Vol. 750
No. 92

Wednesday
8 January 2014

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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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, 8 January 2014.

3 pm

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

Peatlands

Question

3.07 pm

Asked by ***Lord Greaves***

To ask Her Majesty's Government what action they are taking to deliver their commitments made in the statement on peatlands by the Ministers from the Department for Environment, Food and Rural Affairs, the Welsh Government, the Northern Ireland Executive and the Scottish Government on 5 February 2013, in particular those on peatland restoration, land management policies to protect peatlands, and the inclusion of peatland restoration in national greenhouse gas emissions reporting.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley) (Con): My Lords, we are undertaking a number of actions supporting the restoration of peatlands, including working with the International Union for Conservation of Nature on the pilot peatland code, research to determine best practice in peatland restoration, and establishing three government-funded nature improvement areas. We are also investing more than £3 billion in a more targeted successor scheme to environmental stewardship, with the potential to include peatland restoration, and we are funding research on greenhouse gas emissions from lowland peat.

Lord Greaves (LD): My Lords, that was quite a positive response. Is the Minister aware of the recent report by the Institute of Biological and Environmental Sciences at Aberdeen University, which found that building wind farms on undegraded peatland will not reduce net carbon emissions, and that they should not be built there? Many peatlands are in wild, remote, often upland areas, with large stocks of soil carbon. Developing them usually involves substantial excavation and draining of peat, which offsets the gains from wind power. Will the Government take these matters into account when considering their future energy strategy for the UK in conjunction with the devolved Administrations?

Lord De Mauley: Yes, my Lords. Applicants for consent for major energy infrastructure projects must provide assessments of potential biodiversity and geological impacts, including the effects of locating infrastructure on peatland. The decision-making authority must take such impacts into account before making its decision. Much can be done, through project design, to minimise and mitigate impacts. However, if there is damage that cannot be avoided, it is for the planning authorities to judge whether the benefits of the wind farm development outweigh those impacts.

Lord Krebs (CB): My Lords, I would like to ask the Minister about the impacts of climate change on upland peat. As he will know, the report of the Adaptation Sub-Committee of the Committee on Climate Change, which I happen to chair, reported this year that only 4% of upland deep peat in England is in active, peat-forming good condition. Furthermore, only one-third of upland deep peat has a management plan in place. Will he inform the House what he intends to do about the other two-thirds of upland peat that has no management plan in place to improve its quality?

Lord De Mauley: Yes, my Lords—and I should take this opportunity to thank the noble Lord for the work he does with the Adaptation Sub-Committee; it is extremely important to us. The peatland code, which was launched in September, provides a basis for business sponsorship of peatland restoration; that is a key plank in what we are doing. We are also undertaking a considerable amount of important and relevant research. Environmental stewardship, which I referred to in my initial Answer, has for many years benefited peatlands, but the new ELMS will be more focused on environmental outcomes and therefore will be more directly beneficial to peatland restoration. The three nature improvement areas that have peatlands are working hard on improving their habitats.

Lord Cormack (Con): My Lords, is not the best way in which to answer the plea of the noble Lord, Lord Greaves, to ensure that these unreliable, uneconomic and unsightly wind farms are not built on land anywhere?

Lord De Mauley: My Lords, of course, we have to take all factors into account in these decisions, but I shall pass on my noble friend's comments to my colleagues at the Department of Energy and Climate Change.

Lord Knight of Weymouth (Lab): My Lords, as the noble Lord, Lord Krebs, reminded us, only around 4% of our deep peat is in sufficiently good condition still to be actively forming peat. That is a decline from 6% in 2003. We also know that Birmingham, Exeter, Leeds, Liverpool, Manchester and Sheffield, as well as all of Cornwall, rely on peat catchments for their water. The Peak District peatlands alone supply 4 million people. Will the Minister therefore tell us what estimate the Government have made of the costs that could be avoided if the water storage and purification services provided by upland peat were restored?

Lord De Mauley: My Lords, the noble Lord will not be surprised to hear that I do not have a figure for that, but the gist of his question is entirely right. Peatlands perform an absolutely essential function in ensuring that we have clean and pure water supplies.

The Earl of Courtown (Con): My Lords—

Viscount Ridley (Con): My Lords—

Noble Lords: This side.

Baroness Parminter (LD): My Lords, the poor condition of upland blanket peat bogs causes nearly 300,000 tonnes of CO_2 to be released into the atmosphere every year. Can the Minister say at what date the Government intend to increase peatland restoration in the national greenhouse gas emissions reporting?

Lord De Mauley: I was not quite sure which noble friend was going to ask me a question then. The point on greenhouse gas emission reporting is that the metrics and technology are at a relatively early stage. We are still working on that, but noble Lords may rest assured that it is a key focus for us, and we will not rest until we have achieved that.

Lord Berkeley (Lab): My Lords, the Minister said that they were looking for sponsorship for the management of these peatland areas. Does that mean that the only new areas that will get managed will be those sponsored by McDonald's, et cetera?

Lord De Mauley: No, my Lords; that is why I mentioned the new environmental land management scheme.

Viscount Ridley: My Lords, is the Minister aware that it is not only in this country and not only with wind farms that some renewable energy projects are proving to be worse for carbon emissions, because of their effect on peat? For example, a study from Leicester University showed that biomass production from tropical peatland forests can worsen the effect of carbon dioxide emission.

Lord De Mauley: That is a very interesting point, but it strays a little wide of the Question.

The Earl of Courtown: I have got there in the end. I am looking at a slightly different part of this Question—at the end user of much of this peat, particularly the horticultural user. Would my noble friend agree that it would be wise for Her Majesty's Government to look at the labelling of peat products for sale in garden centres, where peat material is sold as being low in peat when at least 50% of it is made up of peat?

Lord De Mauley: My Lords, that is an important point, too, because that is essentially—or at least a major reason—why our peatlands have been so badly destroyed in the past. A road map or plan has been produced from the work of the Sustainable Growing Media Task Force, which sets out recommendations on how a transition to sustainable growing media can be achieved. The Government responded in January 2013. As part of that, a growing media panel was established to oversee and co-ordinate delivery of the plan and to report on progress. The policy review will take place in 2015 to assess progress.

Ofsted: Annual Report 2012-13

Question

3.15 pm

Asked by ***Baroness Perry of Southwark***

To ask Her Majesty's Government what assessment they have made of the remarks about "lucky children" made by the Chief Executive of Ofsted during the launch of that organisation's Annual Report 2012–13.

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): My Lords, I am delighted that the chief inspector has focused attention on "lucky children". Although 78% of schools are now good or outstanding—compared to 68% when we came into office—there are still too many unlucky children. Many of them attend schools up and down the country that have been failing for years and which we are now turning into sponsored academies. The performance of sponsored academies far outstrips that of other state schools. For instance, sponsored academies open for three years improved their GCSE results by 12% versus 5% for local authority schools. The Government's extensive programme of reform is aimed at ensuring that all children are lucky enough to go to a good school.

Baroness Perry of Southwark (Con): My Lords, I thank my noble friend for that heartening reply. Would he also join me in welcoming the chief inspector's finding that children's success in education is determined not by their background but by the quality of the school they attend and that lucky children are simply those who attend good schools? Does this not offer an end to the climate of low expectations for children from disadvantaged backgrounds, which for too long has bedevilled their opportunities?

Lord Nash: My noble friend is quite right. When the new chief inspector came into office, one thing that I thought he did very well was to abolish the appalling low-expectation term "satisfactory" and set much higher expectations for schools. It has clearly been proved through the academies programme and other schools that setting higher expectations for our children does work.

Baroness Massey of Darwen (Lab): My Lords, the report implies that increased testing of children may improve attainment. Many teachers and educationalists believe and state that excessive testing takes time away from teaching. Do the Government agree?

Lord Nash: Assessment, as opposed to testing, is obviously crucial to ensure effective accountability and to work out whether pupils are making progress, which is an issue that I know Ofsted is very focused on. We have held a public consultation on proposals for key stage 1 assessment, whose results have not been published. As far as key stage 3 tests are concerned, we have no plans to reintroduce key stage 3 tests but we expect all schools to be able to demonstrate to Ofsted, through whatever assessment mechanism they use, that their pupils are making progress.

Lord Sutherland of Houndwood (CB): My Lords, would the Minister agree that, while the use of the word "lucky" is good shock tactics—and, possibly, good politics—the primary responsibility of Government, and all of us who are involved in education, is to improve the quality of schools and teaching and to take luck completely out of the picture?

Lord Nash: I agree entirely with the noble Lord. That is what we aim to do.

The Lord Bishop of Ripon and Leeds: My Lords, in view of the difficulties often experienced in recruiting governors for schools, especially but not only in disadvantaged areas, what more can the Government do to encourage people to take on that role and to reduce the bureaucratic pressures that governors so often face?

Lord Nash: The right reverend Prelate is quite right to focus on governance. I put that right at the top of my agenda when I came into office because it seems to me that, whether a school is maintained by a local authority or is an academy, the key decisions are often made by the governing body, so we need to raise the quality of governance. Last year, we focused governors' responsibility on three key functions: on setting the school's strategy and vision; on holding the head teacher to account for pupils' progression and for the performance management of the staff; and on money. It is important to focus governors on a limited number of tasks, but we are also dramatically beefing up recruitment, including by working with business to recruit more business governors.

Baroness Garden of Frognal (LD): My Lords, the chief inspector highlights as a key challenge that pupils do not see English and other school subjects as relevant to their daily lives. Would the Minister agree that lucky children are those who have early exposure to the world of work and make the link between lessons and future aspirations? If so, what steps are the Government taking to support and enhance careers advice throughout primary and secondary schooling?

Lord Nash: I agree with my noble friend that this is very important. It is essential that schools work closely and engage with their local businesses. Many excellent models are emerging up and down the country—I am continually coming across new ones—including: the Business in the Community business class, which aims to work with 500 schools; the Ahead Partnership in Leeds, which runs a very good organisation called "Make the Grade" that builds partnerships between businesses and schools; and Inspiring the Future as well as a number of other models that are emerging. All schools should allow their pupils a window on work through engagement with their local business communities.

Baroness Morgan of Huyton (Lab): My Lords, the progress of schools in London, particularly sponsored academies, was particularly marked in the report. What lessons will the Government take from the London experience of introducing sponsored academies with very strong leadership, good teaching and strong governance, also backed up by the framework of the London Challenge? I draw attention to my entries in the register.

Lord Nash: The noble Baroness makes a good point, and I am grateful to her for her work as chair of Ofsted. There are two lessons from the point she made. One is that school-to-school support is the key model. We are focusing the academy programme on a regional, school-to-school cluster basis—whether that involves national chains operating regionally or local schools supporting local schools. Those are the absolute key things that we learn from the London Challenge and the academy focus. It has to be done on a local basis.

Baroness Hughes of Stretford (Lab): My Lords, at the same time as publishing his report the inspector also said that grammar schools are acting as a brake on social mobility and there should be no more of them. Do the Government agree with that as well?

Lord Nash: The Government are prepared to approve expansion of grammar schools but we are not in favour of new grammar schools.

Exports

Question

3.22 pm

Asked by ***Lord Sherbourne of Didsbury***

To ask Her Majesty's Government what steps they are taking to encourage more United Kingdom businesses to export goods and services.

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Livingston of Parkhead) (Con): My Lords, the Government have significantly increased their support for exporters. UKTI expects to assist 40,000 businesses in this fiscal year, an increase of 50% over the past two years. The Government have also provided additional funding to increase support for exporters in key fast-growing markets such as India and China. In addition, the Chancellor recently announced a significant increase in UK Export Finance's capacity to support our exporters.

Lord Sherbourne of Didsbury (Con): My Lords, I welcome that. In particular, I welcome what my noble friend said just before Christmas about consulting medium-sized companies on what further help they might need. When he does that, will he have in mind the additional support that can and should be provided by chambers of commerce and other business organisations? Will he also look carefully at what lessons we can learn in that regard from other successful exporting countries such as Germany?

Lord Livingston of Parkhead: My noble friend makes a very good point. We have indeed looked at successful exporting countries such as Germany, Japan and the US. One feature in a number of them is, and has been over the past 20 or 30 years, the use of chambers to assist companies in overseas markets; we are indeed adopting this model. We have targeted 41 more-difficult-to-reach markets where chambers will assist us in providing support for particularly our smaller exporters, as well as the large companies that are often represented. In addition, we are looking at the success of middle-sized companies in Germany, where the UK does not do as well, and there will be a number of initiatives with them. In addition to the chambers, we are working closely with the Institute of Directors, the CBI and the Federation of Small Businesses—to name three organisations.

Lord Giddens (Lab): My Lords, we are in the early stages of some of the greatest transformations possibly ever to affect manufacturing and even service industries, with the advent of digital production. By that I mean 3D printing, what has come to be called by some 4D printing and beyond. As a result, it may be possible for us not only to make many things here that are at the moment made abroad but to export them to other countries. What are the Government doing to ensure that the UK is in the forefront of these extraordinary possible transformations?

Lord Livingston of Parkhead: The noble Lord is indeed correct that we are seeing much change in manufacturing capability. The Government are investing significantly and have ring-fenced a science budget to assist in many UK projects. We have the "eight great technologies" that we will be investing in, and we are increasing the links between companies and universities; I commend the universities on that. We are certainly supporting the advanced manufacturing capabilities as well as a number of other technologies that we believe will really help the UK to go forward, investing in the right industries that will grow in the future.

Lord Naseby (Con): Is the Minister aware that the extra resources being put into exports are enormously welcome, but that the weakness is still the marketing of those resources and the facilities that they provide, particularly on export finance to the SME market in general? Secondly, the Queen's award for exports is looking exceedingly tired and is long overdue a revamp. Finally, if we are sending and attending conferences overseas on exports, can we please appoint a Minister early in the process and not turn up at the last moment, as my poor noble friend Lord Marland had to do in Colombo? He still did a very good job, but it was late in the day.

Lord Livingston of Parkhead: There are a number of questions there. At this point, I am probably not looking to rebrand the Queen's award for exports, as the Queen does seem to be the right person to award it. In terms of UK Export Finance, my noble friend does make a good point; UK Export Finance has predominately supported larger companies. We have, however, doubled the number of regional advisers for UK Export Finance, and we have launched a new product aimed at assisting smaller companies. In fact, I was at the meeting of the all-party parliamentary group on this issue, and I heard a number of small and medium-sized businesses commending the work of UK Export Finance, but there is more work to be done.

Lord Stevenson of Balmacara (Lab): My Lords, I welcome the noble Lord to his Front-Bench appearance and look forward to working with him in future. He will be aware of the publication of *Good Business* in September 2013, which is welcome because it puts into effect the Government's commitment to implement the UN guiding principles on human rights. It is somewhat long on rhetoric, and a bit short on action, but one of the commitments it makes is to adjust government rules to allow human rights-related matters to be reflected in the procurement of public goods, works and services. Will he explain what is happening on this matter?

Lord Livingston of Parkhead: In terms of procurement rules—and I will talk in relation to exports, as procurement within the UK will be a different matter—we absolutely look at human rights, and discuss the subject regularly with many of the NGOs involved. We look at the relevant UN guidelines, and we will of course look to and abide by the appropriate and relevant guidelines from the UN. Government procurement is another matter and perhaps should be left for a different question.

Lord Wright of Richmond (CB): My Lords, does the Minister accept that it is wrong to talk about encouraging businesses to export without drawing attention to the worldwide resource provided by the Diplomatic Service? It is very anxious to do everything it can to help both businesses and chambers of commerce wherever they want that help.

Lord Livingston of Parkhead: That is an excellent point. I commend the ambassadorial network; I have seen its work both as a Minister and as an exporter. Its enthusiasm and positivity to assist the UK in increasing exports is to be commended. In fact, the work of the FCO and its focus on our export efforts has been excellent. We will continue to work very closely; of course, as a Minister I am part of FCO as well as being part of BIS, and that reflects the important role that the Foreign Office has in exports.

Lord Stoneham of Droxford (LD): The Government have set out a system of trade ambassadors to promote exports in particular countries, involving a number of Members of this House. Has an assessment been made of the effectiveness of this system and initiative, and what plans are there for its future expansion?

Lord Livingston of Parkhead: Trade envoys have been established to assist in countries to which government Ministers do not make regular visits. I commend the various Members of the House who act as trade envoys and thank them for their hard work. We are reviewing the success of the trade envoy programme, and how we could perhaps expand it slightly into new areas. When it works well, it is certainly helpful. We combine enthusiasm, expertise and knowledge in particular countries to assist us in increasing our overall exports and relationships with those countries.

Legal Aid

Question

3.30 pm

Asked by ***Lord Clinton-Davis***

To ask Her Majesty's Government what is their response to the protests by lawyers on 6 January concerning further cuts to legal aid.

Lord Ahmad of Wimbledon (Con): My Lords, we have engaged constructively with lawyers over a period of many months and we continue to do so. However, the fact remains that we have one of the most expensive

legal aid systems in the world and in the current economic climate this is not sustainable for taxpayers, who fund it. We have to find efficiencies to ensure that legal aid is sustained and available for those most in need of a lawyer.

Lord Clinton-Davis (Lab): I thank the Minister for that uninformative Answer. Does he recognise that the Justice Alliance, representing a large number of people and organisations and many senior judges, has expressed its concern about these proposals? Is it not the case that these cuts will lead to more, not less, expenditure, that cases will be bound to last much longer when people are unrepresented, that there will be a reduction in standards and that there will be more miscarriages of justice and an inevitable increase in guilty pleas? Is not the Minister concerned about all those things, as expressed by reputable organisations?

Lord Ahmad of Wimbledon: My Lords, the Government have undertaken to listen, consult and work with the profession, and we continue to do so. However, in the current economic climate and indeed with the crisis that we inherited, we needed to look across the board to ensure that efficiencies could be had. Even with the efficiencies that we will be making from this series of cuts, £1.5 billion will continue to be spent on legal aid—a figure that is among the highest in the world.

Baroness Butler-Sloss (CB): My Lords, does the Minister appreciate that the figures that the Government have been giving for the incomes of members of the criminal Bar refer to turnover before VAT, tax and chambers expenses are taken off, and that therefore these figures are utterly misleading?

Lord Ahmad of Wimbledon: My Lords, the Government and indeed my honourable friend Shailesh Vara, who is the legal aid Minister, have made it quite clear that when we have referred to these figures—for example, the average figure of £84,000—they have related to fee income. The Government recognise that costs are to be taken from that fee income, and we have talked about that.

Lord Anderson of Swansea (Lab): My Lords, one feature of the stand-off is that the representatives of the criminal Bar and the Government are quoting very different figures for earnings—not just the net and gross earnings. Would it not be helpful as a basis for negotiation to try to agree with the representatives of the criminal Bar a common basis for the actual earnings?

Lord Ahmad of Wimbledon: I repeat my assurance to noble Lords that the Government continue to consult. Indeed, we have just had close to 2,000 responses to the latest consultation on legal aid. As part of those discussions, I am sure that we will take on board the noble Lord's comment, which seems a very sensible suggestion.

Lord Elystan-Morgan (CB): My Lords, does the Minister accept that over the past few years when there have been discussions concerning cuts in legal aid on a broad basis, the Government have accepted that there are massive downstream costs which greatly erode what otherwise might seem to be an attractive saving? Can the Minister tell the House what surveys have been made of such downstream costs and what the results of those surveys are, and, in the event that such surveys were not made, how any Government could have been so monumentally imprudent as to jump into the dark in such a situation?

Lord Ahmad of Wimbledon: My Lords, I am afraid that I do not agree with the noble Lord. This is not a jump into the dark; it is a recognition of the current situation that the Government face across the board and across every department. We are seeking to focus legal aid spending on those who most need it. Spending on legal aid in the UK amounts to about £39 per head. I reiterate that one should look at some of the figures, even making international comparisons. Compared with like-for-like systems—for example, New Zealand at £18, Canada at £10 and Ireland, next door to us, at £20 per head—our legal system will, after the efficiencies are made, still remain one of the best in the world.

Lord Howarth of Newport (Lab): My Lords, the Minister has just spoken of efficiencies. How is it efficient to impair the quality of justice?

Lord Ahmad of Wimbledon: Again, I disagree with the noble Lord. Looking around the world, and speaking for the Benches behind me, I believe that our justice system is one of the best in the world and will continue to be so, despite the efficiencies being made. I do not agree with the picture that the noble Lord paints.

Lord Phillips of Sudbury (LD): My Lords, does my noble friend recognise that solicitors are also essential to criminal advocacy and that there are growing deserts in this country, which will be much accelerated by the cuts, where people will not be able to find solicitors for miles? What is he going to do about that?

Lord Ahmad of Wimbledon: Having just returned from Dubai, I can perhaps relate physically to the picture of a desert, but not in the sense of the legal aid environment. Of course my noble friend is correct to say that solicitors play and will continue to play a crucial and important part, and the Legal Aid Agency will ensure that representation for those who need it will be available.

Lord Forsyth of Drumlean (Con): My Lords, while supporting the Government—

Lord Beecham (Lab): My Lords—

The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford) (Con): My Lords, it is this side.

Noble Lords: No.

Lord Hill of Oareford: It is this side.

Lord Forsyth of Drumlean: I give way to the noble Lord.

Lord Beecham: I am most obliged to the noble Lord.

My Lords, does the Minister agree that VAT and expenses, to which reference has been made, actually account for 40% of the fees that are currently being quoted? What is his response to those members of the judiciary who are concerned about future recruitment of judges to deal with criminal cases in the likely event of a decline in the quantity and quality of the criminal Bar?

Lord Ahmad of Wimbledon: I believe that I have already answered the noble Lord's question. The Government recognise that there are costs that are taken across, which is why we quote fee income. As for recruitment into the profession, and as I said, we believe that after these efficiencies are made, the criminal Bar and indeed the legal profession as a whole will continue to be an attractive proposition. We will continue to work with the profession to ensure that the standards and quality of legal representation in our country remain among the best in the world.

Severe Weather

Private Notice Question

3.37 pm

Asked by ***Lord Wigley***

To ask Her Majesty's Government what additional financial resources they will make available to the enable the various relevant public authorities in each part of the United Kingdom to respond to the impact of the recent severe storms.

Lord Wigley (PC): My Lords, I beg leave to ask a Question of which I have given private notice.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Stowell of Beeston) (Con): My Lords, I hope that your Lordships will allow me to provide an Answer to the noble Lord that is slightly longer than is customary. Noble Lords might welcome an update on the current situation in line with that given by my right honourable friend the Prime Minister in the other place earlier today.

In doing that, I must first pay tribute to the emergency services, Environment Agency staff, local authorities, voluntary organisations and many members of the public who contributed to the response to the flooding over Christmas and the new year. Tragically, seven fatalities in England between 23 December and 5 January are associated with the severe weather conditions. I am sure that the House will want to join me in expressing our deepest sympathy to their families and friends.

There are currently 104 flood warnings and 186 flood alerts in place across England and Wales. Although the weather has improved, river and ground water levels remain so high that further flooding could come at short notice. There are a number of particular concerns, including in Dorset, Wiltshire, Hampshire, Somerset and on the Thames in Oxfordshire. Given these ongoing threats, COBRA continues to meet and is doing so this afternoon.

Recognising the seriousness of the situation, my right honourable friend the Secretary of State for Communities and Local Government announced a Bellwin scheme to support local authorities with the costs associated with the immediate response to protect lives and properties. As of 7 January, my department has received 22 notifications from local authorities that they intend to make a claim under Bellwin for the severe weather events dating from the 6 December east coast tidal surge until now. Equivalent funding for Welsh and Scottish local authorities is a matter for the devolved Administrations.

Lord Wigley: My Lords, I am grateful to the Lord Speaker for permitting this Question, particularly as there was a Statement in the other place on Monday which we were not able to have repeated in this Chamber. I am grateful to the Minister for the Answer that she has given. Perhaps I may associate myself with the sympathy she has expressed to those families that have suffered bereavements in these tragic circumstances.

Does the Minister accept that in some areas, such as Aberystwyth and other parts of the Ceredigion coast, and, indeed, the Pembrokeshire coast, the damage was so acute that it may run into many millions of pounds to put right, well beyond the resources of small local authorities, and that the National Assembly for Wales has a very limited contingency reserve capacity? Can she give an assurance that the Treasury will help out on a basis of the needs of such areas and that that principle will be applied not only in Wales but throughout the United Kingdom?

Baroness Stowell of Beeston: The noble Lord raises a question on support and funding which goes beyond the immediate process that is available to local authorities. As he knows, and as he indicated in the question that he has just put to me, the funding that local authorities in Wales may require is very much part of the Welsh Assembly's arrangements. The funding that they may receive from a similar kind of Bellwin scheme in Wales would be a matter for the Welsh Assembly. I am not in a position to offer any further information at this time as to what the Government might do beyond the Bellwin scheme.

Lord Morris of Aberavon (Lab): My Lords, in the event of the Treasury providing assistance for England, will it provide an increased amount to meet the Welsh Assembly's need for expenditure in Wales?

Baroness Stowell of Beeston: As I said, the normal response to situations of the kind we are experiencing at this time is for the Bellwin scheme to come into force. As noble Lords will know, this is a tried and tested scheme that has been in place for a substantial period of time and has worked well. The noble Lord is suggesting something in addition to that and I am not in a position at this time even to suggest that it is necessary for us to go beyond the Bellwin scheme.

Lord Deben (Con): Does my noble friend accept that the costs of cleaning up after floods are considerably greater than the costs of protection from floods? Therefore, now that the Prime Minister, the Leader of the Opposition and the official spokesman for the Liberal Democrat Party in the House of Commons have admitted the connection between climate change and flooding, can we expect that the Government will re-assess the on-going spending on flood prevention in the United Kingdom?

Baroness Stowell of Beeston: My noble friend raises an important point. On our investment in flood defences, it is important to make the point that this Government's overall investment is higher than ever before. We announced in the Autumn Statement before Christmas—this has not happened before—a commitment to a protected, long-term, six-year capital settlement for flood defences. This will lead to £400 million a year by 2021 and will mean that a further 300,000 other properties are protected beyond those that already are.

Lord McKenzie of Luton (Lab): My Lords, we join in paying tribute to all of those who are working in difficult circumstances to tackle these dreadful adverse consequences of our weather conditions and welcome the Bellwin scheme announcements. However, we have obtained figures in a Parliamentary Answer which make it clear that the Government have reduced investment in flood defences by as much as £100 million in real terms, lower than the level they inherited, from £646 million in 2010 to £527 million this year and £546 million in 2015. How does the Minister justify the claim that has just been made? How does she justify the proposed one-third cut in the budget of local flood authorities for 2015-16 that has just been announced in the local government finance settlement?

Baroness Stowell of Beeston: On the noble Lord's first point, as I have said, this Government are investing more than £2.3 billion on flood defences in this spending review period and the overall investment, when that is combined with local authority and private sector expenditure, is higher than in the previous four years. As for any reductions in budgets, as the noble Lord will know, because he will have heard my honourable friends make the same point, in any reductions to budgets, necessary budget cuts that we have had to make because of economic situations, front-line flooding services are not affected.

Lord Elystan-Morgan (CB): My Lords, as one who lives near Aberystwyth and is proud, indeed, to have been born in that town, I suggest to the Minister that the situation not just in Aberystwyth but in many other places on the Welsh coast that have been so badly hit is far more desperate than the Government seem to appreciate. The scale of storm destruction is such that it is impossible for local authorities or, indeed, the Welsh Assembly to render proper remedy. Although Westminster exercises sovereignty over the land and nation of Wales, with that sovereignty there is also a high and heavy moral responsibility to assist in situations of crisis such as these.

Baroness Stowell of Beeston: I understand the point that the noble Lord is raising. In responding to the situation and ensuring that those who are affected are properly supported, we would expect that to be the same whoever is affected and wherever in the United Kingdom they may be. As I have made clear, and as the noble Lord understands, this is a devolved matter. The Government are at the present time introducing the Bellwin scheme. We believe that that is the proper approach and we look to the Welsh Assembly to consider what action it should take.

Baroness Parminter (LD): My Lords, my family was one of the 750,000 in this country without power for some time over the Christmas and new year period—in our case for four days, on and off, including Christmas Eve and Christmas Day. I pay tribute to the companies, local authorities and volunteers who kept our local community in Godalming going. I applaud the Government for their decision last year not to merge the Environment Agency and Natural England. That would have resulted in a critical loss of focus by the Environment Agency from its core function of responding to flood defences. That was a wise move. However, bearing in mind the need to ensure that we plan in the future for such inevitable further extreme weather events, will the Department for Environment, Food and Rural Affairs soon be in a position to say which policies and programmes it will have to cut in order to make the savings of £300 million in the next two years so that we can plan properly for any future emergency events?

Baroness Stowell of Beeston: First, I echo my noble friend's points about the real, serious effects that some people have had to contend with, particularly those in some parts of the country who were without power for substantial periods. It is worth my saying, as the Prime Minister made clear earlier today, that while the overall response to these situations has been good, a small number of organisations have not been good enough in their response. There are lessons to be learnt and we will ensure that they are. I can inform the House that the Secretary of State for Energy and Climate Change is meeting distribution network operators and Ofgem today to discuss power.

In response to my noble friend's specific point, I make the same point that I made earlier, which is that in the savings that are being made in the Environment Agency, the chief executive of that agency has assured my right honourable friend that he has every intention of protecting front-line services concerned with flooding.

Anti-social Behaviour, Crime and Policing Bill

Report (1st Day)

3.49 pm

Clause 1: Power to grant injunctions

Amendment 1

Moved by ***Lord Dear***

1: Clause 1, page 1, line 8, leave out from "in" to end of line 9 and insert "anti-social behaviour.

( ) Anti-social behaviour is—

(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person, or

(b) in the case of an application for an injunction under this section by a housing provider or by a local authority when exercising similar housing management functions, conduct capable of causing nuisance or annoyance to any person."

Lord Dear (CB): My Lords, in moving Amendment 1, I want to be absolutely clear on one thing: anti-social behaviour can be, and often is, a blight on society and on those who suffer as victims of individuals who care only for themselves—people who are thoughtless, selfish or deliberately provocative. I believe, as many in your Lordships' House will, too, that the law should continue to try to prevent that happening and to offer relief to those who suffer from that sort of behaviour. Their well-being is precious. On the other hand, civil liberty is precious, too, and a balance has to be struck between those two requirements.

My amendment is largely concerned with that balance and with a search for certainty, precision and clarity. It is concerned with the legal requirement that the law should be precise and not undermine fundamental human freedoms. The amendment is of course also about anti-social behaviour but the primary issue is an important and very long-established jurisprudential principle. From at least the days of *Halsbury*, it has been recognised that the law should be clear, reasonable, precise and unambiguous. People must know what the law demands of and grants to them. That principle is followed in all developed democracies. For example, in the USA the void for vagueness doctrine allows a statute to be struck down if it lacks sufficient definiteness or specificity so that:

"Men of common intelligence cannot be required to guess at the meaning of the enactment".

That is from the case of Winters v New York in 1948.

Existing ASBO and public order legislation addresses anti-social behaviour by defining it in those circumstances as conduct that causes harassment, alarm or distress—a threshold test accepted by lawyers and lay people alike that has been well understood after years of judicial interpretation and never seriously challenged or openly criticised as too restrictive in scope. The Bill before us seeks to replace that three-word threshold test of harassment, alarm or distress with two new words: "nuisance or annoyance". In so doing, it will open the door to uncertainty, confusion and legal injustice. Most of Clause 1 is concerned with the mechanics of the new injunctive procedure but the threshold test is the pivotal point around which everything else revolves. To put it another way, it is the foundation upon which all that is new will be based. The present threshold test of harassment, alarm or distress is about to be replaced with the altogether more imprecise words "nuisance or annoyance". In other words, the net is being cast much wider—far too wide, in my opinion.

I am grateful to those who have supported me in tabling this amendment. The noble and learned Lord, Lord Mackay of Clashfern, was one of the most respected Lord Chancellors in the past half-century. The noble and learned Lord, Lord Morris of Aberavon, was an eminent Attorney-General. Both are signatories. So, too, is the noble Baroness, Lady Mallalieu, who brings a wealth of experience at the Bar as a practising QC and who spoke on 18 November in Committee on my behalf when I was unavoidably prevented from being in my place. That day, she tabled in my name a very similar amendment to the one we consider now. I am grateful to her for setting out the proposition with great skill—cogently, powerfully and persuasively.

She reflected that the law should be precise and not undermine fundamental human freedoms. She recognised that anti-social behaviour was a serious problem but that action to deal with it should be balanced against the need to preserve civil liberties. She reminded the House that the Commons Home Affairs Committee had said that Clause 1 of the Bill is "far too broad". She paid tribute, as I do now, to the opinion—widely circulated in your Lordships' House—of the noble Lord, Lord Macdonald of River Glaven, a former Director of Public Prosecutions, who roundly attacked the Bill saying that, "Nuisance or annoyance", is a phrase,

"apt to catch a vast range of everyday behaviours to an extent that may have serious implications for the rule of law".

He went on to say:

"In my view, the combination of a low and vague threshold for the behavioural trigger, coupled with the civil standard of proof, creates an unacceptable risk that individuals will inappropriately be made subject of a highly intrusive measure that may greatly impact on their fundamental rights".

It is not only Members of this House and of the other place who are concerned. A wide, and even disparate, range of organisations and civil liberty groups have expressed the same opposition. Justice, Liberty, the Criminal Justice Alliance, the Standing Committee for Youth Justice, Big Brother Watch, the National Secular Society on the one hand, the Christian Institute on the other, the Association of Chief Police Officers and many more have all said the same thing. A letter was published in the *Times* on 10 June last year in which around two dozen organisations expressed opposition to the phrase "nuisance or annoyance". It reminded us that an injunction in those terms could be applied to anyone over the age of 10. It reminded us that it was subject to a new burden of proof, lowered to the civil burden on the balance of probabilities. It reminded us that it is open to indefinite duration and does not require any form of intent, and that a breach of the injunction can result in serious sanctions, including imprisonment.

I have a distinct feeling of déjà vu in speaking to this amendment, for it was only just over 12 months ago, on 12 December 2012, that I proposed an amendment to remove the word "insulting" from Section 5 of the Public Order Act 1986. The ingredients of that debate were strikingly similar to the issues today. Again, an important legal freedom was then at stake. The word "insulting" had been employed more and more to curb the exercise of free speech in public. That fundamental right was being abused. More and more, police and prosecutors were unwilling to exercise discretion—some might say that they were unwilling to exercise common sense—and they increasingly deferred to the courts for a decision. That increased the growth of the chilling effect, the definition of the word "insulting" became blurred, injustice increased and confusion reigned. Your Lordships agreed that amendment, voting 3:1 with a majority of almost 100 to strike "insulting" from the statute on the ground that it was no longer precise enough. The only real difference in that exercise a year ago and today is

that then I was able to cite a very long catalogue of examples of the results of poor legislation, and today we can only anticipate that such a list will develop—albeit an anticipation with some confidence.

No doubt it is to avoid an identical problem that the Association of Chief Police Officers has advised that, although it broadly supports the new IPNA, it believes that the suggested threshold is unreasonably low and it, too, advocates a return to the "harassment, alarm or distress" test.

With all those examples of the results of imprecise and vague legislation, I am frankly at a loss to understand why the Home Office is so eager to repeat the exercise, yet again facing a solid wall of resistance from experienced groups and learned individuals. I can but recall the words of the 1960s protest song—"When will they ever learn?".

The phrase "nuisance or annoyance" has been borrowed, or perhaps lifted, from the context of existing housing legislation, which involves of course neighbours living in close proximity. In those special housing circumstances it is clearly almost impossible simply to move out or to look the other way or pay no attention. The present test in the housing sphere is restricted to conduct affecting the management functions of the landlord. What is appropriate in an environment with two-inch-thick party walls, or with 10 or more front doors opening onto a balcony on the fifth floor of a tower block, or with cramped lifts and common parts, all of that is clearly inappropriate, surely, in a public square.

Nuisance or annoyance, I would maintain, cannot and should not be applied to the countryside, the public park, shopping malls, sports grounds, the high street, Parliament Square, Speakers' Corner and so on, because that risks it being used against any of us and against anyone in society. That risks it being used against those who seek to protest peacefully, noisy children in the street, street preachers, canvassers, carol singers, trick-or-treaters, church bell ringers, clay pigeon shooters and nudists—yes, they, too, have raised objections with me and, I know, other Members of your Lordships' House.

4 pm

We live on a crowded island and we must surely exercise a degree of tolerance and forbearance. I shall continue to be privately annoyed by those who jump the bus queue, those who stand smoking in large groups outside their office, drinkers who block the footpath outside a pub on a summer's evening, those who put their feet on the seats on public transport, those who protest noisily outside Parliament or my local bank, but none of that should risk an injunctive procedure on the grounds of nuisance or annoyance. I and those who support me are content to leave the test of nuisance and annoyance in place in the housing context, where it is well tried and proven. We strongly resist its use elsewhere and do not see our concession to housing law as a weakness in our case. Rather, we see it as a strength, distinguishing, as it does, the essential difference between the two environments.

I said that I would be brief. In conclusion, I pay a small tribute to the Minister, who has tabled an amendment introducing a test of reasonableness. I applaud his concern but not the practicality, because that test, too, suffers from a problem of definition. I do not believe that it is enough to rely on a court considering it,

"just and convenient to grant the injunction",

as set out in the second limb of Clause 1, or on the draft guidance for front-line professionals published in October last year, or on the insertion of the word "reasonable". None of these will overcome the inherent flaw in the new test: the pivotal words "nuisance or annoyance" are vague and imprecise. The only certainty is that practitioners will leave it to the courts to decide, and thus introduce a chilling effect on lawful conduct, as they did for years when faced with the word "insulting" in the Public Order Act. We know only too well what difficulties that caused. Even in the court room, "reasonable" is itself subjective, and coupled with the lower burden of proof and vague and imprecise terminology, employing words that are hitherto untested in the courts, we will set the scene for confusion and inequity, for courts cluttered with inappropriate actions and for a wave of unintended consequences.

I conclude with the point with which I began. The amendment is about certainty and clarity, with the legal requirement that the law should be precise and should not undermine fundamental human freedoms. I contend that the Bill as drafted does not comply with that.

One last thought: in Charles Dickens's novel *Bleak House*, when the case of Jarndyce v Jarndyce was in question, the cynical lawyer Mr Vholes commented:

"The one great principle of English law is, to make business for itself. There is no other principle … maintained".

As it stands, the Bill will certainly expand the business of law. That should not be our aim today; our aim should be a search for precision, clarity and certainty. I beg to move.

The Lord Speaker (Baroness D'Souza): I should perhaps remind your Lordships that if this amendment is agreed to, I cannot call Amendment 2 by reason of pre-emption.

Baroness Mallalieu (Lab): My Lords, my name has been added to this amendment. The noble Lord, Lord Dear, moved it with his customary reason and calm; I fear that I shall not be following in quite the same vein.

Whoever thought up Clause 1 and managed to slip it under the radar of the other place is a strong contender for some kind of award. Perhaps it should be a citation for attempting to increase the power of the state to interfere in people's lives; perhaps a golden globe for providing the authorities with a new and easy-to-discharge weapon in the war against inconvenient and annoying expressions of dissent; or perhaps even an Oscar for thinking up a way to take out those who are a nuisance or annoyance in any one of a thousand unspecified ways—and doing it in a manner that admits virtually no defence or safeguard and that requires the minimum of evidence.

Those on whom the Government propose to confer this extraordinary power are fully set out in Clause 4. Apart from the housing providers, to whom I will come shortly, they include the Environment Agency, all local authorities, British Transport Police, Transport for London, the Secretary of State for Health—and, of

[Baroness Mallalieu]
course, the police themselves. In other words, they are in every single case an arm of the state. The proposed definition in Clause 1(2), that the respondent must be someone who,

"has engaged or threatens to engage in conduct capable of causing nuisance or annoyance to any person",

has been adopted, as we have just been told, from a very limited provision, carefully restricted to conduct affecting the housing management functions of the relevant landlord. Both the applicant and the respondent are carefully defined. It is intended to assist a housing provider to control the behaviour of neighbours—tenants—living in close proximity who, as has been said, cannot simply look the other way, pay no attention or move easily—and in a situation where, because of fear, evidence may be hard to obtain.

The Government propose to take this particular power, designed for the particular problem of anti-social neighbours, and give it to a wide range of state bodies for use without restriction against absolutely anyone. The amendment of the noble Lord, Lord Dear, recognises the force with which many housing providers have lobbied us between Committee and today. They wish to retain that power in their own very limited and special context. Under this amendment, they would do so.

In Committee—and I anticipate more of the same later when the Minister replies—the response of the noble Lord, Lord Taylor, to my similar amendment on the ASBO definition that this amendment seeks to retain, was, "You are not thinking about the victims". By that he clearly means those who are on the receiving end of anti-social behaviour. I have to say that he is wholly wrong in that. It is precisely because we are concerned about those who are harassed in our hospitals, caused alarm on public transport, or distressed by the conduct of others in the street that we want to see this legislation targeted at that behaviour.

In reality, most anti-social behaviour that the public worry about is already covered by existing criminal law offences under criminal damage, public order and harassment laws. There are unquestionably problems of court delays at present—and not just with ASBO applications. Inadequate resources for police, prosecuting authorities and courts are all factors. Ironically, by making IPNAs so much easier to obtain than ASBOs, for a far wider range of behaviour, and with a lower evidential burden, there is a real prospect that Clause 1 will slow down the courts by clogging them with myriad IPNA applications and will be of little help to real victims in need of urgent help.

I also remind the Minister that there are other victims of whom he appeared to take no account. They include those against whom an allegation is made that is unfair, unwarranted or untrue, or without any proper evidential basis. There is no defence of necessity or lack of intent in the Bill. I see no compensation provisions for a wrongful injunction, or any of the safeguards that normally attach to a civil injunction, especially when the defendant is not present at the initial hearing. This is all worrying, but particularly worrying for me is the lower burden of proof that is now proposed. However, my main concern is the extent to which lowering the threshold to behaviour,

"capable of causing nuisance or annoyance to any person",

has the potential to undermine our fundamental freedoms, and in particular the way in which the proposed law might be used to curb protest and freedom of expression.

In exercising my personal right to protest in the past, I readily accept that I have on a number of occasions been guilty of conduct capable of annoying someone. Every march that delays traffic, every rally that overcrowds public transport or pavements, and every demonstration with loudspeakers, whistles and horns is no doubt capable of causing nuisance or annoyance to someone, and is usually a headache for the authorities, too. I suppose that there are Members of your Lordships' House who have never attended a rally, demonstration or protest march, but I would place a small wager that they are in the minority. In a lifetime of attending protests, from Aldermaston as a child to the countryside march and many in between, if I have caused annoyance or nuisance, I hope that I have never caused harassment, alarm or distress to anyone.

Quite simply, the Bill currently sets the barrier too low. It threatens fundamental freedoms and, importantly, it undermines tolerance, which is surely an essential quality for living happily in an overcrowded island such as ours. Speaking in a rather different context but saying what I think is appropriate, Lord Justice Sedley some years ago put it rather well. He said:

"Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having".

To try to prohibit behaviour that is capable of annoying someone is a step far too far, and I hope that this House will do what the other place overlooked and stop it.

Lord Mackay of Clashfern (Con): My Lords, I support this amendment; I have signed it and I believe that it is amply justified. As the noble Baroness has just said, one of our fundamental freedoms is the freedom of speech. Surely it is clear that in exercising that freedom, one may annoy one or more other people. From time to time in this House I have witnessed a Minister explaining his present difficulty by reference to the behaviour of the previous Government, and one immediately senses annoyance on the opposite Benches. If I have an opinion which I know some or many people will disagree with, surely I am entitled to come out with it. Do I have to reasonably consider whether it will cause annoyance to somebody else, and if it would, what should be the consequence? Am I to muzzle my point of view to placate people who might be annoyed? It is absolutely plain that "annoyance" in this context, with a wide application, is inappropriate for this purpose.

The position taken up by the Government hitherto, so far as I understand it, is that this definition has been tried and tested in the courts for some 15 years. But definitions in their application are subject to the context in which they are used, and this use has been in the context of social housing and its enforcement has been in the hands of the responsible authorities for social housing. You cannot imagine an authority in that field trying to stop a street preacher, for example, on the basis that he was annoying the passers-by by the denunciations that he was pronouncing against their acknowledged conduct. It is not the same context at all, and the context influences the proper interpretation.

4.15 pm

It is certainly possible to consider amendments. The Government have come out with one in which they replace the clause which was in the Bill originally by "reasonably be expected to occasion annoyance". I do not see that that helps in the slightest because the real difficulty is the definition of what is reasonably caused, not whether it is reasonably caused. Indeed, in some aspects this could be regarded as slightly widening the context of what was in the Bill before in the sense that it does not actually need to cause so long as it is reasonably expected to cause. That is a very small point that occurred to me just looking through it.

"Just and convenient" is used as a condition of the granting of this injunction. I find that hard to apply in the circumstances of this case. If something is just, does it not go forward because it is inconvenient to the respondent? That does not seem very sensible. I do not think the condition that it should be just and convenient adds anything to provide against the effect of the basic definition.

The use of the word "reasonably" has been suggested in relation to later amendments as a defence in this situation. But is it not reasonable for me to express my opinion even if I know that somebody will disagree with it? Earlier I gave an illustration from this House of a Minister on this side blaming the previous Government for whatever is the cause of the difficulty. Certainly such a view could be reasonably anticipated to cause annoyance on the other Benches—one has seen it often enough. The difficulty is in relation to the definition and to the absence of any safeguards which would prevent the application of that definition to inappropriate circumstances. There are various ways in which this might be approached and I strongly urge your Lordships to support this amendment unless my noble friend is able to indicate that these matters will be considered further.

I understand that the Government do not intend this to apply, for example, to street preachers, but the problem is that the definition as stated would, for the reasons which we have heard, quite clearly encompass that kind of conduct. The idea that guidance can deal with this seems to be quite aside from the real difficulty, because I do not believe that guidance can alter the substantial issue raised by the statute. The idea of the Home Office giving guidance to the courts strikes me as a slightly difficult concept for the courts to accept. Apart from the kind of interpretation which is given as a result of statements made in this House when an amendment is put forward, guidance to the courts by the Executive would be regarded as being of a rather doubtful constitutional propriety. Unless something can be done to alter this definition or the circumstances of its application, I urge your Lordships to support this amendment if, in due course, the noble Lord, Lord Dear, decides to test the opinion of the House.

Lord Morris of Aberavon (Lab): My Lords, I have added my name to the amendment tabled by the noble Lord, Lord Dear. Like him, for as long as I can remember the Home Office has been bringing forward ill thought-out proposals with little regard for the consequences. Parliament scrutinises them, and they are from time to time defeated. I, like the noble Lord, thought that some lessons would have been learnt from our debate on "insulting". I fear that from time to time the Home Office does not fulfil its purpose as the guardian of our liberties and a watchtower against the infringement of those liberties. I can go back a long time. Over the decades, Parliament has been concerned with loads of proposals of this kind which have not been thought out because they emerge from the fortress mentality of the Home Office, which imprisons so many Home Secretaries of all parties.

We have heard many objections, which I shall not repeat, to these proposals to lower the threshold and inevitably catch a much larger number of people than Parliament would want. As a lifelong criminal law practitioner, I, like the noble Lord, Lord Dear, give the highest of values to the importance of certainty, and the European Convention on Human Rights affirms the common law. When she agreed to the removal of the word "insulting" from Section 5 of the Public Order Act, the Home Secretary, informed Parliament that:

> "There is always a careful balance to be struck between protecting our proud tradition of free speech and taking action against those who cause widespread offence with their actions".—[*Official Report*, Commons, 14/1/13; col. 642.]

I agree wholeheartedly with the need for a careful balance. This proposal, including the Government's amendment, is the wrong side of that balance. "Harassment, alarm or distress" is well tested by the courts and in its application. "Nuisance or annoyance" is such an elastic term that it could, if it were applied widely, be used as open-ended machinery to catch all sorts of people who really should not be before the courts. Somebody with a placard saying that the end of the world is nigh, a preacher or maybe a politician on the street during an election may well be caught because they will certainly cause annoyance to someone. Are those the kinds of people that we want to haul before the courts?

The Government say that their formula is hallowed and supported by 15 years of case law and is readily understood. The reality is that it has been tested only within the narrow confines of housing-related cases, and there are limitations on who can bring such actions. Like all former constituency Members, I have experience of dealing with housing problems. I can affirm that there is sometimes a need for strong action to be taken in cases where people are stable and cannot move. You have to do something to try to remedy that situation. There may be strong arguments for a lower threshold there, but to extend that lower threshold in a situation which has been tested only in the housing section is a bridge too far.

I fear that the Government's amendment does not help us; it merely underlines the situation and may indeed make it worse. The test to be satisfied is the balance of probabilities. I heartily disapprove of such a test, which can ultimately lead to a loss of liberty for the individual for disobedience. The court must consider and decide whether it is,

"just and convenient to grant an injunction".

What on earth does that mean? Convenient for whom? Just is perhaps a slightly easier concept, but I wonder how far it has been tested. We are familiar with the

[Lord Morris of Aberavon]
concept of the interests of justice, but "just and convenient"? One is horrified that this kind of clause, these kinds of words, are put in a statute at all.

For the existing ASBOs, the test is, of course, the criminal one of proof beyond reasonable doubt. The alleged burden is well known and well established, and when it is suggested here that the order must be shown to be necessary, why do we have to depart from the long-hallowed practice, which has been tested?

I support, and pray in aid, what the noble Baroness, Lady Mallalieu, said when she quoted Lord Justice Sedley. I shall not repeat the words, which are still ringing in our ears; I shall merely say that, as the noble Baroness told us, he finished by saying:

"Freedom to speak … inoffensively is not worth having".

We do not want to catch people who merely annoy, or merely cause a nuisance. There must be a higher threshold.

It was my duty, as Attorney-General, to consider prosecutions when anti-Semitic material was published. Even that legislation could be said to be an infringement of free speech, but over the decades there was material so unacceptable that it had to be dealt with firmly. Where my discretion had to be exercised, I tried to approach the decision with the greatest care. Deciding not to prosecute was probably more difficult than deciding to prosecute. There have been other limitations on free speech over the years, and when Parliament attempts to limit free speech, each and every one of those limitations must be considered with the utmost care. We must be ever vigilant not to breach the fundamental concept of free speech.

Lord Faulks (Con): My Lords, I fear that I am about to break the consensus. I hope that in doing so I do not cause too much nuisance or annoyance. The amendment in the name of the noble Lord, Lord Dear, and others is rather different from the one that was before your Lordships in Committee. The amendment there sought to include a requirement that anti-social behaviour had to be established beyond reasonable doubt before an injunction was obtained. Given the evidential problems that this would have created, the amendment has sensibly been altered so that it no longer requires a criminal standard of proof before a judge can order an injunction.

I tabled an amendment that reflected the views of the Joint Committee on Human Rights, of which I was a member. We had proposed that a reasonableness requirement should be imported into the definition of anti-social behaviour. In other words, there should be an objective element, to deal with the argument that the whole concept of anti-social behaviour was too subjective. The Government's Amendments 2 and 3, particularly Amendment 2, seemed to me entirely to meet our concerns, and in this regard I am specifically authorised by my noble friend Lord Lester, who is unable to be here today, to say that he supports the Government's position and would oppose Amendment 1.

It is clear from the speeches that we have already heard that there is concern that the obtaining of an injunction would be too easy, and that there would be a risk of freedom of speech, freedom of association, and the freedom to indulge in activities that some people might regard as annoying, being inhibited. Is this a realistic fear? First, it must be remembered that under Clause 4 the applications can be made only by an agency—for example a local authority, a housing provider or some other such body. That is a defence against inappropriate use. It means that a victim of anti-social behaviour has to go through the filter of a hard-working agency in order to establish the fact that there is sufficient basis to seek an anti-social behaviour order—or, in this case, an IPNA. If it were to be done on the say-so of one individual deciding, perhaps unreasonably or capriciously, that someone else had been guilty of anti-social behaviour, that indeed might be objectionable. But the use of an agency provides an important filter.

At Committee stage, and even at Second Reading, the Minister referred to the guidance. The guidance is given to the front-line professionals—not, with great respect to my noble and learned friend, the courts—to make sure that they do their job correctly. That guidance, which was then in draft, is now, according to an amendment, to be made a specific statutory provision. Page 24 of the advice says that,

"in deciding what constitutes 'nuisance or annoyance', applicants must be mindful that this route should not be used to stop reasonable, trivial or benign behaviours that have not caused, and are not likely to cause, harm to victims or communities. For example, children simply playing in a park or outside, or young people lawfully gathering or socialising in a particular place may be 'annoying' to some, but are not in themselves anti-social. Agencies must make proportionate and reasonable judgements before applying for an injunction. Failure to do so will increase the likelihood that an application will not be successful".

