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20 March 2017
House of Lords

Monday 20 March 2017

2.30 pm

Prayers—read by the Lord Bishop of Leeds.

Social Care in England: Older People
Question

2.37 pm

Asked by Baroness Wheeler


The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, social care is a priority for this Government. That is why the Chancellor announced that local authorities in England will receive an extra £2 billion for social care in the next three years. This funding will allow councils to support more people, sustain a diverse market and ease pressures on the NHS.

Baroness Wheeler (Lab): My Lords, before I respond, on behalf of the whole House I congratulate Dame Vera Lynn on her 100th birthday. I was not born during the war but as a post-war child I remember how people spoke and felt about her, and I send her our warm thanks.

Back to business. The Age UK report gives a very sobering picture of the scale of the unmet demand and likely future demand for social care, and the Minister knows that the extra £2 billion he spoke of spread over the next three years is the shortest of short-term solutions. I want to focus on the report’s assessment that the number of older people with unmet social care needs—defined as whether someone can carry out everyday activities such as washing, dressing, eating and using the toilet—has now grown to 1.2 million. This is an 18% increase since last year and nearly a 50% increase since 2010. It means that one in eight older people is living with some level of unmet need regarding vital everyday tasks. Can the Minister confirm that the Government’s Green Paper will acknowledge this level of demand and need, and that their long-term funding solutions will have to address this issue, as well as the provision of long-term care?

Lord O’Shaughnessy: The noble Baroness is quite right that there is a growing need for care for older people because of our ageing and growing population. I am sure she welcomes the additional funding announced in the Budget. It brings to over £9 billion the additional funding announced since 2015 for social care for the next three years, and that will make a big difference to meeting the kinds of care needs that she is talking about. She talked about the difference between the short term and the long term. That is why the other crucial part of the Budget announcement concerned the Green Paper. This will be ambitious in scope, with the intention of creating a fairer and more sustainable system of the kind I am sure she wants to see.

Lord Watts (Lab): My Lords, does the Minister agree that the Government’s decision to cut spending to local authorities’ care services has created this crisis?

Lord O’Shaughnessy: Much more funding is now going into the social care system to reflect the additional needs of the ageing population. I am sure she welcomes the additional funding announced in the Budget. It brings to over £9 billion the additional funding announced since 2015 for social care for the next three years, and that will make a big difference to meeting the kinds of care needs that she is talking about. She talked about the difference between the short term and the long term. That is why the other crucial part of the Budget announcement concerned the Green Paper. This will be ambitious in scope, with the intention of creating a fairer and more sustainable system of the kind I am sure she wants to see.

Lord Watts (Lab): My Lords, does the Minister agree that the Government’s decision to cut spending to local authorities’ care services has created this crisis?

Lord O’Shaughnessy: Much more funding is now going into the social care system to reflect the additional needs of the ageing population. I am looking forwards in thinking about the extra £9 billion that will be provided. We also have over 150,000 more care workers helping people in the system, whether in residential care homes and nursing homes or at home through domiciliary care.

Baroness Brinton (LD): My Lords, after the publication of the Dilnot commission report nearly six years ago, the noble Lord, Lord Lansley, in another role, and the then Chancellor congratulated the commission on its report being a valuable contribution to meeting the long-term challenge of an ageing population. A Green Paper being seen as the beginning of this process six
years on is way too late. I repeat the question that I asked the noble Lord last week: can he confirm that the Treasury will specifically be involved in looking at the funding of social care in the future?

**Lord O'Shaughnessy:** The noble Baroness is quite right to point out that Dilnot was an important move. It is also fair to say that several Governments, including 13 years of a Labour Government, failed to make any significant progress on this issue. We now have a Green Paper coming forward that is, of course, looking at a sustainable and fair care system, and that must also include looking at funding.

**Baroness Greengross (CB):** My Lords, in spite of what the Minister said, we know that many home care companies say that their biggest problem is the recruitment and retention of carers. The Centre for Workforce Intelligence estimates that at least 2 million more will be needed by 2025, both in home care and in care homes, to cope with the growing demand. Can the Minister tell us how that demand is going to be met?

