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Disability: Black and Minority-ethnic Disabled People Question

2.30 pm

Baroness Thornton: To ask Her Majesty’s Government what they are doing to address access to and use of disability services by black and minority-ethnic disabled people, as outlined in the recently published Scope report Over-looked Communities, Over-due Change.

Baroness Hanham: My Lords, each local authority has to do this as and when they need it. A large way of getting around that is for local government or health authorities to ensure that people are aware of the local groups that reflect black and minority-ethnic requirements, and can thereby find out what their needs are. However, I accept what my noble friend says: that in many of these groups there is a family commitment to look after their own and not to seek statutory help.

Baroness King of Bow: My Lords, I congratulate Scope and the Equalities National Council on the report, which draws to our attention the fact that nearly half of all black and minority-ethnic disabled people live in poverty, which is staggering. Given this extraordinary statistic, will the Minister agree to meet Scope and the Equalities National Council to discuss this point and look at how impact assessments can be improved in the future so that black disabled children in Britain do not have a 50% chance of growing up in poverty?

Baroness Hanham: My Lords, I thank the noble Baroness for that. I cannot give an absolute commitment myself because this goes further than the Department for Communities and Local Government, but I will see who the right person would be and I am sure that I will be able to give a commitment on their behalf that that meeting will take place.

Baroness Thornton: I thank the Minister for that Answer and the recognition of the particular issues that black and minority-ethnic disabled people face, which require a cross-government approach. The impact assessments of the effect of government policies on welfare reform, for example, are so important because this group is disadvantaged. I therefore seek a commitment from the Minister that the cross-government implementation plan will ensure that there is a strong working relationship between the Office for Disability Issues, the Government Equalities Office and her own department. When might that plan be available for us to look at?

Baroness Hanham: My Lords, as I am sure the noble Baroness knows, the Government are developing the cross-government disability strategy at the moment. It is cross-government, so the answer to her question about whether all departments will be involved is clearly yes. As to when the disability action strategy will be available, there is no date for publication yet as consultations are still going on. They include people from black and minority-ethnic groups.

Baroness Gardner of Parkes: Do other factors come into this? Admittedly, the culture of black and ethnic minorities often means that people care for their own, perhaps better than we do and perhaps putting us to shame in that respect. Apart from that, does the Minister think that there is a lack of awareness? Are these people applying for help, or are they not aware that they need to or could apply for help?

Baroness Hanham: My Lords, the report identifies that quite often they do not apply for help. In part, that is because they are not known to the authorities. A large way of getting around that is for local government or health authorities to ensure that people are aware of the local groups that reflect black and minority-ethnic requirements, and can thereby find out what their needs are. However, I accept what my noble friend says: that in many of these groups there is a family commitment to look after their own and not to seek statutory help.

Baroness Hussein-Ece: My Lords, I also welcome this very important report, which has shone a light on the desperate need of nearly 1 million people from black and ethnic-minority communities—a growing community. I want to press my noble friend the Minister a bit more. Given that demographics mean that this cohort of people is growing fast, will she consider developing a national race equality strategy, which would create a joint implementation plan for these two strategies, to be led by the Office for Disability Issues and the Government Equalities Office, to ensure that these people do not fall between the cracks and can access services?
Baroness Hanham: My Lords, I have already mentioned the disability plan, which is in the process of being put forward, and where that strategy has advice from black and minority-ethnic groups. The Government do not think that a race equality strategy would add very much to the current position, with its focus on the barriers faced by disabled people. There are duties under the equality strategy, which I think is now 90% introduced. This is not a question entirely of race and disability but of ensuring that individuals have access to the services that they need and are known to the authorities when they need to be so that their requirements are met. That goes across the board. In short answer to the noble Baroness, we do not think at the moment that a race equality strategy would add anything to the Government’s position.

Baroness Whitaker: My Lords, will the noble Baroness seek to remedy the omission in the Scope report? It took no account of the needs of people with disabilities from the Gypsy and Traveller community. I remind the House that Gypsies and Travellers are a recognised minority-ethnic community.

Baroness Hanham: My Lords, they are indeed recognised as a community, and I am aware that it is a community on which people concentrate. There should be access to information from them about their needs.

Lord Wigley: My Lords, the noble Baroness will be aware that the report has suggested very strongly that there is a danger of the needs of black and minority-ethnic disabled people falling between the remits of various departments, including the Government Equalities Office, the Office for Disability Issues and the Department for Communities and Local Government. Why is that happening? If there is to be an implementation plan, will she give particular attention to finding a way to ensure that that aspect is addressed?

Baroness Hanham: My Lords, I think that aspect will be addressed by the disability strategy. We already have advice from the black and minority-ethnic groups. The strategy very much takes account of their needs and it then will be a requirement under it that local government, the health service—the people who are commissioning services—know where the people are who need them and can identify what they require individually. The short answer, again, is that that will be taken into account across government in the disability strategy.

Schools: Careers Advisers

Question

2.44 pm

Asked By Baroness Hughes of Stretford

To ask Her Majesty’s Government why their guidance to schools on implementing the new duty to provide careers advice has not required schools to employ qualified advisers and provide face-to-face advice for pupils who need it.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, the recent publication of statutory guidance on careers marks an important step, as schools prepare for the introduction of the new duty to secure independent careers guidance from September. Schools will be expected to work in partnership with expert careers guidance providers as appropriate to ensure that pupils receive impartial advice. The statutory guidance is clear; face-to-face careers guidance can help pupils, particularly those from disadvantaged backgrounds, to make informed choices and successful transitions.

Baroness Hughes of Stretford: I thank the Minister for his Answer. The Government have commendably continued the work of the previous Labour Government to establish a national careers service for adults, and the Business Secretary has specified the qualifications that advisers must have and that face-to-face advice must be provided to target groups of adults. Why, then, has the Education Secretary allowed schools complete discretion—because that is what the guidance does; there is nothing required of schools—in the quality of service provided to young people? Has not therefore the Secretary of State for Education really failed in his duty to young people by not setting even a minimum standard of service that every school must meet?

Lord Hill of Oareford: My Lords, we had these debates at length during the passage of the Education Act. As the noble Baroness will know, it is the Government’s view, and our starting point—and it is what we are trying to do across the piece—to trust schools and heads and people running schools to make the best judgments in the interests of their children. That is something that we are seeking to do across the board. It is not the case that the guidance does not provide any framework at all in terms of what schools should take into account. It is clear, for instance, that they should secure access to independent face-to-face careers advice when they judge that it is appropriate, particularly for children who are disadvantaged and with special educational needs. I agree with her about the importance of careers guidance and advice, and there are a range of ways in which we are seeking to do that and to increase employer involvement in schools, whether through studio schools and UTCs or through getting 100,000 employers to come into schools to explain how children can prepare themselves for the world of work.

Baroness Sharp of Guildford: My Lords, I believe that there has been some discussion of examples of best practice in careers guidance being published to supplement the guidance that has already been issued. Is that likely to be the case? Such best guidance would, I believe, bring out the necessity of face-to-face guidance when it is appropriate.

Lord Hill of Oareford: My Lords, it is the case in terms of producing statutory guidance. The department’s view, which I think is the right view, is that statutory guidance should always as short, focused and clear as
possible. But it is the case, as my noble friend mentions, that there could be benefits in having some practical information and additional support to schools to help them to understand what their duties are. It is the case that my honourable friend John Hayes, who is the responsible Minister, would be very happy to have that discussion with my noble friend Lady Sharp and to see how that practical information could best be provided.

Baroness Howe of Idlicote: My Lords, the Minister will know that there are many industries and careers in which girls are under-represented. Within the Government’s plans, do they have specific arrangements for seeing that girls are enlightened about some of the better paid and more needed careers within the communities that they live in?

Lord Hill of Oareford: The general point to which the noble Baroness refers would be well illustrated in the kind of work that we want to do with university technical colleges, trying to make sure that girls, for example, have the opportunity to study and get those technical qualifications that will lead to well paid jobs. In terms specifically of the guidance, consistent with my earlier answer, our overall approach is to say that we would trust schools to take the best judgment as to what is in the interests of their pupils, whether that is boys or girls. But I agree with her that careers guidance is important for children of both sexes.

Lord Brooke of Sutton Mandeville: My Lords, I realise that most of your Lordships’ House will have received qualified careers advice for, otherwise, they would not be here. However, can my noble friend tell me what qualifications are needed in order to give qualified advice?

Lord Hill of Oareford: My Lords, if I had received good careers advice, I would not be here. In terms of what qualifications we look for in good careers advisers, the accredited providers of careers advice will have to meet a quality standard set by the national careers service. However, generally, we can all benefit from advice from a whole range of people. We have all had it in different ways, which is why we are where we are.

Lord Roberts of Llandudno: My Lords, does the Minister really think that one short interview will be sufficient? Should there not be ongoing mentoring and guidance? Some children develop late; others change their minds—as we all have at one time or another. However, they should be ongoing, well-resourced and thorough.

Lord Hill of Oareford: My Lords, my basic view is that it is horses for courses. Different children need different things. There will be some who will need intensive support of the sort to which my noble friend refers. There will be others who know exactly what they want to do and will need less.

Baroness Knight of Collingtree: My Lords, will my noble friend continue to bear in mind that, however good the careers advice may be, if the student cannot get an apprenticeship it is often very difficult to follow such advice that they may have received? The link is very important.

Lord Hill of Oareford: My Lords, I agree with my noble friend. That is why we have rapidly been increasing the number of apprenticeships for under-18s and over-18s. The best support that one can give to children to prepare for a career is a decent education. That is why our focus is on what goes on in schools before they are 16 because careers advice, however good it is, cannot compensate if there is a basic deficiency in the education that has been provided.

Lord Sutherland of Houndwood: My Lords, in agreeing with the Minister’s last remark—

Noble Lords: Time.

Olympic Games: British Companies

2.52 pm 

Asked By Lord Haskel

To ask Her Majesty’s Government why British companies which have supplied innovative products to the London Olympic Games and Paralympics Games are unable to publicise those products in order to gain further business.

Baroness Garden of Frognal: My Lords, as suppliers are paid the full commercial rate for their goods and services and are bound by the no-marketing rights clauses in their contracts, sponsors who have collectively raised in excess of £1 billion towards staging the Games are granted exclusivity for marketing rights. As the Written Ministerial Statement that I made on 1 May clarified, businesses can state their contribution to the Games in various contexts, including client lists, pitch documents and informal business contexts.

Lord Haskel: My Lords, I apologise for raising this matter with your Lordships again today but the matter is urgent. Does the Minister recall that the companies that I spoke about yesterday have no wish to use the logo or the Olympic rings or to do anything that contravenes the branding guidelines? All they want to do is use the Olympics as a shop window for the products and materials that they have supplied to go out and get further orders from other countries—orders that Ministers are urging them to get. Will the Government now persuade LOCOG to lift its ban immediately so that they can get on with it—yes or no?

Baroness Garden of Frognal: My Lords, it is not for the Government to persuade LOCOG to lift the ban because these firms will have signed a contractual arrangement when they made the contract with LOCOG in the first place. Of course they can promote their wares as long as they are within the context of the terms of the contract. As the noble Lord says, we have to ensure that they cannot promote their involvement...
in the Games in a way that undermines the exclusive marketing rights of the London 2012 sponsors. However, there are many other occasions and ways in which the Games will provide a focus for the very businesses that he wishes to support.

Lord Moynihan: My Lords, while my noble friend the Minister has responded on behalf of LOCOG, would she support the decision of the British Olympic Association which, following the return of the Olympic rights from LOCOG to the BOA on 31 December this year, will seek to ensure that all contractors and subcontractors can seek recognition of their superb contribution to the London Olympic and Paralympic Games to help them win national and international contracts in the delivery of sports facilities in years to come?

Baroness Garden of Frognal: Indeed, my Lords, the Government wholeheartedly support all the work that is going on to ensure that after the Games the contractors have a showcase for the outstanding work that they have done. Meanwhile, the Government in conjunction with UKTI and a number of other bodies are setting up visits, activities and promotional ways in which British business can be highlighted during the Games.

Lord Anderson of Swansea: My Lords, the Minister will be aware that in spite of brave promises at the outset of a regional spread of these contracts, the amount of contracts going to the regions has been miniscule but the amount going to London and the south-east has been massive. What lessons has she learnt from the way in which public money has been used to buttress only those firms in areas which are already relatively prosperous?

Baroness Garden of Frognal: My Lords, a number of regional contracts have been awarded as well. They may be small in comparison with some of the London-based ones but some very significant contracts have gone to the regions. We certainly hope that in the course of the Games when the highlight is on the UK generally, we will be able to promote those areas which are showing innovation and creativity in their business.

Lord Addington: My Lords, does my noble friend agree that although there are some restrictions on the use of the Olympic symbol they are there for very good reasons, primarily to allow the Olympic movement, and those sports attached to it, to raise financing and protect their marketing? Will we ensure that that is not damaged? These Games will come and go but the Olympic movement supporting the athletes will go on.

Baroness Garden of Frognal: My noble friend is absolutely right: the Olympic branding is a vital asset to the whole Olympic movement. We have to play our part in ensuring that that branding does not get misused while the Games are in London.

Lord Tomlinson: Does the Minister agree that, welcome as the statement of the noble Lord, Lord Moynihan, was, it is a case of better late than never? A number of companies have made substantial contributions to the infrastructure of the Games and have paid high levels of taxation towards the promotion of them. Should they not get some of the benefits, particularly as we are encouraged to believe that the answer to some of our economic problems is that free competition will sort everything out in the end?

Baroness Garden of Frognal: My Lords, as I set out in my original Answer, they are able to publicise what they are doing in connection with the Olympics as long as it is within the context of the contract which they have signed with LOCOG. They will also be the beneficiaries of the initiatives going on during the Games to ensure that our businesses are highlighted when the international focus is on London during the Games.

Lord Naseby: My Lords—

Lord Wade of Chorlton: My Lords, if one of the benefits of the Olympic Games is to encourage people to get more involved in sport, why not keep the site open next year and have an industrial exhibition to encourage people to be wealth creators?

Baroness Garden of Frognal: As was explained in the debate yesterday, the Olympic site will be closed in order to be redeveloped for its legacy purposes into the future. It will be used for sport in the future. The athletics stadium will host the 2017 world athletics, for instance, and other events will be going on. However, there is a need to close parts of the site down immediately after the Games so that it can be redeveloped for its long-term future.

Lord Moynihan: My Lords, I apologise to the House as I should have declared my interest as chairman of the British Olympic Association.

Lord Stevenson of Balmacara: My Lords, just to get a flavour of what we are actually talking about, when the Olympic torch started out from Plymouth, LOCOG officials confiscated leaflets advertising an Olympic breakfast at a local café. The officials said that flaming torch bacon and egg baguettes were on the menu, which contradicted their guidelines. According to the Office for Budget Responsibility, GDP is set to grow by 0.1% because of the Olympics. Presumably, that figure would have been much higher if the enterprise of the supplier companies had not been so grievously shackled in their marketing and advertising operations that we have heard about. Is the conclusion that we have to draw from this sorry episode that the Government have missed a golden opportunity here by caving in to LOCOG and to the IOC, to the detriment of our supplier companies?

Baroness Garden of Frognal: My Lords, I do not think that there is any question of the Government caving in to LOCOG. We reached agreement with LOCOG and the IOC on the way in which we would frame the Games. I remind the noble Lord that it was...
his Government who set up all these criteria in the first place. However, I agree that the case of the flaming torch sandwich will live on in the memory.

**Housing**

**Question**

2.59 pm

**Asked By Lord McKenzie of Luton**

To ask Her Majesty’s Government what action they propose to take in the light of the housebuilding data for the quarter to March 2012.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, the Government are already taking action. The housing strategy launched in November last year announced an ambitious measure to boost housebuilding substantially, including a £1.3 billion investment to get Britain building and plans to deliver up to 170,000 affordable homes. We are releasing public sector land for up to 100,000 new homes and helping buyers through the NewBuy scheme.

**Lord McKenzie of Luton:** My Lords, I thank the Minister for that reply, which I suggest is massively complacent but surpassed by Grant Shapps, the Housing Minister, who is on record as saying that “Building more homes” in this country, “is the gold standard upon which we shall be judged”. Yet there were just 109,000 completions in England in 2011—the second lowest total of any year since 1946. Seasonally adjusted housing starts to March 2012 were 11% below the December quarter and, for the year to March 2012, 6% below the previous year. Things are getting worse not better while homelessness and rough sleeping are increasing—even without further housing benefit cuts coming down the track—and private sector rents are rising. At a time when the construction sector needs work, people need jobs and families need homes, what are the Government going to do to step up to the challenge?

**Baroness Hanham:** My Lords, the housing strategy steps up precisely to the challenge. Some of the completions depend, of course, on when the start was and not all the starts were since 2010, so the previous programme had some effect on the programme now. However, the Government are determined that there will be a big boost to housing starts, to affordable housing and to private housing. There will be support for that in the programmes that we have outlined. By the time the spending review is completed there will be, as I said, 170,000 new affordable homes built.

**Lord McKenzie of Luton:** My Lords, I hope the Minister is aware that the land value of a house in the 1960s was about 25%. The land value of a house today is over 50%. That means that the present generation are paying 25% more for their mortgages than most of us here today did. Most people who have analysed the situation believe that this is due to excessive land rationing through the planning system. I applaud what the Government are trying to do in freeing up the planning system but we really have to get to the heart of this, release more land and bring supply and demand into balance.

**Baroness Hanham:** My Lords, I agree very much with my noble friend. The Government are doing just that. Public sector land is being freed up as we speak. As I am sure the noble Lord knows, there is a plan across all departments to free up any spare land, including Ministry of Defence land. There are also now policies to ensure that, where planning permission has already been given but the plans have not been implemented, there will be greater encouragement to those people to ensure that the land is developed. We all recognise that there is a great demand for housing. We very much appreciate the problems that first-time buyers are suffering, and the delivery of more houses—on which we are determined—should help.

**Baroness Hollis of Heigham:** My Lords, is the Minister aware of the effect of housing supply on jobs? As my noble friend Lord McKenzie rightly said, each new house built generates two and a half years-worth of job—one year for the construction and one and half years for the supply of materials, the furnishings, the carpets and the rest. Not only will an enhanced housing programme meet desperate housing need, it will also meet desperate unemployment, particularly among young people who wish to be apprentices.

**Lord Alton of Liverpool:** My Lords, I am grateful. The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, we have not heard from the Cross Benches during this Question.

**Lord Alton of Liverpool:** My Lords, I am grateful. Will the Minister share with the House the number of people who are currently on housing waiting lists in the United Kingdom? Can she also share with us the number of underoccupied properties and the number of empty properties in the UK?

**Baroness Hanham:** My Lords, I do not think that anybody will disagree with what the noble Baroness said. There is no doubt that the construction industry provides jobs and training for young people and, as she has said, it has many offshoots as a result. It is therefore in everybody’s interests that we manage to ensure that the housing market is boosted, and the Government are firmly behind that.
Lord Shipley: My Lords, we have recently seen the establishment of a green investment bank, and some commentators think that consideration ought now to be given to a housing investment bank. Will that be seriously considered by the Government?

Baroness Hanham: My Lords, the noble Lord has made a point, which I am sure will be noted—and I will make sure that it is.

Electric Personal Vehicles (Use on Highways) Bill [HL]
First Reading

3.06 pm

A Bill to make provision for the use of electric personal vehicles on highways.

The Bill was introduced by Lord McColl of Dulwich, read a first time and ordered to be printed.

House Committee
Motion to Approve

3.06 pm

Moved By The Chairman of Committees

That a Select Committee be appointed to set the policy framework for the administration of the House and to provide non-executive guidance to the Management Board; to approve the House's strategic, business and financial plans; to agree the annual Estimates and Supplementary Estimates; to supervise the arrangements relating to financial support for Members; and to approve the House of Lords Annual Report;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:
L Alderdice, L Campbell-Savours, L Craig of Radley, B D'Souza (Chairman), B Hollis of Heigham, L Laming, L McNally, B Royall of Blaisdon, L Sewel, L Strathclyde, L True, L Wakeham;

That the Committee have power to send for persons, papers and records;
That the Committee have leave to report from time to time;
That the Reports of the Committee shall be printed, regardless of any adjournment of the House.

Lord Trefgarne: My Lords, perhaps I may put just one question to the Lord Chairman. In line 2 of his Motion, he refers to the Select Committee being able to offer “non-executive guidance” to the Management Board. Are there not occasions when some plain speaking might be required, as far as the Management Board is concerned? Would not the words in his Motion preclude that?

The Chairman of Committees (Lord Sewel): My Lords, I am all in favour of plain speaking but, in my experience, that often takes the form of non-executive advice.

Motion agreed.

Groceries Code Adjudicator Bill [HL]
Second Reading

3.07 pm

Moved By Baroness Wilcox

That the Bill be read a second time.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My Lords, the Bill received its First Reading on 10 May, the day after the Queen's Speech. This reflects the high degree of importance that the Government place on this measure and our desire to establish the adjudicator as soon as possible.

The purpose of the Bill is to establish a groceries code adjudicator to enforce the groceries code and ensure that large supermarket retailers treat their suppliers fairly and lawfully. As a competition measure, this is not a devolved matter and will affect the entire United Kingdom. However, the Bill has been discussed with the devolved Administrations, who support the adjudicator's establishment.

Before I turn to the detail of the Bill itself, I wish to explain why we must now take action. In its 2008 report on the supply of groceries, the Competition Commission found that in certain circumstances the buying power of large supermarkets was potentially a cause for concern. The commission found that at times retailers transferred excessive risks or unexpected costs to their suppliers. This in turn was likely to lessen suppliers' incentives to invest and innovate, which could act to the long-term detriment of consumers.

As a result, the Competition Commission made an order that required large supermarket retailers—those with a turnover of more than £1 billion pounds a year—to incorporate the Groceries Supply Code of Practice into their contracts with suppliers. The code requires large retailers to treat their suppliers fairly and lawfully, and places limits on a number of practices, such as the retroactive alteration of contracts. It applies equally to British and overseas suppliers.

However, the Competition Commission recognised that, by itself, such a code would not achieve the desired change. Very few suppliers would be willing to take a retailer to arbitration or to court, due to the buying power of the retailers and the fact that the supplier will be dependent on them for future business. In consequence, the Competition Commission recommended that an independent groceries code adjudicator be established to enforce the code and ensure that it was effective.

I know that noble Lords on both sides of this House are eager to see the adjudicator introduced. As a former supplier to supermarkets myself, I am very aware of the concerns that the code and the adjudicator
will address. However, I also know that in most cases large supermarkets act well, that they contribute to jobs and prosperity and that the groceries market overall is a highly competitive one, which has been very effective in delivering low prices and wide choice to consumers. The adjudicator’s powers must therefore be both adequate and proportionate, ensuring that he or she can uphold the groceries code while avoiding excessive burdens on retailers.

The adjudicator will investigate large retailers and hold them to account if they have broken the groceries code. There will be no restrictions on who can complain to the adjudicator, and all complaints will be kept in strict confidence. This means that the adjudicator can receive information from any source, potentially including direct and indirect suppliers, including farmers, whistleblowers within the large retailers and trade associations representing their members. If retailers do break the code, the adjudicator will have tough sanctions, including so-called “name and shame”, instructing retailers to publish information about a breach. We think that these sanctions are powerful enough to uphold the code. However, if this proves not to be the case, the Bill allows the Secretary of State to grant the adjudicator a power to impose financial penalties.

Aside from this investigatory role, the adjudicator will have a number of other functions. These are: to publish guidance on when and how investigations will proceed and how enforcement powers will be used; to advise large retailers and suppliers on the groceries code; to recommend changes to the groceries code to the Office of Fair Trading; to arbitrate individual disputes between large retailers and their direct suppliers, or appoint another person to do so; and to report annually on his or her work.

I emphasise that the adjudicator’s direct responsibility is restricted to enforcing the code, which concerns the relationship between retailers and their direct suppliers. By preventing retailers from passing on excessive risk and unexpected costs, the adjudicator will increase the stability of the supply chain as a whole, unlocking investment and innovation.

I recognise that in some sectors, some suppliers have concerns around the activities of intermediaries in the supply chain. However, any extension of the code or of the adjudicator’s role in this way would need to be based on proper evidence and consultation. Extending the code down the supply chain would be likely to lead to over-regulation, restricting practices which are not problematic and placing an undue burden on business.

I will now discuss further two areas that I know are of particular interest to those who support the Bill: how the adjudicator will carry out investigations and what powers he or she will have to hold to account retailers who have broken the code. There will be no restrictions on who can complain to the adjudicator. In order to begin an investigation, the adjudicator must have reasonable grounds to suspect that the retailer has either broken the code or failed to follow a previous recommendation by the adjudicator. Investigations are central to the adjudicator’s role in enforcing the groceries code. That is why we have thought long and hard about what sources of information the adjudicator should be able to consider and have listened carefully to the views of the BIS Select Committee on this.

When the draft Bill was published last year, it provided that the adjudicator not only had to have reasonable grounds to suspect a breach of the code to begin an investigation, but that this had to be part-based on information either from suppliers or in the public domain. At pre-legislative scrutiny, this proved to be one of the most contentious points, with many who gave evidence arguing that the restriction on sources of information should be removed. A few also said that the adjudicator should be able to begin investigations “proactively”—in other words, whenever he or she wanted, based on no evidence at all.

The BIS committee in the Commons advocated a middle way: that the sources of evidence should be extended but that proactive investigations should not be allowed. After careful consideration, the Government have decided not to restrict the information that the adjudicator can consider. We agree that it is possible that sources other than suppliers, such as trade associations or whistleblowers, may have information that would be of value to the adjudicator, and we have therefore decided that the adjudicator should be able to consider any information that he or she has available. The requirement for “reasonable grounds to suspect” a breach or failure will continue to provide a necessary check to prevent investigations being launched without cause.

We have some concerns that, if trade associations do not act responsibly, the adjudicator could be burdened with dealing with larger numbers of less direct and lower-quality complaints. The Government have therefore provided in the Bill that at each triennial review the Secretary of State must assess whether the involvement of third parties is helping or hindering the adjudicator. If the latter applies, he will be able to restrict the sources of information which the adjudicator can consider in deciding whether to commence an investigation. This will ensure that trade associations have a clear incentive to act responsibly, while still allowing them to play a full role.

The Government welcome the way in which pre-legislative scrutiny of the Bill has made the provisions on investigations stronger and better. The version now before your Lords’ House strikes the right balance between preventing proactive investigations or fishing trips that could be burdensome to retailers and providing the adjudicator with the necessary freedom to begin investigations in response to genuine complaints, from whatever source.

The other major area worthy of discussion is what remedies the adjudicator will have to hold retailers to account. It is clearly critical that if the adjudicator finds that a large retailer has broken the groceries code, he or she has adequate enforcement powers that can be used against the large retailer in question. The Bill provides that the adjudicator will be able to take one or more of three possible enforcement measures: to make recommendations; to require the large retailer to publish information—so-called “name and shame”; or to impose financial penalties. I ask noble Lords to
[BARONESS WILCOX]

note that financial penalties may be used only if the Secretary of State makes an order allowing this, and an order would grant this power generally, not case by case.

The range of enforcement measures available will allow the adjudicator to tailor his or her action to the nature of the breach in order to enforce the groceries code most effectively. It will also allow the adjudicator to take more than one measure if appropriate. In some cases, it may be most appropriate, for example, both to make a recommendation and to require information to be published to inform the wider industry.

Some noble Lords may ask why imposing financial penalties is a reserve power only. The reason is that the Government believe that in a highly competitive market retailers will not risk reputational damage from unacceptable behaviour towards suppliers and that therefore the powers to make recommendations and to require information to be published will be sufficient to have a significant effect on behaviour. However, if they prove not to be sufficient, the Bill contains a reserve power for the adjudicator to impose financial penalties, subject to an order made by the Secretary of State for Business. This order would need to be made under the affirmative resolution procedure, ensuring a suitable degree of scrutiny by Parliament.

That last point raises a final very important issue: how will the adjudicator be accountable? I would like to assure the House that the Bill provides for a strong level of accountability. Every year the adjudicator will be required to publish an annual report setting out any arbitrations and investigations that he or she has carried out, any use of enforcement powers and, if recommendations have been made to large retailers, whether those have been followed. The adjudicator must also publish a report after each investigation. Two years after appointment and then every three years, the Secretary of State will be required to carry out a thorough review of the adjudicator. He or she will be required to consult interested parties, publish a report of the findings and lay that report before Parliament.

Finally, the Secretary of State may abolish the adjudicator if he or she considers that the adjudicator has not been sufficiently effective in enforcing the groceries code or that there is no longer a need for the adjudicator. The Secretary of State may also transfer the adjudicator’s powers to another public body. All these powers are subject to the appropriate degree of oversight by Parliament. The adjudicator’s work to uphold the code will support investment and innovation in the supply chain by stopping supermarkets passing on excessive risk and costs to suppliers. It is a proportionate, targeted and pro-growth measure that will act in the long-term interests of the consumer. I therefore commend it to the House. I beg to move.

3.21 pm

Lord Grantchester: My Lords, today brings a major step forward in the implementation of a more honest and transparent regime in the relationship between the major retailers and their suppliers. The measure before your Lordships’ House today has Labour’s fingerprints all over it. It has been a thorough process since the initial referral by the Office of Fair Trading of the supermarkets in their grocery supplies business to the Competition Commission back in 1999. There have been extensive consultations, reviews and recommendations since the second inquiry in 2008, and this strengthened the supply code recommending the establishment of an ombudsman to oversee supermarket practices.

In August 2009, the Competition Commission recommended that this be put on to a statutory basis as no satisfactory voluntary agreement could be reached. In February 2010, our Labour Government brought in the new Groceries Supply Code of Practice to replace the Supermarkets Code of Practice, with the intention of putting the adjudicator on to a statutory basis.

In May 2011, the Conservative-led coalition introduced a draft Bill that has received widespread comment and scrutiny by both the Environment, Food and Rural Affairs Committee and the Business, Innovation and Skills Select Committee in the other place. The Government’s response is before your Lordships’ House today.

There is little doubt that this legislation is necessary. Each step along the way has been tested and found wanting. Suppliers in the groceries market have constantly challenged the practices of supermarkets. I declare my past experiences in the supply chain both as a member of the various trade associations in the farming sector and as chairman of a farmer-controlled co-operative supplying milk largely to the retailer the Co-op, as well as other dairy products to other major retailers.

The reasons for the code and the adjudicator to monitor and receive representations are as valid today as they have always been. While it is true that the largest 10 retailers receive supplies for some major brand suppliers such as Coca-Cola and Kellogg’s, the market is mostly characterised by many much smaller category suppliers to dominant retailers that are dominant across all retail food sectors. This brings features into play that require a strong code of practice to safeguard the confidence and investments necessary for suppliers if there are to be benefits to consumers in the long term.

The Bill not only delivers on the 2008 recommendations by the Competition Commission; it upholds the will of Parliament, as expressed in the Enterprise Act. The adjudicator must actively monitor and enforce the code of practice and provide suppliers with the confidence to come forward with information on possible breaches of the code.

Having said that, we are assessing the Bill before us today against several tests. Does it have the right measures to work in practice and deliver on its promises? Will it bring about change? Does it promote enterprise and growth, leading to sustainable jobs? Will it stimulate innovation in the supply chain? Will the suppliers risk using it? Will it regulate better and in a proportionate manner at an affordable cost? Will it help consumers enjoy better products at affordable prices that translate into sustainable returns for supplying businesses? Will it create a positive, forward-looking structure that is informative, constructive and transparent to all stakeholders, including Parliament, and that will be responsive and timely in its actions?
I am sure that many noble Lords in the debate today will pick up and examine these points in detail. While it is unfortunate that some noble contributors are unavoidably absent, I know that many have expressed an interest in joining us in coming forward with amendments to improve these aspects of the Bill in Committee.

The two main issues that came out of the draft Bill concerned, first, information provided by third parties such as trade associations, in addition to direct suppliers, and secondly, whether enforcement powers should include the fact that the adjudicator may levy financial penalties. With regard to third parties, we are very pleased that the Government have accepted this recommendation and included it in the Bill. It is very necessary to build confidence in suppliers to provide information anonymously without fear of recrimination. This measure also provides a forum for trade to assess the alleged practice at arm’s length and endorse the fact that any alleged malpractice is serious. It should help to deter overzealous complaints.

For that reason, we are alarmed by Clause 15(10), which allows the Secretary of State to delete this provision and revert back to the position where evidence may come only from the supplier. Furthermore, this provision is subject only to the negative resolution procedure. Could the Minister indicate in her response to the debate why the Government would wish to signal this intention?

The second area of contention in the draft Bill concerned the adjudicator’s ability to levy fines. The adjudicator may impose financial penalties under Clause 6 but only after rather a rather clunky drawn-out process under Schedule 3. Why did the Government lose their nerve when it came to introducing the most effective deterrent in the Bill? This is contrary to the recommendations of the BIS Select Committee, which stated that,

“powers to fine should be on the face of the bill, and that the Adjudicator should also be given the power to escalate from a lower to a higher-level penalty if Code breaches continue”.

Under the Bill, a persistently offending retailer can be fined only after extensive warnings, after the adjudicator has published guidance, after the Secretary of State’s consultations across a long list of organisations, including the Competition Commission and the Office of Fair Trading, and after Parliament has agreed to a statutory instrument. This is regulation at its most bureaucratic. Surely we need something more agile. Will the Minister explain why the Government are so averse to giving the adjudicator the ability to enforce through meaningful penalties?

Under Clause 9(6), any fine must be paid into the consolidated fund. In Committee, we will explore whether there should be a more meaningful use for any such funds, for example to promote more innovation in the supply chain. Similarly, complying retailers may wish to see this fund used to reduce their contribution to fund the adjudicator.

The retailers, through the British Retail Consortium, have argued that the Bill will increase prices to consumers. From retailers with over £1 billion of turnover, with many multimillion pound profits, this seems rather disingenuous. The cost of the adjudicator will amount to less than one-tenth of 1% of turnover. Perhaps the BRC could consider whether the levy to fund the adjudicator could be shared on a basis proportionate to each retailer’s turnover. I am sure that it is valid to consider in Committee whether there should be some budgetary ceiling or control on this levy.

It is important to recognise that progress has been made since the code was introduced in 2010. Under Labour, we are heading in the right direction. A lot of excellent work has been undertaken by retailers in setting up compliance units, training their buying teams, reforming practices and sending annual compliance reports to the OFT. Asda has published a summary of its report on its website. However, there is still a long way to go with transparency. Retailers could publish more information and publish their reports to Parliament, to the adjudicator and to trade associations, and could make their customers aware that fair trade starts at home. The OFT could also be more responsive. I understand that retailers liken the OFT to a black hole into which they submit their reports, never to hear back.

The important element in all this is that the code must be kept alive, relevant and responsive to changing circumstances. The adjudicator must be more active than is envisaged under Clause 13. His reports should be forward looking, seek improvements and be sent wider than merely the Secretary of State and the OFT, as outlined under Clause 14(5).

The Groceries Supply Code of Practice applies only to the relationship between retailers and their suppliers. When the Competition Commission published its report in 2008, it indicated that there was a case for extending the code down the supply chain to intermediaries, consolidators and their suppliers. It held back from making any specific recommendations on this as it was considered beyond the scope of its remit.

There is much evidence to support the contention that processors, under supermarket pressure, merely pass on that pressure down to their suppliers. Indeed, only last week the dairy supply chain was braced with reports of big alterations on pricing without as much as one month’s notice, each following down the lead taken by Dairy Crest.