4.30 pm

Then we have the safeguard of a judge deciding whether it is just and convenient to order an injunction. First, there is the subjective element which, if the Government accept the amendment, will be there—the reasonableness requirement. But even if the House does not accept it, the judge would have discretion whether to decide that it is just and convenient to order an IPNA. Just and convenient is a well known expression to embrace the general discretion that any judge has to decide whether to make an order. It is one of considerable pedigree, as is "nuisance or annoyance". I simply cannot see a judge ordering an injunction for any of the sort of trivial matters referred to in the course of the argument—the suggestion that it will apply to carol singers or preachers, for example.

Lord Forsyth of Drumlean (Con): I am following my noble friend's argument closely, but could he give an example of the kind of thing for which he thinks this provision might provide a remedy?

Lord Faulks: It would provide a remedy for myriad different circumstances—perhaps the sort of behaviour where youths gather specifically under a particular person's window and regularly play noisy music, are aggressive and perhaps smoke cannabis, providing day by day harassment of individuals.

Lord Forsyth of Drumlean: Surely that would be covered by the present law.

Lord Faulks: It might be, but the problem is that the test for harassment is fraught with imprecision, as is any test that any Government might provide. Whether something gets over the hurdle of harassment will be somewhat uncertain. No doubt it will be argued in a particular case that it does not go far enough to constitute harassment, but it will nevertheless be anti-social behaviour by anybody's definition.

Lord Cormack (Con): So what is the objection to having harassment in the Bill?

Lord Faulks: The objection is that there is a risk that the hurdle will be too high and that the judge will say, "This is extremely anti-social behaviour and I profoundly sympathise with the individual but, looked at under the definition of harassment, it does not go quite that far". That behaviour could be completely ruinous of an individual's life, but perhaps not have that quasi-criminal description that the substitute definition has.

Lord Berkeley of Knighton (CB): Would "distress" not cover that?

Lord Faulks: The greater test will always include the lesser, but areas that may or may not be considered by a court to get over that hurdle may be profoundly distressing in the non-technical sense to the individual but may not be regarded as sufficiently distressing to come within the definition. There is inevitably a degree of vagueness about any definition, whether you choose the one that the Government choose or the one proposed in the amendment. But I fear that the test is too low.

Lord Thomas of Gresford (LD): Could my noble friend deal with a major objection? An order can be obtained on hearsay evidence, so the judge does not have to hear from somebody who says, "I've been distressed or annoyed"; it would be sufficient for someone to say, "I've heard someone else describe himself as annoyed because of the behaviour in question".

Lord Faulks: The question of hearsay evidence is important, and I am glad that my noble friend raised it. One difficulty about the orders is that individuals are often terrified of those who are responsible for the anti-social behaviour. They are terrified of being identified as the source of the complaint. If they have to give evidence, they will not want to do so. They therefore provide their perfectly bona fide complaint to an agency. Hard-pressed agencies will have to assess whether this is de minimis or of sufficient gravity before deciding whether to proceed.

Lord Thomas of Gresford: Is my noble friend saying that the procedure can be based on an anonymous complaint?

Lord Faulks: It can be on the basis of an anonymous complaint, though a judge will need to be satisfied of its substantiality. There are individuals who simply would not seek an injunction if they thought that they could be clearly identified as the source of the procedure. Of course, judges are used to weighing up hearsay evidence, which has less weight than direct evidence. A judge is unlikely to make an order if they think that it is double-hearsay or comes from an unreliable source.

Before making an order, a judge also has to decide that it is proportionate and necessary, in accordance with the Human Rights Act. As I submitted, it is no light thing for the agencies to assemble the evidence necessary to satisfy a judge. The Law Society has carefully considered the arguments against Clause 1. Although more than happy to criticise government legislation—and even this Bill, in some respects—it remains absolutely firm in its support of the existence of the power described in Clause 1, fearing otherwise that the hurdle would be too high and that the power to prevent anti-social behaviour would be damaged.

Lord Greaves (LD): My Lords, I am anxious to support the Government on Clause 1, because there is a great deal to be said for the replacement of ASBOs by IPNAs. However, the noble Lord seems to be arguing that the existing test for ASBOs—harassment et cetera—is too high. Is he arguing that, at the moment, people cannot get ASBOs because the test is too high and therefore that it must therefore be reduced for the new IPNAs? In my experience, the problem with ASBOs is that they are very often given for inappropriate things.

Lord Faulks: It is a marginally lower hurdle, but as I understand it—and the Minister will confirm—the choice of words was not an arbitrary matter but the result of a very wide consultation among the professionals concerned in order to reach a test that was sufficient to establish gravity but not so high that the scourge of anti-social behaviour could not be prevented.

In its briefing on this part of the Bill, the Law Society made the point that if injunctions are used in the case of noise nuisance, as an alternative to possession proceedings, they can result in the person or family staying in their home but with restrictions on their conduct, rather than the much more drastic step of eviction. Although an IPNA can be obtained on the balance of probabilities, with or without the amendment, the criminal standard must be satisfied before any breach can be established: that is, beyond reasonable doubt. I respectfully suggest that this provides an extra safeguard, so that this will not result in people being deprived of their liberty inappropriately.

I am also concerned about how coherent Amendment 1 is. It requires "harassment, alarm or distress"—a quasi-criminal test—with the exception, which was not in the original amendment in Committee, of a housing provider or local authority in a similar housing management position. In the case of social housing, the hurdle to be surmounted appears to be lower, so there is a two-tier test for anti-social behaviour, depending on whether you are a private tenant or are in social housing, where an injunction is much more easily obtained. That is hardly a satisfactory distinction, and I wonder how enthusiastic the party is about such a classification.

I do not know, of course, how the party opposite—or at least its Front Bench—regards this amendment. It will be borne in mind that MPs on all sides in the House of Commons were at pains to stress what a scourge anti-social behaviour is to their constituents,

[LORD FAULKS]
and that there ought to be substantial and sensible powers to prevent it. Indeed, the shadow Home Secretary said generally of the powers in the Bill that she thought they were too weak.

We are all passionately in favour of freedom of speech, freedom of association—

Lord Elton (Con): Will my noble friend forgive me? He has just said that he cannot understand why there should be a lower test in social housing. Surely the answer is that if you are in social housing you cannot move out of the way, people are free to do what they like to you and you are trapped. Therefore, a lower standard of unsociability has a much greater effect on the person affected. It is exactly the right proportion.

Lord Faulks: Of course I entirely accept the noble Lord's point that those in social housing may not have options and therefore certainly need the protection at a lower level. My point was that it is rather inelegant to have a different test where there might theoretically be greater room for manoeuvre if there is a private tenant. The test ought to be the same.

I was repeating the fact that I sympathise with all those who have spoken in favour of the various freedoms that we value so much in this country. If we vote in favour of the amendment—if it is put to a vote—we will of course be able to congratulate ourselves and say that we have acted in the finest traditions of freedom. I will have the good fortune of going back to my house where, at least at the moment, there is no great history of anti-social behaviour in the area. Other noble Lords will perhaps be in a similar position. But let us not forget those who are in less fortunate circumstances, who do not have room for manoeuvre and whose lives are made totally miserable by this anti-social behaviour. I fear that if we accede to this argument, we will fail to take them sufficiently into consideration and will make bad law.

Lord Cormack: My Lords, we have just heard an interesting speech from my noble friend Lord Faulks. I am sure that I speak for every Member of your Lordships' House in congratulating him on his forthcoming move to the Front Bench—because, as we all know, he is to be Minister very soon. It is therefore hardly surprising that he should have spoken with such passion in support of the Bill.

Lord Faulks: I am grateful to my noble friend for his kind congratulations, but I should say that I spoke on this issue in Committee before I was appointed, to very much the same effect.

Lord Cormack: One is tempted to call that "cause and effect", but I will not.

This noble House concluded its contentious business somewhat earlier than we had expected last night. I went home and turned on BBC Four, on which there was a most remarkable programme on the Salvation Army in which various officers made some extremely sincere but perhaps contentious statements. One gentleman in particular made the point that anyone who did not believe in Jesus Christ, as many of us do, was in fact condemned to eternal damnation. Imagine that being said on a street corner or anywhere else. Do we really want to deny people with sincere and genuine beliefs the opportunity of expressing them? I have always felt—although I did not agree with many of the things ascribed to him—that Voltaire had it right when he said, "I detest what you say, but I will defend to the death your right to say it". That really should be implicit in all our legislation.

I find it somewhat difficult to accept that a Conservative Government or—let me correct myself—a Conservative-led Government are prepared to introduce this lower threshold in the Bill. Although my noble friend Lord Faulks said that it was different from the debate that we had on insulting a little over a year ago, and of course in some senses it is, nevertheless it is similar. It is also very different from what was implicit in the Defamation Act that came into force just a week ago today, whereby we introduced legislation—quite rightly, in my view—that makes it more difficult to engage in frivolous and vexatious complaining.

In this particular provision, in this clause of the Bill—much of which I approve of—we are seeking to lower a threshold and in the process place many people in possible danger of having their civil liberties, including their right to speak as they would, taken away from them. Of course I accept, as my noble and learned friend Lord Mackay of Clashfern accepts, that it is right that social housing should be treated differently—of course it is. In his intervention a few moments ago, my noble friend Lord Elton put that point succinctly and correctly.

4.45 pm

At the moment the definition that is in dispute is ring-fenced; here it would not be. I say to my noble friend Lord Faulks that guidance is not legally binding; guidance is not the law. I would also say to my noble friend Lord Faulks—and to my noble friend Lord Taylor, for whom I have the utmost regard—something that I said not so long ago to the Home Secretary. I do not doubt for a moment her good intentions, but it is not just the road to hell that is paved with good intentions. It is crucial that this House, one of the bastions of freedom and civil liberties through the ages, should not weaken the right of our fellow citizens to be able to speak and to annoy.

We are all frequently annoyed. The noble Baroness, Lady Mallalieu, and I were on the same side in the countryside march. As she knows, we certainly annoyed a lot of people—and those who took a different line certainly annoyed us. But would it be right to slap injunctions on them? Would it be right to curtail that freedom of speech? No, it would not. I absolutely accept that it is not the Government's intention to catch the street preacher, the carol singer or the Countryside Alliance member, but, of course, one can say two things in response to that. First, if this provision is passed, it passes out of the control of the Government. Secondly, this Government—benign, magnificent, united as it is—is not necessarily going to be in power for ever, much as many of us may regret that.

I really believe that the proposition put before us by the noble Lord, Lord Dear, so eloquently supported by the noble Baroness, Lady Mallalieu, and my noble

and learned friend Lord Mackay of Clashfern, is a modest proposition but one of enormous and far-reaching importance. I beg the Government to accept it, and, in accepting it, to recognise that what they seek to do in this Bill will not be damaged beyond repair; on the contrary, it will be bolstered.

Lord Blair of Boughton (CB): My Lords, I should like to take further what the noble Baroness, Lady Mallalieu, said about who is going to be involved at the beginning of this process. Whatever the noble Lord, Lord Faulks, said, it is not going to be a judge; it is probably going to be a police officer. I want to think about the use of language and I am going to give two examples of the use of language which distinguishes the word "annoying" from the language in previous Bills about distress and harassment.

I want to take your Lordships back to 1970s Soho where, as a young constable, I was patrolling with a much more streetwise officer. We were approached by a rather large Westminster councillor who was objecting to people handing out leaflets about rent rises. He said that he was really annoyed by this. The officer I was with said, "Well sir, my Aunt Mabel is annoying but I'm not going to let anybody arrest her for just being annoying". That was in the 1970s. I now want to take your Lordships to the very top of government in 2007. The right honourable Tony Blair has announced that he is about to leave and the right honourable Gordon Brown thinks he is about to be the Prime Minister but he is still the Chancellor. I am sorry that the noble Lord, Lord Reid, is not in his place to confirm this story as he and I were involved in it when he was the Home Secretary. The Chancellor was about to move out of No. 11 with his red briefcase to announce a Budget to a particularly unstartled world when we discovered that a man was standing amid the cameras dressed in a full union jack outfit with a notice saying "John Reid for Prime Minister". It was reported to me, as commissioner, that the Chancellor was likely to be annoyed; it was pointed out to me in very firm terms that the putative Lord Reid was going to be extremely annoyed; and, as the commissioner, I was annoyed because the Home Secretary was annoyed, but nobody used the terms "harassment", "distress" or "alarm".

The difference between simple words relating to annoyance and how they will be interpreted on the street by housing officers, police officers and so on is very important. This is not a matter for judges. People will be told to move on and get out of the road by people who are in authority because that is the easiest thing to do when dealing with somebody who is complaining. This is an absolutely awful piece of legislation and we should avoid it.

Lord Phillips of Sudbury (LD): My Lords, a point that has not been made sufficiently—I think that the noble Lord, Lord Dear, referred to it in his very admirable opening speech—is the extra burden that passing Clause 1 unamended would impose on the police and local authorities. No one should underestimate that. If the only gateway for getting redress for annoying conduct, which I think we all agree is so low a test as to be almost meaningless, is via a local authority or the police, does anyone really believe that they will not be subject to a mass of citizen inquiries and applications? Of course they will. Indeed, many people who might be thought a little obsessive will no doubt badger the poor local police endlessly until they get what they call redress—that is, an application by the police for an injunction under Clause 4. Apart from all the more important civil libertarian aspects of this issue, we should not forget the potential extra burden—and, I suggest, vexatious burden a lot of the time—that will inevitably result from Clause 1 going through unamended.

Lord Walton of Detchant (CB): My Lords, I rise briefly to give warm support to this amendment tabled and so ably presented by my noble friend Lord Dear and others. I firmly believe that the threshold in the Bill is set far too low.

I have been a lifelong supporter of Newcastle United Football Club. My friend, the noble Lord, Lord Shipley, who unfortunately is no longer in his place—and I call him "friend" in the social sense, not in the parliamentary sense—is for reasons best known to him, despite having been leader of Newcastle City Council, a Sunderland supporter. If I were to chide him and say that he is foolish to continue to support that team, which has been absolutely hopeless all season, despite beating Manchester United last night, and if I were to say that the team is in fact languishing at the foot of the Premier League and in imminent danger of relegation, I think that he would be extremely annoyed because he is a loyal supporter of Sunderland. If I persisted with that theme, he would reasonably regard me as a confounded nuisance.

If one looks at this clause and interprets it in a strictly literal sense, I would potentially be in breach of this statute if I said those things. In fact, I do not for one moment believe that he would seek an injunction; at least I hope not. Having said that, I believe that the clause is absolutely unacceptable and needs to be amended. There is even a possibility that the clause as drafted could act as a sort of charter for individuals of paranoid personality or malicious intent in leading them to seek this kind of injunction much more frequently than would ever have happened in the past. This clause is unacceptable and I strongly support the amendment.

Baroness Hamwee (LD): My Lords, in response to that I can say that frequently and over decades I have been annoyed and alarmed and distressed by Manchester City.

When I read this Bill I too was concerned about the threshold, but as someone who has something—I know—of a reputation as a fluffy liberal I understand the Bill's architecture much better than I did when I first came to it. It meets the principles enunciated at the start of the debate. I have understood the context as well, and am reassured that the everyday annoyances that have been used as examples and of which we are all capable will not be caught. Crucially, I have understood that preventing behaviour from escalating and staying out of the criminal justice system are at the heart of this part of the Bill.

[Baroness Hamwee]

Noble Lords have talked about the body of case law that has been built up in the housing sector; there was certainly an effective, large lobby from it at the earlier stage. I agree with my noble friend Lord Faulks about the difficulties of discriminating between two housing sectors. It is not that one is caught in social housing but not caught in owner-occupied housing—from which it may be very difficult to move—in quite the distinctive way that has been described.

Even as a lawyer I see that "convenient" in the term "just and convenient" has an everyday connotation that seems a bit baffling in this context, but the term has a pedigree, as does the case law built up in the social housing sector. It is quite a hurdle to overcome. Lawyers in this House far more experienced than me may correct me, but I understand the term to incorporate "reasonableness", "proportionality" and "appropriateness". I do not see the examples that have been cited as being caught within this; I have seen neither the noble Baroness, Lady Mallalieu, nor even the noble Lord, Lord Cormack, at a rally or on a march, nor many of my friends who might want to be lobbying outside the MoJ against legal aid cuts. It just does not extend in that way, because there is that protection.

Unlike the current ASBO, the IPNA takes offenders directly into the criminal justice system.

Lord Forsyth of Drumlean: I apologise for interrupting my noble friend and am grateful to her. May I ask her the same question I asked my noble friend Lord Faulks? Can she give us a specific example of something that would be prevented by the Bill as it stands?

5 pm

Baroness Hamwee: My noble friend is asking for examples of behaviour. It could be kids kicking a football around on a bit of open ground—which happens on a bit of open ground next to my house. I am lucky enough to live on the Thames but I find it extremely annoying to have discovered that rowing is the most noisy activity: one might not have expected it. It could be a bit of drinking—not drunken behaviour but people sitting around with a can of lager. I know from neighbours' comments that they feel apprehensive about that and, although there has never been anything for them to be apprehensive about, they just do not like people sitting around drinking cans of lager in public. I also suggest dogs being exercised on the same ground where children play—there are a lot of annoyances in that kind of area. People see me and no doubt think that I am a poor old lady delivering pizza leaflets for tuppence a thousand when I am delivering political leaflets.

Lord Forsyth of Drumlean: Is my noble friend suggesting that all these examples should be capable of being stopped by the courts?

Baroness Hamwee: Of course, if people feel threatened and their lives are badly impinged upon. That is what the Government are trying to prevent by this Bill. I do not want to downplay the impact of some bad behaviour on many people who react in a way in which I would not necessarily react, but the impetus to prevent—

Baroness O'Loan (CB): Can the noble Baroness explain precisely how judges are supposed to interpret a threat and a feeling of being threatened from the words "nuisance" and "annoyance"? Also the use of the word "threatened" would indicate a much higher threshold.

Baroness Hamwee: I would say because of the context of the Bill, the clear policy underlying it and the evidence that would have to be given. I have heard the exchange about hearsay evidence but a judge has still got to be convinced that it would be just and convenient, and therefore proportionate, as I understand it, to grant an injunction.

Lord Morris of Aberavon (Lab): When the noble Baroness uses the word "frightened" is she not arguing the case for maintaining the present position of causing harassment, alarm or distress?

Baroness Hamwee: Of course, these things are all subjective to some extent and perhaps that was an inappropriate word for what I was trying to describe. However, with what is reasonably frightening one is attempting to put objectivity into it; what may be unreasonably frightening would fall into a different category.

Perhaps I may now refer to the preventive nature of the provisions and say that, in considering whether the clause impinges on the fundamental freedoms of individuals—and we are talking here about individuals and not peaceful assembly—the convention rights, including freedom of expression, are protected in any event, as I understand them. The Minister will no doubt explain that the Government have responded to the JCHR's concerns.

I have been critical about the reliance in the Bill on guidance. I agree with the noble and learned Lord, Lord Mackay of Clashfern, about it not being appropriate to give guidance to the courts—I made that point at the previous stage—but they would not be guided in the way that the potential applicants listed in the Bill would be, and the guidance will now be statutory.

The noble Baroness the Lord Speaker has confirmed that the second amendment—the reasonabless amendment—would fall if this amendment were agreed to. I finish by saying that I will still feel free to annoy people by delivering leaflets and by expressing minority opinions. I fear that, as a child of the 1960s, the musical exhortation has not persuaded me.

Lord Howarth of Newport (Lab): My Lords, the noble Lord, Lord Faulks, was right in this, at least in drawing attention to the scourge of anti-social behaviour. When I represented the constituency of Newport East I was all the time aware that there were households and, indeed, communities whose lives were very seriously blighted by anti-social behaviour. There is enormous political pressure on MPs representing constituents to find ways to crack down more aggressively and more effectively on such behaviour patterns. That pressure is, of course, amplified by the tabloids.

That is precisely why we should be moderate in this matter, why we need to be restrained and why we must try to get the right balance. Therefore, the provision in law that a threshold of "harassment, alarm or distress"

must be exceeded seems to me to strike the right balance. I think that it is dangerous and improper to lower the threshold to "nuisance or annoyance". It is surely unthinkable that we should risk introducing legislation that could impair the rights of people to go on demonstrations, as my noble friend Lady Mallalieu offered as an instance, or of kids playing football in the street, as the noble Baroness, Lady Hamwee, worried about. There are all manner of other innocent behaviours that are, indeed, annoying, but that in a free society we should not dream of legislating to prevent.

The noble Lord, Lord Faulks, did not annoy me—he never could annoy me—but he startled me with the arguments he scraped together in his gallant speech in support of the Government's position. He asked: is it a realistic fear that people would be subject to IPNAs for trivial and inadequate reasons? He offered the thought that the requirement that applications would have to be made through an official public agency should be seen as a filter and a safeguard. The vast majority of public officials handle their responsibilities fairly, properly, scrupulously and reasonably. I hate to say this, but it is also, surely, an observation that all of us have made that if you put a man in uniform, or if you vest a person in official authority, some will find themselves tempted, and succumb to the temptation, to use power overweeningly. We have to be very careful indeed.

The noble Lord says, further, that guidance will be offered to these agencies so, again, we do not really have cause to worry. I am sure that the guidance will be a force in the right direction, but guidance is only guidance; it is flimsy and an insufficient protection. The much better protection would be not to write this risk into law. He offers a much more reassuring protection—that such injunctions could be made only at the discretion of a judge and that we can rely upon the judges to exercise common sense, decency and appropriate restraint and to be animated by a mature and wise sense of justice. In that case, why legislate? We do not need to do this. We can rely on the judges not to order injunctions against people who are merely guilty of causing trivial annoyance. It does not seem sensible, in the present circumstances in which the resources of the courts have been very attenuated, to add this burden to them.

I agree with the noble Lord, Lord Cormack. What are we here for if not to protect civil liberties? Justice and convenience are very often in tension. I suggest that what may be for the convenience of the Government politically, for the convenience of local citizens, whose annoyance threshold is perhaps rather low, or for the convenience of agencies may be very ill assorted with justice. I think that the Government's position is unwise and I very much hope that the House will support the amendment in the name of the noble Lord, Lord Dear, and his colleagues.

Lord Mawhinney (Con): My Lords, I support this amendment. The arguments for it have been set out so clearly and persuasively by the noble Lord, Lord Dear, the noble Baroness, Lady Mallalieu, my noble and learned friend Lord Mackay and the noble and learned Lord, Lord Morris, that I will not repeat them, particularly at this late stage of our consideration. I will make three quick points as my contribution.

First, I listened in particular to the point made by my noble friend Lord Faulks about MPs on all sides of the House complaining about and explaining the anti-social behaviour that some of their constituents face. As an MP of some 26 years' standing, I can tell him that that is absolutely right: any MP worth his or her salt could give him numerous examples of anti-social behaviour and of the sense of inadequacy and frustration over the law seeming not to apply in those circumstances. However, one of the strengths of our bicameral arrangement is that this, your Lordships' House, can consider such matters in a slightly different frame from the pressured one of representing constituents, some of whom are hard done by because of the law of the land. This House has the opportunity to reflect on the broader principles and bigger issues. This House sets the framework that, just occasionally, the House of Commons has not managed to get around to addressing because of the other pressures that Members of Parliament legitimately face. This is an opportunity for us to behave in a way that is in the national good and not just one that may be pleasing to some, or to some vested interest groups.

Secondly, my noble and learned friend Lord Mackay illustrated the ability to cause annoyance, and of Ministers causing annoyance to the other side of the Chamber when they blame the previous Government for problems they face today. Incidentally, I know my noble and learned friend would accept that this is a two-way street: it is not just Ministers in this Government who have blamed the previous one; Ministers in the previous Government blamed us as well. The distinction I want to leave in the minds of noble Lords is that we are a sophisticated body. I was interested in the reaction to my noble and learned friend's point. We all smiled, nodded and were very civilised about it. Out there are people who are not as civilised, tolerant, understanding or forgiving. This legislation may be of interest to them in a way that it would not be to us. We have to bear that in mind when we cast our vote.

Thirdly, as a former chairman of the Conservative Party, I am saddened that the Government have brought forward this particular piece of legislation. It is a matter of record that I—along with the noble Lord, Lord Dear, and others—was a signatory to the legislation in December 2012 that amended by an overwhelming majority of your Lordships' House the Public Order Act and took out the word "insulting". Now we are offered in its place "annoyance".

The sad fact is that it is not that surprising. I speak with some knowledge when I say that, internally, Governments occasionally believe that the combined wisdom of both Houses is not really up to scratch when compared to the wisdom of a department of state on a particular issue. I see nods on the other side of the Chamber that encourage me to understand that I am not making a party political point at my party's expense. It is one of the realities, and I will say something about departments of state: they have long memories. I have to say to my noble friend on the Front Bench—who is my friend in the personal sense, as we have known each other for many years—that I am saddened that I judge this to be an example of long memory.

[LORD MAWHINNEY]

Your Lordships threw out "insulting"—rightly so—and annoyed a lot of people in the process. They pleased a lot of people as well. Today I hope, not out of any sense of vindictiveness, as I have been a fully paid-up member of this party for a long time, that at the end of this vote the only people who will be annoyed are those who thought to bring forward this particular piece of legislation. I hope that, under the guidance of the noble Lord, Lord Dear, we will now amend it.

5.15 pm

Lord Carswell (CB): My Lords, noble Lords who have spoken in favour of this amendment have produced a gamut of compelling reasons why your Lordships should support it. I will briefly focus on one aspect of the amendment and the original draft as produced to your Lordships, that of the court that has to interpret and apply the provisions, a function of which I have had fairly long experience in my time. The words "nuisance" and "annoyance" are what a distinguished jurisprudent called "weasel words". They are highly subjective and are liable to be interpreted by different people in different ways, which is a recipe for judicial inconsistency and an invitation to those who wish to oppose people expressing opinions that they dislike. In my experience, that would be certain to lead to litigation and to further harassment through the courts.

I am reminded of a remark made by a former First Minister of Northern Ireland, subsequently a Member of this House, who said in his Parliament that people were offended by something that he had said that was rather controversial at the time. He added sweetly: "A lot of people came from a long distance to be offended".

How are the courts to carry out their function of interpreting and applying the words "nuisance or annoyance"? To put oneself in the shoes of a judge, it is worth remembering that a lot of these cases, perhaps a large majority, will come before junior courts, which have neither the time nor the resources to enter into long jurisprudential arguments. I have long maintained that judges should be given discretion and that, whatever the legislation is, it should not circumscribe the discretion of a judge too closely but should leave a modicum of room for the judge to come to a proper conclusion on the facts of the instant case. However, this should operate within the parameters of reasonable certainty of the law. The principles that a court is asked to apply should be sufficiently clear for both the court and, equally important, those citizens who seek to know the obligations that the law places on them.

The provision of "just and convenient" would go no further. It would not satisfy the principle of reasonable certainty of the law. Indeed, a court should seek to achieve that in any decision, on an injunction or any other part of the law. It does not reduce the deficiencies in the substantive provision.

For those reasons, and for others that your Lordships have expressed, I strongly support the amendment. The provision in the Bill without the amendment is too uncertain and too wide. The amendment gives a proper degree of certainty and security of the law.

Baroness Howells of St Davids (Lab): My Lords—

Lord Ahmad of Wimbledon (Con): My Lords, I am not seeking to annoy or cause a nuisance, but I believe that it may well be the will of the House now to hear from the noble Baroness, Lady Smith, on behalf of Her Majesty's Opposition, and then the Minister.

Baroness Howells of St Davids: My Lords, it is my right to speak. People have mentioned cats and dogs; nobody has mentioned race. If this is the wish of the House, I will not.

I rise to support the amendment in the name of the noble Lord, Lord Dear. I believe that the Bill will allow the law enforcers to use subjective prejudices to harass and even charge persons as young as 10. This law does not take on board the fact that this nation is now multicultural but still has not unlearnt its racial prejudices. The clause could have as damaging an effect as the sus laws which black people have fought and struggled to have repealed. We are not unaware that the sus laws are still enforced by a change of language, as was done at the Notting Hill Carnival in 2013.

Britain is now a land of many cultures, and what one culture will subscribe to is not always acceptable to others and may easily be interpreted as annoyance and nuisance. Anyone with a racial bias could misinterpret the actions of anyone, especially someone of colour, as being offensive and feel it within their right to accuse them of breaking the law. Such actions as the Bill proposes could criminalise many innocent persons and further damage the fragile gains that we have made in this country.

A child as young as 10 may not even know that he or she is breaking a rule. This happened under sus many times—because I have worked in the community, I speak from within. This is what happens when people are given the wrong law. A group of young people speaking loudly or displaying high spirits of any kind could be accused of causing a nuisance or annoyance to others who are not aware of the culture. They could be young people gathering together to chat, especially on housing estates where there is not an awful lot of room. Young people are more prone to be victims of this law because they feel deeply and express it. Others in society, I agree, also feel deeply, but they have the means of concealing their real feelings.

I should like to quote Assistant Chief Constable Richard Bennett of Thames Valley Police, who said he would not expose anyone to the obscenities he had hurled at him at times when he was delivering the law. I worked in the community as a human being. I am not representing the black community. I know what I had hurled at me and the discomfort it caused people that I was engaged in trying to help right the wrongs that were going on.

My motive for speaking here so openly and frankly has been curtailed, and I will not delay your Lordships longer. This clause, if unchanged, will have serious effects on the black community and divisions will be even further stretched, as under the sus law.

Lord Scott of Foscote (CB): My Lords, I wish to take very little time to make a point which is worth making and has not yet been made. I express my complete support for the main thrust of paragraph (a)

of the amendment of the noble Lord, Lord Dear, but I wish to express my reservations about paragraph (b) of that formulation. Paragraph (b) refers to anti-social behaviour being,

"in the case of an application for an injunction under this section by a housing provider"—

"housing provider" is defined in Clause 19 of the Bill—

"conduct capable of causing nuisance or annoyance to any person".

I think that paragraph (b) is ill advised and would be better left out.

The Housing Act 1996, amended by the Anti-social Behaviour Act 2003, provided for "relevant landlords". That expression is much the same as, but not identical to, the definition of "housing provider" in the Bill. It provided that the courts, on the application of a "relevant landlord", could grant an anti-social behaviour injunction if the person in question, the respondent, had engaged, or threatened to engage, in housing-related conduct capable of causing a nuisance or annoyance. There we have the expression "nuisance or annoyance" in the amended 1996 Act. Housing-related conduct is defined as meaning conduct directly or indirectly relating to or affecting the housing management functions of the relevant landlord.

There is no repeal provision in the Bill so these provisions relating to the actions that relevant landlords, as defined, can bring will remain as part of our law, not withstanding the Bill becoming an Act. Moreover, it is common in tenancy agreements for there to be a covenant by the tenant not to engage in any conduct that might constitute nuisance or annoyance to the surrounding dwellers in flats or houses. That too will remain. There is no repeal provision so far as that is concerned either. The new right being given by this Bill to persons who suffer from the behaviour, whether it is nuisance or annoyance or, as the amendment of the noble Lord, Lord Dear, would have it,

"conduct that has caused, or is likely to cause, harassment, alarm or distress to any person",

is new. For my part, I do not see why the actions in that regard should not apply as much to housing providers as to anybody else. If housing providers are relevant landlords they can bring the actions referred to in the 1996 Act as amended. If they are not, why should they not be in the same position as anybody else? That is the point I make. This amendment would be improved and would be more consistent with the current law if paragraph (b) was removed.

5.30 pm

Baroness Smith of Basildon (Lab): My Lords, this is one of those debates that are quite special to your Lordships' House. I spent 13 years in the other place and I have been in your Lordships' House for three and a half years. I think other noble Lords who served there would agree this is not the kind of debate that we often heard in the other place. This House is made all the more relevant and important because of that. It is also one of those debates that Ministers from any party in Government would perhaps refer to as "interesting" and "helpful". It certainly has been a very interesting debate. The noble Lord, Lord Dear, the noble Baroness, Lady Mallalieu, and the noble and learned Lords, Lord Mackay and Lord Morris, have done this House a great service by bringing forward this amendment.

I want to be clear at the outset that I think everybody who has spoken wants to see effective and swift action to tackle serious anti-social behaviour and to treat the issue with the seriousness it deserves. It is not overdramatic to recognise that, if left unchecked, anti-social behaviour can destroy lives. Ongoing anti-social behaviour can cause alarm and distress and, in some cases, leaves people feeling utterly devastated and unable to cope. It creates total misery.

In previous debates, I have spoken of my experience in supporting victims, both as a Member of Parliament and a county councillor. There is no doubt that when anti-social behaviour orders were brought in they created a significant change in the way such cases were dealt with. There were teething problems but experience has shown that they are an important tool in tackling such serious problems. That is why I just do not understand why the Government are embarking on such a dramatic change in this legislation. Obviously, improvements can always be made to any system and we would support improvements to anti-social behaviour orders. However, this really is a case of throwing the baby out with the bathwater and does not improve the position for those suffering from anti-social behaviour.

I am not a lawyer—I am perhaps in a minority among those who have spoken today—but all my experience and instincts of dealing with this issue tell me that these proposals from the Government are ill thought-out and unworkable. Noble and learned Lords with far greater experience and knowledge than I who have spoken have come to the same conclusion. As we have heard, the concern is that the Government's new proposed threshold for granting an injunction for engaging or threatening to engage in causing nuisance or annoyance to any person on the balance of probabilities if the court considers it to be just and convenient is too vague and too broad. The noble and learned Lord, Lord Morris, described it as open-ended machinery that would catch people who should not be before the courts. The danger is that in the rush of those being brought before the courts for nuisance and annoyance we could lose focus on the serious cases of harassment, distress and alarm.

The very real concerns about how this power could be used and abused were raised at Second Reading and in Committee. In preparing for this debate, I started to draw up a list of activities that could be brought into the remit of Clause 1. I had to give up after several pages and hours. The noble Baroness, Lady Mallalieu, described it as an extraordinary power, and indeed it is. I appreciate and welcome the experienced and knowledgeable legal views but this is not just a legal issue. It is a moral issue of dealing with those people who are suffering the most. The Government are not targeting the behaviour causing the most serious problems but creating a catch-all clause that could affect almost everybody at some point. There is no doubt that some people and some activities inevitably cause some degree of nuisance and annoyance. However, is an injunction, which in most cases will be pretty weak and ineffective—although at the extreme end it

[Baroness Smith of Basildon]
could involve custody—the most appropriate way of dealing with these cases, or should we accept that in our everyday lives some level of nuisance or annoyance is a consequence of ensuring the liberty and freedom of the individual? Liberty and freedom are not open ended. There have to be constraints and the test of harassment, alarm and distress spoken about today is the appropriate point to place those constraints.

The ACPO lead for children and young people, Jacqui Cheer, emphasised this point in November when speaking to the APPG on children. She said:

"I think we are too ready as a society, as the police and particularly with some legislation coming up on the books, to label what looks like growing up to me as anti-social behaviour".

There have also been concerns that one person's annoyance may be another person's boisterous behaviour. Indeed, as the noble and learned Lords, Lord Morris and Lord Mackay, and the noble Baroness, Lady Mallalieu, said, it need not be boisterous behaviour. Exercising fundamental democratic rights of protest or even just expressing views in a forceful manner can cause nuisance or annoyance.

The Minister's amendment suggests that behaviour has to be reasonably expected to cause nuisance and annoyance. That is an admission that the Government now recognise the unreasonableness of the clause that they have previously defended to the hilt. As the noble and learned Lord, Lord Mackay, made clear, while that change on its own may be welcome, it does not address many of the points being raised here today. It still leaves the test as nuisance and annoyance to any person on the balance of probabilities. That is not good enough. I was interested in the points made by the noble and learned Lord on "just and convenient". I accept his assessment of the value and usefulness of that. If the boisterous behaviour to which I referred is ongoing and causes harassment, alarm or distress, then action obviously has to be taken. But as it stands, even with the government amendment, a one-off event that causes nuisance or annoyance to any person on the balance of probabilities would still lead to injunction.

In Committee the noble Lord, Lord Taylor, relied largely on the definition in the Housing Act 1996. Noble Lords have concerns about paragraph (b) of the amendment. I do not share their concerns because it is appropriate in limited circumstances for the existing law aimed at people in social housing to remain to give housing providers the tools to deal with tenants in such circumstances. No change is being sought to that position and that is what part (b) of the amendment makes clear.

I will now address some of the points made by the noble Lord, Lord Faulks, in his defence of the Government, which I am sure we will hear in due course from the Front Bench as well. One great benefit of ASBOs is how seriously anti-social behaviour is taken. The issue of alarm, harassment and distress is crucial and there are appropriate sanctions for dealing with it. We could end up with more of these orders being imposed but in most cases they will be a weaker response to dealing with anti-social behaviour. The noble Lord referred to the guidance and he read it out very quickly. I have a copy of that guidance. It is somewhat confusing because it says, as he rightly quoted:

"It should not be used to stop reasonable, trivial or benign behaviours that have not caused, and are not likely to cause, harm to victims or communities".

Where in the Bill is harm referred to? Guidance is not legislation. The legislation, as it stood, referred to alarm, distress and harassment. The Bill refers to nuisance or annoyance. Guidance suggesting there has to be harm as well does not override what is in the Bill. Noble Lords who were defending the Government's position, when asked whether they could give examples of activities that would come under the Bill's definition of nuisance and annoyance but not cause alarm, harassment and distress, were unable to do so. Every example they gave of where action should be taken caused harassment, alarm and distress. It is quite clear that the existing legislation is the best way to define the kind of behaviour that is disrupting lives.

The noble Lord, Lord Faulks, also raised the issue of hearsay evidence. It is currently the case with anti-social behaviour orders that professionals can give advice on behalf of those suffering so that they themselves do not have to go to court to present their case. The noble Lord, Lord Phillips, made a very important point about the courts being clogged up and about the pressures on police officers having to respond to every case of nuisance and annoyance. Has the Minister given any consideration to how the police should respond with their increasingly limited resources to cries for help from people suffering what they consider to be nuisance and annoyance and whether they will then be able to deal with very serious cases of anti-social behaviour?

The existing test of harassment, alarm and distress recognises the seriousness of anti-social behaviour and the need to take action against those who breach an order. The definition proposed by the Government is too broad and the remedies are too weak. Setting the threshold so low undermines fundamental freedoms and tolerance. It is a great shame that, having had warning at Second Reading and in Committee of the great concern in your Lordships' House, the Government did not come back today with something a bit better than the amendment being put forward. There are serious concerns about this, not just because it would catch too many people but because those who are really causing distress in our communities will not be the focus in tackling problems. I urge the Minister to accept the amendment moved by the noble Lord, Lord Dear. The only compromise that would be acceptable today would be if the Minister were to say that he accepts that there has to be a change of definition and that he can assure us that that would be "harassment, alarm and distress" and not "nuisance and annoyance".

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): Well, my Lords, this has been an interesting debate. I am not particularly thick-skinned, so I am clearly sensitive to the views that have been expressed by this House. I am grateful to the noble Lord, Lord Dear, and other noble Lords who have spoken, because they have done justice to this debate by the contributions they have made. I owe it to the House to explain the Government's position, and perhaps I can then take this issue on.

Clause 1 is clearly an important part of the Government's reforms, and I begin by acknowledging that there has been some common ground on the need to include it in the Bill. We have indeed reached some common ground on the elements that we need to include in Clause 1 to make it effective. First, I am glad that the civil standard of proof for the new injunction has been accepted by so many noble Lords. Secondly, I welcome the tacit acceptance of the "just and convenient" limb of the test for an injunction. The noble and learned Lord, Lord Carswell, said that this is a proper consideration for courts in any case, but it is right that we should make it explicit as one of the limbs of the test.

The terms of Amendment 1, as compared with the amendments put forward in Committee, are a welcome demonstration that this House listens carefully to the evidence put before it both by noble Lords and by front-line professionals, and that it adapts its approach accordingly. The Government have also listened to the concerns expressed by noble Lords in Committee and by the Constitution Committee and the Joint Committee on Human Rights, and that is why I have tabled Amendment 2, which we believe addresses the concerns about the breadth of the "nuisance or annoyance" test. Although Amendment 2 is not part of this group, it addresses exactly the same issue—the appropriate form of the test for the grant of an injunction—and, accordingly, it is important that your Lordships consider Amendments 1 and 2 together.

As I said in the debate in Committee when my noble friend Lord Faulks tabled his amendment, I believe it is inherent in the way that the court will look at any application for an injunction to consider whether it was reasonable to grant an injunction in the circumstances of the case. I am grateful for my noble friend's contribution, and I look forward to him joining me on this Bill before we conclude our consideration of it.

I thank my noble friend Lady Hamwee for her contribution to this debate. I also thank other noble Lords who wanted to speak but were not able to or who have forgone their right to speak in order to expedite this debate. In that I include my noble friends Lady Newlove and Lady Berridge.

5.45 pm

None the less, I can see that there is a good case for making a reasonableness test explicit in the legislation, and I undertook to reflect further on my noble friend's amendment. In doing so, the Government have also been conscious of the fact that the reference to conduct being,

"capable of causing nuisance or annoyance"

could, arguably, cast the net far too widely, and may not be a sufficiently objective test for these purposes.

I believe that government Amendment 2 addresses both those points. Were the House to agree that amendment, the first limb of the test for the granting of an injunction would be revised, so that instead of the court having to be satisfied that the respondent,

"has engaged or threatens to engage in conduct capable of causing nuisance or annoyance to any person",

it would now have to be satisfied that the respondent,

"has engaged or threatens to engage in conduct that could reasonably be expected to cause nuisance or annoyance to any person".

I hope noble Lords will agree that this is an important change, which, I submit, properly addresses the concerns that have been raised about the test for the injunction.

The noble Lord, Lord Dear, has proposed an alternative amendment to address the concerns to which I have referred. I am grateful to the noble Lord for seeking to find a middle way. In an attempt to find some middle ground, he has designed a two-tier system. The "nuisance or annoyance" test is retained for any application for an injunction by a housing provider or a local authority acting in that capacity, but the "harassment, alarm or distress" test would apply to any application made by the police, a local authority when acting in a capacity other than that of a housing provider, or any of the other agencies listed in Clause 4.

The noble Lord has explained to the House the reasoning behind his approach. As I have said, I commend him for his willingness to find some middle ground. His amendment explicitly recognises that the "nuisance or annoyance" test has operated successfully for a number of years in the housing context. But I part company with him when he asserts that this test cannot be transferred across to other contexts where anti-social behaviour occurs.

The types of anti-social behaviour that a social housing provider needs to address are not unique to that housing sector. The issues that affect those living in social housing affect those in private rented accommodation and owner-occupiers too. The impact of noise nuisance, graffiti, drunken yobbish behaviour or intimidation does not, and should not, depend on where you live.

Let me now turn to what is evidently the core concern of the noble Lord, Lord Dear—the possibility that the "nuisance or annoyance" test could have a chilling effect on free speech. Noble Lords have suggested, for example, that an injunction could be sought against bell ringers, street preachers, carol singers or others engaging in perfectly normal everyday activities.

I hope that noble Lords will accept that that is clearly not the Government's purpose. It is my belief that those concerns are misplaced. I want to make it clear that the purpose of our reforms is not to prevent people from exercising their rights to protest and free speech. We all suffer from annoyance in our daily lives, and there is, rightly, no place for the criminal or civil law to regulate behaviour just because it is annoying.

Lord Elton (Con): Will the Minister take on board the fact that our concern is not with the Government's purpose but with the effects of the legislation?

Lord Taylor of Holbeach: I shall be coming on to that, but I felt I had to place what I was going to say in some context—and I am grateful for the discipline of the House in allowing me to do just that. Our aim is to allow decent law-abiding people to go about their daily lives, engage in normal behaviour and enjoy public and private spaces without having their own freedoms constrained by anti-social individuals.

The test for an injunction, when taken as a whole, coupled with the wider legal duty on public authorities, including the courts, to act compatibly with convention

[Lord Taylor of Holbeach]
rights, would ensure that the injunction cannot be used inappropriately or disproportionately. As I have explained, government Amendment 2 is designed to strengthen the first limb of the test so that the conduct must be such that it could reasonably be expected to cause nuisance or annoyance. This limb on its own is likely to preclude an injunction being sought or granted under this Bill to deal with bell ringers, carol singers or children playing in the street. However, there is a second part to the test.

Lord Forsyth of Drumlean: I ask my noble friend the same question that the noble Lord, Lord Faulks, was unable to answer. Can he give one example of a problem that would not be resolved by the amendment proposed by the noble Lord, Lord Dear? What is the problem that the Government are seeking to deal with? Can he give one example?

Lord Taylor of Holbeach: If I might say, it solves the problem of over-complex legislation. Having two tests for the single problem of anti-social behaviour was not the Government's intention in drawing up this legislation.

Lord Forsyth of Drumlean: I do not want to detain my noble friend, but I am asking for an example of the kind of behaviour that would not be caught by the amendment proposed by the noble Lord, Lord Dear. We understand the Government's intentions, but it is not clear what the problem is that they seek to remedy. Can he give one example that would not be caught under the amendment?

Lord Taylor of Holbeach: I do not intend to give any examples to my noble friend. I have given the reason why we have a single test for anti-social behaviour leading to an IPNA. I have given my reasoning, and I hope that my noble friend will accept it; I am not going to go into listing individual activities that the IPNA is intended to address. That is why we have a single test and why noble Lords will understand that I am speaking in justification of that single test.

The second part of the test is not a throwaway test, as some have suggested. It is under this limb of the test that the court will consider whether it is reasonable and proportionate in all the circumstances to grant an injunction. In making such an assessment, the court will consider the impact on the respondent's convention rights, including the rights to freedom of speech and assembly.

I agree with the noble Lord that we should not leave it to the courts to apply these important safeguards. All these factors will weigh on the minds of front-line professionals in judging whether to apply for an injunction. Our draft guidance makes this clear. This will be backed up by a framework of professional standards and practice operated by the police, local authorities and housing providers.

Having said all that—and I apologise to my noble friend for not giving him an example—I have listened to the strength of feeling around the house on this issue. The Government's purpose is plain: we wish to protect victims. ASB, or anti-social behaviour, ruins lives and wrecks communities. In our legislation, we need to ensure that authorities seeking to do so have coherent and effective powers to deal with anti-social behaviour. Recognising noble Lords' concerns, I commit to take the issue away to give myself the opportunity in discussion with the noble Lord and others to provide a solution that clarifies the use of the legislation and safeguards the objective, which I think is shared around this House, of making anti-social behaviour more difficult and protecting those who are victims of it.

On those grounds, and on the understanding that the Government will return to the issue at Third Reading, I will not move for now government Amendment 2, and I hope that on the commitment to discuss the issue the noble Lord, Lord Dear, will not press his amendment.

Lord Dear: My Lords, we have been detained for something over two hours and I shall take no more than a couple of minutes of your Lordships' time to say what I have to say. First, I sincerely thank all those who have spoken in this debate, particularly the three signatories to my amendment and the Minister, who has had to sit through a varied and interesting debate.

Secondly, I want to pick up on the chilling effect. The experience with the word "insulting" in the Public Order Act is sufficient in itself to indicate what front-line practitioners will do. Governed as they are by very well-oiled complaints machinery, they will undoubtedly be faced with many examples when a set of circumstances are produced for them, and they will be virtually pressurised into taking some sort of action, to pursue the case and push it through to the courts to decide. That is the easy option, and it is what happened all too often with "insulting". To take an exercise in discretion and turn around to the complainant and say, "Frankly, I think we should let this one go by", is not an option that they will take willingly. That is undoubtedly why the Association of Chief Police Officers as one group has said that it thinks that "nuisance and annoyance" is wrong and that we should stay with the well tried formula of "harassment, alarm or distress".

The choice between those two wordings is the pivotal point of the legislation—the absolute foundation on which everything else hangs. We can talk for as long as we like about reasonable, just, convenient, necessary and all those adjectives, and try to make it work but, if the pivot does not work, all the rest falls away. The pivot suggested by the Government is "nuisance and annoyance". We have no knowledge of what will happen if that comes into play, but we know what will happen with "harassment, alarm or distress"; it is well proven, well tried and respected, and has never been faulted. To move way from that is a step into the dark.

We have had no examples whatever of the sort of conduct that "nuisance and annoyance" seeks, rightly, to address. I pay great tribute to the Minister, for whom I have a huge liking and respect, but unless he can satisfy me—and I suspect that this is the case with others in the Chamber, from what I pick up from the atmosphere—that he is willing to move immediately to "harassment, alarm or distress", I must seek to divide the House. I invite him to respond to that.

Lord Taylor of Holbeach: As far as I am concerned, if I go into discussions between now and Third Reading, all the aspects that the noble Lord has related in his speech, and those expressed by other noble Lords around the House, will be on the table. I do not want to prejudge the outcome of those discussions. All that I can say is that I wish to make sure that when we come back to Third Reading we have a House that can unite behind legislation on this issue. I do not think that that is an unreasonable expectation, and I believe that it represents the sentiment in which this debate has taken place this afternoon.

Baroness Butler-Sloss: I have listened with great care to this debate, and I was undecided when I came into this Chamber as to what I would do. What I have not yet heard from the Minister, to my understanding, is what is wrong with the amendment and why it will not actually meet what needs to be done.

Lord Taylor of Holbeach: I was asked a parallel question by my noble friend Lord Forsyth. We are trying to simplify the legislation so that we make it easier for practitioners, no matter in what circumstances they are dealing with the application for an IPNA, to have a test that is capable of being applied in all areas.

I have listened to this debate. There may be ways in which the noble Lord's amendment can be modified to advantage. It is important to recognise that he has made a very valid contribution to this debate, and I would like to have the opportunity to consider further what he is proposing in his amendment.

Lord Mackay of Clashfern: My Lords, if I understand the position that the Minister has taken up, he will have an open discussion, the precise outcome of which cannot, of course, be forecast. He will take account of all aspects of what has been put forward in the hope that we can, between us, reach an agreed solution to the problem which has the support of the whole House.

Lord Dear: My Lords, with the greatest respect to the Minister, I do not think that we can go forward on a pious hope. I beg leave to test the opinion of the House.

6 pm

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6.20 pm

Amendment 2 not moved.

Amendment 3

Moved by ***Lord Ahmad of Wimbledon***

3: Clause 1, page 2, line 6, leave out paragraph (a)

Lord Ahmad of Wimbledon: My Lords, in Committee, Clause 1(5)(a) was the subject of some debate. It and the related provision in Clause 21 have also been a subject between the Home Office and the Joint Committee on Human Rights. Essentially, this provision places a duty on the court to avoid, as far as practicable, imposing prohibitions or requirements in an injunction or a criminal behaviour order which would conflict with the respondent's religious beliefs.

The Government have consistently maintained that this provision related to the manifestation of the respondent's religious beliefs, rather than to the religious belief per se. However, for the avoidance of doubt, we have decided not to remove the provision from the Bill, on the basis that the courts would in any event, by virtue of the operation of the Human Rights Act, be bound to consider whether the proposed prohibitions or requirements were compatible with the respondent's convention rights, including but not limited to the right to the freedom of religion. I beg to move.

The Earl of Lytton (CB): My Lords, I can quite understand the reason why this particular safeguard or defence in injunctive procedures is to be removed. The noble Lord may rest assured that I am with him as far as the argument goes. I have written to his noble friend and had an answer this morning pointing out that, in normal civil injunctive proceedings, there are a significant number of available defences—depending on how one counts them, 15 or 20 or more. The Bill as it stands would have allowed for three; this will reduce it to two.

I still do not understand, because in his letter to me—which I thank him very much for, and for keeping me in the loop on correspondence generally to do with this Bill—the noble Lord, Lord Taylor, merely said that he did not agree with me. He did not explain why in one set of civil injunctive proceedings under this Bill there will remain two defences, but in any other injunctive proceedings there will be 15 or more. That seems a two-tier approach, so what is the direction of travel in that respect?

Lord Ahmad of Wimbledon: My Lords, perhaps I may come back to the noble Earl in advance of Third Reading on that to specifically clarify the issues that he has raised. In terms of what the Government have done thus far, our understanding and direction of travel is clear, responding directly to the concerns raised on this issue.

Amendment 3 agreed.