**Lord O'Shaughnessy:** There are two distinct issues here: carers and care workers. To attract more care workers into the system we have introduced the national living wage, which will make a difference in pay for about 900,000 people. The noble Baroness is quite right about carers. There are millions of carers in the country, and we will be bringing forward a carers strategy this year, which will address some of the issues she talks about.

**Lord Cormack (Con):** Will my noble friend first of all associate this side of the House with the warm tributes to Dame Vera Lynn? Will he also tell the House how many care workers are from other countries within the European Union? What are we doing to ensure that we do not have a haemorrhaging of those upon whom our old people depend?

**Lord O'Shaughnessy:** I of course associate myself with the comments made by the noble Baroness and apologise for not saying so before. However, I am not going to sing in tribute.

Around 17% of the care workforce comes from abroad and some 7% of the total are from the EU. The key is to make sure that we have, as far as possible, a care system that attracts workers. We are doing that through improving the training packages available and through better pay under the national living wage, which I mentioned.

**Baroness Pitkeathley (Lab):** My Lords, we heard this morning that the domiciliary care scene is under pressure and many domiciliary care agencies are in fact not tendering for contracts. The care home sector is also under pressure. The people who are not giving up, as the Minister points out, are the family carers—6 million of whom are picking up the pieces from an inadequate social care system. May I press him a little more on the carers strategy, please? It was due to be published last September. Has he a date yet?

**Lord O'Shaughnessy:** On care homes, it is true that some care providers are exiting the system. However, there is the same number of beds and, indeed, there are more nursing homes. So there is churn in the system and there are more home care agencies than there were in 2010. I say that only to point out that it is a changing picture. On carers, she is quite right: this is a long overdue strategy and it will be published shortly.

**Baroness Watkins of Tavistock (CB):** My Lords, will the Minister explain why the number of mental health and community nurses in England fell between 2010-11 and 2015-16 by 13% to 33,000, as is clearly outlined in the Age UK report? Further, could he explain the recent significant cut in funding at HEE for post-qualifying nurse education, which includes the preparation of district nurses and advanced mental health nurse practitioners? If more people are to be cared for at home, the false separation between social and health care must be acknowledged, particularly if you want to achieve some of what is outlined in the STPs, which we are going to talk about later.

**Lord O'Shaughnessy:** Changes are going on in the nursing workforce and the noble Baroness is right about the cases she points out. It is also worth pointing out that there has been an increase in the number of nurses with general qualifications who are able to work across both health and care, which is important for integration. She will know that there have been changes in the way nursing training has been funded, both in the way she said and in bursaries. However, we are committed to increasing the number of training places available for nurses.

**NHS: Sustainability and Transformation Plans Question**

**2.45 pm**

**Asked by Baroness Pitkeathley**

To ask Her Majesty’s Government what assessment they have made of the impact of any hospital closures resulting from the implementation of Sustainability and Transformation Plans on Accident and Emergency departments.

**The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con):** My Lords, sustainability and transformation plans, or STPs, are about local health stakeholders coming together to make sure that NHS services are placed on a sustainable footing and are being transformed for the future. Any significant changes outlined in the STPs will have to meet the four reconfiguration tests of strong public and patient engagement, a clear clinical evidence base, support for patient choice and support from clinicians.

**Baroness Pitkeathley (Lab):** I thank the Minister for his reply but, in view of the problems about which we heard in the last Question and the fact that accident and emergency departments and other hospital services deal with many social care needs, does the Minister agree that it is vital that there is sufficient capacity in the community to manage the demands for community
services which closures will inevitably cause, and that this must be established before any closures take place? Will the Minister therefore tell the House specifically when, by whom and how this assessment of the adequacy of community services will take place?

Lord O’Shaughnessy: As the noble Baroness has pointed out, it is important that there is sufficient capacity in the social care service and in the NHS. In fact, the NHS accounts for more of the delayed discharges, for example, than does social care. Simon Stevens, the head of NHS England, has been clear that, in addition to the four reconfiguration tests, any bed closures would need to show that there was redundancy in the system, that there is alternative provision—to come to the noble Baroness’s point—and that there is clear potential for efficiency. It is clear that the STPs must be able to plan ahead and provide alternatives if there are going to be changes to A&E or other services.

Baroness Walmsley (LD): My Lords, given that 50% to 60% of patients attending A&E in some hospitals hit the four-hour target, how many more hospitals will hit the target when some adjoining hospitals close their A&E departments? This does not sound like excess capacity.