The Government must not be complacent on this. The introduction of the adjudicator is not the end of the process; it is the beginning. What will success look like? Under Clause 16, the “Transfer of Adjudicator functions and abolition etc” is extremely worrisome to the supply chain because of any possible effect that it may have on the code and its future direction. The code must be a living document that is open for continual improvement in order to ensure that the framework is responsive and aggressive and ultimately works in the best interests of all businesses as well as consumers.

3.32 pm

Lord Razzall: My Lords, notwithstanding the fact that there are 19 speakers in this debate, I am quite certain that the Bill has overwhelming support in your Lordships’ House. Indeed, having listened to the words of the noble Baroness and the noble Lord, Lord Grantham, it rather reminds me of the scene in
“Spartacus”. I think most people in your Lordships’ House are old enough to remember “Spartacus” and that wonderful scene when Kirk Douglas, playing the slave, was about to be arrested by the Romans and every one of the slaves stood up and said, “I’m Spartacus”. The debate reminds me that all three political parties will claim to be Spartacus and that this was their idea. However, I am sure that that will nevertheless produce significant support for the Bill.

The noble Lord, Lord Grantchester, made a number of valid points, many of which I share his view on, and I shall touch briefly on some of them. Clearly the significant change that the coalition has made is to widen the groups of people from whom the adjudicator can take evidence, particularly the trade associations. As the noble Lord, Lord Grantchester, pointed out, there has been concern that people can go on fishing expeditions. However, the remedy proposed in the Bill is fairly blunt because, were it to be found that that had been the case, we would revert to the provision in the previous Bill under which those powers are removed. In responding, the Government ought to indicate whether there should be more flexibility here. I am not entirely sure why a trade association which has not been involved in fishing expeditions, and has not been proved to be defective in the way it has approached this matter, should be excluded under the all-or-nothing nature of Clause 15(10).

The second point that the noble Lord, Lord Grantchester, made, which I entirely agree with, is on the penalties. The procedure for introducing penalties seems to be extremely cumbersome. Perhaps the Government, when we get to Committee or Report, could look at whether that process should be streamlined to make the ability to introduce penalties more effective and speedy?

I am not sure whether the noble Lord referred to the question of anonymity, which is a concern here. Clearly, with the power of the 10 leading supermarkets, people complaining to the adjudicator must have anonymity, but there are circumstances under Clause 18(3) under which disclosure of information by the adjudicator may be authorised. The Government need to look at this to explain to farmers, suppliers and the trade association under exactly what circumstances they envisage that those anonymity rules would be breached.

I entirely agree with the noble Lord’s point that the Government should perhaps look at where the fines should go, notwithstanding the current economic difficulties. At the moment all fines, if there are any, will go into the consolidated fund. As the noble Lord has indicated, it would be worth while seeing if we can be a little more creative about the use to which those fines are put.

Then, of course, there is the question of the abolition of the adjudicator. It seems surprising that the adjudicator under Clause 16(2) can be abolished with a fairly simple procedure, and I wonder if the Government could look again at whether there should be a right for more serious consultation.

We have all been lobbied by the leading supermarkets, and nine of them think that the fee proposals will make a serious dent in their profits. I am delighted to say, as a regular shopper there, that Waitrose does not take that view, and it has a structure that the rest of the corporate world should emulate. Waitrose makes the point that there is likely to be an average cost per retailer of £200,000 a year, which for most of the major retailers is equivalent to 0.02% of their profits, so I do not think that the complaints made by the major supermarkets really stand up. However, I agree with the point made by the noble Lord, Lord Grantchester, which is a Waitrose point, when he asked whether it was fair that everybody should pay the same flat fee, and would it not be possible to have an annual review after which the people against whom there had been the largest number of complaints should pay more and the good boys could pay less? I very much support this Spartacus Bill.

3.38pm

The Earl of Sandwich: My Lords, I am another supporter. I should declare an indirect interest as a life tenant of agricultural land in West Dorset and a member of the NFU, but my real interest comes from my experience of the voluntary sector and fair trade organisations such as Traidcraft and the Fair Trade Foundation, many of which have links with the churches, which I know will have a close interest in the Bill, as we shall hear in a moment.

From small beginnings, these organisations have made tremendous inroads into our supermarkets in recent years. I also know it has been an uphill struggle for some of them, just as it has for small farmers and milk producers, who often operate just the wrong side of the price margins. It means everything to them to get this sort of guarantee. The noble Lord, Lord Plumb, knows about this, as does the noble Lord, Lord Knight of Weymouth, as he comes from the West Country. I see that the BIS leaflet on the adjudicator has a dairy producer on its front cover, which is always encouraging.

Dairy farmers have simply gone out of business all around us and they still blame the supermarkets. They hark back to the time of the Milk Marketing Board, when they received a fairer and more stable price and there was much more certainty in forecasting and budgeting. Anyone who has worked with small businesses must be relieved to see this legislation come forward at last. Although it is imperfect, we must not hold it up for long, because of its importance. Although it is essentially a Labour measure, this is not a bargaining chip for the coalition. It is long agreed by all the parties and, while capable of being improved, it must be allowed to pass into law—perhaps in time for the adjudicator to start work in the new year. In the Minister’s words, retailers act well on the whole, and breaches of the code have, thankfully, been rare.

The major bone of contention is of course the extent of powers given to the adjudicator who, in the Bill, still appears to be the dog that growls but has only one or two teeth. The supermarkets—even the good ones such as Waitrose, which was just mentioned—that are nominally behind the code are nervous about the Bill. Not surprisingly, they resent any interference with the market. They think that the code is working; they distrust the influence of trade associations; they
do not like flat levies—or fines, for that matter—and they would like any powers that enforce the code to remain at the naming and shaming level. Clause 9 says that financial penalties on retailers can be enforced only via the Secretary of State and, “only if ... other powers are inadequate”, as stated in Schedule 3. It is easy to see that this process could be cumbersome. Clause 19 also stops short of requiring retailers to pay levies towards the adjudicator’s expenses, again leaving it to the Secretary of State. The reserve powers in both these clauses surely need to be strengthened if the adjudicator’s office is to have credibility.

Then there is the vexed question of third parties, which was mentioned by the noble Lord, Lord Razzall, and the previous speaker. Sainsbury’s says that obtaining evidence from trade bodies and charities is impractical and would add an unnecessary layer of bureaucracy. On the other hand, the CLA argues that third parties must be included and the NFU says that the GCA must have, “the power to take credible evidence from reputable sources, and to use its judgment to assess its worth, before launching an investigation.”

Those points seem very reasonable. The Government have listened to them and the BIS Select Committee has spoken on this. As a result, the draft Bill has been altered to include third parties and, on the whole, to ensure anonymity. However, under Clause 15(10) there could still be restrictions on sources of information. I know that the Minister will cover that in her reply.

I appreciate that there is a risk of overregulation and I look forward greatly to the noble Viscount, Lord Eccles, who will expand on that. The adjudicator cannot be expected to investigate every complaint and the Government’s concessions will not satisfy everyone. Problems are bound to occur when retailers hide behind larger suppliers and middlemen. The British Retail Consortium claims that very few farmers supply directly to retailers and that most grocery supplies now come from large manufacturers such as Kraft and Nestlé, some of whom may have greater market power than the food retailers that they supply. We must keep a close eye on how legislation affects these other suppliers. Under the Bill, their business should be covered by the adjudicator.

I do not intend to play a major part in Committee because others have so much more experience, but I wanted to offer those few words and I shall be watching to see how far the Minister will have to bend in the face of some of the strong arguments that I know will be deployed.

3.44 pm

The Lord Bishop of St Edmundsbury and Ipswich:

My Lords, my colleague the right reverend Prelate the Bishop of Wakefield was very much hoping to speak in this debate but is unavoidably detained elsewhere. I know he will hope to speak at later stages. However, as I come from a rural diocese I found only too familiar the stories that he told me about the situation in the part of Yorkshire covered by his diocese and his concerns, which go back to 2004 when, on a very cold January night, he picketed the Arla dairy complex near Wakefield. Since then other noble Lords, particular the noble Earl, Lord Sandwich, have raised this matter in this House on a number of occasions.

As we have already heard, the impact of unfair prices has been particularly severe in the dairy industry. Before I went to East Anglia, I had seven years in Cheshire, a part of the country that had been noted for its dairy produce, and saw the effect of unfair prices. I am sure noble Lords are all too familiar with all the disturbing stories about retailers and suppliers.

The Church of England is delighted with the speed with which this Bill has been brought to this House following the gracious Speech. Detailed work within the Church of England on this issue began following a question to the 2005 General Synod; that sounds as if I am claiming that the Church of England had a Spartacus moment about seven years ago. The ethical investment advisory group conducted a detailed study into the practices of supermarkets in relation to their farmer suppliers. The ecumenical network of locally based agricultural chaplains and rural officers interviewed farmers in Yorkshire and the south-west and north-west of England. Such was the fear of some farmers that they would recount their experiences only to the church because they trusted it not to betray their confidence or reveal their identities. Such levels of fear should not be part of ethical or efficient business practice.

Fairtrade Begins at Home, which was published in 2007, was submitted as evidence to the Competition Commission inquiry in 2008. It identified practices such as: flexible payment terms, which seldom work to the advantage of the farmer; contracts subject to arbitrary change; retrospective variations to supply agreements; deductions from invoices without clear reason; and evidence that facilitation payments were required from suppliers—one such demand was £500,000.

There have been many positive developments in the relationships between farmers and supermarkets in the intervening years. However, sufficient problems remain for a groceries code adjudicator to be necessary, despite the introduction of the groceries supply code of practice two years ago. It is therefore important that the powers outlined here are implemented rapidly.

An important and valuable component of the Bill is the proposal to allow complaints from direct and indirect suppliers, as well as from whistleblowers within retailers and third parties. This is an essential part of addressing the climate of fear pervading business with some of the large retailers. It protects the anonymity of complainants and adds credibility to office of the adjudicator. In the current financial climate, co-operatives and collaborative producer groups remain essential for the development of farming businesses, especially for livestock farmers. As indirect suppliers, it is important that co-operatives and producer groups operating on behalf of individual farmers will be able to make a complaint where the groceries code has been broken.

The decision to include enforcement through recommendations on how a retailer applies the groceries code and the requirement to publish information on breaches are positive. The adjudicator must be able to guide and encourage as well as have the means to take action. Nevertheless, like others who have spoken, the Church of England is extremely disappointed that...
financial penalties as currently proposed will not accompany the Bill when it comes into force. Provisions for the imposition of financial penalties are contained in the Bill, as we have heard, but they seem to create unnecessary delay. This will result in limitations in the immediate effective working of the adjudicator. As we have heard, large retailers have deployed the argument that financial penalties will lead to an increase in food prices but, as their turnover is several billion pounds, the Church of England does not believe that that argument stacks up. The British Institute of International and Comparative Law reiterated the importance of teeth—financial penalties—for effective enforcement of fair commercial relationships in food supply chains.

Given that only two years have elapsed since the introduction of the groceries code and that a full report on its functioning is yet to be forthcoming, we urge that the adjudicator role be given three years, if not longer, rather than the two years that it has been given, to establish itself before it is reviewed. Regular review of any function of governance is important, but only after a proper period of time has elapsed can an accurate assessment be made.

The first annual report of the groceries supply code of practice, when it comes, should contain information which will be useful guidance as to how the adjudicator will work and how long it might be wise to wait before a review is conducted. I welcome the Minister’s implication that a wider view of the information that can be considered has been taken by the Government and we certainly support the widest possible access to sources of information for the adjudicator.

It is, of course, to be hoped that where disputes arise, they will be primarily resolved through the existing Groceries Supply Code of Practice, but inevitably circumstances will arise when an anonymous direct complaint to the adjudicator is the only suitable avenue of recourse open. After years of hard work by many people, organisations and others, it would be unfortunate if we were to fail at the final hurdle by not providing the groceries code adjudicator with the budget, staff and financial enforcement mechanism needed to do the job properly.
the adjudicator alone. We need strengthening among co-operatives and co-operation between farmers to improve their bargaining power. I have to say that that has been a theme of mine for the past 50 years. There have been improvements but there is a lot of room for greater collaboration.

Therefore, I congratulate the Minister on many of the issues she has put forward, including amending the Government’s initial proposals in last year’s Bill. The current Bill states in Clause 4 that the adjudicator can launch an investigation where there are “reasonable grounds to suspect” a breach of the code. The trade should welcome the crucial element in safeguarding the adjudicator’s duty to protect the identity of complainants.

As we develop the debate on this extremely important issue, we shall hear many of the myths that come forward. For instance, it is already said by retailers that a supermarket adjudicator will just add to retailers’ costs and push up shop prices for customers. It is estimated that the cost will be around £200,000 a year. The cost of the adjudicator to retailers will be a minuscule proportion of the turnover of the 10 largest supermarkets involved. Only those supermarkets with a turnover in excess of £1 billion are covered by the adjudicator, meaning that the cost will represent 0.02% of turnover at most and usually much less.

Another myth is that both farmers and the Government argue for less regulation, whereas an adjudicator simply adds red tape to business—the point that I made in my opening remarks. However, some regulation is necessary. Indeed, some is desirable to ensure that markets function fairly. It is worth remembering that the Competition Commission recommended the establishment of a statutory adjudicator only when it became clear that no voluntary solution was forthcoming. The retail sector was given the opportunity to provide its own solution to monitoring and enforcing the code of practice but was unable to do so. Regulation is being brought forward now because we see it as the only solution after all other avenues have failed.

I support the legislation coming forward. It is a unique situation, since all parties agree in principle. Therefore, I hope that we will not spend too much time in Committee arguing between ourselves. Let us have some action and get on with the job.

4 pm

Lord Haskel: My Lords, I thank the Minister for explaining this Bill because, for once, I am able to say that I welcome a government Bill—with some scepticism, I might add. Nevertheless, it is a big day when I can say that. As my experience is not in food, I am hesitant to speak about the food business, especially after someone as experienced as the noble Lord, Lord Plumb. Like him, I am in favour of codes in business because, like him, I think markets need rules.

When I first started in business—many, many years ago—one of my first tasks was to go and sell our new flame-retardant fabric to the contracts department of John Lewis. It has a big business in furnishing theatres, hotels and restaurants. I went to its buying offices in New Cavendish Street, did my presentation and they were quite interested. On the way out there was a sign telling you who to contact if you did not think you had had a square deal. “That is a company I would like to do business with”, I thought, and I did for 30 years. Waitrose is part of John Lewis and I imagine the adjudicator operated there too; so it has been doing this for a long time. I entirely agree with the point in its briefing—a point my noble friend Lord Grantham made—that the costs should be allocated according to the number of complaints, instead of a flat levy. In this way you reward compliance.

We were a tiny company then dealing with a large one, and the fact that there was a dispute adjudicator encouraged us to bring all our new products to John Lewis. It benefited and so did we. This is why I welcomed the grocery code Labour introduced in 2009. This Bill enforces that code because presumably it needs new powers of enforcement. This is fine but my concern is that if you go too far enforcing a code it ceases to be a shared interest—the noble Lord, Lord Plumb, implied this. It will then deliver more hope than reality. If you have a serious argument and want compensation you want an arbiter, not just an adjudicator. From what the Minister said, I think the Bill leaves suppliers and supermarkets to get their own compensation from each other unless the Secretary of State intervenes, and that is a big step.

Another difficulty is that modern business can become so complicated, it is hard for an adjudicator to apportion blame. As my noble friend Lord Grantham explained, there are now numerous intermediaries creating grey areas all along the supply chain who will be outside the code. It is also very difficult to assess competition up and down the value chain. It is easier to assess between firms selling similar products.

As ever, the devil is in the detail. Does the Minister recall the regulation about extended warranties? Everybody thought it was a wonderful idea that the cost should be clearly displayed to the consumer on the shop counter—simple. The arguments that ensued about where the notice should be put, the wording, the print size and the type face were such that a simple idea became ineffective. Looking through this Bill, to me it looks too complicated and could benefit from simplification.

The noble Lord, Lord Razzall, used the word cumbersome, and I think he is probably right. I imagine that the Bill steers clear of arbitrating claims because of the difficulties of establishing costs. Again, there are too many complications. Variable costs, allocating overheads, hidden commissions, intermediaries, grants, hidden marketing and financial costs, and all the other surprises that we learn about through experience. As I said, to be effective it has to be kept simple.

At the end of the day the adjudicator will settle the dispute by interpreting the contract within the code. In practice, that is probably as much as one can expect. The Secretary of State will be very cautious about imposing a financial penalty, because researching all these details and costs makes it difficult and time-consuming to establish a loss. The noble Lord, Lord Plumb, said that this will make for less red tape, but the Minister will be aware of the calls from the Benches behind her for less regulation and freer markets to make British business more efficient and more competitive. With this Bill, their Government are introducing more
red tape and a new quango. The noble Earl, Lord Sandwich, mentioned this. What is the Minister’s response to their concerns? I am less troubled, so I welcome the Bill. Sorting out grievances between retailer and supplier will eventually benefit the consumer. It will also benefit the supplier and their communities. But it has to be kept simple. My scepticism concerns the value of this Bill in assisting to arbitrate financial compensation. At the end of the day, if the matter is serious, that is what most disputing parties seek. This reminds me of the Bill that the Labour Government introduced regarding prompt payment. It did not solve the problem, but it made things better, and there is nothing wrong with that. That is what this Bill will do, and that is why in general I wish it a fair passage.

4.07 pm

Baroness Parminter: My Lords, in the 1940s it was typical for people to spend between one-fifth and one-third of their income on food. Now it is only about one-tenth, but much of what we spend on food, in retail shops such as supermarkets, does not make it back to the producer. Companies and growers chase greater and greater volume to cover the overheads imposed by the all-powerful customers. Commercial unethical practices are commonplace in the food chain, but with the level of dominance achieved by the supermarket it is an invidious process and prospect for a supplier to complain. Moreover, as margins become thinner, there is a worrying resulting underinvestment in creating sustainable and resilient farm businesses. For these reasons, I welcome the announcement in the Queen’s Speech of an independent adjudicator to act as an ombudsman with authority and confidentiality to investigate and hold large retailers to account, as has been promised.

The Competition Commission has highlighted widespread examples of abuse, but this is not just limited to the usual suspects, with cases being reported of even the most socially responsible supermarkets demanding hundreds of thousands of pounds from suppliers. Take just one sector: horticulture. Vegetable and fruit growing is intensely competitive and the market is dominated by the oligopoly supermarkets. These major customers have been very successful in passing overhead costs back up the chain to suppliers, and margins are dangerously thin—with 1% on turnover being typical. This is contributing to a major and worrying underinvestment in horticultural research. With the rising tide of obesity and health problems, we want more people to eat more fruit and vegetables, but if we are to make fresh produce more comparable in cost to calorific and less healthy food we must have good research funding.

We know that more people want to buy British fruit, which is convenient and affordable. Indeed, one major retailer is looking to source 50% of its fruit from the UK by 2020, when presently it sources only 10%. We know that rising temperatures in the UK, as identified in the UK 2012 climate change risk assessment, could be an opportunity for growing more blueberries, apricot, grapes and peaches here.

However, how can you invest for the future when margins are that tight? It is to be hoped that the groceries code adjudicator can play some part in overcoming some of the abuses in the system and thus help deliver some of the necessary research and investment to secure resilient farm businesses. To do that the groceries code adjudicator needs strong powers. I find it disappointing that the Government have decided against putting the powers to impose fines into the Bill. To do so would have echoed the views of the 2011 report by the House of Commons Business, Innovation and Skills Select Committee. I am sure that we will debate during the passage of the Bill the holding back of automatic powers to fine, although I accept that the Bill gives the adjudicator the power to impose fines if Ministers that agree other remedies are not working.

In the absence of such an automatic power to fine, the ability to name and shame is the most potent stick that the adjudicator has. It must be used well. The adjudicator’s annual report needs to be transparent about which businesses it has found wanting, and to do so in a way that allows for meaningful public scrutiny. The Explanatory Notes to the Bill make it clear that the annual report should contain information that is useful to the Office of Fair Trading in monitoring the groceries supply order and to the Secretary of State in reviewing the adjudicator and the users of the groceries code generally. I would like to see added clear information of the use to consumers and to the groups that champion their rights so that consumers can make informed choices about where they choose to shop.

I welcome the Bill and the proposals that the Government will regularly review the performance and effectiveness of the adjudicator in undertaking its role. This is a complex industry with a non-binary food chain in many cases, and the Government are right to keep the door open to amending the scope, power and function of the adjudicator in future.

One area that I hope might be looked at in such a review is more incentives to reward compliance with the code. This issue has been echoed across the House by the noble Lords, Lord Grantchester, Lord Razzall and Lord Haskel. Forcing supermarkets that burden the office of the adjudicator with a large number of complaints to play a larger proportion of the adjudicator’s fixed costs could be a very valuable way to incentivise supermarkets to adhere to the code and minimise the number of complaints made. This is surely what everyone on all sides of the House wants.

4.11 pm

Lord Palmer: My Lords, in principle, I do not think that we need more quangos. However, I, too, welcome the Bill and congratulate the noble Baroness on her fluent and succinct introduction, which was done with her usual charm and flair.

From my earliest memories I have been involved in the food chain, initially as a prime producer and then as a biscuit manufacturer. I have now done a full circle: I farm in one of the most beautiful parts of the country, the Scottish Borders. I am delighted to see that the Bill applies to Scotland. I also own a shop, mainly selling souvenirs and biscuits, with a tiny turnover
of approximately £4,000 per annum. I also declare an interest as a member of the National Farmers’ Union of Scotland.

It is important to realise how incredibly cheap food is today. The noble Baroness, Lady Parminter, made this point: 45 years ago, 40% of the national wage went on food; today, it is just under 8%, which is a huge difference. Twenty years ago, as a farmer I was selling malting barley for £160 per tonne, the same as I got two years ago, despite the price of fertiliser tripling from 20 years ago and the price of fuel nearly quadrupling. These are grim statistics that emphasise the huge powers that the supermarkets have. Perhaps more importantly, however, prime producers are being squeezed, and hopefully this is where the Bill will make a difference.

While not wishing to throw a spanner in the works, I would be interested to know why the noble Baroness thinks that “groceries code adjudicator” is the correct term. Some influential organisations have said that perhaps a better and more understandable title would be “supermarket ombudsman”. I am sure that that would make more sense to those who shop in supermarkets and to those who supply them. When the noble Baroness winds up the debate, will she inform the House of the exact logistics of how this very important person will be appointed?

As other noble Lords have mentioned, the adjudicator must have real teeth. He, or she, must be able to levy realistic financial penalties from its very inception. As other noble Lords have also mentioned, in that all the main political parties believe in its conception I wish the Bill all speed and hope that it can become law before the end of the year rather than, as rumour has it, not until next year.

4.15 pm

Baroness Byford: My Lords, I am happy to follow other noble Lords in saying how much I welcome the Bill. I remind the House of my family’s farming interest. Indeed, we used to supply pigs to Waitrose but we no longer have them. Many suppliers have good working relationships with supermarkets. I would hate anybody reading this debate to think that that was not true.

I wonder whether it is just me but I was struck by the rather “folksy” way in which the contents of the Bill are set out. That worries me. Why are the headings between each clause in the form of questions? For example, the question: “How does the Adjudicator arbitrate disputes?” appears before Clauses 2 to 13. The question: “What are the Adjudicator’s reporting requirements?” appears before Clause 14. Other questions follow in the same vein. For example, “Will this law mean other changes to the law?” appears before Clause 21. I hope that when she responds, my noble friend will say that this approach will not give the impression that the Bill, as law, is open to doubt or dispute. It is unusual. Having dealt with many Bills over the years, I found it slightly strange.

I must reinforce what other noble Lords have said on the need for the Bill. Over the years there has been a real climate of fear among some suppliers. I am very grateful that the Government have recognised this and are enabling third parties to bring forward evidence. It is impossible for suppliers to do this themselves because they feel cut off at the knees and there is nowhere else to go. They run the risk of losing a contract—even one that has been reduced—and probably not getting it back. They must have real teeth. He, or she, must be able to levy financial penalties without the need for an order from the Secretary of State. I am grateful that the Government have taken on board some of these recommendations but we shall return to these issues in Committee.

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There have been few changes from the draft Bill and most of my detailed questions will come up in Committee. However, I feel that there are—or may be—issues of principle involved in the significance of some of the alterations as well as in the basic content. The Minister may therefore wish to comment on the following points. In the draft Bill there was a clause titled “Investigations: information” which introduced Schedule 2—then titled “Investigation Powers”. In this Bill, the clause has gone and Schedule 2—now titled “Information Powers”—is first introduced through Clause 4, “Investigations”. These are significant changes in terms of the detail of the work the adjudicator will be empowered to do. I would be grateful for some clarification.

The nature of the adjudicator’s staff is vague, with a reference in Schedule 1 to, “staff working for the Adjudicator”.

The EFRA Select Committee sent seven recommendations to the BIS committee, four of which I have highlighted as the Government have listened and taken them on board. First, the ability of suppliers to make anonymous complaints is fundamental to the success of the groceries code adjudicator. Secondly, the adjudicator should have the power to launch proactive investigations. Thirdly, third parties such as trade organisations should be able to make complaints to the adjudicator on behalf of suppliers, but appropriate restrictions would need to be included in these provisions so that they are not abused. Fourthly, the adjudicator should have the power to levy financial penalties without the need for an order from the Secretary of State. I am grateful that the Government have taken on board some of these recommendations but we shall return to these issues in Committee.

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As others have said, the groceries code was established by the 2009 groceries supply order, which itself arose from work carried out by the Competition Commission between 2001 and 2008, so the measure has been a long time in gestation. That at least tells us that the allegations made by producers have some validity and that the issue has been “live” for a long time.
[Baroness Byford]

Schedule 1 also states that the Office of Fair Trading, “may provide staff, premises, facilities or other assistance … (with or without charge)”. There is also reference to a “Deputy Adjudicator” and “acting Deputy Adjudicators”. All of this seems to indicate a very small establishment and yet the adjudicator is charged, under paragraph 15 of Schedule 1, with keeping proper accounts, with preparing an annual report, under Clause 14, and with receiving both financial penalties and costs. Will the Minister supply more detail on the adjudicator’s establishment?

Clause 15 held my attention for some time. There is a potential imbalance between the large retailers, all of which have to be consulted by the Secretary of State, and those representing the interests of the suppliers, where he is required to consult only one. How does the Secretary of State intend to proceed with such consultations? Will the Minister also expand on the reasons for and the intention of the introduction of a new Section 4A, to which other noble Lords have referred, by Clause 15(10) of the Bill?

Clause 18 allows for the disclosure of confidential information, “for the purpose of an EU obligation”.

I am not the only one to have referred to this. Who will decide what is obligatory and how and when will this decision be communicated to the adjudicator?

I do not wish to go into any greater detail at this stage, but there are some basic questions to which responses from the Minister would be enormously helpful. All of us welcome the Bill. We want to see fair trade for UK producers and overseas producers. We also want to make sure that financial penalties do have an effect on the way in which those who do not currently honour the code will in future honour it.

4.24 pm

Lord Borrie: My Lords, I must declare an interest as a former director of the Office of Fair Trading. Unusually, I am able to thank the noble Baroness, Lady Williams of Crosby, who is in her place today, because she appointed me to that post when she was Secretary of State for Prices and Consumer Protection back in 1976.

Baroness Williams of Crosby: I may say, simply, that it was a good choice.

Lord Borrie: I ceased to be director in 1992, and I need not therefore disclose my current interest—I do not have one.

I generally welcome the Bill because it is designed to deal with a real problem, many of the details of which have been mentioned by previous speakers, and provides a remedy to limit the market power of the top 10 major supermarkets—a power that they have over the supplier, whether the supplier is a farmer or a food producer of some other kind, who normally has, or often has, much less bargaining strength at their elbow. A groceries code was promoted by the Competition Commission and agreed to some years ago by supermarkets, requiring them to deal lawfully and fairly with their suppliers. However, it was not until 2008 that the commission proposed an adjudicator to enforce the code.

The Bill is the Government’s welcome and positive response to the commission’s proposal. It is intended that the adjudicator will be appointed by the Secretary of State and operate from within the Office of Fair Trading, sharing premises and back-office facilities. Under another Bill that is imminent and will come before us soon, the Office of Fair Trading is to be merged with the Competition Commission. No doubt, it will be then that the adjudicator will be housed within the new combined Competition and Markets Authority.

Perhaps it is too late to raise the following point, but I do so in part because my noble friend Lord Haskel spoke of the cumbersome nature of some of the provisions in the Bill. I am not at all sure why there was a need at all to go to the lengths of creating an adjudicator under a special statute as a separate so-called “corporation sole”, plus a deputy adjudicator, as the noble Baroness, Lady Byford, mentioned, instead of simply giving the power and responsibility under the Bill to the Office of Fair Trading or its successor organisation. Why have a completely separate organisation with apparently separate back-up facilities? I certainly see no case for adding further to this special statutory creation by providing for a right of appeal, as some organisations, such as the British Retail Consortium, have been arguing.

Under the Bill, the supplier will be enabled to make a confidential complaint to the adjudicator and, more controversially, third parties such as trade associations—be it the National Farmers’ Union or the British Retail Consortium—may also make complaints. If the adjudicator finds on investigation that a breach of the code has occurred, he may make recommendations. As we have heard several times, he may name and shame as appropriate, but he may not impose fines unless the Minister agrees that other remedies are not working. If that is the case, the Minister then has to introduce secondary legislation afresh, which requires the affirmative resolution of both Houses of Parliament before the financial penalties can be exercised by the adjudicator. I do not think that I am the only person who feels that such a power is, unfortunately, not provided in the Bill. Why not? If it was provided for in the Bill, why should not the adjudicator, who surely we are meant to trust from the outset—it would surely be a good appointment, and all the rest of it—be able to decide from day one of his statutory existence whether a fine is justified in a particular case?

One limitation on the adjudicator’s powers made me wonder. The noble Lord, Lord Palmer, who is not in his place at present, thought that “ombudsman” was a suitable alternative word for the adjudicator. That is not at all appropriate on the basis of what is in the Bill. The serious limitation on the adjudicator’s powers is that if on investigation he finds that a large retailer has broken the code, and the breach affects a particular supplier, the finding will not constitute a determination of liability of the retailer to that supplier. That is specified in the Explanatory Notes and seems to be perfectly clear. It therefore seems odd to refer to
the adjudicator as an ombudsman because ombudsmen decide complaints between two businesses, or between one individual and one business. Under the Bill, if the supplier wants a civil remedy—if he wants damages or compensation for some behaviour of the supermarket—he must make his own claim in the courts or by way of arbitration. As I read it, although I would be happy to be corrected, the person who cannot do the arbitration is the adjudicator; he would be regarded as having a conflict of interest, having previously done the investigation.

I am assuming that, under the Bill, the price the supplier has to pay for being able to make his complaint anonymously is that he cannot bring a civil claim. There would be a serious disadvantage in the whole system envisaged in the Bill if the complaining supplier had to identify himself in the complaint right at the start. That would seriously jeopardise his ongoing relationship with the supermarket, as others have said. However, if the identity becomes known in the course of the adjudicator’s investigation, would not the basis of disallowing the adjudicator from determining the supermarket’s civil liability to the supplier disappear? Certainly, there are some disadvantages in having not only the adjudicator but also some civil court or third-party arbitrator going over the same ground, the same evidence, all over again, preventing the adjudicator from dealing with the civil claim and, indeed, behaving like an ombudsman. That would be unfortunate.

Finally, I add a point which has been referred to by others. Under Clause 19 the adjudicator may request a levy on all large retailers to cover the expenses of the new office. Would it be more appropriate to make such a levy mandatory?

4.33 pm

Baroness Randerson: My Lords, I join with other speakers in supporting the principle of this Bill and the vast majority of its content as well. Indeed, the cross-party support here has been exceptional. The processes that the draft Bill went through have definitely assisted that support.

It is a rare cause that unites both trade unions and small business organisations in its support. It is important to remember that this Bill is not just about the small suppliers, which are most obviously immediately affected; it is also about consumers. The excessive risk and costs that have been forced on occasions on suppliers by some supermarket chains have deterred investment and innovation. It is innovation that helps consumers in the long run.

Seventy-five per cent of the groceries market is in the hands of the top five retailers. That market is just about the most reliable and stable market imaginable. It has all the conditions of monopoly power, and that monopoly power has increased dramatically over the years. The Competition Commission statistics show that the major chains account for 98% of grocery sales. Tesco is the giant of them all, accounting for 30%. The spider’s web of street-corner shops, as well as the large supermarkets, has of course increased and reinforced that power. Possibly most astonishing is that, despite the recession, there are still 44 million square feet of projected new supermarket developments in the pipeline, so the expansion has not stopped.

The Competition Commission has identified the adverse effect on competition of grocery retailers passing unexpected costs and excessive risks down the supply chain. Ultimately, the extra costs of this are imposed on producers, whether or not they deal directly with the retailers, and that is an important point in this debate. As many noble Lords have pointed out, this is not a new issue; it has been debated thoroughly over the past 15 years. I was a Member of the Welsh Assembly for 12 years, and the NFU and the FUW were very vocal in their support for the need for a supermarket ombudsman, as they called it.

The impact of the dominance of large retailers has been phenomenal—on the way we live, on what we eat and on the shape of our towns and villages. The large retailers have given us cheap food but they have also created out-of-town shopping, with its impact on the number of cars on the roads and the distance we have to drive, as well as its social impact on those who have no car. In many places, it has led to empty shops in our town centres, which can be desolate in some poorer parts of the country. Very importantly, it has led to the delocalisation of our food shopping and, hence, of our diet. This is all part of a very fundamental movement in the way we live our lives, and the adjudicator is an important part of that picture.

In the Explanatory Notes, several references are made to the small scale of the adjudicator’s office and the low budget that it will have. I greatly support and appreciate the need to save money and I am not trying to argue with that principle. However, given that there are more than 300,000 farmers in the UK and more than 6,000 food and drink manufacturers, I would welcome some information from the Minister about the basis for this calculation and the assumption that the budget will be low. Because the costs will be covered by a levy on the retailers—and several noble Lords have pointed out how small that levy is proportionately—it seems that the total budget for this office will be some £2 million a year. However, because the climate of fear will be removed, we can confidently expect a big increase in the number of complaints as a result of the Bill becoming law, and I wonder whether the office will have the capacity to deal with them.

I share the concerns of many others that fines will be introduced only as a second step and even then by a rather cumbersome process. I will listen carefully to what the Minister has to say on this point, as at the moment I feel that it would be better to have fines from the start as one of a range of actions—not necessarily the only action—that the adjudicator can take. I share the concerns about a flat-rate levy. Although a mechanism is built into the Bill to enable the adjudicator to order culpable retailers, or indeed vexatious complainants, to pay costs, I believe it is unlikely to create a truly fair system that would financially encourage retailers to avoid breaches of the code.

Like other noble Lords, I have received briefings from a variety of organisations. I have to say that they are mainly unusual in their fulsome praise for the Government in the action they are taking in this Bill. Not surprisingly, the British Retail Consortium argues that this Bill is not necessary and that everything now works well. In fact, I believe that once the adjudicator
Committee.

In conclusion, I believe that this is a very sound Bill. I have concerns about some small details but its principle is definitely right.