Amendment 4

Moved by ***Baroness Hamwee***

4: Clause 1, page 2, line 18, at end insert—

"( ) For the purpose of determining whether the condition mentioned in subsection (2) is fulfilled, the court shall disregard any act of the respondent which he or she shows was reasonable in the circumstances."

Baroness Hamwee: My Lords, Amendments, 4, 5, 24 and 25 are all directed at a defence for an application for an IPNA or for a criminal behaviour order. My amendments are different from definitions of the first condition which is the requirement for an injunction or an order.

There must be cases where the conduct can be expected—or maybe we will end up with "reasonably be expected"—to cause the impacts that we have been debating. Nevertheless, there is good reason for that conduct. It is not clear to me if, as drafted, there is any defence other than "I didn't do it" or that the conduct does not meet the test.

In the Crime and Disorder Act 1998, Section 1(5) includes a provision similar to the one which I have set out in two of these amendments—that:

"For the purpose of determining whether the condition",

of the test,

"is fulfilled, the court shall disregard any act … which … was reasonable in the circumstances".

In case that point is not clear enough, I have specifically used the term "defence" in my more homemade Amendments 5 and 25.

There must be an opportunity for the respondent or defendant to explain himself, and I would not be happy to leave whether or not to proceed to the discretion of the applicant or prosecuting authority, whichever we are talking about. At the previous stage, the Minister said that he would take away the first of each pair of these amendments to explore whether it was appropriate to introduce an explicit reference to reasonableness. I appreciate that he went three-quarters of the way to doing so this afternoon. I know that he gave no commitment at that stage, but in any event I do not believe that his amendment, had he pursued it, would have met the point of a defence. Conduct which could reasonably be expected to cause nuisance or annoyance might still be conduct for which, in particular circumstances, there is good reason. The court should actively have to consider this.

The point is made more important by the fact that it is likely in this area that there will be a lot of litigants in person, so the legislation itself needs to be extremely clear.

Lord Taylor of Holbeach: My Lords, I am grateful to my noble friend Lady Hamwee for her explanation of these amendments. She explained that they seek to provide the respondent or offender with a defence as to why an injunction or criminal behaviour order, which are also included in these amendments, should not be granted—namely, that the behaviour was reasonable in the circumstances. My noble friend has pointed out that this issue is distinct from the amendment that we have already debated, which is related to the first condition for the grant of an injunction.

[Lord Taylor of Holbeach]

If I may respond at this point to the noble Earl, Lord Lytton, about his queries in the previous debate, I can say that the provisions in Clause 1(5) are not defences; they are factors for the court to take into account when imposing restrictions or requirements. The two issues mentioned should not be confused with defence issues.

The Earl of Lytton: Do I understand from the Minister then that the normal range of civil defences would continue to apply in the normal way, in connection with matters under this Bill as everywhere else?

6.30 pm

Lord Taylor of Holbeach: As I understand it, that is the case. I was going on to argue the question of defences because that was the issue that my noble friend wanted to sort out. However, I hope that we have saved the price of a stamp by clearing that up in the Chamber.

In effect, my noble friend is seeking to argue that it is not enough to be able to establish, in the case of the injunction, that the conduct in question could reasonably be expected to cause nuisance or annoyance but that it should also be necessary to show that the conduct was unreasonable in the circumstances. My noble friend has pointed to the reasonableness defence in Section 1 of the Crime and Disorder Act 1998, which applies to the ASBO on application, although it is worth noting that no such defence is contained in Section 1C of that Act, which relates to the ASBO on conviction. I am sympathetic to the point that she raised and I hope to persuade her that it is already effectively covered.

I will deal first with the injunction. As my noble friend will be aware, the second condition that must be satisfied is that the court considers that it is "just and convenient" to grant an injunction for the purpose of preventing the respondent from engaging in anti-social behaviour. As I have already indicated, in applying this limb of the test, the court will look at whether it is reasonable and proportionate in the circumstances of the case to grant an injunction. It will be open to the respondent to argue that he or she had a good reason for his or her conduct. The court will weigh that up against the evidence submitted by the applicant and come to a view. If the court is satisfied that the reason put forward by the respondent is a sound one, I fully expect it to conclude that it will not be just and convenient to grant an injunction. Therefore, the defence is, in practice, inherent in the drafting of Clause 1 as it stands.

In the case of the criminal behaviour order, it is again important to look at the wider context in which the court will apply the test in Clause 21. The same public law principles of reasonableness and proportionality will apply. It would therefore be open to the offender to argue that there were reasonable grounds for the conduct in question, which the court would then consider alongside the evidence presented by the Crown Prosecution Service.

I might add that there is no reasonableness defence in Section 1C of the Crime and Disorder Act 1998, which provides for ASBOs on conviction—the forerunner to the criminal behaviour order. That section does, however, stipulate that the court may consider evidence presented by the prosecution or the defence, which will be the position in relation to the criminal behaviour order, albeit that is not expressly stated in the Bill.

In addition, it is worth pointing out that, in deciding whether to apply for a criminal behaviour order, the Crown Prosecution Service would need to be satisfied that there was sufficient evidence to provide a realistic prospect of obtaining an order and that it was in the public interest to apply for an order. The prosecution would therefore consider any evidence which showed that the conduct of the respondent was reasonable in the circumstances.

In short, the point made by my noble friend is well made. I assure her that a respondent or offender will be able to raise such a defence, which will then be properly considered by the court alongside evidence submitted by the applicant for the injunction or order. In the light of this reassurance, I do not believe that these amendments are necessary and, as a result, I hope that my noble friend will be prepared to withdraw Amendment 4.

Baroness Hamwee: My Lords, my noble friend is having a difficult enough day, so I reassure him immediately that I will seek to withdraw the amendment.

I notice the reference to the public interest test in the case of the criminal behaviour order. As regards the injunction—this is not a matter for this afternoon—I wonder whether my noble friend might consider a reference to the point in the statutory guidance. I reassure my noble and learned friend that I am seeking not guidance to the court—I would not dare—but guidance to potential applicants in order to prevent them going forward if it is not appropriate that they should go forward in the circumstances that I sought to outline. As I said, it is not a matter for this afternoon and I know that the Government are consulting on the guidance but I hope that my comment at this point can be taken as a contribution to that consultation. On that basis, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Ahmad of Wimbledon***

6: Clause 1, page 2, leave out line 19 and insert "An application for an injunction under this section must be made to—"

Lord Ahmad of Wimbledon: My Lords, in developing our anti-social behaviour reforms, the Government have, both formally and informally, sought the views of the front-line professionals who will use the new powers. We have listened to them and, where appropriate, have accepted constructive proposals to improve the measures in the Bill. The amendments in this group exemplify this approach.

Under Clause 1(8), applications for injunctions against over-18s to prevent nuisance and annoyance will be heard in the county court and applications against under-18s will be heard in the youth court. However, some cases of anti-social behaviour involve mixed groups of under and over-18s. To allow for such cases,

Amendment 19 would enable rules of court to be made which would, in turn, enable the organisation applying for an injunction to seek permission from the youth court for the application against the adult—or, indeed, applications if there is more than one adult—to be heard in the youth court alongside the applications in respect of one or more under-18s. The youth court may grant the application if it is "in the interests of justice". If not, the application will be denied and the application in respect of the adults will be heard in the county court in the normal way.

If the case is heard in the youth court and an IPNA is granted, Amendments 8, 9, 10 and 11 provide that any subsequent proceedings in relation to the adults will be heard in the county court—for example, if there are proceedings for a breach. Only the initial application for the grant of an injunction will be heard in the youth court.

Amendments 6, 7 and 21 are consequential on Amendment 19. These amendments help put victims first. In most cases, it will prevent them having to attend court and give evidence twice. The amendments will also reduce costs and save court time. By linking these hearings in the youth court, we will retain the experience and expertise of its judges in protecting the best interests of respondents under 18. I beg to move.

Lord Rosser (Lab): We understand the reasons for these amendments and for wanting to try to ensure that cases involving those under 18 and those who are adult, where they relate to the same issue, can be tried or dealt with in the same court. Therefore, I certainly have no wish to argue against the principle of what the Government are seeking to achieve. However, in the letter that the Minister sent to us on 18 December, in which he outlined these amendments that were being tabled, he said in respect of this issue:

"We believe that it is in the best interests of respondents aged under 18 for linked cases involving adults to be transferred to the youth court rather than vice versa".

Can he confirm that that means that a case could not be held in the adult court if somebody aged 18 was involved? Perhaps for the sake of argument I may take as an example—perhaps it is very exceptional—a case where there are, say, four or five adults and one person under 18 who happens to be 17 and a half. Under these amendments, is it the Government's position that it would not be possible, if the parties wanted it, for the matter to be dealt with in the adult court? Are they saying that if the cases are going to be dealt with together, that can happen only in the youth court? I should be grateful if the Minister could clarify that point.

I stress that we are not opposed to what the Government are seeking to achieve, but I pose the question in the light of the sentence in the letter that was sent to us where reference was made to believing it to be,

"in the best interests of respondents aged under 18 for linked cases involving adults to be transferred to the youth court rather than vice versa".

Does that mean that they could never be held in the adult court, even if for example there were four or five adults and one under 18? I think that I know the answer to this, but could the Minister say why the Government believe that it is in the best interests of respondents aged under 18 for linked cases to be in the youth court rather than vice versa?

Lord Ahmad of Wimbledon: My Lords, I will clarity that. As was put down in the letter of my noble friend on the final point, there is an understanding and appreciation that with youths under 18, youth courts have certain specialist knowledge in dealing with these cases. The point, which has been raised over and again, is that one of the key things, especially when it comes to such matters, is reforming and addressing particular issues, and ensuring that we prevent reoffending. We feel that the youth courts, particularly in the cases of under-18s, are best placed to deal with these issues. I can confirm that a case involving a person under 18 cannot be transferred to the country court in any circumstances.

Amendment 6 agreed

Amendment 7

Moved by ***Lord Ahmad of Wimbledon***

7: Clause 1, page 2, line 21, at end insert—

"Paragraph (b) is subject to any rules of court made under section 18(1A)."

Amendment 7 agreed.

Clause 7: Variation or discharge of injunctions

Amendment 8

Moved by ***Lord Ahmad of Wimbledon***

8: Clause 7, page 5, line 6, at end insert—

"( ) In subsection (1) "the court" means—

(a) the court that granted the injunction, except where paragraph (b) applies;

(b) the county court, where the injunction was granted by a youth court but the respondent is aged 18 or over."

Amendment 8 agreed.

Clause 8: Arrest without warrant

Amendments 9 and 10

Moved by ***Lord Ahmad of Wimbledon***

9: Clause 8, page 5, line 31, leave out paragraphs (b) and (c) and insert—

"(b) a judge of the county court, if—

(i) the injunction was granted by the county court, or

(ii) the injunction was granted by a youth court but the respondent is aged 18 or over;

(c) a justice of the peace, if neither paragraph (a) nor paragraph (b) applies."

10: Clause 8, page 5, line 40, leave out from "injunction" to end of line 42

Amendments 9 and 10 agreed.

Clause 9: Issue of arrest warrant

Amendment 11

Moved by ***Lord Ahmad of Wimbledon***

11: Clause 9, page 6, line 8, leave out paragraphs (b) and (c) and insert—

"(b) a judge of the county court, if—

(i) the injunction was granted by the county court, or

(ii) the injunction was granted by a youth court but the respondent is aged 18 or over;

(c) a justice of the peace, if neither paragraph (a) nor paragraph (b) applies."

Amendment 11 agreed.

Schedule 2: Breach of injunctions: powers of court in respect of under-18s

Amendment 12

Moved by ***The Earl of Listowel***

12: Schedule 2, page 138, line 34, leave out paragraph (b)

The Earl of Listowel (CB): My Lords, I will speak also to the other amendments in my name in this group. Amendments 12 and 13 to Schedule 2, and Amendments 34 and 35 to Clause 37, seek to remove imprisonment as a sanction for children breaching their IPNAs or failing to comply with police dispersal orders respectively. Schedule 2 provides for supervision orders to be made against children breaching their IPNAs. This is adequate for dealing with children of all ages. There is no need to introduce detention as an additional sanction for over-14s. The case for why this is necessary has not been made. Will the Minister explain why this is seen by the Government as necessary?

Amendment 34 removes imprisonment as a sanction for children failing to comply with a police dispersal order. Amendment 35 sets out a range of alternative sanctions for such children. These measures aim to ensure that the discretion of the court is not fettered. I am grateful to the Minister for allowing us an opportunity to meet yesterday to discuss my concerns in this area. I will come to my final Amendment 86 in this group, which is on youth services, when I have discussed the other amendments.

There are two key reasons why imprisonment should not be available for children breaching their IPNA or failing to comply with a police dispersal order or power. First, imprisonment is expensive, ineffective and counterproductive. In 2010-11 the reoffending rate for children leaving custody was 72.6%. Youth custody is expensive. The average cost of a place at a secure training centre is £178,000 per annum. There is clear evidence to suggest that for many children, incarceration increases the risk of recidivism. Imprisoning children, even for a short period, can introduce them to criminal networks that become impossible to escape later.

I fear that we may be introducing more children to schools of crime and preparing them for later universities of crime. I have visited many young offender institutions and secure training centres. I visited Feltham young offender institution 13 or 15 years ago, and then visited it recently with a number of chief executives from London local authorities and the chair of the Youth Justice Board, Frances Done. It was striking how much things had changed in that time. Thanks to this Government, there are far fewer young people in custody, which is very much to be welcomed. Those young people who are left are very challenging, tough and difficult to work with. In the Bill, we are considering bringing in some young people—children—who have not even committed a crime to spend three months or so in detention with these very hard nuts. Do we really want to mix such children with such children?

From that visit to Feltham young offender institution, the concern of the chief executives of the local authorities in London about gang violence also became clear. We heard a transformation from my first visit to Feltham. No longer were two young people getting into a fight with one young person, but 13, 14 or 15 young men would be attacking one or two boys because they were not in the right gang. It was important for the secure estate to know from the local authorities which gangs their particular boys came from, so that they could manage the risks around that.

6.45 pm

There is also a concern that we are bringing into these conditions young people who may not be a member of the right gang and may be victimised because of that. If they are not a member of a gang, one can speculate that they will be by the end of their time in the secure estate, because they will need to be to survive. I am very concerned about introducing more young people into the secure estate, given how much risk for them is involved and how detrimental for us it might be for them to have that experience.

The second main reason for opposing imprisonment is that it is a severe and anomalous punishment that may be incompatible with the UN Convention on the Rights of the Child. Allowing children to be imprisoned for IPNA breach or non-compliance with a police dispersal power is inconsistent with how prison is used in the wider youth justice system. In the criminal justice system, children are imprisoned only for the most serious offences or for persistent offending. Failure to comply with a police dispersal order is only a minor offence. IPNA breach is a civil offence—a contempt of court. This Bill introduces for the first time detention for children who are in contempt of court for minor civil wrongs. Currently the law does not allow this to happen, except in very limited circumstances.

Arguably, imprisoning children for IPNA breach or failure to comply with a police dispersal order is not consistent with the UK's obligations as a signatory of the United Nations Convention on the Rights of the Child. Article 37 of UNCRC states that children should be imprisoned only as a "measure of last resort". The United Nations standard minimum rules for the administration of juvenile justice—the Beijing Rules—state that:

"Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or a persistence in committing other serious offences and unless there is no other appropriate response".

I would argue that there are a number of other appropriate responses.

In conclusion, I assure the Minister that Amendment 86, on youth services and the duty on local authorities to secure appropriate services to prevent young people from being involved in anti-social behaviour, is merely a probing amendment. I would like to see the Minister attending to and looking at the statutory guidance for local authorities on services and activities to improve young people's well-being. I support the broad principle set out in the guidance and acknowledge the reference there to youth work, and to young people's personal and social development. However, the guidance is so broad in its interpretation that all local authorities are able to say that they are meeting some of these requirements so far as is reasonably practicable. Because the guidance says specifically that government will not prescribe which services and activities for young people local authorities should fund or deliver, or to what level, I am sure that more than ever the level of support that young people get access to is determined by where they live.

Last year, spending on youth services declined by 10% overall. Spending on getting young people off drugs and alcohol declined by 18%. If we are to be serious about preventing anti-social behaviour—and especially if we are talking about putting young people in custody because of their anti-social behaviour—it is important that we ensure that we have the vital youth services that will prevent this behaviour. This is a healthier and more civilised way of intervening with these young people, and it is well evidenced in preventing such behaviour. I would appreciate the Minister's assurance that he will look at the guidance and consider whether it might be tightened to some degree to ensure that adequate youth services are provided.

It is welcome that considerable funding is being given to police and crime commissioners in this area, but what all young people need, particularly vulnerable young people, is continuity of relationships. They need to build a relationship of trust with an institution or an individual, they need their youth clubs—and they need them to be there over a period of time, not opening and closing depending on the whims of the local authority or the state of the economy.

I am sorry to have spoken for so long, but perhaps I may conclude by saying how sad I was to learn of the death of Mr Paul Goggins MP, a former Minister for Prisons and a well respected parliamentarian, with whom I had the privilege of working on a number of occasions as the vice-chair of the All-Party Parliamentary Group for Children and Young People in Care. He began life as a social worker and managed a children's home. He tabled in the other place an amendment to the Children and Families Bill that is currently proceeding through this House, which the Government eventually accepted. It is described as one of the most important changes for looked after children in a generation and allows young people to remain in foster care with their foster carers until the age of 21, where they choose to do so. The Government are supporting that with £40 million for its implementation. He also worked very hard to introduce special financial provision for looked after young people and did much other work in this area. I am sorry to hear of his early demise and I hope that it will be of some comfort to his family to know of the respect in which he is held by this and the other place.

I beg to move.

Baroness Hamwee: My Lords, the noble Earl knows how sympathetic I am to his amendments, particularly in regard to detention. I made a cack-handed attempt at about 11.43 pm on day 4 out of five of Committee to raise issues about Schedule 2, and I have some questions for the Minister.

I am aware that Part 1 of Schedule 2 contains some significant safeguards—I hope the Minister will not feel upset at my using that term—and that paragraph 1(3)(a) provides that the applicant for a supervision order or a detention order must consult the youth offending team. There is no explicit provision for the court to consult the youth offending team although it may be good practice. Can he give me any reassurance on that score?

Secondly, is the Minister able to give me an example—I am sorry if it seems as though I am harking back to an approach adopted in an earlier debate, but I have asked this question before and it will not come as a surprise to him—of such a severe or extensive breach that only detention would be appropriate, without that activity also being a criminal matter? Perhaps he will also say whether there is a role for guidance from the Home Office, and what that role might be, for rules of court and for sentencing guidelines in this connection.

Lord Harris of Haringey (Lab): My Lords, I have not always felt that the noble Baroness, Lady Hamwee, has addressed herself to issues that are hugely important or pertinent in this Bill, although she has gone into a great deal of detail. However, the point that she has just raised about the circumstances in which the Government envisage these powers in respect of juveniles being appropriate is extremely important.

There is a risk that the Government will, no doubt inadvertently, create a perfect storm around some of these matters. The powers under the dispersal order—we will come to this later—can be exercised without proper prior consultation. This can then lead to young people in breach of a dispersal order being potentially subject to detention, with all the consequences that the noble Earl described.

I can envisage circumstances in which the perhaps over-hasty, ill thought through use of dispersal order powers will lead to young people being rounded up and to some of them, because they are in breach of a dispersal order, being potentially subject to detention. That seems to be a toxic cocktail for community relations in many of our towns and cities.

Therefore the question that the noble Baroness has just asked the Minister is extremely important. What are the circumstances in which it is envisaged that detention is the appropriate outcome of a breach of, in particular, a dispersal order? What are the circumstances? What is the context in which this will be done? Are the Government going to provide sufficient guidance to make that clear? Otherwise, I can envisage circumstances in which young people will be detained as a consequence of something that was perhaps ill thought through at the time, with enormous social consequences.

Lord Lucas (Con): My Lords, I share the noble Earl's appreciation of the late Paul Goggins, in my case from when he was a very good Prisons Minister. I am equally sad to learn of his death.

In the context of these amendments I share his concerns that we should be looking at detention for, as it were, a first offence; for something which, as my noble friend Lady Hamwee pointed out, might not even be a criminal offence. If it is a criminal offence, of course, we do not need the detention powers in the first place. I look forward with interest to what my noble friend has to say. I hope that he has been allowed to be more helpful to my noble friend Lady Hamwee than he was on a previous amendment.

Baroness Smith of Basildon: My Lords, I thank the noble Earl, Lord Listowel, for his generous and kind comments, which we appreciate, for our former colleague Paul Goggins. He was an exceptional MP and, for those who knew him and were very fond him, he was an exceptional person as well. We are very sad to lose him.

On the amendments, rather along the lines of the issues raised by my noble friend Lord Harris of Haringey, perhaps I may ask some questions about dispersal orders. The extension of dispersal orders that the Government are proposing seems quite strange. Previously, dispersal orders were for 24 hours, with democratic oversight in consultation with the local authority, and covered a restrained geographical area. That has changed because under the Government's proposals they are for 48 hours with a much wider geographical area. There is no involvement of the local authority but there is the involvement of a member of the police force of the rank of inspector or above.

The Minister will recall that we discussed in Committee the lack of clarity around the operation of dispersal orders. A number of questions were put to the Minister but we did not get answers then. Given this extension and the change in how the Government want dispersal orders to operate, it is a concern that the detention, particularly for young children, would remain for a much broader and wider offence about which we have had very little information, and I read the debate again today. It raises some questions for the Minister to answer. Why does he think that these dispersal orders are appropriate? Does he think it likely that, because of the wider area, the increased length of time and the fact that there is no democratic oversight, we shall see more dispersal orders? Is it appropriate in those cases that we may see more breaches of them?

It raises a concern that something as minor as a dispersal order, which can be issued by a police offer on the spur of the moment, when there is not really a process in the way we would expect, could lead to detention. The extension of how the Government are planning to use dispersal orders in the future, retaining detention for young people if there is a breach, gives rise to concern. Will the Minister explain why he thinks it appropriate, how he thinks it will be used and on how many occasions? I am concerned that we may see an increase in dispersal orders. I am very unhappy about the Government's proposals in any case, but if we see an increase there could be an increased number of breaches and we could then see detention of young people. Will the Minister explain how this will operate and why he thinks it is appropriate?

7 pm

Lord Taylor of Holbeach: My Lords, I start by joining in the tributes being paid to Paul Goggins. I know that my colleagues in the Home Office share this view. We were together yesterday evening when his illness was mentioned. His loss this morning is a loss to British public life and I am happy to pay tribute.

I am very grateful to the noble Earl, Lord Listowel, for tabling these amendments. It is right and proper that we consider these matters. His amendments raise important issues about whether detention is appropriate for someone aged under 18, and we debated this at some length in Committee. I was pleased that we had the opportunity for a productive meeting yesterday and I hope that I will be able to answer some of the points made by the noble Earl and other noble Lords.

The Government strongly support the use of informal interventions and rehabilitative approaches, particularly when dealing with young people. That is at the heart of our overall approach to anti-social behaviour. However, detention must be available to the court if the new injunction is to act as an effective deterrent and to protect victims and communities in the most serious cases. When we consulted on the new anti-social behaviour powers, 57% of those who responded were in favour of the breach sanctions for the injunction for under-18s. Only 22% disagreed, with only a further 4% against any custody for under-18s.

The injunction is a court order and must be supported by tough sanctions to ensure compliance. However, in contrast to anti-social behaviour orders, under-18s will not be unnecessarily criminalised and saddled with a criminal record for breach. However, it is only in the most serious or persistent cases of breach that a court may detain someone aged under 18. Schedule 2 to the Bill makes clear that a court may not detain a young person for breach of an IPNA,

"unless it is satisfied that, in view of the severity or extent of the breach, no other power available to the court is appropriate".

Where this is not the case, the court may impose a supervision order on a young person and Part 2 of Schedule 2 to the Bill sets out a number of non-custodial requirements that can be attached to such an order. The relevant requirements are a supervision requirement, an activity requirement or a curfew requirement. These are three of the requirements which may be attached to a youth rehabilitation order, the youth equivalent of a community sentence.

We would expect the youth courts to do all they can to ensure that a young person's rehabilitation is effective. In making any decision to make a detention order, the court must consult with the youth offending team and inform any other body or individual the applicant thinks appropriate. If the court does decide to make a detention order, it must give its reasons in open court. The availability of custody as a sanction in exceptional cases reflects the current position as regards the anti-social behaviour order on application. Indeed, breach of an ASBO on application attracts a maximum penalty of five years' imprisonment as well as a criminal record.

The previous Administration took the view that there needed to be effective sanctions for breach up to and including imprisonment, including in cases involving young people. While it was generous of the noble Earl to congratulate the previous Government on this aspect of their policy, we do not believe that they got the balance quite right between punishment and rehabilitation. That is why we are treating breach of the IPNA as a contempt of court rather than as a criminal offence: we believe that they were right to include the option of custody for both adults and juveniles. To remove that option for juveniles would significantly weaken the effectiveness of the injunction and thereby weaken the protection we are seeking to afford to the victims of anti-social behaviour.

I shall address some of the concerns expressed by the noble Earl and other noble Lords. Of course, a vital part of preparing for the introduction of these new powers will be appropriate training and support for the judiciary, police and other front-line professionals in how these powers are applied to young people, and the Home Office is already discussing these requirements with the Ministry of Justice, the Judicial College and the College of Policing.

I can inform the noble Earl that young offenders under 18 years of age may be placed in a young offender institution run by the National Offender Management Service, NOMS, a privately operated secure training centre or a local authority secure children's home. Placement is made by the placements team of the youth justice board, which is notified by the court when custody is given. They will use their expertise and will be informed by the relevant youth offending team to place them in an appropriate establishment suitable for their needs. The youngest and most vulnerable young people will be placed in secure children's homes. There are no longer any places for girls in young offender institutions, so they will be placed in a secure training centre or secure children's home.

Under the Bill, the court must consider any representations made by the relevant youth offending team in considering whether to make a detention order against an under-18. Moreover, the applicant for a detention order or a supervision order must consult any youth offending team and inform any other body or individual the applicant thinks appropriate. I hope that helps to reassure the noble Earl.

I shall go on to the dispersal order.

Baroness Smith of Basildon: The noble Lord made the point about it being a contempt of court. Can he tell me in how many other cases young people can face detention for a contempt of court?

Lord Taylor of Holbeach: Off the top of my head, I cannot, but I hope that the noble Baroness will allow me to write to her on that. I will copy in all noble Lords who have spoken in this debate and put a copy in the Library.

As for breach of a dispersal direction, I can offer the noble Earl some comfort and, in doing so, I should like to correct the impression I gave in Committee on 20 November that custody was an option for breach of a dispersal direction by a person aged under 18. I can, in fact, reassure the noble Earl, the noble Lord and the noble Baroness that this is not the case. Detention and training orders—the juvenile equivalent of imprisonment—must be made for a minimum of four months. That means that where the maximum term of imprisonment that could be imposed is less than four months, as is the case here, a detention and training order is not an option in relation to a juvenile offender. The court will be left with the options of a youth rehabilitation order, a fine, a conditional discharge or an absolute discharge. I hope that is of some reassurance and apologise if my previous comments misled noble Lords. I hope I have been able to reassure the noble Earl as regards the dispersal powers.

In the case of the IPNA, I fear that we have to agree to differ on the appropriateness of having custody as a long-stop option for breach of an injunction by a person under 18. For the sake of victims of anti-social behaviour, we remain strongly of the view that, in exceptional cases, a detention order should be available to the courts. We should not weaken these provisions by removing that option.

Amendment 86, the final amendment in this group, seeks to place a new responsibility on local authorities to provide youth services to prevent young people becoming involved in anti-social behaviour. This obligation is already effectively provided for by the Crime and Disorder Act 1998, which places a responsibility on local authorities to formulate and implement a strategy for the reduction of crime and disorder in their area, where crime and disorder includes anti-social behaviour and youth anti-social behaviour. That Act includes a responsibility for local authorities to keep the strategy under review, monitor its effectiveness and alter it accordingly. Local authorities must ensure that their strategy focuses on the types of problem in their area, based on an analysis of local levels and patterns of crime and disorder, and the misuse of drugs and alcohol. Therefore, if an area has a particular problem with youth anti-social behaviour, the local authority has a responsibility to put measures in place to reduce the problem. I would expect this to include preventive measures. In addition, the Children Act 1989 places an obligation on local authorities to safeguard and promote the welfare of children in their area who are in need and to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs. This includes services to prevent young people becoming involved in anti-social behaviour, crime and disorder, as well as services to support those young people and their families who become involved in anti-social behaviour or crime.

I hope I have reassured my noble friend Lady Hamwee, the noble Lord, Lord Harris of Haringey, the noble Baroness, Lady Smith of Basildon, and the noble Earl that the duty he seeks to create through this amendment already exists and that local authorities have these crime and disorder reduction strategies in place. In these circumstances, I hope the noble Earl will be prepared to withdraw his amendment.

7.15 pm

The Earl of Listowel: My Lords, I am most grateful to all those who have spoken: the noble Baronesses, Lady Hamwee and Lady Smith of Basildon, and the noble Lord, Lord Harris Haringey. I am grateful to the Minister for his careful reply, particularly for giving some detail about the training of the judiciary and other people in contact with young people in this regard. That is terribly important and a place where we fall down to some extent. Again, I encourage the Government to think about the use of mentors in this kind of training of professionals working around young people. It is so important to develop an understanding of young people in front-line police officers who work on a beat and regularly come into contact with such young people, and other workers. Allowing and supporting them to become mentors to a young person for a period of three to six months, and helping them to reflect on that and how it works, benefits them but also benefits the young person who often needs that kind of relationship.

The Minister made a number of other interesting and helpful points. I express some concern about the placements—the disposals, if you like—within the secure estate. Because of the Government's success in reducing the number of young people in custody, a number of secure children's homes have been shut down. I am not sure if the secure training centres have also shut—I think places in them have been reduced. The courts have less range and freedom in choosing disposals. Sometimes, they will simply be driven to choose what is available, even for a fairly vulnerable young person. One recalls the suicide of a young person who was recognised as being vulnerable but was sent to a secure training centre because there was no space available in a children's home. Shortly after that, he hanged himself. That was about five years ago. There are difficult decisions to be made. This is an area we will have to agree to disagree on.

I was really pleased to hear that there will not be the detention of children under breach of dispersal orders, if I understood the Minister correctly. That is very good news. I will not keep the House any longer at this time. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13 not moved.

Amendment 14

Moved by ***Lord Taylor of Holbeach***

14: Schedule 2, page 139, line 31, leave out paragraph (a)

Amendment 14 agreed.

Amendment 15 not moved.

Clause 12: Power to exclude person from home in cases of violence or risk of harm

Amendment 16

Moved by ***Lord Ahmad of Wimbledon***

16: Clause 12, page 6, line 36, at end insert—

"( ) the respondent is aged 18 or over,"

Lord Ahmad of Wimbledon: My Lords, in Committee, my noble friend Lady Hamwee questioned whether it was appropriate for under-18s to be excluded from their own homes on the grounds of anti-social behaviour. After further consideration, I am content to make a change that ensures that only adults can be excluded from their home where there is a threat of violence or a significant risk of harm to others.

Councils have wider safeguarding duties and other legislation that allows for a child to be removed from the home when it is in their best interest. For instance, local councils already have duties under the Children Act 1989 to safeguard and promote the welfare of children. Where a young person is committing serious anti-social behaviour to the extent that agencies are considering applying for an injunction with the power to exclude that young person from their home, the local council should first consider whether the child is "in need" under the Children Act and if so provide appropriate support as an alternative to simply excluding a young person from their home. A Part 1 injunction could still play a role in transforming the young person's life as well as protecting victims from further anti-social behaviour. However, if removing them from the family home is considered necessary, this should be done under existing legislation and not just be seen as a chance to disperse the problem to another area.

I do not believe that this change will weaken agencies' ability to deal with anti-social behaviour caused by minors. Agencies can still apply for an injunction to stop the young person's behaviour and the court can attach a power of arrest to the order in cases where an individual has either been violent or threatened violence when committing or threatening anti-social behaviour, or where there is a risk of significant harm to another person by that individual. The power of arrest will act as a deterrent and allow the police to take swift action to protect the victim or communities if the injunction is breached. Of course, youth offending teams will play an important role in identifying the problems that drive the young person's behaviour and measuring the risk they pose to others to ensure that the right action is taken. However, we accept that excluding a young person from their home using an injunction will not be the right action and I therefore commend the amendment to the House. I beg to move.

Baroness Hamwee: My Lords, the bad news for the government Front Bench is that this amendment was put down in the flurry of amendments that my noble friend Lord Greaves and I rushed to table when the timetabling of business was changed. That encourages me to continue that sort of scattergun approach to matters I think need to be discussed in Committee, but of course I am extremely happy to see this among the government amendments and to know that the change will be made. I am very grateful to the Government for listening.

Amendment 16 agreed.

Clause 13: Tenancy injunctions: exclusion and power of arrest

Amendment 17

Moved by ***Lord Ahmad of Wimbledon***

17: Clause 13, leave out Clause 13

Lord Ahmad of Wimbledon: My Lords, this amendment follows up the debate in Committee initiated by the noble Lord, Lord Rosser, about Clause 13. This clause preserves an existing power available to social landlords to apply for tenancy injunctions to prohibit anti-social behaviour which relates to or affects their management of their housing stock.

In Committee, the noble Lord, Lord Rosser, sought to challenge Clause 13 on the grounds that its provisions were not tenure-neutral. As I have indicated, Clause 13 simply preserves an existing power available to social landlords under Section 153D of the Housing Act 1996. That section, which, I might add, was inserted into the Housing Act by the previous Administration in 2003, responded to calls from social landlords that they needed to be able to hold their tenant responsible for the behaviour of visitors. However, strictly speaking, Clause 13 is not necessary, as an injunction under Clause 1 can be used to achieve the same end of holding the respondent responsible for the anti-social behaviour of the visitors to their property, regardless of tenure.

We included Clause 13 in the Bill because social landlords were familiar with tenancy injunctions. However, given the points raised in Committee by the noble Lord, Lord Rosser, and after further consultation with social landlords, we have decided to remove the clause to ensure that the injunction is completely tenure-neutral. This will fit in with our wider approach of simplifying anti-social behaviour powers through the Bill, while ensuring that social landlords, like the police and other agencies, will have access to the tools they need. I beg to move.

Lord Rosser (Lab): My Lords, I thank the Minister for introducing the government amendment. Any move towards increasing tenancy neutrality in the Bill is to be welcomed. I will raise one issue with the Minister, which arises from the letter that he sent to us setting out the reasons for the changes that were being made. The paragraph in question states:

"However, as the IPNA can do everything a tenancy injunction can do, we are satisfied that there is no compelling case for retaining this bespoke provision for those living in social housing".

Earlier in the letter, the Minister had said:

"The provisions in respect of the IPNA are tenancy neutral"—

I am not sure whether that is regarded as different from tenure-neutral—

"save for the provisions in clause 13".

From that, one would assume that if Clause 13 is disappearing from the scene, then the provisions in respect of the IPNA are indeed neutral. With the comment in the letter that,

"the IPNA can do everything a tenancy injunction can do",

that was why the Government felt that they could withdraw Clause 13. Of course, not only does Clause 13 cover what is said in Clause 12(1), that an injunction,

"may have the effect of excluding the respondent from the place where he or she normally lives",

it also states:

"The court may include in the tenancy injunction a provision prohibiting the person against whom it is granted from entering or being in … any premises specified in the injunction (including the premises where the person normally lives)",

and,

"any area specified in the injunction".

In the light of the statement in the letter that the IPNA can do everything a tenancy injunction can do, are we to assume that that part of Clause 13(3) would or could apply to any tenure and not simply to those tenures previously covered by the tenancy injunction? As I understand it, the Government appear to have moved on that point and the provisions in respect of the IPNA are now neutral. Bearing in mind what Clause 13(3) said, which went beyond merely,

"excluding the respondent from the place where he or she normally lives",

which covered,

"any premises specified in the injunction",

and,

"any area specified in the injunction",

is that something that is still to be reserved for social housing tenants or is it something that, if it was deemed necessary or desirable, could now be applied to anybody in any form of tenure?

Lord Ahmad of Wimbledon: My Lords, to clarify, as I said earlier in moving the amendment, an IPNA could impose the prohibitions that were specifically referred to in Clause 13 as well. For example, an IPNA could be used to deal with visitors to a property. As such, the provisions are covered in an IPNA. Therefore we have tabled the amendment in light of the comments made by the noble Lord in Committee.

Lord Rosser: That would be irrespective of tenure? It would not apply purely to social housing?

Lord Ahmad of Wimbledon: As I stated earlier, the purpose behind the IPNA is that it would be tenure-neutral.

Amendment 17 agreed.

Clause 17: Children and young persons: disapplication of reporting restrictions

Amendment 18

Moved by ***The Lord Bishop of Ripon and Leeds***

18: Clause 17, leave out Clause 17

The Lord Bishop of Ripon and Leeds: My Lords, Amendments 18, 26 and 29 set out to remove the presumption that a child will be named publicly when they are involved in youth court proceedings relating to the new anti-social behaviour orders. I am very grateful to the Children's Society, the Standing Committee on Youth Justice and others for concentrating my thoughts on this issue.

The Bill as it is currently written suspends Section 49 of the Children and Young Persons Act 1933 for children subject to the new orders and breach proceedings. For 80 years, Section 49 has provided a presumption against revealing details of a child's identity. This Bill means that children will be named publicly as a default unless the court makes an active choice not to name them. My amendments do not prevent the court from naming a child if it thinks it appropriate to do so. They simply mean that a child will not be named by default.

[The Lord Bishop of Ripon and Leeds]

The issue of publicly naming children is an important one. It raises a number of concerns regarding rehabilitation and safeguarding and is contrary to the usual presumption of anonymity that is granted to children in criminal proceedings. The presumption to name children has significant implications for the safeguarding of children. Naming a child publicly could mean that they are subsequently targeted by individuals or gangs wishing to exploit their vulnerability. Identifying a child as having been involved in anti-social behaviour could indicate that the child may be tempted to engage in risk-taking behaviour or that they will be more susceptible to being groomed. Children with special educational needs are also more likely to be involved in ASB, making them particularly vulnerable to exploitation.

Naming, thereby shaming, children can hinder the successful rehabilitation of those who wish to make a fresh start. It can be counterproductive by prolonging the problems that children have in re-engaging positively with their community. It can also make it extremely difficult for professionals to obtain services instrumental in a child's rehabilitation. There is little evidence that identifying a child is effective as a deterrent.

In our debates yesterday we were concerned with the Government's very positive response to the need for education, health and care plans for children in trouble. I believe that this element of this Bill works in the opposite direction. In the age of the internet and social media, details of a child's identity are indelible once they are revealed. Children should not have this stamp on them from such a young age because it can affect their future ability to get a job, obtain housing and contribute to society. Naming and shaming through ASBOs has criminalised, stigmatised and negatively labelled young people and has in some cases perpetuated problems rather than helping to resolve them.

The Joint Committee on Human Rights has expressed concern about the impact of reporting on a child's right to privacy in its pre-legislative scrutiny report. Naming and shaming contravenes the anonymity usually granted to children in criminal proceedings and denies the right to privacy in the UN Convention on the Rights of the Child. The Local Government Association has also expressed concern, especially about a child who receives or breaches an IPNA but who has not actually committed a criminal offence.

7.30 pm

Magistrates and district judges sitting in the youth court are not accustomed to considering whether to impose reporting restrictions. That is because the youth court operates under a general presumption of anonymity. Section 39 of the Children and Young Persons Act will allow a court to impose anonymity on the new ASB proceedings. However, because the court is not used to having to consider whether anonymity should apply, it is likely that children will be named without the court even considering whether a Section 39 application should be made.

I therefore want to press the Minister for some guidance. Will he consider discussing with magistrates and district judges sitting in the youth court the need to consider a Section 39 order in each case where ASB proceedings are taking place? How will they ensure that the youth court considers whether to impose a Section 39 order in every case of a child involved in ASB proceedings? The guidance for front-line professionals accompanying the Bill should advise them to make a Section 39 application to the court when they believe that a child's details should remain anonymous. Privacy for a child affects him or her not just at that moment but for the rest of their lives. It is something that we ought to take great care about removing. I beg to move.

The Earl of Listowel: My Lords, I support the right reverend Prelate. I was grateful to the Minister for the chance to discuss this matter yesterday, and I understood from what he said that he expected the courts to use naming and shaming to a very limited extent. That is comforting to some degree, but I worry about this, because many young people who will be drawn into this procedure are the sort with whom I am familiar from my parliamentary work with young people in or on the edge of care. The familial experience—the father often absent from the home, often violence in the home, often alcohol or other substance misuse in the home—has left many of them feeling deeply worthless and very guilty about themselves. We all know, I think, that when a young person sees a parent desert them, they do not think, "This is a very irresponsible adult"; they think, "What have I done to drive this person away from me?". The risk is that, by the state coming along and publicising their name in the newspaper as a bad boy, they will think, "Yes, look, even the local newspaper thinks that I am useless, worthless, a bad boy and there is no good in me". That is one area of concern for me.

The other is that when these young people grow up in a family where there is little love or attention and they are not listened to, sometimes, if they cannot get any fame, at least notoriety—their ability to be notorious—is something that they can chase after. If they will not be listened to in their home or anywhere else or given attention in school, at least if they cause a lot of aggravation they can see their photograph in the local newspaper. There are real reasons to be concerned about this. I am very grateful to the right reverend Prelate for tabling the amendment and I look forward to the Minister's reply.

Baroness Hamwee: My Lords, in Committee, I tabled an amendment on the clause which was an attempt to suggest a compromise before we had even discussed it, because I knew that the Government would be keen to stick to the general approach. That amendment would have meant that the clause applied only to 17 and 18 year-olds.

As the right reverend Prelate said, the existing provisions are not absolute. I have some questions for the Minister arising from them. Given that there is currently discretion to allow reporting that is in the public interest, and given the public policy underlying the Bill, would that not be a strong indicator to the court on how to view the public interest test? Would not reversing it, so that the individual is named unless the court decides otherwise—apart from the consequences for the individual; I entirely take the points that have been made—mean additional process for the courts?

I suspect that there would have to be a pre-trial application for anonymity. If I am right, how does one ensure anonymity before that or in the listing of the application? The right reverend Prelate made the point that that would overturn the culture—in fact, the practice—of the youth court. It would be much easier for it to be able to continue with its current practice.

The existing provisions contain a lot of detail about lifting restrictions. Conversely, if one has reversed the presumption, what is the trigger for restriction to apply? What would be pointed to in an application to restrict reporting? Another question is whether any stakeholders have argued for the provision that we see in Clause 17.

Finally, what consideration have the Government given to how communications have changed, particularly with Twitter, which spreads information almost faster than a heartbeat and certainly before restrictions could be applied? Ironically, the law brought into effect in 1933 seems more appropriate for the age of speedy communications, where you start with restrictions and then consider whether to lift them. That would work much better for communications 80 years on.

Lord Hope of Craighead (CB): My Lords, I add just a word based on my experience of how these things are dealt with in the courts. The advantage of the present rule is that a uniform rule applies throughout the country and avoids the problem, which is commonplace in the courts, of different practices in different areas and different judges taking different views. The uniformity of the rule is one advantage.

The second point, which the noble Baroness just mentioned, is that it is essential, if a reporting restriction is to be effective, that it be asked for at the beginning. There is always a risk that somebody nips out of the court before the order is made and the damage is then done but the individual can say, "I wasn't there when the order was made". To be effective, it has to be made at the start.

The third point is representation. I do not want to go into the issues about legal aid, which are not a matter for this debate, but there would be concern that people who are not very experienced and not attuned to all the matters raised by the right reverend Prelate fail to take the point. My impression is that if the point is taken as eloquently as the right reverend Prelate made it, the court would be very slow not to make an order unless there were compelling reasons for refusing the application, but it requires an application to be made, because I suspect that a court will not take the initiative without that.

Those are advantages of the present rule which would be lost. Obviously there is a balance to be struck, but I would be interested to know to what extent study has been made of the effect of losing those advantages, if the Bill is to remain in its present form.

Lord Rosser: My Lords, I will be brief. The Minister has been asked a number of relevant questions and I am sure that noble Lords will be waiting to hear the responses. In particular, do the Government anticipate that their proposal, with provision for suspending Section 49 of the 1933 Act, is likely to lead to a significant increase in the number of children being named as a result of that suspension of Section 49? Or do they take the view that it will lead to very little increase at all because they think that courts will regularly make decisions—an active choice—not to name the child in question? The question has already been asked about the Government's intentions, not in respect of numbers or an exact figure, but whether they are looking for a significant increase in the number of children named. Is that the purpose of this? Or is their view that even though they are making the change, it may not make a great deal of difference because the courts are more likely to look at this matter and make the active choice not to name the child in question?

The answer may be that it is already covered in the draft guidance. I have not looked at the guidance to see if it is. However, if it is not already in the guidance, is it the intention that the guidance which will be issued to professionals will say anything about making applications to courts for children not to be named where professionals are directly involved? If it is not in the guidance is it the intention that it should be put in that guidance, and what in fact would it say?

I will leave it at that; the concerns have been expressed about this. Obviously there are already circumstances where children can be named as far as legislation is concerned, and I do not want to pretend that that is not the case. Clearly the Government were expecting that numbers of IPNAs would be issued and, therefore, that that might have an effect on the numbers of children being named. Whether that would still be the case in light of the amendment that has now been carried will remain to be seen. Nevertheless IPNAs will still be around, and that may lead to an increase in the numbers of children being named. It would be helpful to know the Government's stance. Is that what they are looking for—or do they not see it making a great deal of difference? Will they be giving advice to anybody? I know that they cannot give advice to the courts, but will they give advice to professionals who might be appearing in court in order to make sure that courts are reminded at the very least that they do have this power to make the decision that children should not be named?

Lord Taylor of Holbeach: My Lords, this again has been a good debate on an important issue. Though it is a small part, it is an important part of these provisions. I thank the right reverend Prelate the Bishop of Ripon and Leeds for presenting these amendments for our discussion.

As the House will know, the Government do indeed believe that there is a need for reporting restrictions in respect of under-18s in certain cases, where it is both necessary and proportionate to allow for effective enforcement of an injunction or criminal behaviour order. This will enable communities to play their part in ensuring that the injunction and criminal behaviour order are effective in tackling anti-social behaviour by alerting the police if the respondent or offender breaches their conditions. Publicising the injunction and the order in certain cases will provide reassurance and increase public confidence in agencies' willingness and in their ability to take action against perpetrators of anti-social behaviour. Potential perpetrators will be

[Lord Taylor of Holbeach]
deterred from committing anti-social behaviour due to reporting. So while I understand the sentiment behind these amendments, I believe that there is a strong case for maintaining the default position under Clauses 17, 22 and 29. This mirrors the current position for anti-social behaviour orders.

7.45 pm

However, all these legitimate aims must be weighed against the effect on the young person of making it known to their community that they have been subject to a formal court order, albeit a civil one. That is why, as we clarified in Committee, Section 39 of the Children and Young Persons Act 1933 gives the court the discretion to prohibit publication of the injunction or order. The courts are very well used to making such sensitive decisions, having been dealing with such cases since the reporting arrangements for ASBOs were changed by the Serious Organised Crime and Police Act 2005. The consultation with the local youth offending team will play an important role here. In this and other respects, the Bill has made changes that enhance safeguards in respect of the rights of young people, ensuring that they are always properly considered. The Bill provides that the youth offending team must be consulted before an application may be made for an injunction or a criminal behaviour order. The team will give valuable insight into the effect reporting would have on a young person, and allow more carefully informed decision-making by the applicants and courts on this issue.

I thank the noble and learned Lord, Lord Hope of Craighead, for his contribution to this debate. We are retaining the position as it applies to ASBOs as introduced by the previous Government. We would not expect any change of practice or frequency, as the relevant legislation was passed in 2005. We are not looking for any increase or decrease in the incidence of reporting. This is a matter for practitioners on the one hand and for the courts on the other. Perhaps I can reinforce the role of the youth courts. It is worth pointing out that once these powers are in place all applications for injunctions will be heard in the youth courts, which is not currently the situation for ASBOs. The youth courts are best placed for making such decisions and so this will ensure that the right outcomes on reporting, for the offender and the community, are achieved.

On this last point, during its pre-legislative scrutiny the Home Affairs Select Committee said,

"we are happy to leave the decision not to name a young person to the discretion of the judge".

We agree that this is appropriately a matter of judicial discretion. I hope my noble friend Lady Hamwee also accepts that point. There is a wealth of case law on this issue which has upheld the legislation that allows for the publicising of ASBOs made against under-18s. The case law makes it clear that the reporting is sometimes necessary and gives guidance on the factors that should be considered. It demonstrates that the discretion given to courts can be exercised reasonably, proportionately and in a way which respects a young person's human rights. I can help the noble Lord, Lord Rosser, on this. Our draft guidance makes clear that local agencies must consider that it is necessary and proportionate to interfere with the young person's right to privacy, and take account of whether it is likely to affect a young person's behaviour, with each case decided carefully on its own facts. There is a paragraph in the draft guidance on page 26. I do not propose to read it out but I hope that noble Lords will study it and find it satisfactory.

The right reverend Prelate the Bishop of Ripon and Leeds asked whether we would give guidance to the courts. The noble Lord, Lord Rosser, said that of course the Government will not give guidance to the courts. I am sure that the noble and learned Lord, Lord Hope of Craighead, would be happy that the Government are not seeking to give guidance to the courts. However we can and will give guidance to the police, to councils and to other practitioners on this issue. It is for the senior judiciary to give guidance to magistrates in the youth courts. However, I undertake to draw the attention of the Lord Chief Justice to this debate and to the concerns that have been raised in it by noble Lords. I will also work with the Judicial College on training for magistrates.

I will not go through the relationship of this debate with debates on ASBOs but I remind noble Lords that we must take into account the impact of lifting reporting restrictions on the young person. The youth court is well qualified to do that but we need to balance it against the needs of victims and the communities in which they live. For this reason, I am confident that the reporting of under-18s will be carefully considered, with all relevant factors weighed in deciding whether it is necessary to publicise an order against a young person. I therefore hope that the right reverend Prelate will feel reassured by the comments that I have been able to make and withdraw his amendment.

The Lord Bishop of Ripon and Leeds: My Lords, I am grateful to the Minister for that response and I am at least partially reassured by what he has said, particularly in the promises to discuss with the judiciary and bring this debate to their attention, as well as emphasising the guidance to the professionals involved in such cases. I am grateful to those noble Lords who have spoken in the debate and I emphasise again the point made by the noble Earl, Lord Listowel, on just how damaged the children involved in these cases can be. They often feel deeply worthless.

Whether we are here as legislators or in the actual practice of the courts there is a need for us all to be aware, yes, of the needs of the community, which are very much at the fore of the discussion of IPNAs, but also of the needs of the child and the effect that will have on the community. If those needs of the child are not met then the damage to the community in the future can be much greater. However, I am at least partially reassured and so beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Clause 18: Rules of court

Amendment 19

Moved by ***Lord Taylor of Holbeach***

19: Clause 18, page 9, line 36, at end insert—

"(1A) Rules of court may provide for a youth court to give permission for an application for an injunction under section 1 against a person aged 18 or over to be made to the youth court if—

(a) an application to the youth court has been made, or is to be made, for an injunction under that section against a person aged under 18, and

(b) the youth court thinks that it would be in the interests of justice for the applications to be heard together."

Amendment 19 agreed.

Consideration on Report adjourned until not before 8.52 pm.

Commonwealth Games 2014

Question for Short Debate

7.53 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government what steps they are taking to ensure the success of the 2014 Commonwealth Games in Glasgow.

Lord McConnell of Glenscorrodale (Lab): My Lords, I thank the House for this opportunity to raise the important events which will take place in Glasgow this year on the occasion of the 20th Commonwealth Games. I look forward to hearing the response from the Government by the Minister after our short debate this evening. I welcome those who have chosen to speak here tonight, and in particular I welcome the maiden speech from my noble friend Lord Haughey, who I am sure will be a welcome addition not only to this debate tonight, as a Glasgow boy, but in the debates that we will have in this House for many years to come.