Lord O’Shaughnessy: The noble Baroness is right to point out that the four-hour target is critical for the NHS and it is committed to making sure that that target is hit. Some A&E closures have been mooted but only seven areas, according to the Health Service Journal, have clear proposals, and that is before there has been any public engagement and any application of the reconfiguration test. I point the noble Baroness to the comments of Simon Stevens about the importance of demonstrating alternative provision and that it cannot be a case of closing beds without that being in place.

The Countess of Mar (CB): My Lords, I ask the Minister not to forget people living in rural communities, who are already disadvantaged regarding social care because their carers are not paid for their travelling. If hospitals are to close it will mean that they and their relations will have to travel further. It is therefore important, first, that they do not have to go into hospital unless it is absolutely necessary and, secondly, that they have the right sort of care.

Lord O’Shaughnessy: The noble Countess is right. Additional funding in the Budget will mean that local authorities and the NHS have more resources to account for things such as travel costs and unit care costs for care workers. Some of the STPs are dealing with urban areas and some with more rural areas. All the plans within those configurations have to take account of public engagement. As I have said, there cannot be changes without meeting the reconfiguration tests that we have set out, which must account for local circumstances.

Baroness Altmann (Con): My Lords, can my noble friend assure the House that the reviews of social care will include looking at the impact of the withdrawal by councils of help for those with moderate needs in order to focus social care on those with substantial needs? Has the emergency admission of elderly people who were not given the care that they might have needed had an impact on A&E services in certain areas? Further, will the demographics of ageing populations be taken into account when looking at the closure of A&E departments?

Lord O’Shaughnessy: My noble friend is quite right to bring the attention of the House to the effect of standards. The Care Act 2014 introduced for the first time national standards as well as much greater transparency in the provision of care. What the announcement in the Budget of additional funding for social care allows for is particularly a focus on the interface between the NHS and social care, which is where the issue of delayed transfers can arise. I can provide my noble friend with a reassurance that the Green Paper will be looking at this issue in the round, carrying on from the work done in the Budget to try to address the interface between the social care and health systems.

Baroness Wheeler (Lab): My Lords, what is the Minister’s response to the key questions asked in the recent King’s Fund progress assessment on how STPs are to be funded and how integrated care is to be delivered in the context of having, in its words, a, “‘workaround’ … of the complex and fragmented organisational arrangements that are the legacy of the Health and Social Care Act 2012”?, and when the NHS is under huge pressure to make £22 billion of efficiency savings and to improve performance? Does this not show that the thinking and modelling behind STPs are deeply flawed?

Lord O’Shaughnessy: I am sorry to hear the noble Baroness say that about the STPs, which have received support from the King’s Fund and NHS clinical commissioners. I hope that she is also aware that in the Budget the Chancellor announced £325 million of capital spending to support the strongest STPs, those which are capable of providing the kind of integration she has talked about and are delivering the highest levels of performance.

Lord Blunkett (Lab): My Lords, will the Minister share with us whether the department has provided advice or best practice in the localities on the first test of the service reconfiguration? A great deal of disquiet has emerged about a lack of engagement of key partners, never mind mobilising the support of the wider community.

Lord O’Shaughnessy: The noble Lord is quite right to bring up the issue of engagement. Those STPs which have been completed and published in draft form are now going through the engagement process. They are also being stress tested by NHS England and NHS Improvement to provide exactly the kind of scrutiny that he has talked about. Finally, in addition to the tests I have mentioned, there can be no significant service reconfigurations or bed closures without passing those tests and without public consultation to provide precisely the reassurance that these changes are about delivering national standards—they are not about trying to find a way around them.
2.53 pm

**Question**

To ask Her Majesty’s Government when they will produce their programme for negotiating the United Kingdom’s exit from the European Union.

**Baroness Ludford (LD):** My Lords, the Brexit Secretary, David Davis, last week told the Brexit committee in the other place that the Government have not carried out a full assessment of the economic impact of the “no deal” pledged—or threatened—by the Prime Minister. He said that he might be able to do it in about a year’s time. Does this not show that the Government’s brutal Brexit policy, driven by blinkered ideology, is totally incompetent and irresponsible? Does it not reinforce the need for Parliament to be in charge to prevent a plunge off the cliff and for voters to get the final say?