4.41 pm

Lord Howard of Rising: My Lords, I must declare two interests: I am a farmer. Even more relevant to this debate, I am landlord to a tenant who is a direct supplier to supermarkets. I therefore have first-hand knowledge and experience of what we are discussing today. I shall deal with the general points rather than the detail, which will probably be more appropriate in Committee.

Generally speaking, I find it difficult to understand why there should be a code at all, let alone an adjudicator to police it. There is no obligation on anyone to supply a supermarket. People and businesses do so because it is a commercial decision that benefits them. In my own case I delay the rent due from my supermarket-supplier tenant to tie in with when he is paid by his customer. It is an agreement freely entered into; if I did not like it, I would not have to do it. I could let the land to someone else and be paid more promptly.

Leaving aside the pointlessness of trying to interfere in markets, with all the unintended consequences that inevitably crop up, there are other faults in this Bill. There is no doubt that, as drafted, the Bill will impose substantial costs on the supermarkets, which in turn will be paid for by their customers. There is no cap on what the adjudicator may spend for which the supermarkets and their customers will then have to pay. Complaints are not limited to parties to a contract. Anyone—even someone with no involvement in a transaction—can complain to the adjudicator. It is almost incredible that someone with no connection to either side of an agreement can complain about that agreement. As no one knows what the adjudicator will regard as reasonable grounds for a complaint, it opens the door to more costs with the possibility of complaint upon complaint, with the supermarkets and ultimately their customers, again having to pick up the bill.

Major supermarkets already employ departments to deal with the Groceries Supply Code of Practice. On top of that they are being asked to pay for the adjudicator and his staff. If the adjudicator resembles any other office of a similar type it will grow exponentially. Can your Lordships imagine the self-discipline required to control costs and limit activities when all that is required to pay for expansion is to say, “Hey you—a bit more this year please”? What is it all for? The guidance notes tell us of “potential improvements” in quality and price. Do not the Government know that there is a cut-throat business out there where any supermarket not offering the best quality and choice soon suffers? We need only to look at how quickly the results of the large supermarkets can deteriorate to see that. How did the supermarkets get to where they are today? Guess what? They offered choice and quality at attractive prices with no government interference.

Lord Vinson: Would the noble Lord be kind enough to give way? If supermarkets sell milk for less than the price of water, does not that indicate that the price structure is not exactly working properly?

Lord Howard of Rising: It indicates that people are buying milk very cheaply. Lucky them.

Ultimately, there is only one person who will pay for all this expense, and that is the supermarket customer. I look forward to hearing from the Minister why the poor shopper should be clobbered in this way so that I can get paid earlier, and possibly increase the rent I receive.

4.45 pm

Baroness Sherlock: My Lords, I add my voice to those who, unlike the noble Lord, Lord Howard of Rising, want to see this Bill go further, rather than backwards. I listened to his contribution with interest.

I am grateful for briefings from various sources including Traidcraft and the Grocery Market Action Group, as well as various retail bodies, including more supermarkets than I knew existed hitherto. Like many—indeed, almost all the noble Lords in this debate—I am delighted that we are where we are. I am thrilled that the previous Labour Government brought in the code. I am very pleased that the Government are introducing the adjudicator, and I commend them on that. However, I encourage them to think hard on this question. If it is worth doing, it is worth doing properly. I suspect that the critics of the Bill—and there are some even in this Chamber—would not be satisfied even if this were done in half stages. Therefore, if the Government are going to do it, they may as well take a step out and do it with some gusto.

I would like to make a few specific suggestions. First, I am delighted that the adjudicator will consider evidence from all sources, but will the Minister say what signal she intends to send by the ease with which that power could be revoked? What is that intended to say to the world outside?

Secondly, will the Minister tell us why there is not in the Bill a clear description of the purpose of the adjudicator? I assume, having reread recently the 2008 Competition Commission report, which the Minister cited earlier, that this is addressed directly to the second of the problems it found—the transfer of excessive risk and unexpected costs by groceries retailers to their suppliers. If that is the aim, would it not be helpful for that to be specified in the Bill? I know the Minister said that the only purpose of the adjudicator is to enforce and oversee the groceries code in the ways described in the Bill, but she may remember that she also said in her opening remarks that the adjudicator would be tasked with recommending changes to the code. If he or she is to do that, on what basis will that be done if they have not got a statutory objective for the organisation in the first place?
Thirdly, I am another person who believes that the GCA should have the immediate power to fine people who are in breach of the code. This makes it almost all of us, now, who believe this—a full house. I have heard no convincing argument against this at all. If the power is never needed, it need not be used, but the fact that the adjudicator has the power must surely concentrate the minds of those who are tempted to sidestep the provisions of the code. Like the right reverend Prelate the Bishop of St Edmundsbury and Ipswich, I read the report from the British Institute of International and Comparative Law, and very interesting reading it made. I commend it to the Minister, if she has not had the opportunity to read it. It would be very good bedtime reading, and I encourage her to look at it. Very usefully, it went through all the types of mechanisms used by different countries, and what was effective, and it produced a category of characteristics of favourable means, of which financial penalties—in other words, teeth—were firmly up there.

I also agree with noble Lords who have mentioned how important it is that the adjudicator should function well from the outset. That will be essential to give it credibility from the beginning. I suggest that it needs to flex and to respond to the scale of the task. We simply do not yet know what that will be. I hope the Minister will consider that quite carefully.

How did the Minister reach her decision about the nature of the financing? I, too, read the brief from Waitrose which expressed concern with the generalised nature of financing. I declare an interest as the senior independent director of the Financial Ombudsman Service. While I am not in any way suggesting a comparison, that and other adjudicators of various kinds often have a two-part fee. There may be a general levy of some sort on all those within the jurisdiction, and then either a case fee or a specific fee which is related in some way to the degree to which the firm is engaged in or is triggering the work of the adjudicator. Will the noble Baroness look at the fee systems employed by others making similar decisions in making a final decision on this?

Finally, I am concerned about whether the Government are being too hesitant in doing this. They have decided to set up an adjudicator but are retaining the power to shut it down by negative resolution. They are open to the idea of fines—but not yet—and it will take a rather complicated Heath Robinson mechanism to enable that to happen at all. They want to allow the power to take evidence from third parties but, again, want to threaten to withdraw it. Is the Minister concerned that she is taking the right step but, in hedging it around so much, she risks undermining the good work that I know she is trying to do?

4.50 pm

Lord Teverson: My Lords, I declare an interest in that I chair a modest company that supplies supermarket retailers who will not be affected by the Bill.

I enjoyed the speech of the noble Baroness, Lady Sherlock. She asked why we need an adjudicator. Clause 1 says, in a completely Book of Genesis style:

“There is to be a Groceries Code Adjudicator”.

What more do we need? It then carries on with a rather less biblical “(see Schedule 1)”, but that does not help us much.

I agree in many ways with the noble Lord, Lord Howard of Rising, on his philosophy about the market. However, this is the one area in the UK economy where there is a huge concentration of buyers and a fragmented base of suppliers. The purist answer would be that the supermarket chains should not only be further referred to the Competition Commission but have their market dominance broken up. I do not suggest or advocate that, but it may be the alternative to this. As my noble friend Lady Randerson said, 75% of the groceries market is controlled by five suppliers. That is indeed some market concentration and it is why we need supplier protection in this sector rather than the consumer protection that we have in most others.

As many other noble Lords have said, there has been a gradualism over the past decade. In 2001 the groceries code was invented, if you like; it was written and then put into contracts between suppliers and supermarkets; and now we are moving towards an adjudicator. That is why I, too, think that after 11 years of experimentation we should surely do the deal and go ahead with the fining side as well. For example—again this is not directly applicable—the Financial Services Authority, which is to do with customer protection, is perhaps a mirror image of what we are doing, and one of its great strengths is that it can fine the large organisations with which it deals.

There are many hurdles at the end of the Bill, which states:

“Before making an order, the Secretary of State must consult … the Adjudicator … the Competition Commission … the Office of Fair Trading … the large retailers … one or more persons appearing to the Secretary of State to represent the interests of suppliers … one or more persons appearing to the Secretary of State to represent the interests of consumers; and … any other person the Secretary of State thinks appropriate”.

So we are up to 9 billion at that point. The Government are really saying, “Guys, we are not interested in this at all. We are going to put it in there because we want to give ourselves a backstop, but it is not very applicable”.

The Government should be courageous here, move ahead and do it now. That would be a good thing. Having said that, I welcome the fact that the adjudicator can impose costs on both supermarkets and vexatious complainants. That is very good.

I particularly welcome the fact that—although it is not in the Bill, this is a part of what business has been saying—this applies not only to UK suppliers but to world-wide suppliers. That is important. Not because I am championing French farmers but because it will stop supermarkets avoiding this obligation by importing even more food. It stops, if you like, regulatory hedging beyond the United Kingdom.

I congratulate the Government on getting on with this. However, it is very important that this is not a supermarket-bashing Bill. I am often surprised to read that supermarkets and multiple retailers have restricted choice to consumers. Frankly, it is because of our retail organisation, our retail management and efficiency in this country that we are able to go out and buy tens of thousands of products, normally within only a few miles of where we live. Having said that, yes, I shop in
supermarkets and I am pleased to do so, but I also get a local food box from the Cornish Food Box Company, and I think that is a good balance. I am sure that organisations such as that one will be championing competition with supermarkets as well.

4.55pm

Viscount Eccles: My Lords, I have no current interests to declare, but for 49 years I was a supplier of goods to businesses larger than my own—in particular, for a long time, to Marks & Spencer. I was also, for a time, on the Monopolies and Mergers Commission, the predecessor of the Competition Commission, and the noble Lord, Lord Borrie, used to receive reports that I had signed. Fortunately he never sent any of them back.

I have doubts about the Bill, quite complicated doubts, and I hope that the House will indulge me as I go through them. Before I start on the doubts, I would like to talk about anonymity. When someone is accused of something, under our system—whether it is codes of practice or law—we would assume that they had a right of reply. I simply do not understand how a serious complaint, which might lead to some enforcement, can be handled without the retailer knowing who made it. I would also say, just as a practical matter, if there had been a complaint about something, for example a line of clothing, that Courtaulds supplied to Marks & Spencer and Courtaulds had wanted to remain anonymous, we would never have been able to do so. There is far too much knowledge within the buying organisations about whose product is being talked about. If we try to pursue anonymity, there will be endless bickering. I thought that we lived in an open and transparent society.

I am not at all clear that the Bill is in the public interest or what the public reaction will be. The public are largely disengaged from the Westminster village and its lobbyists, and this is a Westminster village and lobbyists’ Bill. I think many people who shop in supermarkets would conclude that the theory of how you deal with difficulties in competitive markets precludes the exercise of common sense. I have been struck by the way in which several noble Lords have dismissed £200,000 as a sum of no importance. Well, I do not know how your Lordships have lived, but to me £200,000 remains quite an important sum of money.

It has been a habit of many people to hate supermarket power. That has gone on for a long time and indeed 30 years ago, when I was a member of the group in the MMC, we did a very long report on differential discounts to retailers and we studied supermarket power. Exactly as the 2008 Competition Commission report concluded, we found that they were not abusing their market power per se. That has been the conclusion of all the inquiries into supermarkets: they do not make monopoly profits. They do not charge prices that are higher than they should be, which is the classic way of making monopoly profits.

Now we have to look at what happened in 2008 in some detail. My noble friend on the Front Bench referred to the finding that is the base of the pyramid of what we are talking about. It is worth quoting again what the commission said:

“we found that the transfer of”

economic risk, “and unexpected costs by grocery retailers to their suppliers through various supply chain practices if unchecked will have an adverse effect on investment and innovation in the supply chain, and ultimately on consumers.”

That was not a conventional Competition Commission adverse finding. It was quite a complicated one, being conditional and about the future—there will be an adverse effect but it has not happened yet. The commission concluded that there was no declining trend in innovation and, at the same time, no shrinking of suppliers’ margins. Could my noble friend on the Front Bench provide us with any precedent for a finding of this type about an adverse effect on competition that would enable us to think about what happened previously?

It is worth noting that one member of the commission dissented from the remedy that came up. The commission of 2008 was not unanimous but it decided to beef up the code of practice. I see no objection to that; it seems an entirely sensible thing to do. The commission drew up a rather humdrum list of things that should be remembered when—as I think has not been said this afternoon, although my noble friend Lord Howard came close to it—the terms and conditions of purchase and sale were being freely agreed between the supermarkets and their suppliers, and would become legally enforceable. Of course, a code of practice is not legally enforceable.

I will refer to just two of the humdrums. One is shrinkage. A supply agreement must not include provisions under which a supplier makes payments to a retailer as compensation for shrinkage. However, the question of shrinkage would turn on when, for example, the property passed. If the shrinkage happened while the goods were still in the possession of the supplier, that would be one thing. If the goods are in the possession of the retailer, that would be another. All that the code of practice does is, quite properly, to remind the supermarkets and their suppliers that they must have a proper clause about shrinkage in their legally enforceable contracts. It is exactly the same with payments for wastage. You might have some yogurt on the shelf that, for some reason, goes off two days before the sell-by date. That cannot be unambiguously set out in a legal document, because it would probably depend on who left it out on the pavement when the temperature was 26 degrees, on what day, and so forth. As the noble Lord, Lord Haskel, said, these matters can become very complicated when you are dealing with detailed disagreements under terms and conditions of purchase and sale.

From February 2010, the beefed-up code of practice has been the subject of self-regulation. I am sorry that there is such a unanimous opinion that we should give up on self-regulation. I have read the compliance reports of several of the big supermarkets—the first ones that they wrote, as they were required to, in their annual report and accounts. Marks & Spencer recorded that they had had two; one it has settled and one it has not. Sainsbury’s reported that it had a small number; they were all settled and none of them had to go to the compliance officer. Morrisons reported much the same and Lidl very much the same. Close attention should be paid to how this self-regulation has so far worked. What is the evidence that tells us that it is not working and that the adverse effects predicted by the Competition
Commission about innovation and investment are actually taking place? I do not think that they are. I have asked a lot of the representative bodies to give any evidence that innovation and investment are being damaged, as predicted. I have had none back at all.

We seem to depend on this climate of fear. Because suppliers might lose a contract if they put their heads above the parapet, they are prevented from providing evidence. Several people have been quite complimentary about Waitrose. Do your Lordships really believe that a supplier would not be brave enough to raise a complaint about the code of practice with Waitrose? It is supposed that if we appoint an adjudicator and let anybody talk to it—that seems fine, as we have freedom of speech—in some way this climate of fear will disappear and we shall get to know all sorts of things that we do not know now. I seriously doubt it. This is a highly competitive industry. There are 10 big retailers. If you have a row with one, there are nine others. Innovation and investment interests are held in common. The supermarkets have progressed in what they offer because of what their suppliers have done to enable them to offer it. There is no shortage of investment or innovation that I can detect.

As the noble Lord, Lord Borrie, said, the Office of Fair Trading is already there, monitoring such things as the code of practice. What is the purpose of setting up another cost centre? I do not think the public will understand why we need another one. Do we want to exacerbate the disengagement of the public from the political system? If we believe that common sense, shared interests and fair dealing under the law are not political system? If we believe that common sense, shared interests and fair dealing under the law are not

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supermarkets—how does the Minister reconcile that with Mr Adrian Beecroft’s proposals to allow employers to dismiss at will? On one hand we are reducing the legislative and regulatory protection for the weaker party in a market-based transaction. On the other, we are seeking to introduce even greater regulation.

The Bill cites no evidence that a regulator or adjudicator of the sort proposed has been successful or necessary in other countries. Nor are any arguments cited to suggest that there is something about the grocery trade in the United Kingdom, such as excessive concentration, that means that we need an adjudicator where other geographies do not. In comparison with most markets, we have a relatively fragmented grocery market, with very intense competition among the top 10 or so firms in the business. As the noble Viscount, Lord Eccles, said, if a supplier is not happy with one of the 10 firms to be covered by the adjudicator, there are nine other potential customers to whom they can turn for business.

The Minister also asserts that supermarket behaviour at the moment reduces the incentives and abilities of suppliers to innovate in new product lines and production processes. Where is the evidence for that assertion? How has the Minister concluded that markets do not lead to appropriate innovation and investment? The impact assessment says that the proposal “could ultimately”—in brackets, I would add, “Civil Service: most unlikely”—“lead to improvements in quality and choice for consumers, as well as lower prices in the long run”.

No evidence is cited to support that conclusion. However, the impact assessment says that the Government will monitor improvements in investment and innovation. Am I correct to say that we will see civil servants opining on whether a competitive market has led to improvements in investment in innovation? If so, will the Minister tell us how civil servants will form that view and what experience they will bring to that task?

Next, there are some very woolly words in the detail of the proposed Bill. Setting aside for the moment the fact that the term “grocery” is not defined, there are terms such as “deal fairly” and, “pay suppliers within a reasonable time”.

Will the Minister tell us how a market process does not lead to fair outcomes? Can she explain why reasonable times are not part of the agreement reached between the supplier and the supermarket, which is entered into openly and willingly by both parties? Which civil servants will agree on fairness as a judgment on market outcomes, or on the reasonableness of terms of payment?

On reasonable behaviour, am I not correct in my recollection that Sir Philip Green recommended, in his report on government procurement, that the Government should do many of the things that the supermarkets are being accused of doing here by applying pressure to suppliers? Sir Philip Green’s report was for the Department for Business, Innovation and Skills, so no doubt the Minister will be fully informed and able to explain how Sir Philip Green’s recommendations lead to acceptable behaviour while the behaviour of the supermarkets is not acceptable.

I do not expect the Minister to speak on defence matters, but I note that last week the right honourable Philip Hammond, the Secretary of State for Defence, also suggested that the Government would seek retrospectively to amend agreements with suppliers. My point is that there is a complete absence of consistency in the Government’s thinking. Why do the Government not have confidence in the market to produce the right outcomes?

The Bill also evidences a very poor understanding of the supply chain, particularly the activities and presence of intermediaries within it. This will need a lot of attention in Committee. I agree with the noble Viscount, Lord Eccles, that anonymity is almost certainly one issue about which we deceive ourselves. As for major suppliers, the specificity of the terms of a contract is such that, when an issue is raised with the adjudicator, the identity of the supplier will almost certainly become evident in a very short period, so it is hogwash for the Government to suggest that anonymity in some way gives this Bill some superior attraction.

There are many other areas that the Committee is going to need to spend a lot of time examining. The Bill as proposed suggests an adjudicator who definitely will not be independent of government. It is quite clear and is in the explanatory document that the intention is that the adjudicator’s department should be staffed by people from the Department for Business, Innovation and Skills and should be collocated with the OFT. As the noble Lord, Lord Razzall, said in his contribution, the process as described is inordinately cumbersome.

I also fail to understand, and perhaps the Minister can explain, why the penalties imposed by the adjudicator, if penalties are to be activated, should be paid to the consolidated funds while the penalties paid to the Financial Services Authority are paid to the FSA. Can the Minister explain why the Government appear not to have consistency?

Finally, the Explanatory Note to Clause 15 says: “The Secretary of State”, may, “restrict the information the Adjudicator may consider to four specific classes of information, which are those that might be expected to be most useful in determining whether or not a breach of the Groceries Code had occurred”.

To be clear, the Minister will be setting the criteria and will set the criteria to four. Again, no reason or explanation is given as to why it should be four and how those would be narrowed or broadened; nor is any understanding given of the basis of expectation or the criteria of utility. What one can clearly see here, tucked away towards the end of the Bill, is that this adjudicator will have very little independence at all.

When we get to Committee we are going to have to look very closely at this Bill, because I do not think it is going to achieve the purpose that has been set out. If we have done our work in Committee and conclude that the Bill will never deliver the purposes intended, it should be withdrawn, otherwise we have a recipe for further bureaucracy and red tape, which is the last thing the country needs at the moment.

Lord Razzall: The noble Lord quite properly disclosed his interest in Marks & Spencer at the beginning of his remarks. Bearing in mind his attack on the coalition
Government’s policy on the banks, would it not have been appropriate to disclose that he was a senior Minister between 2008 and 2010, with responsibility for banks?

Lord Myners: My Lords, I think the House is aware of that. The noble Lord, Lord Razzall, has often impressed me with his skill on the Floor of this House—his debating approach and his wit. Today he has fallen well short of the House’s expectation.

5.23 pm

Lord Knight of Weymouth: My Lords, we have had a largely good-natured debate until just now about this important issue for consumers, producers and retailers. As my noble friend Lord Grantchester said, we have a sense of ownership of this Bill since we first advocated it and since the adjudicator refereeing the code was brought in by us in 2009. On that basis we are keen now, as the Opposition, to work with the Government as the Bill goes through Parliament to make sure that the adjudicator has the best possible chance of success and perhaps prove my noble friend Lord Myners wrong in respect of its chances. As has been said, we brought in the code following the 2008 report by the Competition Commission which talked about the “climate of fear” among suppliers in relation to disputes using the code in force at the time. The commission recommended using a new code and an adjudicator to give it teeth.

I was delighted when I met representatives of the large retailers through the British Retail Consortium last week. They told me that they were not opposing the principle of establishing the adjudicator in this Bill. Given that it was in all three party manifestos, they are bowing to the inevitable. This was reinforced by the e-mail from Waitrose, which claims to have supported this move from this outset. This attitude from the large retailers is positive and constructive and reflects what will I am sure be helpful engagement from all stakeholders as the Bill goes through its legislative journey.

On that constructive basis, I hope that we can get this Bill on the statute book as soon as possible so that the adjudicator can get on with this important job and offer suppliers the comfort that not only is the playing field a little more level, thanks to the code, but—to borrow the phrase that the noble Lord, Lord Plumb, attributed to Peter Kendall—there is now a referee to ensure that the game is played according to the rules. However, my noble friend Lady Sherlock is right to look for a statutory purpose. I was amused by the noble Lord, Lord Teverson, raising the possibility of schedules to the Bible. I bet Michael Gove is volunteering to write them.

Before I move to a more wholly constructive mode, I make one criticism of the Government in this regard. Why has it taken them two years? Back at the beginning of 2010, the shadow Environment Minister Nick Herbert went to the Oxford farming conference and said:

“While the government dithers the Conservatives are clear: we will introduce an ombudsman to curb abuses of power which undermine our farmers and act against the long-term interest of consumers”.

At the same time, Labour MP Albert Owen introduced a Private Member’s Bill on the same issue in the other place. Clearly, the policy was worked out and work was going on in legislation. In Opposition, the Minister’s party was ready to go with this measure. So why did we have to wait for two years? Is it the fault of their coalition parties being lukewarm? From what we have heard, that is not the case. Was it her Secretary of State not managing to make the case for the Bill in the legislative timetable? Or was it that Defra, the real policy lead, was not being listened to by anyone and farmers were being taken for granted by the coalition? We shall see—but I am glad to get that off my chest, and I can now be more positive.

The Bill has enjoyed support across the House, with the notable exceptions of the noble Lord, Lord Howard of Rising, the noble Viscount, Lord Eccles, and the noble Lord, Lord Myners. I very much respect their purity of free-market thinking, but I disagree, as there are times when markets need regulating when agreements are not entered into as freely as some think. The noble Viscount, Lord Eccles, and to some extent the noble Lord, Lord Myners, asked what the public would think. I do not know if noble Lords tweet, but I do, and when I have asked Twitter and Facebook about this, the overwhelming response is, “about time”. Even though they are like me all customers in supermarkets, they believe that at times they overuse their power.

My noble friend Lord Grantchester set out the tests that we will use in opposition as to whether the adjudicator will be effective. First, is it good for growth? I was delighted to go to the briefing for parliamentarians last Monday, which the Minister and her ministerial colleague Norman Lamb MP kindly offered. I was even more delighted when Norman described the Bill as a growth measure. My delight knows no bounds when the Minister in her peroration confirmed that this Bill to establish a quango and a regulator is good for growth. This feels somewhat discordant with the rhetoric we hear from the Prime Minister about deregulation being the key driver for growth. But maybe on this, as on Beecroft, the Minister’s Secretary of State has won the argument. Perhaps she could pass on our regards to Vince Cable, because of course there are times when a market needs intervention to make competition work well, if players in that market become overmighty. I note that my noble friend Lord Myners wanted a similar arrangement in this Bill to apply to banks. I am sure that he is making the same point to our friend Ed Balls—and I wonder whether Vince agrees.

Agriculture and food processing, worth more than £80 billion to our economy, are our largest manufacturing sector. Some 3.6 million people are employed in food production in this country, and to make competition in that market function more fairly is ultimately good for growth and for those jobs in the food sector. Then it can also be good for consumers if it is working well. As the noble Baroness, Lady Randerson, told us, a healthy market will allow new entrants in and innovation in the supply chain; it will offer choice and competition and will thereby push up quality and push down prices.

This takes us to another of our tests. Will the adjudicator be able to act on the right things? The question is about updating the code. Much of what we
have heard today concerns issues for the code and not always issues for the adjudication of the code. My noble friend Lord Grantchester and the noble Earl, Lord Sandwich, talked about recent worries in the dairy industry. The noble Baroness, Lady Parminter, talked about the fruit industry. Some of the remedies for these problems depend on renewing the code and potentially extending its reach. While the code is out of scope for the Bill, the role of the adjudicator in reviewing the operation of the code is not. We think that it is in the interest of all stakeholders that the code is kept a living document and that it should be reviewed regularly and updated by Parliament accordingly. We will therefore explore in Committee whether the adjudicator should include in the annual report any recommendations on improving the code so that it is an act of consideration rather than—as the Bill stands—a passive one.

I will also be seeking a commitment from the Government to commission a serious look at the whole supply chain to the large retailers. It is worth noting that when the Competition Commission reported in 2008, it had only been asked to look at the immediate suppliers to supermarkets. Some of these, such as Kraft and Coca-Cola, are bigger businesses than some of the supermarkets they supply. We need to look at their suppliers and the whole chain to see if this process will create a fair deal for small producers. In winding up, will the Minister give an indication of what consideration the Government are giving to looking at this so that a better code can be developed? I note that, in her opening speech, she hinted that she might view it as overregulation. Is she willing to ask the Competition Commission to research and test that view?

Our next test is whether suppliers will risk using the adjudicator. I applaud the Government for listening to stakeholders and the two Select Committees who did some excellent work in pre-legislative scrutiny of the Bill. It is much improved around anonymity, which we support. It also allows third parties to make complaints, and not follow the simple negative procedure in the new quango should replicate the new processes that are starting to get used in the Public Bodies Act and not follow the simple negative procedure in the Bill. Like others, I am keen for the proceeds of fines to be used in an imaginative way, ideally in investing in innovation in the supply chain. Unlike the noble Baroness, Lady Byford, I like the clarity conferred by questions punctuating the Bill’s wording, however homely it may seem to her. Unlike the noble Lord, Lord Palmer, I like the name of the adjudicator. I understand why the Minister might not want to call it the regulator given that when the Competition Commission reported in 2008, it had only been asked to look at the immediate suppliers to supermarkets. Some of these, such as Kraft and Coca-Cola, are bigger businesses than some of the supermarkets they supply. We need to look at their suppliers and the whole chain to see if this process will create a fair deal for small producers. In winding up, will the Minister give an indication of what consideration the Government are giving to looking at this so that a better code can be developed? I note that, in her opening speech, she hinted that she might view it as overregulation. Is she willing to ask the Competition Commission to research and test that view?

Finally, is this measure strong enough to force change where needed and will it be seen to be fair on all parties? This leads to the three key issues to debate as the Bill progresses: appeal, independence and fining. Before talking about these, it would have been helpful to have an impact assessment. Is there one beyond that for the draft Bill? If not, why not? Is it not a requirement these days to have one? Currently, there is no appeal for retailers. If financial penalties are subsequently brought in, the Bill specifies the courts as the means of appeal. In the interests of fairness, we may want to debate whether the potential damage of naming and shaming is serious enough for retailers to have a straightforward appeals process. Although the informed opposition to this from my noble friend Lord Borrie has probably persuaded me, we may need a quick debate to be sure.

We will also explore the independence of the adjudicator, an issue raised by my noble friend Lord Myners. The adjudicator will be appointed by and accountable to the Secretary of State. We will explore whether it is better to have the independence and transparency of accountability to Parliament. I know from contact with Members from the other place who serve on the BIS Select Committee that they would like a say in the appointment of the adjudicator. Equally, there is merit in an annual report to Parliament, including reporting on the operation of the code and the operating costs of the adjudicator. The latter would provide some comfort to retailers who will be funding the operation through the levy which they regard as something of a blank cheque.

Then there is the biggest issue of them all, mentioned by most of the speakers in this debate today—that of fining. Within this, there are two issues to debate. There is the principle of whether the adjudicator should have this power from day one and, if not, whether the process for introducing fining is, as the noble Lord, Lord Razzall, described it, cumbersome. I will certainly draw on the experience of my noble friend Lord Haskel when bringing forward amendments in Committee to Schedule 3 to deal with the latter. However, first, I will try to win the argument on the principle of fining. Like the right reverend Prelate the Bishop of St Edmundsbury and Ipswich, I think that the adjudicator should have teeth from day one. His comments were echoed by many other speakers. The referee should have the red card to help enforce the rules. I hope that there will never be sufficiently serious breaches to invoke the use of these powers, but just having the powers there and ready to go may prevent such serious breaches.

This raises the question of what success for the adjudicator looks like. I hope that the Minister will not abolish the measure by order in a few years’ time if it has been used to instigate not much more than low-level arbitration and investigation. As a football fan, I do not like it if the ref keeps stopping play, but I would always want one there to enforce the rules of the game. I also think that the power to abolish this new quango should replicate the new processes that we are starting to get used to in the Public Bodies Act and not follow the simple negative procedure in the Bill. Like others, I am keen for the proceeds of fines to be used in an imaginative way, ideally in investing in innovation in the supply chain. Unlike the noble Baroness, Lady Byford, I like the clarity conferred by questions punctuating the Bill’s wording, however homely it may seem to her. Unlike the noble Lord, Lord Palmer, I like the name of the adjudicator. I understand why the Minister might not want to call it the regulator given the sensitivities around that issue.

This is broadly a good Bill and has been warmly welcomed by most speakers this afternoon. My promise to noble Lords is to engage openly and constructively across the House to improve the Bill as it goes through its journey. I am sure that the Minister will do the same. We look forward to helping her get an effective adjudicator up and running as soon as possible.

5.36 pm

Baroness Wilcox: My Lords, today’s debate has cast a great deal of light on the important issues addressed in the Bill. I thank all noble Lords for their contributions. I recognise the strength of feeling and depth of experience that we have heard in the debate. I have been asked far
more questions than I thought I would on a Bill on which we all seem to agree, with two or three exceptions. I will do my best to answer as many questions as I can.

The noble Lord, Lord Myners, seemed to ask me 100 questions. I am grateful to him for telling me that I can reply to him in writing as long as I copy the response to everyone else. As I said in my opening remarks, the Bill has undergone substantial consultation and pre-legislative scrutiny. Wherever possible, the Government have attempted to find approaches that ensure that the adjudicator’s powers will be adequate while also keeping them proportionate. We intend to keep the costs to business minimal while ensuring that the adjudicator is fully equipped to fulfil his or her role. However, I will, of course, reflect on the comments of the noble Baroness, Lady Randerson, the noble Lord, Lord Teverson, and others, who have expressed their concerns about both those statements. We think that we have allowed tough powers to name and shame from the outset. We have kept back the last resort of financial penalties as a reserve power. I note that many, including the noble Lord, Lord Knight, have questioned this. I have no doubt that we will debate these questions further in Committee.

The noble Lord, Lord Knight, commented on the impact assessment of the draft Bill. That remains valid; hence there is no requirement for an updated impact assessment. The noble Baroness, Lady Byford, did not approve of the Bill’s “folksy” drafting and noted that the style of writing was unusual. I reassure the House that this is not a mistake. The Bill is one of the pilot plain English Bills that are intended to be easier for everyone to understand. That is what it is intended to be. However, I am happy to write to the noble Baroness on her question about the changes in clause headings and on the consultation.

My noble friends Lord Howard of Rising and Lord Eccles, and the noble Lord, Lord Myners, said that the supermarkets are currently bound by the Groceries Supply Code of Practice and questioned whether an adjudicator was needed as well. The Competition Commission has found clear evidence that the excessive use of buyer power could lead to adverse effects on consumers. The code has the commission’s recommendation, when it first introduced the code, that an adjudicator be set up to uphold it. At pre-legislative scrutiny, the BIS Select Committees in the Commons also concluded that a groceries code adjudicator was necessary. The code allows only individual cases to be resolved and only if a supplier is prepared to raise the issue with the large retailer involved. The adjudicator will be able to investigate suspected breaches involving many suppliers, not just adjudicate individual cases.

The noble Lord, Lord Myners, wishes to intervene. He did make a promise, and I have a lot of questions to answer.

**Lord Myners**: My Lords, I did not say that the Minister said that, but the assertion that there is excessive use of buyer power over a diffuse supplier community would be evidence of monopoly profits. Do the Government believe that our grocers are evidencing monopolistic behaviour through excessive returns on equity or sales?

**Baroness Wilcox**: We are basing this on the Competition Commission’s evidence.

A concern was raised about the creation of a new regulatory body and I mention in particular the noble Lords, Lord Haskel and Lord Plumb. The Government are committed to reducing the overall burden of regulation on business. We are not creating a new bureaucracy but appointing an individual to be the adjudicator. I hope I can reassure the right reverend Prelate the Bishop of St Edmundsbury and Ipswich and my noble friend Lady Byford that the small, agile staff will be effective. We will, however, be watching all the way through—this also relates to the point made by the noble Baroness, Lady Randerson—to see that the office has the capacity to work with such large supermarket chains.

The noble Lord, Lord Haskel, thought that arbitration was more vital than the adjudicator’s investigations. I can reassure him that the adjudicator will be able to arbitrate disputes concerning individual suppliers as well as investigate complaints.

In response to the concern of the noble Lord, Lord Borrie, it is correct that the adjudicator probably would not arbitrate himself or herself where he or she had previously carried out an investigation into a similar issue, due to the risk of a conflict of interest. However, in that case the adjudicator would simply appoint a different arbitrator, and the Bill provides for this in Clause 2.

My noble friend Lord Eccles suggested that the Competition Commission was lukewarm in its support for the adjudicator. The commission said clearly in paragraph 11.375 that all but one member of the investigation panel considered the adjudicator to be essential for the monitoring and enforcement of the code, but all six members of the Competition Commission group who investigated groceries agreed that, “the transfer of excessive risks or unexpected costs by grocery retailers to their suppliers is likely to lessen suppliers’ incentive to invest in new capacity, products and production processes … if unchecked, these practices would ultimately have a detrimental effect on consumers”.

**Viscount Eccles**: I nearly accept the Minister’s description of what I said, but this Competition Commission finding was made in 2008. It is now 2012. I asked, and will ask again, whether there is any evidence that the adverse effect which they predicted in 2008 is in fact coming about.

**Baroness Wilcox**: I do not have the answer before me, but I will most certainly write to my noble friend.

The noble Lord, Lord Palmer, suggested that the adjudicator should more accurately be called an ombudsman. Such a description is not to be used in this case because it would be contrary to the guidance of the ombudsmen’s society, because ombudsmen deal with business-to-consumer disputes.
The noble Lord, Lord Knight, asked whether there should be a further investigation into the practices of intermediaries. A decision to refer a market to the Competition Commission for investigation is a matter for the Office of Fair Trading, and any concerns would be raised with it. However, the question of keeping the code a living document is a matter that I should like to continue to explore in Committee, if the noble Lord is happy with that.