I recall vividly a breakfast meeting on 29 July 2002, after a few glorious days in Manchester supporting Team Scotland at the Commonwealth Games. It was in the immediate aftermath of Sir Chris Hoy's first gold medal the night before at the velodrome, when Louise Martin from Commonwealth Games Scotland and I shook hands, having looked each other in the eye and felt, "Yes, we could do this too". We felt that not just Manchester but Glasgow was capable of hosting the Commonwealth Games and, 12 years on, it will be an immense pleasure to see the Games come to Scotland. In those 12 years there have been many moments, both when in office and after leaving it. I recall the bid presentations in Melbourne during the Games there in March 2006, when the Nigerian bid for Abuja claimed that it was a little bit of Scotland in Africa and therefore we should stand aside for them. There was also the elation when, from Sri Lanka in late 2007, it was announced that Scotland and Glasgow had achieved this success.

In July this year we will see 70 teams with 4,500 sports men and women coming to Glasgow for 12 days of high-level sporting activity and competition across 13 venues and 17 sports. It will include a record five para sports where disabled competitors will take part in the main event at a higher level than ever before. That has been recognised as potentially the best ever representation in Commonwealth Games history for that important aspect of these multisport games.

The preparations are well under way. Today the Queen's baton relay is in Cameroon. Ninety-two per cent of the tickets have been sold. The venues are not only all ready but are all in use by the public, which is perhaps unique for a multisport Games of this sort internationally. The venues are already being used in a way that will ensure the legacy for the future. The Clyde-siders, who are the Games volunteers, had 50,000 applications resulting in 15,000 successful volunteers being chosen. They are currently being notified and are to welcome the thousands and thousands of visitors to Glasgow and look after the competitors during these 12 days in July and August. There is a cultural programme which will include the first ever music biennial, with newly commissioned works that will ensure that the city is promoted not only across Scotland and the UK but worldwide as a centre for cultural excellence, in addition to sporting excellence.

This has been a tremendous all-party effort, supported initially when my Sports Minister, Patricia Ferguson MSP, was leading the bid in the early days through to the now Scottish Government's Sports Minister, Shona Robison, who has seen through the implementation of the preparations. This is at all levels of Scottish government—the city council, which is clearly in the lead in all this, has played a key role—and in successive Administrations. Of course, there has been advice, assistance and support all along from London 2012.

Today, in relation to the engagement of the UK Government, I hope that the Minister will specifically address in his summing-up a few important issues where the co-operation of the UK Government is important for the efficiency and success of the Games. For example, on visas for athletes and their team supporters, is the Home Office ready to ensure that that demand can be met? In relation to security and protocol, will the appropriate co-operation be in place to ensure that the Games run smoothly? Will UKTI and other UK bodies support investment conferences in attempts to ensure that the Games can maximise business interest in Scotland? Crucially perhaps, after the last few weeks, will the UK weather forecasting authorities keep everybody very well informed?

We had three key objectives when we launched the bid a decade ago. One was to showcase Glasgow and Scotland to the world as a venue for international sporting events. The second was to ensure that there was a lasting legacy in the city and beyond, both economically and socially—and, crucially for Scotland's and Glasgow's health, on a sporting basis. The third was to provide a platform on which Scottish and other athletes could perform to the highest level. As I have said, the venues are all in place. They include some outstanding new venues that have already been used for international competitive events. Those venues and the events themselves have been recognised, with Glasgow's ranking in recent weeks as the ninth best venue in the world for international sporting events. We can safely say that the Commonwealth Games this year will not be the last international sporting event to be held in Glasgow. The city has done a tremendous job, efficiently making sure these venues are ready and that they are of the highest possible international standard.

[Lord McConnell of Glenscorrodale]

There is an important economic legacy for the east end of Glasgow and the regeneration of that part of the city. There is an economic legacy in terms of apprenticeships and a graduate training programme as well. There will be an economic legacy in the promotion of Scotland as a destination for tourists and for business. There is also a crucial sporting legacy. Since the bid was secured, sporting participation in the city has risen by 40%, using these new venues and the fresh interest there has been. The potential for a sporting and health-related legacy is clearly there and I am sure the city and the Scottish Government will be focused on that in the months and years following the Games. There is an important role for UNICEF, which has been chosen as the major charity partner of the Games. It will be raising funds before and during the Games to spend on sport and realising the potential of young people, not just in Scotland but critically across every country of the Commonwealth, supporting projects that ensure that sport changes lives in the way that we know it can.

In relation to performance, these stadia are going to be fantastic venues to see some incredible performances. The new Emirates stadium includes not just a marvellous velodrome named after Sir Chris Hoy but a fantastic arena which will be used for other indoor sports as well. The aquatic centre at Tollcross is world-class and recently hosted a contest between the USA and Europe in swimming that was so competitive it went to a swim-off. That is the first time I have ever heard of a swim-off at an international swimming competition. It was so competitive and energetic that it resulted in such an exciting conclusion. The most recent venue to open is a new hockey centre, which I hope will generate an interest in hockey among another generation of young Scots, not just for the Games but far beyond.

My final point is that sport has the almost unique potential to unite people in all kinds of different circumstances and to give people the ambition and inspiration to realise their potential. It is really important that in Scotland and Glasgow in July and August we use these Games to their fullest potential to unite not just people there on the spot but a generation in having ambitions for a better future. From the very beginning these Games—the bid, the operation, the organisation, the preparation and now their actual execution—have been conducted on an all-party basis in Scotland at all levels of government. Therefore, it is critical at a time when Scotland faces a huge choice in September about its future that, for that two-week period in July and August, the two contesting points of view in Scotland for a yes or no vote in a referendum due to take place seven weeks later set aside their differences, call a truce, put an end to public campaigning and do not exploit the Games but instead put Glasgow and Scotland first, join together and make sure that these are the best Commonwealth Games ever.

8.03 pm

Lord Moynihan (Con): My Lords, I congratulate the noble Lord, Lord McConnell, on securing this appropriately popular debate and on giving an insightful assessment of the preparation for the Games and the important role Government can play in ensuring the success of the Games. He is right; the 20th Commonwealth Games in Glasgow will be a powerful and genuine celebration of world-class sport and culture. Their success will be in no small part the result of the work of three people who deserve recognition and praise for their dedication, professionalism and all-party approach, as he mentioned, to the preparation of the Games. Shona Robison has been a superb champion for the Games and for sport in Scotland. The indefatigable Louise Martin has brought a lifetime of experience and expertise to play in preparing for the Games, and Gordon Matheson, leader of Glasgow City Council, deserves full recognition for understanding how the Games can boost the interests of the city of Glasgow and how sport can be a catalyst for regeneration, enhanced reputation and enthusiasm.

My appeal to the Government in their support for the Games is threefold. First, please will the Government reflect the will of the athletes in the political fora surrounding the Commonwealth Games? Politics and sport are increasingly interdependent. The athletes want visas swiftly and a safe, secure and successful Games. They also look to Government to urge all members of the Commonwealth to meet and practise the aspiration set out in Commonwealth Games Federation Article 7, which reads:

> "There shall be no discrimination against any country or person on any grounds whatsoever, including race, colour, gender, religion or politics".

We are a member of the Commonwealth, where 40 of the 53 member nations—over 70%—have some laws or regulations on their statute books persecuting same-sex relationships. That is unacceptable.

Secondly, I hope the Government can confirm that they have by now learnt one of the more painful lessons from the post-London 2012 experience—namely, the need to invest far more than before into ensuring that we translate the inspiration of the Games into opportunities for participation and that we raise the bar to unprecedented new heights for the young people of tomorrow, particularly in all our schools. That means that work needs to be done now to ensure that local authorities are ready to do more in the provision of access to sports facilities, and that governing bodies are assisted by Government to work through their clubs not just to welcome new members but to have in place the trained coaches, volunteers and equipment necessary to capture the interest of every single individual who will be inspired to take up sport and physical recreation. The capacity and capability to respond with a sports and health legacy for all concerned should be audited now.

Finally, key to the success of this decade of international sporting events is the work of the volunteers. Volunteer Development Scotland and Volunteering in Sport 2011-2015 are excellent initiatives. I hope the Government will work to put in place additional policies to ensure that the 15,000 volunteers—the Clyde-siders—are only the tip of the iceberg when it comes to capturing the enthusiasm of all volunteers to work in community sport after the Games are over. We need a raft of new policies backed by investment to increase participation at all levels, both in Scotland and throughout the United Kingdom. The Commonwealth Games gives us a chance to deliver on that agenda.

8.07 pm

Lord Addington (LD): My Lords, I thank the noble Lord, Lord McConnell, for bringing forward this debate. It is fitting that the Commonwealth Games are in this great cycle of sporting events that we have had. The run of events that we have experienced over the past few years, and are going to experience, started with the Manchester Commonwealth Games where we British proved to ourselves, much to our surprise, that we could do it. My mother's home town is a very fitting place to make sure there is investment in the people and the structure behind a successful festival of sport, which is what the Games are, unlike a championship, no matter how glorious. Games are where you bring everything together. The most wonderful thing about sport is the fact that it brings people together on common ground where they have common interests and communication. No other subject can do that.

Games present a greater opportunity than even bigger sporting championships. Thus we must cash in on this to invest in our future. I agree with my noble friend Lord Moynihan about the fact that we have to invest in people at grassroots level. We are on depressingly familiar territory here because we usually agree on this. London 2012's great legacy is the idea. We were never going to get it right first time. Glasgow gives us the opportunity to build on that—not just for Britain but internationally since the Olympics and the Commonwealth Games are the two great international movements—to learn about how to create enthusiasm and to take it into other sports. The Rugby League World Cup has worked on this and the Rugby Union World Cup will, I hope, go on and do more with it. But this is the great legacy that will come from the Games. I am glad that emphasis has been put on participation and involvement. I hope that we will build successfully on the information and practice that have gone before. That is the true legacy of this. Buildings are great but ideas can last for ever.

8.09 pm

Baroness Grey-Thompson (CB): My Lords, I should like to declare an interest in that I sit on the Spirit of 2012 trust, I do some work with SSE which is a Games sponsor, and I am also an ambassador for UNICEF. I am very much looking forward to the Commonwealth Games this summer. The reality is that the vast majority of the work needed to deliver successful Games will already have been done. I have every confidence in the Games time being a great success.

Many experiences of 2012 will have been passed on to Glasgow, which has an experienced team. The House also benefits greatly from having the expertise of the noble Lord, Lord Holmes of Richmond, who did a superb job at LOCOG and has first-hand experience of Games delivery. This is my first opportunity formally to welcome him to your Lordships' Chamber.

The Commonwealth Games are diffident. There is a reason why they are called the friendly Games. I competed for Wales at three of them and have many happy memories. I am delighted that the Commonwealth Games have led the way in terms of the inclusion of disabled athletes in such a positive way. While in the past there were wheelchair racing demonstration events at Olympics and major athletics events, such as world and European championships, the Commonwealth Games have embraced disability sport with full medal status events.

It is easy to forget that it has not always been that way. In the Commonwealth Games in Auckland in 1990, 1500 metres and 800 metres wheelchair races were included in the programme, but the teams were not allowed to stay with the mainstream teams or to have any kit. I remember that my fellow Welsh athlete Chris Hallam, who sadly passed away last year, and I had to share a single vest. Luckily, my event was first. In 1994, in Victoria, Canada, we were very nearly part of the team. There was a little bit more inclusion, and thanks to the largely negative comments of the Australian chef de mission, who suggested that disabled athletes should not be there, there was suddenly a turnaround in people's opinions. That set the path forward for Manchester, which, as the noble Lord, Lord Addington, said, also had a massive effect on the London Games.

While I do not wish to see an integrated Olympics and Paralympics, I think there is much greater possibility within individual sports at international level for the integration of disabled people. The Commonwealth Games prove very clearly that it can be done. In future, I would love to see integrated world championships and European championships. People go to watch the sport, not necessarily to watch disabled or non-disabled people.

Now that the excitement of 2012 is behind us and Glasgow is very nearly upon us, I urge the Government not to forget the importance of elite sport. We clearly see the decline of Australians in Olympic sport—but sadly not in cricket—since they thought that with the major games out of the way they no longer needed to support sport at this level. Nobody wants that to happen in the UK.

The legacy of these Games is not just about participation or stadia, although they are important. It is a massive opportunity for young athletes. For me, it bookended my career. It gave me a step up, and it gave me the way out at the end. We have a huge opportunity to look at how we use those athletes at a local level. With the size and scale of the home country teams, I am really looking forward to seeing what plans they have to keep the momentum of participation going as well as giving the governing bodies another chance to see what they can do for coaching and volunteering. Some really embraced 2012, and some sadly missed the boat completely. They have a second chance to do better. I am also looking forward to what can be done to improve accessible tourism and transport and it gives us anther chance to look at PE in schools, which I do not believe we have quite right at the moment.

Finally, I wish the Glasgow Commonwealth Games much success. It will be a great event.

8.12 pm

Lord Haughey (Lab): My Lords, it is with a feeling of great honour and humility that I stand before the House to deliver my maiden speech. First, I would like to thank my noble friend Lord McConnell for securing this debate that will allow me to talk on a subject that

[LORD HAUGHEY]
is very dear to my heart. Before I broach the subject matter, I would like to say thank you to Black Rod and his staff who have been nothing but supportive when I have been lost in the building. I thank the doorkeepers who have been great and supportive and the catering staff who looked after my family famously when we were here on the day of my introduction. I would also like to say a thank you to my mentor, my noble friend Lord Browne, and a very special thank you to my sponsors, the noble Lord, Lord Martin, and my noble friend Lord McAvoy. I also express my appreciation for the extent and depth of welcome that I have received from noble Lords on all sides of the House.

For my part, I would like to talk about the legacy of the Commonwealth Games. As I drive through Glasgow, I see many infrastructure projects that are in full flow on both the stadia and the housing requirements, and I am heartened by the amount of construction jobs that have already been created and, more importantly, the ones that will be sustained going forward. When all the medals have been distributed and the Games have come to a conclusion, Glasgow will be left with world-class sporting infrastructure that I hope will help young budding athletes to achieve their dreams and goals. It is vitally important that we utilise these facilities to the maximum for many years to come. The way the athletes' village, consisting of 700 houses, will be converted to affordable housing is a master stroke by Glasgow City Council. It is something the East End of Glasgow was crying out for. It will also play a major part in the overall regeneration of the area.

Securing the Games for Glasgow gave us a great opportunity to tackle youth unemployment . Two of the legacy initiatives that went a long way to achieving this are the Commonwealth graduate fund and the Commonwealth apprenticeship initiative. The graduate fund is designed to encourage employers to create new graduate-level jobs in and around Glasgow. It targets the recruitment of unemployed graduates by offering financial incentives to employers to take on a new employee. The fund is worth £l0 million and is providing funding opportunities for 1,000 graduate jobs in the city. The apprenticeship initiative was created by Glasgow City Council as a way to assist suitably qualified Glasgow school leavers into apprenticeships by offering financial incentives to businesses in return for new vacancies. The success of this initiative will not only benefit Glasgow school leavers but will help business growth in the city as well. Over 2,500 apprenticeships have already been created, which is remarkable. As a result of the success of this initiative, the leader of Glasgow City Council, Gordon Matheson, has committed to the continuation of this initiative to the end of the current administration in 2017, which is a great boost for some of Glasgow's young people at a time when it is most needed.

As someone who employs 170 apprentices and is committed to helping to create opportunities for the young people of today, I applaud these efforts by the council in creating a lasting legacy from the Games. For the unemployed who are part of the 15,000 volunteers, I hope that the experience they gain through working at the Games will give them confidence and enable them to find employment thereafter.

I am sure that the great people of Glasgow will deliver a memorable occasion that will be well received throughout the world and one that we can be truly proud of. This will be equalled only by the legacy that will be enjoyed by thousands of Glaswegians for many decades thereafter.

As noble Lords have probably already heard, people from Glasgow tend to talk a bit faster, so all week I have practising making my speech last a bit longer. I got my six-minute speech off to a tee, and I had a wry smile when I arrived tonight and was told I had three minutes and should make it snappy. I shall finish as I started. I feel truly privileged and honoured to be part of this wonderful establishment. I hope that my experiences in business and life will help me add further value to this noble House.

8.17 pm

Baroness Prashar (CB): My Lords, it is huge privilege to follow the very thoughtful maiden speech of the noble Lord, Lord Haughey. He is a fine example of what apprenticeships can do. We can see that not only has he benefited from an apprenticeship, but he is benefitting others. I share his affection and passion for Scotland because I was a post-graduate student in Glasgow and did my placement in Gorbals. My experience of Gorbals reinforces for me how awe-inspiring the noble Lord's achievements are. From very humble beginnings as a Gorbals boy, through an apprenticeship he has set up a global business that is now the largest employer in Scotland. He is truly a Gorbals boy made good, not just a Glasgow boy made good. His commitment to giving back to society is equally impressive. Through his City Charitable Trust he supports local and global initiatives, sports, particularly football, and entrepreneurs and he acts as a role model by visiting schools. The commitment of the noble Lord, Lord Haughey, to social justice and zero youth unemployment and his real-life experience and commitment to giving will be a great inspiration to this House and we all look forward to his further thoughtful contributions. I thank him for a wonderful maiden speech.

It is clear that a great deal of effort is being devoted to ensure the success of the Commonwealth Games, and they will be successful. Crucially, these Games also provide opportunities above and beyond the hosting of a major event. They offer the potential to inspire cultural engagement, creativity and learning. This is an opportunity to promote intercultural relations, global citizenship and the values of the Commonwealth as enshrined in the Commonwealth charter, and also to deepen connections between the people of the Commonwealth. Intercultural and interdisciplinary learning, and the international links they will foster, will be important in developing understanding and trust among the nations of the Commonwealth, which in the long run will help with the prosperity agenda. Glasgow has a rich cultural tradition, and the Commonwealth Games are an opportunity to add another chapter to the city's cultural story and further enrich its cultural and educational credentials through intercultural experience.

As deputy chairman of the British Council, I am delighted that the British Council, in association with others, will be using education and the arts to make

such connections between Scotland, the wider UK and the Commonwealth, through projects such as Commonwealth Class, and a rich and diverse cultural programme, which will provide a platform for voices from across the Commonwealth to be heard through music, dance, visual arts and the written word.

It is important that such activities are seen not just as a sideshow but as an integral part of these friendly Games. They will lead to long-term connections between the citizens of the Commonwealth and help to promote the values of the Commonwealth for the common good. After all, the Commonwealth is the Commonwealth of the people, not just an intergovernmental organisation. Its strength is its people, and these Games are an opportunity to showcase that, particularly after the controversial CHOGM held in Sri Lanka. It will be helpful if the Minister can assure the House that these educational and cultural activities will be both highlighted and supported in the long run.

8.21 pm

Lord Holmes of Richmond (Con): My Lords, the Commonwealth Games are unique, with a personality of their own, and will be truly sensational in Glasgow this summer. They are not the Olympic Games or the Paralympic Games, but they have the potential to ignite that same spirit that we all felt so keenly in the summer of 2012. I know this from my own experience. When my swimming career was coming to an end, I realised that I had the opportunity to do my final swim at the Manchester 2002 Commonwealth Games trials—finishing not so much on home soil as in Mancunian waters.

I am delighted that Glasgow is following the tradition of holding events for disabled athletes; indeed, there will be the most events ever for disabled athletes at a Commonwealth Games. Post-Glasgow, we will all need to look at how we can develop this element further to make it even more meaningful and impactful. I am also interested in the whole idea of soft power, and the impact that the Games can have in that respect. Will the Minister comment on what is happening, particularly with his colleagues in the Foreign and Commonwealth Office, to ensure that we have the largest number of high-level Ministers and Heads of State at the opening ceremony and throughout the Games this summer?

Glasgow will get it right if it puts athletes at the centre of the Games, if it has sport at its heart, and if it builds an extraordinary, exceptional experience for athletes, spectators, the Commonwealth family and the media. Thousands of people are already working to this end, and they are in the final straight of their preparation. Hats off to Louise Martin, who has already been mentioned. Hats off, too, to Mike Hooper and his team at the Commonwealth Games Federation, whose expert eyes have been all over this project from the outset.

We should also look further than Glasgow, because it is not beyond the realms of possibility that we could think about another home nation bid for a future Commonwealth Games in the not-too-distant future—perhaps in Wales, perhaps in London, but certainly another event that could extend further that decade of fantastic sport throughout the UK. Glasgow 2014 has the potential to be sensational, to light up this summer with the golden hue of sporting success and to leave a sporting, social and economic legacy. It has such potential for Glasgow and for Scotland. It will be great for Britain and great for the Commonwealth.

8.24 pm

Lord Purvis of Tweed (LD): My Lords, I, too, congratulate the noble Lord, Lord McConnell, on securing this debate. Before I go further, I also congratulate a fellow new boy in your Lordships' House, the noble Lord, Lord Haughey, on his maiden speech—a snappy but sincere speech about the benefit for young people in his native city. When the eyes of the world are on Glasgow and Scotland, they will see the friendly Games in the friendly city, which will afford the athletes the best platform to strive their hardest in their given sport.

In what both the noble Lord, Lord Holmes, and the noble Baroness, Lady Grey-Thompson, said, we saw politics and sport mixing. However, as the wise counsel of the noble Lord, Lord McConnell, indicated when he talked about the caution that we should exercise, politicking and sport do not mix. The noble Lord's warning about the constitutional and political debates that will be taking place in Scotland at the same time as the Commonwealth Games should be heeded.

For completely understandable reasons, major events such as the Commonwealth Games are hosted by cities. However, in view of the level of funding that goes into them, I hope that your Lordships will allow me to make one comment about the areas and sports that are not from the cities. That includes a sport—rugby sevens—that originated in the constituency that I formerly represented in the Scottish Parliament. Rugby sevens is one example of how the Commonwealth Games can show, in a microcosm, the benefits that sport can bring. It will now be featuring in its fifth Games, and I hope that friends from New Zealand will not be too disappointed when I say that I hope that they will not win the gold medal, because they have won it for every Games that they have participated in so far. The sport originated in 1883 in the Greenyards in Melrose; it will now be in Glasgow, and then an Olympic sport for the first time in Rio in 2016. With the World Cup sevens coming soon in 2018, we can see the best example of an amateur sport, with a community basis and a strong heart, also having a global profile.

As the purpose of this debate is to ask the UK Government to do what they can, I share the view of the noble Lord, Lord Holmes, about using all the might and all the persuasive powers of the United Kingdom Government to promote this sport as one element of the Commonwealth family—the family of sports in the widest sense.

Last week I was in Taiwan, and I flew from Hong Kong, where the Hong Kong sevens is now possibly the biggest sport in the area. It is sponsored by Cathay Pacific. Then, coming back to London, when you are on the Heathrow Express you see that that sponsors the English rugby sevens team. This is a local sport with a massive heart, and with, we hope, a global following to come. It is one of the examples of the sort of sport for which Glasgow will afford one of the best windows that we can secure.

8.28 pm

Lord Taylor of Warwick (Non-Afl): May I add my thanks to the noble Lord, Lord McConnell, for securing this timely debate? I also congratulate the noble Lord, Lord Haughey, on his excellent maiden speech. He is a man of great achievements, who will clearly add much value to this House.

As noble Lords have said, there is no doubt that the Commonwealth Games is a fantastic sporting event, but it is much more than that; it is about the wider Commonwealth family. It was sport that first brought my father to Britain in the late 1940s after serving in the British Army in the Second World War. As a Jamaican, he was a member of the Commonwealth, and in coming to England he did not see himself as travelling to foreign parts. As far he was concerned, he was coming to another part of the extended Commonwealth family. He was coming home, in effect. Even the fact that it snowed on his first day as a professional cricketer for Warwickshire did not diminish his feeling of belonging to that family. But he did remark that he thought he had signed for Warwickshire as a professional off-spin bowler, not as a professional snowball thrower.

The noble Baroness, Lady Grey-Thompson, made a point about cricket, and I note that cricket has been included in the Commonwealth Games only once, in 1998 in Malaysia. I was going to suggest that one way of securing the success of the Glasgow Commonwealth Games would be to bring in cricket, even at this late stage. However, given the current state of the England cricket team, perhaps we need another four years to reflect on that idea.

The Glasgow Games will be another opportunity to promote para-sporting events. One of the most exciting developments in sport over the past few years has been the recognition of Paralympic athletes as stars in their own right. The noble Baroness, Lady Grey-Thompson, and the noble Lord, Lord Holmes of Richmond, have played a huge role in that success.

The Glasgow Commonwealth Games chief executive has wisely ensured dialogue with LOCOG 2011, so that lessons learned from the London Olympics can benefit the Glasgow Games. In particular, there is an awareness that the ticketing system must be efficient and the cost of tickets affordable for most people. As he has said:

"It's your Games. Filling the stadia has been one of our key principles".

As the noble Lord, Lord McConnell, said, the fact that 50,000 people from all over the United Kingdom have applied for 15,000 volunteer roles shows the level of interest.

This event is a great one for sport, but it is bigger than that; it is about the wider Commonwealth family. It is a window to the benefits of that family—and that is a gold medal message.

8.31 pm

Baroness Seccombe (Con): My Lords, I add my congratulations to the noble Lord, Lord McConnell, on giving us this joyous subject to debate. On a really lovely summer day in 2012, I was fortunate to have a ticket for the stadium for both the Olympic Games and the Paralympic Games. I was with my family, all of us wearing the obligatory GB T-shirt and equipped with the union flag, and so on. As we boarded the Tube, it was such fun to see other families similarly attired and excited in anticipation of what was to come. After all, we knew it was unlikely that any of us would ever see such a glorious event in our lifetime again.

The welcome we received from the Games-makers was exceptional and certainly made a huge contribution to the excellent organisation. They also created a great atmosphere of fun and enjoyment. Our seats for the Olympics were in row 57, which was quite a climb, particularly when once I went up the wrong staircase. In contrast, at the Paralympic Games, row 20 was a fantastic change, from which we watched the wonderful achievements of the Paralympians. Both days made me very proud to be British, and I am sure that the support given to our athletes lifted their magnificent performance. They gave us a superb and humbling experience, and one I shall never forget.

The Government's role was imperative throughout, and the organisation and attention to detail was of the highest standard. I am sure that lessons were learnt which must be of assistance to the Scottish organising committee as it makes the final push to fine-tune its plans and to enthuse the public. I am sure that it will be the greatest success, so I can only encourage everyone to enjoy this most important sporting association.

This year, I am off on what I hope will be an equally balmy summer's day to the Commonwealth Games in Glasgow. I am geared up to be suitably attired and ready to roar our home teams on as they battle to win. Whatever the results, I know that we will have had another very special day, when probably some will indulge in a wee dram.

8.34 pm

Lord Stevenson of Balmacara (Lab): My Lords, I thank my noble friend Lord McConnell for securing this debate and, in particular, for not being in any sense modest about the way in which the Games came about, and the distinguished role that he played in that. It would not have happened without his foresight and his thinking about it, and that it has happened has been because, as with our experience of the Olympic and Paralympic Games, these things work only if they are done on an all-party basis. My noble friend exemplifies how that can happen.

I played a very minor part in the Paralympic Games, as I was involved in distributing the flowers as part of the medal ceremonies. A flower girl I was, and I enjoyed it very much; it was one of the highlights of my summer in 2012. Through that, I met Shona Robison, and was impressed, as has been said already in this debate, by the care and concern expressed and her acknowledgement of the need to work together across parties towards this event. I am sure that it will be successful.

I thank all speakers for the wide-ranging contributions, which will help us to focus on some of the important issues. In particular, my noble friend Lord Haughey made a very good point in his snappy maiden speech that a lot of these things are very local. The great value that comes from these huge projects is that they can and do invigorate across all sectors of the host city and

town, with the apprenticeships and the work involved on graduate schemes, and will have a lasting legacy around that.

The Question asked the Minister to respond as to what steps Her Majesty's Government were taking to ensure the success of the Games. However, as has been pointed out, there are very limited direct steps that the Government can take, since this is not a reserved issue. Indeed, if noble Lords read the reports from the organising committee, the Games preparations are going extremely well, so I do not think that there will be much to say on that. But the wider context that has been raised in this debate by many speakers is that we need to think again about how we do big projects in the UK and the values that come from that. The investment is not just in the Games itself but in the enthusiasm that it generates, and the focus on the sport —and how good it is that my sport, squash, is being played in Glasgow, although it does not yet appear in the Olympic Games. All that makes for a much better country, with a much better engagement of people in the activities that make us the nation that we are.

When he comes to respond, I hope that the Minister might pick up on some of the legacy issues that have been touched on. I was very struck by what the organising committee said about this when they did a survey which asked people what they wanted the legacy to be. They found that in Scotland—and I would not think it would be different in the UK as a whole—people wanted a successful Games, of course, but they also wanted their children to be more sporty, which is shorthand for them doing more exercise and being involved in sport. They also wanted to ensure that funding for sport in primary schools was continued and that more girls could be enthused to enjoy sport. As we have heard today, that might also be applied to those with disabilities. Although one could expect the Government to say that this is not their responsibility, a lesson which was picked up in the excellent report from one of our own committees, *Keeping the Flame Alive: The Olympic and Paralympic Legacy,* is that we need to invest more in these activities. I hope the Government will pick this point up and respond to it.

8.37 pm

Lord Gardiner of Kimble (Con): My Lords, I too congratulate the noble Lord, Lord McConnell, on securing this debate. I believe that he can take great pride in what he and others embarked upon and are now seeing fulfilled. It has been an excellent debate, and the maiden speech from the noble Lord, Lord Haughey, was, rightly, warmly welcomed across the House. With all his roots in Glasgow, the noble Lord could not have a more appropriate debate to launch what I am sure will be a long and fulfilling career in your Lordships' House. We all very much welcome the many contributions he is going to make.

It is a privilege and opportunity that the 2014 Commonwealth Games are taking place in Glasgow, in Scotland, in the United Kingdom. The Games are expected to draw around 6,500 athletes and officials, competing in 17 sports in 40 venues—I have increased the number from the one suggested by the noble Lord, Lord McConnell—with a global audience of around 1.5 billion people. We have the prospect of watching countless great athletes—the likes of Usain Bolt, Laura Trott, David Weir and Jessica Ennis-Hill. My noble friend Lord Purvis of Tweed highlighted the rugby sevens, and I do not think that a sport could not have a more robust champion. The Commonwealth Games are the only major games where the sports programme for elite athletes with a disability is fully integrated with that for non-disabled athletes. As the noble Lord, Lord McConnell, said, this is something that we want to build on in the legacy of Glasgow. I also agree with the points made by my noble friend Lord Holmes of Richmond on this matter.

As has been said, preparations for the Games, led by the organising committee, are proceeding extremely well, with venues such as the Sir Chris Hoy Velodrome already open and hosting major events. The Government are committed to strengthening our engagement with, and role within, the Commonwealth. A strong Commonwealth is important to the national interests of all its members and can help promote UK objectives of democratic values, good governance and prosperity. The noble Baroness, Lady Prashar, spoke powerfully about the importance of the Commonwealth for cultural engagement, international relations and the effect on its people. My noble friend Lord Moynihan also mentioned the equally important values of democracy and non-discrimination.

With over 2 billion people, the Commonwealth makes up nearly a third of the world's population, including some of the world's fastest growing economies. It provides a platform for trade, investment, development and prosperity. Glasgow 2014 provides an exceptional opportunity to build on the experience and legacy of the 2012 Olympic and Paralympic Games and to promote Glasgow and Scotland worldwide. The Prime Minister has made it clear that the UK Government will do everything they can to ensure the 2014 Commonwealth Games are a success. I know of his visit to the arena, for instance, and his personal commitment.

Working closely with the Scottish Government, Glasgow City Council and the organising committee, the UK Government have a number of reserved responsibilities, referred to by the noble Lord, Lord Stevenson, including managing the border and national security, facilitating entry to the UK of athletes, coaches and support staff from the Commonwealth nations and accrediting them to use the Games venues and managing the more formal international relations with visiting Heads of State and Heads of Government. The contribution of the UK Government is managed through the Cabinet committee system in the normal manner with regular meetings of officials and Ministers. There have been meetings in the past two days while I have been hearing more about these matters. There is no doubt at all that Ministers are fully seized of the importance of their responsibilities to fulfil the reserved matters and to co-operate with those in Scotland.

As has been said, legacy was a key element of the plans for the 2012 Games and the Glasgow Games, from the start of work on the bids. It is striking that the president of the International Olympic Committee, Jacques Rogge, said that London,

"raised the bar on how to deliver a lasting legacy",

[Lord Gardiner of Kimble]
and created,

"a legacy blueprint for future Games hosts".

I am in no doubt that Glasgow will be very much in the forefront of legacy.

Noble Lords in their places tonight have played a crucial part in the delivery of the 2012 Games and their legacy. I mention in particular my noble friend Lord Holmes of Richmond, a distinguished multi-gold medal-winning Paralympian who played such a part in delivering the 2012 Games. The noble Baroness, Lady Grey-Thompson, an exalted Paralympian, is now a trustee of the Spirit of 2012 Trust—an independent trust established to keep the 2012 Games' legacy flame alive. Indeed, my noble friend Lord Moynihan, an Olympic medallist, chaired the British Olympic Association with such distinction. I mention this because we wish that all the experiences and knowledge from those Games are shared with all those concerned in organising such an important Games later this year.

The noble Lords, Lord Stevenson and Lord Haughey, mentioned regeneration, apprenticeships, infrastructure and employment. All these matters will make a huge difference to east Glasgow and well beyond. They are part of this economic legacy. UK Trade and Investment has announced that more than £11 billion in trade and investment has been generated from the 2012 Games. The Glasgow Commonwealth Games offer another platform to promote the UK as a partner for business and an investment destination. Her Majesty's Government, in conjunction with the Scottish Government, will host an inward investment and business conference during the Commonwealth Games. I express particular gratitude to Glasgow City Council for making the city chambers available during the Games.

The economic benefits from the London Olympics and Paralympics have been extremely well spread. In fact, it is estimated that those Games will have created the equivalent of between 51,000 and 62,000 jobs each year between 2004 and 2020. These figures are hugely important, and I am sure that they will be reflected in Glasgow. As regards tourism, VisitBritain is now actively engaged in using the 2014 Games to promote Scotland across the world. The GREAT campaign is also seeking to promote the Commonwealth Games.

The Games makers and other Games-related volunteers were one of the extraordinary aspects of the 2012 Games. My noble friend Lady Seccombe highlighted this. The organisers of the Glasgow Games have been recruiting 15,000 volunteers, known as Clyde-siders. These opportunities were heavily oversubscribed, a testament to the esteem in which the Games makers are, and I am sure the Clyde-siders will be, held. I agree with my noble friend Lord Moynihan about the importance of ensuring that volunteering and fostering the volunteering spirit are enshrined in policy and the way in which we conduct business.

I also want to raise the cultural aspect of the Commonwealth Games. The two strands are a Scotland-wide programme called Culture 2014, and a Games-time celebration running alongside the sporting action called Festival 2014. They will make a very powerful contribution indeed.

A number of points were raised about a truce, including by the noble Lord, Lord McConnell. I have to say that this is very much a matter for the two sides in that debate to decide upon, but my hunch is that most people are going to be rather more interested in the sport and the athletes than in political exchanges.

A number of noble Lords mentioned the Queen's baton relay. As has been said, it is in Cameroon tonight. British high commissions across the Commonwealth have played an active part in supporting the relay and raising its profile.

In July and August 2014, the Commonwealth family —as my noble friend Lord Taylor of Warwick mentioned; that is absolutely the right reference for this institution— will come together for a festival of sport. The noble Lord, Lord Addington, rightly used the words, "coming together". It will be a positive celebration of peace and unity. This precedes the first official event to mark this year's centenary of the start of the First World War, which will take place in Glasgow the day after the end of the Commonwealth Games. It, too, will be a time for the whole nation and our Commonwealth partners to come together and pay tribute to the brave men and women of the Commonwealth who sacrificed so much.

A number of points have been raised, about which I had better write to noble Lords. When future bids are made is a matter for the Commonwealth Games associations of the nations concerned. However, it would be fair to say that if any of the nations were minded to bid, I am sure that it would be very much welcome to the Government. The Games will be in Australia in 2018. There have been five occasions when that country has generously hosted the Games, so let us see.

I conclude by expressing my thanks to the noble Lord, Lord McConnell, and to your Lordships who have spoken in this debate. There is much that I would wish to reflect on regarding the importance of the sporting legacy and, as the noble Lord, Lord Stevenson, said, of ensuring that the next generation of people are playing more sport. I understand that 1.5 million more people are engaged in sports since 2012. We need to build on that, and I am sure that the noble Baroness, Lady Grey-Thompson, will keep us up to the mark on these matters.

I wish the organisers of the Glasgow Games—the friendly Games, as has been said—and the people of Glasgow all the very best for a successful Games. I know that the UK Government will do all that they can within their reserved responsibilities to support the Games and to ensure that they are a great success for Scotland, for the United Kingdom and for the Commonwealth.

8.50 pm

Sitting suspended.

Anti-social Behaviour, Crime and Policing Bill

Report (1st Day) (Continued)

8.53 pm.

Amendment 20

Moved by ***Lord Ahmad of Wimbledon (Con)***

20: After Clause 18, insert the following new Clause—
"Guidance

(1) The Secretary of State may issue guidance to persons entitled to apply for injunctions under section 1 (see section 4) about the exercise of their functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published."

Lord Ahmad of Wimbledon (Con): My Lords, ahead of Report in the House of Commons, the Government published draft guidance for front-line professionals on the new anti-social behaviour powers. With the exception of those sections dealing with the review of criminal behaviour orders and the community remedy, this was to be non-statutory guidance.

In addition to the draft guidance produced by the Home Office, the Department for Environment, Food and Rural Affairs published a draft practitioner's manual for tackling irresponsible dog ownership. Of course, the content of the draft guidance has been the subject of discussion during our Committee deliberations. On a number of points, noble Lords expressed concern that our expectations of how the power should be used would be in guidance with no statutory basis.

While I believe that the new powers have sufficient safeguards to ensure appropriate and proportionate use, I see merit in making the guidance statutory for all the new anti-social behaviour powers. Out intention is not to be prescriptive; it is essential that professionals and the courts have the flexibility to consider the facts of each case and choose the most appropriate course of action. However, statutory guidance will help them use the new powers more effectively. The amendments in this group will achieve that result and I trust noble Lords will support them. I beg to move.

Lord Greaves (LD): My Lords, I wish to speak on the statutory guidance sections. I have one little amendment, Amendment 57, in this group, and it is fairly clear what it means.

This is the first time that I have spoken at this stage of the Bill, apart from one intervention, so I should declare my interests again in relation to this group and some others that we will come to. They are my membership of a district council in Lancashire as a councillor, my membership of the British Mountaineering Council, of which I am a patron, and my vice-presidency of the Open Spaces Society, and they relate to things that will come up later.

I thank the Ministers—particularly the noble Lord, Lord Taylor of Holbeach, who is not yet in his place—for the way in which they have approached this Bill, for the way in which they have been open to discussion and to holding meetings with the Bill team, and for the large amount of material that they have sent out in letters and so on. Their readiness to look at a lot of the questions raised at Second Reading and in Committee, and to come forward with quite a lot of amendments today—most of the amendments that we are discussing at the moment are government amendments—shows that they have been willing to listen. I have absolutely no doubt that the parts of the Bill in which I am interested—those on anti-social behaviour—are a lot better for that process, so I will put on record my personal thanks to them.

These amendments are all about guidance. As the Minister said, they mean that the guidance that we were told would be issued—we have already seen the draft guidance—and that is now out for consultation with various bodies will become statutory. This is very welcome. A caveat to that is that I would much have preferred the guidance to be statutory instruments and regulations, as those would have had the benefit of having to come before the House of Commons and your Lordships' House. Nevertheless, it is better that the guidance should be statutory rather than it being left open as to whether or not people will bother to produce guidance. The fact that it is statutory guidance means that there will have to be proper consultation on it, that it will have to be published and everybody will know that, and that the Ministers issuing the guidance will have some accountability to the Houses of Parliament if we want to raise questions as a result of what is in it. That is welcome and it is being welcomed by a number of organisations with which I am in touch.

The guidance referred to in this group of amendments covers a number of different parts of the Bill, including IPNAs—I am interested that we are still calling them IPNAs following the amendment that was agreed this afternoon; I was trying to work out whether they should now be called IPHADs but at the moment they are called IPNAs—criminal behaviour orders, the powers of police community support officers, community protection notices, public space protection orders and the question of the closure of premises, and there may be others. The point that I would have made if I had been able to get in during the debate this afternoon is that the Bill is not really about everything that was discussed this afternoon.

Most of the debate was about free speech, freedom of assembly and the right of people to protest, as by-products of Clause 1. In practice, this Bill is about anti-social behaviour—or at least the majority of it that refers to anti-social behaviour is—and about whether it is successful in tackling anti-social behaviour more effectively than the existing regime based on ASBOs. I am optimistic that it will be more successful, but the guidance that we are discussing is going to be crucial to how it works on the ground. At the moment if you have to make an ASBO, you have failed.

9 pm

If you have to make an IPNA, or criminal behaviour or public spaces protection orders, that is the end of the process. They are backstops to everything else that ought to be happening in the mean time. If the system is to work properly, the problems should be picked up early. A lot of work should go into what my noble friend Lady Hamwee this afternoon referred to as preventing escalation. That requires a lot of work and effort on the ground, and teams of people: perhaps the neighbourhood policing team, or the local council anti-social behaviour team, or people from schools and from the truancy, probation and environmental health services. These people need to work together as teams rather than individually. That is what tackling anti-social behaviour really means if it is to be successful on the ground.

I hope that the guidance will strongly point people in this direction: to take action as early as possible and to take preventive action to work with people rather

[Lord Greaves]
than at the beginning waving these new powers, orders and notices, and using them as last resorts but nevertheless as backstops if necessary. However, resources are a huge problem. Before Second Reading, I had a meeting with two people from the local anti-social behaviour team—a team of three altogether—from my council of Pendle to talk about this Bill and get their views on it. They were optimistic that it would help them.

Given the scale of the spending cuts on the local authorities and the fact that my own authority is having to lose about half its staff over six or seven years, the problem is whether that team will exist in a year's time. The presence of services and teams like these, which are not statutory but voluntary as far as the council is concerned, is crucial if the statutory provisions in this Bill are to work. I think they would want me to make that point. Having said that, I support the amendments in this group and hope that the Minister will reply to my little amendment.

Lord Rosser (Lab): As has been said, the Home Office has already published draft guidance for front-line professionals. The purpose of these amendments is to refer to it in the Bill, with the conferring of powers on the Secretary of State to issue it. In one of the letters sent to us, the Minister also said that:

"We also undertook in response to yet other amendments to revisit the terms of the draft guidance for frontline professionals".

That letter set out a list of the areas where they would review the draft guidance.

Is the outcome of that review known or is it still taking place? If it is still taking place, is the intention that we will see the outcome of the review of the draft guidance and know what it is before we get to Third Reading? We have at least had the advantage in the discussions we have had so far of knowing what was in the already published draft guidance and, if it is being looked at again, we ought to have sight of any revisions being made to it before we conclude our discussions on the Bill. That would be extremely helpful. Is it now the Government's intention to review the draft guidance in the light of the carrying of the amendment earlier today, which must presumably have some impact on the draft guidance that has been issued?

Lord Ahmad of Wimbledon (Con): My Lords, I thank my noble friend Lord Greaves for his amendment and his comments. I have scribbled down here that I would convey his thanks to my noble friend Lord Taylor of Holbeach. I have so conveyed them and he has obviously heard them, so there we are.

Turning to Amendment 57, I can assure my noble friend that any guidance produced under the new clause proposed in Amendment 56 will automatically apply to any person or body designated under the new clause proposed in Amendment 53. We will come on to that amendment later in our proceedings but suffice it to say that, by virtue of subsection (2) of the proposed new clause, any designated person or body would be treated as a local authority for the purposes of Chapter 2 of Part 4 as a whole. As such, the guidance produced for local authorities under the terms of Amendment 56 will be applicable to persons or bodies designated in accordance with the provisions in Amendment 53. I hope that reassures my noble friend in relation to his amendment.

On the questions raised by the noble Lord, Lord Rosser, and taking the second question first on revisions to guidelines in the light of the vote, obviously the vote has happened and we shall look at the outcome. The guidelines will be finalised once the Bill has reached its final stages in Parliament.

As to where we are on the guidance, we are currently working with councils, the police and others. Over the coming months we will discuss the effects of the guidance but any results and further alterations will, unfortunately, not be available before Third Reading. However, the final draft of the guidance will reflect the terms of the Bill as enacted.

With those reassurances to my noble friend, I hope that he will be minded not to move his amendment.

Amendment 20 agreed.

Clause 19: Interpretation etc

Amendment 21

Moved by ***Lord Ahmad of Wimbledon***

21: Clause 19, page 10, leave out line 4

Amendment 21 agreed.

Clause 21: Power to make orders

Amendment 22

Moved by ***Lord Ahmad of Wimbledon***

22: Clause 21, page 11, line 38, after "satisfied" insert ", beyond reasonable doubt,"

Lord Ahmad of Wimbledon: My Lords, Amendment 22 is in similar terms to the one tabled in Committee by my noble friend Lady Hamwee and proposed by the Joint Committee on Human Rights in its report on the Bill. The amendment will specify in the Bill that when considering whether to make a criminal behaviour order, the court must be satisfied to the criminal standard of proof that the offender has engaged in behaviour that causes or was likely to cause harassment, alarm or distress to any person.

The government position was that, as the case law is clear on this point, there was no need to provide for the criminal standard in the legislation. This approach is in line with that taken in other legislation providing for other types of civil preventive orders. However, on reflection, we are satisfied that there are sufficient grounds here for taking a different approach. Part 1 expressly provided that an IPNA was subject to the civil standard of proof so, unless express provision was made in Part 2, we accept that there could be some doubt that the criminal standard would apply in proceedings in respect of the criminal behaviour order. This amendment therefore removes any such doubt. I beg to move.

Baroness Hamwee (LD): My Lords, I am grateful to the Government for having reflected and I thank them for the amendment.

Amendment 22 agreed.

Amendment 23

Moved by ***Lord Ahmad of Wimbledon***

23: Clause 21, page 12, line 16, leave out paragraph (a)

Amendment 23 agreed.

Amendments 24 and 25 not moved.

Clause 22: Proceedings on an application for an order

Amendment 26 not moved.

Clause 27: Review of orders

Amendments 27 and 28

Moved by ***Lord Ahmad of Wimbledon***

27: Clause 27, page 15, line 42, after "any" insert "relevant"

28: Clause 27, page 15, line 42, after "State" insert "under section (Guidance)"

Amendments 27 and 28 agreed.

Clause 28: Carrying out and participating in reviews

Amendment 28A

Moved by ***Lord Greaves***

28A: Clause 28, page 16, line 15, leave out "the Isle of Wight" and insert "a county in which there are no districts"

Lord Greaves: My Lords, this amendment is just trying to help the Government. They have a bit here that is wrong. I raised it in Committee and I thought it would be sorted out. I apologise that I did not notice that it had not been until it was too late to get it on the Marshalled List. Never mind: it has appeared.

In all these different sections and all the alphabet soup of IPNAs, PSPOs and the rest, there is a definition of what the local authority is in relation to that particular area. In the case of IPNAs it is all the principal local authorities. In most of them it is the lowest-tier principal local authority. For example, in relation to public space protection orders it reads:

"'local authority' means—in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly".

The definition here in relation to criminal behaviour orders is outdated. The definition in Clause 28(4) has, I think, been picked up from previous legislation which must have been enacted before there were any unitary authorities apart from the Isle of Wight, and certainly before there were any unitary counties. It simply reads:

"'local government area' means—in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly".

This means that those areas where there is a unitary county, not a unitary district, are not included and so they are simply missed out of the list. These include Northumberland, Durham and Cornwall, for example, and, I think, one or two more.

My amendment will simply delete "the Isle of Wight", which is a unitary county, and insert the words,

"a county in which there are no districts".

That is equivalent to the wording elsewhere. As I say, I am just trying to help the Government by making the legislation cover the whole of England and to get it right. I beg to move.

Lord Ahmad of Wimbledon: My Lords, I am for ever grateful to my noble friend Lord Greaves for continuing to keep us on our toes with his scrutiny of the various definitions of local government area as used in the Bill. This amendment relates to Clause 28 which, as my noble friend said, requires a chief officer, in carrying out a review of a criminal behaviour order made against a person under 18, to act in co-operation with the council for the local government area where the offender lives.

This is an area of statute law where there is more than one way of defining a local government area. I have to advise noble Lords that the definition in Clause 28 is correct, but I accept that the drafting could always adopt a different approach. In order to preserve the overall structure laid down by the Local Government Act 1972, the area of a unitary council is usually designated both a county area and a district area, even though it has only a district or a county council. Therefore, in an area where there is a unitary county council, that council will be the council for the district in which the offender resides. In short, the provision works as drafted.

Just as a clarification on the issue of the Isle of Wight, my understanding is that it is a case apart in that it still has districts, albeit no district councils. The express reference to the Isle of Wight therefore avoids any ambiguity in this respect. In light of this explanation, I hope that my noble friend is minded to withdraw his amendment.

9.15 pm

Lord Greaves: I refer the Minister to page 31 of the Bill and the meaning of "local authority" under community protection notices, for example, where the list is different. That specifically refers to,

"in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly".

It does not refer to the Isle of Wight specifically and separately but refers to,

"a county council for an area for which there is no district council".

In Clause 67, on page 40, the definition is identical to that for community protection notices.

It may be that, as the Minister said, Northumberland, Durham and Cornwall are districts as well as counties, but that would be news to them since they think that all their districts were abolished a few years ago and that, in common parlance, they are unitary counties. In normal lists of local authorities in England, you refer either to unitary authorities if that is what you mean—you could do that—or to unitary districts and unitary councils. Clearly, unitary districts such as those in Berkshire are districts and so come under the general thing of districts.

[LORD GREAVES]

Even if the Minister's rather obscure explanation is right, why is the same terminology not used in different parts of the Bill? Different terminology is used for IPNAs, community protection notices and public space protection orders. It is different because it has simply been picked up, in the case of Part 2 of the Bill on criminal behaviour orders, from previous legislation. All I ask is that the Minister goes away and looks at this again. Even if what he says is right, surely the terminology in the different parts of the Bill should be the same. Could the Minister respond to that?

Lord Ahmad of Wimbledon: My Lords, again, if I follow my noble friend's point, it partly proves my own that different drafting approaches to this issue can achieve the same end. I am assured that the Bill is not defective as drafted so I urge my noble friend to accept the approach we have taken, but I listened to his comments again. I assure him that I will sit down with my noble friend Lord Taylor and the officials once more to get the required assurance that the drafting is correct. I will write to my noble friend Lord Greaves in that regard.

Lord Greaves: I am grateful for that. I hope the Minister will write to me in good time: I will put the same amendment down at Third Reading if I do not get satisfaction. If it is true that the Isle of Wight is a case on its own and has to be mentioned separately, why is it not mentioned separately in all the other cases of IPNAs, PSPOs, community protection notices and so on? The Minister seems to have it both ways. Again, he has not answered my basic question as to why—so that people can understand it—the same terminology is not used in different parts of the same Bill. The answer will be that different officials wrote different parts of the Bill but that is no reason for not standardising it when you have the opportunity. Having said that, when a Minister makes an offer, I believe it is within the traditions and courtesy of the House to accept it. I will do so and beg leave to withdraw the amendment.

Amendment 28A withdrawn.

Clause 29: Breach of order

Amendment 29 not moved.

Amendment 30

Moved by ***Lord Taylor of Holbeach***

30: After Clause 30, insert the following new Clause—

"Guidance

(1) The Secretary of State may issue guidance to—

(a) chief officers of police, and

(b) the councils mentioned in section 28(2),

about the exercise of their functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published."

Amendment 30 agreed.

Clause 32: Authorisation to use powers under section 33

Amendment 31

Moved by ***Lord Taylor of Holbeach***

31: Clause 32, page 18, line 38, at end insert—

"( ) In deciding whether to give such an authorisation an officer must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

"Convention" has the meaning given by section 21(1) of the Human Rights Act 1998."

Lord Taylor of Holbeach: My Lords, there are two government amendments in this group. It may assist the House if I set out the case for the reform of the existing powers available to the police and, in doing so, also address Amendment 32, which has been tabled by the noble Baroness, Lady Smith.

In Committee, the Opposition questioned whether the new dispersal power is needed—indeed, the noble Baroness mentioned that earlier in the debate—and whether there is any problem with the existing powers. It is true that both of the existing dispersal powers have been used successfully to deal with anti-social behaviour and alcohol-related disorder. However, they also have limitations. Section 30 of the Anti-social Behaviour Act 2003 is used to deal with persistent anti-social behaviour in an area and requires the agreement of the local authority in designating a dispersal zone. That approach is not as swift and responsive as it could be. This Bill takes a different approach. Where there is persistent anti-social behaviour in an area, it is the council that is able to put in place the measures to promote long-term, sustainable change in an area. It uses not a dispersal power but the new public spaces protection order.