**Lord Bridges of Headley:** I am very sorry to disappoint the noble Baroness, but I do not think it will come as a great surprise that I disagree entirely with the premise of her question. We are not seeking the kind of outcome that she has just outlined. As I just said, we are seeking success in these negotiations. We are seeking a partnership because we see it as in our and Europe’s interests to come to such an agreement. I am entirely of the view that we will come to such a partnership and that we will be able to strike an agreement, so long as both sides enter these negotiations in the spirit in which we will enter, which is one of good faith and good will.

**Lord Campbell-Savours (Lab):** My Lords, now that the Minister has told us the date, will he tell us whether the communication on Article 50 will be published and made available to Parliament at the time that it is communicated? Will he say whether the Government have yet appointed a negotiating team to conduct negotiations, which will be starting in slightly over a week, and whether we will be told who they are?

**Baroness Hayter of Kentish Town (Lab):** My Lords, I am sure that the Minister has read the report of the Constitution Committee. He may also have read the IFG report from this morning. In the light of those, could he tell the House something about how we will deal with the great repeal Bill? Will it have pre-legislative scrutiny? Will we need some mechanism for the extra 5,000 statutory instruments that we will be met with? Does he agree with the Institute for Government’s assessment that 10 to 15 other pieces of primary legislation could be brought before us?

**Baroness Hayter of Kentish Town (Lab):** My Lords, I am sorry to disappoint the noble Baroness and your Lordships, but I am not going to go into that much detail now. Good things will come to those who wait. As noble Lords would expect, a lot of thought has gone into not just the amount of legislation that will be required, be it primary or secondary, but the need to make sure we get those statutes on to the statute book in time, while balancing the need for effective and proper scrutiny. I have been taking a close interest in this. We will publish a White Paper in due course. I am sure that there will be plenty of debate about that. As always, my door absolutely remains open to any one of your Lordships who may have views on that White Paper.

**Lord Bridges of Headley:** As my right honourable friend the Prime Minister told the Liaison Committee in December, the negotiations will be conducted at a number of levels. She said that she would have a role to play relating to discussions with other European leaders and that my right honourable friend the Secretary of State would have an important role to play. Other technical negotiations and discussions will take place at official level. Regarding the first part of the noble Lord’s question, we are indeed looking at the proposals to ensure that, as we have said many times before, Parliament gets the same information as the European Parliament. My right honourable friend the Prime Minister confirmed today that she will make a Statement to Parliament next Wednesday.

**Lord Campbell-Savours (Lab):** My Lords, the Question asked by the noble Lord, Lord Spicer, was whether Article 50 was reversible, but the Minister said in answering that it would not be revoked. Are they not two completely different issues?

**Lord Bridges of Headley:** The noble Lord picks me up on an interesting point. We have said that, regardless of the legal position, we do not intend to revoke our notice to withdraw.

**Lord Wigley (PC):** My Lords, will the noble Lord confirm that the Government have not ruled out the possibility of asking for a specific chapter in the negotiations to deal with the particular problems of Northern Ireland, Scotland and Wales in this context?
Lord Bridges of Headley: My Lords, the noble Lord raises very important points, especially regarding the situation of the island of Ireland. I am not going to get into the structure of the negotiations nor the outcome, but I have to reassure him that we are very focused on that issue.

Lord Howell of Guildford (Con): My Lords, with whom on the other side does the Minister think at this stage we will be negotiating? Will it primarily be with the Commission, with the national capitals or with a mixture of both?

Lord Bridges of Headley: My Lords, the negotiations will be with the Commission, but as your Lordships would expect, the Government have ongoing relationships and conversations with national Governments across the European Union.

Lord Foulkes of Cumnock (Lab): My noble friend on the Front Bench asked the key question. Can I ask the corollary? In view of the huge volume of legislation that will be needed in order to implement Brexit, will there be any time for any other legislation?

Lord Bridges of Headley: My Lords, we have a very full, action-packed manifesto which we are determined to see through as far as possible.

Noble Lords: Oh!

Lord Bridges of Headley: I am sorry, but that is what happens when you get elected: you get elected on a manifesto and then you see it through. That is what we are going to do.