We heard complaints, including from the noble Lord, Lord Knight, that the Bill has been delayed. I know that it has been keenly anticipated and I recognise noble Lords’ eagerness for it to have been introduced. However, we have not delayed in this. The 2008 report did not lead to an immediate Bill, but I would not criticise the previous Government for that because they were attempting to get the retailers themselves to create the adjudicator. That is why there seems to have been a delay—it was not in our time. Since the election, we prioritised this measure for pre-legislative scrutiny during the first Session, and introduced it on the first day possible of this new Session. I hope that noble Lords will work with us on the Bill and that we will see an adjudicator in place next year.

The noble Lord, Lord Grantham, and my noble friend Lord Razzall suggested that the way in which the levy to fund the adjudicator is divided between retailers should be reconsidered by annual review. The Secretary of State will be able to assess, as the evidence unfolds, how the levy should be divided to ensure that those who create most trouble pay more.

Concern was raised by my noble friends Lord Razzall and Lady Byford about the few instances where confidentiality might not be completely guaranteed. We believe that confidentiality will be vital to the adjudicator’s investigations. The circumstances in which the identity of a complainant might be revealed without their consent are strictly limited by Clause 18. We believe that this would happen in exceptional circumstances. That will perhaps become more apparent when we go through the Bill in Committee. The Government will be engaging with suppliers to ensure that they understand the rules on confidentiality. We are confident about their ability to comply.

The noble Lord, Lord Grantham, expressed concern over the Secretary of State’s power to restrict the sources that can complain to the adjudicator. We believe that it is important that trade associations are incentivised to act responsibly for the sake of both suppliers and retailers. I will be happy to discuss this further in Committee.

Noble Lords, including my noble friend Lord Plumb and the noble Lords, Lord Palmer and Lord Grantham, demonstrated a close interest in the question of sanctions. I agree that getting right the sanctions available to the adjudicator is critical. I know that we will continue to explore this issue.

The noble Lord, Lord Grantham, the noble Earl, Lord Sandwich, my noble friends Lord Razzall and Lady Randerson, and the right reverend Prelate the Bishop of St Edmundsbury and Ipswich suggested that the process of consultation on fines could be streamlined. Our intention is for the fining power to be introduced promptly, if necessary, but also to ensure that its introduction is based on proper consideration of the evidence. I shall be very happy to discuss with noble Lords how the details of the Bill can ensure that such a power is delivered.

I seem to be answering a lot of questions from the noble Lord, Lord Grantham, and my noble friend Lord Razzall. Perhaps it is because they asked them early on. I have a lot of answers here. I shall try not to respond to them too much again because I am not responding to some other noble Lords.

An important question was asked about what consumers think of the adjudicator. I think by my noble friend Lord Eccles. A poll by War on Want last year found that 84% of consumers support the establishment of the adjudicator. The general public have a keen sense of fair play and do not like to see farmers and suppliers being exploited in any way by anyone. At the same time, they, too, wish to see fairness in our dealings. Consumers are, of course, the ultimate beneficiaries from a stronger and more competitive groceries market.

Many thoughtful and incisive points were raised today, and I hope that I have been able to address some of them. Obviously, I will write to noble Lords on any of the questions that I have not been able to answer. I am sure that we will continue to explore these and other issues in Committee and on Report.

I have in my time supplied supermarkets with chilled food, before any code or the prospect of an adjudicator. In those days, the 1980s and 1990s, there was no written contract for chilled food, and I had no written contract to go to the banks to raise money. It was not easy to get them to say that they would buy something for you at that time, so I would have loved to have had a code and an adjudicator. Yet it was very exciting to supply to a large supermarket group. We were only a small to medium-sized company. At that time the supermarket groups were very worried about having very few suppliers, and they did the best they could to make sure they had a large range of suppliers and to help us to overcome the barriers to supplying so much.

However, I also remember the dreaded special offers. When they arrived, it was extremely difficult for us to fulfil them without having to work through the night and putting on extra shifts. Any profits that we made in those two weeks went out of the door with all the staff we had to engage. That was the price of having contracts, not even written ones, with very large supermarket groups. If I had to give any advice to a company starting to deal with them, I would say that the excitement of a contract should be resisted until you fully recognise the terms and conditions and the implications of what they mean to you, because they are very big contracts that you are taking on and they happen regularly every week.

This Bill appeared in three major parties’ manifestos. I hope that those of all parties and noble Lords on the Cross Benches will wish to ensure that the adjudicator protects suppliers, including farmers, from any unfair dealing, and does so without needless disruption to commercial arrangements. I look forward to my noble friends Lord Howard and Lord Eccles and the noble Lord, Lord Myners, taking part in Committee so that together we can ensure that this Bill delivers on our
aims and achieves the best possible outcome for the grocery supply chain as a whole. Fair market practice from the supplier through the retailer to the consumer is exactly what we want from the biggest industry in this country.

Bill read a second time and committed to a Committee of the Whole House.

Local Government Finance Bill
First Reading

5.53 pm

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

Proceeds of Crime: EUC Report
Motion to Agree

5.54 pm

Moved By Lord Hannay of Chiswick

To move that this House agrees the recommendation of the European Union Committee that Her Majesty’s Government should exercise their right, in accordance with the protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, to take part in the adoption and application of the proposal for a directive of the European Parliament and of the Council on the freezing and confiscation of the proceeds of crime in the European Union (document 7641/12) (32nd Report, Session 2010–12, HL Paper 295).

Lord Hannay of Chiswick: My Lords, I beg to move the Motion standing in my name on the Order Paper. It is in my name because I have the honour to chair the European Union Committee’s Sub-Committee on Home Affairs, which at the end of the last Session prepared the report now before your Lordships’ House.

As your Lordships know, when the House considers reports of the European Union Committee, this is almost invariably on the Motion that the House should take note of the report. In the case of this report, the Motion invites the House to agree the committee’s recommendation. The reason for this is that the report deals with draft legislation falling within the area of freedom, security and justice, and the legislation will apply to this country only if the Government exercise their right under the protocols to the treaties to take part in the legislation—in other words, if they opt into it. They have to do this within three months of the proposal being presented to the Council, which, in the case of the directive we are considering tonight, means before 15 June. The committee believes that the Government should do so, and the Motion invites the House to agree with the committee.

Last year, this Government repeated an undertaking given by the previous Government—usually known as the Ashton undertaking—that time would be found to debate opt-in reports well before the expiry of the three-month period. I am grateful that, despite Prorogation, the Government have made time available for this debate early enough for them to be able to take the views of the House into account before they formally reach a decision on whether to opt in.

Freezing and confiscation of the proceeds of crime is one of the most effective ways of fighting crime. Since criminals are much more mobile and much more ingenious about hiding these proceeds, it clearly strengthens this aspect of the fight against organised crime if such freezing and confiscation can be enforced across the whole of the European Union and not just within one country’s borders. There is current EU legislation on the subject in a series of framework decisions stretching from 2001 to 2006. Two of these establish minimum rules on freezing and confiscation of proceeds of crime. There is, however, nothing to prevent member states enacting more stringent legislation, as this country has done in the Proceeds of Crime Act 2002. The new draft directive that we are debating this evening would supersede these two framework decisions and add to them fresh powers—in particular, the power to confiscate the proceeds, despite there having been no criminal conviction because, for example, of the death or flight of the suspected person. This is a power already available to the courts of this country. My committee supports the proposal that the courts of all member states should be required to have this power.

The confiscation of the proceeds of a crime is of course an integral part of the penalty—the criminal should not be allowed to profit from their ill gotten gains—but even more important is the deterrent effect. Criminals who know that the proceeds of their crimes are likely to be confiscated may think twice before embarking on criminal activities. It is therefore a weakness in our law enforcement system that, as things are, the proceeds are not all that likely to be confiscated. The figures available are, unfortunately, very speculative, as estimates of the proceeds of crime vary wildly. In the United Kingdom one estimate is that, of the £15 billion annually criminally acquired, in 2009-10 only £154 million was recovered to the state. That is net of assets recovered for the victims and of management expenses but, even so, the proportion of the proceeds recovered cannot on any measure exceed 5%. The deterrent effect is thus currently small but not negligible.

The Costa del Sol has been the haven of choice for criminals to retire to and enjoy the fruits of their labours. The statistics from Eurojust show that in 2010 one case in Spain resulted in the confiscation of €112 million, with many other cases netting smaller amounts and, in addition, a number of properties, boats and luxury cars. This demonstrates the importance of all member states having these powers.

The Government have stated on many occasions their determination to pursue the fight against serious organised crime. In my view, this entails not just having adequate domestic law in the United Kingdom but bringing pressure to bear on other member states to have provisions in their own laws on freezing and confiscation which at least meet the minimum requirements laid down in this directive. The committee therefore believes that it is important that the Government should opt in to the proposal and play a constructive part in negotiating a strong directive, and support
other member states which may have weaker law enforcement systems thereafter to implement the system effectively. That is where there have been doubts in the past and I hope that this new legislation will provide a basis for much more effective work in the future.

There is one aspect of the draft which has caused the committee real concern. It is a regular feature of serious crime that the criminal will launder the proceeds internationally, but then hide assets in many countries. A conviction in one country will therefore be fully effective only if a confiscation order made by one court is automatically recognised and enforced in other member states. There are two framework decisions dealing with mutual recognition of freezing and confiscation orders, but the directive being discussed tonight does not deal with that topic. We hoped that the directive would repeal, replace and strengthen the provisions of all four framework decisions. Instead, it repeals, replaces and strengthens the two dealing with the making of freezing and confiscation orders, but leaves in place those dealing with mutual recognition of orders made in other countries’ courts. The committee fears that that may be an unintended consequence of the arbitrary and illogical division of the former Commission directorate of freedom, security and justice into two separate directorates, dealing respectively with justice and home affairs. I would like to hear the Minister’s views on this; perhaps he could in any case tell the House whether the Government will argue in the negotiations for the new directive to be extended to include mutual recognition provisions as well.

This is only one of a number of aspects of the directive that we would like to see raised in the negotiations. Others are detailed in our report. Some are technical, but there is one to which I should draw attention. If the Government were not to opt in, the United Kingdom would remain bound by the current provisions of the earlier framework decisions, which will thus be included in the list of those measures on which the Government have to decide—by May 2014 at the latest—whether all or none of them should continue to apply to the United Kingdom. That arises under Protocol 36 to the treaties. I am not wishing to raise that extremely interesting and sensitive issue tonight, but merely say that it is one about which your Lordships will hear more in the period ahead of us, not least from the European Union Committee, which will be carrying out an inquiry into the background to the 2014 decision in due course, and nearer that time.

We are continuing to keep the directive under scrutiny, so at this stage one matter only comes formally for decision to the House: whether or not the Government should exercise the United Kingdom’s opt-in. For the reasons I have given, the committee is firmly of the opinion that the Government should do so. I hope very much that we will hear from the Minister at the conclusion of the debate that this is their intention.

6.03 pm

Lord Hodgson of Astley Abbots: My Lords, I am no longer a member of Sub-Committee F: I have been transferred for a period of rest and recreation to Sub-Committee G under the chairmanship of my noble friend Lord Bowness. These are probably my valedictory remarks in connection with a report of the sub-committee that I was on when it was prepared. I enjoyed my time on the sub-committee, first under the chairmanship of my noble friend Lord Jopling and more recently under the chairmanship of the noble Lord, Lord Hannay, who, with his impeccable style, has given us a clear exposition of the issues before us. We were splendidly looked after and impeccably marshalled by our clerk, Michael Collon. His deputy was originally Michael Torrance, who has now ascended to higher and greater things to the clerk of the committee. I am only sorry that I shall not be there to see him in action.

It is a truism that the past 40 to 50 years have seen the trends of globalisation and interdependence of nations burgeoning. It is hard for me to remember that when I first finished university and went to work in New York, one could not make an international telephone call; one had to book it. At weekends and holidays, one might have to book it several days ahead. In the investment bank in which I worked, because I had a decent English accent, my first job was to chat up the operators at the New York international exchange so that the lines could be kept open until my bosses were ready to make the telephone calls that they wished to.

In those days, when you went abroad it was demonstrably a foreign country, in a way that is inconceivable today. With Ryanair and easyJet, people pop all over Europe and indeed over the wider world in a way that in my youth was considered impossible. The emergence of global brands of clothing has meant that some of the physical appearances of us all have become much more similar. I think, by the way, that there is a PhD thesis to be written on the role of jeans in creating a global culture, but that is for another day.

All this is no doubt a good thing—increasing international understanding and so on—but there is of course a seamer side, which is the subject of our debate today. It used to be said that if the Governor of the Bank of England raised his eyebrows in the City of London, whatever was being complained of would stop, and no doubt the news that Scotland Yard was on your tail had a similar calming effect. These threats no longer have the same power or influence, because of globalisation. My first reason for encouraging the Government to opt in to this proposal is that crime has gone global. As our report on the EU’s international security strategy said, “the nature of the international threat in this area was clearer and that therefore international cooperation was”—as one of the witnesses put it—“utterly indispensable”.

The second reason, which was referred to by the noble Lord, Lord Hannay, is that to date our efforts at recovery have only scratched the surface, and there is a serious need to up our game. This means that work to establish effective asset recovery offices across the continent of Europe is a very high priority. To see how high, I suggest that the Minister ask his officials to look at Annex 2 to the Commission Staff Working Paper. Only eight countries are listed out of the total in the EU. Every set of statistics is on a different basis, no headings are the same and you have no way of telling what the level of effort is or how effective it is, or of comparing one country’s performance with another.
Even turning to the United Kingdom, which has a commendable record in this, and looking at the Serious and Organised Crime Agency’s report, which the noble Lord, Lord Hannay referred to—he gave the net figure for recovery, but the gross figure is £350 million recovered—in the same year when the Government said that cybercrime was costing the UK £27 billion, we were recovering £350 million gross. That is the second reason for urging the Government to opt in.

The third reason is that we need to establish some centralised mechanism to share information, establish best practice and spread it across Europe. Of the reports that we have had in Sub-Committee F, one of the most depressing sets of evidence was from Europol, which said that all too often police forces in individual European countries have bilateral arrangements and do not send information through Europol itself. If we are not able to create a central approach to this, then for certain the cops will never catch up with the robbers. We need to make sure that within this proposal the ability of Europol to set standards, find out what is going on and make sure that a proper level of collaboration and co-operation takes place, is critical.

What are the downsides? One answer perhaps lies in Annex 4 of the Staff Working Paper. Pages 58-71, headed “Asset recovery in the UK”, show what a lot of good work is being done in the UK. However, this is of absolutely no value unless other countries in the EU are upping their game at the same time. Page 6 of the Explanatory Memorandum states:

“In order to address the lack of data, the main economic analysis is … based on a model which uses proxy indicators to extrapolate from a detailed analysis of income and cost in the UK (the only Member State for which income and costs for all elements of the asset confiscation system can be estimated and which has a confiscation system that is a reasonable approximation of the maximal legislative sub-option)”. So we are ahead of the game and, judging from that statement, most other countries are far behind us. The same report states that:

“EU Member States will progressively sign and ratify the 2005 Council of Europe Convention”— which is on laundering, search, seizure and confiscation of the proceeds of crime.

“While this Convention is based on a relatively good consensus, seven EU Member States have not even signed it yet”.

So we have some justification in this country in being a trifle cynical. The UK is leading the way—we are taking on the associated costs and bureaucratic impediments—but who is following us?

My second reason for being concerned is that the trans-European experience on judicial co-operation has not always been an unqualified success. I refer in particular to the European arrest warrant. I declare an interest as a trustee of Fair Trials International. It is a difficult act to follow but, having known him over many years now, I think he has all the talents and skills that will enable him to fulfil the role very effectively. Therefore, as I say, we wish him well.

Lord Judd: My Lords, like the noble Lord, Lord Hodgson of Astley Abbots, I have had the privilege of serving on the committee and putting my name to the report. It is very important at the outset to place on record how the members of the committee appreciate the leadership and chairmanship of our chair, the noble Lord, Lord Hannay—it is good to work under your chairmanship—and the effective and professional work of the clerk and his colleagues. They made a very strong combination and we should put that on record.

In a debate last night we paid tribute to the noble Lord, Lord Roper. We should today take the opportunity to say that it is very good that his successor is with us in these deliberations and to wish him well. He has got a difficult act to follow but, having known him over many years now, I think he has all the talents and skills that will enable him to fulfil the role very effectively. Therefore, as I say, we wish him well.

My reasons for supporting opting in clearly outweigh those for standing aside, for the reasons that the noble Lord, Lord Hannay, gave. However, there is a lot to be done by the Government to ensure that the detailed work that will make this effective is given real impetus. If it is left in a half-formed state, not only will it be ineffective in tackling the problem, which we all agree is serious, but it will add another burden to this country which our competitor and fellow European states are not undertaking.

6.13 pm

Lord Judd: My Lords, like the noble Lord, Lord Hodgson of Astley Abbots, I have had the privilege of serving on the committee and putting my name to the report. It is very important at the outset to place on record how the members of the committee appreciate the leadership and chairmanship of our chair, the noble Lord, Lord Hannay—it is good to work under your chairmanship—and the effective and professional work of the clerk and his colleagues. They made a very strong combination and we should put that on record.

We know that there are some very big issues before the European Union at present on which there are profound matters of difference. We also know that both the Government and the Opposition frequently take the opportunity to restate that they are in no way questioning our membership of the Union and that they are deeply committed to its success. That is why, when we come to specific matters such as this, it is all the more important to be positive, to engage and to do all we can to make a success of what is being recommended. Like the noble Lord, Lord Hannay, I believe very strongly that we should get on with ratifying and implementing this proposal.

Obviously, crime has become very sophisticated and the rather disappointing figures on how much of the proceeds of crime is actually recovered is in no way any criticism of the dedicated people who are doing the police and other work involved. It is, however, an indication of the complexity and size of the challenge. It is not an issue that we can possibly solve on our own; we simply have to work with others. Therefore, this proposal has great merit in enabling that to happen. In making that point I would like to emphasise one other issue, about which frankly I get rather anxious. Due to the complexity of the kind of crime we are dealing with in these proposals, it is very difficult—in fact it may be impossible—to establish a dividing line between what is legitimate, legal business and what is very significant crime. There is not a clear-cut dividing line all the time; there can be overlaps. Of course, in our newspapers we read about the more sensational evidence of this every day. That is another reason for making sure that we have the strongest possible international collaboration in making a success of the arrangements that exist.
Proceeds of Crime: EUC Report

[LORD JUDD]
I hope that we will not delay any longer in ratification. I hope also that by showing our commitment at a time when we are differing from the Community on so many other issues, we will take the opportunity to demonstrate how strongly we believe in the Community where it really is relevant and can help us all in meeting the challenges that face us. If we are always hanging about on everything, it rather undermines the strength of the commitment, as it is expressed, to belonging. We really should get on with it.

Having said all that, I want strongly to endorse what the noble Lord, Lord Hodgson of AstleyAbbotts, said. One of the characteristics of the European Union and its activities—although it is not only the European Union—is that everything can become terribly complex and, in a sense, abstract and intellectual. It becomes about legislation, but legislation does not solve the problem. It is the monitoring the detail—what is actually done—that achieves this. There are quite a number of areas in which it has become clear to me since I have been on the committee that there is a great deal to be done, together with our colleagues in the European Union, to strengthen the monitoring and scrutiny not only of the legislation and its intentions, but how the activity is going; what is strong, what is weak, what needs to be put right, and what this demands of us all. I think the noble Lord was absolutely right to make that point and it is one with which I totally concur.

I strongly support the chairman’s recommendation and I am very glad to be associated with the words of the report. I do hope we are going to hear a very positive response from the Government and the Minister on how quickly and firmly they intend to proceed.

6.20 pm
Baroness Hamwee: My Lords, the whole House will be grateful to the noble Lord, Lord Hannay, and to his sub-committee. Even for a Europhobe, which I am emphatically not, it seemed to be a no-brainer. However, as I read the report, I realised that issues arise which make one consider the differences in approach between our law and procedures and those of other European states, and the overall principle of how far one should go in willing the means as well as the end. As has been said, we are talking about big crime, which is big business. The Explanatory Memorandum to the directive referred to it in what was very much a financial take on the situation, and to the position weakening, “our ability to fight cross-border … crime”—yes—and affecting, “the functioning of the Internal Market by distorting competition with legitimate businesses”. It also referred to depriving, “national governments and the EU budget of tax revenues”. I do not quarrel with that, but there is another dimension to this. There are real, human victims of serious, organised international crime and therefore the deterrence of confiscation is of great importance.

As we have heard, it is very hard to stay ahead on these matters. Criminals seem to manage to be ahead of agencies and I wonder whether harmonisation in the EU will drive the transfer of funds outside the EU. You do not have to go as far as somewhere such as Belize to get outside the EU. Following the money is rarely straightforward. People who have headed for bankruptcy on a rather smaller, more personal scale know well about trying to transfer assets so that they are not, they hope, liable to be seized. Again, the Explanatory Memorandum deals with this. Obviously, the directive does as well but I am afraid that I cannot claim to have read that.

Third-party confiscation raises some quite important issues. I was interested to see that the provision, “requires third party confiscation to be available for the proceeds of crime or other property … received for a price lower than market value and that a reasonable person in the position of the third party would suspect to be derived from crime”, which clarifies the “reasonable person” test. Given the sophistication of much organised crime, evasion is likely to be very sophisticated and there will be innocent third parties, so that gave me a little cause for concern. I was also worried about confiscation in the absence of conviction—something that we in this country, with our own legal traditions, would be particularly aware of. I was reassured by the explanation that this would be in very limited circumstances, where the court finds, “that a person … is in possession of assets which are substantially more probable to be derived from other similar criminal activities than from other”, non-criminal “activities”; and, importantly, that: “The convicted person is given an effective possibility of rebutting … specific facts”, and that there are rights of appeal. “Substantially more probable” is an interesting phrase and not one that we are that familiar with here. I do not know how it works with our recognised standards of proof but, reading it in a common-sense way, it seems to me to be somewhere between the balance of probabilities and beyond reasonable doubt. The report makes the point, which has been made in the debate, that if we do not opt in it sends the wrong message to our partners about the Government’s attitude to international co-operation and that there are impacts beyond the subject matter. The report states: “We have no doubt that the Government should opt in”. Neither have I.

6.25 pm
Lord Rosser: My Lords, I thank the noble Lord, Lord Hannay of Chiswick, for his very helpful opening speech, for the work that he and his committee have done on the draft directive that we are discussing and which we broadly welcome, and for the report that has been presented to us.

We await the Government’s response with interest, but I understand that a decision has now been taken to put back the scheduled debate upon the draft directive in the other place. It was scheduled to take place tomorrow. No doubt the Minister will confirm whether that is the case and, if so, will tell us why and, unless the reason is a lack of time in the other place tomorrow, why the Government considered it appropriate to proceed with our debate today.
The treaty of Amsterdam gave the Council the power to legislate in this field of police and judicial co-operation, since when four framework decisions and one decision have been adopted covering the area that we are considering today. The framework decisions require member states to enable confiscation, harmonise confiscation laws and provide for mutual recognition of freezing orders and confiscation orders. The Commission’s view is that member states have been slow in transposing the framework decisions on harmonising confiscation laws and providing mutual recognition of freezing orders and confiscation orders, and that the relevant provisions have often been implemented in an incomplete or incorrect way. The noble Lord’s committee has made it clear that it finds this most unsatisfactory, and it would be helpful to know if that is also the Government’s view.

The new draft directive appeared at one stage to have been expected by the Commission to strengthen the EU legal framework on confiscation through allowing more third-party confiscation and extended confiscation, and to facilitate the mutual recognition of non-conviction-based confiscation orders between member states. As the committee’s report states, though, in actual fact the draft directive is silent about mutual recognition, and the committee expressed its concern at the failure of the draft directive to deal adequately with the mutual recognition of extended confiscation orders and to deal at all with the mutual recognition of civil recovery orders. Once again, it would be helpful if the Minister said whether that concern is shared by the Government.

The principal issue considered in the report from the noble Lord’s committee is whether the Government should opt in to the proposed directive, and it is in no doubt that they should. The noble Lord’s committee has drawn attention to the very small proportion of the proceeds of serious organised crime that is currently recovered, has observed that confiscation would be a more effective weapon if there were better co-operation at international level and has stated that a failure by the Government to opt into a measure setting out minimum provisions to be adopted by member states would be against our national interest, since it would be in our national interest for all member states to introduce tougher measures on the confiscation of criminal assets. The committee also expressed the view that not opting in would send entirely the wrong message to our partners about the Government’s attitude to international co-operation. What is the Government’s response to this case for opting in that the committee has made in its report?

The Government have stated in their Explanatory Memorandum that they take a case-by-case approach to the application of the opt-in protocol and that, in this instance, the issues that they will need to consider in particular are: the ability to support or develop our asset recovery programme; wider domestic developments in tackling organised crime; the burden on the legislative programme; cost; and association with other international developments. The committee was clearly underwhelmed by the strength of the issue of, “burden on the legislative programme”, describing it as “lacking in merit”, bearing in mind that member states will have two years from the date of adoption of the draft directive in which to transpose it into national law, and bearing in mind that the Government consider that United Kingdom law already complies with most of the substantive provisions of the directive. In the light of the comment in the committee’s report, will the Minister say if, “burden on the legislative programme” is still seriously being advanced as an issue that needs considering when determining whether or not to opt in?

A decision on whether or not to opt in needs to be taken, as I understand it, by the middle of June, since the directive will apply to the United Kingdom only if by 15 June the Government notify the President of the Council that we wish to take part in the adoption and application of the directive—in other words, to opt in.

In the later paragraphs of their Explanatory Memorandum, the Government make a number of points that, frankly, could be construed as the basis of developing a case for not opting in. While the committee has made an argument in its report for opting in, and indeed strongly supports taking that course of action, the Explanatory Memorandum appears to lack any particularly positive statements about the draft directive. I hope that the Minister will give us an indication of the Government’s current thinking on the draft directive, although maybe, if it is true that there has been a hiccup that has led to the debate in the other place being put back, we shall find that the Minister is no longer in a position to say anything very much.

It would be helpful, though, if he could say what further developments there have been since the Explanatory Memorandum of 26 March that update any of the issues or points referred to in that memorandum. It would also be helpful if he spelt out in more detail, if they have not yet made a decision, the specific points being considered and why they are crucial under the five issues that the Government are considering before deciding whether or not to opt in, which I referred to earlier and which are set out in paragraph 26 of the Explanatory Memorandum. Included in those five issues is the issue of cost. What conclusions have the Government reached on this score, and why?

The report of the committee of the noble Lord, Lord Hannay, sets out, in paragraphs 14 and 15, certain legal questions. What is the Government’s response to those questions and points? The committee also say in paragraph 20 of its report that the joint action and certain provisions of the two framework decisions are to be repealed and replaced, but only, “in relation to Member States participating in the adoption of this Directive”.

The report goes on to say on this point that if the United Kingdom does not opt in, it will continue to be bound by the existing measures and that this would be an unfortunate situation and an unnecessary complication. Do the Government share the committee’s view on this point?

The House of Commons European Scrutiny Committee said in its report last month that, “the draft Directive nevertheless represents a significant extension of EU competence on such matters as third party and non-conviction based confiscation and on the freezing of property, in some cases without first obtaining a court order”.
Lord Rosser:

Is that the Government’s view as well? If so, is it this point that is the Government’s principal concern over opting in?

We share the committee’s view about the importance of co-operation at the international level on the freezing and confiscation of the proceeds of cross-border organised crime. I hope that today the Minister will be able to tell us more about the Government’s stance on the draft directive, including issues that are still of concern to them or are unresolved and which may still be precluding a final decision on whether or not to go down the road recommended by the noble Lord’s committee—namely, that we should opt in to this draft directive.

6.35 pm

The Minister of State, Home Office (Lord Henley):

My Lords, as always, I welcome the opportunity to debate the draft directive. I offer my thanks to the noble Lord, Lord Hannay, for his introduction, particularly for his explanation of the process, for his explanation of the Ashton undertaking and how we are supposed to take these things forward. It is obviously right that the Government should listen to the expertise that we have in this House and on the European Union Committee. On that basis, I welcome the presence of the noble Lord, Lord Roper, the former chairman of that committee; the noble Lord, Lord Boswell, whom I can no longer call my noble friend now that he has taken over that job; and all those who offer their expertise, particularly the noble Lord, Lord Hannay. The Government will certainly bear all that in mind before making their decision on whether to opt in or out.

At this point I must offer an apology to the House as, at this stage, the Government have not made a decision as to which way we should go. As the noble Lord, Lord Hannay, made clear, if we want to opt in or out at an early stage, we must do so before 15 June. A decision will certainly be made before then. However, it is always possible that we could opt in after final decisions have been taken and the whole adoption stage has been completed, when we have seen what has been agreed. There are very difficult decisions to be made. I hope I will be able to explain exactly why we have not yet made a decision and give some thought to our reasoning behind the different options before us.

Before I do so, I will say a little about the timing of this debate and the debate in another place, which was raised by the noble Lord, Lord Rosser. I know that the noble Lord is immensely experienced and has been in this House for a number of years. However, he obviously does not realise that things operate on a very different basis between the two Houses in this particular matter. In line with the Ashton undertaking, the appropriate time for this debate to take place was a matter for the noble Lord, Lord Hannay, as chairman of the sub-committee, to negotiate with the usual channels. It was agreed some weeks ago—before we prorogued, I think—that it would take place around now. Quite rightly, it went ahead. Even though the Government have not come to their final decision, it would not have been right for me or anyone else to go to the noble Lord, Lord Hannay, to suggest that it should be put off to a later date, purely because we had not made a decision.

The debate in another place is on a government Motion, which is completely different. It would not be right for the Government to table a Motion before they have made up their mind. However, as the noble Lord is probably aware, the Government will make up their mind before 15 June. We will have that debate and another place will have a debate—I give that assurance—before 15 June.

Lord Rosser: I think I understand the procedures. Will the Minister just confirm whether it is true that the debate in the other place was scheduled to take place tomorrow and that it has been put back?

Lord Henley: My Lords, my understanding is that a debate was to take place tomorrow. It was put back because the Government have not come to a final decision. There is nothing wrong with that. The Government want to make the right decision. All that I make clear to the noble Lord, who obviously does not understand these procedures, is that we will have done so before 15 June. That is our timeline. I give the noble Lord that assurance. The noble Lord seems to imply that there is some sort of conspiracy here. The Government want to get it right and must put down a Motion for the debate. Procedures in this House are different, which is why we do things differently. The noble Lord should have understood that.

I want to explain relatively briefly what our thinking is and not which way we are going—as I have said, a decision has not yet been made—but the pros and cons of the different options before us. I want to make it quite clear to the House that we believe that asset recovery is a very important weapon in our efforts to tackle organised crime. We believe that the proceeds of crime are not only a central motivation for organised criminals but that they also fund further criminality. Freezing and confiscating criminal finances hurts organised criminals and protects the public.

The United Kingdom has advanced legislation in this area, as other noble Lords have alluded to, and we have had real operational success. In 2010-11, United Kingdom law enforcement agencies froze or recovered more than £1 billion worth of criminal assets. The amount of assets recovered has increased year-on-year since the Proceeds of Crime Act 2002 was passed. As my noble friend Lord Hodgson made clear, the United Kingdom is recognised as a leader in this field. We still want to do more, particularly on international asset recovery, as we made clear in our organised crime strategy in July 2011. In 2008, it was estimated that some £560 million of UK criminal assets was held abroad. Improved international co-operation is a necessary step towards recovering that money. That is why we welcome the aims of this directive. It is right that we seek, as leaders in this field, to drive up standards throughout the European Union and to find better ways of working together with our EU partners. To this end the directive covers confiscation following a criminal conviction, extended confiscation, third-party confiscation, non-conviction-based confiscation, and powers to freeze assets.

We must, of course, consider carefully the contents of the draft directive. The Government’s analysis is in progress. Our recommendation on the opt-in decision will be communicated to the parliamentary scrutiny
committees at the first opportunity. The United Kingdom already has all of the powers envisaged by the directive in our Proceeds of Crime Act 2002. In almost all areas we exceed the minimum standards established by the directive. There are, however, areas where changes to domestic legislation might be necessary were the final version of the directive to include the same provisions as this draft.

Some aspects of the directive’s provisions on non-conviction-based confiscation, extended confiscation, and freezing without a court order do not sit easily with our domestic regime. Without prejudice to the Government’s final position, it should be noted that the directive as drafted appears to pose a risk to our domestic non-conviction-based confiscation regime. Our non-conviction-based confiscation powers are civil law measures—they allow prosecution agencies to take action against property that they think has been acquired through unlawful activity. The action is not taken against an individual and no criminal conviction is necessary. It is a particularly useful tool for tackling the high-level, organised criminals against whom it is difficult to achieve a criminal conviction. In 2011-12, some £20 million worth of criminal assets were recovered using non-conviction-based confiscation powers.

Due to its criminal law basis, the directive risks placing non-conviction-based confiscation measures in the UK onto a criminal law footing, opening new avenues of legal challenge to our powers. If criminal law procedural protections and a criminal law standard of proof were introduced, our domestic regime could be severely weakened and our law enforcement agencies would find it harder to disrupt the workings of some of the most dangerous organised criminals.

The Government are considering whether the best approach is to opt in to the directive and attempt to negotiate out those aspects that conflict with our domestic regime; or whether the conflict in some areas is sufficiently serious that not opting in at this stage is the better approach. While the directive does not offer direct benefit to the United Kingdom’s domestic regime, tougher legislation and more effective action elsewhere in the EU will help tackle those cross-border criminals who cause harm in the UK, as the European Union Committee said in its report, and for that we are grateful. We believe that it is vital that we get the detail right and we must consider the effect of the directive on our domestic regime and its likely operational impact.

The noble Lord, Lord Hannay, wanted to know whether we would press for mutual recognition to be included in the directive from both conviction and non conviction-based confiscation. We would like to see effective mutual recognition arrangements for both conviction and non conviction-based confiscation. This aim would be better achieved through separate instruments. The directive is a minimum standards directive; obviously, we will continue to work with our partners to seek further new mutual recognition instruments from the Commission.

None the less, it is certainly our intention to play an active part in the negotiations on this directive, irrespective of whether we opt in or not at the outset: that is, before 15 June, the date to which the noble Lord, Lord Hannay, referred. The United Kingdom’s internationally recognised experience and expertise in asset recovery will help us to achieve an influential position in negotiations. The directive offers us a valuable opportunity to raise the standard of asset recovery legislation in the EU, enhance our co-operation with member states, and increase our powers to recover criminal assets held overseas. I repeat the fact that the expert views of the EU sub-committee will play a very important part in the Government’s thinking as they decide whether to opt into this directive. For that I am very grateful, and again we will take note of everything that has been said.

6.47 pm

Lord Hannay of Chiswick: My Lords, first, I thank all those who participated in this short debate and have made very valuable contributions. Perhaps I may be permitted to thank in particular the noble Lord, Lord Hodgson of Astley Abbotts, whose departure from the sub-committee that drafted this report is a cause of regret to all its members, because he has made a remarkable and constructive contribution to our work over the past three years. He will be sorely missed.

I join those who spoke about Michael Collon, our clerk, who has guided this committee for so long and has now moved on to greater things. He will also be missed.