Section 27 of the Violent Crime Reduction Act 2006 is a police-only power, so can be used more quickly; but it can be used only in relation to alcohol-related disorder, and that is too limited. In reforming the anti-social behaviour legislation, we have sought to streamline the powers and make them more flexible. That is the philosophy behind all the anti-social behaviour powers in this Bill. The new dispersal power will allow police to respond quickly so that victims do not have to suffer the anti-social behaviour while a dispersal zone is put in place. I believe that agencies should not have to label an area an ASB hotspot before the police are able to act. These labels are a stigma on communities and can hinder the hard work of local agencies to improve the quality of life in those areas. I agree that the existing dispersal powers are not "broke"—to use a well known expression—but that does not mean that we should not take this opportunity to improve them. Combining the best elements of the existing powers makes the new power a more effective tool to protect victims of anti-social behaviour.

In its written evidence to the Home Affairs Select Committee, ACPO stated that the new dispersal power,

"will strengthen police powers to remove people from areas for poor public place behaviour in general and are not overly focussed on alcohol related disorder as at present".

It said that the two existing powers,

"have proved to be very effective tools and combining these orders will simplify their administration and reduce costs".

This is echoed by a number of individual police forces and the Mayor's Office for Policing and Crime, which also welcome the new dispersal power. The Criminal Justice Alliance stated that the new power,

"could alleviate antisocial behaviour from particular areas quickly with far less administrative bureaucracy than previously".

All these organisations caveat their statements with the note of caution that it will be important that the new power is used proportionately and sensitively, and we agree. As I have explained, the new power is designed to allow the police to act quickly to prevent anti-social behaviour from escalating. This does not mean that we expect the police to act in isolation from other agencies; indeed, we acknowledge that there will be many situations where it is appropriate to involve the local authority in the response to anti-social behaviour.

However, to require the police to consult the local authority routinely before the dispersal power is used would severely constrain its use. As for providing democratic oversight of the police, which some have suggested is the reason for local authority involvement, that is not the role of the local authority. As with all police activity, police and crime commissioners will provide the democratic accountability for the use of dispersal powers.

I believe that it is right to reform the dispersal powers. That said, we have listened to the concerns expressed in Committee that the new dispersal powers could be used to restrict peaceful protests and freedom of assembly. That brings me to government Amendments 31 and 33, which I hope will be agreed by the House. I remain satisfied that the test for the exercise of those powers precludes them from being used in such a way. However, given the strength of feeling on the matter, we have tabled the amendments. Amendment 31 makes it clear that, before authorising the use of the dispersal powers, the authorising officer must have due regard to the rights to freedom of assembly and expression as enshrined in the European Convention on Human Rights. Similarly, Amendment 33 makes clear an officer's duty to consider those rights before issuing a dispersal direction.

Similar concerns were raised in the context of public spaces and protection orders. Although not in this group, Amendment 54 places a similar duty on the local authority to have particular regard for those two convention rights before making such an order. Again, as public authorities under the Human Rights Act, local authorities are already duty bound to act compatibly with convention rights, but we recognise that, in the context of the Bill, it is helpful to reinforce that point.

I hope that that reassures noble Lords that the new dispersal powers will not be used in a way that conflicts with an individual's convention rights. I commend the government amendments and the provisions of Clause 32 to the House.

Lord Harris of Haringey (Lab): My Lords, I am sure that we are all grateful to the Minister for Amendments 31 and 33. They are clearly intended to address one of the problems which arises from the clauses on dispersal orders. They address the issue of whether this power could be used in respect of people conducting a demonstration of some sort—at least, I assume that that is what they do. Perhaps when the Minister responds, he could tell us the strength of the words,

"have particular regard to the rights of freedom of expression",

in relation to a demonstration which may be a bit rowdy, a bit difficult or a bit challenging, as opposed to a straightforward, entirely sedate slow march or, indeed, to someone standing still waving a placard.

For example, could the power be used under circumstances in which, having given regard to the rights of freedom of expression, the inspector concerned decides that he has thought about it but, none the less, he wishes to use the power? If the Minister can reassure us about that, clearly the issue has been adequately addressed by Amendments 31 and 33.

I address my remarks to the wider issues raised by Amendment 32 in the name of my noble friend, which would remove Clause 32. I suspect that that is a rather blunderbuss approach to a matter on which we have been trying throughout the passage of the Bill through your Lordships' House to get clarity on: in what circumstances the power might be used and how that might happen. We asked many questions in Committee about how this might happen, to which we have had very little in terms of answers. I certainly recall raising the issue of the rank of the police officer who would authorise the use of the power in a specified locality. I accept that the Minister described inspectors as comparatively senior police officers—and indeed they are comparatively senior police officers compared with a constable or a police sergeant—but they are not comparatively senior compared with an assistant chief constable or a superintendent. These are relative terms.

9.30 pm

Will these officers have sufficient sensitivity to the local environment, local circumstances and local community issues that might be raised by the use of dispersal powers? The reason why this is so sensitive is that it is a very broad power. I am sure that many of your Lordships remember the debates that took place in the 1970s about the use of the sus power. That was a power to stop, really, on the basis of a police officer deciding they did not like the look of somebody. What we now have with this power is a facility for the police to say, "In this area, we are deciding that this group of people will not be here". If those people are removed and they refuse to go, this has created a power where they could ultimately be going to jail. There are community implications of doing that. As an example of where these powers might be used, I cited a group of boisterous youths in a fairground site or in an area where other activities are taking place, who are or might be regarded as alarming or distressing members of the public in the locality, or likely to alarm or distress members of the public in the locality. Those are exactly the sort of circumstances which could provoke major disturbances, certainly in some of our inner cities and, I suspect, in many other areas, if the powers were used insensitively, inappropriately or in a disproportionate fashion. How will these authorisations be given? Will there be a proper account of the likely local community consequences?

This is why the absence of any reference to consulting the local authority is so silly. This is not about a democratic deficit. The Minister is quite right to say that under current legislation the police service is held to account by the police and crime commissioner. This is not about holding to account. This is about involving

[Lord Harris of Haringey]
democratic representatives prior to a decision being taken. This is not about ceding direction and control. It is about listening to the voice of the people who know the area best, usually the locally elected representatives, on the likely consequence of saying, "In this particular area, we are excluding these particular people because it is alleged that they may be liable to cause a particular problem even if they have not done so already". That is why it matters. The danger is that the inappropriate use of this power creates circumstances where there are going to be all sorts of problems and disturbances in the future. I would personally have confidence in the sensitivity of inspectors in making such decisions, but there may well be circumstances in which that would not be the case and a more senior officer would be appropriate.

I cited the example of a county force which might decide, "We have this complicated new legislation—the annual Home Office piece of legislation. We need to make sure we get it right. We will designate an inspector for the whole force area who will be in charge of authorisations to use powers under Section 33 of this new Act". That would be a sensible decision for a police force to make—it might even be one that the police and crime commissioner would endorse—but it would mean that the inspector making that decision would not necessarily have any knowledge of the locality concerned. If it was the community inspector for that area, if you could define one and such a thing existed, or if it was the local commander or an officer of sufficient seniority that they would have thought through all the community implications, that would make sense. However, the way that it is expressed at the moment, which is simply as,

"A police officer of … the rank of inspector",

does not provide enough safeguards.

The Minister seems to imply that it is making it more difficult for the police to act if there is a requirement to consult. However, there are various forms of consultation. I do not think that any of us talking about this are envisaging a circumstance—at least I am not—in which there would be a three-week consultation with a formal exchange and so on. We are simply talking about the courtesy call. What is the likely community impact in this area of doing that? That could be a simple phone call; it could even be a text message or by word of mouth. It could be done in a variety of ways. However, surely the least that should be expected is that there will be communication with the local authority with which the police are supposed to be in partnership as part of their crime and disorder reduction arrangements. Yet that is omitted. Indeed, the Minister said that it would be far too cumbersome to allow that to happen. Well, there might be a small degree of inconvenience and slowing down of the speed of action but that opportunity to take advice might be what averts a major disturbance or even a riot. That is why these issues are important and why we need some clarity.

We are told that the authorisation, once given,

"must be in writing … must be signed by the officer giving it, and … must specify the grounds on which it is given".

That is fine—it is not a complicated requirement—but presumably there is then an expectation that members of the public will know about this, so presumably this has to be copied and made available to the officers on the ground so that they can explain to an individual, "These are the legal powers under which I am asking you to disperse". Again, we have not had clarity from the Minister. Or if we have had it I have lost it in the piles of letters that he has had to send out following Committee because of the difficulties with the drafting of some parts of the Bill. We have not had clarity about how this power is to operate, the circumstances in which it is envisaged to operate or whether there is to be sufficient guidance to make sure that the nightmare that I can see round the corner does not occur. I hope that the Minister will be able to reassure us on this point. We have waited quite a long time for this reassurance; we have still not had it.

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the Minister for the amendments that he has brought forward. He did respond to the debates in Committee by bringing them and we welcome the provisions on freedom of expression and assembly. However, as my noble friend Lord Harris of Haringey said, he and I both raised more fundamental concerns about the changes being made by the Government. I do not propose to repeat the comments made by my noble friend or comments that I made previously but the fact is that we did not receive satisfactory answers in Committee, particularly on how the dispersal orders will work in practice or on the evidence base for why they are being extended and changed.

In Committee, the Minister said that he would write to me with that information. Again, I take the same view as my noble friend Lord Harris: my apologies if I have missed the Minister's letter to me in the many letters that we have received or have been copied into. However, I do not appear to have received the letter that he promised with information on the evidence base for changing the orders. I was very interested in the comments that the Minister made this evening when he opened and I wish that I had had them in writing previously, as I thought I would. That would have given me an opportunity to consider them properly but I will read *Hansard* to see what he said.

In Committee, the noble Lord, Lord Harris of Haringey, tried to extract information about how the orders would work in practice. He made a similar point tonight, but when he made it in more detail in Committee the Minister accused him of being mischievous. It is fair to say, he does have a mischievous streak. That has been evident but it was not evident on that occasion and it is not evident this evening.

Lord Taylor of Holbeach: I think that was the phrase I used—that the noble Lord had a mischievous streak to his nature.

Baroness Smith of Basildon No, it was not. The Minister accused him of being mischievous in that regard. He cannot rewrite *Hansard*. My noble friend was making then, and is making now, a genuine attempt

to find out how the orders will work in practice, step by step. The points made about the police officers are ones to which I should like answers.

We are not opposed to dispersal orders. I made that point before and I will make it again. We introduced them in 2004. There was some controversy at that time but we think it was the right thing to do. The issue we have is with the significance of the changes being made in the geographical area and the timescale and the lack of involvement from the local authority. The noble Lord, Lord Harris, made the point that our issue is not with any demographic oversight the PCC can provide after the event. It is with ensuring that, where there is to be a dispersal order, democratically elected community representatives ensure that the power is used to the best effect and that they do not cause any further problems and misunderstandings by not using it appropriately. That consultation and involvement with local authorities is very important.

When the Home Affairs Select Committee recommended as part of its pre-legislative scrutiny in the other place that there should be a duty to consult local authorities over dispersal orders of more than six hours, the Government agreed and said they would amend the legislation. They have not done so and it would be helpful to hear from the Minister why the Government are not now fulfilling their commitment to HASC. There must be a reason why they are no longer choosing to do that.

As far as I understand it, the Minister said that the police have now said that they find the dispersal order powers useful. At the risk of being accused of a blunderbuss approach, I have tabled the same amendment to try to get some answers. What was the evidence base for bringing such significant changes forward? Did the police come along and say to the Government, "There is a lack of flexibility in the current orders. There are delays in implementing them. We do not want to have to liaise with local authorities. We want to go it alone. We need them to be longer. We need a wider area."? Did they raise those concerns prior to the Government bringing this forward? I am not aware that they did or that there were any such concerns raised by the existing orders, but if there were, can the Minister let us know that? In his comments in Committee regarding the involvement of local authorities he used phrases such as "it is likely" the police will work with the local authority and he referred to draft guidance, which states that the authorising officer "may wish where practical" to consult local council or community representatives. That is very vague and it is not my understanding of the commitment made to the Home Affairs Select Committee.

I am just trying to understand why the changes were brought forward in the first place, who complained about local authority involvement and who thought that was hampering the process or the use of orders? If the Minister is unable to answer these questions at this stage we will have to conclude there is no evidence base but I would very much regret the Government bringing forward such significant changes without an evidence base. I reiterate the point made by the noble Lord, Lord Harris. We need some real understanding of how this will work in practice, given the very significant changes that are being made.

9.45 pm

Lord Taylor of Holbeach: My Lords, this gives us an opportunity to come back to a subject where there has not been a great deal of meeting of minds. I am anxious to make sure that we are all reading this situation in the same way. I will address the various points raised by the noble Lord, Lord Harris of Haringey—I accept that he is not making them out of mischievousness but out of genuine inquiry as to how the operations are going to work—and the remarks of the noble Baroness, Lady Smith.

When we talked about setting this process up, I thought my speaking notes made it clear that information that we provided in the consultation we had on this was about making efficient dispersal arrangements and providing them in connection with the public space protection order. One of those things deals with territory and one deals with situations. I think we all agree that when we are dealing with territory, there is often quite a bit of history—there is certainly a lot of experience—and local government and the police can work very happily in hand together to deal with it. When we are dealing with situations and people, it is very important that we have a clear order of command. In areas which may well have provided trouble in the past or, indeed, in situations which are known to the police and local authorities to be likely to be troublesome, there may well be some prior discussions.

One of the great advantages of using inspector grades to take these decisions is that most inspectors have territorial responsibilities and local knowledge is very important. Indeed, in terms of policing—and it is an operational matter involving the police, not local authority employees, for example—it is the police who have that local knowledge. They have access to that local knowledge and an inspector would have access to it by consultation with sergeants and constables. Indeed, it need not be at inspector level that the decision is ultimately made. If it is a complex issue that requires great sensitivity, the inspector is perfectly entitled to go up to superintendent or even chief constable level before determining that the dispersal order is made. However, this legislation provides the facility for it to occur.

The noble Baroness talked about the evidence. To my mind, the evidence is pretty self-explanatory in that what we need is a clear command structure. The Government feel that this is the right thing. We have presented it to the police. I met Richard Antcliff of Nottinghamshire Police city community protection team before Christmas. He welcomes these new powers. His team is a partnership team of police officers, police staff and council officers. I went to Nottingham in October to see its work. He is very positive about the new dispersal power and sees it as a key intervention in dealing with anti-social behaviour in the city of Nottingham. The work in Nottingham is co-operative, and that is surely the sort of thing we want.

Lord Harris of Haringey: I am not trying to hold up progress through the Bill. I am sure the project that the Minister went to see in Nottingham is excellent, but if it is being interpreted, on the basis of a conversation that he had with somebody there, who was no doubt in

[Lord Harris of Haringey]
deep awe of the Minister, as a statement of police support for this change, it is going a little far. It may be that it is more than that, but the point still remains. The clause we have at the moment simply states,

"a police officer of at least the rank of inspector".

It does not say, "a police officer of at least the rank of inspector who has, for example, an intimate knowledge of the communities concerned and the likely impact of this action". If it said something like that, and I appreciate that that is not legislative drafting, that would reassure on that particular point, but it does not. It could simply be an inspector. I think it quite likely that some police forces, given that they are about to receive a large new volume of technical legislation, will decide to have an inspector somewhere—or maybe even a superintendent; it does not really matter which—whose sole purpose will be to ensure that all the boxes have been ticked in terms of following the legislation. That is not the same as someone with an intimate knowledge of what the community consequences are likely to be in that locality.

Lord Taylor of Holbeach: Although the noble Lord is not being mischievous, he is being extraordinarily cynical. Effective operation of a police force is that police force's job; it is not our job here in Parliament, as we construct the law, to tell the police how they should effect the law. The law requires us to ensure that dispersal orders are operated properly and that full consideration is given to the rights of peaceful protest and political expression. We have made it clear what the law is, and it is up to the police to decide what they should do. The view that I have expressed—it is, of course, just an opinion—is that it is right to involve inspectors in this sort of decision-making, because, as I think the noble Lord would agree, when it comes to local knowledge of policing situations, it is frequently the inspector who is in the best position. If he does not know, he can ask a superior officer, and also consult the officers involved in policing that particular area.

I am sorry, but I feel that the noble Lord is making heavy weather of what I considered to be a fairly straightforward matter. He asked what sort of protest would not be approved of. I have already said that if people were carrying hate messages on placards they might well be considered to be out of order, and a dispersal order could be the most effective way of handling that situation. I gave that simply as an example.

As I explained in Committee, the dispersal will be authorised by an officer of the rank of inspector or above. This is in line with all the other responsibilities that police inspectors have. A neighbourhood policing inspector will have a detailed knowledge of the local area and what the consequences of using the dispersal power may be. Ultimately, as I have said, it is an operational matter.

I hope I have answered noble Lords' questions. Have I answered the question asked by the noble Lord, Lord Harris, and the questions asked by the noble Baroness, Lady Smith? The noble Baroness asked me about our response to the Home Affairs Select Committee. As she said, we did not make any commitment. We made it clear that we would accept the committee's argument that the dispersal power would benefit from the additional safeguards, to ensure that its use was proportional and appropriate, and that we would change the legislation to state that the use of the dispersal power should be approved in advance by an officer of at least the rank of inspector. This ensures that the wider impact on, for example, communications can be considered properly before use. Those were the commitments that we made to the Select Committee.

Lord Harris of Haringey: I am under strict instructions from my Front Bench not to pursue this point at any length. But before the Minister sits down, may I ask him whether he would accept that if, at Third Reading, there was an amendment that said, "In deciding whether to give such an authorisation, an officer must have particular regard to the likely community impact of such an order", that would solve the problem? It would place an obligation on those in the police service, however they had chosen to organise themselves, to consider the community impact. At the moment, the officer's only obligation is to consider whether he or she is,

"satisfied on reasonable grounds that the use of those powers in the locality during that period may be necessary for the purpose of removing or reducing the likelihood of",

certain events. That is not the same as having regard to the likely community impact.

Lord Taylor of Holbeach: No. I am sorry. I cannot commit the Government to accepting such an amendment.

Amendment 31 agreed.

Amendment 32 not moved.

Clause 34: Restrictions

Amendment 33

Moved by ***Lord Taylor of Holbeach***

33: Clause 34, page 20, line 24, at end insert—

"( ) In deciding whether to give a direction under section 33 a constable must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

"Convention" has the meaning given by section 21(1) of the Human Rights Act 1998."

Amendment 33 agreed.

Clause 37: Offences

Amendments 34 and 35 not moved.

Amendment 36

Moved by ***Lord Taylor of Holbeach***

36: After Clause 38, insert the following new Clause—

"Guidance

(1) The Secretary of State may issue guidance to chief officers of police about the exercise, by officers under their direction or control, of those officers' functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published."

Amendment 36 agreed.

Clause 45: Offence of failing to comply with notice

Amendment 37

Moved by ***Lord Ahmad of Wimbledon***

37: Clause 45, page 26, line 9, leave out subsections (3) and (4)

Lord Ahmad of Wimbledon (Con): My Lords, under Clause 45 it is an offence to fail to comply with the terms of a community protection notice. The defences provided for in Clause 45 in respect of this offence in part repeat the grounds on which the making of a notice can be appealed. However, criminal proceedings on breach of a notice should not be the forum to repeat earlier proceedings on an appeal against a notice. Amendments 37, 38 and 39 therefore remove this particular defence contained in subsections (3) and (4) of Clause 45. It will continue to be open to a person charged with the offence of failing to comply with a notice to argue that they took all reasonable steps to comply with the notice or that they had some other reasonable excuse for the failure to comply. This will bring this aspect of the Bill into line with the approach taken with the public spaces protection order and the closure powers where a reasonable excuse defence also applies. I beg to move.

Amendment 37 agreed.

Amendments 38 and 39

Moved by ***Lord Ahmad of Wimbledon***

38: Clause 45, page 26, line 22, leave out "also"

39: Clause 45, page 26, line 25, leave out subsection (6)

Amendments 38 and 39 agreed.

Clause 47: Forfeiture of item used in commission of offence

Amendment 40

Moved by ***Lord Ahmad of Wimbledon***

40: Clause 47, page 27, line 25, leave out "to a constable as soon as reasonably practicable" and insert "as soon as reasonably practicable—

(a) to a constable, or

(b) to a person employed by a local authority or designated by a local authority under section 50(1)(c)"

Lord Ahmad of Wimbledon: My Lords, the Bill confers the power to issue a community protection notice on the police, local authorities and persons designated by a local authority. Provision is made for items used in the commission of the offence of breaching a notice to be forfeited or seized on the order of a court. As my noble friend Lady Hamwee pointed out in Committee, forfeited items must be handed over to a constable and disposed of by the relevant police force. Similarly, the power to seize items is vested in a constable. My noble friend suggested that amendments be made to confer similar powers on local authority personnel in the interests of parity. The Government are satisfied that this would be a sensible extension of these provisions and Amendments 40 to 45 to Clauses 47 and 48 modify the provisions accordingly.

My noble friend also tabled amendments in Committee which sought to enable persons authorised by a local authority to serve a closure notice. I said then that I could see merit in such an approach and that is why the Government have tabled amendments to achieve just that. Amendments 63 to 70 would allow the local authority to contract out the service of the closure notice, while the decision to issue the closure notice would continue to rest firmly with the local authority. I commend the amendments to the House.

Baroness Hamwee (LD): My noble friend Lord Greaves often describes what this House is about as ensuring that Bills are workable. That was what was in my mind in tabling these amendments at the previous stage. I do not suppose that the world will change dramatically as a result of them, but I am glad that we are making the Bill more workable at local level. I am grateful for that.

Amendment 40 agreed.

Amendment 41

Moved by ***Lord Taylor of Holbeach***

41: Clause 47, page 27, line 34, at end insert—

"( ) Where an item ordered to be forfeited under this section is kept by or handed over to a person within subsection (2)(b), the local authority by whom the person is employed or was designated must ensure that arrangements are made for its destruction or disposal, either—

(a) in accordance with the order, or

(b) if no arrangements are specified in the order, in whatever way seems appropriate to the local authority."

Amendment 41 agreed.

Clause 48: Seizure of item used in commission of offence

Amendments 42 to 45

Moved by ***Lord Taylor of Holbeach***

42: Clause 48, page 27, line 41, after "constable" insert "or designated person"

43: Clause 48, page 27, line 42, at end insert—

"( ) In this section "designated person" means a person designated by a local authority under section 50(1)(c)."

44: Clause 48, page 28, line 1, after "constable" insert "or designated person"

45: Clause 48, page 28, line 3, after "constable" insert "or designated person"

Amendments 42 to 45 agreed.

Amendment 46

Moved by ***Lord Taylor of Holbeach***

46: After Clause 52, insert the following new Clause—

"Guidance

(1) The Secretary of State may issue—

(a) guidance to chief officers of police about the exercise, by officers under their direction or control, of those officers' functions under this Chapter;

(b) guidance to local authorities about the exercise of their functions under this Chapter and those of persons designated under section 50(1)(c).

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published."

Amendment 46 agreed.

10 pm

Clause 55: Power to make orders

Amendment 47

Moved by ***Lord Greaves***

47: Clause 55, page 32, line 36, at end insert—

"( ) A public spaces protection order on land which has the status of—

(a) a town or village green or forms part of such a green,

(b) access land under Part I of the Countryside and Rights of Way Act 2000, or

(c) a footpath, bridleway, restricted byway or byway open to all traffic that is shown in a definitive map and statement of rights of way under Part III of the Wildlife and Countryside Act 1981,

shall not restrict those rights that are conferred on persons by virtue of that status."

Lord Greaves: My Lords, I return again to the relationship between public spaces protection orders and what I call special categories of land. This in an important issue, so I will dwell on it for a few minutes. I raised this at Second Reading and in Committee I suggested that these special types of land, where public access is specified and guaranteed by other legislation, should be excluded from public spaces protection orders. The categories of land are: access land under the Countryside and Rights of Way Act, which is mountain, moor, heath, down and commons and now includes the coastal footpath and coastal access land where that has so far been designated in England; village greens and town greens; and rights of way—mainly footpaths and bridleways—which appear on a definitive map and the statement of rights of way which nowadays comes under the Wildlife and Countryside Act and is held by top-tier local authorities.

The purpose of the designation of these kinds of land is to allow public access. To have public spaces protection orders put on them which deny that access looks like an easy and quick way for local authorities to prevent access, which is otherwise a fairly difficult and convoluted process. Public footpaths can be closed or diverted. There is a process by which, over time, access land can have its designation removed. There is also a process by which exceptions and exclusions can be made to access land, under the CROW Act. However, these take time and are difficult, for very good reasons.

In Committee, the Minister said this was okay but that rights of access were for specific purposes. For village greens it is informal recreation. For footpaths it is, obviously, walking along them. For access land it is for accessing that land on foot, together with a restricted number of ancillary activities, such as stopping and having a picnic or taking photographs, but there are a lot of activities which are not allowed. Anti-social behaviour may well be taking place on some of that land which is affecting the enjoyment of it by the people for whom the designation has been made, such as the people walking on it. That is a fair point, so Amendment 47 does not say that public spaces protection orders should not be made on this land. It says that, if they are made, they cannot remove the right of access which is the whole purpose of the land.

I know the Government do not want to do this. I do not know why, because it is very sensible. Nevertheless, I am pressing the case to give the Minister the opportunity of saying exactly how these access rights will be protected. I have had a letter about this from Norman Baker, who was in charge of the Bill within the department. I will read some of it out, because it has not been widely circulated and it is worth putting on record:

"I note your concerns that the new public spaces protection order is a much wider power than the three orders it replaces, and as such could be used to restrict access to common land, access land and rights of way on the definitive map. However, I believe the test and the safeguards we have built in mitigate such a risk.

As Lord Taylor made clear during the debate in Committee, these types of land are important and certainly worthy of the additional debate they received. In fact, in the draft guidance, we specifically mentioned a number of these categories of land because of their importance to both the local community and visitors to the area".

One of the points that I raised in Committee was the importance of the national bodies that look after this kind of land—the Ramblers, the British Mountaineering Council and the Open Spaces Society, as well as landowners' organisations and others—being involved in any change in the system. Mr Baker writes:

"We also made clear that where restrictions were necessary, national bodies could play an important role in the consultation process"—

that is not something that I had picked up—

"to ensure that all those affected have a chance to comment. I know my officials are continuing to work with interested groups with a view to making this even clearer in the final iteration".

This is the vital importance of the statutory guidance, as it now will be, to prevent what I might call rogue local authorities—there are one or two—taking advantage of this legislation and doing things that are not intended. The letter continues:

"However, in terms of restricting access on certain categories of land, I do not believe that this would pass the test, in part because of the final limb, which states that the anti-social behaviour, 'justifies the restrictions imposed by the notice'. Given the importance of these areas, whether coastal access land or registered common, I cannot envisage a level of behaviour that would constitute such a draconian response. Where a problem behaviour does exist, the flexibility within the PSPO means that the behaviour itself can be targeted rather than access in its totality. This is a major failing in the current system where unless the anti-social behaviour is related to dogs or alcohol, the local authority is left with limited options, too quickly resorted to 'gating' in some situations.

In addition, the behaviour that has to be restricted on this land has to be 'unreasonable'. Again, given the rights afforded to commoners through other legislation, I fail to see how someone

exercising these rights in a responsible manner (for instance, pannage) could be considered to be acting in an unreasonable way. As such, I believe these rights are adequately protected".

In reading that out, I apologise to the Minister if I have stolen his thunder and he was going to say exactly the same things. However, at the very least, I would like him to guarantee here in the Chamber that what I have said is true and that that is the way in which the Government look at it. In the end, of course, how it comes out in the wash will be how we will judge it. However, the discussions that we have had have been useful in clarifying these issues and in concentrating the minds of people in government as to exactly how these things might work. I hope that the Government will accept my amendment. I have no great optimism about that but, anyway, I beg to move.

Lord Taylor of Holbeach: My Lords, my noble friend Lord Greaves has once again articulated his argument well and, if I may say so, he has also articulated mine. In quoting the letter from Norman Baker he has to some degree stolen my thunder. However, as my noble friend asked that I reiterate the position of the Government on the record, I will do so.

The types of land that he mentioned in his amendment are important and worthy of the additional discussion. Common land, village greens, rights of way and open access land all play an important part both in local communities and in our nation's heritage. This is exactly why they should be protected from the minority of anti-social individuals who ruin this enjoyment by acting in a way that is unreasonable. I am glad that my noble friend has accepted that the new public spaces protection order could be used positively to protect the categories of land he identifies.

The amendment itself, though, seeks to protect any rights conferred on individuals or groups as a result of other legislation. As I have said before, this amendment is unnecessary. For a new order to be made, the activities have to be "unreasonable". I do not believe that someone exercising their rights to, for example, collect firewood in a particular woodland could be considered to be acting unreasonably. In addition, while in theory the council could seek to restrict access to that land altogether, I do not believe that that would meet the final limb of the test—namely, that the activities justified the restrictions. Such an absolute ban would likely be disproportionate in legal terms. Indeed, it is the flexibility that we have built into the new power that makes sure that the nuclear option, to use that phrase, is truly a last resort. Where problem behaviour does exist, this flexibility means that the behaviour itself can be targeted rather than access in its totality. This is a major failing in the current system where unless the anti-social behaviour is related to dogs or alcohol, the council is left with limited options, and too quickly resorts to gating in some situations.

However, I do believe that where the anti-social behaviour is unreasonable and so bad as to justify restrictions, the council, in consultation with the police and others, should have the ability to act, and act fast. That said, given the continuing concerns which my noble friend has expressed, I assure him that Home Office officials will continue to work with interested bodies to see how the statutory guidance can address these issues more effectively. We have already emphasised in the draft guidance the importance of these categories of land, but the draft guidance is exactly that—a draft. We want to make sure that by the time we publish the final statutory guidance, it reflects the needs of professionals and the interests of the users of rights of way, access land and village greens.

Many professionals will be aware of the special rights and protections afforded to such land, but where they are not, we can make sure they have the relevant information so that their decisions and actions reflect the needs of the whole community. In the light of these assurances I have given, rather reiterating points made by my friend, colleague and fellow Minister Mr Norman Baker, I ask my noble friend to withdraw his amendment.

Lord Greaves: I also dodged the issue of whether Norman Baker was right honourable or honourable.

I am grateful for what the Minister has said and I think that the general tenor of what the Government are saying on these has shifted a little bit in the right direction. I am grateful to the Minister for his help and assistance in these matters.

I still think there is a possibility of conflict—for example, if there is a village green where traditionally the kids play cricket in the middle of summer, and the cottages around the village green are all bought up by townies who go and live there at weekends and complain about the fact that cricket balls are coming into their gardens. That is the kind of conflict which could happen, and where a PSPO might try to stop them playing cricket despite the fact that that was part of the traditional informal recreation there.

However, the national organisations now clearly have an accepted role, which was in doubt at the beginning of this process, so—combined with the tenacity and vigour with which my friends in the Open Spaces Society pursue these matters—I hope that it will never get to the High Court to sort things out, but at least I am happy in the knowledge that that would be possible if it came to it. Having said that, I am grateful to the Minister for all his help, and for that of his colleague, and I beg leave to withdraw my amendment.

Amendment 47 withdrawn.

Amendment 48

Moved by ***Lord Taylor of Holbeach***

48: Clause 55, page 32, line 37, leave out subsection (7)

Lord Taylor of Holbeach: My Lords, the government amendments in this group flow from the debates we have had in Committee about the consultation requirements attached to the making of a public spaces protection order and the preparation of the community remedy document. In responding to the points raised in Committee, particularly by my noble friend Lord Greaves, we have sought to strike a balance between the need to ensure that appropriate consultation takes place, while avoiding the imposition of unnecessary bureaucratic burdens on local authorities, the police or police and crime commissioners.

[Lord Taylor of Holbeach]

In relation to public spaces protection orders, the key amendment is Amendment 54, which brings together and augments the consultation and notification requirements already provided for in Chapter 2 of Part 4 of the Bill. The key additions are the requirement to consult with the owner or occupier of the relevant land, so far as it is reasonably practical to do so, and to notify any county council, parish council or community council. These requirements are in addition to the existing duties to publish the proposed text of an order before it is made or varied, and to consult the chief officer of police, the local policing body and any community representatives whom the local authority thinks it appropriate to consult.

10.15 pm

We have already debated, in an earlier group of amendments, the other new duty imposed on the local authority by Amendment 54—namely, to have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the ECHR, so I will not go over that ground again.

Amendments 48, 49 and 50 are consequential upon Amendment 54 and simply strip out the existing consultation requirements, which are now brought together in the new clause.

Amendments 81 and 83 similarly augment the consultation requirements in relation to the community remedy document. In Committee, I undertook to consider an amendment tabled by my noble friend Lord Greaves which sought to provide that local authorities should be consulted in the drawing up of the community remedy document. While we would have expected local authorities to be consulted by the police and crime commissioner as part of their public consultation, we see merit in making this explicit in the Bill. As my noble friend pointed out, local authorities will often be directly involved in supervising the actions included as community remedies, so it is right for them to be consulted as a matter of course. These amendments accordingly place a statutory duty on the police and crime commissioner to consult the local authorities in the police force area on the actions that it would be suitable to include in the community remedy document.

I am grateful to my noble friend for drawing our attention to these matters and I commend this set of amendments to the House.

Lord Greaves: My Lords, I suppose that I ought to say thank you. As my noble friend Lady Hamwee said, when amendments come back like this from the Government, you sometimes think that all the time and effort spent in Committee has produced something worth while. Therefore, I am very grateful to the Government: when I saw this particular amendment, I thought that it was a late Christmas present.

It is an odd amendment because it is an odd new clause, including two completely different things. However, both are very welcome. The reference to the rights of freedom of expression and freedom of assembly are extremely useful. With this Bill—and all the fuss this afternoon bemused me a little—I have always been of the view that the public spaces protection order provisions had the potential to be a greater danger to freedom of speech and assembly and to the civil right to protest and so on than the injunctions for the prevention of nuisance and annoyance. The reason, as the Minister said when he introduced an earlier amendment, is that PSPOs are about territory and areas, and therefore, unless very specific provisions are made, they apply to everybody. Unlike IPNAs, which are injunctions against individual people or groups of people, as I understand it public spaces protection orders, which can last for up to five years and are renewable, would apply to everybody and stop normal activities such as handing out leaflets, parading with banners, making speeches and holding meetings. Therefore, this part of this new clause is extremely useful and valuable and the Government are to be congratulated. I am a little bemused as to why on earth they did not just produce a clause such as this and attach it to IPNAs, as that might have defused a great deal of the fuss earlier today. However, that is for the Government to think about, not me.

The publicity stuff is useful. A lot of this brings together what is already in different bits of the Bill and puts it in one place. The specific provisions are very useful. My amendment is just to query the difference in subsection (4) of the proposed new clause, under the definition of "necessary publicity",

"in the case of a proposed order or variation, publishing the text of it",

and,

"in the case of a proposed extension or discharge, publicising the proposal".

I am not quite sure what the difference is there, and this is to probe that in a minor way. I am grateful for the inclusion of the county councils and parish councils under "the necessary notification", which is common sense, but sometimes you put forward amendments on these matters and common sense does not always apply. On this occasion it has and again I am very grateful.

My final point is that one of the things that my friend Norman Baker sent to me was a draft of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations. This point is not exactly in this amendment but perhaps noble Lords will bear with me for two sentences. The regulations set out the instructions to local authorities that where a public spaces protection order has been made it has to be published on the council's website and the council has to,

"cause to be erected on or adjacent to the land in relation to which the public spaces protection order has been made … such notice … as it considers sufficient to draw the attention of any member of the public using the land to the fact that a public spaces protection has been made and the effect of that order being made".

It is the same for variations.

Again, this is very welcome. The fact that it will be in regulations is welcome, because councils will not be able to get out of it. If the notices fall into disrepair over time, they will have to replace them and keep the information before the public. I put these amendments forward in Committee, and I am grateful that the Government are taking them up and putting them into a statutory instrument regulations. I thank the Government for this amendment and those in relation

to the community remedy documents, where, as the Minister said, the Government have taken up my suggestions about consulting the local authority. That will be in the Bill. This is all excellent stuff. Thank you very much.

Baroness Hamwee: My Lords, may I say a word following on from Amendment 54? It is on a matter that I raised in Committee, which is how parts of this Bill fit in with the existing nuisance legislation.

My noble friend Lord Clement-Jones and those with whom he worked on what is now the Live Music Act 2012 remain concerned about the possibility of local authorities using public space protection order powers when there is existing nuisance legislation that could be used against a particular nuisance—though I think that they do not regard much music as "nuisance". There have been some awkward examples of some local authorities banning busking and other live music-making during "reasonable hours"; and when I say that, I would probably agree that they are reasonable, but I do not particularly want to bring that into the equation here. During hours when there have been a small number of complaints, the local authorities would argue that such action is reasonable and there is a concern that the powers might be used far more extensively than the Government would have in mind. They have spoken to me about balancing competing rights between freedom of expression and the right to peaceful enjoyment of one's possessions—in this case the items that are being used for busking.

I am making the point now in the hope that the Government may be able to say something about guidance on the fit between the statutory powers under this Bill and statutory nuisance. I raised the issue at the previous stage following discussions with the Chartered Institute of Environmental Health. I know that officials are working on this area of the guidance but I also know that those who have been in touch with me will be grateful if they can have further discussions on and further input into what will now be statutory guidance. Clearly those who are working on these issues day-to-day still feel uncomfortable that their concerns about what I called "workability" have not quite been taken on board.

Lord Taylor of Holbeach: I thank my noble friends Lord Greaves and Lady Hamwee for their hard work on this section of the Bill. They have proposed a number of amendments, many of which have informed government thinking. Indeed, these government amendments are based on ideas that came from the debates we had in Committee with them. We have yet to dispose of my noble friend's Amendment 55, but I hope he will at a suitable moment see fit not to move it.

The role that my noble friend Lady Hamwee has emphasised depends on the statutory guidance, which is very important in this area. This is a matter for consultation. We want to get the statutory guidance right and ensure that it allows councils maximum flexibility. We do not want to miss the chance, particularly as the guidance will now be statutory, of making sure that we give background information on the exercise of all the elements of these parts of the Bill for the efficient use of anti-social behaviour powers.

I hope I have reassured my noble friend Lady Hamwee on the importance we attach to the guidance and my noble friend Lord Greaves about our recognition of the need to publicise what is going on in connection with the consultations that will take place.

Lord Greaves: Why does it say "publish" for one and "publicise" for the other?

Lord Taylor of Holbeach: I am sure someone will know the answer to that; I am not entirely sure. "Publish", I suspect, implies that it is in a particular form; "publicise" is perhaps multiple publication. However, I am only hazarding a guess, without being particularly good in my command of language.

Baroness Hamwee: I will not speculate about whether "publish" is a technical term, which I think it probably is. "Publicise" is about spreading it around in a practical way.

However, returning to my question, will the guidance —I hope it will—make clear that, where possible, it would be more appropriate to use existing legislation, such as noise abatement notices, than these wider powers?

Lord Taylor of Holbeach: It may be that that is one of the things that is considered in the guidance. We will make use of what we have available to us. There is no repealing of the Noise Abatement Act 1960, for example, in the Bill.

Amendment 48 agreed.

10.30 pm

Clause 56: Duration of orders

Amendments 49

Moved by ***Lord Taylor of Holbeach***

49: Clause 56, page 33, line 25, leave out subsection (5)

Amendment 49 agreed to.

Clause 57: Variation and discharge of orders

Amendment 50

Moved by ***Lord Taylor of Holbeach***

50: Clause 57, page 34, line 5, leave out subsections (5) and (6)

Amendment 50 agreed.

Clause 62: Challenging the validity of orders

Amendment 51

Moved by ***Lord Ahmad of Wimbledon***

51: Clause 62, page 38, line 1, leave out subsection (7) and insert—

"(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—

(a) under this section, or

(b) under subsection (3) of section 63 (where the interested person is charged with an offence under that section)."

Lord Ahmad of Wimbledon: My Lords, in Committee my noble friend Lord Faulks and other noble Lords questioned the effect of Clause 62(7). He asked whether this had the effect of stopping an application for judicial review against a council that makes a public spaces protection order. I agreed to go back and consider the matter further. On reflection, it is true that, as originally worded, the clause meant that judicial review was not available. This was because an interested person can challenge an order in a broader way than is open under a judicial review and, as such, the requirement for that process did not seem necessary. I believe that this is right: it ought not to be possible for the same person to challenge a public spaces protection order on effectively the same grounds through two different legal procedures.

However, as my noble friend pointed out, because only "interested persons" as defined in the Bill may challenge a decision to make an order, this has inadvertently left national bodies and others who do not fall into the category of an "interested person" without any means to challenge a decision. Amendment 51 rectifies this and ensures that the option of judicial review is available to those who do not qualify as "interested persons". I hope the House will agree that this is a fair way of ensuring that all parties with an interest in a public spaces protection order can challenge the terms of the order should they consider there to be a case for doing so. I beg to move.

Lord Greaves: My Lords, there was quite a lot of discussion about this question in Committee and it became clear that the Bill was not very clear. I think that the noble Lord, Lord Rosser was involved in those discussions. The amendment now proposed is extremely welcome and has been welcomed by various national organisations that were concerned about it. Again, it is to the credit of the Government that they have seen the sense of this and sorted it out.

Amendment 51 agreed.

Clause 66: Byelaws

Amendment 52

Moved by ***Lord Ahmad of Wimbledon***

52: Clause 66, page 40, line 7, leave out subsection (2)

Lord Ahmad of Wimbledon: My Lords, in Committee I undertook to consider an amendment tabled by my noble friend Lord Brooke of Sutton Mandeville that sought to acknowledge the excellent work of the City of London Corporation in managing some of the important public spaces in and around the capital. We agree that my noble friend's proposal has significant merit. Amendment 53 therefore provides for statutory custodians, such as the City of London Corporation, to be designated by order of the Secretary of State. The effect of such an order will be to enable the designated body to make public spaces protection orders in respect of the land they are also responsible for managing. The amendment also includes the safeguards proposed by my noble friend ensuring that the local authority will continue to have precedence in the decision-making process. Therefore, a designated body will be able to make a public spaces protection order only where the local authority does not wish to act.

In addition, any designated body will be able to make an order only in respect of those matters it already has the power to regulate through by-laws, so there will be no extension of scope. For the time being, the City of London Corporation is the only body that we have in mind to designate under this order-making power. This is in line with a similar provision that currently exists under the terms of the Clean Neighbourhoods and Environment Act 2005 in respect of dog control orders which will be replaced by the provisions in the Bill.

Amendments 52, 58, 59, 60 and 61 are consequential on the main amendment. I am once again grateful to my noble friend for raising this issue on behalf of the City of London Corporation. I trust that these amendments address the issue that he and it has raised and, accordingly, I commend them to the House.

Lord Brooke of Sutton Mandeville (Con): My Lords, I shall speak to government Amendment 53, to which my noble friend has just spoken. In responding to my amendment in Committee, my noble friend Lord Ahmad was kind enough to acknowledge that there appeared to be a strong case for extending the availability of public spaces protection orders to bodies other than local authorities. I am most grateful that further consideration has confirmed that view. I know also that the City of London Corporation, whose position prompted my earlier intervention, is grateful for the constructive and open-minded approach taken by officials during discussions on this point. No doubt, other bodies that manage public spaces under statute but are not local authorities will also find the change helpful.

My noble friend will recall that in my amendment in Committee, to which Her Majesty's Government have now helpfully responded, I alluded to Epping Forest. In this appreciation of the Government response, I quote a testimonial about the Corporation of London from 1979—35 years ago—when I moved in the Commons the Second Reading of a private City of London (Various Powers) Bill on behalf of the City which primarily related to Epping Forest. Two of my noble friends who are now in your Lordships' House spoke in that Second Reading debate: my noble friend Lord Tebbit, then MP for Chingford, and my noble

friend Lord Horam, then replying to the Bill as Under-Secretary for Transport. They were thus witnesses to the quotation uttered by the late Arthur Lewis—then and for the previous 34 years Labour MP for West Ham, where he was Tony Banks' predecessor—when he spoke in that debate. I quote the conclusive passage in his speech:

"I do not trust the Department of Transport. By its actions over the years it has not proved that it has the best interests of the people at heart. The City of London has proved this. It has done so for 100 years, and certainly to my personal knowledge for the past 34 years … I have gone along to many Ministers, ministerial advisers and local government officers. I have never found any of them so accommodating or helpful as the City of London authority and its officers. They have not put themselves out in the way that the City of London's officials have. When I have problems or difficulties over Wanstead Flats, West Ham park or Epping Forest, I know that I get better treatment from the authority's officials than I do from ministerial Departments".—[*Official Report*, Commons, 6/3/79; col. 1203.]

I am confident that the Home Office will be rewarded by the Corporation of London for government Amendment 53 with just such similar imaginative service in future.

Finally, to wind up, I also thank the Minister for taking up the drafting point in Clause 67(2) that I raised in Committee in relation to the interpretation of Chapter 2. I note that this has been addressed in the Report stage print of the Bill now before us and I express appreciation for the Government's reaction to that.

Lord Rosser: I will just raise one or two questions on these amendments. Again, I look particularly at what was said in the letter we received from the Minister. On these particular government amendments, that letter ended by saying that any public spaces protection order,

"made by a designated body under the provisions of the new clause would take precedence over a PSPO made by the local authority in whose area the land is situated".

As I understand it, that means that a PSPO made by the City of London Corporation—if it was so designated—would take precedence over a PSPO made by the local authority covering the area of Epping Forrest, Ashtead Common, Hampstead Heath or any other areas. I would be grateful if the Minister could confirm whether that is the case. It is what the last sentence of his letter dealing with these government amendments says, as I just read out.

On the face of it, that would appear to be rather odd because Clause 55, which deals with public spaces protection orders, says that two conditions must be met, the first that,

"activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality".

If the City of London Corporation has responsibility for managing an open space, presumably most of those who will be deemed to be affected on the basis of the,

"quality of life of those in the locality",

are unlikely to actually live in the open space and likely to live in the areas surrounding it, which are presumably within the area of the local authority.

I am not seeking to raise some frivolous point, and my intention is not to oppose this amendment. What I am getting at is whether there are potential areas of conflict now between what the City of London Corporation may deem to be necessary or desirable in a public spaces protection order and the views of the local authority, bearing in mind that it is surely only the local authority that can make the judgment on whether activities were being carried on which had a detrimental effect on the quality of life of those in the locality. I would be grateful if the Minister could clear that up. Perhaps I have misunderstood it. If I have, I am sure the Minister will explain that when he responds.

Lord Ahmad of Wimbledon: My Lords, first, I thank my noble friend for his kind remarks and I reiterate the Government's thanks for raising these issues. On the noble Lord's point on clarification of the letter, it is my understanding—and we are just double-checking—that the letter got the position the wrong way round, so we apologise for that. I trust that clarifies the point.

Lord Rosser: If I may confirm what the letter should have said, it is that the PSPO made by the local authority has precedence over that made by the City of London or a designated body. That clears it up. I thank the Minister very much.

Amendment 52 agreed.

Amendment 53

Moved by ***Lord Taylor of Holbeach***

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

"Bodies other than local authorities with statutory functions in relation to land

(1) The Secretary of State may by order—

(a) designate a person or body (other than a local authority) that has power to make byelaws in relation to particular land, and

(b) specify land in England to which the power relates.

(2) This Chapter has effect as if—

(a) a person or body designated under subsection (1) (a "designated person") were a local authority, and

(b) land specified under that subsection were within its area.

But references in the rest of this section to a local authority are to a local authority that is not a designated person.

(3) The only prohibitions or requirements that may be imposed in a public spaces protection order made by a designated person are ones that it has power to impose (or would, but for section 66, have power to impose) by making a byelaw in respect of the restricted area.

(4) A public spaces protection order made by a designated person may not include provision regulating, in relation to a particular public space, an activity that is already regulated in relation to that space by a public spaces protection order made by a local authority.

(5) Where a public spaces protection order made by a local authority regulates, in relation to a particular public space, an activity that a public spaces protection order made by a designated person already regulates, the order made by the designated person ceases to have that effect.

(6) If a person or body that may be designated under subsection (1)(a) gives a notice in writing under this subsection, in respect of land in relation to which it has power to make byelaws, to a local authority in whose area the land is situated—

(a) no part of the land may form, or fall within, the restricted area of any public spaces protection order made by the local authority;

(b) if any part of the land—

(i) forms the restricted area of a public spaces protection order already made by the local authority, or

(ii) falls within such an area,

Amendment 53 agreed.

Amendment 54

Moved by ***Lord Taylor of Holbeach***

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

"Convention rights, consultation, publicity and notification

(1) A local authority, in deciding—

(a) whether to make a public spaces protection order (under section 55) and if so what it should include,

(b) whether to extend the period for which a public spaces protection order has effect (under section 56) and if so for how long,

(c) whether to vary a public spaces protection order (under section 57) and if so how, or

(d) whether to discharge a public spaces protection order (under section 57),

must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

(2) In subsection (1) "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

(3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—

(a) making a public spaces protection order,

(b) extending the period for which a public spaces protection order has effect, or

(c) varying or discharging a public spaces protection order.

(4) In subsection (3)—

"the necessary consultation" means consulting with—

(a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;

(b) whatever community representatives the local authority thinks it appropriate to consult;

(c) the owner or occupier of land within the restricted area;

"the necessary publicity" means—

(a) in the case of a proposed order or variation, publishing the text of it;

(b) in the case of a proposed extension or discharge, publicising the proposal;

"the necessary notification" means notifying the following authorities of the proposed order, extension, variation or discharge—

(a) the parish council or community council (if any) for the area that includes the restricted area;

(b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.

(5) The requirement to consult with the owner or occupier of land within the restricted area—

(a) does not apply to land that is owned and occupied by the local authority;

(b) applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.

(6) In the case of a person or body designated under section (Bodies other than local authorities with statutory functions in relation to land), the necessary consultation also includes consultation with the local authority which (ignoring subsection (2) of that section) is the authority for the area that includes the restricted area.

(7) In relation to a variation of a public spaces protection order that would increase the restricted area, the restricted area for the purposes of this section is the increased area."

Amendment 55, as an amendment to Amendment 54, not moved.

Amendment 54 agreed.

Amendment 56

Moved by ***Lord Taylor of Holbeach***

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

"Guidance

(1) The Secretary of State may issue—

(a) guidance to local authorities about the exercise of their functions under this Chapter and those of persons authorised by local authorities under section 59 or 64;

(b) guidance to chief officers of police about the exercise, by officers under their direction or control, of those officers' functions under this Part.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published."

Amendment 57, as an amendment to Amendment 56, not moved.

Amendment 56 agreed.

Clause 67: Interpretation of Chapter 2

Amendments 58 to 61

Moved by ***Lord Taylor of Holbeach***

58: Clause 67, page 40, line 21, after "London" insert "(in its capacity as a local authority)"

59: Clause 67, page 40, line 28, leave out from "permission" to end of line 29

60: Clause 67, page 40, line 30, at end insert—

"( ) For the purposes of this Chapter, a public spaces protection order "regulates" an activity if the activity is—

(a) prohibited by virtue of section 55(4)(a), or

(b) subjected to requirements by virtue of section 55(4)(b),

whether or not for all persons and at all times."

61: Clause 67, page 40, line 31, leave out subsection (2)

Amendments 58 to 61 agreed.

Consideration on Report adjourned.

Mesothelioma Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with a privilege amendment. The amendment was considered and agreed to.

House adjourned at 10.43 pm.

Grand Committee

Wednesday, 8 January 2014.

Pensions Bill

Committee (3rd Day)

3.45 pm

The Deputy Chairman of Committees (Lord Colwyn) (Con): My Lords, I have the usual announcement. 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 or at such a time as we are all back in our seats.