**Syria**

**Question**

3 pm

**Asked by Baroness Cox**

To ask Her Majesty’s Government what is their assessment of recent developments in Syria.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the war in Syria started six years ago. Today, violence continues and the Syrian people are suffering. We urge those with influence on the regime to secure an end to the military campaign and ensure unhindered humanitarian access. We welcome the resumed UN-led talks. Only a political settlement will end the war. We remain at the forefront of international action to help the Syrian people and hold those responsible for atrocities to account.

Baroness Cox (CB): My Lords, I thank the Minister for her reply. Is she aware that the Syrian Government have brought significant benefits to the people of Syria, including the expulsion of ISIS from the iconic city of Palmyra, recovering control from ISIS over Aleppo’s water supplies and displacing ISIS from numerous other strategic locations? Is she further aware that the UK Government’s support for Islamist-related armed militants is hampering the fight against ISIS? Will she reveal the extent and the nature of the support which the United Kingdom is providing to these Islamist armed militants and the cost to the taxpayer of this very dubious policy?

Baroness Anelay of St Johns: My Lords, we certainly do not see the Assad regime as bringing benefits to the Syrian people. This is a regime which has been found by a series of independent United Nations reports to have used chemical weapons and committed war crimes against the Syrian people. The regime is currently denying humanitarian aid to 1.4 million Syrians living in siege-like conditions. The UN has found it responsible for bombing an aid convoy last September. It simply is not true to say that all armed opposition are terrorists. The opposition fighters in rural Damascus, for example, are not extremists, nor were the vast majority of fighters in eastern Aleppo. The UK provides political and practical support to the moderate opposition. This has included communications and medical equipment, as well as equipment—as the House will understand—to protect against chemical weapons attacks. We do not provide weapons to anyone in Syria. The recipients of UK assistance are always rigorously and continually assessed to ensure that they are not involved in any extremist activity or human rights abuses.

Lord Collins of Highbury (Lab): My Lords, there is no doubt that all sides of the House will be united in seeking peace in Syria, particularly bringing all parties together, but that peace cannot happen without ensuring that the people responsible for war crimes are held to account. My own view and the strongly held view of the Opposition is that all sides have committed atrocities and no one should be able to act with impunity. What steps are we taking to support the UN General Assembly resolution on an accountability mechanism that will ensure that all those who have committed crimes against humanity are properly held to account?

Baroness Anelay of St Johns: My Lords, I entirely agree with the noble Lord that as a member of the international community it is right that we hold to account all those who commit war crimes; that is, both Daesh and the regime, and any of the very extreme groups with which the UK does not have contact as such. Otherwise, there cannot be a long-term solution. Therefore, I can give the noble Lord an assurance that we give our full support to the United Nations, particularly this month of all months because we are chairing the Security Council. We call for all measures to be taken which ensure that the Security Council can move forward on this and avoid having anybody veto any decisions.

Lord Wright of Richmond (CB): My Lords, now that most of Syria’s major cities are effectively under the control of the Syrian regime, do the Government have plans to consider reopening a diplomatic presence in Damascus?

Baroness Anelay of St Johns: My Lords, I understand why the noble Lord raises this question—he has diplomatic experience and background in these issues—but as I responded to him a short while ago, we have no faith in the word of Assad because he has broken his word so frequently. Indeed, he is breaking his word now on a ceasefire, for example in east Ghouta. So we do not
[Baroness Anelay of St Johns]

feel that it is right to show our faith or our trust in him, which we cannot have, by opening an embassy in Damascus at the moment.

Lord Risby (Con): My Lords, we all pray for the destruction of Daesh, but is my noble friend aware that some of the more moderate elements in the Syrian opposition to Assad appear to have linked up with a more radical organisation, Tahrir al-Sham, which is linked to al-Qaeda? Is my noble friend aware that this organisation has been responsible for some civilian outrages in Syria and is refusing to participate in the peace process? Can she indicate, or give some clarification of, what she thinks is happening as regards what appear to be some very unwelcome developments?