As to the points raised in the debate, I followed carefully what the Minister said. I understand the procedural complexities of the matter and the need for the Government to handle their relationship in the other place in a way that is consistent with reaching a decision on this. I admit to a scintilla of regret that the Minister could not rise to his feet this evening and say that the Government had decided to opt in, but patience is sometimes rewarded. I can see why they are in the position that they are in.

The only point that I make is that from my own experience, and I think from the experience of much of the legislation in this area, it is a better way to influence this sort of legislation effectively if one opts in and negotiates as a full negotiating partner than to have to try to do it from the outside with the use of the potential opt-in at a later stage when other people have shaped the legislation. I am sure that the Government would in those circumstances still try to exercise their influence, but in my view they would have less influence than if they opted in before 14 June. So I very much hope that that is a decision that they will come to. This may be a triumph of hope over experience, but I even hope that the scrutiny committee in the other place may take a somewhat less negative view than it has on many matters, particularly given the importance to this country of Europe-wide legislation to deal with the confiscation and recovery of assets. I do not find it believable that they should feel that it is not a reasonable objective of our national policy and in our national interests to see tougher provisions Europe-wide, not just in this country.

I hope that this debate and its outcome, which I suggest will be the House’s approval of the Motion on the Order Paper, will be factored into the Government’s consideration and will be given due weight.

Motion agreed.

House adjourned at 6.51 pm.
Grand Committee

Tuesday, 22 May 2012.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux): My Lords, good afternoon and welcome to the Grand Committee. If there is a Division in the House, the Committee will adjourn for 10 minutes.

Police (Collaboration: Specified Function) Order 2012

Considered in Grand Committee

3.30 pm

Moved By Lord Henley

That the Grand Committee do report to the House that it has considered the Police (Collaboration: Specified Function) Order 2012.

Relevant document: 44th Report from the Joint Committee on Statutory Instruments

The Minister of State, Home Office (Lord Henley): My Lords, the order concerns the arrangements for providing air support to the police forces of England and Wales. It specifies the provision of police air support as a function that must be carried out through a collaboration agreement applying to all police areas in England and Wales.

Sections 22A to 23I of the Police Act 1996 make provision for police collaboration in England and Wales. Section 22A provides for the making of collaboration agreements involving policing bodies and chief officers of police. Section 23FA enables the Secretary of State to specify police functions that must be the subject of collaboration. The order is to be made under Section 23FA. Orders made under this section must be approved by both Houses beforehand; this procedural requirement is imposed by Section 23FA(4). This is the first order made under Section 23FA.

The scope of the collaboration agreement to be made under the order will include the operation of aircraft, staffing, equipment, airbases, ground control facilities, and maintenance arrangements, facilities and other resources necessary for such air operations. The order establishes the required outcome—a national collaborative agreement for the provision of air support—but the detailed terms are a matter for policing bodies and forces to agree.

The background to the order is a review of police air support completed in 2009. The service-led review identified scope to save £15 million per year by reducing the number of police aircraft and bases while providing a more consistent service. Since 2010, proposals for a collaboratively organised national police air service—the NPAS—have been developed under the leadership of the chief constable of Hampshire. The principle of a national service has been endorsed by all chief constables.

Discussions between the NPAS project team, police forces and authorities have continued, but full agreement has not been achieved. In January 2012 my right honourable friend the Minister for Policing and Criminal Justice announced the Government’s intention to make the order. The Government consulted the Association of Chief Police Officers, the Association of Police Authorities, the Mayor’s Office for Policing and Crime and Her Majesty’s Inspectorate of Constabulary on the proposed order. Responses were also received from other police authorities and police organisations.

No responses directly opposed the order. Some suggested that it was premature and some expressed concerns about financial and operational aspects of the business case for the national police air service. The concerns expressed by respondents about the governance and management of the proposed NPAS service and about precise costs and savings were important. The Government’s view is that the best way to resolve the concerns is through the detailed negotiation of a collaboration agreement by all forces and policing bodies. Therefore, it is timely and not at all premature to make the order. It will ensure that all forces and policing bodies will focus on reaching an agreed set of terms, conditions and governance arrangements for collaboration.

A feature of the proposals for collaborative delivery of a national police air service is that a single police force should take the lead. Several respondents to the consultation noted that any force, and its policing body, taking lead responsibility would require reassurance regarding the continuing commitment to collaboration by other forces and policing bodies. The order will provide that reassurance by ensuring that there is a collaboration agreement in place to which all forces and policing bodies must be party.

The order provides a basis for a more efficient, effective and economical provision of police air support that noble Lords will want, and I commend it to the Committee.

Baroness Doocey: I hope that noble Lords will forgive me; I am losing my voice. I have no problem in principle with the order. As a former chair of finance of the Metropolitan Police Authority, I am very much in favour of anything that can be done to make economies of scale and efficiencies. However, I have a number of concerns. Wearing the hat of somebody who sat for eight years on the Metropolitan Police Authority, I emphasise that my knowledge and experience is of the Met rather than of police forces nationwide. Therefore, with that caveat, I know that there are various concerns in the Met, and I wonder if the Minister can help to allay some of those concerns, particularly about the issues of governance and structure as set out in the draft agreement.

The strategy board has got quite a lot of power: it can approve annual capital budgets and determine the direction of the service. However, there is no representation on the board for PCCs—and in the case of London,
Baroness Doocey: My Lords, I am grateful to the Minister for his explanation. Like the noble Baroness, Lady Doocey, I welcome the principle of what the Government are seeking to do here—I do not think that there can be any disagreement on it. However, what the Government are seeking to do here—I do not think that there can be any disagreement on it. However, I have a slight concern that if there is not quite a good steer from the Government on how these issues can be resolved, that might be a major problem down the line. I think that it would be helpful to address those issues now.

I have another concern. Although having an integrated strategy for the air service is clearly sensible, how will this affect the local accountability of local police forces? I wonder if the Minister could address that point as well.

Baroness Smith of Basildon: My Lords, I am grateful to the Minister for his explanation. Like the noble Baroness, Lady Doocey, I welcome the principle of what the Government are seeking to do here—I do not think that there can be any disagreement on it. However, like her, I have some concerns. I am sure that the Minister can help allay those concerns when he addresses the questions.

I was interested when the Minister spoke about the consultation that took place. He quoted the parts that were in the impact assessment, which was very helpful. As I mentioned to the noble Lord previously, I tried to access the Home Office website to get more information on the consultation responses. I hope that my complaints about the website do not become a familiar theme in these Committee sittings or when I discuss Home Office matters. However, I find it the most difficult website to access that I have ever used. It has crashed on me something like six times in the past week, which is as long as I have been in this post. I therefore felt at a disadvantage on this order by not being able to read the consultation responses. I take on board entirely, and accept the Minister’s explanation, that none of the responses was directly opposed.

However, the situation with the website makes this slightly more difficult. I would have liked to know the difficulties that have prevented voluntary implementation from taking place. The noble Baroness, Lady Doocey, has been very helpful in using her experience with the Metropolitan Police to outline some of the issues.

The Minister says that there have been discussions for some time, that no one is directly opposed to it and that everybody seems to think that it is a good idea—and yet it does not happen. So, what is the precise nature of the difficulties? One wonders whether those difficulties, depending on how practical they are, can be removed simply by implementing legislation. If they are practical difficulties which the police are trying to resolve, putting legislation in place will not make them go away. One question—if we can legislate to change things—is whether he thinks that the police are simply being difficult by not reaching a voluntary agreement on the issues of concern which have prevented voluntary collaboration to the degree that the Minister would like. As the police, presumably, will still have to agree the details of the arrangements being put in place, it would be helpful to have a little more information about the difficulties and how they will be overcome by legislation.

I appreciate that savings have to be made—I am not querying that. I would never deny the need to make savings. Indeed, I am one of those who look for genuine efficiencies to save money. However, when police forces are fully under the budgetary cuss in many ways, collaboration can become more difficult for them—understandably, it makes it that little bit harder to cooperate. If the Minister can say something more about the agreements that need to be put in place, and the discussions taking place to make that happen, that would be welcome.

Perhaps I may also say something briefly about savings versus efficiency. Where crime prevention and crime detection are concerned, efficiency savings are one thing, but cuts in service, or reduction in the quality of service, is another.

I am seeking assurances from the Minister, because the impact assessment is perhaps slightly woolly on this. It says that in some areas it is expected that the collaboration will be resolved by some increases in response times for air support. It goes on to state the positives, including that a 24-hour service will be available to all forces. Will the Minister quantify what those increases in response times will be? Will they be significant? Which areas will be affected the greatest? Assurances from the Minister on that would be most welcome. In principle, the direction of greater co-operation and collaboration between police forces is welcome. I should be grateful if the Minister will address the issues that I have raised.

Lord Henley: My Lords, first, I apologise to the noble Baroness, Lady Smith, for the failings of the Home Office website. We have to admit that it is not the most perfect website. No doubt it can be improved, and in due course we will look to improve it to make sure that the noble Baroness can access information as and when she would like. That is why my noble friend Lord McNally and I made it clear when we met yesterday to discuss other matters that we would provide hard copies of certain information, to ensure that she does not have to go through this problem again.

Baroness Smith of Basildon: My Lords, I appreciate the noble Lord’s offer. However, as I said to him yesterday, he might not appreciate a call on a Sunday afternoon when I am working at home. I appreciate his going back to the Home Office to try to resolve this matter.

Lord Henley: I certainly would not appreciate a call from the noble Baroness on a Sunday afternoon. I might not be available and I would not have access to the papers either. Obviously we have to improve this website, because we all want to use it on a Sunday afternoon. That is the point of having an efficient website. It is why all of us, in a whole range of departments, have been subject to such complaints. We take that on board and will look at the website to see what we can do.
As regards the noble Baroness’s request for access to the consultation responses, my understanding is that it was a very limited consultation and the responses were not published on our website. Therefore, that is probably one of the reasons why the noble Baroness could not get them. If they are available, I will make sure that she gets them.

I should have made clear in my opening remarks how much I welcome the noble Baroness to Home Office matters. I saw her dealing with that rather extraordinary debate we had on the Queen’s Speech, which covered a whole range of departments. On that occasion, I did not have the opportunity—

Baroness Smith of Basildon: Unfortunately, I was unable to speak during the Queen’s Speech debate, but we crossed swords across the Dispatch Box at Question Time.

Lord Henley: In whatever way, I am at fault in that I have not welcomed the noble Baroness to the Home Office brief. I do so with great warmth and I look forward to many debates. She also asked about having to look at the savings that are coming about and what we are trying to achieve. Perhaps I may remind her that the exercise goes back to 2009 when her own party was in government. It sensibly started because police forces—some 43 of them plus the British Transport Police—vary in size enormously from the Met to, say, in my own area, Cumbria, which is a very small police force. Therefore, it is very difficult for some police forces to provide the same coverage as others. That is why we are looking at much more working together of all police forces and rationalisation of the services provided, and into which individual forces could buy in as necessary.

As a result, quite obviously, one would be able to find appropriate savings and produce a better service for the different police authorities. In the process, I would be able to guarantee that even a force such as Cumbria, which obviously would not be able to afford such a thing on its own, could provide helicopter coverage 365 days a year, 24 hours a day, in a way that the Met, which obviously is a much bigger police force, would be able naturally to do on its own. That is what we hope we will be able to do. Obviously, it is very difficult for all of them to get together. That is one of the reasons why it was important to give a general shove to the forces, to try to deal with these matters. The noble Baroness particularly asked what exactly had impeded that agreement. I can say that there has been general agreement on the principle. The order provides the imperative since my noble friend announced his intention to make the order. It gives that extra shove from the centre, just to make sure that the things asked for will happen in due course.

3.48 pm

Turning to the questions asked by my noble friend Lady Doocey, I welcome her intervention in this debate, particularly with the expertise that she brings. She has served eight years on that police authority and we are grateful for that. As regards local accountability, I can give an assurance that it will not be compromised at all. Chief constables remain accountable to their PCCs, or to the mayor in the case of the Met, for discharging their functions collaboratively. As regards representation of PCCs, the point concerns the detail of the proposed collaboration agreement for air support as a whole. This detail is under discussion with the NPAS project and the service. I understand that the latest draft of the agreement provides greater PCC representation, including a representative of the Metropolitan Police Authority as, obviously, it would be appropriate. The terms of the agreement cannot be defined by the order, but that will be dealt with in due course. We will have to wait until then.

I hope that that deals with most of the points put by both my noble friend and the noble Baroness, Lady Smith. Since I had general support from both of them, I commend the order to the Committee.

Motion agreed.

Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2012
Considered in Grand Committee

3.48 pm

Moved By Lord Henley

That the Grand Committee do report to the House that it has considered the Misuse of Drugs Act 1971 (Temporary Class Drug) Order 2012.

Relevant documents: 44th Report from the Joint Committee on Statutory Instruments

The Minister of State, Home Office (Lord Henley): My Lords, this order was laid before Parliament on 3 April—that is, if it is to remain in force. The order was made on 29 March and came into force on 5 April 2012. It makes—I have to stress that this is one of those words that I find difficult to say—methoxetamine, and its simple derivatives, temporary class drugs under Section 2A(1) of the Misuse of Drugs Act 1971 for up to 12 months.

The Government identified and monitored methoxetamine, through our drugs early-warning system, in 2011. In light of the available evidence, I referred methoxetamine to the Advisory Council on the Misuse of Drugs for advice in relation to temporary control in March. I thank the advisory council profusely for the quality of its advice, which was provided within 15 working days, allowing a decision to be made within a matter of days rather than weeks as has previously been the case. It is the first time that the power to make such an order has been used since it became available to the Secretary of State on 15 November 2011. It was also the first time that we invoked our drugs early-warning system to this effect.

The Home Secretary was satisfied, in consideration of available evidence, that the ACMD’s initial advice that the conditions to make a temporary class drug order were met. Methoxetamine is a drug being misused, and much misuse is having sufficiently harmful effects to warrant temporary control. The ACMD likens the effects of methoxetamine toxicity to those of acute—class C—ketamine use, including hallucinations, catatonia and dissociative effects. It further indicates cardiovascular
effects, agitation, hypertension and cerebellar features such as ataxia—unsteadiness on the feet—rarely seen with controlled drugs.

The order applies UK-wide to protect the public while the ACMD prepares full advice on methoxetamine. It enables enforcement action against traffickers and has already had an impact through self-regulation of the online trade. We know that at least 70 websites previously offering methoxetamine for sale—the number of which increased from 14 to 52 in early 2011—have ceased this activity.

The order also sends out a clear message to the public, especially young people, that methoxetamine is a harmful drug. Of course, we will continue to monitor data on the drug to measure the impact of the order through all available channels, and share this information with the ACMD.

I take this opportunity to bring to the Committee’s attention the recent publication of a cross-government action plan to tackle new psychoactive substances, as an annexe to the first review of our drugs strategy. We also published our response to the ACMD’s advice, which helped to inform the action plan, and the 2011 report of the Home Office’s forensic early-warning system, on the Home Office website, which I hope the noble Baroness will find easier to access in due course.

I commend the order to the Committee.

Baroness Dooley: My Lords, I will be very brief. This is clearly a sensible precaution. It is very necessary and I very much welcome it. In view of the very nasty and harmful effects of what is known of this drug—which I am not even going to try to pronounce—it is, if anything, overdue, and I think it is a splendid idea.

Baroness Smith of Basildon: My Lords, again I thank the noble Lord for his explanation. We welcome and support the order. The purpose and the benefits are quite clear. I will not follow in his footsteps and try to pronounce it. I am told the street name is “mexxy”—MXE—and I will stick with that because it is far easier to pronounce.

I have a couple of concerns, not around the specific action taken here but about the process and time it takes to get to this point. Both Switzerland and Russia have already banned MXE. I have a slight concern over whether the processes in place are quick enough to respond to the changes that are made. I know that the Minister is aware of the European Monitoring Centre for Drugs and Drug Addiction, which has a key role in detection and assessment of new drugs within the EU. There is a recognition that these “legal high” drugs require very rapid action across Europe.

Since the Government came to power, the EMCDDA has identified 90 new substances during 2010-11, but I am concerned that the Home Office early-warning system has only identified 11. I am not clear why there would be a discrepancy between the two. If the Minister was able to say something about that, it would be helpful. It may be that the processes that we employ here in the UK mean there are others in the pipeline—perhaps they are with the ACMD, I do not know.

It would also be useful to know when the Home Office became aware that MXE was a drug on which action should be taken. If the Minister can say anything about the work with the EMCDDA, that would be helpful. It seems quite clear that the EMCDDA is very much ahead of the game as to what is happening across Europe as a whole.

I was quite shocked when reading about this SI—and the Minister reiterated the point—by the easy availability of these drugs via the internet. That does not confine itself to national boundaries. Also, the number of internet stores selling MXE increased in a very short space of time. In January 2011 there were 14 online stores; by July, within six months, this had risen to 58 online stories selling MXE. Any delay in banning such drugs allows them to become established very quickly. How is it possible to monitor such internet sites? Is this the responsibility of SOCA, which is to become the National Crime Agency? How are these sites monitored to ensure that they do not take hold in the same way?

One of the things that the impact assessment said was that there was a risk that a minor chemical change in the drug could make a new drug that would then be legal and unaffected by the order being made today. Are the Government looking at this issue? If they are not, we could have a constant flow of temporary orders each time there is a minor chemical change in the drug.

Finally, the impact assessment and briefing notes from the Home Office highlighted the importance of education in drugs awareness. Young people hear about the drug, but think that it is a legal high and do not realise the quite devastating implications and consequences. At the moment, we have the Drug Education Forum, which brings together 30 high-profile, high-quality and knowledgeable organisations across the UK, including ACPO and the NSPCC. Unfortunately, the Department for Education has withdrawn the funding from this body. My colleague, Diane Johnson, Member of Parliament and shadow Minister for the Home Office in the other place, has written to the noble Lord about this and I think that it would be helpful if the Government were able to look at this again. Clearly, by their own analysis, education is key to young people understanding the dangers of such drugs. It would be very sad to see good action in one part of the Government being undermined by action in another part that makes it more difficult to tackle this problem. We certainly support the order but would be grateful for responses to these questions.

Lord Henley: My Lords, I thank both my noble friend and the noble Baroness, Lady Smith. I reiterate that this is the first time that we have used this new order. The point behind it is to act much more quickly than we ever could in the past when we see new drugs being developed. That is why we created this system, which allowed me to refer this at a relatively early stage to the ACMD, get its advice and then bring in this temporary order, which will remain in effect for a year while the ACMD does further work on deciding whether this is right or proper.
As the noble Baroness, Lady Smith, will know from some of the questions that were put to my honourable friend in the debate in the Commons, there is this faint danger, particularly with the way these things are developing, that we are constantly chasing after new drugs as new things develop. That is particularly the case when, as she put it, you can have a very minor change in something that creates a new drug that is not covered. We therefore obviously have to consider whether some more generic approach might be more appropriate in the future.

As to education, it is my privilege and honour to chair an inter-ministerial group on drugs, which has representatives from a large number of departments. The Home Office chairs it but all the other departments come in. The Department for Education, along with others, has always been involved and we are grateful for that. We take its involvement very seriously and look at everything that it can do. We certainly recognise that the Drug Education Forum, which the noble Baroness referred to, has a very valuable role to play. Getting all Ministers together to work on this has had a very beneficial effect and will, I hope, lead to further thoughts about how we deal with these very difficult problems. Sometimes, some of them seem to be almost insoluble. Certainly, the Department for Education is fully committed to that process and Education Ministers come to that meeting, for which I am very grateful.

The noble Baroness seemed to imply that the temporary ban had not had much effect on sales on the internet. As far as we are aware, we have seen a reduction. The 70 or so websites that were offering MXE have now ceased selling the drugs. To put that into context, the European Monitoring Centre for Drugs and Drug Addiction, the EMCDDA, reported that in the first half of 2011 some 52 websites were offering MXE for sale. So we are making progress. We want to see how this works. Obviously, we will want to see whether we can use this process in the future.

I assure the noble Baroness that the Government are doing as much as they can to tackle the much wider trade in legal highs, the new psychoactive substances or whatever they are called. “Legal highs” is a rather dangerous term to use. It could encourage some young people to think that if they are legal they must be okay and not a problem. We believe that tough enforcement should be a fundamental part of our NPS action plan. Action to restrict the drug supply, including illegal new psychoactive substances, is a priority for all law enforcement agencies. We certainly will work closely with SOCA, the United Kingdom Border Force and others on that matter. We will also make sure that the information getting out to individuals, particularly young people through FRANK, continues to be at the best possible level to make sure that they know that, even if these substances are referred to as “legal highs”, it does not mean that there are not serious dangers about them.

As I have said, this is the first order that we have brought in under this process. It obviously has all-party support and I hope that all parties agree that it will allow us to move much more quickly than we have in the past. Again, I offer my thanks and congratulations to the ACMD. The way in which it dealt with the initial processing in only 15 days after the first representations from us was very encouraging. We hope that it will continue to do that as and when we refer others in due course.

Motion agreed.

**Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2012**

**Considered in Grand Committee**

4.03 pm

**Moved By Lord Freud**

That the Grand Committee do report to the House that it has considered the Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2012.

**Relevant documents: 44th Report from the Joint Committee on Statutory Instruments**

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My Lords, I am pleased to introduce this instrument, which was laid before the House on 26 March. I am satisfied that it is compatible with the European Convention on Human Rights.

The original qualifying earnings band was set out in the Pensions Act 2008. We amended the Act last year to insert the automatic enrolment earnings trigger but these figures are now up to six years old. It is essential to keep the automatic enrolment thresholds up to date and relevant.

The original figures are subject to a mandatory annual parliamentary review. This first review needs to catch up with six year’s worth of change. Our task is to consider the outcome of this year’s review—the revised rates that will apply when the largest companies start to implement automatic enrolment from July of this year. This is an important and much anticipated debate. I am glad to see that we have the benefit of having pensions experts and champions of automatic enrolment with us this afternoon. I have been grateful for their expertise in the past and I remain grateful now. I look forward to what I am sure will be a robust and thorough examination of these thresholds.

The power to revise the automatic enrolment threshold is a broad, flexible power. Flexibility is important. Rather than a lock-in to a set formula with a short shelf life, flexibility safeguards the interests of savers, employers and the public purse. Flexibility enables this and future Governments to react to the changing financial landscape, the number of people saving and the amount they are saving, all set against the backdrop of the shape of state pensions.

However, flexibility and the degree of discretion that Parliament has allowed makes the task of setting the automatic enrolment thresholds for private pension saving more challenging and perhaps more contentious.
than the state pensions uprating exercises that we are more familiar with. The amount of the automatic enrolment earnings trigger and the lower and upper limits of the qualifying earnings band are critical to deciding who should be auto-enrolled, when it makes sense to start saving and how much people should save. Targeting is critical. We must safeguard the interests of all workers who may be in scope for automatic enrolment including the lowest paid. If the trigger is too low the low paid may baulk at the costs and opt out.

Persistent low earners tend to find that state pensions provide them with an income in retirement similar to that in working life, without the need for additional saving. For these individuals, it will very often not be beneficial to direct income from working life into pension saving. If we are to meet the challenge of pension undersaving, we have to get the pension-saving message out into the workplace. We are about to see a revolution in workplace provision. We are asking employers, payroll providers and the pensions industry to take on significant additional responsibility.

Workers will need to understand how pension saving will work. They will need to know how automatic enrolment will affect them, when it will affect them and how much it will cost. We know people will see their employer as a first port of call. We have to make automatic enrolment simple for employers to understand, administer and explain. The automatic enrolment rates for this year need to balance complex interactions between targeting, simplicity, affordability, costs and savings, and take account of equality issues. The problem is that simplicity and pensions are not natural bedfellows. The Government felt that the best way forward was to have a full consultation on the proposals for the first year of live running. Up to now employers and the pensions industry have been working with figures that are unlikely to be the ones for live running. We wanted to share our thinking and the evidence we took into account as part of the review process.

We needed the views of employers who will have to make automatic enrolment work in practice; of the companies who will provide pension schemes; and of the representatives of people who will be brought into pension saving, possibly for the first time. The Government have now reviewed this evidence from the public consultation and weighed the costs, savings and low-earners issues carefully in arriving at the figures that I present to your Lordships today. Targeting is critical but the level of the trigger is a difficult judgment because everyone’s personal circumstances will differ and will change over their lifetime. When household finances are under pressure, we do not believe it is right to encourage low earners—whatever their gender—to save at a time when they may need to use all their income to meet their family’s present living costs.

We propose an automatic enrolment earnings trigger of £8,105, aligned with this year’s personal tax threshold. Tax relief is a core part of the automatic enrolment deal. We believe that automatic enrolment should target people once they earn enough to pay income tax and therefore qualify for tax relief, and should exclude the low paid who will have a high replacement rate from state pensions alone. This exclusion is from automatic enrolment, not from pension saving per se. People on low earnings in households with a higher earning partner may be in a position to put something into a pension. People on low earnings with an expectation of a rise may want to get a toehold on pension saving. That is why the right to opt in, with an employer contribution, is such an important feature of these reforms. Any rise in the trigger disproportionately affects women. I make it completely clear that we are not weighing equality against cost; gender is not the issue here. The outcome of this review is right for all people on very low incomes, regardless of gender.

The results of the consultation were powerful and persuasive. Simplicity is critical to the success of automatic enrolment. It is best supported by aligning the automatic enrolment thresholds with existing payroll thresholds to give employers and individuals figures that they are familiar with and can explain.

I turn now to the qualifying earnings band. The headline message from the public consultation was that the band should maximise pension saving. This suggested that the right direction was to set the lower limit fairly low—and nor should we set the cap so high that it significantly increased employers’ minimum costs.

I am acutely aware that your Lordships’ views were mixed about the point at which we should pitch the lower limit of the qualifying earnings band. There was some residual support for not having an earnings band at all. The previous Administration ruled this out on the grounds of cost, and we continue to do so.

There is a good case to be made that pensions saving should rise as earnings rise, and that the original thresholds in the Pensions Act 2008 should be revalued by the rise in average earnings. That proposition was put in place by the previous Administration. There is also a logical argument that the automatic enrolment thresholds that will drive minimum pension saving levels should rise in line with the consumer prices index, for consistency with the Government’s wider policy. Price inflation affects affordability. It has a very direct bearing on how much people can afford to pay into their pension, and a direct bearing on employer costs. However, neither price nor earnings inflation produces a figure that aligns with existing recognisable payroll thresholds, and the consultation rejected them.

The work on the development of automatic enrolment and the early legislation, led so ably in this House by the noble Lord, Lord McKenzie, gave us another solid canon to work with. Private pension saving should build on the foundation of state pension entitlement. The Johnson review gave us a solution to the de minimis level of pension contributions, via a gap between the automatic enrolment trigger and the earnings level from which contributions are collected. The lower limit of the qualifying earnings band must work hand in hand with the automatic enrolment earnings trigger to deliver the policy intentions.

The consultation rejected alignment of the lower limit of the band with the national insurance contributions primary threshold because it increased substantially this year to £7,605. We, too, rejected it. It would not deliver the policy intentions. It would be a logical point of alignment and is a recognisable payroll threshold,
but it is too high a peg for automatic enrolment minimum contributions. It would reduce the gap between the trigger and the point from which minimum contributions are calculated to such an extent that we would lose the critical de minimis cushion, and then we would be back to the problem of penny-packet contributions.

We looked for a point of alignment for the lower limit of the qualifying earnings band that would deliver simplicity and maximise pensions saving. We looked for a threshold that worked in conjunction with the trigger to solve the problem of penny-packet contributions. This happens at the national insurance lower earnings limit. A worker will start to build up a basic state pension on earnings above the national insurance contributions lower earnings limit. This is £5,564 for this tax year. The national insurance lower earnings limit is a figure that will be familiar to employers. It is similar, in today's price terms, to the original proposition of the Pensions Commission and to the original figure in the Pensions Act 2008.

4.15 pm

We had originally proposed to revalue the upper limit of the qualifying earnings band by earnings to arrive at a figure of around £40,000 to cap employer costs, rather than track the national insurance upper earnings limit, up to £42,475 this year. The evidence from the consultation suggested that at these earnings levels, people are likely to be in a good-quality scheme already and the cap on minimum contributions had little practical relevance.

Only the largest employers are staged in this tax year. Medium-sized companies that may have a greater proportion of their workforce on median or average earnings will not come under the employer duty this year and will be less affected by the upper limit. Most of their people will be earning much less.

The conclusion was that the difference between a figure of around £40,000 and the national insurance upper earnings limit of around £42,400 was not a large enough gap to justify building a random figure into payroll processing, given the profile of the employers going live this year. For that reason, our final proposal to the House is that the value of the upper limit of the qualifying earnings band should be £42,475 for the 2012-13 tax year.

I commend this instrument to the Committee.

Baroness Drake: My Lords, starting positively, it is most welcome that auto-enrolment will really commence in October 2012, and this order is obviously an essential part of getting to that position. The pay reference periods in the draft order and the corresponding earnings values in respect of the relevant sections of the Pensions Act 2008 are sensible. We can understand why, for example, a daily pay reference period could deliver results that were not the policy intent.

It is also pleasing that the Government have held to the definition of qualifying earnings that reflects the common pay components that make up the pay packet. Aligning auto-enrolment triggers and thresholds with tax and national insurance thresholds in the interests of simplicity for employers wherever possible would seem a sensible approach—but only to the point where the pursuit of simplicity does not undermine desirable outcomes, particularly for women.

Aligning the upper limit of the qualifying band of earnings with the NI upper earnings limit provides simplicity, complements the policy intention and, by extending the range of earnings, increases savings a little. Similarly, setting the lower limit for the qualifying earnings band to the NI lower earnings limit provides simplicity and maintains contribution levels when auto-enrolment is triggered. That is the positive.

However, our concern is that the level of earnings that triggers the automatic enrolment of a worker is set for 2012-13 at £8,105, the PAYE threshold. This further rise in the trigger excludes yet more women, and places simplicity above enabling millions of women to increase their savings pot. We remain concerned for the reasons we have rehearsed previously: raising the earnings trigger has a disproportionate impact on women and the Government are repeating the errors of the past in designing a second-tier pension system that does not work for the life pattern of many women. In 10 years’ time, the error will be obvious, particularly to women themselves. I have no doubt that action will be taken to amend it, but by then thousands of women will have lost out unnecessarily.

The Government’s response to the automatic enrolment earnings threshold consultation reports that the main focus of consumer organisations was on equality issues, particularly the impact of higher thresholds on low-paid workers, the majority of whom are women, but clearly their views are not a dominant influence in setting the trigger. Millions of women have a life pattern in which periods of full-time work are interspersed with significant periods of part-time work when their caring responsibilities are at their greatest.

On the Government’s figures, of the workers eligible for auto-enrolment, two in five—39%—are women. Raising the trigger from £5,035 to £7,475—the 2011-12 PAYE threshold—excluded 600,000 individuals, 78% of them women, most of them part-time, but that decision was made. However, raising it to £8,105 excludes another 75,000 women, on the grounds of simplicity. If, over time, that earnings trigger rises even further in real terms, tracking proposed increases in the tax threshold, the number of women excluded from the benefits of auto-enrolment will grow even more.

The effect of excluding these women is, first, that they may not start to save when the reforms are introduced. Secondly, when they transition from full to part-time jobs they may face increased charges on their pension pot accumulated as a result of becoming an inactive member. Thirdly, ceasing to be auto-enrolled when they become part-time workers could break the persistence of the savings habit they built up when working full-time.

The Government sympathise with the view that only those who benefit from tax relief should be auto-enrolled. This ignores the working of the tax credit system. For example, household income brought to account when calculating universal credit disregards 50% of that income paid in pension contributions.
Of course, before the reforms it was 100%. To quote from the Johnson report commissioned by the Government:

"Many or most very low earners are women, who live in households with others with higher earnings and/or receiving working tax credits. These may well be exactly the people who should be automatically enrolled".

Those excluded women also suffer a loss in lifetime pay, albeit deferred pay, because they do not have access to the employer’s 3%—and for some employers the figure is higher. However, they will still lose out from any lower wage growth that flows from the cost of automatic enrolment.

If policy is predicated on the belief that most people will not begin to save unless the power of inertia is harnessed through auto-enrolment then it cannot be the case that the right of those below the earnings trigger to “opt in” will seriously mitigate the risk that many women will face lower incomes in retirement as a result of the level at which the trigger is put. As to persistent low earners, the argument that they should not save because they get state pension and benefit means yet again that there will be no “asset accumulation strategy” for low earners. If 100% of pension contributions were disregarded for universal credit calculation, this would reduce the risk of a fall in people’s welfare prior to retirement.

Furthermore, if the Government accelerate the move to a single flat-rate pension, depending how that is done, together with the more generous crediting arrangements for carers introduced by the Labour Government, then the incentive to save can increase for significant numbers. As the Johnson review again observes:

“earnings are highly dynamic and there are relatively few people who have low earnings throughout their lives”.

A make-weight argument for the higher earnings trigger is that it reduces the number of small pots of pension saving, which are disproportionately expensive for the insurance industry to administer. But of course that argument is totally contrary to the policy intention. The answer to that problem is the public service obligation of NEST not to increase the numbers of workers excluded from auto-enrolment.

Much is made by large employers—though having read the review, one sees that not many of them directly make submissions—of certainty and business planning from linking the earnings trigger to the PAYE threshold, so setting the direction of travel. In 2012-13 the Government are rolling out to the large employers planning from linking the earnings trigger to the PAYE threshold. However, these are large firms well versed in dealing with complexity. Surely we should not be trading fairness for women, which they need, for an alleged simplicity which these companies do not require.

Many large employers have already been given the simplifying benefit of an alternative certification test. Many use salary substitution, managing the complexity of employees opting both in and out of salary substitution. They are experienced in deploying often complex measures to manage their pay and tax liabilities and frequently changing tax rules. Do 75,000 more women need to lose the benefit of auto-enrolment to give them the alleged simplicity they seek?

To return to the positive: while we welcome the commencement of the new employer duty, and recognising some of the positives in this order, we remain concerned about the position of many women that is created by raising the earnings trigger.

Lord German: My Lords, I recognise in the consultation document and in the response from the Government that three-quarters of the respondents supported the trigger that is now being set by the Government in this legislation. Of course, this is not an exact science; one cannot say that a specific figure is the level at which people will benefit from coming in to automatic enrolment. However, we should recognise that for many low earners, investment in pensions is potentially unsuitable, and that it is not suitable for persistent low earners. I will come back to that point in a moment.

When the Pensions Commission did its initial work, it stated that low earners might aim for a gross replacement rate of 80% or more of their income when they retired. The Johnson review—which I, like the noble Baroness, will quote from—stated:

“This disproportionate impact on women is something we would wish to avoid if we believed that these people would benefit from saving.”

Individuals who are low earners throughout their lifetime will receive a relatively high income—I stress “relatively”—in retirement, without private pension saving. Paul Johnson quotes the example of an individual earning £10,000 a year from the age of 22, who would see a replacement rate of around 97% from the state alone. Therefore, the question is where the target trigger should be set. Surely the objective must be to maximise pensions saving where that saving is valuable and minimise it for people for whom it will not be worth while.

There is no doubt that this will have a disproportionate effect on women, but the question is whether potentially it would not be worth their while to invest in this manner. Would they benefit from the savings? The question that is being asked here is about what the threshold should be and whether it should be somewhere in the region of the figures that Paul Johnson quoted in his review for the Government. Individuals who are low earners throughout their lifetime will receive a relatively similar income without private pension saving. The question is: does the trigger enable people to come back in when their earnings level rises above the tax threshold? The question that the Minister might like to answer is: what will be the procedure for people who have been low earners, who are underneath the trigger, who have not chosen to opt in but who reach that figure to be automatically enrolled? If they are in the category of persons who will occasionally fall back below and then rise above the trigger level, how will their re-enrolment occur? Will there be encouragement, and will they be tracked so that the re-enrolment will occur seamlessly, without them losing out?