Clause 5: Transitional rate of state pension

Amendment 22

Moved by ***Baroness Turner of Camden***

22: Clause 5, page 3, line 18, at end insert "plus the state pension benefits from an employee's post-commencement qualifying years up to a maximum of nine years"

Baroness Turner of Camden (Lab): My Lords, this is a rather complicated matter. We are on to the area of people who are contracted in and those who are contracted out. Under the Government's proposal, an employee who by April 2016 has already built up a state pension entitlement equal to or in excess of the single state pension cannot add further to it. This means that a large number of long-term contracted-in employees will face the prospect of a reduced state pension. These employees, by definition, have not had access to quality company DB pensions during their career, and SERPS and the second-tier pension were originally designed to assist them. By contrast, an employee who has been long-term contracted-out will have an established right to the basic state pension only. Under the transitional terms, they would have the ability to add to their single pension benefit and could increase it from the prospective £107 of the basic state pension level to £144 in approximately nine years.

The amendment is designed to be helpful. We realise, of course, that the transition may be difficult. Some people may feel that they are losing out as a result, and we want to ensure that as few as possible feel that way. The idea of the amendment is to limit the loss of future rights to accrue for the contracted-in employees and to put them on an equal footing with contracted-out employees. Under the new scheme, both groups will in future be paying the same amount of national insurance contribution. The idea of the amendment was therefore to ensure that the transition that is taking place will be as smooth as possible, and that people who think that they have been left out or that their conditions are undermined will feel that every effort is being made by the Government—if they accept our amendment or something rather similar—to make the transition as painless as possible. I beg to move.

Lord Browne of Ladyton (Lab): My Lords, I apologise on behalf of my noble friend Lady Sherlock for her absence from today's Committee. I should explain that she became quite ill over the Christmas holidays and spent part of them in hospital. She is now on the mend but, wisely but reluctantly, as I am sure those noble Lords who know her can imagine, she has accepted the advice of her medical adviser that it is not yet appropriate for her to come back to work. However, she is hopeful that she will be fit to recommence her duties in your Lordships' House some time next week and hopes to be with us for the next scheduled Committee day. I know that noble Lords will want to extend their best wishes to her for a quick recovery.

I also pray the Committee's indulgence to express my sadness at the news of the shocking and untimely death of my very good friend Paul Goggins. He was the best of the best. No words can express the sorrow that I feel. I shall miss him a lot, and I just want his family to know that my thoughts and prayers are with them at this very difficult time.

We are now on Clause 5, which, as my noble friend Lady Turner of Camden, explained, deals with the transitional rate of state pension. Once again, my noble friend has allowed the Committee an opportunity for some further clarification and explanation from the Minister. In the House of Commons, the Minister for Pensions, Steve Webb, dealt with this clause in two paragraphs. To be fair to him, it took slightly longer to explain Schedule 1 but most of that legislation was probably, rightly, a paean of praise for the drafting and for parliamentary counsel. It appears that Schedule 1 is a unique piece of drafting and reads logically, simply and straightforwardly. If all legislation were as clear, it would be very helpful.

I hope the Minister will forgive us if we tarry a little in this important provision, given that we do not have a lot to go on from the debate this Bill has been subject to thus far. Clause 5 and Schedule 1 explain how the transitional rate is calculated. My understanding—and if it is not right I am sure the Minister will correct me—is that this rate applies to everyone who, under Clause 4(1)(c), has at least one pre-commencement qualifying year. A pre-commencement qualifying year is one year of national insurance contributions before 6 April 2016 and, for completeness, after 6 April 1978—although I suspect that is not of great relevance. Everyone who has such a pre-commencement qualifying year and who meets the minimum qualifying period will have the foundation amount, which is the higher of either the pre-commencement and post-commencement years added together or the amount already accrued under the old system, whichever is the larger. In short, such a person will get what they would get under the old rules or what they would get under the new rules, whichever is the greater. Thereafter we are working on a maximum of £144 and one thirty-fifth of £144 for each year until they reach the maximum. Over and above that, as my noble friend has pointed out, there comes a point, no matter what age you are, when you cannot accrue any more pension entitlement. It is capped. Indeed, there was some debate in the House of Commons as to whether the pursuit of the word "cap" was appropriate. Interestingly, "cap" is in the schedule itself. You cannot accrue any further pension

[LORD BROWNE OF LADYTON]
under the current system. As with the present system, after 30 years you still have an obligation to pay national insurance but you will be contributing not to your pension but to the whole pot.

Beyond that, we knew—I think until the Prime Minister's recent announcement on "The Andrew Marr Show" on 6 January—that none of this was guaranteed to be triple locked. I digress a little because I am not entirely sure exactly where we stand with the fact that the Prime Minister took the opportunity to make an announcement on "The Andrew Marr Show" on retaining the triple lock for the duration of the next Parliament. This will provide existing pensioners, I think, and those retiring soon after the implementation of this Bill, with some degree of comfort in the rather unstable financial world we are now living in and I venture to suggest that it was calculated to do so. It was calculated by the Prime Minister to generate that degree of relationship between him and those people.

The Opposition have supported the triple lock since it was proposed by the Government. Maybe the Minister can take this opportunity to tell us if this announcement constitutes a Conservative Party manifesto policy pledge or is it—as I think we could probably, in an inspired fashion, guess that the junior partner in this coalition is unlikely to take a different view—now government policy, issued on behalf of both coalition partners? I apologise if I have offended any noble Lords by my reference to "junior". Perhaps I will just refer to them as "the other party in the coalition".

Are pensions within the welfare cap now? People are asking whether the winter fuel allowance and other pensioner benefits will be protected. Is the Prime Minister planning to take from one part of a person's pension pot and put it in another with no gain? Will the triple lock apply to existing pensions? Will it apply to pension savings credit? Is this within the welfare cap itself? Will the triple lock apply to S2P or are we retaining the uplift? There are lots of questions. I suspect the Minister, who carefully prepares for these things, anticipated a significant number of them.

I will resist the temptation to go back over all the ground of the debate on the triple lock which we could not have because there was apparently no guarantee for it. We now appear to have the best we can expect in terms of a guarantee, bearing in mind what the Prime Minister had to say. Maybe the Minister would be willing to engage with that. Perhaps he could also explain a little more than was in the two paragraphs of the Written Ministerial Statement yesterday about the money that has been captured from the reserve in order to build the IT for the accelerated implementation of these provisions. He may have something further to say that could be relevant to our discussions on this Bill, although this may not be the right time to do it.

To a limited degree, we know about the transitional rate of the state pension. This is an opportunity for the Minister to explain it with a degree of clarity that is always welcome in the official record of debates on Bills. I hope that the Minister will engage with the questions posed by my noble friend Lady Turner in relation to this, and I am sure we shall all be much the wiser if he does so.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, I start by thanking the noble Lord, Lord Browne, for stepping into the place of the noble Baroness, Lady Sherlock, with his customary skill. I join him in paying tribute to Paul Goggins. I knew him much less well than the noble Lord, Lord Browne, did, but I worked with him on the Mesothelioma Bill—which is now an Act—and I found him knowledgeable, supportive and an extraordinarily likeable man. He is a real loss to many of us.

Noble Lords: Hear, hear!

Lord Freud: On the series of questions that the noble Lord, Lord Browne, raised about the triple lock, I would direct him to the next Conservative manifesto if he wants more information. I will not go into any more detail, but I will promise to deal with the amendment in more than two paragraphs and to treat it with the dignity that it deserves.

The amendment of the noble Baroness, Lady Turner, concerns the single-tier position of people entitled to a protected payment—so, in other words, those with foundation amounts higher than the full single-tier pension. People in this position are likely to have built substantial additional state pension entitlement in the existing system and would typically have been contracted into the additional state pension for most of their working life.

Let me first say that the decision to close the additional state pension in 2016 was by design, rather than by accident, as it allows us to provide a simpler, fairer state pension. Most of the complexity inherent in the current system is associated with the additional state pension and contracting out. This in turn makes it more difficult for a person to know how much pension they are likely to get from the state and how much more they would need to save to realise their desired income in retirement. However, we are recognising pre-commencement qualifying years in the transition design and will allow people to gain amounts above the full single-tier pension. We also uprate the whole single-tier amount by earnings, as opposed to just the basic state pension in the current system, and any excess is price-protected. I think we have had sufficient reference to the triple lock around that.

The noble Baroness's amendment would allow those with protected payments to add up to nine extra qualifying years to their foundation amount. This would provide for a maximum of an extra £37 a week in single-tier pension—or, in other words, nine times the £4.11 a week illustrative figure. If we were to do this, we simply would not have a single-tier system. We would, in fact, enhance disparities in state pension outcomes counter to the aims of the reform which seeks to provide a flat-rate amount on which people can save. For example, a person whose pre-commencement qualifying years result in a pension that is £1 above the illustrative amount of £144 a week could add up to nine more qualifying years. However, this generosity would not be extended to a person whose pre-commencement qualifying years resulted in a pension just below, or at, the full single-tier amount: this person's pension would be capped at £144 of the illustrative amount. This seems arbitrary and unfair.

We are also talking about potentially enhancing the entitlements of up to around 1.5 million single-tier pensioners who will be receiving a protected payment in the 2030s. This would come at a significant cost—each extra year added to each individual's entitlement would add £200 a year to the costs of the single-tier pension. As I have already said, the costs of this amendment would be considerable and it would benefit a group which is already receiving £11 a week more than the full single tier on average.

To sum up, the single-tier pension is designed to give people a clear foundation for saving. The transition arrangements recognise the contributions people will have made up to 2016. Further enhancements for people with amounts higher than the full single-tier pension would undermine the principles of the reform and come at considerable cost. I therefore ask the noble Baroness to withdraw the amendment.

4 pm

Baroness Turner of Camden: I thank the Minister for his detailed response to the amendment. It was of course designed to cover the situation where a number of people may feel that they are being badly done by in the transitional process. That is why it was suggested that an amendment be put down and the Government's views on it sought. I am grateful for what he has said. I acknowledge, of course, that there will be some cost involved—I realise that we mostly put down amendments that involve some cost. None the less, we were anxious to try to ensure that people should not feel hard done by if they feel that they are losing out in any respect. However, I note what he has said. We shall have a good look at this issue before Report and I shall let the people who originally raised it with me know what the response was. In the mean time I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Clause 5 agreed.

Amendment 23 not moved.

Schedule 1: Transitional rate of state pension: calculating the amount

Amendment 24 not moved.

Amendment 25

Moved by ***Baroness Turner of Camden***

25: Schedule 1, page 28, line 33, leave out sub-paragraph (2) and insert—

"( ) The amount to be revalued in accordance with the full rate of the state pension."

Baroness Turner of Camden: This, again, concerns a somewhat difficult point. Currently, paragraph 6(2) of Schedule 1 provides that amounts of pre-commencement pension up to the level of the full single pension will increase in line with "the full rate" of the single state pension, while any amount in excess of that will rise only in line with CPI inflation. In other words, the rate of revaluation is on the basis of prices rather than, as in the past, in relation to earnings. This takes into the whole area of revaluation. We have already heard that, apparently, government policy is in future going to support the triple lock, which I personally have always supported. If the triple lock were accepted, and if our amendment were accepted, that would certainly bring the whole thing into line with the triple lock, because it would increase this section of the pension in line with earnings.

I am rather surprised that the Government continue to imagine that it is possible, in this particular section of the Bill, to have revaluation in line not with earnings, or indeed with the triple lock at all, but in line with prices. That is completely out of kilter with what will, hopefully, be in the rest of the Bill and with support for the triple lock. I therefore suggest that the Minister look again at the amendment and perhaps agree with what we are suggesting: that the amount to be revalued should be in accordance with the full rate of the state pension, which would of course bring you directly into the earnings section rather than looking at prices again. I do not think that we want to look at prices again in relation to any section of the Bill. If we are going to have the triple lock, which I hope we shall, that would of course not arise because the best of three would be payable in respect of all the pension payments referred to in the Bill. I beg to move.

Lord Whitty (Lab): My Lords, I fully support what my noble friend has just said and have some amendments in this group which point in the same direction. The issue is fairness in relation to expectations. Under this part of the schedule, if your entitlement under the prior system is greater than the reference point, it is index-linked on a different basis from that on which it would be if it falls below the reference point.

The Minister may regard that as part of the overall approach, but in terms of the expectations of the people concerned there is in essence the same point as was in my noble friend's previous amendment: somebody who is retiring in 15 years' time may be able to provide other means of savings to make up for the loss of expectation. However, if they are retiring fairly close to the due date of the single tier, then their expectations cannot be made up in that time. A significant degree of unfairness applies there. The same applies in relation to the subject matter of these amendments if you happen to be one side or another, under the old system, of the proposed reference figure of £144 or whatever it turns out to be. There is no particular reason why one group of workers—who have, by and large, not had the most favourable pension schemes but have saved into the state second pension—should be treated differentially in this way, compared with their expectation.

It is an issue of fairness. The triple lock seems to have all-round support except in these clauses. It seems that the Government, at a relatively small cost, could make the adjustment here and save quite a lot of aggro and, I suspect, a significant postbag for most Members of Parliament.

Lord Browne of Ladyton: My Lords, I have no idea how many persons Clause 6 is expected to relate to, but it seems to be a discrete and relatively small group of pensioners. As I understand it, it deals with those

[Lord Browne of Ladyton]
who, after the start date, leave a contracted-out pension scheme where, under the rules of the scheme, they are not entitled to a pension and their transitional rate will be calculated as if they have never been contracted out before, and thereafter by reference to Schedule 1 which will set out the rules whereby that transitional rate will be calculated.

Amendments 25 to 29, as my noble friends have explained, all have similar intentions behind them. They refer particularly to the revaluation of the foundation amount and the protected accrued state pension amount above the single-tier amount for people with pre-commencement qualifying years of practicable pensionable age. As my noble friends have explained, the amendments are designed to ensure that for the revaluation of the foundation amount and the amount in excess of the full single-tier state pension, the protected payment would be in line with average annual increases in earnings as opposed to annual increases in general price levels. I hope that I have understood the effect of these complicated amendments. Currently, the Bill specifies that the valuation of the foundation amount up to the full rate of the state pension is to be revalued by earnings and any excess over that rate is to be revalued in line with the annual increase in the general level of prices.

For all those reasons articulated by my noble friends, which it would be otiose to repeat, I look forward to the Minister's assessment of my noble friend's amendment. I ask him to address these additional questions when he responds to the amendment. How will the public be informed of these changes to their pension entitlement in order to ensure that they are able to make adequate preparation for a secure retirement? In the words of my noble friends Lady Turner and Lord Whitty, will they be able to calibrate their expectations? Do the Government plan to review these arrangements at some time in the future? My noble friend Lord Whitty asked a very pertinent question: what are the cost implications of these amendments? In my estimation, they appear to relate to a comparatively small number of people. If the Minister is not able to tell us, will he come back to my noble friend before Report so that that information can inform the debate, if it takes place then?

Lord Freud: My Lords, it might be helpful if I explain the principle behind having protected payments. We recognise that some people who will reach pensionable age under the single tier will already have amounts of additional pension which take them over the full single-tier rate. A key consideration in the design of the transition was that this extra would not be taken away. Revaluing the protected payment, at least by increases in prices, will maintain its purchasing power over time.

Let me deal directly with the point made by the noble Lord, Lord Whitty, about fairness in relation to expectations. Under the current system, the additional state pension is revalued up to state pension age in line with average earnings, but is then indexed only by prices once in payment. A man retiring in the first 10 years of single tier could expect to spend, on average, 20 years in retirement. In single tier, we have shifted this balance between adjustments before and after pensionable age, and the majority of people receiving protected payments will be better off overall as a result of this shift.

In the current system, only basic state pension is uprated by a minimum of earnings. In the future, the full amount of the single-tier pension would be uprated in this way. So using the 2012-13 White Paper figures, this means that people will see the illustrative £144 of their state pension being uprated each year by earnings, or more—potentially the triple lock—not just £107. People with a protected payment will be relatively close to pension age, so the revaluation will typically be applied only for a few years. So, for example, even someone with an above average protected payment of £20 with 10 years left until they reach retirement would find that revaluation leaves them £4 per week worse off upon reaching pensionable age, but £4 better off 10 years later.

The amendments tabled by the noble Baroness, Lady Turner, and the noble Lord, Lord Whitty, would effectively incorporate earnings revaluation of the protected payment into single tier. As this is a cost-neutral package of reforms, we would need to make offsetting changes elsewhere. Given that we expect most people to be better off from the combined revaluation and uprating changes, this would be difficult to justify. To give noble Lords a response to their question about the costs we are talking about, I can tell them that using earnings to revalue the protected payment would have annual costs, which would peak at around £150 in about 2040.

Baroness Hollis of Heigham (Lab): How much?

Lord Freud: It would be £150 million per annum—I am not doing too well with my millions and billions. Let me be specific: £150 million per annum at the peak in about 2040.

As regards the question from the noble Lord, Lord Browne, on the review, we will look at how we do that as part of our overall communication strategy, part of which will be about providing people with individualised information. I hope that I have covered all the questions and therefore ask the noble—

4.15 pm

Lord McKenzie of Luton (Lab): Before the Minister sits down, I hope that he will help me. I think that he made reference to the proposals being cost neutral and that his previous formulation went something along the lines that the new arrangements would not be more costly than the current ones. Should we be worried about this nuance?

Lord Freud: My Lords, it was not my intention that the noble Lord should be worried about it. I ask the noble Baroness to withdraw her amendment.

Baroness Turner of Camden: I thank the Minister for that response but he will not be surprised to learn that I am not terribly happy with it because I cannot envisage a situation in which any element of pension provision could be linked to prices rather than anything

else, and rather than the triple lock which we have all talked about. Therefore, although I thank the Minister for his detailed response, we will have to look at it very carefully because I am not happy about any element of pension provision where there is revaluation based on prices. It is out of kilter with the rest of the thinking in relation to pensions generally and we will certainly have to think about this and come back to it on Report. However, in the mean time, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 to 29 not moved.

Schedule 1 agreed.

Schedule 2 agreed.

Clause 6 agreed.

Clause 7: Survivor's pension based on inheritance of additional old state pension

Amendment 30 not moved.

Clause 7 agreed.

Schedules 3 and 4 agreed.

Clauses 8 and 9 agreed.

Schedule 5 agreed.

Clauses 10 and 11 agreed.

Schedule 6 agreed.

Clause 12 agreed.

Schedule 7 agreed.

Clause 13: Shared state pension on divorce etc

Amendment 31

Moved by ***Baroness Hollis of Heigham***

31: Clause 13, page 7, line 22, at end insert—

"( ) Regulations may provide that those entitled to or subject to a pension credit or a pension debit shall be advised annually of their entitlement."

Baroness Hollis of Heigham (Lab): My Lords, we move on to a different subject, which is pension sharing on divorce. This is a very simple, short amendment that raises the issues of divorce that were touched on in previous amendments. When we delivered pension sharing on divorce—many of my noble friends were absolutely vital in that activity in the 1990s—it primarily affected private pensions. We thought that the portion that could be set aside as part of the divorce settlement would be the basis of a useful pension for the divorced spouse—usually the woman. We were also anxious that he and she would build on—or, in his case, perhaps rebuild—their pension shares back up again so that both would face retirement with an adequate pension. However, most divorcing spouses do not seek pension sharing. In some cases, obviously, there may not be much pension to share, particularly if the divorce takes place at a relatively young age—often, sadly, younger women do not always properly value their husbands' pension, and solicitors, I am afraid, are still pretty sleepy about what is quite a technical issue. Many of those who share pensions do not realise the need for or the possibility of rebuilding their separate pensions. However, out of 120,000 or 125,000 divorces a year, an average of 10,000 divorces involve pension sharing, which means that 8% or 9% of total divorces involve pension sharing of private occupational pensions.

This amendment asks what the implications are for the new state pension. Currently, under existing laws—we clarified this again in a previous discussion on divorcees—upon divorce the woman can substitute the man's NI record for BSP in lieu of her own at the point of divorce, if his is the higher, and she may also be entitled to half of his additional pension—SERPS or S2P—if the court so decrees as part of the sharing of matrimonial assets.

Under the new regime, she will not be able to substitute his NI contributions for her own, a point that we argued a few amendments back. The only element that can be split or shared, if the court decrees it, is the protected pension; for example, the frozen, additional amount from SERPS and S2P, to which my noble friend referred on a previous amendment. What is more, if he has a shortfall in his NI contributions towards the new state pension—possibly because he has a track record in the public sector, I imagine, with contracting out—some of his additional pension will be brought over to make good his NI record and that transferred slice of protected pension will not then be available for sharing. I am assuming a genderised position here, I am afraid. So she takes the double whammy: not only does she not get an ability to substitute his NI contributions for her own for the basic state pension element, but, equally, if he has an inadequate NI contribution—that may well be the case if he has had a lifetime of contracting out, has never had head space and wishes to make good his shortfall in the new state pension—as I understand it, she will then not be able to access that chunk of his protected and S2P or SERPS pension, which will go across to make good the shortfall.

I would be grateful if the Minister would confirm that I have understood this correctly. If so, the woman has a pretty nasty deal and I think some explanation of the implications is required, particularly for women who have childcare responsibilities and so on and who may not be able to rebuild the additional income, particularly once their youngest child hits 12.

Advising people annually of their pension debit—for example, telling him, as it is usually, but not invariably the man, by how much the pension has reduced following divorce, or with regard to pension credit, the fraction that usually has gone to her of the protected additional pension, if the court has so decreed—would allow

[Baroness Hollis of Heigham]
each of them to know where they stand to make better decisions about their pension futures and, in particular, that might encourage them into NEST to build or rebuild their total pension prospects.

With this amendment, I am seeking to ask the Minister to ensure that women who may not be aware of, but who could well take advantage of, a share of the additional protected pension have the knowledge that they can do so. They may wish to set that against other matrimonial assets that may otherwise go their way on divorce. I hope, therefore, that the Minister will agree with me that as this is techie and this has now been changed substantively in the Pensions Bill, those women who have been married to someone in the public sector—the reverse could equally well be true in terms of gender—will be a loser a second time because he may well dip into this to make good his NI shortfall. I hope that the Minister will agree with me that we need to encourage people to be aware of the situation and I think that the department needs to take some responsibility for ensuring annual information. I beg to move.

Lord McKenzie of Luton: My Lords, I put my name to this amendment because I spent a happy half hour with my noble friend trying to fathom out what the legislation was about, on this occasion, without a bottle of gin. The conclusion that my noble friend has just outlined, which I believe to be correct, is that any protected payment could be shared—I think that was confirmed at one of our briefing meetings and indeed in some of the documentation that we have and this parallels the current situation with the additional state pension—but the protected payment cannot, I think, for some of the reasons outlined by my noble friend, be greater than the second state pension accrued at 6 April 2016; it can, however, be smaller. For individuals who grow up entirely within the single-tier system, with just S2P, as we understand it, there would be no basis for sharing the state pension. The noble Lord's confirmation would be helpful. The particular thrust of the amendment—to make sure that people are routinely informed—seems entirely reasonable.

Lord Browne of Ladyton: My Lords, I intend to make a very short contribution to this debate. As my noble friend Lady Hollis made clear in her introductory remarks, this is a simple amendment. If it can be simple and complex in its implications at the same time, then that is what it is. I have no intention of trying to replicate or supplement my noble friend's understanding of the complexity of this issue, and the implications of the decisions that face people in these very difficult circumstances. My understanding of the element of the pension that can be split by the courts on divorce is as my noble friend Lord McKenzie explained it. We benefited from a briefing from the Minister's supporting civil servants which, as always, we were grateful to receive; it was very clear and helpful.

We have heard from my noble friend Lady Hollis about some of the challenges and problems that face divorced women in particular, or women in the context of divorce, about the choices that they have to make. They may well spend some significant time thereafter before receiving pension payments, not knowing or losing track of the details of their pension-splitting arrangements. As a supplementary to the questions asked by my noble friend, and because I do not know the answer, can the Minister tell the Committee if there are arrangements in place by which the courts or the legal profession—the justice system—in some fashion notify the DWP of such arrangements? If they do, what are they? If people are not to be sent regular statements of pension credits or debits, how else would the Minister suggest that this information gap be addressed?

Before I sit down, I want to take the opportunity to provide the Minister with the chance to put on the official record information about a very discrete point relating to the devolution settlement, and the implications of these provisions about pension sharing on an area of devolved responsibility. In this Bill, necessarily, there are consequential amendments to the Family Law (Scotland) Act 1985. As most of us have come to know, the devolution settlement requires certain rules to be applied to circumstances where we in this Parliament legislate in areas which are otherwise devolved—and family law is devolved to the Scottish Parliament. I am satisfied—because I raised this matter with the Minister's civil servants and received an e-mail explanation on 13 December—that this issue has been discussed with both the Scottish Parliament and the Scottish Government. I was told that the Scottish Government were content, within the scope of the devolution settlement; that the provisions in the Pensions Bill fall under a particular category in the devolved guidance that allows legislative provisions to be enacted here without the necessity for the normal processes. I think this is called a Sewel Motion in the Scottish Parliament. I am speaking long enough for the Minister to find some words that he can put into the official record. I am sure he will understand why it would help if there was some recognition of these discussions and the agreement of the Scottish Government to this Parliament legislating in these potentially contentious areas which would otherwise be devolved. I hope I have made myself clear that it would be helpful if that could be addressed in the response to this amendment.

Lord Freud: My Lords, by way of background, the additional state pension can be considered as an asset in a divorce settlement and the department is responsible for administering pension-sharing orders ordered by the courts. Basic state pension is not included as an asset to be shared, nor will the new single-tier pension be shareable. However, share orders in respect of additional state pension which are made before the single-tier pension is introduced will still stand and, from 2016, only the protected payment—the excess above the full single-tier pension—will be considered in any share order.

4.30 pm

To address the challenge put by the noble Baroness, Lady Hollis, on the combination effect, the substitution arrangements are, as we all know, extremely complex. There is no substantial need for them any more because

the vast majority of women will receive a pension in their own right. Pension sharing is a completely separate issue to substitution, and is to do with sharing the assets at the end of a marriage rather than lifting women out of poverty. Last year, the department was asked to undertake 10,000 pension valuations in respect of pension sharing, but actually received only 150 orders from the courts to share additional pension. Under single tier, pension sharing will be gradually withdrawn but the numbers that I have supplied indicate that this will not play much of a factor in protecting the pension position of divorcees.

Baroness Hollis of Heigham: The Minister also gave those figures last time, when we debated the amendment on divorcees and the substitution issue. The 100,000 requests and the 150 orders are happening in terms of the protected or state second pension, or SERPS, now. Of course, it is only a tiny fraction of the occupational pensions which are usually the more valuable asset and make up the other 9,900 or so requests.

Perhaps I should have asked this before, and I do not mean to catch the Minister on the hop, but what is the financial distribution of the 150 within the 10,000? Are those 150 simply the largest, or are they associated with people who are tenants in rented accommodation, where there is therefore no unoccupied house to be set off in lieu, or what? What does the Minister know about them?

Lord Freud: Rather than going into the sub-detail of what is already a very detailed point, I ought to commit to getting whatever information we can find and supplying that by letter to the noble Baroness.

When pension sharing disappears, most men and women will be able to build up entitlement to a simple contributory pension above the basic level of means-tested support. This is the most effective way of ensuring that savers have a decent underpin which stays with them however their family circumstances change. More than 80% of those reaching state pension age by the mid-2030s will get the full single tier, a figure with which I know the Committee is familiar. The courts will still be able to take account of private pension provision in the divorce settlement. The expectation is that the vast majority of people will be able to build a single-tier pension in their own right.

If someone is the beneficiary of a pension share order they receive a pension credit. The person the order is made against is subject to a corresponding debit. State pension credits are normally awarded and debits applied from state pension age. If the order is made after state pension age, the payment is increased or decreased at that point. As under the current system, single-tier pensioners who have a state pension debit or credit will be informed of the weekly addition or deduction when the court order is implemented. Individuals will be able to ask for statements of their state pension, but the pension credits or debits would be consolidated within the individual's single-tier payment or protected payment and so not identified as credits or debits. As now, these elements could be identified on request but I am informed by the department's pension sharing administrators that no one can recall ever receiving such a request.

On communications, the question raised by the noble Lord, Lord Browne, our statements will give individuals an up-to-date picture of their single-tier state pension position, which includes their foundation amount, and explain how this may change with further national insurance qualifying years through work or credits. The foundation amount included in statements will take into account any pension share debits or credits, as I have said.

Let me make it clear that state pension sharing on divorce affects relatively few people. As I said, in 2012-13 the department implemented only around 150 sharing orders. The changes to the computer system necessary to generate such automatic annual statements would therefore be disproportionately costly to provide this group with information it can in any case request.

Finally, on the devolution issue raised by the noble Lord, Lord Browne, I can confirm that this does not require a legislative consent Motion from the Scottish Government.

I hope that I have been able to go some way in reassuring the noble Baroness that, while there is low demand for this information, it is available if requested. I hope that on that basis, she will feel able to withdraw the amendment.

Baroness Hollis of Heigham: My Lords, I am grateful to my noble friends Lord McKenzie and Lord Browne for their contributions and also to the Minister for a helpful reply. However, I am still not secure on a couple of points he raised, if he would be so kind as to elaborate on them. He said that the recipients—I presume they would be almost all women; the Minister has not challenged me on this so I assume that it is correct—get information when the court order is implemented. Does that mean at the point of divorce or at the point of payment? What does "implementation" mean here? It could be the legal point of when the court has finished with it or the practical effect of when it is actually paid. I am not quite clear.

Lord Freud: My Lords, I think it is at the point of divorce.

Baroness Hollis of Heigham: So it is at the point of divorce. Thereafter, from what the Minister has said, if they wish to see what has happened to that payment they can make an inquiry but the Minister says they never have so far.

Lord Freud: That is exactly right. We have the information and people who want to double check it can ask, although they seem to be satisfied with the level of information they had at the outset.

Baroness Hollis of Heigham: If it is 150 people, how much does an inquiry cost to handle?

Lord Freud: I beg your pardon.

Baroness Hollis of Heigham: If we are talking about 150 people, how much does it cost to respond to each inquiry?

Lord Freud: My Lords, as I said, in practice we have not had an inquiry. We have to manage 150 sharing orders. Again, I am not sure of the cost of that and how easy it is to extract it. If I can do it, I will include it in a letter that I have committed to send.

Baroness Hollis of Heigham: I am grateful for the Minister's promise of further information and, on that basis, I am happy to withdraw the amendment.

Amendment 31 withdrawn.

Clause 13 agreed.

Schedules 8 and 9 agreed.

Clause 14 agreed.

Schedule 10 agreed.

Clause 15 agreed.

Schedule 11 agreed.

Clause 16: Pensioner's option to suspend state pension

Amendment 31A

Moved by ***Lord Browne of Ladyton***

31A: Clause 16, page 8, line 19, leave out subsection (4)

Lord Browne of Ladyton: My Lords, I speak to the amendment and to Amendment 31B which are in my name and that of my noble friend Lady Sherlock. These are simple probing amendments which need not detain the Committee for long. Clause 16(4) says:

"A person may not opt to suspend his or her entitlement to a state pension under this Part on more than one occasion".

Clause 16(5) says:

"Regulations may specify other circumstances in which a person may not opt to suspend his or her entitlement to a state pension under this Part".

My question is simple. Can the Minister please explain the need for these subsections and what circumstances they are intended to cover? I beg to move.

Lord Freud: My Lords, the simple answer is one word: simplicity. However, I will embellish a little. Clauses 16, 17 and 18 allow people to defer their single-tier pension at state pension age in order to build up an increase to their pension. These provisions broadly mirror the deferral arrangements in the current scheme.

Clause 16 specifically provides for the individual to suspend their single-tier pension only once after they have started to receive it, as is the case in the current state pension scheme. This will be particularly important for those who are not certain of their likely retirement income until they have reached state pension age but who could benefit from the ability to suspend their pension and build up weekly increments. At the moment, pensioners can only do this once under the current scheme. This enables people who want to return to work or increase their hours to manage their tax position more effectively. For example if they have the opportunity to work and no longer require their state pension to support themselves, they will be able to suspend their pension and therefore lower their taxable income for that period. They will then build up an increase to their single-tier pension which will be payable when they reclaim it.

The amendments would remove any restriction on the number of times a person may opt to give up their entitlement to a single-tier pension. It introduces new complexity for individuals planning for their retirement and administrative complexity for the department. Allowing people to de-retire later in life increases the risk that they will not live long enough to break even. It would only really make sense for people who would see a significant tax benefit from not claiming their state pension for certain periods of time. Having the option to suspend their state pension once strikes a balance between giving people the flexibility to return to work and manage their tax position after claiming their state pension and ensuring the system remains as simple as possible. I ask the noble Lord to withdraw the amendment.

Lord Browne of Ladyton: My Lords, I am grateful to the Minister for his response, to the extent to which he responded. I had hoped, however, that he would have gone further and, in particular, engaged with Clause 16(5), giving noble Lords some indication as to under what circumstances the Government expect that they would want to further curtail the option to suspend. Maybe the Minister has something of an answer to that coming to him at the moment.

I had hoped that the Minister would say that there is a very narrow set of circumstances to which the regulations that could be promulgated under Clause 16(5) would relate, and give some assurance that it was not the Government's intention to use thee powers extensively but in a narrow way, with reference to at least one set of circumstances for which they were planned.

Lord Freud: My Lords, the power provides the flexibility to respond quickly should the need arise to amend the scheme—for example, if there is a group of people to whom it would be inappropriate to offer the opportunity to improve their pension once it was been claimed. Under the current scheme, if the individual is not ordinarily resident in Great Britain or another EEA member state and has claimed their pension, they will not normally be able to suspend it in order to build up an increase. The inclusion of this power means that we can use secondary legislation to mirror the current position for the suspension of a single-tier pension. The amendment would mean that any modification of the option to elect to suspend a single-tier pension would require a degree of parliamentary scrutiny via the primary procedure that would be disproportionate to that change.

4.45 pm

Lord Browne of Ladyton: I am grateful to the Minister for engaging with the challenge that I encouraged him to engage with. I am not entirely sure that it satisfies

my curiosity over the need for this power, but this is an issue to which we can return later, perhaps in correspondence. In the mean time—

Lord Freud: My Lords, so that we do not waste a lot of extra time on this matter, this replicates the power that we have in the current scheme and does no more than that. There is no substantial change going on or any intentionality towards using it in a different way.

Lord Browne of Ladyton: I reassure the Minister that I do not see any malevolent intention masked by this power. It occurs to me that if there is no purpose in this element of the existing structure, there is no purpose in replicating the existing structure, but I do not intend to expand this debate into such philosophical discussions. At the moment, I am content that the issue has been raised and will consider the Minister's response to it. If I am satisfied when I see it in writing, we will not return to this. If I am not, we may return to this issue. In the mean time, though, I am content to beg leave to withdraw the amendment.

Amendment 31A withdrawn.

Amendment 31B not moved.

Clause 16 agreed.

Clause 17: Effect of pensioner postponing or suspending state pension

Amendment 32

Moved by ***Baroness Hollis of Heigham)***

32: Clause 17, page 8, line 27, at beginning insert—

"( ) If a person's entitlement under this Part to a state pension has been deferred for a period, that person may receive it as a lump sum, as specified in regulations."

Baroness Hollis of Heigham: My Lords, I would just point out that the clock seems to have frozen on the display.

Lord Browne of Ladyton: Time has stood still.

Baroness Hollis of Heigham: It does not matter. I am grateful for the additional statistics on this issue provided by the Bill team. That has been very helpful. In 2004, the previous Administration sought to encourage people to stay in work longer by offering attractive arrangements if they deferred taking the state pension for several years, or at least for more than one year. About 9% of pensioners did so—1.2 million people—three-quarters of them women, usually because they were younger than their husbands and worked longer hours, particularly given that their retirement age was earlier than the husbands' and this way they could retire together. These arrangements had several advantages: they kept people in work for longer; they allowed husband and wife to synchronise their retirement if they wished; and they offered them a higher pension income once retired, with interest rates—until this Bill comes into effect—of 10.4% per annum, or to roll it up into a lump sum, where instead they received the basic rate plus 2%.

The vast majority of the 1.2 million pensioners who deferred their state pension for more than a year chose income. Some 60,000 preferred to take a lump sum. I do not know how many of those are women, but my hunch would be, again, a very high proportion. If by any chance the Minister had that figure, that would be helpful. Some 60,000 preferred to take the lump sum, which on average was £13,700 for GB residents—a considerable sum.

The Bill proposes to remove the option of a lump sum so that in future, if you defer taking your state pension, all that you can do is add to your income. Why? I have to say that the arguments offered by the Minister in the other place did not persuade me. He said that, first, it was a less financially attractive proposition to take the lump sum than to take the money as increased pension, even at the proposed new rate for income deferral of 5.2%. Secondly, drawing their pension rather than deferring it and then putting it into a building society account would give much the same return. And, thirdly, by removing choice, you are giving people something more valuable—that magic word "simplicity", as though a lump sum payment is really hard to understand.

I think this approach is incomplete at best and, in policy terms, wrong in terms of what we know about pensions income and capital. Why would one want a lump sum when the alternative of income is, in terms of return, more financially attractive, which I accept that it is? The answer, it seems to me, is simple. It may be the only opportunity a couple or an individual—but more likely a couple—get of acquiring any capital before they go into full-time retirement. If they have an occupational pension, they are likely to get perhaps the capital of a 25% tax free lump sum. If they are reliant only on the state pension, they have no such access to capital at all. The problem for pensioners now, and future pensioners, as they face their retirement, is not so much lack of income, thanks not only to what the previous Administration did but what the current Administration are doing, on which I congratulate them—it is above all lack of capital. I do not think that the Government or the Minister in the other place gave the impression of understanding that that is the problem coming up in the lift.

Let us remind ourselves that in 1997 the percentage of pensioners below 60% of median income was 41%. As of now, it is about 14%. Pensioners, as we know, have rightly done relatively well in terms of income. As my noble friend teased earlier on, we now know that the current Administration propose to continue this until 2020, should they return to office. As a result, pensions have already risen three times faster than wages and pensioners will continue to do well. The big problem for pensioners is not income but the lack of savings or capital. That has, if anything, worsened over the past decade: 21% of all pensioners have no savings at all; 37% have less than £3,000—not enough to pay for one funeral, let alone two—and 50% of all pensioners have less than £8,000, which would just about cover two funerals with a bit left over for the

[Baroness Hollis of Heigham]
high tea. For those able to defer, bringing in an extra £13,000 to £14,000 of capital is magic. It transforms their situation. I repeat that the struggle for pensioners is not so much lack of income, which was how it was treated down the other end, as lack of capital, and the Government are going to close down one of the easiest and simplest routes to acquiring it.

A couple, for example, could make the entirely sensible judgment that one of them—possibly him—adds their deferred pension to their pension income and, as a result, his state pension increases. The other—it may well be her—brings in the lump sum to build some savings for a rainy day or replace the car, build the conservatory, help their grandson with tuition fees at university, and, above all, in time, to help pay for social care and eventually, perhaps, to fund funerals. Yes, they could save that sum out of income instead, as Steve Webb suggested. However, as with auto-enrolment, where we are structuring choice, ring-fencing it into a deferred lump sum may be the most helpful way to build those savings. To assume that people will voluntarily put their income aside into a building society is the exact opposite of what we are doing with auto-enrolment, where we know that we need the nudge theory of inertia to get people to save, not to leave it to a voluntary choice. They can, of course, do as the Minister suggests, but if that is the case, and if we can rely on them to do that, frankly, we do not need auto-enrolment at all because people will look after themselves with private occupational provision. But, of course, we know that they do not and that is why we are introducing auto-enrolment. The same cast of mind applies to deferred state pensions, I suggest.

In my experience, pensioners seldom spend their full income. They cope. Whatever the level of pension—whether it is £60, £80 or £100—pensioners spend £1 or so underneath their ceiling. Indeed, as a result of past and current government policies, including the triple lock, the income from the new state pension for future pensioners will be increasingly adequate. However, what pensioners are badly short of is capital, and that capital, as a proportion of their future, is reducing. They have little or no reserve cushion and the Government are taking away the easiest way in which pensioners can choose to build that up.

Why are we taking this choice away? No one has to opt for a lump sum but, as long as it is an informed choice, it may be absolutely the right choice for them. Government should not second-guess them and deny them a choice. It is very silly. Contrary to what the Government believe, we do not know what is best for all pensioners in all situations and we should allow them to make the decisions they want and which work best for them. In moving this amendment, I hope very much that the Government reconsider their position on this as they are failing to see the issues that are going to affect pensioners in the future, particularly as we move into the field of social care and the need for individual pensioners to pay for it. I beg to move.

The Lord Bishop of Chester: My Lords, I support this amendment. The background seems to be one of a general lack of provision for pensions for older people in the future. There is a major shortage of pension savings, and my impression is that that is getting worse rather than better, for all sorts of reasons. My experience of young people—I use the word "young" to include people in their 30s—is that they do not think about pensions as much as they should. Anything we can do to encourage people to take a long-term view and think for the future must be a good thing. The principle, therefore, of deferring taking the state pension until you really need it seems a healthy principle to encourage in our circumstances. My anxiety is that, in the future, a lot of people are going to be very short of money when they are older. It seems fundamentally right to do anything we can to encourage that culture of not taking the pension until you need to.

If you are going to encourage people to do that, maintaining the flexibility so that they can either take additional income when they do take their pension, or a lump sum in lieu of the money they save, seems to be a sensible inducement. If you just look on it as an issue of encouraging savings, one of the lessons of the last decade or so is that we need to encourage the thought of saving in our culture. It may be just as easy to take the pension and put it into a building society account or whatever but why not offer the option of the Government allowing the lump sum to be taken? Another reason for supporting the amendment is the principle that if it ain't broke, why do you need to change it? What is wrong with the current arrangements that means that we want to change them?

My third reason for supporting this is that, in principle, I think there should be parity with how we relate the state provision of pensions to private provision, which normally allows the option of taking part of the pension as a lump sum. That is an important principle of flexibility and, indeed, defined benefit schemes now typically make that option more available than they used to. There seems to be a simplicity—to use the Minister's point—in treating state pension and private pension arrangements in broadly similar ways.

Lord Hutton of Furness (Lab): My Lords, I do not want to detain the Committee for any length of time here but my noble friend has raised a very important issue of principle that the Committee should consider very carefully. I hope that at some later point the whole House might as well.

In relation to the Amendment 31A moved by my noble friend Lord Browne, the Minister, quite sensibly, prayed in aid the existing rules and said that the provisions simply reflected that. In essence, that was his argument for continuity. Here, he is proposing something quite different—he is proposing to take away a freedom and a choice that have existed for some considerable time from people who want to defer claiming their state pension. We should not do that unless there is a compelling reason for so doing. The principle of choice for people retiring should be preserved. They might want to, for whatever reason—and maybe the Minister would not agree with the reason—take their deferred pension as a lump sum. I cannot think of any good reason why we should not allow them to continue to do that. It cannot have any overall implications for public spending so there cannot be any cost to the Treasury.

5 pm

I agree with the right reverend Prelate. We should be doing all we can, given the scale of the demographic changes that have taken place in our society, to encourage people to consider deferring taking their state pension. It could well be that one of the arguments that some people would find attractive is that they would be entitled to a lump sum if they were to exercise that choice. Sadly, in this country we do not have a savings culture. It is a great shame, but we do not and we should not pretend that we do. I accept that for many noble Lords the sums we are talking about here as a lump sum would be very small but for many pensioners they could be very significant. Why are we taking away from pensioners the opportunity, at this point in their lives, of having something that looks like a capital sum, which they can choose to spend in whatever way they like? Why on earth would we consider that to be a rational thing for Parliament to do at this time?

I do not know the figures but maybe the Minister does. How many pensioners who exercise the choice to defer their state pension claim a lump sum? That would be good to know. My sense is that it would be quite a significant number but I would like to hear the number from the Minister. This is an issue of principle and I do not think this House, or Parliament, should take away from pensioners the option of taking their deferred state pension as a lump sum if they choose to do so. That should be their choice and we should enshrine it in legislation.

Lord McKenzie of Luton: My Lords, I have added my name to this amendment and I wholeheartedly support the points my noble friends Lady Hollis and Lord Hutton and the right reverend Prelate have raised. The Government are reserving the right to defer but, of course, making it more expensive. I think the savings the Government ultimately get from this are in the order of £300 million, because it is going to be dealt with on an actuarial basis rather than the current way. I do not know if it is possible to split the saving between that resulting from the denial of the lump sum and that which is otherwise simply a result of the different actuarial calculation. It would be helpful to have that split, if it could be done. We await the final rates, which are going to be dealt with in regulations.

The issue about lump sums is very important. We need to think about people who might have a health impairment. There is no impaired annuity equivalent under state provision, so far as I am aware. Surviving spouses cannot inherit increments arising from deferral, as I understand it, but they can, of course, inherit a cash sum that has been saved.

The point has been made about the equivalence between the private sector and the state sector. Many people to date have not accessed private savings. Thank goodness auto-enrolment is in place now, courtesy of my noble friend Lord Hutton, who was Secretary of State when big advances were made on that. Over time, people will get better private sector provision and that will provide them with an opportunity many of them do not currently have to access a lump sum.

Can the Minister say what this all means for the public finances? I presume a lump sum paid on day one in a sense scores against public finances in that year while a deferred amount does not score until it is received, and is then received at a higher rate going forward. I do not know whether this is part of the Government's considerations, but I hope not because I think it would be modest at best.

There are also differences in relation to pension credit. A modest capital sum is ignored for pension credit but, of course, a supplement and income increase arising from deferral would not be. That would be a further denial and scraping away of benefits from these provisions. I very much support the point that no great rationale has been advanced why the lump sum and other deferments should be denied and I hope we can agree across the Room that it should be reinstated in the Bill.

Baroness Dean of Thornton-le-Fylde (Lab): My Lords, I, too, will not detain the Committee very long. When we go through a Bill, there is always something that comes up quite unexpectedly. My noble friend Lady Hollis has alighted on one here, which I do not think is going to go away. If we are not able to progress it at this level, perhaps we shall need to return to it later in the debate on the Bill.

I do not know where the Government have the mandate for this, but it is there now. They are understandably trying to look at pensions as a whole, and saving for retirement, hopefully through a personal pension scheme and through the state scheme. We would support that. However, it is taking a very different principle to the one that applies in private schemes. It will only apply, of course, where the individual says, "I am going to defer my pension". It is not a case of saying, "I want to take some of my pension in a lump sum". It is also taking choice away from people. You cannot say, on the one hand, that we want people to have choice, to save and to be in charge of their own income when they retire, and do everything you can to encourage them, but then, in this particular aspect, say, "No, we the state know better than you do". Even if the Minister cannot do so today, I hope he will be able to reflect on this and give due consideration to making some movement in the Bill on it.

Lord Browne of Ladyton: My Lords, in speaking to these amendments, I seek to achieve a better and more precise understanding of the nature of the Government's objections to the taking of lump sums. My noble friend Lady Hollis has done your Lordships' Committee two favours. One is in raising this issue, which has captured the mood of the Committee quite clearly. The second is in rehearsing accurately the explanation by Steve Webb, the Pensions Minister, in the House of Commons, as to why there is opposition to the taking of lump sums. In my recollection, the arguments were as thin as my noble friend made clear.

My noble friends, and the right reverend Prelate the Bishop of Chester, have explained very clearly the case for allowing lump sums. Undoubtedly there is a savings crisis. Too many people do not have the safety net of a rainy day fund or, in some cases, of any fund at all. British households do not have enough money in savings, and the amount they do have has been falling in recent years. This is, perhaps, unsurprising given the

[Lord Browne of Ladyton]
cost of living crisis that we have been experiencing. The data on this are very persuasive. ONS data show that 6% of pensioners—over half a million people—live in households where the total financial wealth is less than £10,000. Half—more than 4.8 million—live in a household where it is less than £20,000. However, that is not the whole story. Given the distribution within those bands, there must be a significant number of retirees with little or no cash available in savings. Interestingly, the ninth annual Scottish Widows pensions report stated that, of those already retired, one-third are still paying off debts, including mortgages. The average amount owed is in excess of £5,500—£5,682 to be precise. It is not as if those people are in a position to add to their savings in retirement. In a survey in June 2013, the insurance giants LV reported that nearly 2 million pensioners have an average £8 per week of disposable income. By way of comparison, that is less than the average eight year-old has as pocket money, according to another survey.

The case made by my noble friends and the right reverend Prelate about why people might need access to a lump sum deserves an answer. The lump-sum payment option was introduced in April 2005. I think my noble friend Lady Hollis was the Minister who oversaw its introduction. The reasoning then was the same as the case she has made today. Even if pensioners go into retirement with a just adequate income, they may well not have enough savings to deal with the rainy day problems we all face. Never mind the challenge of the eventual cost of their own burial, what happens if the boiler fails in a bitterly cold winter? Or the car that they require in a rural environment breaks down and they are otherwise trapped in their home? We can all think of circumstances in which a bit of capital would be of help.

We know who chooses to defer their pensions. Drawing on the DWP's own statistics, in March 2013, 1.2 million pensioners, or 9%, were receiving an income arising from a deferred pension, of whom 75% were women and 77% were living in the UK. We know that few of those who choose to defer take the lump-sum option; 63,000 payments were made in 2011-12, and the DWP forecasts that that will fall to 35,000 by 2017-18. In 2011-12, the average lump sum was £11,500, with the UK average being £13,700 and the overseas average £4,100. These are not significant sums, and the calculation could be done as to what this is likely to cost based on these statistics.

However, there are things that we do not know. First, we do not know why people choose to defer. Of those deferring, 75% are women, but the question is whether they are waiting until their partner retires to draw their pensions or there is some other motivation we do not know about. Are those who defer still working, deferring their retirement perhaps because they have saved too little and it is too early for them to retire? What do we know about the wealth of those who defer? Very little. The statistics already deployed show that 25% are overseas residents. Do we know why they make the choices that they do? We do not.

These Benches would like to understand the costs better. The DWP tells us that spending on lump sums currently costs about £800 million per annum and is due to fall to £700 million in real terms, although I am not sure by when. Obviously, these people have not been drawing their pensions for the period during which they deferred, so I presume that that is not a net cost—but maybe my presumption is wrong and it is. If it is not, what is the cost of the lump sum minus the pension forgone? What is the net cost of these deferrals in real terms? If there is a net cost, what rate would have to be offered to make the lump sum a cost-neutral choice?

Finally, I would like to understand why the Government want to end this. Is it the cost? Is it the administration? Is it the desire for simplicity? Are the Government sure that they know enough about the impact of this policy and the relatively small numbers who choose to defer? If not, has the Minister or his department considered further research on who is deferring? If it turns out primarily to be people with no or too little savings, what other option would he suggest for those who are retired and have no nest egg now, on what are likely to be low incomes with no means or opportunity to build up such a nest egg or capital?

Lord Freud: My Lords, as several noble Lords have said, the Bill does not provide an option for those deferring a single-tier pension to receive a lump-sum payment. Instead, the deferral arrangements will be simplified. Those who defer will receive a weekly increase in their state pension, enabling them to improve their pension income for retirement. Looking at some of the relevant figures, I can confirm the figure given by the noble Lord, Lord Browne, of 1.2 million people receiving an increment in March 2013, which was around 9% of the state pension case load. We had 63,000 lump sums taken in the latest year for which we have figures, 2011-12. In response to the query of the noble Baroness, Lady Hollis, two-thirds of those are women and one-third are men. However, under the new system, we expect that that is likely to change, and I will go into that in a little while. A primary objective for the reforms is to simplify the state pension and to provide a simpler foundation for private saving.

At this point, I was going to give the cost figures, which the noble Lord, Lord McKenzie, asked about. The savings from removing the lump sum in isolation from the change in the increment rate are around 85% of the overall deferral savings for 2030, which are outlined in the impact assessment. That figure will be between £250 million and £300 million in 2030.

5.15 pm

Baroness Hollis of Heigham: Why did the Minister in another place, Steve Webb, argue that one of the reasons for doing this was because the deferred pension, even at the proposed rate of 5.4%, was financially much more attractive to people and a much better buy, and therefore he was helping to protect would-be savers from themselves? If it is a better buy for the individuals receiving it, why does it therefore cost the Government money to keep the less expensive option going?

Lord Freud: It is a timing issue, of course, because you take the money in earlier. That is where the costs to the Government come from.

Baroness Hollis of Heigham: If the Government were making that monetary saving, they would have to show us that that would be a one-off saving and not a continuous saving. If those people then took instead the increased income, the cost of that would soar by comparison because the £62,000 or £63,000 would presumably move across. In order to save some upfront costs of the lump sum, the Minister is committing himself to an increased continued income on the deferred income option.

Lord Freud: I do not have the crossover point figure. I could look into that. Clearly, it would be different depending on the system. I can offer to discuss this with some graphics, which I suspect are essential, in a briefing session before Report.