Baroness Anelay of St Johns: My noble friend is right to raise the fact again that we should stand up against all those who commit outrages, whoever they may be. He is right, too, to point to the fact that the situation among the opposition groups in Syria can indeed be fluid. There can be splintering of those groups and some which appeared in the past to be moderate then change their view and join up with those with whom this country will have no truck. I can give him an assurance that we will not negotiate with those extremists. He also raises the issue of talks. We encourage all the moderate opposition to take part in the talks in Astana. The problem has, of course, that some chose not to attend because the regime is continuing to break the ceasefire.

Lord Campbell of Pittenweem (LD): My Lords, it has been the policy of the Government that no solution could be arrived at in relation to Syria that includes the Assad regime, but is it not the case that with Iranian and Russian support, the Assad regime is the Assad regime, but is it not the case that with

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, we now move in this wide-ranging Bill from the esoteric delights of the universal service obligation, dynamic spectrum access services and the Electronic Communications Code to a crucial area: namely, seeking to protect children online.

As we have said before, the introduction of a new law requiring appropriate age verification measures for online pornography is a bold new step, with many challenges. It ensures that commercial providers of pornographic material are rightly held responsible for what they provide and profit from. Commercial providers of online pornographic content provide an incredibly large amount of easily accessible content to UK users, with little or no protections to ensure that those accessing it are of an appropriate age. It is imperative that we retain controls on such material and, in this terribly sensitive area, aim to strike a balance between freedom of expression and protection of the young.

Perhaps the most sensitive challenge is how we approach material that would not be classified by the BBFC in the offline world. We have heard concerns from some quarters that the current definition of “prohibited material” may be going too far in the type of material that the regulator is able to sanction above and beyond the age verification requirements. We heard in Committee that this, “would give the regulator extended powers of censorship beyond that originally envisaged in the Bill”, that it would potentially set, “new limits on consenting adults accessing pornography that is not harmful to themselves or others”, and that, “this is not the place to resolve these wider debates on adult consensual pornography”.—[Official Report, 2/2/17; cols. 1355-56.]

We agree. Our policy intent is child protection, not censorship. Our amendment redefines the scope, taking an approach based on the definition of an “extreme pornographic image” in the Criminal Justice and Immigration Act 2008. This captures grotesque sexual violence, including rape. We have thought long and hard about where we should draw the line. We have adopted two principles. First, as this measure is about protecting children, we do not want to create a new threshold for what adults can or cannot see. This is not the place for that debate. Secondly, we want to ensure that we do not allow the regulator to step on the toes of others involved in policing this territory.

The definition of an “extreme pornographic image” in the Criminal Justice and Immigration Act provides a good marker. I know that there are also concerns
about sexual violence against women and other acts that do not meet the “extreme pornography” definition. We absolutely do not intend to create a regime that unintentionally legitimises all types of sexually explicit content as long as age verification controls are in place. We are most definitely not saying that material not allowed under other legislation is allowed if age verification is in place.

That is why government Amendment 25YV makes it absolutely clear that content behind age verification controls can still be subject to criminal sanctions provided by existing legislation: for example, the Obscene Publications Act. But we concede that there is unfinished business here. Having protected children, we still need to examine other online safety issues. As we will come to later in the debate, my department is leading cross-government work on an internet safety strategy that aims to make the UK the safest place in the world to go online. We want to understand more about the scope of the problem and identify where there are gaps in our current approach to tackling online harms.

We have heard the calls to provide the age verification regulator with powers to block criminal images involving children, as defined by the Coroners and Justice Act 2009. However, at the forefront of cross-government thinking on this was the need not to cut across the excellent work of the Internet Watch Foundation on child sexual abuse content, complicating the landscape and making it harder to effectively and efficiently protect children. It has never been the case that this regime would seek to regulate that child sexual abuse material. Fundamentally, we are dealing with different harms, with different responses, and it is right that they are treated separately.

With child sexual abuse material, the Government seek to ensure that it is eradicated at source: that content is not just blocked but actively taken down from the internet. Providing for the age verification regulator to simply block this material in the course of its work risks this. The BBFC and the IWF are in agreement that they do not wish the BBFC to take on the role of policing child sexual abuse material, or content likely to fall within this classification. The Internet Watch Foundation does a vital and difficult job and we should not seek to complicate that by conflating with age verification.

This is a sensitive subject and we know that we will never satisfy everyone. But I hope that I have convinced noble Lords that the position we have settled on is neither arbitrary nor a sop to one interest group or another. I commend the government amendments in this group.