The other way in which people’s choices could be made is through opting in. I note that the consultation response from the Government states that people will
be encouraged and that employers will be required to pass on information to their workforce. However, there is a difference between passing on information and encouraging people. The difficulty that many employers will have with low earners is in determining whether this is potentially good for them. It is a very difficult judgment to make, given that it may not be the right choice for a person who is a low earner throughout their life but might be for someone who is a low earner now but who has the potential to move back and forth across the trigger line.

4.30 pm

Perhaps my noble friend the Minister can tell us a little bit about the reviewing mechanism, particularly the opt-in and opt-out rates that will be used to understand where we are going in the future with this quite large group of people who are currently low earners. We are at the beginning of a long process here and will understand more as time moves on, but predicting behaviour from where we are at the moment is somewhat difficult. Is the Minister considering a general review of the areas that are to be considered?

The other issue that relates to this is whether the trigger will remain at the tax threshold. I notice that the Government said in their response that it was not set in stone and that they would review it on an annual basis. Of course, the Government have already announced that they intend to introduce a single-tier pension. In his report, Paul Johnson said that, “we could generally expect the incentives to save (and therefore payback) to improve as a result of”.

a single-tier pension approach. Clearly, when the new single-tier pension is enacted, it will be important to review the trigger level, and it might be sensible to do that once the Government have determined the nature of the legislation that they intend to bring forward on the single-tier pension. If they do that, clearly the trigger will have to be thought about again, as there will be some tax benefit for low earners when the basic state provision is made up to the level of £140 or more at the current rate, because tax relief will be provided even though people will not have reached the tax threshold. That might be an important feature in understanding how we move forward.

With those questions to my noble friend, I am pleased to support the order. We will need to return to this matter with a review and further thinking as time progresses—and certainly within the next year or two.

Lord McKenzie of Luton: My Lords, I begin by thanking the Minister for the manner in which he introduced the order—and I think I spotted a few kind words as well.

My noble friend Lady Drake set out our position with her usual precision and focus, so I will be brief. Auto-enrolment goes live in a few months and we should take this opportunity to reflect on the tremendous efforts that have been brought to bear, not least by my noble friend, to make it a reality. Although we do not have an identity of view with the Government on all aspects of its implementation, we acknowledge their role in taking this forward in challenging times. The introduction of auto-enrolment may not be preceded by a torch relay but its effect and indeed its legacy have the potential to outshine the other exciting event that we expect to experience later in the year.

Appendix A to the Explanatory Note sets out the impact of changing the earnings trigger and the upper and lower limits of the qualifying earnings band. My noble friend Lady Drake focused on our major concern: the impact of the raised earnings trigger. As she explained, far and away the biggest number of losers are women. There seems to be an implicit assumption—which was in a sense reiterated by the noble Lord, Lord German—that these would be persistent low earners. I would be interested to know what evidence there is for that. If we wanted to align it with something that had a PAYE component, what about the primary threshold, for example?

I looked at the Government’s response to the consultation. The reason given for excluding the primary threshold was that there was no tax relief at the lower end. How much work have the Government done on this? I went to the HMRC website to remind myself of the rules on tax relief for pensions. It states:

“Usually, your employer takes the pension contributions from your pay before deducting tax (but not National Insurance contributions). You only pay tax on what’s left. So whether you pay tax at basic, higher or additional rate you get the full relief straightaway. However, some employers use the same method of paying pension contributions that personal pension scheme payers use—read more in the section on ‘Personal pensions’.”

That section states:

“You pay Income Tax on your earnings before any pension contribution, but the pension provider will only pay tax back from the government at the basic rate of 20 per cent. In practice, this means that for every £80 you pay into your pension, you end up with £100 in your pension pot. If you pay tax at higher rate, you can claim the difference through your tax return”.

What happens if you do not pay tax?

“If you don’t pay tax you can still pay into a personal pension scheme and benefit from basic rate tax relief … on the first £2,880 a year you put in. In practice this means that if you pay £2,880 the government will top up your contribution to make it £3,600. There is no tax relief for contributions above this amount”.

So the assertion that there is no tax component available simply because you are below the tax threshold is not true. I recall that the proposition was that NEST would adopt that alternative means of generating tax relief for people who went into the NEST scheme. Will the Minister outline in some detail the extent to which that issue was factored into the considerations; and confirm what the position of NEST is intended to be in relation to the routes by which people may get tax relief when it is introduced?

It is a great pity that the issue of the trigger has left us apart. The noble Lord, Lord German, instanced the fact that the tax threshold may rise to £10,000—part of a wider deal, I understand. We will see whether and when that comes to fruition, but it will simply exacerbate the problem that my noble friend Lady Drake outlined in such detail. I hope the Minister can deal with that point.

Lord Freud: My Lords, I said I was expecting a robust debate. It has been short but typically robust. What has clearly come through is that the figures
around the earnings band seemed to get general acceptance in this Committee, and the real issue we are discussing is the trigger level. It is common ground that it would be pretty hard to find an earnings trigger that would target auto-enrolment perfectly. Our aim is to maximise pension saving for those for whom it is valuable, and minimise the number captured of those for whom it is not. Clearly this is not a perfect science.

The rise in the value of the trigger takes us to the impact on the low paid. As noble Lords pointed out, on balance many more women are in this category—in particular years, though it may not be a continuous position. I should put on the record that the rise from the £7,475 threshold to £8,105 excludes does not exclude 75,000 women; the figure I have is 100,000. We might as well get that on the record. Of those affected, my information is that 82% are women. We recognise that women are more likely to work part time or work less than men, and that they will be disproportionately represented in the group excluded from automatic enrolment by the increase in the trigger.

With the trigger, and automatic enrolment generally, we are talking about soft compulsion. We have developed a system that aims to capitalise on inertia—the default is saving, but we have left people who are new to pension saving to opt out if they consider that they really cannot afford it. Automatic enrolment with an employer contribution is an incentive to save. For the first year, certainly, we do not want to encourage people who do not earn enough to pay tax to divert wages into a pension pot unless their circumstances mean that it makes financial sense.

A question was asked based on reading three pages of the HMRC site, which was very assiduous. Tax relief was one of the factors considered, but not the only one. Maintaining an adequate gap between the trigger and the bottom of the earnings band was also relevant. We also needed to make sure that the right people—those who could afford to save—were enrolled.

There are two ways for a pension scheme to access tax relief for individuals. As the noble Lord, Lord McKenzie, said, schemes using relief at source can get tax relief at the basic rate even if the individual is not a taxpayer. However, where a scheme uses a net-pay arrangement, individuals can get tax relief only if they have taxable earnings. To answer the specific question, NEST will use the former, so that all members can get that tax relief.

Lord McKenzie of Luton: Does that mean that the tabulation in the Government’s response—which says that if the trigger is set at the primary threshold, it is not tax relivable at the lower end—would only run in some circumstances and would not run for many scheme members, particularly if they were members of NEST?

Lord Freud: Yes, on the basis of what I have just said, that is quite clear. For those saving in NEST, the figures would not work, while those saving in some other way, as the legislation currently stands, would not get the relief. NEST: yes; others: no. I think the silence behind me suggests a good spot there and I suspect we may look at that particular issue or anomaly—we may.

With the gently-gently approach of phased contributions starting at a modest level, we hope that we will not trigger a rush to the exit, but we do not know. We know what people tell researchers when they are asked. We can look at the opt-out rates in those countries that have similar systems. However, in the end, the evidence shows that if people feel they cannot afford it they are more likely to walk away, and the whole issue of pensions stays in the “too difficult to think about” pile. We are feeling our way here and there will be chances to make adjustments.

4.45 pm

I will pick up some of the other points raised. The noble Baroness, Lady Drake, asked what our intentions are as the tax allowance rate goes up—if it were to go up, and clearly I am not making any presumption either way. My answer also incorporates an answer to the question from my noble friend Lord German. The earnings ban and the trigger are subject to annual review—so we are talking simply about the rates for this year—and we will have a look at where the rates should go for 2013-14 on the basis of a number of factors, including the economic conditions, and indeed what reactions we get from the early run in experience. You will all be pleased to know that this is subject to affirmative debate every year, so we can look forward to many enjoyable afternoons over the years on this matter.

The noble Baroness, Lady Drake, also raised the issue of pots. Clearly that is an issue that we are looking at separately. It is not an easy issue, as we build up these very small pension pots, and I know that it is a matter of concern all around the House. We have been looking at this issue, and we plan to publish a response on that this summer.

Baroness Drake: I appreciate that the Government are looking at the whole issue of the transfer of small pots. The point that I sought to concentrate on was that it is very likely that the market will apply a differential charging structure to inactive members and to active contributing members. Even though the Government have taken powers to control that, those powers will not stop differential charging. If a woman is full-time, then takes on a part-time job with another employer and is not auto-enrolled—and so becomes an inactive member—one of the consequences is that the charges on her remaining pot start to rise, because inertia is not turned into a positive. It is that narrow point. I appreciate that the wider review of pension pot transfers is coming up.

Lord Freud: I will stand my ground a little bit on this, because these are some of the issues that really come into consideration when we look at the broader issue of pension pots. My colleague Steve Webb has said a few things about this in public, and I know that he is looking in private at this differential charging issue, so it is something that he is considering.
My noble friend Lord German asked a related question about the opt-in/opt-out rates. Those will be monitored on an ongoing basis. He also asked about people coming in and going out as their earnings change, perhaps going from full-time to part-time. These people will continue to make and receive contributions according to the rules of the scheme that they end up going into when they go in, but if earnings dip to the extent that no contributions are due in a particular period, they will restart immediately when their earnings are high enough, so there is no waiting period.

I will now return to two issues to deal with them precisely. I only touched on the differential charging that the noble Baroness was concerned about. We have powers under the 2008 Act to set a cap should charges become inappropriately high. We recently extended those powers to cover deferred members. Therefore, we have all the necessary powers, and my colleague is aware of the issue. We are monitoring the charges with rolling research and will continue to do that as enrolment is brought in.

I will close my answers by doing justice to the point about tax relief made by the noble Lord, Lord McKenzie. We will continue to take that into account. The matter is not entirely straightforward, as we established. At this stage we do not know how many people will get relief at source as opposed to making net pay arrangements. We will keep that matter, too, under review.

This is our first review. It took a major consultation effort to decide on the trigger and the earnings band. We would have preferred to come out with this earlier, and I will try to do better on timing next year because early certainty is important, for employers in particular. It was right to consult this time, and to gather the views of people who will need to make automatic enrolment work in practice: those who will have to administer pension schemes, employers who will have to deal with all the questions from their workers, and people who represent those workers. The one message that we got from all of them was that we should keep this simple. I shall take that to heart for the future. Of course, it chimes with the Government’s Red Tape Challenge.

As I said, we will come back to this in a little less than a year. I know that I look forward to it as much as other noble Lords in the Room. I commend the order to the Committee.

Motion agreed.

**Criminal Justice and Police Act 2001 (Amendment) Order 2012**

*Considered in Grand Committee*

*4.53 pm*

*Moved By Baroness Northover*

That the Grand Committee do report to the House that it has considered the Criminal Justice and Police Act 2001 (Amendment) Order 2012.

Relevant document: 44th Report from the Joint Committee on Statutory Instruments

**Baroness Northover:** My Lords, the order seeks to add the following offences listed in the Royal Parks and Other Open Spaces Regulations 1997 to the penalty notice for disorder—PND—scheme. Regulation 3(3) covers the dropping of litter or refuse; regulation 3(4) covers illegal cycling; and regulation 3(6) covers dog fouling. If Parliament agrees the order, the penalty levels for the new offences will be made by a separate statutory instrument.

Currently the three offences in question may be dealt with only by a magistrates’ court, so much offending in Royal Parks goes unenforced as prosecution is costly and disproportionate for what are relatively trivial offences. Offenders therefore tend to be formally reported or verbally warned. The police advised us that each report takes approximately two hours to complete. Therefore, in most cases there is no effective deterrent for those dropping litter, for irresponsible dog owners and for illegal cyclists, and there is increasing concern from many Royal Parks users about the lack of enforcement action. For a number of years, the Department for Culture, Media and Sport, Friends of the Royal Parks and a number of MPs have expressed support for these Royal Parks offences to be added to the PND scheme.

It is right that the Royal Parks should no longer be outside the ambit of the law. Adding the offences to the PND scheme is the most efficient way to address the lack of enforcement. It will enable the police to deal with offending in an effective and proportionate way, in order to maintain the safety and enjoyment of the Royal Parks. This will be valuable all year round, and particularly ahead of and during the Olympic and Paralympic Games when the parks expect many more visitors.

The purpose of the PND scheme is to provide the police with a swift financial punishment to deal with low-level misbehaviour on the spot. The PND is a type of fixed penalty notice established by the Criminal Justice and Police Act 2001, and may currently be issued for a specified range of 26 minor offences, such as being drunk and disorderly in a public place.

By adding the offences to the PND scheme, offenders against whom little or no action is taken will be sent a clear message that offending will not be tolerated and they will receive a financial punishment for their behaviour. The offenders who are currently prosecuted for these offences will no longer be clogging up the magistrates’ courts and will instead be dealt with in a proportionate way out of court. It will also significantly free up police time for additional patrols and provide a more effective deterrent to persistent offenders. Issuing a PND takes an officer approximately 30 minutes, whereas a formal report takes approximately two hours to complete. The police have advised that following the investment of two hours in completing the report, the majority do not result in a summons.

In addition, adding the offences to the PND scheme will correct the current anomaly whereby the police have the option to issue an environmental or road traffic fixed penalty notice for similar offending outside the Royal Parks but not within them. It was not practical to amend the legislation governing those...
[Baroness Northover]

other fixed penalty notice schemes in the near future, so adding the offences to the PND scheme was considered the best option for correcting the anomaly.

We have consulted on this proposal with interested parties, including DCMS, the Home Office, the Metropolitan Police, MPs, councillors and cycling groups. The majority of respondents were in favour of adding the offences to the scheme. Some concerns were raised regarding the offence of illegal cycling. Let me be clear: we are not targeting cyclists; we are tackling illegal cycling, which can be dangerous and intimidating. Illegal cycling outside the Royal Parks can already be dealt with by a road traffic FPN and we think it is right that a similar disposal is available inside the Royal Parks.

With regard to music events held in the parks, where people may be more likely to drop litter, whether to issue a PND will remain an operational decision for the police. They will use their professional judgment and discretion to determine what is the most appropriate and proportionate response to offending based on the circumstances of the case. Ample bins and recycling facilities are provided at events.

It may be helpful for me briefly to set out how PNDs will be issued for the new offences. A fixed penalty of £50 will be issued where a police officer has reason to believe that a person has committed any of the three new penalty offences while inside the Royal Parks. Once issued with a PND, the recipient has 21 days to either pay the penalty or request a court hearing. If the recipient fails to take any action, a fine of one and half times the penalty amount—that is, £75—is automatically registered against them by the magistrates’ court.

Visitors to the Royal Parks will be made aware of the new penalty offences through effective signage and markings. We will be working with the Royal Parks Agency and Metropolitan Police to ensure that these are clear and unambiguous. The Government are supportive of adding these offences and see the benefits to the public as well as to the Royal Parks Agency and Metropolitan Police of having an effective means of tackling this kind of offending in the Royal Parks.

I hope that noble Lords will support the order.

5 pm

Baroness Doocey: My Lords, I support this order and I am very pleased that cycling is included. On more than one occasion, I have seen people cycling in the park in a very irresponsible manner, which can have devastating effects. However, I should like to mention parks and dogs. I love both and am in the wonderful position of living in an area where I can use Bushy Park and Richmond Park.

It never ceases to amaze me how people who are completely and utterly responsible about their dogs and would not dream of not cleaning up after them in the street will take a very different view in a park. They also take different views between different parks. Bushy Park is a wild park which does not have manicured lawns in most places. It always surprises me that totally responsible people will say, “Oh, it doesn’t matter here because the deer are all over the park and what is the difference?” But children play in parks and I am particularly concerned about the spreading of the parasitic disease toxocariasis. I know someone who suffered as a result of this disease, but its effects are not widely known.

I believe that everyone should be able to use our parks. We are very lucky to have such wonderful Royal Parks and open spaces. But enjoyment for children, animals and adults should not be ruined by the very small minority of people who just cannot be bothered to clean up after their animals. It is not the fault of the animals. It is the fault of the owners. Therefore, these orders are particularly welcome and I am very pleased that this behaviour will be subject to PNDs in the future.

Lord Beecham: My Lords, it is a privilege to be involved in such a momentous change to the country’s criminal law. I support entirely the Government’s objectives, particularly the observations made by the noble Baroness, Lady Doocey. She has referred to a matter which is of considerable risk to health and clearly cannot be tolerated. The Explanatory Notes refer to the fact that the impact of the order will be reviewed in 12 months. I assure the Minister that the Opposition will not press for such a review, unless Cabinet Ministers are seen to be depositing papers otherwise than in the litter bins in the Royal Parks, which would make a welcome change. It is hardly necessary to go to those bureaucratic lengths for such modest matters as these.

However, I wonder whether at some point the Government propose to review the general issue of fixed penalty notices outside the Royal Parks. There may well be other matters concerning the Royal Parks that might be raised. But there might be other issues that would be worth discussing with, for example, the Local Government Association, the national parks authorities and organisations of that kind to see whether there needs to be general updating of the system. As the Minister has made clear, this is a cost-effective way in which to deal with relatively low-level matters that nevertheless cause offence and inconvenience, and occasionally create risks to public health and safety. Having said that, we certainly support the order.

Baroness Northover: My Lords, I thank my noble friend Lady Doocey and the noble Lord, Lord Beecham, for their support. I agree absolutely with what my noble friend said about dogs fouling parks. From many years’ experience of small boys in particular playing in the parks where I lived, not just the foulness but also the important health risks involved in dogs fouling was of great concern. I welcome this support and note what the noble Lord, Lord Beecham, asked about whether this might be reviewed and applied to other areas. I will take that back, given that I have no pointer at the moment on what we might be thinking of doing.

Now, fortunately, I have some inspiration. We are currently developing a new framework for the use of out-of-court disposals, including PNDs, and revising
the guidance for officers. That deals with reviewing the PND scheme more generally. The noble Lord pointed to other areas where it might be applied that were analogous to the situation of the Royal Parks. I will take back that question and let him know what we conclude. I hope that I have addressed the concerns of noble Lords, and that they will support the order.

Motion agreed.

Greater London Authority Act 1999 (Amendment) Order 2012
Considered in Grand Committee

5.07 pm
Moved By Earl Howe

That the Grand Committee do report to the House that it has considered the Greater London Authority Act 1999 (Amendment) Order 2012.

Relevant document: 44th Report from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, the order before the Committee gives the Greater London Authority the ability to spend money on activities that protect or promote improvements in public health in London.

The Health and Social Care Act 2012 confers important new public health duties on upper-tier and unitary local authorities in England. They include London borough councils and the City of London but not the GLA. From April 2013, those authorities must take appropriate steps to improve the health of their populations. The Act also confers on the Secretary of State for Health the new duty of taking steps to protect public health, and allows him to delegate his functions to local authorities either by prescribing them in regulations or by entering into other arrangements. Local authorities will be supported in their duties by a new grant, based on the current NHS spend on the equivalent activity, ring-fenced exclusively for public health. They will employ directors of public health and other specialist staff who will act as local champions for health improvement both within their authorities and beyond.

It is fair to say that the Act’s provisions pave the way for the most fundamental reform of public health services for some decades. They were broadly welcomed by both local government and the public health community. There is widespread recognition that in many ways local authorities are the natural home for action on public health, given their closeness to their local communities, their direct democratic accountability and the responsibility they share already for a wide range of services that have an impact on health, such as social care, leisure and education among many others.

The public health challenges in Greater London are exceptional. London has a complex population that is ethnically diverse, relatively young, mobile and transient, with pockets of high levels of poverty, crime and social exclusion cheek by jowl with great wealth. London rates below the national average on 18 key health indicators, including mental illness and deaths from heart attacks and strokes, while childhood immunisation rates are lower than in other large cities.

Individually, the 33 boroughs are ready and able to address these challenges. There is, however, currently no agency with the power to plan and act across borough boundaries, and to take an overview of what can be done most effectively and efficiently for London as a whole. We believe that such an agency would have considerable potential. For example, it could be asked to commission pan-London services for smaller minority groups which may otherwise be at risk of slipping beneath the radar in some boroughs. We have consulted organisations representing minority groups in London, which agree that this would be a significant benefit.

A cross-London agency could reduce administrative costs and obtain economies of scale, freeing up more resources for public health services. If, for example, the boroughs agreed that it would be appropriate for them to run cancer awareness campaigns, it would be far more effective, and less costly, to commission one campaign for London than 33 separate campaigns each confined to a single borough.

The Government propose to fill this gap. In the gracious Speech on 9 May, Her Majesty announced that we will publish a draft Bill to modernise adult care and support in England. Subject to parliamentary approval, we also intend to use this Bill to require the Greater London Authority to establish a London health improvement board, bringing together the GLA, the mayor and the boroughs to produce and implement an annual plan for public health in London, funded by the boroughs from their ring-fenced grants.

I am delighted to say that the idea for this proposal came from the boroughs and the GLA themselves, in response to an invitation from the Secretary of State, which I think sends us a very positive message about their commitment and enthusiasm. In fact, the board is already up and running, albeit in a limited and non-statutory way.

This brings us directly to the matter of today’s debate. The boroughs will acquire new duties and the related funding from April 2013. The NHS in London is keen to work with the London health improvement board on public health right now. However, it will not be possible to establish the board on a statutory basis before 2014 at the earliest.

Eager as the Board is to make its full contribution as soon as possible, it faces one particularly severe constraint during this intervening period. The GLA is currently prevented by Section 31(3)(d) of the Greater London Authority Act 1999 from spending money on providing any health services that can be provided by a local authority or other public body, such as a primary care trust.

This means that even if funds are contributed voluntarily by the boroughs or the NHS, the GLA and therefore the board cannot currently use them to
commission public health services or campaigns. It is easy to understand the rationale for that constraint—it is the need to prevent wasteful duplication of activity. We have no intention, either now or in the future, of giving the GLA a standing statutory duty for public health that would overlap with the duties that the boroughs have for their populations.

The objective we want to achieve now, ahead of more comprehensive primary legislation, is simply to allow London boroughs to work in partnership with the board from the outset as one way of effectively fulfilling their duties. This order removes the obstacle that the 1999 Act presents. It is made under Section 31(9) of that Act, which provides that the Secretary of State may make an order to remove or restrict any prohibitions or limitations imposed by Section 31.

The order inserts a new Section 31(5A) into the Act, which from July will allow the GLA to spend money on providing services or facilities that protect or promote improvements in public health. This new power will be exercised consistently with the GLA’s principal purposes as set out in Section 30(2) of the Act.

With this new power, the GLA will also be able to spend funds on public health activities that it raises from external sponsors other than the borough councils and, until April 2013, allow it to work with primary care trusts and the strategic health authority in London if they commission the GLA to deliver public health services on their behalf.

5.15 pm

From 2013, the GLA, if commissioned, will be able to work with London boroughs and clinical commissioning groups, either individually or en masse, to deliver public health services on their behalf. I should perhaps stress that final point. The decision to fund the GLA or the board will be for the boroughs, and they will take that decision only if they see it as an appropriate step for them to take in improving their own population’s health. In other words, the boroughs will need to be sure that funding the board offers them good value for money. They will remain accountable for that to their local population.

I hope the Committee agrees that this measure, modest as it may seem in some ways, opens up genuine possibilities for public health across London that would not otherwise be available unless and until we are able to introduce primary legislation that Parliament approves. I am happy to commend the order to the Committee.

Lord Hunt of Kings Heath: My Lords, I thank the noble Earl, Lord Howe, for explaining the intention of the order to the Committee. I declare an interest as chairman of an NHS foundation trust and as a consultant and trainer in NHS and health issues. As the noble Earl explained, this will enable the GLA to spend money on improving or protecting public health in Greater London. It has a specific relevance to the London Health Improvement Board, and is consistent with the enhanced role to be given to local authorities in the rest of England and in the London boroughs.

We believe that local authorities can make a major contribution to public health and support the general thrust of the order.

The case the noble Earl put forward for a pan-London approach to public health is persuasive. My understanding is that—as he said—it will tackle the major health problems in the capital, including cancer, childhood obesity and alcohol abuse. I particularly note the comments of Dr Simon Tanner, NHS London regional director of public health, who explained that:

“Health issues in London are both complicated and specific to the city. The capital’s biggest health problems such as obesity, cancer and alcohol abuse are often interrelated and cannot be tackled in isolation”.

On behalf of the NHS, he said,

“we want to draw on the diverse skills and experience we have to tackle these areas through the London Health Improvement Board”.

This clearly receives support from the NHS, as well as the London boroughs and the GLA.

I listened carefully to the noble Earl’s explanation of the relationship between the London boroughs, the GLA and the improvement board. He was careful to make clear that the London boroughs are the principal public health bodies for London. In essence, the LHIB will depend on the support of the London boroughs to be able to take the necessary action. I entirely understand that, but I will ask the Minister a question. He mentioned the issue of campaigns. He said that it would be much better to co-ordinate a public health campaign across London, and that the board could have an important role to play, which is self-evident. However, I imagine that it would depend on all the London boroughs signing up to a particular programme and committing a budget to it.

What will happen if the board is not able to get all the London boroughs to join a campaign? When statutory legislation is brought to Parliament, will it enable the board to take account of that in some way? Presumably, one would not want one borough to be able to veto an action that all the others had agreed to. I would be grateful if the noble Earl would also indicate when he thinks legislation will be brought forward to put the board on a statutory basis. I do not know whether it will be primary or secondary legislation. It would be helpful if he could explain that, too.

My final question is slightly outwith the issue, but I hope that the noble Earl will not mind me asking it. We are all agreed that local authorities, whether inside or outside London, should have a stronger role in public health. The appointment of a director of public health by first-tier local authorities, and the establishment of public health departments in those local authorities, is clearly very important. Noble Lords will be aware that there has been concern in the public health community about the extent to which the ring-fencing of budgets will actually hold. If the noble Earl is not able to explain this, perhaps he might write to me in due course.

I am also picking up some concerns that local authorities are being less than sensitive to the debates that we had on the Health and Social Care Bill about
the status of the director of public health and the right of direct access to the local authority chief executive. I realise that local government structures have changed since 1974 and that direct access for the DPH could present some problems to local authorities, but it is widely accepted within government that the Chief Medical Officer must have direct access to the Prime Minister and senior Ministers—for obvious reasons in view of the importance of that office. Surely the same applies at local level.

There are some signs that local authorities have not taken that message on board. It would be a great pity if local authorities, almost at the starting gate of assuming greater responsibility, did not recognise the need to ensure that public health has a very strong voice at the top table. Frankly, local authorities are on trial. There is no guarantee that the arrangement will stay for ever if they are not able to accept the responsibility that is placed on them. I realise that this matter goes slightly wider than the order, but any words of comfort would be much appreciated.

Earl Howe: My Lords, I am very grateful to the noble Lord, Lord Hunt, for his support for the order. He asked me a number of questions. First, he asked whether, if the London borough councils cannot unanimously agree on a plan, that would affect their ability to commission services from the GLA or through the board. The board can and will be able to deal with the boroughs individually if necessary. The draft Bill that we are bringing forward will make clear in primary legislation how the board will agree plans on a statutory basis. For example, if a group of boroughs wished to get together, excluding other boroughs, there is no reason why they should not do so and commission the GLA to deliver services solely on their behalf.

As I said, the establishment of the board as an NDPB will require primary legislation. Unfortunately, I cannot tell the noble Lord when that will be brought forward, but the draft legislation will be published soon. We published baseline allocations based on the NHS spend for public health, and our intention is to move gradually to a more needs-based formula over a period of years. To move more suddenly would prove destabilising, as I am sure the noble Lord appreciates. That addresses his point about the ring-fencing of budgets, and whether they will hold. I was not aware of concern about that. Of course, some boroughs wish that they had more money than they do, but it is necessary to start from a logical place, and we believe that the baseline allocations reflect current reality.

I was concerned to hear what the noble Lord said about the status of directors of public health and the extent to which they will or will not have access to their respective chief operating officers within a local authority. I will take that concern away with me, and I am grateful to him for raising the matter. If there is anything I can say to him in writing, I will be very happy to do so.

Motion agreed.
The commission has taken on a challenging workload in bringing a large number of new providers into a new registration system in a short period of time, and in merging the work of three former regulators. I believe that it should be commended on the progress that it has made. The early years of the commission’s operation have been comprehensively reviewed over the last year. This has included reviews by the Public Accounts Committee, the Health Select Committee and the performance and capability review undertaken by my own department.

The regulations before us now were consulted on and drafted before the findings of those reviews were available. I assure the Committee that my department will consider whether further changes to the regulations that underpin the registration system are required in the light of these several reports. We are now commencing a further review of the regulations and aim to consult on any further changes, if they are needed, at the end of the year.

5.30 pm

Next, I should like to outline briefly the effect of the regulations before the Committee. Our aim in reviewing the regulations has been to adhere to the original principles underpinning the registration system. These are that there is a fair playing field, regardless of the type of provider; that the requirement to register with the commission is based on the risk to people who use services and the extent to which regulation can mitigate that risk; and that all types of providers must meet the same registration requirements.

In the autumn of 2011 we consulted on a number of proposals to changes to the regulations underpinning the registration system. The proposals that we put forward were not designed to remove the safeguards provided by the registration or to dilute the impact of registration. Rather, they were designed to ensure that the registration system was focused on the right places and was addressing areas where services posed a risk to patients and service users that could be mitigated by registration with the CQC. In addition, we identified anomalies and inconsistencies in the regulations. In the light of the consultation, we made some changes to the proposals and decided that others required further consideration before we could proceed. For example, the regulation of personal care away from home will now be taken forward in the next stage of our review of the regulations.

One of the key changes to the regulations, and the one that is most pressing, is to put in place an exemption from registration for activities provided on a temporary basis solely in relation to the Olympic or Paralympic Games. The short-term nature of these services, combined with the security arrangements around the Games, mean that the potential benefits of registration are limited. Other changes made by these regulations relate to partnerships and diagnostics, both of which reduce the burden of regulation in these areas.

On partnerships, we are changing the fitness requirements so that the necessary qualifications and experience are held by the partnership as a collective body, rather than having to be held by each partner as an individual. This recognises the fact that some partners may have little or no involvement in the day-to-day running of the regulated activity, and that requiring these skills and qualifications on an individual basis is not necessary to provide protection for patients and service users.

The final change that I should like to mention in some detail relates to the regulated activity of diagnostic and screening procedures. Our review identified a number of relatively low-risk diagnostic procedures that would currently require registration but where this is not justified by the risk to patients. As a result, we are amending the regulations so that these lower-risk diagnostic procedures—for example, the taking of urine samples without further action attached—do not of themselves require registration with the commission. Providers of other, higher-risk diagnostic procedures will still be required to register with the commission.

Other changes relate to the definition of medical devices, arrangements for securing consent when patients are not themselves able to give consent, and a change to clarify the defence that is available to providers against the offence of failing to meet the registration requirements.

In addition, there are changes to the scope of the activities which require registration. Personal care, where it is arranged by a parent, carer or trust, will no longer require registration with the commission; nor will the activities of second-opinion appointed doctors working under the Mental Health Act. Suppliers of blood-related products where there is no contact with patients or donors will no longer require registration; nor will the providers of ambulance services where these operate only within the confines of a cultural or sporting event. Providers of air ambulances will also not be required to register where they are registered with the Civil Aviation Authority and they do not provide the treatment component. In a single case, the scope of registration is being extended to include sterilisation and sterilisation reversal in the surgical procedures regulated activity.

Finally, we are amending the exemption that applies to some private practice of medical practitioners. In future, this will apply wherever a medical practitioner is employed by a registered provider and they are either on the performers list of a designated body for professional appraisal or employed by a designated body.

The overall impact of the changes that we are making is deregulatory, removing from registration with the commission some activities where the burden of registration is not justified and, at the same time, freeing up the commission’s resources to focus on those higher-risk activities where regulation is justified. Our assessment of the impact of the changes is that they will deliver a net benefit of more than £100 million over 10 years.

These changes to the registration regulations ensure that the Care Quality Commission can operate a system of regulation that is focused on addressing the risks associated with the provision of health and adult social care. I commend the regulations to the Committee.
Lord Hunt of Kings Heath: My Lords, I start by declaring an interest as chairman of an NHS foundation trust and as a consultant trainer on NHS and health issues.

I thank the noble Earl, Lord Howe, for his very extensive explanation of the regulations. Although the instrument is mainly technical in respect of the scope and definition of regulated activities, I do not think that it can be divorced from more general issues facing the CQC and its turbulent history over the past few years.

It is clear that the CQC faces some fundamental challenges over leadership, sense of direction and the confidence that both the public and the sector it seeks to regulate have in it. The noble Earl, Lord Howe, mentioned the Public Accounts Committee report of 12 March, which stated that the commission had more responsibilities but less money than its predecessor organisations. It pointed out that, none the less, “it has consistently failed to spend its budget because of delays in filling staff vacancies. It is overseen by the Department of Health … which underestimated the scale of the task it had set in requiring the Commission to merge three bodies at the same time as taking on an expanded role. The Commission did not act quickly on vital issues such as information from whistleblowers. Neither did it deal with problems effectively, and the Department is only now taking action”.

The PAC concludes:

“We have serious concerns about the Commission’s governance, leadership and culture. A Board member, Commission staff, and representatives of the health and adult social care sectors have all been critical of how the Commission is run”.

I also noted with interest what the noble Earl said about his department’s own performance and capability review. I do not disagree with the summation in the review that:

“CQC’s achievements are considerable and should not be underestimated”.

The review points out that since 2009 it has not only brought together three different organisations and developed a new regulatory model but has brought 21,000 providers into the new regulatory regime and carried out more than 14,000 compliance inspections and reviews. I also understand from the capability review that:

“CQC has now set the essential platform from which tougher regulatory action can be taken when needed, if and where standards fall below acceptable levels”.

However, it points out that, alongside those achievements, “CQC has faced operational and strategic difficulties, as previously documented. Delays to provider registration, shortcomings in compliance activity and, at times, a negative public profile have seriously challenged public confidence in its role. With hindsight, both the Department and CQC underestimated the scale of the task of establishing a new regulator … Even so, CQC could have done more to manage operational risks”.

Looking forward, the review states that there are important issues that need to be addressed. First, the CQC should become more strategic; and, secondly—this is very telling in view of my later comments—accountabilities are unclear. The review says that there is a blurring of the boundary between the board and the executive team, with the board only recently moving to take on a stronger role to constructively challenge the executive team. Finally, the review says that the underlying regulatory model is new and that so far there is limited practical evidence of its effectiveness.

I have now had the opportunity to read the Treasury minute responding to the PAC report, in which the Government agreed with the PAC’s recommendation on the need for an action plan to secure the changes that are required. I also note from the Treasury minute that, on governance, the Government promise that a new board structure will be in place by October 2012. When the noble Earl responds, perhaps he will say a little more about this governance structure. Can I take it that there will be a process of reappointing non-executives? It would be helpful to know whether that is intended.