Lord McKenzie of Luton: Will the Minister help me on another point about simplicity? We will come on to discuss 3A voluntary contributions in a moment. As I understand it, additional pension achieved via that route could be deferred and a lump sum could be taken. Is that right?

Lord Freud: Yes. The reason is that that is the equivalent of the private pension provision, which is a purchase. We are drawing a distinction here between public provision and private provision. With the pulling into a single tier, that is where the line is drawn between the two. As private pensions offer lump sums, that is where we would expect people to be taking them.

Baroness Hollis of Heigham: That cannot be reasonable, can it? After all, the new state pension combines the element, including the state second pension, which was bought up by people in lieu of and as an alternative to or an equivalent of an occupational pension and contracting out into it.

Lord Freud: Deferrals of lumps sums are both complex to understand and cumbersome to administer.

Baroness Hollis of Heigham: Why are they complex to understand?

Lord Freud: That complexity is illustrated in the DWP information booklet which provides guidance on deferrals. It runs to 60 pages and then recommends after all that that people get independent advice before making their decision. Even so, given the factors and variables, there is no guarantee that such advice would be forthcoming.

Reverting back to the class 3A distinction, that is clearly being directed at existing pensioners who currently get existing increments as a lump sum, so they are within the old system. It is being directed at people who are in the existing system rather than those in the single-tier system.

Baroness Hollis of Heigham: But that means, does it not, that the Minister is giving the option of a deferred lump sum within the state system, even though, a couple of minutes ago, he said that was exactly what he was not going to do because he wished to maintain the boundaries between state and private provision?

Lord Freud: Yes, that is the distinction between the existing system, where there is a lump sum, and the post-2016 single-tier system, where it is proposed that there should not be a lump sum. That is where the consistency lies.

The simplified arrangements under Clause 17 will mean that people will be able to work out both the level of increase they will build up as a result of deferring their state pension and the potential effect this will have on their future taxable income. People will be able to make their own arrangements to save their single-tier pension if they wish and build up savings in that way. This will give them a choice over what and when to save, in a form that meets their needs. We do not think that the state should continue to provide the lump-sum option as an alternative to savings in the long term.

However, there is a way of building up some capital, if people take 12 months of arrears of pension straightaway if they claim after state pension age. That is worth around £7,500 for someone with a full single-tier pension in 2013-14 terms. Our intention is to bring forward regulations for the single tier that will replicate the existing arrangements.

Baroness Hollis of Heigham: Could the Minister help us further? Is he saying that at the end of the first year post the conventional state retirement age you can choose to take your deferred pension as a lump sum for one year only but not for a second year? Is that what the Minister is now telling us?

Lord Freud: That is what I am saying.

Baroness Hollis of Heigham: Well, why? Why is it okay to do it for one year and not for two?

Lord Freud: That is the standard position whereby, if you are in arrears for a year, you can take the provision at the end of that year and that is treated as arrears of pension rather than a lump sum. Some noble Lords are very concerned about the issue of the nest egg. If we drop the distinction between arrears and lump sum, there is a nest egg opportunity in that £7,500, which may go a long way to satisfy the concerns that have been expressed with some vigour this afternoon.

The Lord Bishop of Chester: My Lords, I invite the Minister to comment on the more general point as we are getting into specifics, which I recognise are complicated. Do the Government agree that it would basically be a good thing if deferral was encouraged? Is it the Government's position that in the great scheme of things and income in old age it would be a good thing if the principle of people being encouraged to defer was affirmed?

Lord Freud: I am not sure that parliamentary privilege covers me for giving financial advice. Perhaps the noble Baroness, Lady Drake, could advise me on what I should say on that matter.

Baroness Drake (Lab): I think that the Minister is right not to give advice as to whether or not it suits an individual to defer. It depends on their personal circumstances.

Baroness Hollis of Heigham: Personal circumstances to the fore!

Lord Freud: I must thank the noble Baroness for keeping me out of jail. Many a seminar that I have been to would have told me that. It is a matter for people to judge.

The Lord Bishop of Chester: If I may have another little bite of the cherry, I do not wish the Minister or the Government to give any specific advice to any specific person. I am inviting a general comment upon the desirability of people looking to the longer term, given the parameters around old age and pensions in our society. If in some general terms that is a desirable object, without making any comment about specific cases, surely the more flexibility we build in, the better.

Lord Freud: I actually have very strong views on this matter but I think they are personal. I am going to utterly resist putting them on the record in this Committee but I would enjoy having tea with the right reverend Prelate and giving vent to my personal views at full force.

Baroness Drake: Could we come too?

The Lord Bishop of Chester: My Lords, very few people on the Committee will know that the last time that I had tea with the Minister was in his rooms in Merton College when we were both first years in 1969, so it would be good to have another cup. Given the nature of this discussion, I wonder whether the Minister could at least agree to take the issue away and think about it. There are issues here that may need a bit of teasing out other than in the circumstances of this Committee.

Lord Freud: I have to accept that the right reverend Prelate is on a very important and interesting point, on which one could write many a financial essay. I will go back and think about whether there is any generalised approach that we as a Government should take on this. I will resist any indulgence in doing so off the top of my head, though, because this is a huge and difficult issue.

Lord Browne of Ladyton (Lab): My Lords, I am pleased and not surprised that a cup of tea with the Minister can last one a very long time. May I tempt him to look at the challenge that he has been posed from a slightly different perspective? It strikes me that a number of things may be possible. First, I tempt him to express a view on whether he thinks that it would be a good thing to encourage people in their retirement to have some capital, rather than encouraging individual people to defer a pension or whatever. As a point of principle, would it not be better for us if our retired population had access to some capital that would cover these rainy-day situations?

Secondly, is it possible to take advantage of the Bill, in the way in which the Minister has suggested pensioners can do, by deferring taking pensions for a year and then taking that as a lump sum or by some other simple method to create an opportunity for people to take a deferred pension lump sum to provide that capital? I am struck that it should not necessarily be the case that the only way of doing this is to import a very complicated existing procedure as a method of taking a lump sum, and then finding that that confounded the argument for simplicity. Is it not worth spending some time to see whether there is a simpler method of doing this, such as perhaps an extension of what the Minister has tempted us with today as a possibility?

Lord Freud: My Lords, if it is a nest egg that noble Lords are worrying about, then the arrears approach is not a huge distance away from what they might find quite attractive. The best thing that I can do is try to spell that out in a bit more detail in a rather considered letter to Members of the Committee, to see if it addresses their concerns. The counterpoint is that a lot of people take their nest egg and blow it on a car. Concern about the no-savings culture is the other side of the lump sum coin and those people will face later old age, if they live a long time, poorer than they otherwise would have been because it is a complicated decision. I will think a little bit harder about the arrears issue we have discussed because it might give noble Lords what they are after, possibly without needing to change very much, but I need to spell out how that might work. My team is looking ecstatic at that offer and will fully support any tea-time activities I might indulge in later.

5.30 pm

I will just make one point before I ask the noble Baroness to withdraw her amendment. I know she always concentrates on the impact on women when it comes to pensions, for very good reasons. Historically, far more women than men deferred their state pension, but we expect the gender ratio to equalise as the pension age for women is aligned with that for men. Even allowing for an equal state pension age, women will typically draw their state pension for longer than men. Therefore, for women, the lump sum is likely to be less financially advantageous, and increments are likely to provide a better rate of return than for men. With that look into the future, and coming the closest I can go to giving any advice to anyone, I ask the noble Baroness to withdraw her amendment.

Baroness Hollis of Heigham: My Lords, I am extremely grateful to all Members of the Committee. I am sorry we did not hear from the Lib Dem Benches as we would then have had a full hand. I am grateful particularly to my noble friend Lady Dean, to my noble friend Lord Hutton for raising the debate in the way he did and to the right reverend Prelate for his persistent questioning. Both my noble friends continue to interrogate the Minister, which is really valuable. The right reverend Prelate said, "If it is not broken, why fix it?". I have seen no evidence at all, apart from the Minister saying this is not such a good buy for individuals as taking it as income, that the system is broken. The Government

are relying on having the upfront savings rather than the longer-term costs. That is not, in my view, a prudent way of handling finance.

My noble friend Lord Hutton, along with the right reverend Prelate, stressed that it is no use saying that we have to go for simplicity and thereby remove choice, if choice would be part of the attraction for people to save and defer taking their state pension. We do not have hard evidence on this, but we know from everything that is coming through from auto-enrolment and the pilots—including under my noble friend—that the nudge theory of encouraging people to stay opted-in and having them opt out rather than choosing to opt in was transformative. I remember when we got the figures from the Newcastle brewery, where something like 43% of its staff opted in to a pension. When it went to opting out, that went up to over 90%, and the only people opting out were students working in the summer vac. It transformed the pension regime in that brewery. It relied on nudge and inertia and ensuring that people could save in the way that was least problematic for them. Unless the Minister can show noble Lords—certainly me—that denying people the right to turn a deferred state pension into a lump sum will not only not have a negative effect on their savings but actually increase their savings, he is storing up problems for himself in the future.

Research last month by the LSE found that 483,000 people—nearly half a million, almost all of them pensioners—had either lost their home care support or were no longer eligible to claim it, as compared with 2008. Now, that home care will need to be funded by savings; it will not come out of income. People are losing the capacity to pay for home care week in, week out, as the cuts bite. My noble friend Lord McKenzie—

Lord Freud: To go back to the point of how people use their lump sum, it is towards the latter end of the pension drawdown period that you are going to need to pay for care. It is exactly at that time that any lump sum taken earlier will have been used up on other expenditure. That is why this is such a difficult area. A lump sum taken at 70 is probably not going to be around when social care is needed in the late 70s, for instance.

Baroness Hollis of Heigham: How does the Minister know? I represented one of the poorest wards in the city of Norwich and the pensioners I know were desperate to have a lump sum. Very often, they cast it in terms of paying for funerals, because that was a working-class, respectable-culture consideration. They desperately wanted savings and they did not have them. They managed weekly. Sometimes their daughters might help out with the odd bit of groceries when they did their shopping but the notion is that you can read across from people in the private sector having a car or holiday.

The same arguments apply to equity release. We know the research on equity release. We know that if people take it very early they may spend it on white-good replacement or on trying to keep up a standard of living but we also know that, as they grow older, they tend to take it for personal care. If, as the Minister suggests, he believes that it is going to be blown, why, for example, are his Government continuing to keep a tax-free lump sum? By his own argument, we should scrap that, on the grounds that the Government know better than the taxpayer how to spend the taxpayer's money. We should instead roll it into the basic pension that people have from their occupational fund because we know that only between 11% and 13% of pensioners use their tax-free lump sum to increase their pension; instead they use it to give themselves savings. We know that from the private sector. We have no reason to think that it would not apply here. I am amazed that the Minister seems to think that there are different cultures between those who have private, occupational pensions and those who do not. As a result, we are making it harder and harder for the poorest to have what each and every one of us wants—a modest cushion against, as my noble friend Lord Browne said, the rainy day. The Minister, the Government or the department seem to be pulling that possibility away from people for no good reason.

My noble friend Lord McKenzie asked about health impairment. The Minister did not answer that question at all. Under the new scheme, a spouse would not be able to inherit a deferred income that was accumulated by their deceased spouse but they could inherit the lump sum. That, too, is unfair. The couple have made a decision together that that is what they will do. They can take it in one form, but not in the other. Why? That is just the point at which the spouse may wish to have the cushion of a lump sum and is not able to inherit it. It is unfair.

The Minister may also choose to look at my other consideration, which has not been discussed today. Perhaps I should have raised it in my opening speech. Once you hit retirement age, if you carry on working, you are not entitled to continue to build up national insurance contributions. I think you should be able to do so, with employer input, although maybe that is a debate for another day.

Drawing on the report from Scottish Widows, my noble friend Lord Browne emphasised how many people retire with debt, including mortgages. He is absolutely right. Taking a lump sum that actually pays off that debt, which it would take years to accumulate through a modestly increased pension, may be the most prudent thing that those people can do, because that debt may require a much higher rate of payments to keep it covered than any other income that they could get. It could be through a loan company, for example, where they were paying APRs of 300%, 500% or 1,000%. A lump sum would pay that off and therefore increase the robustness of the rest of their income. That is what you can do with capital—you cannot do it with income. Again, I hope that the Minister will reflect on this. I know that he is concerned about people's indebtedness as they go into retirement, and by freeing them from a burden of debt he would actually improve their financial ability to cope once in retirement.

The Minister argued about the cost of the lump sum. He seemed to suggest that taking away the lump sum would produce 85% of the £800 million savings. I am completely baffled by that figure. What he is doing is removing the up-front cost of paying a lump sum

[Baroness Hollis of Heigham]
while paying out over a period of time at a higher cost to the Government. There is therefore a break-even point, five or maybe seven years down the line, at which the Government incur additional cost—not reduced cost—by getting rid of the lump sum. Obviously it is less financially attractive; a return of 2.5% or 3% is less attractive than the return of 5.4% that he is proposing. In that case, how can the Government say simultaneously that they are going to save money by getting rid of the lump sum and that if a person takes it as deferred income instead they will be better off? He is going to have to do some nimble footwork—I am sure he will be able to do so—to explain to the noble Lords how he gets to those savings.

The Minister helpfully said that people could already take a deferred pension at the end of one year as arrears of £7,500. If he were able to say that two years could be taken as arrears, I would be satisfied because that would give people the cushion that they would need, or some such flexibility. I take heart from the fact that he has responded, as I was confident that he would, to the range of feeling around the Room that this is simply the wrong way to go. All parties have genuinely attended to pensioners' incomes, and the present Government—I include both members of the coalition—as well as the previous one are entitled to claim high credit for that. It is a very good achievement for us to have taken pensioners out of income poverty. However, we are sending them into retirement with increased capital poverty. If we wish, we have the option of allowing them to do something about that. To say that we are removing the choice to address capital poverty in the name of simplicity is, frankly, Orwellian, and normally I would expect better from the Minister than that.

Under the circumstances, I will withdraw the amendment and hope that the Minister will be able to find a way through, perhaps around the hook of an assumption that this is actually paid as arrears. I thank again all noble Lords who have taken part in the debate and beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Amendment 33 not moved.

Clause 17 agreed.

Clauses 18 and 19 agreed.

Clause 20: Overseas residents

Amendment 33A

Moved by ***Lord German***

33A: Clause 20, page 10, line 5, at end insert "including those territories where reciprocal agreements have been reached with Great Britain"

Lord German (LD): My Lords, the amendment is an attempt to find an alternative approach to the solution of the anomaly of what is known in common parlance as the frozen pensions issue. At Second Reading I asked my noble friend if I could see the correspondence between other Governments where there were UK pensioners receiving only the frozen pension, in order to try to identify whether the idea of moving forward on the basis of reciprocal arrangements was actually going to be productive and would produce some way forward. It is clearly an anomaly; there are currently approximately 600,000 UK pensioners living outside the UK who get their pensions uprated in the same way as if they were living in the UK. At the same time, we do not uprate the pensions of about 550,000 UK pensioners, most of whom live in Commonwealth countries. All, of course, have made the appropriate financial contribution for their pension and many of them have relocated to be near family members. Many of them are former members of the British Armed Forces.

5.45 pm

My purpose is to try to probe and examine whether there is any benefit now in looking at reciprocal arrangements between this country and the countries where we do not have reciprocal arrangements, to see if there is any mutual benefit in such an approach. There may well be a quid pro quo for other countries to seek a way of ensuring that this is of mutual benefit to the United Kingdom and to the country concerned. If that were the case, we might be able to challenge the approach taken currently, which has been taken for a number of years.

When I asked my noble friend to release the correspondence, he said—I paraphrase—that he would rummage around the basement of the DWP to find the appropriate correspondence. Unfortunately, in the letter which he sent me on 9 December, he says,

"the relevant correspondence is not available as disclosure requires the permission of the foreign Governments involved".

That started a bit of a paper chase, in which I sought to find some details of that correspondence. Fortunately, I have had access to correspondence between the UK Government and the Canadian Government, who have a principal interest in this matter. On 18 June 2012, the honourable Diane Finley, the Minister of Human Resources and Skills Development, whose department, I believe, has responsibility for pensions issues in Canada, said that the Canadian Government will,

"vigorously pursue all diplomatic efforts to conclude an agreement with the United Kingdom".

Subsequently, in May this year, the same Minister, in her words,

"wrote a letter to the UK Minister for Works and Pensions to once again propose that, in light of the generational review of the British pension system"—

the Bill which noble Lords are now considering—

"our respective officials meet to negotiate a mutually beneficial agreement that would provide for the indexation of UK benefits".

The crucial words there, of course, are "mutually beneficial". That was precisely what I was going to be looking for in the correspondence, because the clear problem exemplified in the document which my noble friend's department has provided for us is that there is a cost to uprating.

That cost falls into two categories: the cost of uprating from the time at which the pension starts to be uprated and the secondary cost there might be if

there were challenges, perhaps through legal procedures, to previous payments which had not been uprated. Attempts to determine what precisely those might be have led to a large range of figures being provided in this area. However, in the document that we have before us, which my noble friend's department released, the estimate of the cost of the first of those categories is, by 2014-15, £590 million a year. That is the cost of uprating in that year if you start the process for those people whose pensions have been frozen. That is significantly less, by the way, than the earlier quote of around £700 million, which we heard from the House of Commons procedures on this Bill. However, what should interest noble Lords in this matter is how we have dealt with approaches from other Governments.

I understand that there have been no reciprocal agreements between the United Kingdom and another country covering the uprating of pensions since 1981. My noble friend helpfully tells us that this is because of the costs involved—I have just outlined the costs that we are talking about—and because it would lead to calls from other countries to negotiate similar agreements. However, if the reciprocal arrangement is to the mutual benefit of the other country and the United Kingdom, it is clearly in our interest to pursue and discuss these matters. The message that that would send to the Governments of other countries would be, "Don't bother to negotiate with us unless the package that you can produce is to the mutual benefit of the United Kingdom and your country".

When the Minister in Canada wrote to the United Kingdom Government asking for officials to meet to talk about—the word "negotiate" would be a bit strong—a mutually beneficial agreement, that raised my interest, which I hope noble Lords will share. I was therefore a bit dismayed to read in the letter dated 9 December from my noble friend that, because of the costs and the possibility of other countries negotiating similar agreements, the Government,

"has therefore informed the Australian and Canadian governments"—

I believe that a similar approach had been made by the Australian Government—

"that it will not be opening formal discussions on this policy".

Either the UK Government do not know what they would be receiving, in a mutually beneficial way, from the Canadian Government or there have been discussions that are not, in the word of the letter, "formal". I would be most grateful if my noble friend could tell us what discussions, if any, have taken place. Without those discussions, my noble friend cannot answer the question, "What would be mutually beneficial for the United Kingdom in the Canadian Government's offer?". My plea to him is that if, as I suspect, we do not know the sorts of offer that the Canadian Government might provide to the United Kingdom and whether that would lead to something of benefit to each side, perhaps we ought to have these discussions so that we can resolve the anomaly at least for some of these people. If there were such an agreement, that would encourage the Governments of other countries, notably New Zealand and Australia, to come up with a deal that was mutually beneficial to them and the United Kingdom. I do not know what was in the mind of the Canadian Government, but they clearly understand the problem for the United Kingdom.

I conclude with a remark made by a former Canadian high commissioner to the United Kingdom, who said that frozen British pensions were the only thorn in the side of an excellent bilateral relationship. It seems to me that an excellent bilateral relationship is one in which, when an offer is on the table of a mutually beneficial agreement, it is worth at least sitting down and talking about it.

Baroness Hollis of Heigham: My Lords, I had not expected to come in on this, but I am intrigued by the concept of mutual advantage to both countries. I have never been in a position to support—I use those words appropriately, I hope—the proposition that we have reciprocal relationships. That is primarily because the main beneficiaries are the UK citizens who have gone to the major Anglo-Saxon countries: Canada, above all Australia, to a lesser extent New Zealand, and South Africa. Obviously, there is free movement within the European Union. I am sure that the Minister will correct me if my stats are wrong, but when I last looked at this the reason why it was so costly—the figure used to be £400 million but I understand that it has gone up to over £600 million—was that four times or more British citizens go to those countries than come back to the UK. Therefore, I cannot see how it can be mutually advantageous if the UK is committed to spending four times as much pro rata as, say, the Australian Government—if those are the appropriate figures—in reverse. If it is the case, as I believe it to be, that so many more people are emigrating to those countries than come back to the UK to retire, essentially it is a one-way bid. That is why so many of us are concerned about this proposition. In Australia, particularly—I have less knowledge of New Zealand—there is income-related support which amplifies any state pension that someone may have brought with them from the UK. It is obviously means-tested but it ensures that those UK citizens have at least a minimally adequate income, so we are not talking about dire poverty, particularly as many of these people have retired and gone to join their families.

It is also the case—this was argued all the way up to the European courts, which found in favour of the British Government—that increments to the British pension in the UK were granted in the light of wider considerations of social policy, and to deal specifically with increased costs of living reflected in increased earnings within the UK. If you were to track the relevant figures—for example, in South Africa—you may well find that because of changes in currency rates, employment rates or wages, the British pension may well be worth more in the home country than in the country to which the retired person has moved as it was designed to deal with the UK situation. For many years when the state pension was first introduced there were no automatic increases at all. They were introduced as a regular item under the Wilson Government. Then, fairly quickly, Mrs Thatcher, after four years, separated the provision from earnings and attached it to prices, but only since then have

[Baroness Hollis of Heigham]
we assumed regular increments, which is why the problem possibly did not arise in those early reciprocal arrangements. The pension was designed to deal with the British cost of living and not with costs abroad.

As long as people emigrating or retiring to those countries where there is no reciprocal arrangement have full information about the financial implications of their choice—that is key—then they make that decision with their eyes open to what it means. Given that the Government are seeking to impose cuts on British pensions here for widows, and cuts in universal credit, income for disabled people and so on, I could not support seeing £600 million go to people who have made an informed decision to leave this country. If we were to have reciprocal arrangements, it would result in cuts to other very beleaguered services.

Lord Browne of Ladyton: My Lords, I wish to speak to Amendment 33A in the name of the noble Lord, Lord German, and to support Amendment 33B, which stands in my name and that of my noble friend Lady Sherlock. I am grateful to the noble Lord, Lord German, for his explanation of the motivation behind his amendment. We had the benefit of his contribution to the Second Reading debate, to which I listened carefully, in which he explained the provisions of this amendment and posed questions to the Minister on them.

However, when I looked at the mechanism he had chosen, I was slightly concerned that he was seeking to empower the Government to act in breach of the EU and international law in the form of bilateral treaties, and that he felt so strongly on the issue that anything which budged the status quo was worth arguing for. However, I understand his motivation and am intrigued by the questions that he asked, and those which my noble friend Lady Hollis asked, about how one can—specifically in regard to Canada—come to some mutually beneficial agreement in these circumstances. He is right to be intrigued by that. These are the words of the Canadian Minister and, if that is the offer that they are making, it would be interesting to know the extent to which the Government know the detail of that offer and whether an argument can be made for it.

However, I move on from that, as I wait in anticipation of the Minister's response to these interesting questions, to Amendment 33B. Before I come to the argument for it I should say, as was explained by my honourable friend Gregg McClymont in the debate on this issue in the Commons, that we are not hostile to the government position of continuing not to uprate pensions in countries where they are not currently uprated. It would be extremely difficult to explain why we had not done this in years of government if we were now to take this position. We have the benefit of the Government's estimate of the cost of doing so.

6 pm

Sitting suspended for a Division in the House.

6.10 pm

Lord Browne of Ladyton: My Lords, we have the benefit of the Government's estimate of the cost of uprating those pensions that are not presently uprated, which is in the region of £700 million, plus of course the possibility of significant backdating. Once payment began then the arguments for backdating would subsequently follow; I do not think that that would be unexpected. We on these Benches agree that at present this is not a priority for our country, and that the cost is important.

That leads me directly to the justification and the reason for Amendment 33B. We promote this review for many of the same reasons that the noble Lord, Lord German, promotes his questions on engagement—to help us to reach a definitive and informed judgment on the costs and benefits of uprating. We are not calling on the Government to uprate. If the analysis that we call for, which we understand is capable of being done on a cross-governmental basis, has been done in whole or in part, then we would welcome the information that is available because it would help our understanding of the necessary information and the calculation of the costs and benefits. By this method we seek to inform the debate, and that is the consistent approach of our amendments calling for a review in different parts of the Bill.

Importantly, this issue is not going to go away; I think that we all appreciate that. In fact, as my honourable friend Sheila Gilmore made clear in the House of Commons, it is impossible to be a Member of that House without being assailed by the impressive campaign consistently being run by those who feel aggrieved because they have not benefited from uprating over a lengthy period. Indeed, many noble Lords have also been assailed by these arguments in correspondence. I remember, at the time when I was in the House of Commons, receiving correspondence regularly and indeed, on occasions, people at my constituency advice surgeries who were home-visiting relatives coming to argue and make the points for uprating in a very forceful fashion.

Those who have campaigned for uprating for these frozen pensions have been encouraged in that campaign at various times by senior politicians. Mischievously, I cannot resist the temptation to remind noble Lords that in 2004, when the Pensions Bill was passing through Parliament, the now Pensions Minister Stephen Webb told campaigners,

> "I agree that pensioners who earned their pensions by paying national insurance contributions have a strong case for the value of that pension being maintained in line with inflation, and I am actively seeking such a change. As you may be aware, there is currently a Pension Bill passing through Parliament. I will take this opportunity to table an amendment, seeking to uprate the 'frozen pensions' of expatriates".

My researches have not gone to the extent of trying to find out whether or not he did in fact promote such an amendment, but he certainly indicated his intention to do so. He has clearly changed his mind, and I suspect that he may not be the last Back-Bencher to find his words in the surgery haunting him once he is in ministerial office. It was once famously said by someone that when the facts changed, he changed his mind. Here the facts have not changed—they have been consistently the same—but the mind has changed.

6.15 pm

The issue, as we know, is not ever present in our media, but comes up periodically, and will continue to do so. We need to engage with it in a constructive way. Not unreasonably, in my view, does the International Consortium of British Pensioners seek a proper assessment of the impact of overseas pensioners on the public finances. It asks for consideration to be given to the benefit that the UK economy gets from the expatriate pensioners who reside outside the EU. In moving this amendment, we are seeking just such a review, the purpose of which is to inform this debate and to allow a judgment to be made about the Government's estimate of the cost—in short, whether it is the true cost.

In the Commons, the Pensions Minister opposed this amendment. In doing so, he left significant questions unanswered and I hope that the Minister will be encouraged to engage with these. Is it the Government's view that an analysis of this nature would be difficult to undertake? In particular, is it the Government's view that a review would unfairly raise expectations? In Committee, Steve Webb, the Pensions Minister, told the House of Commons that only 2% of British pensioners move overseas as pensioners. He went on to say that a significant number move just before retiring. Do the Government have statistical evidence to support that assertion, or is it based on other information? Any further clarity that the Minister can give to the principle of this matter would be very welcome.

Finally, the Pensions Minister said that he remained sympathetic to the case. Do the Government remain sympathetic to the case? If so, and if financial circumstances allowed, would they be willing to uprate these pensions? With respect, I think that is the most interesting question of the afternoon.

Lord Freud: My Lords, as the noble Baroness, Lady Hollis, pointed out, the policy on the uprating of state pensions for pensioners abroad is a long-standing one. It has been regularly debated over the years. Clause 20 provides an enabling power for regulations to restrict the availability of annual uprates, as now, in the new state pension where the recipient is living overseas. The Government's intention is that there will be no difference in treatment between the new and old state pensions as to overseas uprating, either generally or with regard to the UK's various bilateral agreements. I can reassure noble Lords that all our existing legal obligations with regard to uprating of pensions under bilateral agreements—along with the European co-ordination regulations—will continue to be honoured. To treat the new single-tier pension differently to the current pension would clearly go against the spirit of these agreements. However, I should make it clear that there are no current plans to enter into any new social security bilateral agreements.

There are a number of factors to be considered behind that decision. These are the number of people moving between countries, the benefits available under the other country's scheme, the compatibility of systems and how far and to what extent reciprocity can be achieved. Future costs are also considered in both the implementation and future operation of any agreement. A bilateral agreement with Australia existed in 2001 when Australia ended it because of a dispute around the current UK policy on uprating UK state pensions paid overseas. There are no plans to enter into a new bilateral agreement with Australia, as any agreement would not achieve reciprocity between it and the United Kingdom.

I shall pick up the Canadian point. Bilateral agreements cover social security matters only, rather than matters beyond this scope which might be described as mutually beneficial. DWP officials are not aware of a discussion or correspondence on this wider scope of mutually beneficial arrangements. I cannot confirm the figures provided by the noble Baroness, Lady Hollis, on whether four times more go to Australia than come back, but she is normally well informed.

I need to make information available on the numbers. We are in the process of updating and quality assuring our estimate of the cost of unfreezing pensions for 2014-15. The department has moved from modelling change to the case load at a population level to a more complex methodology, which takes account of individual characteristics and provides a more accurate estimate when applied to historic data. As a consequence, we now estimate that the cost of extending the uprating of pensions currently paid overseas is slightly reduced but it will still represent a substantial cost to UK taxpayers of more than £0.5 billion per annum. My noble friend is right in saying that this is somewhat below the previous estimate, based on general populations, of £700 million. The department has recently released a statistical publication that clarifies this matter, to which I can refer noble Lords if they need more information.

On the point of the noble Baroness, Lady Hollis, on whether people have full information, the department issues the following leaflets which include information on the impact of living outside the UK and the annual uprating increase for UK state pensions: leaflet BR 23, leaflet DWP040 and leaflet DWP026. The 040 leaflet is sent out with the state pension statement, for instance. Information is available on the government website and *Social Security Abroad*, leaflet NI138, issued by HMRC, and also includes similar advice.

The amendment in the name of the noble Lord, Lord Browne, on reviewing overseas residents' provision assumes that we would be able to identify and assess the behavioural link between uprating policy and migration patterns. The question about a review is whether it would raise expectations. The noble Lord posed the question about whether we would uprate if we had the money. The noble Baroness, Lady Hollis, was spot on when she raised the issue about making very difficult decisions on payments. Finding £500 million is not an easy business. Clearly, there will always be different priorities for £500 million per annum, as indeed the previous Government decided at a time when there appeared to be more money floating around than there appears to be today. I will not step on anyone's grave in the collegiate atmosphere of this Committee.

The final question raised by the noble Lord, Lord Browne, was on the numbers of pension-age people moving abroad. That comes from the document from the ONS called *Emigration from the UK, November 2012,* which states:

[LORD FREUD]

"Only two per cent (or 6,000) of those emigrating were over the state pension age of 60 for women and 65 years for men".

The report also interestingly indicates that 10% were aged between 45 and 59/64 years.

We are aware of research that suggests that a theoretical and economic case can be made to support the uprating of state pensions for all recipients abroad. However, it is notable that this analysis has not been able to provide evidence of a proven behavioural link between uprating and pensioner migration. In fact, we think it unlikely that any review would demonstrate that. In any case, the decision to emigrate abroad remains a personal choice for individuals. In the absence of that kind of evidence, we know that the cost of extending the uprating of pensions currently paid overseas remains significant at more than £0.5 billion per annum. The Government, like their predecessors over the past 60 years, believe that they must put the interests of pensioners living in the UK over the interests of those living overseas by restricting the availability of uprates to those living here or in a country where we have a legal or treaty obligation to provide them. I therefore ask the noble Lord to withdraw his amendment.

Lord German: My Lords, I thank noble Lords who have taken part in this debate. It is an interesting one because in the words, I think, of the noble Lord, Lord Browne, it is one that will not go away and will continue to raise its head. I am grateful to the noble Lord, Lord Browne, for reminding noble Lords that at Second Reading I did preface my remarks quite clearly by saying that I was not seeking to pay huge amounts of money to deal with this matter in the manner that many people have demanded or asked. It is a question of trying to find an alternative approach, which is what I was seeking to do with this amendment and in my earlier statements at Second Reading.

As many noble Lords have mentioned, people are putting pressure on noble Lords and Members of the other House to come up with some solutions. The challenge is to think of a way in which an approach might be developed, and I put one before noble Lords in this amendment. I hope it was quite clear that the amendment was not seeking any approach beyond a quid pro quo with another Government so that the message would be clear to any other Government seeking to approach the United Kingdom on this issue. Quite a number have approached the United Kingdom over the years, including some quite surprising places such as Mongolia. If we are going to go down this route, we need to ensure that there is a clear message that there will be no additional costs to United Kingdom plc.

I note what my noble friend said about reciprocity only being looked at from a social security angle. However, that raises another point, on which I echo some thoughts back to the noble Baroness, Lady Hollis. If income comes to UK plc, providing the UK Government can redistribute accordingly, there may well be opportunities in any agreement beyond just simple social security. I think that has been consistently looked at as the approach for all these reciprocal arrangements, right back to the very beginning.

Baroness Hollis of Heigham: I am intrigued by the notion of it being mutually advantageous. The noble Lord raised this—rightly and in an interesting way—at Second Reading and again today and has been understandably careful about not seeking to load a substantial increase on the pensions bill for people who no longer live in this country. When he talks about mutual advantage, he must have thought about what that might look like. What suggestions has he got? What propositions have been made? I cannot understand why it is about anything other than money, to the advantage of people who have left the country. Can he give us some indication of how his thinking might go in that way because I am sure it would be of considerable interest to the Committee?

6.30 pm

Lord German: Perhaps I could put inverted commas around the comments of the noble Baroness, Lady Hollis, and refer them, and the precise nature of this debate, to the Minister in Canada. I do not know what was in their mind. My noble friend the Minister here cannot know either, because of course they closed the door to any discussion with the officials from the Canadian Government. However, we need a discussion about this issue. It may well be that it is not with DWP Ministers; it may need to be at some other level.

I do not know the answer to the noble Baroness's question. All I know is that the Canadian Government believe that they have a mutually beneficial offer to make. That seems to me to be worthy of further discussion; no more than that. I make it clear that I am very much in favour of managing expectations here. The amendment does not call for expenditure at the levels which we have seen before us, and I do not wish to see a reduction in social security expenditure for people currently living in this country as a result. However, when an offer of that sort is made, it is worthy of examination. If there were to be the sorts of things that would make it mutually beneficial, and the Canadian Government believe it to be mutually beneficial to adopt a procedure for Canadian UK pensioners, then it is worth at least finding out what is on the table. If it were to be a successful offer, that of course quite clearly sends the message to other Governments that they can come up with a deal that actually meets the expectations of this Government and the British people.

Baroness Hollis of Heigham: I am sorry to interrupt the noble Lord again; he is being very tolerant, for which I am grateful. Again, I am relying on my memory, which is probably faulty, but something in the order of 85% of overseas pensioners outside the EU are in the four major Anglo-Saxon countries. However, the countries in which most of us would recognise that there are anomalies are not so much the big four Anglo-Saxon countries, which have decent social security systems for poverty relief as a safety net and so on. This is about the mixed history of some Caribbean islands, which came in under the net, before 1979, for protection of overseas pensioners, while others did not. Once we started inflating pensions by the cost of living—I am not sure that this was accidental—bilateral relations disappeared at that point because they started to reflect the British cost of living. Those countries are so

poor that they are looking for a form of aid in the form of pensions. How would the noble Lord justify coming to a mutually advantageous deal with a relatively wealthy country like Canada while, because an appropriately mutually advantageous offer could not be made with Caribbean islands, that opportunity would be refused to some of the poorer countries?

Lord German: We have gone a very long way from what might be the first step in this direction. We have not yet been able to answer that first question: what do any Government have ready to offer?

Incidentally, the Government's figures are quite clear. They say that 85% of all those with frozen pensions live in Canada, New Zealand and Australia. Those are huge numbers. One of the interesting things when you look at these issues, as noble Lords will know, is that other countries produce information, which comes to you in emails. The noble Baroness, Lady Hollis, asked earlier about Australian pensions. I understand that they are means-tested, but only by 50% of total income over the threshold, so if the UK pension was increased by £20 then the Australian pension would be reduced by the equivalent of £10. As we know, it is not always as clear as we suggest.

My intention in tabling the amendment was simply to be able to examine the issue in a different way, and only then to consider it further. However, it seems to me that we need an answer. I have not yet heard the answer, although of course I could not expect to hear an answer from my noble friend since the discussion with officials was not allowed to take place. However, I encourage that discussion to take place, even if it is over a cup of tea with another group of officials at some stage. In a spirit of hope that this will happen, I beg leave to withdraw the amendment.

Amendment 33A withdrawn.

Clause 20 agreed.

Amendment 33B not moved.

Clauses 21 and 22 agreed.

Clause 23: Amendments

Amendment 34

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

34: Clause 23, page 11, line 30, at end insert—

"( ) Before the provisions contained in paragraphs 83 to 86 of Schedule 12 come into effect, the Secretary of State shall set out comprehensive arrangements for the passporting to benefits for those no longer eligible for the savings credit."

Lord McKenzie of Luton: My Lords, this is a probing amendment to give us a chance to have a canter round the passporting issues. The impact assessment has a section on passported benefits. We had a brief excursion into these matters when we last met and have since had a helpful letter from the Minister. The impact assessment sets it out clearly:

"If pensioners are no longer eligible for Pension Credit as a result of the single-tier reforms then they could lose eligibility to some of these 'passported benefits'".

That is straightforward. It goes on to state:

"Receipt of Guarantee Credit passports pensioners to the full amount of Housing Benefit and Council Tax Benefit … There is little reduction in Guarantee Credit eligibility resulting from the single tier".

Therefore, this has a limited impact on the proportion of pensioners who are eligible to be passported. Yet in his letter—and we understand the arithmetic—the Minister tells us that in 2020 there will be a fall of around 15% to 20% of the total eligible for guarantee credit in these cohorts.

Going back to the impact assessment, we are reminded that there are other benefits that are linked to receipt of guarantee credit such as health benefits and Social Fund payments, so that pensioners no longer entitled to guarantee credit as a result of the single-tier measures may also lose eligibility to these other benefits. But again we are told that,

"there is only a small impact of single tier on entitlement to Guarantee Credit".

The cynic might conclude that, when dealing with passported benefits, the Government are seeking to play down the reduction in guarantee credit recipients but are otherwise seeking to reassure us that single tier will reduce means-testing. I accept the figures in the Minister's letter that in the 2040s there will be some 50,000 fewer households on guarantee credit than would have been the case under the existing state pension arrangements. It is further accepted that fewer will be on guarantee credit because their income has risen. However, the working assumption is that STP will be set just marginally above the guarantee credit level, so for notionally swapping pension income for guarantee credit some 50,000 are notionally missing out on passporting. Is this correct? What are the estimated savings to government from this? There seems clearly to be no intent to compensate in any way. As our documentation makes clear, the main driver of reductions in pension credit is the demise of the savings credit. Chart 4.1 of the impact assessment shows—as a percentage of the population reaching state pension age after the introduction of single tier—the change in the composition of those eligible for pension credit, but I cannot readily locate the absolute numbers of households which lose savings credits and the notional average amounts. The chart is done in percentage terms. Can the Minister help us on this?

So far as the passporting of benefits is concerned, under current arrangements most depend on guarantee credit. However, receipt of the savings credit can unlock access to such benefits as cold weather payments, affordable warmth obligations of energy companies and, until abolition, working tax credit and child tax credit. How many pensioners will have no access to cold weather payments under STP who would have under the current arrangements? How much money are the Government saving by this, and are there plans to put in place any alternative arrangements? I beg to move.

Lord Browne of Ladyton: My Lords, in speaking to this amendment I shall speak also to Amendment 36A in the name of my noble friend Lady Sherlock and myself. Amendment 36A is a small probing amendment designed simply to draw out the Minister on the

[Lord Browne of Ladyton]
impact of the abolition of savings credit on mixed-age couples—that is, a couple where one member reaches the state pension age before 6 April 2016 and the other after. The relevant provision in the Bill is to be found in paragraph 85 of Schedule 12, and the mechanism is the insertion of Section 3ZA into the State Pension Credit Act 2002. Subsection (1) of this new section of that Act reads as follows:

"Regulations may provide that, in prescribed cases, a person who is a member of a mixed-age couple is not entitled to a savings credit".

Subsection (2) reads:

"For example, the regulations could provide that a member of a mixed-age couple is not entitled to a savings credit unless … the person has been awarded a savings credit with effect from a day before 6 April 2016 and was entitled to a savings credit immediately before that date, and … the person remained entitled to state pension credit at all times since the beginning of 6 April 2016".

For good reasons to do with the interpretation of statutory powers, it is unusual to legislate by example, and with this amendment I am seeking to draw out the Minister on why the Government have chosen to do so. The answer may be that there is some existing provision that has to be re-enacted. If that is the case, I would quite like the Minister to go further and explain why there is this particular example of circumstances where a mixed-age couple would not be entitled to savings credit. For the record, I think it would instruct and inform the public and the Committee if the Government explained whether it is their intention that these example circumstances will be the only circumstances in which a mixed-age couple are entitled to savings credit. How many couples do the Government expect will be affected by this very specific change?

On the broader issue of the loss of savings credit, will the Minister clarify precisely how many people are currently entitled to savings credit only? I cannot reconcile the figures from the different case load statistics that I have access to. Will he clarify how much the mean and median loss—the notional loss, if he prefers—will be? Will he engage with the question of whether or not this will create a cliff edge for those who just miss out on guarantee credit?

Turning to my noble friend's amendment, what will happen to entitlement to those benefits that are passported off savings credit? According to the paper from his officials, these are assisted prison visits, affordable warmth, access to the Social Fund—presuming, of course, that there is anything left of it—working tax credit, child tax credit and the Sure Start maternity grant. Will these people still be entitled to those, based on the maximum income on which they could have been eligible for savings credit?

6.45 pm

Lord Freud: My Lords, as you know, these amendments seek detailed arrangements of passporting to other benefits for single-tier recipients who would, under the current system, have been receiving a basic state pension with a modest private pension income above that level. They would also ensure that mixed-age couples, where one member has reached state pension age before 6 April 2016 and the other after, would retain access to the savings credit. As noble Lords will be aware, the savings credit, which is currently available to those aged 65 and over, will continue to be available to those who reach state pension age before 6 April 2016, and mixed-age couples who are already in receipt on that date will continue to receive it.

The guarantee credit will continue to be available for the poorest, regardless of when they reach state pension age, and receipt of the guarantee credit will, for example, continue to give access to the warm home discount scheme and to cold weather payments. Moreover, poorer pensioners, in the bottom income quintile, are among the principal beneficiaries of these reforms: more than half will be better off in the first 25 years, with a median gain of £8 a week in 2040 and £5 in 2020.

The full rate of the new single-tier pension will be set above the basic means test. Where both members of a couple receive the full single-tier pension, they will receive nearly a third more than the couple rate of the pension credit standard minimum guarantee, based on 2013 rates. This means state pension income alone will raise them above the standard income level at which pension credit runs out. Savings credit already rewards some couples for their state pension, which muddies the original intention. Mixed-age couples, where one is on a full basic state pension and the other a full single-tier pension, would also have income above the couple's standard minimum guarantee.

A key principle of the reforms is to remove access to savings credit for single-tier households, which includes couples where one reaches state pension age before 6 April 2016. We need to balance the fairness between recipients and taxpayers in dealing with the conflict between the individual basis of the single-tier pension and the household basis of the savings credit. However, we will allow those mixed-age couples already in receipt of savings credit on 6 April to retain it, if they continue to meet the eligibility conditions.

Amendment 36A would retain means-testing for the mixed-age couple group and continue to reward some with savings credit for their state pension, but without any increase in savings incentives, which is why we oppose it. The cost of the amendment would be up to £20 million per year into the 2030s.

I shall pick up the issue of why we include the example. The power in the Bill will allow us to specify when the restrictions should and should not apply. The example in new Section 3ZA(2) captures one situation where we may wish to allow existing recipients to retain the entitlement, but we may identify more situations as we work through the detail of single tier. The numbers affected are likely to be small, with a maximum of 20,000 couples at any one time, and a total of 40,000 couples affected at some time over their retirement, which is only 5% of an estimated 800,000 mixed-age couples. Of those potentially affected, only around two-thirds would have claimed, because of the low take-up issue. Changes in circumstances during retirement mean that, on average, a mixed-aged couple would miss out for only seven years of their retirement.

The noble Lords, Lord McKenzie and Lord Browne, asked about numbers in receipt of savings credit. There are currently 540,000 receiving only savings

credit. The average median loss of savings credit peaks at around £10 per week in 2020, but the net impact on household income is only expected to be £8 per week at that point.

Lord Browne of Ladyton: Before the Minister moves too far away from my specific question, which was exploring legislation by example, I should perhaps correct what I said. In explaining this, I remember suggesting that new Section 3ZA(2) was about the circumstances in which somebody would be "entitled" to savings credit. However, the wording is "not entitled to". I wish to clarify that for the purposes of the record. I am really not clear why the Government choose to legislate by putting into primary legislation an example of the only set of circumstances that they have currently come across in which, specifically, a mixed-age couple would not be entitled to savings credit and then say they expect that there are other sets of circumstances out there but that they have not formulated them yet. Why put in any example at all? What is the purpose of it?

Lord Freud: The purpose is that we want to retain the ability to avoid cash losers. That is the purpose of this particular power. In relation to the potential impact of the removal of savings credit on passporting, I remind noble Lords that, while pension credit acts as a passport to a number of other benefits, most are linked to receipt of the guarantee credit rather than the savings credit. Housing benefit and council tax reductions are not limited to pension credit recipients; they can already be claimed on low-income grounds regardless of receipt of pension credit, and this will continue. Furthermore, there is a higher applicable amount for pensioners over 65 in housing benefit, essentially to ensure that the savings credit is not itself means-tested away for those paying rent. This higher applicable amount applies to all pensioners over 65, not just those receiving savings credit. This provision will continue for at least as long as housing benefit remains. As noble Lords may be aware, we recently announced that there are no plans to change housing benefit for pensioners until at least 2017-18.

Unlike housing support, entitlement to social fund payments, including cold weather payments, requires receipt of pension credit, and this can include people getting savings credit only. I assure the noble Lord, Lord McKenzie, that we have made no assumption of savings from cold weather payments as a result of the changes in this Bill.

On the question of figures—

Baroness Hollis of Heigham: Is the noble Lord saying that cold weather payments will continue as is?

Lord Freud: No, it means that we do not expect that we will be paying out less in cold weather payments because of these changes.

Baroness Hollis of Heigham: Then I am even more confused. If we are denying a category of people the right to cold weather payments, how is it that the bill is remaining the same?

Lord Freud: Clearly, it is because we are expecting that broadly the same numbers of people will be getting cold weather payments. Because of the complexity around this, as I was trying to indicate, we have put no assumption of savings into these figures.

Lord McKenzie of Luton: I accept that the Government have not put in any assumptions of savings but if, in fact, there are going to be 540,000 fewer individuals on savings credit and presumably at least some of those would have been able to access cold weather payments under current arrangements—quite apart from couples; I am not talking here about mixed-age couples—there must be savings. There must be circumstances where cold weather payments are not going to be due to somebody in the future who would have got them under the current arrangements. We are just trying to understand the numbers and the savings.

Lord Freud: We estimate that only 80,000 who would otherwise have been claiming pension credit in 2020 will be taken out of the scope of cold weather payments. Cold weather payments will clearly continue to be linked to savings credit, but it is difficult to say whether the 100,000 who may lose savings credit would get cold weather payments for other reasons. It depends on where they are living and what is triggered. That is the reason that we have not made any assumptions. On the basis of these observations and, in particular, the reassurance in respect of support with housing costs, I ask the noble Lord to withdraw the amendment.

Lord McKenzie of Luton: My Lords, I am going to withdraw the amendment—we are in the Moses Room—but I am bound to say that I think that the noble Lord would himself recognise that that answer in no significant way addressed the issues we were trying to explore. I will just restate them, and maybe we could have follow-up correspondence. Maybe we should have one of our sessions around this; it is important that we get to the bottom of it. We are seeking to understand how many individuals who would get the savings credit under current arrangements will not do so under the new arrangements in the future, whether they are individuals or couples; I am not dealing here with mixed-age couples. What is the average loss of income because of the denial of savings credit? What is the benefit to government of having restricted passporting of these individuals to a range of benefits, except that some of them may have other routes to those benefits? Of course, the cold weather payments depend on where they live; I am not asking the noble Lord to assume that they go and live in the Antarctic, Scotland or somewhere cold. Sorry, Des; I am in hot—no, cold—water.

The Minister will see the point that I am probing here. There must be savings to government from these changes and we are just trying to understand the measure of them. I take it from the Minister's reply that there is absolutely no intent to bring forward any special arrangements to reinstate this sort of entitlement for people who will fall out of it because the savings credit is no longer applicable or because they are just at the threshold of being out of the guarantee credit. That is where S2P is going to be pitched, on the basis

[Lord McKenzie of Luton]
of all the information that we have. I am not sure that we can make much further progress on this issue this afternoon, unless the Minister is going to—

Lord Freud: I think the noble Lord made a valuable suggestion. This is one of the issues we can look at in a pre-Report session, at which we can go through some of the figures and tables. I am happy to commit to arranging that.

Lord McKenzie of Luton: I am grateful for that. On that basis, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Clause 23 agreed.

7 pm

Schedule 12: State pension: amendments

Amendment 35 not moved.

Amendment 36

Moved by ***Lord Freud***

36: Schedule 12, page 62, line 25, at end insert—

"In Schedule 4 to the Marriage (Same Sex Couples) Act 2013, omit paragraphs 11, 12, 13 and 16."

Lord Freud: My Lords, this is a minor technical amendment. It is being made as a consequence of Part 2 of Schedule 12 which, among other things, amends and consolidates the provisions dealing with category B pensions, which will continue to be available to people reaching state pension age before the magic date of 6 April 2016. These provisions have recently been amended by the Marriage (Same Sex Couples) Act 2013 in order to extend category B pensions to same-sex spouses. This Bill already takes account of these recent amendments. They are consolidated in paragraphs 55-61 and 63 of Schedule 12. The amendments in the Marriage (Same Sex Couples) Act will therefore be redundant when Schedule 12 comes into force so this amendment simply removes them from that point. I beg to move.

Lord Browne of Ladyton: My Lords, I am grateful to the Minister for confirmation for the record that this is a genuine and consequential amendment and I accept that. I am encouraged to ask a question, which he may not be in a position to answer, and I would be happy if he could write to confirm what I suspect is a simple answer to this. As a consequence of drawing my attention to this area of the law, I am moved to ask whether the Minister can confirm if there is any difference in the transitional arrangements that will apply to members of a civil partnership or same-sex marriage who divorce if one of them has reached state pension age before 6 April 2016? I do not want to detain the Committee in the detail of that. If the answer is no that is the answer I am looking for.

Lord Freud: I am very pleased to give the answer the noble Lord is looking for. No.

Lord Browne of Ladyton: I am grateful to the Minister and am pleased to have that on record. I have nothing further to add.

Amendment 36 agreed.

Amendment 36A not moved.

Schedule 12 agreed.

Clause 24: Abolition of contracting-out for salary related schemes etc

Amendment 37

Moved by ***Baroness Turner of Camden***

37: Clause 24, page 11, line 34, leave out subsections (2) to (5)

Baroness Turner of Camden: My Lords, Subsections (2) to (5) of Clause 24 and Schedule 14 give employers powers to amend employee contributions and benefits in their occupational schemes to an extent supposed to be limited to the cost of the extra national insurance the employer will have to pay as a result of the end of contracting out. I am totally opposed to this clause and also to Schedule 14. The proposal potentially impacts on 1.6 million active members of private sector DB schemes. It would enable any existing protection for members' benefits in legislation or scheme rules to be overridden. This includes specific statutory protection given to members in former nationalised industries when they were privatised and also measures of protection that employers in times past have agreed to write into their schemes.

The ending of contracting out and the associated increase in employer national insurance is, in principle, no different from any other risk employers with DB schemes might face and there is no sound justification for the Government to disturb the existing balance of power in relation to these schemes. The extra cost on employers is no greater than as might arise in the event of a small change in market interest rates. There was no suggestion of intervention to protect scheme members who lost out when the Government, not so long ago, amended the statutory basis of the pension increase from RPI to CPI. A number of us objected at the time. Governments should allow the problems arising for employers on this count to be dealt with through the established process whereby changes can be effected by negotiation and agreement. An overriding power based on being able to recover a set amount of cost could result in great unfairness as there may be no correspondence between the variable amounts members may gain from a single state pension and those they may lose if employers are allowed to determine unilaterally the form of contribution and benefit changes in occupational schemes.