3.15 pm

Baroness Butler-Sloss (CB): My Lords, I was wondering which of us would go first, so I apologise to the House for being a little slow.

I strongly support the work that the Government aim to do on age verification. It is admirable work and, as a former family judge, it is exactly what I would have hoped that this Government would do. I have therefore had no general involvement in the Bill until this moment—but I am concerned that their admirable work is likely to have the unintended consequences that the Minister says he does not intend to have.

The government amendments deleting “prohibited material” and putting in its place “extreme pornographic material” are giving a message which is of great concern to me. The Prime Minister has gone public, hugely to her credit, in saying that she wishes to eradicate domestic violence. But the impact on the public of a lack of online protection in relation to prohibited materials, by changing the reference to extreme pornography, will inevitably leave a gap. Although the Government say that it will not, it seems obvious that it will leave a gap—which means that serious violent porn will not, if this legislation goes through, be covered in the way that extreme, violent pornographic material will be.

This is an opportunity for those disposed to violence, particularly in the home against spouses and partners, to see it online before they try it out in their own home. Perhaps I may give your Lordships one rather telling example of how this impacts not only on women. Many women out there, some of whom have already been polled, will be absolutely astonished and some, I believe, are outraged by the idea that this degree of violent porn online will not now be part of what is restricted. But I had a case on one occasion of two children, aged about 10 and 11, who kept the television on as loud as they could so that they could not hear their father beating their mother. Day after day they sheltered in the kitchen, away from what was happening in the front room.

The message is what worries me. Perhaps the message is even more important than the wording because the extreme, violent pornography may be identified as something which would not include a great deal of serious, violent porn—whatever the Government might say. This is the matter that has brought me to table an amendment and to speak to your Lordships today. There is some flawed Crown Prosecution Service guidance, but I do not propose to say anything about it as I hope that other noble Lords will do so.

We are facing a vast number of amendments from the Government on the second day of Report, without any prior consultation or any opportunity in Committee for noble Lords to ask rather more about the likely consequences, intended or unintended, of these amendments. So I have tabled Amendment 25YD—I thank noble Lords for telling me which one it is; there are such a lot of Ys—saying that there should be two aspects: first, that the use of the words “extreme pornographic material” in the place of “prohibited materials” should not last for more than three years; and, secondly, that in two years, by regulation, the Government should be looking at, reviewing and reporting on whether this has had any adverse effect. I have to say that I would be very surprised if it had not.

I am grateful to the Secretary of State for a very helpful letter in which he says that the Government are looking at a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Green Paper followed by a White Paper. I am also grateful to three Ministers for coming to a Government, but I do not propose to say anything about it as I hope that other noble Lords will do so.
Baroness Butler-Sloss: This House as well as the other place in the 18 months to two years before we come to the end of Article 50 and leave the EU. The likelihood of getting legislation in the next two years to deal with the sort of violent porn that I am talking about is really remote. I am concerned about the damage that it may do to women and also, inevitably, to children, if the man and the woman have children. However young they are, the children will suffer as well as the women—and, sometimes, the men.

That is the general background to this somewhat elaborate amendment. I hope it may find favour with the House.

Baroness Benjamin (LD): My Lords, I am very pleased to hear the Minister say that the remit of the IWF is to be extended and that soon it will be able to remove these images wherever in the world we see child abuse images stored. At present the IWF can take down only UK-stored images. Every day that passes sees the increasing abuse of innocent children because of these images. When can we expect to see the IWF given all the necessary powers to take down any child abuse images that are ever seen on the internet, in line with the offline as well as the online policy that the BBFC has? On this International Day of Happiness, I thank the Government for ensuring that children will be safeguarded and will not be able to see abusive pornographic material anywhere, and that as soon as possible the IWF will be given all the powers it needs to make sure that we do not harm children anywhere in the world.