On the role of the commission, the Treasury minute refers to the comment made by the PAC, which stated that there was at least uncertainty about the core role of the commission. My understanding from the Treasury minute is that the Government accept the challenge of setting this out with measurements of quality and impact to assess the CQC’s effectiveness.

Having seen the reports from the PAC and the Health Select Committee, and the department’s own review, we now have an understanding of some of the actions that will be taken. Does the noble Earl consider that they will be sufficient to ensure confidence among the public? I invite the noble Earl to reflect on that because, however worthy many of the CQC’s actions were, one should not underestimate the knock to public confidence that has occurred in these turbulent years.

Perhaps I can tempt the noble Earl to gaze into the future and say a little about how the CQC might fit into the new NHS architecture. In our debates on the Health and Social Care Act we considered the relationship between CQC, the NHS Commissioning Board and Monitor. There is some built-in tension there, and I am interested to know how the noble Earl thinks the whole thing will fit together.

We also await the second Francis report, which I gather is now due in the autumn. Inevitably, this will have something to say about the CQC and, I suspect, the regulatory architecture. Again, I cannot anticipate what the inquiry will say, but will the noble Earl say a little about what process the Government intend to adopt following receipt of the report? Clearly it could have an immediate impact on some of the changes that the Government are making as a result of legislation.

On the burden on the CQC, it was a mammoth task bringing three organisations together and, essentially, increasing the responsibility but reducing the resources. One should not underestimate the task that was placed on the CQC, which was expected to take on new responsibilities. The noble Earl mentioned the responsibility of embracing the registration of providers of NHS primary medical services. This has now been delayed until April 2013 but, none the less, is a major additional responsibility. The Public Accounts Committee commented on this and said that in the past the commission’s inspection work suffered when it had to register large groups of providers. The committee said that it shifted its focus to registration and carried out far fewer inspections than planned. What guarantees
I note that the PAC also recommended that the commission review and set out how it will make sure that the assessment of GP practices is meaningful. In the Treasury minute the Government have said that they agree with that recommendation. I am sure that that is useful but, in order for it to be effective, one has to be reassured that the CQC has the capacity to cope with this new responsibility. How successful does the Minister think the CQC has been in focusing on areas where it is likely to have the greatest impact and where the burden of regulators on providers can be justified?

This is not an easy task. The scale of the sector is huge—it ranges from a plus £1 billion foundation trust not a million miles away from here, to a single-handed GP or to a small care home. It is a huge responsibility and deciding the priorities on a risk basis is a tremendous challenge. Over the fullness of time, it would be good to know how the CQC is able to deal with this.

I am tempted to say to the noble Earl that, of course, the CQC has not always been helped by interventions from his ministerial colleagues. I refer to the intervention of the Secretary of State in launching spot checks on more than 300 abortion clinics. Let me make it clear that I accept that the Secretary of State should have intervention powers. From our debates on the former Bill, the NHS Commissioning Board will know that I very much uphold ministerial interventions. The Secretary of State must always have an ability to say, “Here is a concern. You as regulator need to go into it”. I do not have a problem with that.

I am not sure that the Secretary of State got his priorities right and I draw the noble Earl's attention to the comments of Stephen Dorrell, the chairman of the Commons Health Select Committee, who thought that the Secretary of State's approach might have been better if he had drawn the CQC's attention to the fact that the subject of abortion clinics was an issue in the Commons Health Select Committee, who thought that the subject of abortion clinics was an issue in the health service, should have a right of intervention. Of course, the way in which the regulator conducts its inspection must be entirely a right of intervention. Of course, the way in which the public interest in the health service, should have a matter for the regulator and should not be subject to political interference. My concern is about priorities and whether the Secretary of State, in taking the action that he did, thought carefully enough about whether that would have a negative impact on the resource availability of the CQC to do the other things that it needs to do.

I note that because of issues of capacity and complexity the PAC recommended that the CQC should not take on the functions of the Human Fertilisation and Embryology Authority at this time. In stark terms, the Treasury minute states that the Government do not agree with the committee's recommendations but points out that the department has made a commitment to undertake a full consultation of options before making any decisions. Can the noble Earl say any more about the progress that has been made in the timetable for that consultation? It would be very helpful.

Returning to the issue of whistleblowing, which I mentioned earlier, whistleblowers have to be a key source of intelligence in helping the commission to monitor the quality of care. The Public Accounts Committee was concerned with the closure of the dedicated whistleblowing line that the Healthcare Commission had previously used. I see from the Treasury minute that the department believes that that was a justified decision. That is open to debate. I respect the views of the Government on that but there is an issue around whistleblowing.

I am concerned at the potential treatment of a non-executive board member of the CQC, Kay Sheldon, who gave evidence to the Francis inquiry and whose membership of the CQC board is apparently at risk. She developed substantial concerns about the way in which the board was operating and believes that she raised those concerns about the management, culture and leadership of CQC over a sustained period. She says that she repeatedly raised these issues internally but her experience was that other members of the CQC board, and the senior management of the organisation, failed to engage on the issues she was raising.

I would again draw the noble Earl's attention to his own capability review, which seemed to suggest that there was a confusion of roles on the board and that the department is now satisfied that the non-executives are providing the scale of challenge necessary. It is quite significant that Ms Sheldon clearly found it difficult to get her concerns treated seriously. She raised issues with the noble Earl's department and the National Audit Office but felt that those were not treated seriously. In the end, she approached the Mid Staffs public inquiry team and gave oral evidence on 28 November 2011.

In describing the evidence that Ms Sheldon gave, along with another colleague from the CQC, leading counsel to the inquiry said that, “the great majority of the evidence of both witnesses, in our submission, goes to the following: clear and identifiable issues which are relevant to the systems and culture within the CQC as it was at its inception, with the shadow board in light of late 2008 and at its inception in 2009, and as it is now. Those are whether or not there is a clear strategy for effective regulation in place at the CQC, the effectiveness of the board of the CQC and the culture of management within the CQC”.

The chairman of the public inquiry said:

“Both today's witnesses, I should make it clear, have come forward to this inquiry of their own volition, and I suspect it has required great courage on their part to do so. So far I have seen nothing to suggest that they have acted otherwise than in good faith, and without intending to refer in any way to the technicalities of current whistleblowing legislation, it seems to me that both these witnesses are properly called whistle-blowers.”

I understand that on the day Ms Sheldon gave evidence to the public inquiry that the Secretary of State had set up, the chair of the CQC wrote to the
Secretary of State to invite him to use his powers under the Health and Social Care Act 2008 to remove Ms Sheldon from the CQC board on the basis that there was an irretrievable breakdown of trust and working relationships. However, there has to be a suspicion that action was taken against her because she had the courage to give evidence to a public inquiry which the Secretary of State had set up.

Following the letter from the chair of the CQC, which requested that the Secretary of State exercise his powers under paragraph 3(3) of Schedule 1 to the Health and Social Care Act 2008 to remove Ms Sheldon from her position as a non-executive member of the CQC board, I understand the Secretary of State appointed Ms Gill Ryder, the director-general of leadership and people strategy at the Cabinet Office, to investigate the background to this request. Ms Ryder prepared a review, which was coincidentally released on the same day that the Public Accounts Committee reported—12 March 2012. The essential conclusion of the Ryder review, as I understand it, is that the public airing of concerns by Ms Sheldon caused a fundamental breakdown of trusting relationships between Ms Sheldon and the other members of the board. Therefore, she recommended to the Secretary of State that he exercise his powers to remove Ms Sheldon from the board.

I understand that the Secretary of State has written to Ms Sheldon, inviting her to make a full response to Ms Ryder’s review, indicating that she may have met the grounds for termination set out in the Health and Social Care Act 2008.

I do not know how much the noble Earl can respond to me today, but I use this opportunity to express some concerns that I have. I would have thought it clear that Ms Sheldon acted in the public interest and I want to take the noble Earl back to the conclusion of the capability review. I was very struck by the comment that there had been a blurring of the boundary between the board and the executive team, and only recently has the board moved to take on a stronger role to the constructive challenge of the executive team. My argument would be that, in those circumstances, surely Ms Sheldon should not be penalised for taking her concerns to the Francis inquiry, having already raised them at the CQC, the department and the National Audit Office and feeling that they were not dealt with effectively.

It is very important that whistleblowing should be supported. I use this opportunity to make it clear to the Minister that the decision of the Secretary of State in relation to Ms Sheldon will have a profound effect on whistleblowing generally within the National Health Service. I urge a great deal of sensitivity when it comes to making any such decision.

Finally, I in some ways replicate the comment that the Minister made at the beginning of his remarks. I do not underestimate the CQC’s achievements and the commitment of its people; I believe that Dame Jo Williams, the chairman, and Cynthia Bower, the chief executive, are people of the highest integrity and I have very great respect for them. However, very searching questions have to be asked about the CQC and its performance and future, and they deserve to be answered. As we have an extensive statutory instrument that relates to the role of the CQC, it is appropriate for me to put those points to the Minister tonight.

Earl Howe: My Lords, I am grateful to the noble Lord for his comments. I begin by thanking him for the expressions of support that he gave to Dame Jo Williams and Cynthia Bower. I am sure that they will read those with gratitude.

The noble Lord made a number of points around the capability of the CQC to undertake the duties placed on it. The performance and capability review found that in its early stages the CQC was understandably focused on operational priorities. However, the achievements of the CQC should not be underestimated, and I was glad to hear the noble Lord acknowledge that. The review also acknowledges that the CQC leadership could have done more to manage operational risks and provide better strategic direction. We are clear that the CQC leadership is now demonstrating greater confidence and challenge. The recommendations are aimed at building on performance over the last 12 months, which I think has been noticeable, to further strengthen capability and improve accountability, including within the department.

We were very frank in our assessment of our own role—that is to say, the role of the department—in this. The capability review recognised that the department and the CQC underestimated the scale of the task of combining three regulators into one organisation while developing and implementing the new regulatory model. Even so, the review found that the CQC could have done more to manage the difficulties that it faced in its first few years.

We need to address those points but, at the same time, to look ahead. The department is committed to supporting and strengthening the CQC. We are clear that the CQC should continue in the future to focus on its core role of assessing whether providers meet the essential levels of safety and quality through its registration function. We have every confidence in the CQC’s ability to provide effective regulation of providers of healthcare and adult social care in England. The performance and capability review found that the CQC has made significant progress in the last nine months and is clearly focused on its core tasks.

The review has already made recommendations to strengthen the board and the board’s structures, which was a matter raised by the noble Lord, including changing the board so that, instead of comprising only non-executives, it becomes a unitary board of majority non-executives, with senior executives on the board where they can be better held to account. It also recommended that the CQC reviews and reinstates the board’s support and development programme and strengthens capability at executive team level with greater strategic capability and more and wider sector-specific expertise. The department will oversee the implementation of those recommendations.

6 pm

The noble Lord mentioned in particular Kay Sheldon, who is a member of the board. I hope that he will understand that I do not want to comment on the
position of individual members of the board, but I assure him that the department is committed to ensuring that the board of the CQC functions well and is effective.

Based on the capability review, the CQC will now be expected to set out as part of its business plan for 2012-13 an agreed action plan providing details of how the recommendations will be taken forward. These recommendations are intended to make the CQC more strategic and responsive to risk, to set out more clearly what success looks like, to clarify accountability arrangements, including strengthening the membership and structure of the CQC board, as I have mentioned, and to provide greater consistency and coherence in the development and delivery of regulation. Those three things will run through the business plan.

The noble Lord spoke about the various new roles that the CQC will be undertaking. The roles that we are asking the CQC to take on are intended to strengthen its existing role as the independent regulator of health and adult social care. At the same time, in line with the Government’s regulatory reform agenda, we are looking at ways to reduce the regulatory burden on the system for providers. The functions considered for the CQC are those that have a natural synergy with the commission’s primary functions. That is where the registration of GP practices comes in. As the noble Lord knows, we took the decision, in response to a request from the CQC, to defer the registration of around 9,000 providers of NHS primary medical services. That decision will give the CQC additional time to improve the registration process for this tranche of registrants. The CQC is overhauling its online application process so that providers will be able to start completing their applications sooner than in previous application rounds. The website will contain full information on the registration process. It will provide updates on the progress of an application and on how long it is anticipated it will take for key decisions to be made. That is a very welcome development.

The CQC will also put in place a central team to handle applications, reducing the risk of the registration of NHS primary medical care providers impacting on the CQC’s ability to monitor compliance for other registered providers. The CQC is working to put in place a different system for CRB checks for the registration of providers of primary medical services that will be effective, but simpler, and should avoid the delays experienced in the registration of dentists.

The noble Lord mentioned the Mid Staffs inquiry and the report that we expect in October from Robert Francis QC. All I can say at present is that we will consider Mr Francis’s recommendations when they are published. I hope that the noble Lord will understand that it is difficult for me to anticipate what we will do before we read those recommendations.

The noble Lord also mentioned the CQC’s recent activity in conducting spot checks on abortion clinics. He asked whether it would have been more appropriate for the CQC to direct its own priorities. The central point I would make here is that the CQC needs to take into account any relevant information it receives within the context of its ongoing work programme. My right honourable friend the Secretary of State was made aware of a potentially serious issue where providers were not compliant with the law. The CQC acted accordingly and, in my view, that was appropriate.

The noble Lord also asked me about the plans to transfer the work of the Human Tissue Authority and the Human Fertilisation and Embryology Authority to the CQC. As he knows, our report from the review of arm’s-length bodies nearly two years ago set out the work that the department is doing to reduce bureaucracy and improve efficiency in its arm’s-length bodies, and indeed throughout the NHS. We have not accepted the PAC’s recommendation that the CQC should not take on the functions of the HFEA at this time. The Department of Health has made a commitment to conduct a public consultation on the transfer of HFEA and HTA functions and the abolition of those bodies. We will publish the consultation shortly and we of course welcome responses to inform our thinking. We are pleased that the PAC recognises that we will be consulting on this proposal and considers this to provide a “welcome pause”.

Lord Hunt of Kings Heath: I am grateful to the noble Earl, Lord Howe. Perhaps I may make just a couple of points. On the consultation on the HFEA, all I should like to say to him is that it might be useful if there were some time for parliamentary discussion in your Lordships’ House around the consultation—not to second-guess the consultation process but, I should have thought, in view of our previous debates, to allow for some discussion among parliamentarians about the consultation document.

Secondly, as regards Kay Sheldon, I fully understand that the noble Earl is not prepared to comment on any individual case. He went on to make the point that the department was concerned to ensure that the board of the CQC was well functioning and effective. One could take that both ways. I understand, in a sense, the ambiguity of the noble Earl’s expressions in relation to that. All I would say to him is that I would ask the department to walk very carefully in this area. I know that he has debated the issue of whistleblowing many times in the past few years, and he has always upheld the rights of whistleblowers. Although it might be argued that a board member is a little different from a member of staff, there will sometimes be circumstances when board members themselves can become frustrated that they have raised concerns that are not then dealt with. Taking action against a board member who has actually given evidence to a public inquiry will send unfortunate signals to the NHS about how strong collectively we are in supporting whistleblowers. I do not expect the noble Earl to respond to that but hope that it will at least encourage the department to think very carefully about their actions in this case.

Earl Howe: My Lords, on the noble Lord’s first point, I would be very willing to take part in a debate on the issue involved in our proposals to transfer the functions of the HFEA and the HTA to the CQC. I can only say that I will ensure that the noble Lord’s suggestion is fed into the usual channels.
On the second issue that he raised, I appreciate his understanding that it would not be appropriate for me to comment on the position of individual members of the board. I am sorry if my remarks appeared ambiguous; that was certainly not my intention. All I intended to say was that the CQC will be facing significant challenges over the coming months, as we have been discussing, and the department is committed to ensuring that its board has the skills and capabilities it will need to meet those challenges.

Motion agreed.

Committee adjourned at 6.10 pm.
Written Statements

Tuesday 22 May 2012

Anti-social Behaviour

Statement

The Minister of State, Home Office (Lord Henley): My right honourable friend the Secretary of State for the Home Department (Theresa May) has today made the following Written Ministerial Statement.

I am later today publishing Putting Victims First—More Effective Responses to Anti-Social Behaviour. It sets out the Government’s plans to deliver on the commitment to introduce more effective measures to tackle anti-social behaviour, and puts them in the wider context of the our reforms to the policing and criminal justice landscape and work to turn round the lives of the most troubled families.

The term “anti-social behaviour” masks a range of nuisance, disorder and crime which affects people’s lives on a daily basis; from vandalism and graffiti; to drunk or rowdy behaviour in public; to intimidation and harassment. All have huge impacts on the lives of millions of people in this country. None is acceptable.

Many police forces, local authorities and social landlords are working hard to deal with these problems. However, too often, the harm that anti-social behaviour causes, particularly when it is persistently targeted at the most vulnerable people in our society, is overlooked.

At the heart of our new approach is a fundamental shift towards focusing on the needs of victims, rather than the type of behaviour.

We know what victims of anti-social behaviour want. First and foremost they want the behaviour to stop, and the perpetrators to be punished for what they have done. They want the authorities to take their problem seriously, to understand the impact on their lives and to protect them from further harm. They want the issue dealt with swiftly and they do not want it to happen again.

The mistake of the past was to think that the Government could tackle anti-social behaviour itself. However, this is a fundamentally local problem that looks and feels different in every area and to every victim. Local agencies should respond to the priorities of the communities they serve, not to those imposed from Whitehall. From November this year, directly elected police and crime commissioners will be a powerful new voice for local people, able to push local priorities to prevent anti-social behaviour from being relegated to a “second-tier” issue.

The Government do, however, have a crucial role in supporting local areas. We will do that by:

- focusing the response to anti-social behaviour on the needs of victims—helping agencies to identify and support people at high risk of harm, giving front-line professionals more freedom to do what they know works, and improving our understanding of the experiences of victims;
- empowering communities to get involved in tackling anti-social behaviour—including by giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour through a new community trigger, and making it easier for communities to demonstrate in court the harm they are suffering;
- ensuring professionals are able to protect the public quickly—giving them faster, more effective formal powers, and speeding up the eviction process for the most anti-social tenants, in response to recent consultations by the Home Office and Department for Communities and Local Government; and
- focusing on long-term solutions—by addressing the underlying issues that drive anti-social behaviour, such as binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership.

It is vital that those who will be affected by these changes, from the professionals who will use the new powers to victims seeking protection from targeted abuse, can continue to shape the reforms so that we get them right first time. We will therefore publish a draft Bill for pre-legislative scrutiny before introducing legislation.

Copies of Putting Victims First will be available in the Vote Office.

Armed Forces: Nuclear Submarines

Statement

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My honourable friend the Minister for Defence Equipment, Support and Technology (Peter Luff) has made the following Written Ministerial Statement.

I wish to inform the House that the Ministry of Defence (MoD) has signed contracts, worth approximately £350 million (excluding VAT), for the first 18 months of work on the assessment phase of the Successor submarine programme.

The Successor submarine programme will deliver the replacement for the Vanguard Class submarines that carry the UK’s strategic nuclear deterrent. Honourable Members will recall that my right honourable friend Dr Liam Fox, the then Defence Secretary, announced to the House on 18 May 2011 (Official Report, cols. 351-353) that the programme had obtained its initial gate approval and was commencing its assessment phrase leading up to the main gate consideration in 2016.

The assessment phase is expected to cost some £3 billion in total, and focuses on design and engineering activities, the purchase of long lead items, preparation for production, technology development, information and knowledge management, and project management. These latest contracts are part of that investment.

To deliver the assessment phase effectively, the MoD has signed a collaborative agreement with the three key suppliers in the UK submarine industry: BAE Systems Maritime-Submarines, Rolls-Royce and Babcock. We have also signed contracts with these companies, which include the first 18 months of assessment phase activities, as the start of a rolling programme of work.
The highest value contract is with BAE Systems Maritime-Submarines: it is worth around £328 million and covers submarine design. The contract with Babcock is worth around £15 million and covers the design aspects of in-service support. In addition a contract amendment with Rolls-Royce has been placed and is worth around £4 million for Successor design work.

These contracts, along with our continued commitment to the Astute submarine programme, will sustain thousands of jobs across the UK submarine industry, and will allow us to maintain this vital capability that underpins the nation’s long-term security.

Coroner Service Statement

The Minister of State, Ministry of Justice (Lord McNally): My honourable friend the Parliamentary Under-Secretary of State for Justice (Jonathan Djanogly) has made the following Written Ministerial Statement.

The Lord Chief Justice, following consultation with the Lord Chancellor, has announced today that His Honour Judge Peter Thornton QC is to take up post as chief coroner in September 2012.

HHJ Thornton, a senior circuit judge at the Central Criminal Court, was originally appointed to the post in May 2010 but did not formally take up his duties while the Government were reviewing the position.

As chief coroner HHJ Thornton will, for the first time, be responsible for providing national leadership to coroners in England and Wales. He will also play a key role in setting new national standards and developing a new statutory framework for coroners including rules and regulations, as well as guidance and practice directions, within which coroners will operate. This will help to bring about much greater consistency of practice between coroner areas and improved services to the bereaved.

While HHJ Thornton will not formally commence his duties until September, he will in advance of that familiarise himself with issues facing the coroner system. He will also continue to sit in the Administrative Court to hear judicial reviews on coronial matters.

Work is ongoing on implementation of the chief coroner’s statutory functions and other powers in Part I of the Coroners and Justice Act 2009, with a view to bringing them into force in 2013.

Energy Bill (Draft) Statement

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): My right honourable friend the Secretary of State for Energy and Climate Change (Edward Davey) has made the following Written Ministerial Statement.

I am pleased to be publishing a draft of the Energy Bill today, in order for pre-legislative scrutiny to be carried out on it.

The draft Bill includes measures necessary to reform the electricity market to deliver secure, clean and affordable electricity.

At the heart of our electricity market reform (EMR) measures are feed-in-tariffs with contracts for difference (CIDs), long-term instruments which will provide stable and predictable incentives for companies to invest in low-carbon generation. CIDs are more affordable than alternative incentives and will mean a better deal for consumers. Through the work on final investment decisions (FID) enabling we are committed to working with developers to ensure the delivery of investment to come forward in advance of the CfD regime coming into force, and the Bill contains measures to support this process. This will be complemented by a capacity market that will, if required, provide security of electricity supply by ensuring sufficient reliable capacity is available.

The Bill also ensures that the Office for Nuclear Regulation will be fully able to meet the future challenges of regulating the nuclear industry, as the first new power plants since the 1980s are built.

Finally, the Bill contains provisions that will enable the sale of the Government Pipeline and Storage System (GPSS). The Parliamentary Under-Secretary of State for Defence Equipment, Support and Technology, at the Ministry of Defence is laying a separate Written Ministerial Statement today.

I am confident that measures contained in this Energy Bill will enable us to keep the lights on, bills down and air clean. I am pleased to commend it to the House today for PLS and will look forward to the publication of the Energy and Climate Change Select Committee’s report.

Equality Statement

Baroness Verma: My right honourable friend the Secretary of State for the Home Department (Theresa May) has today made the following Written Ministerial Statement.

When I launched the equality strategy Building a Fairer Britain, in December 2010, I made a commitment to report back on its progress.

I have today published a progress update, The Equality Strategy—Building a Fairer Britain: Progress Report. It sets out how the coalition Government’s new approach
to equality which is based on transparency, local accountability, and reducing bureaucracy is beginning to make a difference across the five key priority areas set out in the equality strategy.

Copies of the report are available on the Home Office website.

**EU: Foreign Affairs Council and Development Foreign Affairs Council Statement**

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

I attended the Foreign Affairs Council (FAC) in Brussels on 14 May. My right honourable friend the Secretary of State for International Development attended the Development FAC held later the same day.

Both meetings were chaired by the High Representative of the European Union for Foreign Affairs and Security Policy, Baroness Ashton of Upholland. A provisional report of the meeting and all conclusions adopted can be found at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraffl/130248.pdf.

**Foreign Affairs Council**

**Afghanistan**

Ministers discussed Afghanistan ahead of international meetings in Chicago 20 and 21 May, Kabul 14 June and Tokyo 8 July. Conclusions were agreed (see link above) which reaffirmed the EU’s and individual member states’ commitment to support Afghanistan beyond its transition. Ministers agreed to continue to prioritise Afghanistan over the long term through making an enhanced contribution to support the country. This commitment would be dependent on reciprocal efforts by the Afghan authorities to meet their agreed reform obligations.

**Middle East Peace Process**

Ministers agreed conclusions (see link above) stressing their commitment to a two-state solution to the conflict, and expressed concern about developments on the ground that could threaten the goal of a two-state solution, including in Area C of the West Bank and in East Jerusalem. They also reiterated the importance of Israel’s security.

I welcomed the conclusions and expressed hope that the new Israeli coalition could benefit the peace process. I also reminded colleagues of some recent positive steps including the import into the UK of textiles from Gaza for the first time since 2007. There is an urgent need to relax the restrictions imposed on Gaza in order to allow products to be exported to the West Bank, Israel and the EU.

**Southern Neighbourhood**

Ministers agreed conclusions (see link above) and a further round of sanctions against Syria. I made the following statement after the meeting:

“I welcome the EU’s agreement on a new round of sanctions on Syria. As long as the violence and repression continues we will continue to increase the pressure on the regime and its supporters. We will also press others to adopt and implement similar measures.

The UK fully supports the work of the Joint UN and Arab League Special Envoy to resolve the crisis in Syria. The regime must implement rapidly and fully its commitments under two unanimous UN Security Council resolutions and Kofi Annan’s plan. This plan remains the best hope of ending the violence, but it is not open-ended and we will not hesitate to return to the UN Security Council if it is not implemented swiftly and in full”.

Ministers discussed Algeria’s parliamentary elections. I had already made the following the statement on 12 May:

“I congratulate the people of Algeria on the conduct of these elections and welcome the Algerian Government’s decision to allow EU observers for the first time. Over the past 16 months people across North Africa have clearly expressed their desire for greater openness and accountability, and it is encouraging that the Algerian authorities have responded in this positive way. I particularly welcome the greater representation of women in the new parliament, in line with Algeria’s recent reforms.

I hope this progress will lead to further reforms in the forthcoming discussion of constitutional change, and in the run up to the local elections later this year and the presidential elections in 2014. The UK has a good relationship with Algeria and I am confident that British parliamentarians will seek to further strengthen ties with their newly elected Algerian counterparts”.

Ministers had a short exchange on Libya where many expressed their concern about increased migration flows through the country. I noted that that the EU’s border management assessment would soon be complete and that following this up should be a priority.

**Mexico**

Baroness Ashton briefed Ministers on her two recent visits to Mexico and preparations for the EU-Mexico summit due to be held on 17 or 18 June. During the following discussion many stressed that the summit was an opportunity to discuss a number of issues important to EU partners, including the EU-Mexico free trade agreement and wider trade and investment within the region.

**Russia**

Ministers reviewed Russia in light of the upcoming EU-Russia summit of 3 and 4 June in St Petersburg. I highlighted the importance of focusing on issues which were priorities for both Russia and the EU. We need to continue to engage with civil society groups. Although many colleagues highlighted the importance of the EU-Russia new agreement, others pointed out that progress on this was likely to be slow.

**Ukraine**

During discussions some Ministers expressed concerns about developments in Ukraine and the EU’s inability to exert any influence. Many Ministers agreed that it was too early to take any EU-wide decision on governmental attendance at the Euro 2012 championships.

**Bosnia and Herzegovina (BiH)**

Under a short AOB item, the Slovenian and Austrian Ministers briefed on their recent visit to BiH. This is likely to be a full agenda at the FAC on 25 June.

**Other business**

Ministers agreed without discussion a number of others measures, including:

- a Council regulation suspending certain restrictive measures against Burma;
- conclusions on Somalia highlighting the steps needed for completion of the transition process,
committed to continuing “significant support” for AMISON, and stressing concern over the humanitarian situation. The conclusions also noted the imminent mandate of EUCAP NESTOR (Regional Maritime Capacity Building) and extension of the mandate for EUNAVFOR ATALANTA (counter piracy); conclusions on Yemen;
a Council decision to extend the EU Special Representative in Afghanistan;
the fifth implementation report of the EU Action Plan for Afghanistan;
a common position on the fourth meeting of the EU–Albania Stabilisation and Association Council; and
the establishment of the EU’s position for the fifteenth meeting of the EU-Ukraine Co-operation Council.

**Development Foreign Affairs Council**
Commissioners Piebalgs (Development), and Potocnik (Environment) attended the meeting chaired by Baroness Ashton.

**Council conclusions on Agenda for Change and the Future Approach to EU Budget Support**
Ministers discussed and adopted Council conclusions for both the Agenda for Change and the Future of EU Budget Support. There was broad support for the principle of focusing EU grant funding on the poorest countries, with the exception of Spain which argued for a continued focus on middle-income countries in Latin America. The Secretary of State outlined UK priorities including the focus on results, impact and value for money in all EU aid. He noted the importance of rigorous analysis before providing budget support, support for improvements in domestic accountability during the provision of budget support and the importance of co-ordination within the country receiving the support. Commissioner Piebalgs stated that the EU could learn from the UK on how to better communicate its development results.

2012 Annual Report on EU development aid targets
Ministers discussed the findings of the Commission’s annual report 2012 on EU development aid targets and adopted Council conclusions. Commissioner Piebalgs and Baroness Ashton both stressed the need for the EU to continue to meet its 0.7% aid target. The Secretary of State highlighted that the millennium development goals (MDGs), would not be met if we did not meet our commitments. He argued that it was in the EU’s interest to support development as well as being the right thing for the world’s poor. In spite of the economic climate there was significant public support for continuing development aid. The Secretary of State noted that the Prime Minister had recently been announced as co-Chair for the UN’s high level panel for the post-MDG framework.

**Burma**
Ministers discussed the situation in Burma. The EU would spend €150 million in the next two years. Commissioner Piebalgs made the case for joint programming in the country, supported by a number of other Ministers. The Secretary of State informed EU Ministers that the UK had recently quadrupled its aid to Burma, and that donor co-ordination was essential.

**Rio+20**
Development Ministers discussed the EU position for Rio+20, stressing that there should be a development focus to the Rio summit. Some Ministers noted their support for a sustainable development council and sustainable development goals.

**Council conclusions on food security under the Horn of Africa initiative**
Commissioner Piebalgs presented the Commission’s approach to SHARE (Supporting Horn of Africa Resilience) stressing the importance of private sector involvement and the rural sector. The Council adopted conclusions welcoming the approach and recognised the importance of support to build resilience in the Horn of Africa. Commissioner Piebalgs informed Development Ministers of ongoing discussions under the G8 regarding food security.

**Council conclusions on policy coherence for development (PCD)**
Council conclusions were adopted by Ministers with no discussion.

**State of play on joint programming**
France welcomed the Commission’s written note on joint programming and called for an extension of joint programming to additional countries, adding that partner countries needed to be fully involved.

**International family planning**
The Secretary of State called for financial and political support from EU development Ministers for the family planning summit on 11 July 2012, co-hosted by the UK and the Gates Foundation.
I will continue to update Parliament on future Foreign Affairs Councils.

**Government Car and Despatch Agency: Business Plan Statement**

**Earl Attlee:** My honourable friend the Parliamentary Under-Secretary of State for Transport (Mike Penning) has made the following Ministerial Statement.

I am today announcing the next stage of the reform of the Government Car and Despatch Agency. By the end of this calendar year we intend to have ended GCDA’s agency status and to have integrated it into the Department for Transport.

We expect potential savings in administration costs of around £1.3 million to be achieved from the ending of agency status once all of the functions have been successfully merged with the department. We will continue to publish information on expenditure and income to maintain financial transparency.

I am also announcing the publication of the 2012-13 business plan for GCDA.

The business plan sets out:
the services the agency will continue to deliver until agency status ends and details of the continuing significant change and reform programme being implemented there;
the resources it requires, and
a framework of measures by which its performance will be assessed.

The measures allow service users and members of the public to assess how the agency is performing in delivering its key services and reforms and in managing agency finances.

The business plan will be available electronically on agency websites and copies will be placed in the Libraries of both Houses.

**Government Pipeline and Storage System Statement**

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My honourable friend the Minister for Defence Equipment, Support and Technology (Peter Luff) has made the following Written Ministerial Statement.

A draft Energy Bill has been published today, including provisions to enable the sale of the Government Pipeline and Storage System (GPSS).

The GPSS was established at the beginning of the Second World War to supply aviation fuel to military airfields across the country. Since then it has grown to become an important commercial asset, serving a number of major civil airports such as Heathrow and Gatwick. Military use now only equates to around 10% of the GPSS throughput, with the system distributing around 40% of aviation fuel in the UK.

Following a review of the GPSS it has been concluded that it does not need to remain under MoD ownership and could benefit from the investment that a private sector operator can be expected to bring, although a final decision on sale will be subject to market conditions at the time. Such investment has the potential to increase the resilience of the system and allow even greater commercial development by removing current restrictions unless there is an underpinning defence requirement. Sale will not impact on defence outputs and military requirements can be met through contractual arrangements with the purchaser of the system. Consultation is being undertaken across government to ensure other outputs are similarly accounted for.

The primary purpose of the legislation is to create a set of transferable rights to maintain, use, remove, replace or renew the GPSS, to restore land if any part of it is removed or abandoned, to inspect or survey the GPSS or the land on or under which the GPSS runs and to access the land on or under which the GPSS runs for these purposes.

The legislation will also provide that where an interest in land is depreciated as a result of the creation of these rights, the owner will be entitled to compensation and impose an obligation on the owner of the GPSS to pay compensation in respect of loss caused by the exercise of these rights.

An exercise is being launched today to notify those landowners on or under whose land the GPSS runs and interested bodies of the impact the legislation will have on them and provide them with the opportunity to comment on the draft provisions, which have been published as part of the draft Energy Bill. As part of this exercise I am also writing today to all those MPs within whose constituency it is situated.

More detailed information can be found on the MoD’s website at: http://www.mod.uk/gpss.

Comments on the draft provisions should be submitted by 31 July and the Government’s response will be published on the MoD website shortly thereafter.

**Independent Agricultural Appeals Panel Statement**

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): My right honourable friend the Minister of State for Agriculture and Food (Jim Paice) has today made the following Statement.

I announced on 15 December (Official Report, col. 123WS) that I had commissioned a review of the Independent Agricultural Appeals Panel (IAAP). I have considered the findings and recommendations of the review, and following consultation with the Minister for the Cabinet Office I am pleased to announce the Government’s decision on the future of this body. The IAAP will be retained in its current form (an advisory NDPB) and business processes supporting the appeals function are to be strengthened by Defra and the RPA, providing a more accessible and informative appeals service.

The review concluded that there remains a need for the IAAP its current form and that it is a service valued by stakeholders. The report makes a number of recommendations that will strengthen and improve how the appeals function is operated and increase its transparency and accessibility for customers. The Government have accepted these in full. Defra and the RPA will work together to implement the recommendations as part of the wider programme of work announced in the RPA’s five year improvement plan (published on 9 February). Further details are available on the Defra website (www.defra.gov.uk) and the RPA’s website.

Copies of the review report, review of the Independent Agricultural Appeals Panel, have been placed in the Libraries of both Houses.

**Ports: Liverpool Cruise Terminal Statement**

Earl Attlee: My honourable friend the Parliamentary Under-Secretary of State for Transport (Mike Penning) has made the following ministerial statement.