I also recall, during my career as a trade union official a number of years ago, how keen we were to negotiate what we then called final salary schemes—

DB schemes. As a result of the schemes that we negotiated then, there have been beneficial changes for many pensioners. As we know, though, after a certain number of years there was a bit of a campaign against DB schemes, as a result of which a number of employers decided that they would scale down their DB schemes. I have sensed that there remains not a hostility but a lack of concern and support on the part of the Government for DB schemes. These schemes excellently provided for generations of pensioners, who are very grateful for the fact that they are in existence.

What is proposed here is not in any way acceptable. I very much hope that the Government will take it away and rethink it. I am not the only person to feel this; the Minister will notice that there are a number of other amendments in this group, including my own Amendment 40, which are designed to protect employees who were covered by existing protections when they belonged to former nationalised industries that were denationalised. As a result of that, there was legislation that provided for protection. In fact, the protected persons were first introduced by an Act of Parliament in 1948 and reaffirmed by the Thatcher Government on the denationalisation of the electricity supply industry in 1990.

The Government now propose, in my view, to override the statutory provisions providing these pensions, in order to allow employers to claw back the additional NI contributions. This really is the thin end of the wedge and I do not think we should accept it. The Government should take it away and rethink it, because I regard it as quite unacceptable and so do many people, including individuals who are themselves beneficiaries of DB schemes and the unions that support them. I beg to move.

Lord Whitty: My Lords, I have amendments in this group that broadly support the line that my noble friend has been taking. She was right to try to prise open what the Government's strategy actually is.

Everyone recognises that there are consequences of contracting out, but under this clause and schedule the Government are effectively giving carte blanche to employers to change established means of paying occupational pensions among private sector employees. Government amendments 48 and 49 actually make that worse by making it pretty explicit that the full cost of that will, or at least can, fall on the employees so that not only are the employers given the right not only to avoid the consequences of that cost and place it on to the employees, which is likely to have the knock-on effect of people opting out of the schemes, but they are overriding the long-established system whereby such schemes are governed by trustees representing the employers, the contributing members and often the pensioners in those schemes. To override the whole system of pension trustees that we have had in place for the past 40 or so years with regard to private occupational pensions is a very serious step. There are particular consequences in the area where statutory protections are built in. Past Governments have given guarantees that can be overridden by this clause.

All this can lead us only to the conclusion that the Government have a strategy and are using the excuse of the other provisions of the Bill on state pensions to go further in destroying private occupational schemes. We discussed the knock-on effect in public sector schemes at our previous sitting but here we have, as my noble friend says, more than 1.5 million people still in defined benefit schemes who have benefited from them and have every expectation of continuing to benefit from them. On top of everything else, the Government are attempting to ensure that those schemes now fail.

There are other reasons why some schemes have been curtailed and there are other reasons why the future of such schemes, in some cases, looks fragile. However, this is a deliberate attempt by the Government to make matters significantly worse. The Government must think very seriously about that. This is why my amendments and those of my noble friend would delete the bulk of Clause 24 and Schedule 14. We recognise that we have to face up to the consequence of that, but it would force the Government to rethink this and do it in the context of an overall strategy towards occupational pensions, their governance and their future, which is not there at the moment.

This clause provides the possibility of the Government reassuring us that they have a strategy but, frankly, we need to see the outlines of that strategy before we finish the proceedings on this Bill. Otherwise, I think that the message to those outside will be that, if you are in an occupational pension scheme in the private sector, we will make it cost you more and the benefits will be less and, if you are in the public sector, the Government will not compensate for the costs that they are imposing on well funded public sector schemes, as we discussed last time.

There is an occupational pension dimension to the whole pension issue. In principle we support many of the changes that the Government intend to make to the state pension, but the other part of the equation also needs to be faced up to. Frankly, I have seen no sign of a government strategy to do that. These clauses and much of this schedule will only make matters very significantly worse.

Baroness Drake: My Lords, I shall speak to Amendments 38ZA, 39, 45, 46, 47 and 50. The amendments in this group pose three propositions: the first is not to give the power to employers; the second is to give it only to employers with trustee consent; and then there is the amendment that I propose, which would give the power to employers only if it was subject to an explicit requirement to consult with the trustees.

Quite clearly, abolishing contracting out means abolishing DB schemes. The national insurance rebates to both employees and employers currently run at 1.4% and 3.4% on a band of earnings, so they are not insignificant amounts of money. The Bill will give this statutory override to the employers effectively to recoup that loss of their NI rebate by a choice of one of two options: increasing the employees' contributions or reducing the value of the future benefits to be accrued. Not all employers need this statutory override to make that adjustment. It is quite clear that the closures and benefit changes of the past 10 years are evidence enough of that. However, there will be some schemes where employers cannot do that without trustee consent.

[Baroness Drake]
The Government are clearly seeking to provide an override where that trustee consent is required so that employers can proceed without it.

If one looks at the impact assessment, it is quite clear that there is now a green light as a consequence of this clause for employers to recoup the loss of their NI rebates through an increase in employees' contributions. The assumption made in the impact assessment is that all employees active in DB schemes, who are impacted by this, will bear the cost of increased employer's national insurance contributions.

7.15 pm

The raison d'être that the Government give in the impact assessment is that they believe that the,

"loss of the rebate on its own should not, in general, trigger scheme closures: however, it should be recognised that the loss of the rebate"—

that is, the NI rebate—

"may be taken as a reason for some sponsors to close their DB scheme".

I confess to articulating that view myself some years ago; it may well have been a factor in deciding what route one takes, and at what speed, to a flat-rate pension scheme. However, I am not persuaded by that argument any more. The compelling arguments that employers mobilise for closure of DB schemes are, first, that they simply do not want to bear the risks and the costs any more and, secondly, that they simply do not want to meet the impact of volatility and deficits in the funding of the scheme on their company balance sheets. Even with the continuation of the contracted-out rebate, we have seen private sector contracted-out DB active membership declining from nearly 6 million in 1980 to an expected 950,000 by 2016. I am therefore not sure that I accept the raison d'être. I am not going to pursue that point but I mention it because I think it is a vain hope that this override will address some of those issues.

The focus of my amendment is on strengthening the protections to be put in place to protect against the inappropriate exercising of this new employer power. It is a substantial power, and the protections and controls on exercising it are limited. I should perhaps have declared at the beginning, as is recorded in the register of interests, that I am a trustee of two large schemes, so obviously my thinking is partly influenced by anecdotal experience and sharing experience with other people.

My group of amendments would strengthen the protections for private sector scheme members in respect of two issues: first, the involvement of trustees through the consultation in the process when an employer exercises this power, so that it is explicit what the duty is on the employer in relation to consulting the trustee; and, secondly, being clearer as to the value of what it is the employer has the right to recoup from scheme members. That clearly has lots of ambiguity in it and it is not clear what exactly it is that this statutory override will allow the employer to recoup.

Taking first the involvement of the trustees, and I hope that Members of the Committee will indulge me a little if I go on, Amendment 39 would provide for the employer's use of this power to be subject to consultation with the trustees. I know that it is the Government's intention to remove any requirement for agreement with the trustees—that is the driver of the amendment—but there is no explicit provision in the Bill for any consultation with the trustees. In Schedule 14 there is some limit on the employer's power in Clause 2—for example, the employer cannot increase the amount of the annual employee contributions by more than the employer's annual increase in national insurance contributions as a result of the abolition of contracting out. However, certain key definitions, such as exactly what amount the employer is entitled to recoup, are to be set out in regulations. Unless I have missed something and the Minister corrects me, I think that it is still proposed that they are going to be negative regulations. Even if they are positive regulations, my argument still stands.

The Delegated Powers and Regulatory Reform Committee has also expressed concerns about the strength of the protections afforded to members. It said that, in effect, there is a protection but its substance is unclear. We have not yet heard the Minister's arguments on the Government's Amendment 48 but, through that, we are seeing further elaboration on the employer's power whereby, for example, if an increase in employee contributions would trigger an increase in the employer's contribution, further amendments can be made to the scheme to prevent the employer's contributions increasing. Similarly, if reducing future benefits would lead to a decrease in employees' contributions, this power can be used to ensure that those contributions are not decreased. This expansion of the employer's power introduces more complexity, particularly in a multi-employer shared cost scheme—for example, the railways pension scheme—which I suspect is part of the driver behind the Government's amendment.

We are seeing what seems like a simple principle—that is, that employers should be able to recoup their lost NI rebate from their employees—resulting in ever-increasing complexity as employers, actuaries and pension lawyers start to identify the problems in implementing such a principle. In the face of such complexity, it should be absolutely and unequivocally clear in the Bill that trustees have the right to be consulted. Even if the Government do not want to concede to trustees that they have to concur with or agree to the change, it is nonsense not to make it explicit that there is a right of consultation. If the Government are concerned that consultation with trustees could delay the single tier implementation timetable of April 2016, they should set consultation time limits in regulations. That is not without precedent. Trustees can be held to time limits on consultation. The bringing forward of the implementation date is not of itself a reason for removing an explicit requirement to consult with the trustees.

A statutory override will be very difficult to operate in multi-employer schemes as there is more than one employer. They will have different views on if, when and how they want to exercise the override. Depending on how many employers and how many variations on a principle are exercised, the trustees could potentially be faced with a bedlam of a situation. Again, there is no explicit requirement in the Bill to consult on these

measures. Statutory overrides are not mechanisms to be used lightly. Later I may well argue the merits of statutory mechanisms regarding legacy schemes, and I do not want to walk into a trap, but they are not mechanisms to be used lightly in the area of pensions and they certainly should not be used without care.

I turn to the second issue that my amendments embrace, which is what employers have the right to recoup from scheme members. Schedule 14 leaves to regulation the definition of,

"the annual increase in an employer's national insurance contributions in respect of the relevant members"

of a scheme, which is what the employer is being given the power to recoup. That will be a pretty important definition. Defining something, however, is not necessarily the same as establishing its value. What I want to establish very clearly is that the regulation will address how you determine the value of what the employer is entitled to recoup. My Amendments 45 and 46 would explicitly provide for the regulations to address the value of what the employers can seek to recoup.

Depending on the definition, private sector active members of defined benefit pension schemes could be contributing significantly for access to the single-tier state pension, given the 1.4% increase in their own employee's NI on the relevant band of earnings and the cost of the employer's 3.4% increase. If I have got the figures wrong I apologise but, on a quick arithmetical check, for someone earning £40,000 per annum that could amount to around £1,500 a year, with no tax relief on the employee element of the NI increase because, clearly, the treatment of private pension contributions is different from NI.

If an employer seeks a reduction in the value of future benefits, it is important to ensure that the reduction is not greater over time than the real net cost to the employer of the loss of the NI rebate. Depending on the approach that the employer takes, that is not an uncomplex issue to assess—what is the value of the reduction over time, as against what it is that the employer is seeking to recoup?

Is it, for example, the Government's intention that what the employer can recoup is permanently crystallised in terms of the value of their lost NI rebate in 2016, or will it reflect that the band of earnings to which the rebate applied would have become narrower under the existing arrangements anyway? So, if you freeze its value in 2016 terms, it is arguable that you are giving the employer an advantage because the value of the rebate two, three or four years later may well have reduced as a result of what was happening to the earnings-related element under the current arrangements.

When it comes to the value of what an employer can recoup, myriad questions are prompted, but I will put just a few to the Minister. Is it the gross or the net value of the increase in the employer's NI contributions? Where salary substitution is operating, and furthermore where an employer is taking a share of the employee's NI savings, how will it work? What will happen in shared cost schemes if the employer reduces future benefits? How will the regulations work in schemes that are integrated with the state system where, for example, only pay above the level of the lower earnings limits counts as pensionable pay, resulting in significantly different accrual rates, depending on salary level? Add a shared cost arrangement and you have the potential for real equality-proofing problems in how this principle is applied.

Schedule 14 provides for an actuary to certify that the employer's proposed use of this power complies with the regulations. This is the Government's way of dealing with any employers trying to overmilk the statutory power. However, actuaries often differ on their assumptions—and this is quite a big issue at the moment, particularly over actuarial valuations. Anyone who has been involved in them knows that things like assumptions on discount rates and on inflation rates can make significant differences when setting the value of something. Just giving the employer the right to select the actuary who countersigns, authorises or concurs that the employer's amendment fits the regulation is not fair.

My Amendment 50 would provide for the actuary acting for the employer and the actuary acting for the trustees to agree, not on the employer's proposed amendment itself—I am not seeking to do that; I am establishing a right of consultation—but for them to agree that the amendment met the regulatory requirement. Why should the actuaries of both employer and trustees not have to agree that the amendment meets the regulatory requirements that are set out as a consequence of this clause?

The Government are going to be under considerable pressure to release details of these regulations so that employers can start to prepare for 2016. Most of the consultation is with the employers, so it is really important that that level of protection where both actuaries have to concur that a change deduced under this statutory override meets the regulations should be in the Bill. There is an even greater defence for my argument. The majority of private sector active members contracted out of DB schemes are concentrated into the biggest schemes. Of the 1.6 million active members in schemes, 1.2 million are in schemes with more than 5,000 active members. This means that the total membership of the scheme will be much bigger because there are 5,000 active members. These regulations will be drafted under pressure from an influential group of employers so it is important that, if the Bill is to provide a statutory override, there should be a clear provision for consultation with the trustees. There should also be clarity as to the value of what it is that an employer can recoup, and for the scheme and the employer's actuary to agree—not the amendment itself necessarily, but that the amendment or the proposed change meets the regulations.

7.30 pm

Lord Browne of Ladyton: My Lords, I shall speak to all the amendments in this group, particularly Amendments 38ZB, 40A and 68A, which are in the name of my noble friend Lady Sherlock and myself. In total, this is a comprehensive grouping of amendments that deals with what my honourable friend Gregg McClymont described in the Commons as,

"the more granular aspects of the ending of contracting out".—[*Official Report*, Commons, Pensions Bill Committee, 4/7/13; col. 236.]

[Lord Browne of Ladyton]
However, it is important to recognise that, although these amendments are almost comprehensive, there is one aspect of the ending of contracting out with which they do not directly engage: the abolition of contracting out itself. I feel motivated to say that with the honourable exceptions of my noble friends Lord Whitty and Lady Turner of Camden, there is broad agreement that the change to a single-tier pension and the aim of introducing simplicity into the state pension system require an end to contracting out, so we are dealing here with the consequences of contracting out, not the fact of its abolition. I will leave my noble friends to speak eloquently for themselves, and I have had private conversations with them to articulate their position on these issues.

When the Committee last met on this Bill, we debated in part the consequences of the ending of contracting out but only for public sector schemes. There were a lot of good questions for the Minister but, with respect to him, his response was essentially—this is not a direct quote—"How to deal with these consequences is a matter for future Chancellors". The provisions that we are debating here and these amendments make it clear that that is not a luxury that employers with private sector defined benefit pension schemes have available to them.

As my noble friend, Lord Whitty, made clear in his contribution, and this has been his abiding concern regarding aspects of this Bill since his engagement with it, the ending of contracting out could have fatal consequences for occupational pension schemes. The Government's response to that challenge is to give employers, through the vehicle of a statutory override, the powers to increase employee contributions and/or reduce accrual rates of defined benefit schemes in order to reflect the cost of the extra national insurance that the employer will now have to pay as a result of the end of contracting out. However, these powers are limited by the mechanism set out in Schedule 14, which precludes the use of them beyond the cost of the extra national insurance that the employer will have to pay.

Amendments 37 and 38, in the names of my noble friends Lord Whitty and Lady Turner, seek to delete that override power completely. While we on this Bench do not directly support these amendments, they raise a number of interesting questions. The Pensions Minister in the other place has said repeatedly, in public and in debate, that he is keen to help employers to maintain their defined benefit schemes.

I have some questions for the Minister today. Have the Government consulted employers to assess whether the changes may have the consequence that my noble friend Lord Whitty fears and lead them to close their defined benefit schemes or move employees on to career-average schemes, which are still good but not as good as defined benefit schemes? Should the costs of the additional amount of national insurance fall on to employees, my noble friends are fearful that employees will be unable to pay this from their salary and be forced to leave their schemes. Even a 1.4% additional contribution may be more than can be afforded by some workers living with static salaries and the rising cost of living. This is clearly not in their long-term interest, but if a large percentage of workers withdraw it will also threaten the viability of some pension schemes. As my noble friend Lady Drake has pointed out, 5% is a huge amount to find between employer and employee at a time when so many small businesses are seeking to get back on their feet. My noble friend reflects the views of trade unions, but have the Government discussed the changes with employees and employers, especially small businesses that will be affected by this?

However the changes are achieved—by consultation, as we advocate, or by imposition, as this Bill permits—employees will not be happy. They will struggle to understand the changes to single-tier pensions that are justified. I shall share an anecdote of my consistent experience as a Member of Parliament: I was regularly assailed on the main streets of Kilmarnock by pensioners who asked me why they had to pay tax on their pension. I became quite adept at replying. I will not bore the Committee with the explanation, which is simply that you make up the pot from untaxed income and the deal is that you pay the tax as you draw down. Try as I might, though, I do not think that I ever, even with charts, persuaded one pensioner that that was the case with regard to their pension. I spent from 1997 to 2010 as the MP for those people, and I would be surprised if I persuaded one person of the mechanism for their pension scheme and the operation in this fashion and how it was taxed, despite my very best endeavours to develop skills and take advice in order to do this.

Will employers end up saying, "We're going to have pain over these changes whatever we do"—I am imagining the kinds of conversations that I have had with people—"so we might as well bite the bullet and close the final salary scheme"? We know that the Government, particular the Pensions Minister, are keen to help employers retain the remaining defined benefit schemes. That is a justification for the override, as he said at col. 245 of the eighth sitting of the Committee in July 2013, but have the Government discussed with employers how many of them will use this as an opportunity to consider the closure of schemes? These are important questions that need to be tested. My noble friend Lord Whitty asks us all the time what the consequences will be.

This is a complex and expensive matter. Actuaries are costly, and scheme changes are extremely costly to achieve. The amendments tabled by my noble friends Lord Whitty and Lady Turner are helpful in raising questions that we should know the answers to, if they exist. If these measures will lead to employees being forced or inclined to leave schemes and schemes being forced to close, then we should debate that matter as I accept that it is not an intended consequence of the Government's position.

The second issue engaged by these amendments reflects the fact that, apart from being subject to an actuarial check, this Bill gives the employer largely unfettered power. In particular, as we have heard, the employer does not need to reach agreement with, or even to consult, pension fund trustees or scheme members. As I understand it, existing employers' rights under the Pensions Act 2005 are already quite significant.

As my noble friend, Lady Drake, made very clear from her extensive experience of this, further extensions of that power should be done with great care, if at all. As she explained in convincing fashion, statutory overrides are very strong measures and should be used with care in all cases.

The opposition Benches do not believe that the override power, in this form, is needed or desirable. Amendment 38ZB, tabled in the name of my noble friend Lady Sherlock and myself, would require that changes to pension schemes could be made only with the consent of pension trustees. I accept that it is unlikely that the Government will accept that amendment, but my noble friend Lady Drake offers more of a compromise position that the Minister may find acceptable. In her Amendment 39, she proposes that an employer has the power to amend a pension scheme after consulting pension trustees, and her Amendment 50 states that regulations may require employers to reach agreement with trustees.

It is interesting that in the debate in the Commons, the Pensions Minister, Steve Webb, said—I am keeping this short but I promise the Committee that I have not changed the meaning of it; I have merely taken out extraneous words:

> "To encourage … firms to be willing to carry on offering defined benefit pensions, which most of us want them to do, we need to allow them to recoup the money. Many employers will do that by having a conversation with the trustees of their pension scheme and reaching … agreement. That would be the norm. It would be quite proper … The strong incentive, therefore, is … to have a mature conversation with the trustees in order to reach an agreement. We believe that many employers will do that".—[*Official Report*, Commons, Pensions Bill Committee, 4/7/13; cols. 244-45.]

If I understand this legislation correctly—and I have to admit that I cannot always guarantee that I do, given its complexity—without the statutory provisions for override in the Bill, that is what all employers would have to do. As is clear, many Members of the Committee, and all of us on these Benches, are at a loss to understand why that best practice, endorsed by the Minister himself, is not what the Government are legislating for.

Our amendments, including Front-Bench Amendment 38ZB, ask these questions: why are the powers set out in the Pensions Act 2004 not sufficient? Why is it necessary to legislate for an override in this fashion at all? Why is it necessary, as the Government are doing in Amendments 48 and 49, to give employers even more powers than in the original drafting of this Bill? What possible reason can the Government have for not reflecting their own Pensions Minister's endorsement of best practice in their Bill? Where is the opposition coming from to consultation at least, if not to consultation and agreement, if not—as it clearly is not—from the Pensions Minister himself? I hasten to add that I reinforce that I am not reading the Pensions Minister's words from the debate in a way that misrepresents his argument; I have taken out some extraneous words but that is all.

It is just good management practice, never mind in pensions, to consult staff. Consultation assists implementation and, consequently, staff buy-in to the need for changes. To seek the agreement of pension trustees to changes to schemes, as we propose under Amendment 38ZB, can only prove helpful to employers. As we have heard, trustees have fiduciary duties and responsibilities to act in the best interests of scheme members, so why should the Government not think it sensible, as well as best practice, to consult trustees and seek their approval?

I turn to the limitation on the power to override and the effect of the amendments in relation to this. There is a limitation on the exercise of this override power. As has been said, the employer's override powers are limited to recouping the cost of the extra national insurance that the employer would have to pay as a result of the end of contracting out. Under the terms of Schedule 14, the exercise of this power must be certified by an actuary as doing no more than that.

My noble friend Lady Drake's amendments, which I do not intend to engage with in any detail, given her eloquent and convincing arguments for them, are designed to put more definition in the extent of this power. In particular, her Amendments 37ZA, 45, 46 and 47 are designed to define more clearly the values that limit the exercise of the power and would clarify the power of override in a way that I am sure the Government would find helpful. They are within the spirit of the Government's proposal and the Minister's intentions, as explained by him repeatedly.

I have some experience of engagement with actuaries when I practised law in Scotland. Given that it is improbable that actuaries, who are notoriously independent of each other and seldom ever agree on discount rates, are likely to come separately to different conclusions, is it not better that the statutory limitations on the use of this power are expressed in such a way as set out in my noble friend's amendments, rather than in the way that the Government have chosen to do it?

I turn to the issue of protected persons. We have not had an extensive debate on this issue or protected pension schemes, but I have been subject to some very powerful arguments, made not only by noble friends and other parliamentarians but by those with whom I have engaged in preparing for the debates on the Bill, about such persons. I have studied carefully the words of the Pensions Minister, which I encourage people to do—they are very instructive about the thinking behind some of this legislation. To me, his words clearly imply his preference for exempting protected persons. Having done that, one cannot but feel that there is a special set of circumstances arising from the privatisation of nationalised industries in respect of these pension schemes.

Curiously, the Bill is drafted in a way that allows the Secretary of State the power to keep the promises that were made to the members of the schemes. I am really interested in why this has been done. What was the motivation behind it if there was no inclination to do it?

7.45 pm

Curiously, despite the fact that he has created this opportunity and then deployed the best time-wasting tactic known to any Minister—a consultation—to its fullest extent, we are now in a position where we have no idea, despite a consultation which promised to report in the summer, what the Government's position

[Lord Browne of Ladyton]
is in relation to the exercise of that power. This affects 60,000 or more members of these schemes awaiting this decision. They are entitled to know what it is.

My noble friends' amendments relate to specific pension schemes. Our Amendment 40A deals with the issue of former nationalised industries in the round, covering all the relevant schemes; if it is not comprehensive then I am happy to take it away and recast it because I understand that people are coming across other information on these schemes, as was clear in the debates in the House of Commons.

It is also clear that specific undertakings were given to the members of these schemes to encourage them to accept privatisation of the industries in which they worked. As my honourable friends Katy Clarke and John McDonnell, and others, made clear in the Commons in debate, these privatisations were hugely contentious and there was substantial opposition to them. These promises were in a very specific category. They were designed to encourage workforces to accept privatisation, if not to support it. Those who made them, many of whom are now noble Lords—honourable men—expected them to be honoured. Curiously, I have concluded that the drafting of the Bill implies that the Minister in another place wishes to do so. Otherwise, I do not understand why this power has been put into the Bill. Why not just wait until a decision has been made and then amend the Bill one way or another? Why was the power specifically put into the Bill if somebody did not want to exercise it at some point? The Minister said:

> "I hope we will be in a position to conclude our deliberations relatively shortly, certainly while the Bill is still before Parliament. Later in the summer is the timetable we are working towards".—[*Official Report*, Pensions Bill Committee, 4/7/12; col. 248.]

Those of us who have been Ministers know the value of using seasons as opposed to months for promises but, by any view, we are well beyond the summer of 2013 now that we are into 2014.

At the very least, is it not therefore appropriate for us to be asking the Minister when this decision will be made? It is difficult to avoid the conclusion that the way in which this issue of protected persons is being dealt with is becoming an affront to Parliament. Parliament is being promised, in the context of the Bill, a decision about this. Whatever decision the Government make, there will be consequences that we are entitled to debate and consider in the context of this legislation. We have been denied the opportunity to debate these properly and to make a decision as a Parliament. It is getting very close, in my submission, to being contemptuous of Parliament. Promises were effectively made about timescales which have now been comprehensively broken. Is the Minister at least in a position to tell us today when we can expect the Government's decision on protected pensions?

Finally, conscious of the time, Amendment 68A is simple and straightforward, and merely seeks, through the mechanism of an amendment to Clause 49—"Regulations and orders"—to require the Government to have regulations to extend beyond five years the period of time for which an employer may amend pension schemes to reflect the abolition of contracting out dealt with by affirmative resolution rather than negative resolution.

There is an extremely interesting passage in the debates in the Commons about the value of the negative resolution as opposed to the affirmative resolution, conducted by the Pensions Minister, in which he goes very close to saying that there is no substantial difference in these processes. An affirmative resolution requires the Government to make their argument and a negative resolution requires someone to pray against, to encourage the debate. In my view, the extension of these powers beyond a five-year period is such a significant thing to allow an employer to do, against all the consequences that we have debated, that it would be proper for the Government to make their argument for an extension as a matter of legislation rather than expecting someone to pray against it and then have to make the argument.

Lord Freud: My Lords, I particularly enjoyed the stories of the noble Lord, Lord Browne, about his dealings with pensioners. I am disappointed that he and his silver tongue were unable to persuade against the pocket. After single tier is introduced, there will not be an additional state pension to contract out of. Employers with such schemes will no longer receive the national insurance rebate; they will pay the same rate as other employers and will have to continue to provide a pension scheme that is generous but which will therefore be more costly. To continue funding these defined benefit schemes and to keep them open without the rebate, employers will be forced to find other ways to reduce running costs. They may wish to reduce the future rate of accruals, or to increase employee contributions.

Employers have told us that, without the override, they will have to consider closing their schemes, particularly if they have no other way of offsetting the costs of contracting out. Clearly, members are not served by their pension schemes closing. It is vital that we support those employers who are seeking ways of offsetting the increased cost of national insurance, including where their scheme rules would not allow the change or where the consent of trustees cannot be obtained. We also recognise that trustees may be put in a difficult position if employers come to them with a request to reduce benefits or increase contributions.

Baroness Drake: On the point that trustees find themselves in difficult positions if they are asked to consider increasing contributions or reducing benefits, I am not sure whether the Minister appreciates what trustees have been doing in the past 10 years in addressing precisely those kinds of requests from employers.

Lord Freud: I understand what trustees in pension funds do and I understand that some of them find themselves in very difficult positions when having to address those issues.

Referring to those private sector employees who are contracted out immediately before implementation, who reach state pension age in the first decade of single tier, around 75% of them will receive enough extra state pension to offset both the increase in national

insurance contributions that they will pay over the rest of their working lives and any potential adjustments to their occupational pension schemes. Such a move must be considered in this context.

In contrast to the figure that the noble Baroness, Lady Turner, and the noble Lord, Lord Whitty, were looking at—1.6 million in private sector schemes—regrettably, by 2016, we expect only 950,000 individuals to be affected. That figure is in the impact assessment at paragraph 128.

Amendments 37 and 38 would remove the statutory override power and prevent Schedule 14 from coming into force. The practical effect would be that an employer would be required to get trustee consent for the changes they wanted to make to their scheme should their pension scheme rules require this. For the reasons I have just set out, we feel the override is necessary.

Amendments 38ZA, 45, 46 and 47 of the noble Baroness, Lady Drake, relate to the calculation of the value of the employer's lost national insurance rebate. For the statutory override to operate as intended we must balance two competing factors: first, safeguarding members from changes to scheme rules that go beyond offsetting the loss of the rebate; and, secondly, providing an override that remains workable for employers—otherwise in practice they will still be left with little real alternative to scheme closure. Schedule 14 sets out important safeguards in the Bill and includes powers to put further safeguards in regulations. Paragraph 2(2) of the schedule prevents the employer making changes beyond those necessary to recoup their increase in national insurance contributions. We intend for this amount to be calculated in accordance with regulations—allowing us to define annual national insurance contributions—and an actuary must certify that any changes do not recoup more than that amount before they are made.

Importantly, any proposed scheme changes cannot take effect before April 2016 and individuals' accrued pension rights are protected by the Bill. The amount will be calculated in accordance with actuarial methods and I accept that that can be a changeable feast, as the noble Baroness, Lady Drake, pointed out. However, we intend to specify the methods and assumptions in regulations following consultation with the actuarial profession. We are working on the detail of the override regulations and are developing the legislation with stakeholders. We have shared an early draft of the key technical provisions of the regulations with the industry and will undertake a full public consultation on the full regulations as soon as possible. The override will not remove an employer's obligations under existing legislation to consult their workforce in the usual way before making changes.

Amendments 38A, 39 and 50 refer to the role of trustees in the use of the statutory override. Legislating for trustee consultation risks unnecessarily complicating existing communication channels. It would be counterproductive to require employers to seek trustees' agreement that the proposed changes recoup no more than the increase in national insurance costs. Trustees would be put in a position of either accepting or challenging the professional view of the certifying actuary. The proposal that the trustees could block the use of the override would negate its purpose. It is worth remembering at this point that, as with any significant alteration to pension schemes, existing legislative provision means that members must be consulted before any changes take place, which is a point I have made.

Where employers wish to make changes to their scheme, whether using the override or through existing scheme rules, it is in their interest, as my colleague Steve Webb said, to engage with their employees and scheme trustees. They will not want to make changes that are impractical or have unforeseen consequences for the scheme or themselves. We can see no reason why employers would not engage in the usual way without the trustees in this case.

We have placed a limit of five years during which employers may use the statutory override. This ends in 2021 but, as the noble Lord, Lord Browne, observed, that time limit may be extended by an order made by the Secretary of State. Based on all the information we have at the moment we believe employers who choose to use the override should be able to do so within this time limit. However, contracting out is complex and there may be unforeseen problems for some employers. An employer who is unable to use the override within the time limit, without the possibility of an extension, may have no option but to close their defined benefit scheme. This would be a compelling reason to use the power and we feel that an affirmative resolution procedure on this matter would not be a prudent use of parliamentary time.

8 pm

On the question about the affirmative procedure, technical regulations have been drafted in consultation with pension industry representatives and advisers. We are directly engaging with industry professionals to ensure that these provisions are workable in practice and we will have full public consultation.

Noble Lords will remember that the Government have assured employers and the pensions industry that they will have a two-year preparation period for the changes relating to the ending of contracting out. That timetable is already very demanding. Subjecting the draft regulations in addition to the affirmative procedure, which is lengthier than the negative one, would considerably shorten the amount of time which schemes will have to prepare and put in place amendments for April 2016. This would mean a prolonged period of uncertainty that the industry and employers have said will delay them being able to commit resources such as the employment of actuaries and other professionals to work on the scheme changes that may be necessary, and will in turn delay any negotiation between employers, members and trustees. Delay also increases the risk that employers will simply close the schemes.

I turn to Amendments 40 and 40A. In some formerly nationalised industries, employers and trustees are limited in their ability to change scheme rules by legislation made at the time of privatisation. However, Governments cannot bind their successors. The radical overhaul of the state pension system and the abolition of contracting out in this Pensions Bill leaves this Government with a very difficult decision—should the statutory override apply to those covered by protected

[LORD FREUD]
persons legislation or not? Trade unions have strongly urged us to honour the promises made at the time of privatisation. They have argued that a change in 2016 would leave those close to scheme pension age no time to make adjustments. It is also reasonable to ask why we would disturb the pension provision of a relatively small group of workers. Around 60,000 individuals are covered by protected persons legislation. This represents a small proportion of the members in private sector contracted out schemes. However, employers and the National Association of Pension Funds argue just as strongly for the override to apply to protected persons because they want all scheme members to be treated in the same way. If protected persons are excluded from the override, employers will look for other ways to offset the loss of the rebate for that group. Consumer prices may rise where regulatory regimes allow. Wages could be held down, which would also affect those outside the protected persons group. Additionally, employers fear that any differential treatment carries a risk of industrial dispute.

One could also argue that those protected under privatisation legislation will in many cases have ended up with more generous pension terms than their counterparts in the public sector. We also have to factor in that the design of the single tier reforms means that those with a long history of contracting out will in most cases build up significantly more state pension. Around 75% of people in the private sector who pay higher national insurance contributions and reach state pension age during the first two decades following implementation will receive enough extra state pension over their retirement to counterbalance the increase in national insurance contributions. This is a very complicated issue with many different and conflicting interests, and the Government are still deliberating the matter. A decision will be made as soon as possible and we will inform Parliament accordingly.

Finally, we come to government Amendments 48 and 49.

Baroness Drake: I wish to clarify one or two points, if I may. The Minister said that these changes would still be subject to consultation with employers, by which I assume he is saying that they would be considered as listed changes and therefore trigger the listed changes regulations. What triggers that? Those provisions can be operated in a way that excludes the trustees, if the employer takes a certain route. I do not want to go into the detail; perhaps I can do so outside. I would like to understand how consultation with employers is triggered because I would almost certainly want to go on to say that what I think will be triggered will not be fit for purpose in a statutory override situation. I have a couple more points.

Lord Freud: Those are not straightforward points to answer and, given the time pressure we are under, I will write on those two matters.

Baroness Drake: I completely understand these technical matters. We are up against the clock but I think they need answering and I would want to respond to the answers. There could be an element of the positive in the second—on specifying the assumptions in the regulations—because it starts setting out the rules more explicitly. However, it appears that the Government are still proceeding on the basis that these are negative regulations. The trouble is that other interested parties cannot make an effective contribution unless this House has the opportunity to question those assumptions and those regulations. I have no idea what the delay implication would be of allowing this House to consider the proposed regulations and assumptions more actively when they are brought forward.

Secondly, I would still like an answer to what it is that can be recouped. Is it the definition of the NI rebate in 2016, or is it the NI rebate as it would evolve anyway over time under the current arrangement, meaning that, because of the reduction in the earnings element, it would contract?

Again, I do not want to get too much into protected persons but, on the fourth point, if one takes as an example the railway pension scheme, the Minister is absolutely right. Lots of people in that scheme do not have protected pensions, but they do have the shared cost. There are particular complexities that arise from shared costs and some other things as well, but I feel that there is no opportunity to flesh these out. I have spent some time looking at the railway pensions bill. Even if one did not want to challenge the Government on the principle, there are some complexities here. It is not easy just to adjust the contribution rate or to adjust the benefits in a shared cost situation and where there are variable accrual rates. How are we going to get a chance to look at these?

Lord Freud: My Lords, given our time constraints, I will pick up those issues—the shared cost and the rebate over time. With the negative and affirmative, there is a time saving and a certainty. The difference is that you get them in and, within a matter of a month, they are effectively law and they can then be prayed against, but they are in shape unless they are undone. Affirmative has to be approved. So there is quite a process and a time loss in going one way or the other, which I hope I have spelt out. Let me rush to—

Lord Browne of Ladyton: I am grateful to the Minister. I am conscious of the time, but I am also conscious that we should not move on from this particular part of the Bill with all its complexity because we are pushed for time, due to the accident of when we held this debate. I say this for a good reason. The Minister read a speaking note about affirmative resolution procedure in relation to regulations which was not written to respond to the amendment that I proposed but was a much more general speaking note. The amendment tabled by me and my noble friend Lady Sherlock related only to Section 24(8)—a very specific part that would not involve the complex regulations which the Minister narrated. The regulations in Section 24(8) will probably be two short paragraphs.

The Minister has given us a lot of other food for thought about how the regulations will be promulgated more broadly. He tantalisingly gave us some of the

detail about what may be in there, which may answer many of our questions. It is inappropriate that we just move on from Committee in relation to all these issues that he has raised in his response, and which none of us has had the opportunity to tease out. There are three or four other issues that he raised in response to my contribution with which I would like to engage, because I am not certain that these arguments would stand the test of debate.

Lord Freud: Well, my Lords, I was responding to the comments of the noble Baroness, Lady Drake, on the negative procedure generally. It is fairly odd to have two separate procedures going on within one process. That is the point.

I will try to deal with government Amendments 48 and 49. Schedule 14 currently provides that regulations can create exceptions to the limits set out in paragraph 2(2). This was originally provided to deal with unusually funded schemes, such as fixed cost-share schemes, which I hope goes to the issue raised by the noble Baroness, Lady Drake. The Delegated Powers and Regulatory Reform Committee raised concerns about the power. In light of this and our ongoing discussions with the pensions industry, we no longer believe that we need this power—we believe that something different is required—so Amendment 49 removes it. Amendment 48 then makes specific provision for employers with atypical scheme-funding arrangements, such as cost-share schemes. It allows those employers to recover their increased costs without affecting the safeguards provided by Schedule 14.

In the statutory override we have designed a process whereby employers can continue to sponsor defined-benefit schemes without losing the rebate. We have included provision to allow for a pivotal role for actuaries in signing off any changes but we have not restricted the ability of trustees, and indeed members, to express their views to the employer. We have ensured that trustees are not forced to decide whether to accept scheme changes or risk closure of the scheme. I hope that this reassures noble Lords and I urge the noble Baroness to withdraw her amendment.

Baroness Turner of Camden: I thank everyone who has contributed to the debate. I agree, of course, that it is a complicated matter but, on the other hand, the complications take place within the context of what is in the Bill. The Bill makes it clear that in future employers will have the right to change the provisions of pension contributions and benefits. That is what most of us are concerned about. I do not think that the Minister's response has dealt with the fear that people have that they are now facing a possibility that DB schemes could be under attack. They have been under attack in the past. Although I agree with everything that has been said about the necessity of involving trustees—of course I believe in that—when in the past employers have changed from a DB scheme to something less good, which has happened, the trustees have been consulted but have made no attempt to disrupt what the employer had intended to do. I therefore still do not think it is sufficient to say that the trustees have to be consulted. There has to be general consultation. The problem is, of course, that it is in the general context of the Bill, and the general context of this clause, which gives the employer power to change the benefits system through the DB scheme that may exist.

People are concerned about the continuation of their DB schemes. As I have said in the past, DB schemes which have been negotiated in the past have been responsible for improving benefits for a whole generation of pensioners. They want to continue with those schemes and to ensure that the unions to which most of them belong will have the right to ensure that negotiation will properly take place before anything can be done to remove those benefits that they all value so highly from them.

In those circumstances, while I have listened very carefully to what has been said, particularly to what the Minister has been saying this afternoon, I will look again at what he said. However, concerns still exist about Schedule 14 and the wording of this clause, and we shall certainly return to it on Report. Personally, I have not been satisfied with what I have heard and am quite certain that a number of other people will not be either. There has to be much more of a debate. Unfortunately, a number of our Members have left because we are running rather late tonight. A number of people who have tabled amendments have not had the opportunity to speak to them and so on. I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendments 38 to 38ZB not moved.

Amendment 38A had been withdrawn from the Marshalled List.

Amendments 39 to 42 not moved.

Clause 24 agreed.

Committee adjourned at 8.15 pm.

Written Statements

Wednesday 8 January 2014

The following Written Ministerial Statement should have been printed on Tuesday 7 January 2014.

European Council

Statement

The Chancellor of the Duchy of Lancaster (Lord Hill of Oareford): My Rt Hon Friend the Prime Minister has made the following statement to the House of Commons:

I attended the European Council meeting in Brussels on 19 and 20 December. Discussion focused on defence; economic and monetary union; and EU enlargement and association agreements. The opening session was addressed by the Secretary General of NATO.

Defence

Protecting our national security is our first priority. At this European Council, the United Kingdom was clear that when it comes to defence issues and decisions about national armed forces, policy must be driven by nations themselves, on a voluntary basis, according to individual priorities and needs; not by the EU Institutions.

For the UK, this means that NATO has been, and will continue to be, the foundation of our national defence. We are pleased to be hosting the 2014 NATO summit - the first time such a summit has been hosted in the UK since 1990.

It is of course also right for European neighbours to cooperate on defence issues and in this respect I am proud that the UK is always in the vanguard when our European allies are in need of practical help, including supporting French efforts in Mali and the Central African Republic and coordination of the EU's counter-piracy operation off the Horn of Africa.

I made these points at the Council and the agreed conclusions make clear that there will be no EU ownership of defence assets and no EU headquarters. I removed references to Europe's armed forces, to a European pooled acquisition mechanism and to EU assets and fleets and made clear that equipment such as drones and air-to-air refuelling tankers are to be owned and operated by the Member States. The conclusions of the European Council are clear that nations, not the EU institutions, are in the driving seat of defence and must remain there.

Economic and Monetary Union

The Council also held important discussions on the future of the Eurozone and measures to strengthen economic and monetary union. Britain is not in the Eurozone and will not be joining the euro, but it is in our interest for those that are to have a strong and stable single currency. We therefore support efforts to achieve that as long as the UK's interests are protected. My priority at this Council was to ensure that, just as the UK is out of the EU Eurozone bailout mechanism, so there can be no financial liability for the UK from banking union or from any future euro area mechanism of loans or guarantees for Eurozone countries. This is reflected in the conclusions which make clear there will be no financial obligations on countries not participating in these areas. The conclusions also reiterate the importance of making the EU more competitive, completing the single market and cutting red tape for business.

Leaders also agreed to build on the UK's G8 agenda with an explicit commitment to agree further measures on tax transparency as swiftly as possible.

Enlargement and Association Agreements

The UK has long supported enlargement as one of the EU's greatest strengths. The prospect of EU membership has proved a huge driver for peace, prosperity and progress across our continent. But the EU of today is very different to the European Community of 50 years ago and it was never envisaged that the accession of new countries would trigger mass population movements across our continent.

So I made clear that when future countries join the EU we must look again at the transitional arrangements for the free movement of workers, and my preference to look at options such as much longer transitional periods and new benchmarks that would need to be met. I also made the case for returning the principle of free movement to a more sensible basis and making clear that it should never be a completely unqualified right but should be what the EU first envisaged - the free movement of workers, not of those after the best benefit deal. This is not just the view of the UK. At the recent meeting of interior ministers, Germany, Austria and the Netherlands all made clear that we need to find a better approach to tackle free movement abuse. In this spirit, we can now look forward to continuing these discussions in the coming year and ensuring that future enlargements proceed in a way that regains the trust and the support of our peoples.

Copies of the Council conclusions are available in the Libraries of both Houses.

Aviation: Air Navigation Guidance

Statement

The Minister of State, Department for Transport (Baroness Kramer) (LD): My Honourable Friend, the Parliamentary Under Secretary of State for Transport (Robert Goodwill) has made the following Ministerial Statement:

Today I am pleased to announce the publication of a revised version of the Air Navigation Guidance. I am grateful for the technical assistance of the Civil Aviation Authority (CAA) and the input of those who responded to the consultation – carried out in summer 2013. A summary of the responses to the consultation and the Government's reply to these responses is being published alongside the new guidance.

Under the Transport Act 2000, the CAA is required to take account of environmental guidance given to it by the Secretary of State when exercising its air navigation functions. The new guidance has two key objectives. The first is to provide the CAA with additional clarity on the Government's environmental objectives relating to air navigation in the UK, including the need to improve the efficiency of our UK airspace network.

The second is a reaffirmation of the need to consult local communities near airports when airspace changes are being considered in the vicinity of these airports. The guidance now reflects significant developments such as the creation of the Future Airspace Strategy and Single European Sky, and the Aviation Policy Framework.

Although this guidance has been prepared, consulted on and revised by the Government separately from the Airports Commission's work, it is notable that the clarity it brings around the introduction of performance-based navigation routes at our major airports and the need for greater delegation of decision-making powers over airspace changes to the CAA are in line with the findings of the Commission's recently published Interim Report. The Government's full response to the Report will follow in the spring. In the meantime, this publication demonstrates the Government's desire to act quickly to make the best use of existing capacity.

A copy of the guidance can be found on my Department's website at https://www.gov.uk/government/publications/air-navigation-guidance and I will place copies in the Libraries of both Houses.

Written Answers

Wednesday 8 January 2014

Anti-social Behaviour, Crime and Policing Bill

Question

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what representations they have received in respect of (1) the possibility of restrictions on leisure activities such as skateboarding, and (2) the possibility of bans on peaceful demonstrations, that local authorities might impose under a public spaces protection order provided for by the Anti-social Behaviour, Crime and Policing Bill. [HL4282]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): We have received a number of representations on the proposed new Public Spaces Protection Order during the passage of the Anti-social Behaviour Crime and Policing Bill. Skateboarders, young people playing in their local park, and anyone else enjoying leisure activities perfectly reasonably should not be affected by this power, which is designed to protect the public and communities from the minority who behave anti-socially. Similarly the Public Spaces Protection Order cannot be used to ban peaceful protest. However, we have listened to the concerns raised and the Government has accordingly tabled an amendment ahead of Report Stage to make this even clearer in the legislation.

Burma

Question

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

To ask Her Majesty's Government what involvement, if any, the United Kingdom has in training police and security forces in Burma. [HL4149]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): As part of an 18-month European Union funded police training mission four officers from England and Wales police forces have provided expertise on public order training to the Burmese police force. Former police officers with experience of policing in Northern Ireland are also contributing to the community policing component of the EU police mission.

Gambling: Lotteries

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what protections exist for consumers who take part in lotteries that market themselves in the United Kingdom but are based elsewhere. [HL4260]

Lord Gardiner of Kimble (Con): There are a range of protections for British consumers taking part in lotteries based overseas. These lotteries will be regulated by the local regulator and existing protections will be further enhanced by the proposed changes in the Gambling (Licensing and Advertising) Bill. Those who fall victim to or witness fraud through lotteries based overseas can make a crime report to Action Fraud, the national fraud reporting centre run by the National Fraud Authority. These reports are passed on to the City of London Police, who will consider criminal investigation. In addition, the Citizen's Advice Service runs preventative public awareness campaigns to guard against scams where criminals make unsolicited contact with consumers in an attempt to defraud.

Government Departments: Management Information Reports

Questions

Asked by ***Lord Mendelsohn***

To ask Her Majesty's Government, further to the Written Answer by Lord Gardiner of Kimble on 17 December relating to the Cabinet Office (WA 179), whether any performance data are collated on a daily or weekly basis for Ministers or the Permanent Secretary; and, if so, what. [HL4253]

To ask Her Majesty's Government, further to the Written Answer by Lord Gardiner of Kimble on 17 December relating to the Cabinet Office (WA 179), what key performance indicators are used to review progress against the overall performance targets and objectives of the Department. [HL4254]

Lord Gardiner of Kimble (Con): Department-wide performance reports are produced on a monthly basis. Individual areas of the Department submit additional information as and when required.

Alongside the list of actions set out in its Business Plan, the Department has adopted a number of indicators to help the public assess the effects of policies and reforms on the cost and impact of public services. These are set out in the table below:

Drive efficiency and effectiveness in government
Efficiency Reform Group savings figures verified by the National Audit Office
Total savings made by improved management of relationships with key government suppliers.
For every pound spent by government departments, the cost of running a central procurement function to buy common, standard government supplies and equipment.
Increase transparency in the public sector
The number of data sets published on data.gov.uk.
The number of external applications using government data published on data.gov.uk.
The number of unique visitors to data.gov.uk increases yearly
Build the Big Society
Overall level of volunteering
Number of participants in the National Citizen Service
Number of senior community organisers trained
Growth of social investment market is higher than UK economic growth

Departmental performance against indicators is reported on the Number 10 transparency web site at http://transparency.number10.gov.uk.

Higher Education: Student Demonstrations

Question

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government whether an investigation has been carried out into allegations that students have been recruited as informers on fellow students involved in demonstrations.[HL4283]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): No such investigation has been carried out.

Migrant Workers: Romanians and Bulgarians

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government how many workers from each of Bulgaria and Romania have been legally admitted to the United Kingdom in each of the last three years. [HL4111]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): Bulgarian and Romanian nationals enjoy rights of free movement and do not require permission to enter the United Kingdom in order to seek or take work. Under the Accession (Immigration and Worker Authorisation) Regulations 2006, Bulgarian and Romanian nationals requiring authorisation to work in the UK must either obtain an accession worker card in respect of a specific offer of employment or be in possession of a work card, valid for up to six months, issued under the Seasonal Agricultural Workers Scheme before they commence employment in the United Kingdom. The number of such documents issued to nationals of Bulgaria and Romania in each of the last three calendar years is as follows:

	Accession worker card applications approved	*Work cards issued under the Seasonal Agricultural Workers Scheme*
Bulgaria		
2010	805	11,861
2011	876	11,627
2012	526	11,955
Romania		
2010	1,815	7,937
2011	1,764	8,408
2012	1,276	8,866

There are, however, circumstances in which Bulgarian and Romanian workers will be exempt from the requirement to obtain prior work authorisation before commencing employment in the United Kingdom.

Police and Crime Commissioners

Questions

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government what responsibility Police and Crime Commissioners have for re-offending rates in their areas. [HL4205]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): PCCs have brought democratic accountability to the way communities are policed and have responsibility for the totality of policing, including cutting crime, in their area.

The Government's strategy for reform sets out how we will transform the way offenders are rehabilitated. We will drive down reoffending rates by opening up the market to a diverse range of new rehabilitation providers, who will work closely with PCCs to cut crime. In addition, in order to create the most holistic and integrated rehabilitation services, PCCs will be able to commission providers to deliver additional services in line with their own priorities.

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what evaluation they have made of the way in which Police and Crime Commissioners have overseen the implementation of sustainability plans by police forces; and what steps have been taken to reduce the carbon footprint of policing. [HL4281]

Lord Taylor of Holbeach: Police and Crime Commissioners (PCCs) are responsible for the totality of policing within their respective force areas including setting and managing budgets. It is the responsibility of the PCC to pay due regard to sustainability, and the evaluation thereof, according to local priorities.

Police: Protestors

Question

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government whether plans have been developed by police forces in the south of England to recruit special investigations managers to prepare court cases against protestors at sites planned for shale gas fracking investigations. [HL4284]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): It is matter for individual police forces to determine how best to manage their case preparation processes and this information is not held by the Home Office.

Violence Against Women and Girls Overseas

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they will propose any action by the United Nations Security Council or otherwise in response to the "organised sexual and gender-based violence" on

women and girls in Darfur reported to the United Nations Security Council by the Chief Prosecutor of the International Criminal Court on 11 December. [HL4194]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi) (Con): Reports of crimes of sexual and gender-based violence (SGBV) in Darfur, as highlighted by the Chief Prosecutor of the International Criminal Court to the UN Security Council in December 2013, are deeply disturbing.

The UN Security Council is seized of the need to tackle this violence. The African Union-United Nations Mission in Darfur (UNAMID) is mandated by the Security Council with the primary task of protecting civilians. Through Resolution 2113 (2013), UNAMID was called upon to provide regular reports on the instances of SGBV and to measure progress against the elimination of such crimes, including through the appointment of Women Protection Advisors. UNAMID has acted, including by providing protection to women and girls collecting firewood away from population centres.

We urge all states to cooperate with the International Criminal Court to ensure that the alleged perpetrators of these and other serious crimes of concern against the people of Darfur are held accountable for their actions.

World Anti-Doping Agency

Question

Asked by ***Lord Moynihan***

To ask Her Majesty's Government whether they intend to increase their contribution to the World Anti-Doping Agency (WADA) target over the years 2014 to 2017; and whether it is their intention to contribute to the additional supplementary $10 million call for funds by WADA to enable new research into anti-doping in sport. [HL4247]

Lord Gardiner of Kimble (Con): The UK's annual contribution to the World Anti-Doping Agency (WADA) budget is paid by UK Anti-Doping and we expect the UK to continue to fully support WADA through our agreed contribution. The UK does not intend to contribute to the additional supplementary $10m call for funds.

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