On 26 January (Official Report, col. 26WS) I undertook to report back to the House after taking external advice on an appropriate figure for grant repayment by Liverpool City Council in order to assuage competition concerns sufficiently to withdraw the Department for Transport’s objection to turnaround cruise at the City of Liverpool Cruise Terminal.

The grant condition precluding turnaround had originally been set in 2007 in order to avoid unfair competition with other UK ports, which had invested in facilities without grant support. Liverpool City Council had requested that the condition be lifted and it was agreed that a proportion of the grant be repaid.
I have now received this advice and have decided to accept the recommended figure of £8.8 million as a lump-sum repayment, or a total of £12.6 million if phased over 15 years. In my view this represents a fair outcome that addresses competition concerns while enhancing the benefits to secure which the grants were initially paid.

Final removal of the grant condition by DCLG will be dependent on securing state aid clearance from the European Commission, which will now be sought. The department will assist in that process.

Roads: Dartford Crossing

Statement

Earl Attlee: My honourable friend the Parliamentary Under-Secretary of State for Transport (Mike Penning) has made the following ministerial statement.

On the 30 June 2011, the Department for Transport launched a consultation on proposals to revise the road user charging regime at the Dartford–Thurrock River Crossing. The consultation closed on 23 September.

The Government had to make hard choices at the time of the 2010 spending review, and accepted the need to increase revenues from the crossing to enable the continuing prioritisation of planned improvements.

The department’s proposal was that cash charge for cars would increase from £1.50 to £2 from late 2011, and then to £2.50 in spring 2012, and that prices for other vehicles would also increase at broadly proportionate rates. These increases were part of a strategy to both manage demand at the crossing and to continue to prioritise short, medium and long-term improvements at the crossing.

On 24 November 2011, I informed the House that in recognition of the number of representations made, and to allow the department time to carefully consider the responses further, there would be no increase in either 2011 or spring 2012 as set out in the consultation.

The Government remain committed to tackling the current and forecast traffic congestion at the crossing in recognition of its strategic importance, its role in facilitating the movements of goods and people and its contribution to national and local economies.

The department received over 1,300 responses to its proposals for revising the charging regime at the crossing. Following careful consideration of all the points made during that consultation I am today announcing the department’s conclusions and the actions it intends taking.

The department has decided to keep the road user charging regime at the crossing as part of its strategy to manage demand for its use, and also to allow the department to delivery its strategy for future improvements. This includes the medium-term measure of implementing free-flow charging technology at the crossing in autumn 2014. To achieve this, consultation on the necessary secondary legislation will begin in autumn this year, followed by awarding the contract for customer charging and enforcement management services in autumn 2013.

In terms of the charges, the department intends to increase these in two successive steps, as originally proposed, but to introduce the first increase in October 2012 (after the Olympic period), and the second at the same time as implementation of new, free-flow charging technology at the crossing, currently scheduled for October 2014.

In terms of the levels of increase, the department intends to increase the level of the cash charge for cars by 50p in October 2012, and again by a further 50p in October 2014. The cash charges for other vehicle classes will rise by broadly proportional amounts.

Discounts offered to regular users of the crossing who pay in advance through the electronic Dart-Tag system will remain, with the costs of the discounted crossing charge increasing at the same rate and at the same time as the increases for cash payments.

Delaying the increases until after September responds to views expressed in the consultation about the proposed timing of increases, particularly in relation to the Olympic and Paralympic Games, and about adverse impacts on the national and local economies.

As promised, the department will maintain the levels of discounts to those eligible through the local residents’ discount scheme, and there will be no increases in the levels of the crossing charge for them. The department is committed to ensure that the discount scheme for residents remains effective and easy to use, and I have asked my department to undertake a full review of the scheme to ensure it provides suitable discounted benefits to local communities which are impacted by the crossing.

One of our short-term measures to improve the crossing included the deployment of a charge suspension protocol which was trialled during 2011 by the Highways Agency. The agency has reviewed the effectiveness of the suspension protocol, taking into consideration the views expressed during the consultation on charges and we will shortly announce the conclusions of that review.

Subject to the completion of the necessary parliamentary processes, the department intends to revise the road user charging regime as set out above.

The full response to the consultation can be found on the department’s website.
Written Answers

Tuesday 22 May 2012

Armed Forces: Aircraft

Question

Asked by Lord Lee of Trafford

To ask Her Majesty’s Government whether, when chartering aircraft, the Ministry of Defence are able to select the lowest tender, or whether they have to give preference to United Kingdom carriers.

[HL7]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): The Ministry of Defence is bound by European Union public procurement directives which demand fair and open competition across the European Union (EU) for all contracts involving the expenditure of public funds.

Aircraft charter contracts are awarded to carriers that provide the best value for-money for the MoD. Commercial tenders are evaluated against a number of factors, including cost.

Any competent company can compete for aircraft charter contracts. However, before operating to, from, or within the United Kingdom, any non-EU carriers not established in the UK must be in possession of an operating permit issued by the Department for Transport under the 2009 Air Navigation Order. An application for an operating permit must be made for each contract.

Under the provisions of the 2009 Air Navigation Order, UK and EU carriers established in the UK have the right to object to the granting of an operating permit to a foreign carrier if they are able to demonstrate that they themselves have a suitable aircraft available.

Armed Forces: Medals

Question

Asked by Lord Ashcroft

To ask Her Majesty’s Government whether they have any plans for the Meritorious Service Medal to be designated as a post-nominal award.

[HL172]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): No. The Meritorious Service Medal is available to recognise good, faithful, valuable and meritorious service of those who are of irreproachable character and conduct. However, it is not a state award and as such does not entitle the holder to adopt a post nominal. We have no plans to change this important principle.

Children: Parenting

Question

Asked by Baroness Thornton

To ask Her Majesty’s Government what factors were taken into account in contracting with Boots plc for the delivery of parenting advice vouchers; what are the conditions of the agreement; and whether consideration has been given to extending the scheme across the whole of community pharmacy.

[HL160]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The CANparent trial will test whether offering the vouchers through a high street store helps to normalise take-up of parenting classes. Boots was identified as a good candidate for involvement in the trial as it has customers of all ages, including parents, and is a trusted and well-known family brand. It is an outlet for a range of advice and information on health and wellbeing needs for all ages. In addition, Boots has a strong presence in all three CANparent trial areas and can offer insights from its Parenting Club and Advantage Card customer loyalty programme.

When we were considering potential partners, we looked at two key areas—their geographical presence and their relationship with parents. This analysis showed that no competitor combined a similar presence in all three areas with an existing targeted relationship with parents and supported the selection of Boots as the preferred partner.

Boots stores will be distributing the parenting class vouchers, at no cost to the taxpayer, alongside other healthcare leaflets that parents can pick up in store. As well as being able to amplify and extend the awareness of the trial through their communication channels, they will also be supporting the trial by participating in the evaluation and providing expert advice on issues like parental engagement, as required.

Alongside Boots, the vouchers will also be distributed through a range of professionals working with families with young children in the trial area—including children’s centre staff, GPs and health visitors. There is only one high street retailer involved because of the small geographic scale of the local centres.

The independent evaluation of the trial will compare the different distribution routes for vouchers to see which are most successful in encouraging take-up of the classes. Decisions on the involvement of future retail partners in any national rollout will be informed by this evaluation.

Dangerous Dogs

Question

Asked by Lord Greaves

To ask Her Majesty’s Government what action can be taken against (1) dogs, and (2) their owners or controllers, in cases of dog attacks on cats and other domestic animals.

[HL163]

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): The Dangerous Dogs Act 1991 enables action to be taken in cases where a dog is dangerously out of control in a public place or a place it has no right to be, whether or not it injures anyone. This can include instances where the dog attacks another animal.

For dogs, this could result in them being put down. For their owners or controllers this could mean a maximum penalty of two years’ imprisonment and/or an unlimited fine. On 23 April 2012, the Government launched a consultation on their proposals to tackle irresponsible
dog ownership and these included extending the law to all places, including where the dog has a right to be. The consultation closes on 15 June 2012.

The Dogs (Protection of Livestock) Act 1953 provides for action that can be taken by farmers against dogs that attack their livestock. In addition, under the Animals Act 1971, a dog owner may be liable if it injures or kills livestock.

It may also be possible to take action under the Animal Welfare Act 2006 against an owner whose animal has attacked and injured another animal.

Democratic Republic of Congo

Question

Asked by Lord Ashcroft

To ask Her Majesty’s Government what assessment they have made of the comments made by Willy Vangu, an opposition leader in the Democratic Republic of Congo, on his recent visit to London that “we are asking the British Government and International Monetary Fund to stop spending public money on aid packages and loans to the Congo...We say the money would be better spent preventing deals that strip ordinary citizens of their rightful assets”, as reported in the Sunday Times on 29 April.

[HL65]

Baroness Northover: We strongly believe that the UK should not suspend its aid programme in the DRC. Doing so would only serve to harm those that most need assistance. UK taxpayers’ money is achieving tangible results for the poorest in DRC. In 2011-12 alone 2.5 million Congolese received life-saving humanitarian assistance, 927,593 bed-nets were distributed and 748 kilometres of roads were upgraded. With corruption endemic in DRC, to protect our investments and ensure UK development assistance reaches the poor and vulnerable, none of our funding passes directly through government systems.

We agree that the Democratic Republic of Congo’s (DRC) mining industries must be run transparently for the benefit of all its people. That is why the DFID co-funds with the World Bank a minerals sector reform programme (ProMines). The programme aims to improve the governance of the mining sector in the DRC, increasing its contribution to growth, sustainable development and poverty reduction. The programme will improve: laws and information on how to access mineral resources to encourage investment; government capacity to manage the sector including how to conduct mining transactions in an open and competitive manner; and, government capacity and accountability in mining tax collection. We are also supporting the DRC to achieve compliance status under the Extractive Industries Transparency Initiative. This involves independent audit of taxes paid and revenues received, thus enabling public scrutiny of any discrepancies.

The UK Government are fully committed to and comply with international anti-money laundering standards and exert pressure to help ensure that the Overseas Territories comply with these, and that they play an active part in global bodies such as Financial Action Task Force. Responsibility for the regulation of financial services has been devolved to the Government of the British Virgin Islands. Therefore, the local authorities in British Virgin Islands are responsible for the regulation, supervision and inspection of financial services business carried out in or from within the territory.

Education: English

Questions

Asked by Lord Quirk

To ask Her Majesty’s Government what action is being taken to secure pupils’ early reading skills by the end of key stage 1 in response to the Ofsted Report Moving English Forward.

[HL156]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Securing pupils’ early reading skills is a top priority for the Government. In particular, we are committed to promoting the use of systematic synthetic phonics in the teaching of early reading. To do this we are providing up to £3,000 of match-funding for phonics products and training to schools with key stage 1 pupils. The products include materials that will help children who need additional support in reading to catch up, and the training will enable teachers to embed and refine their teaching practice.

From June this year, all pupils in year 1 will sit a phonics screening check to assess their ability to decode and read words using phonics. The check will be carried out by teachers, and will help them to identify those children in need of additional support.

The Government have also published core criteria that define the key features of effective systematic synthetic phonics programmes to assist schools in selecting resources.

Asked by Lord Quirk

To ask Her Majesty’s Government what action is being taken to ensure that the English curriculum at key stage 3 has a clear and distinct purpose with a view to engaging pupils with the world of work beyond the classroom in response to the Ofsted Report Moving English Forward.

[HL158]

Lord Hill of Oareford: We are currently reviewing the national curriculum in England. The review will ensure that the new curriculum demonstrates a clear and distinct purpose which should engage pupils and prepare them for the world of work.

Asked by Lord Quirk

To ask Her Majesty’s Government what action they are taking to improve children’s communication skills in respect of fluent and clearly enunciated spoken English in the Early Years Foundation Stage, in the light of the Ofsted Report Moving English Forward.

[HL165]

To ask Her Majesty’s Government what action they are taking to link reading and listening with the extension and enrichment of pupils’ vocabulary, in the light of the Ofsted Report Moving English Forward.

[HL166]
Lord Hill of Oareford: Securing pupils’ early language skills is an important priority for the Government. The Government published a reformed Early Years Foundations Stage (EYFS) framework on 27 March 2012, which will come into force this September. This is an integral part of the Government’s wider vision for families in the foundation years and demonstrates our commitment to freeing professionals from bureaucracy to focus on supporting children.

The new EYFS will be simpler and clearer and places a much stronger emphasis on communication and language development as one of three prime areas of learning. It will include new early learning goals that will help improve communication and language, and reading and writing skills. The reformed framework will also require teachers to assess communication, language and literacy in English when children are five. We are also funding a new Early Language Development Programme over the next two years, aimed at supporting professionals to work with children who have early language needs. These measures should help ensure children are better placed to be ready for later stages of school life.

Asked by Lord Quirk

To ask Her Majesty’s Government what action they are taking to close the gap between the standards of achievement attained by boys and girls in English both in speech and in writing, in the light of the Ofsted Report Moving English Forward. [HL167]

Lord Hill of Oareford: The Government are committed to ensuring that all groups of pupils have the opportunity to make good progress and reach their potential, whatever their gender. To achieve this we have given heads more freedom to drive improvement in their school to meet the needs of their pupils.

Schools with little or no gender gap tend to demonstrate a positive educational ethos, high expectations of all pupils, high quality teaching and classroom management and close tracking of individual pupils’ achievement.

Elections: Registration

Question

Asked by Lord Laird

To ask Her Majesty’s Government whether they have plans to ensure that electoral registration forms will in future, in the case of Commonwealth citizens, include a related question on immigration status and the individual’s leave or right to be in the United Kingdom, and available associated proof, to enable assessment of the requirement to be a qualifying Commonwealth citizen when registering.

[HL27]

Lord Wallace of Saltaire: British, resident Republic of Ireland and qualifying Commonwealth citizens are entitled to register to vote in UK parliamentary elections, local elections, and European elections assuming that all of the other registration criteria are also met. For the purposes of registering to vote, a qualifying Commonwealth citizen is an individual who has leave to enter or remain in the UK or does not require such leave.

The annual canvass form and the provisions for rolling registration effectively capture a person’s nationality. The electoral registration officer (ERO) uses this information to determine a person’s eligibility to register. When there is doubt about eligibility the ERO may investigate and request further information from the elector.

In future under individual electoral registration, individual application forms will clearly set out the eligibility requirements for registration. In addition, all electors declaring a Commonwealth nationality will be asked to declare their immigration status.

Government Departments: Bonuses

Question

Asked by Lord Laird

To ask Her Majesty’s Government how the Department of Energy and Climate Change defines bonus payments in the context of civil service pay; what proportion of civil servants are eligible to receive non-consolidated performance payments; and how they are selected for those payments.

[HL331]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): The Department of Energy and Climate Change does not define bonus payments in the context of Civil Service pay. However, the department currently awards both non-consolidated end of year performance awards and in year special awards, which may be referred to as bonus payments.

The department uses non-consolidated performance related payments to help drive high performance as they:

encourage continuous high attainment because the payments are dependent upon strong performance;

prevent a permanent rise in salary and an increase in pension on the basis of one off performance while still allowing good performance to be rewarded;

have no long-term costs, in particular they do not increase future pension payments;

focus the work of employees more directly on the priority goals of the organisation;

motivate employees by linking an element of compensation to the achievement of objectives rather than offering payment for time served; and

target money at those who make the biggest contribution.

End of year non-consolidated performance awards are used to reward the department’s highest performers as assessed in their end of year appraisal reports. In 2011, 40% of DECC staff below the senior Civil Service, and 25% of senior civil servants were eligible to receive a non-consolidated end of year performance award.
Non-consolidated in year special awards are used to recognise performance or behaviours which might not be fully reflected in an end of year performance appraisal. All staff are eligible to be considered for such awards and are selected for such an award to reward staff for exceptional pieces of work or taking on additional responsibilities.

Gulf War Illnesses
Question
Asked by Lord Morris of Manchester

To ask Her Majesty’s Government whether they have made any reassessment of the safety of vaccines administered to service personnel deployed in the First Gulf War in the light of the report on The effect of co-administration of the pertussis vaccine on specific antibody titre development to the anthrax vaccine in man prepared in February 1992 at the Chemical and Biological Defence Establishment; and what action they will take in response to the report.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever):

No. In 1998, the Ministry of Defence (MoD) sponsored a vaccines interactions research programme into the possible health effects of the combination of vaccines and tablets given to service personnel to protect them against the threat of biological and chemical warfare during the 1990-91 Gulf conflict. The overwhelming evidence from the programme is that the combination of vaccines and tablets that were offered to UK forces at the time of the 1990-91 Gulf conflict would not have had adverse health effects.

The paper referred to in the Question was published by MoD in 1997 and was therefore available to the independent panel of experts and veterans’ representatives overseeing the work of the vaccines interactions research programme.

Health: Addiction to Prescribed Drugs
Question
Asked by The Earl of Sandwich

To ask Her Majesty’s Government what services are offered to those suffering from addiction to, and withdrawal from, prescribed medication (1) in the Roehampton Addiction Centre, and (2) in the Borough of Wandsworth as a whole.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):

NHS Wandsworth commissions treatment services for addiction to all drugs, including alcohol and prescription drugs, from an integrated drug treatment system (IDAS). The service at Roehampton is called IDAS Queen Mary’s.

I am sure Wandsworth primary care trust will be happy to provide further details of their services.

Health: Clinical Commissioning Groups
Questions
Asked by Lord Patel of Bradford

To ask Her Majesty’s Government whether clinical commissioning groups will be added to the list of Schedule 19 bodies to which the public sector equality duty applies under the Equality Act 2010; and, if so, when.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Yes. The Health and Social Care Act 2012 amends Part 1 of Schedule 19 to the Equality Act 2010, concerning bodies subject to the public sector equality duty, to include clinical commissioning groups. This will have effect from their establishment as statutory bodies by the NHS Commissioning Board which will commence in October.

Asked by Lord Patel of Bradford

To ask Her Majesty’s Government whether clinical commissioning groups will be subject to specific duties under the Equality Act 2010.

Earl Howe: Clinical commissioning groups, as public sector organisations, will be subject to the specific duties of the public sector equality duty under the Equality Act 2010.

Asked by Lord Hunt of Kings Heath

To ask Her Majesty’s Government what criteria will govern the allocation of budgets to clinical commissioning groups by the NHS Commissioning Board.

Earl Howe: From 2013-14, the NHS Commissioning Board will allocate resources to clinical commissioning groups (CCGs) in a way that is consistent with the board’s duty to have regard to the need to reduce inequalities in access to healthcare services and the outcomes achieved for patients by healthcare services. We would expect this to support the principle of securing equivalent access to NHS services relative to the prospective burden of disease and disability.

The Secretary of State has asked the Advisory Committee on Resource Allocation (ACRA), an independent expert committee, to support the development of the formula for allocations to CCGs. ACRA’s interim recommendations on the formula will be published.

Health: Controlled Trials
Questions
Asked by The Countess of Mar

To ask Her Majesty’s Government whether a publicly-funded trial has to be registered in the ISRCTN (International Randomised Controlled Trial Number) Register; whether this is a condition for publication in reputable journals; and, if so, whether they consider that the PACE (Pacing, graded Activity and Cognitive behaviour therapy: a randomised
The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): There is a requirement for publicly funded clinical trials to be registered and there are a number of different registers.

The PACE study was funded by a Medical Research Council (MRC) grant to Queen Mary, University of London. The Department of Health for England, the Chief Scientist Office in Scotland and the Department for Work and Pensions co-funded the trial; their contributions were paid via the MRC grant.

The MRC has been a strong supporter of trials registration for many years and provided financial support to help set up the ISRCTN scheme. The MRC was also involved in helping to refine the scheme and in promoting its widespread adoption in the UK.

The MRC requires that all MRC-funded clinical trials comply with the CONSORT Statement, which is an evidence-based, minimum set of recommendations for reporting randomised controlled trials. CONSORT, which stands for Consolidated Standards of Reporting Trials, offers a standard way for authors to prepare reports of trial findings, facilitating their complete and transparent reporting, and aiding their critical appraisal and interpretation. CONSORT includes guidance on ISRCTN registration.

The results of the trial were reported in The Lancet, which also follows the CONSORT guidelines. The PACE trial report would have had to meet this standard as a prerequisite for publication.

The MRC is not responsible for assuring the quality of data in the ISRCTN. The Government cannot comment on the completeness of the data.

**Asked by The Countess of Mar**

To ask Her Majesty's Government why the recovery statistics and other outcomes as defined in the published Protocol of the PACE (Pacing, graded Activity and Cognitive behaviour therapy: a randomised Evaluation) trial have not been published.

To ask Her Majesty's Government why the “normal range” for both PACE (Pacing, graded Activity and Cognitive behaviour therapy: a randomised Evaluation) trial primary outcome measures (fatigue and physical function) were re-defined so that it was possible for a participant to deteriorate on both measures during the course of the trial yet still fall within the chief principal investigator’s “normal range”; and what impact they consider this re-definition to have had on the validity of the trial.

**Baroness Wilcox:** The PACE study was funded by a Medical Research Council (MRC) grant to Queen Mary, University of London. The Department of Health for England, the Chief Scientist Office in Scotland and the Department for Work and Pensions co-funded the trial; their contributions were paid via the MRC grant.

Queen Mary, University of London, has been identified as the formal sponsor of the PACE trial throughout the duration of the study. The MRC would normally only be identified as the formal sponsor of a clinical trial where the principal investigator was an MRC employee or where an MRC unit designed and managed the trial.

**Baroness Wilcox:** The Medical Research Council (MRC) is an independent research funding body which receives its grant in aid from the Department for Business, Innovation and Skills. The selection of projects for funding is determined through peer review.

The decision to fund the PACE trial, a randomised controlled trial of cognitive behavioural therapy (CBT), graded exercise, adaptive pacing and usual medical care for the chronic fatigue syndrome, was based on MRC’s usual rigorous peer review process for clinical trials. The study aimed to evaluate treatments that were already in use, and for which there was insufficiently

**Baroness Wilcox:** The PACE study was published in a Medical Research Council (MRC) grant to Queen Mary, University of London. The Department of Health for England, the Chief Scientist Office in Scotland and the Department for Work and Pensions co-funded the trial; their contributions were paid via the MRC grant.

As for all MRC-funded studies, it is the responsibility of the investigators and the relevant journals, guided by peer reviewers, to determine how findings are published and when.

The investigators’ first paper on the outcomes of the PACE study was published in The Lancet in March 2011. This includes descriptions of normal ranges and how they calculated. The MRC understands that further publications are planned, one of which will address the issue of recovery.

**Asked by The Countess of Mar**

To ask Her Majesty’s Government what is the position of the Medical Research Council as co-funder of the PACE (Pacing, graded Activity and Cognitive behaviour therapy: a randomised Evaluation) trial regarding the subsequent reliance by the National Institute for Health and Clinical Excellence and the Department for Work and Pensions on the outcome as reported in The Lancet.

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strong evidence to support their effectiveness. The MRC strongly supported this research and the publication of the findings.

The MRC strongly supports the publication of the findings of all MRC funded research to advance medical research worldwide and to inform new therapies and treatments. The investigators’ first paper on the finding of the PACE study, was published in The Lancet; Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial. P White et al, The Lancet, Volume 377, Issue 9768, Pages 823 - 836, 5 March 2011.

The MRC does not have a position on how the outcome of MRC-funded studies are interpreted and used by regulators or policy makers although, as above, it supports prompt publication of its research findings so they are widely available to all potential users and to support evidence-based treatment of patients.

 Asked by The Countess of Mar

To ask Her Majesty’s Government what disease or condition was being studied in the PACE (Pacing, graded Activity and Cognitive behaviour therapy: a randomised Evaluation) trial that was co-funded by the Medical Research Council, the Department of Health, the Department for Work and Pensions and the Scottish Chief Scientist’s Office, in the light of the statement made by the Chief Principal Investigator, Professor Peter White, that the PACE trial did not purport to be studying myalgic encephalomyelitis. [HL69]

Baroness Wilcox: The PACE study was funded by a Medical Research Council (MRC) grant to Queen Mary, University of London, the principal investigator was Professor P White at QMUL, co-investigators were Professor T Chalder, King’s College London, and Professor M Sharpe, University of Edinburgh. The Department of Health for England, the Chief Scientist Office in Scotland and the Department for Work and Pensions co-funded the trial; their contributions were paid via the MRC grant.

The criteria for the PACE study were published in the trial protocol and are also addressed in the main findings published in The Lancet.

Health: Human Papilloma Virus

 Question

Asked by The Countess of Mar

To ask Her Majesty’s Government how many adverse reaction reports to human papilloma virus (HPV) vaccinations have been reported for each year since the introduction of the vaccination for girls in schools; how many of those reactions have involved hospitalisation; and what precautions are in place to ensure that the parents whose daughters may have immune system dysfunctions are not pressured into giving their consent. [HL180]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Medicines and Healthcare products Regulatory Agency (MHRA) has responsibility for vaccine and medicine safety in the United Kingdom and collects information on suspected adverse reactions (ADRs) via the yellow card scheme. Two human papilloma virus (HPV) vaccines, Cervarix and Gardasil, are licensed for use in the UK, with Cervarix currently used routinely within the HPV vaccine immunisation programme.

Since the HPV vaccine immunisation programme began in September 2008 up to 16 May 2012, the MHRA has received a total of 6,216 suspected ADR reports associated with HPV vaccine (Cervarix, Gardasil and HPV vaccine brand unspecified) and of these 182 reports involved hospitalisation. This follows administration of more than six million doses of Cervarix across the UK to date.

It is important to note that a yellow card report is not proof of a side effect occurring, but merely a suspicion by the reporter that the vaccine may have been the cause. While some reports may relate to side effects, others may be due to coincidental, underlying medical conditions that would have occurred anyway in the absence of vaccination. These data are continuously reviewed by the MHRA. The independent advisory committee, the Commission on Human Medicines (CHM), has advised that no serious new risks have been identified despite substantial use of the vaccine in the UK and abroad.

The following table provides a breakdown of the total number of ADR reports received for each year since the introduction of the programme:

<table>
<thead>
<tr>
<th>Year of Programme</th>
<th>Total Number of ADR Reports associated with HPV Vaccine</th>
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<tbody>
<tr>
<td>2008</td>
<td>1,304</td>
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<tr>
<td>2009</td>
<td>1,934</td>
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<tr>
<td>2010</td>
<td>1,802</td>
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<tr>
<td>2011</td>
<td>1,081</td>
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<tr>
<td>Up to 16 May 2012</td>
<td>95</td>
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</tbody>
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HMS “Gloucester”

 Question

Asked by Lord Renfrew of Kainsthorn

To ask Her Majesty’s Government what steps they are taking to ensure the future conservation of the wreck of the first HMS “Gloucester” (sunk in 1682); whether they have any plans to “gift” the wreck to any charitable or other foundation; and, if so, whether they will first seek to ascertain that such a foundation has the financial resources to survey, excavate and conserve the wreck without resorting to the commercial sale of artefacts recovered it. [HL107]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): Officials are in discussion with the finders of a wreck which may be that of HMS “Gloucester”, lost in 1682: however the identity of the wreck has not yet been formally determined. Specialist archaeological advice is being provided by the National Museum of the Royal Navy and English Heritage.

No decisions have yet been taken regarding future governance arrangements for the management of the wreck site.
HMS “Victory”

Questions

Asked by Lord Renfrew of Kaimsthorn

To ask Her Majesty’s Government whether the National Museum of the Royal Navy has paid for two cannons recovered from the wreck of HMS “Victory” (sunk in 1744); if so, what was the price paid; from whom they were acquired; and whether due diligence was exercised to verify that they were not already legally the property of Her Majesty’s Government.

[HL105]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): Following initial notification of the location of the wreck thought to be that of HMS “Victory” (1744), authorisation was given to the finder of the wreck, Odyssey Marine Exploration, for the limited recovery of two cannons to facilitate the process of identification. Following their recovery, the cannons, which were Crown property, were given to the National Museum of the Royal Navy and are currently undergoing conservation. A payment of £50,000 was made to the company for its work in recovering the cannons; the amount was considerably less than the assessed value of the two artefacts.

[HL106]

Lord Astor of Hever: Under the deed of gift which transferred the remains of HMS “Victory” (1744) to the Maritime Heritage Foundation, the foundation requires the prior agreement of the Secretary of State for Defence should it wish to take actions in respect of the wreck. The deed also identifies the responsibilities of an advisory group, consisting of representatives of the National Museum of the Royal Navy and English Heritage, in providing advice to both the Secretary of State and the foundation on the extent to which any actions proposed by the foundation are consistent with the archaeological principles set out in Annex A to the UNESCO Convention on the Protection of the Underwater Cultural Heritage.

[HL108]

The advisory group is currently considering the project design for the site submitted by the Maritime Heritage Foundation and will provide advice to both HMG and the foundation in due course.

Odyssey Marine Exploration has been contracted by the Maritime Heritage Foundation, to which the remains of HMS “Victory” (1744) have been gifted, to provide it with archaeological services. Any assertions made by Odyssey are a matter for the company and the foundation.

Schools: Catholic Schools

Question

Asked by Lord Warner

To ask Her Majesty’s Government whether they are required by legislation to approve any proposal for a voluntary-aided Catholic secondary school by the London Borough of Richmond upon Thames; and whether they are considering or have approved any such proposal.

[HL110]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The Diocese of Westminster applied to the Secretary of State in September 2011 to publish proposals for two new schools, a voluntary aided Catholic secondary school and a voluntary aided Catholic primary school outside a competition, as permitted under Section 10 of the Education and Inspections Act 2006. Ministerial agreement was given in December 2011 to the diocese under the legal provisions in force at that time.

Amendments since made by the Government to Sections 10 and 11 of the Education and Inspections Act 2006 (through the Education Act 2011), which came into force on 1 February 2012, now allow for proposals to be published for voluntary aided schools outside a competition without the need to seek the Secretary of State’s agreement.

Schools: Free Meals

Question

Answered by The Lord Bishop of Bath and Wells

To ask Her Majesty’s Government what is their response to the Children’s Society Fair and Square campaign to give all children in poverty a free school meal.

[HL144]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Our priority is to make sure that the most disadvantaged children are able to get a nutritious meal at school. The Children’s Society proposal—that all children whose families are in receipt of universal credit from 2013 be entitled to free school meals—would mean that over half of school age children would be entitled to free school meals. We estimate that this would cost up to an extra
£1 billion per year, which in the current economic climate is unaffordable. The department is currently developing new proposals for eligibility for free school meals once universal credit is introduced, on which we will be consulting later this year.

**South Sudan**

*Question*

*Asked by The Earl of Sandwich*

To ask Her Majesty’s Government what assistance they are giving to the Office of the United Nations High Commissioner for Refugees and other humanitarian agencies to support refugees arriving in the Unity state of South Sudan. [HL193]

**Baroness Northover:** The UK is the largest donor to the Common Humanitarian Fund (CHF) for South Sudan (£15 million this year). Our funding is helping to provide crucial non-food items for refugee camps, run by the United Nations High Commissioner for Refugees (UNHCR) and its NGO partners, in Unity and Upper Nile states. In addition CHF funding is supporting agencies providing health, water and sanitation and protection programmes for refugees. Last month my honourable friend Stephen O’Brien, the Parliamentary Under-Secretary of State for International Development, announced an additional £10 million allocation to the World Food Programme in South Sudan to help feed 100,000 people over five months. This support will be available to assist refugees as well as other food insecure populations.

**UK National Screening Committee**

*Question*

*Asked by Baroness Masham of Ilton*

To ask Her Majesty’s Government what arrangements are in place to ensure the work and findings of the National Screening Committee are scrutinised by the Department of Health. [HL225]

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** The UK National Screening Committee (UK NSC) advises Ministers and the National Health Service in all four countries about all aspects of screening policy and supports implementation. Using research evidence, pilot programmes and economic evaluation, it assesses the evidence for programmes against a set of internationally recognised criteria. As an advisory group it exercises its functions on behalf of the department.

The department works closely with the UK NSC and scrutinises the work and findings of the committee in a number of ways. It provides the secretariat on behalf of the devolved Administrations. In this role it is responsible for ensuring that the UK NSC acts within its remit and terms of reference and that it acts independently and impartially. The department is also represented on the committee and regularly sends observers to meetings. It is also responsible for holding the UK NSC to account for proper use of public funds and for the setting and delivery of its objectives.

**UK Trade and Investment**

*Questions*

*Asked by Baroness Nicholson of Winterbourne*

To ask Her Majesty’s Government, further to the Written Answer by Lord Green of Hurstpierpoint on 5 March (WA 398), when they expect to agree a budget and programme plan for the UK ASEAN Business Council; and whether they have any plans to establish other business councils. [HL118]

**The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint):** The UK-ASEAN Business Council is working actively with partner organisations in the UK and ASEAN to develop its profile and a programme of targeted events of direct benefit to UK business. The UKTI budget contribution for 2012-13 has been agreed at £150,000.

An events programme is underway with, for example, a briefing to business on Burma on 8 May, a networking event with an Indonesian official delegation on 25 May, and a further briefing planned for 28 May on regional opportunities for engagement in the professional training sector. Long term, the council is working, inter alia, with British diplomatic missions and with the Association of British Chambers of Commerce in SE Asia to identify decision-makers to invite to the UK, and on a possible large-scale event in the autumn, to be run in conjunction with the Asia Task Force.

UKABC was one of the initiatives announced in the 2011 UKTI strategy. New business councils may be established where there is demonstrable need and as resources permit.

*Asked by Baroness Nicholson of Winterbourne*

To ask Her Majesty’s Government, further to the Written Answer by Lord Green of Hurstpierpoint on 8 March (WA 448), who are the members and chairs of UK Trade and Investment’s sector group task forces and sector advisory groups. [HL119]

**Lord Green of Hurstpierpoint:** I am placing the latest list of members and chairs of UKTI sector advisory groups in the Libraries of the House.

**Water Management**

*Question*

*Asked by Lord Lester of Herne Hill*

To ask Her Majesty’s Government whether they intend to increase capacity for the storage of water. [HL129]

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach):** The water White Paper *Water for Life*, published in December 2011, sets out the vision for a resilient water industry across all sectors. It outlines plans for the introduction of a reformed abstraction
regime that will provide clear signals and regulatory certainty on the availability of water to drive efficient investment to meet water needs.

It is the responsibility of water companies to manage the storage of water for public supply.

Water companies plan through their water resources management plans to ensure they are able to balance supply and demand for water over the long term. Some water companies’ plans included proposals to build or enlarge reservoirs—for example, the enlargement of the reservoir at Abberton in the Essex and Suffolk Water region—while other companies have identified alternative solutions to balancing supply and demand.

**World Heritage Sites: Liverpool**

**Question**

*Asked by Lord Storey*

To ask Her Majesty’s Government, further to the Written Answer by Baroness Rawlings on 1 May (*WA 473–4*), whether the Secretary of State for Communities and Local Government has decided to call in the Liverpool Waters planning application; and, if a decision has not yet been reached, when it will be made and what process will follow. [HL195]

*The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):*

The Liverpool Waters application will be referred to the Secretary of State for Communities and Local Government in due course by Liverpool City Council. The application falls within the scope of the Town and Country Planning (Consultation) (England) Direction 2009 by virtue of English Heritage's outstanding objection, related to the impact of the proposal on the outstanding universal value of Liverpool’s World Heritage Site. Once referred, the Secretary of State will consider whether or not he wishes to call in the application for his own decision against the call-in policy set out in the Caborn Statement. The Secretary of State is very selective about calling in applications and will do so only if they raise issues of national importance.*
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