The Lord Bishop of Leeds: My Lords, it seems odd in a society such as ours that we are even thinking about how to give access to violent pornography or trying to mitigate it in some way. It seems clear to me that most of us sitting in this House probably have less idea of how online digital communications work than a five year-old. Children—my grandchildren’s generation—are very adept and almost intuit how to do this stuff. The technology is advancing so quickly—more quickly than we can imagine—and you can bet your life that many of our children will find ways around it more quickly than we can set down laws. What is online ought to be held at least to the standard of what is appropriate for offline, because it is online that children, as well as young people and adults, will access this stuff, and it is too easy. If the higher standard applies to offline, surely it ought to be maintained for online communications. Otherwise, we are saying that the IWF is to be extended and that soon it will be able to remove these images wherever in the world we see child abuse images stored. At present the IWF can take down only UK-stored images. Every day that passes sees the increasing abuse of innocent children because of these images. When can we expect to see the IWF given all the necessary powers to take down any child abuse images that are ever seen on the internet, in line with the offline as well as the online policy that the BBFC has? On this International Day of Happiness, I thank the Government for ensuring that children will be safeguarded and will not be able to see abusive pornographic material anywhere, and that as soon as possible the IWF will be given all the powers it needs to make sure that we do not harm children anywhere in the world.

Baroness Howe of Idlicote (CB): My Lords, I spoke on the subject of prohibited material in Committee and I rise to do so again. In Committee, I raised concerns that if the Digital Economy Bill was amended so that prohibited material could be supplied if placed behind age-verification checks, children were still likely to see this material because the Government have made clear that they are expecting a “proportionate enforcement” targeting the biggest pornography sites—likely to be the top 50 to start with—so we are not creating a world in which children are safe from accessing prohibited material. They will be safer, yes, but not completely safe.

That is the sad effect of government amendments to Clause 16. If they are accepted, it will become acceptable for a website to supply any material so long as it is behind age verification, unless it falls within the very narrow definition of extreme pornography. By doing so, we are giving violent and abusive material a large boost of respectability, as we do not allow supply of the same material via DVDs or UK-based video on demand.

In this context, the fact that the legislation defining prohibited material remains in place does not make these amendments more acceptable. It simply presents a very awkward question for the Government. Why do they not want to enforce the standards set by these laws? The decision to go to the lengths of asking us to change the Bill so that most of the laws that make up prohibited material will not be enforced cannot but send the message that in some ways we regard this as acceptable. How does changing the Bill today to allow pornographic violence that allows injury to the breasts, anus and genitals so long as it is not serious, and serious injury to any other body part, do anything other than normalise violence against women? How is this consistent with the Government’s other messaging on violence against women?

The other government argument—that the CPS will still retain the discretion to prosecute—borders on the absurd. As everyone knows, the vast majority of online porn accessed in the UK comes from websites based in other jurisdictions that cannot be easily reached by our courts. That is the whole point of creating an age verification regulator with the enforcement powers in Clauses 22 and 23, which do not depend on getting errant websites in Russia into court. I am especially concerned that this material will include some images of children. The origins of this part of the Bill were, after all, to protect children. I know that the Internet Watch Foundation has a very effective role in working with internet service providers on photographs and pseudo-photographs of children. However, I am troubled because there is no agreement around the world about the ethics of animated pornographic images of children. The IWF’s role on animated images is restricted to images hosted in the UK.

3.30 pm

The truth is that the IWF, unlike the age verification regulator in the Bill, does not have statutory foundation or statutory powers of enforcement. Its power is based on and limited to international agreement. This works satisfactorily where there is such agreement, namely in relation to photographic images of children. It does not work, however, where there is no international agreement—in relation to computer-generated images.

In the context in which we now find ourselves, with a Bill that makes provision for a regulator with the power to prevent animated child sex abuse images being seen in the UK, courtesy of the enforcement
powers in Clauses 22 and 23, it would be manifestly wrong to strip the regulator of that power and to invest the responsibility for dealing with the challenge in a body unable to enforce our legal standards in relation to computer-generated child sex abuse material projected into the UK from websites based abroad. Without a clear enforcement mechanism, we would effectively be endorsing the availability of such content behind age verification and telling foreign websites that it is okay to supply such material into the UK. That is not the outcome I was expecting from the Bill.

I do not support the Government’s extreme pornography proposals and will certainly vote against them if there is a Division. In the unfortunate event that they pass, I will support the very important backstop amendment moved by the noble and learned Baroness, Lady Butler-Sloss, to which I have added my name. It proposes a reasonable and measured approach to the changes the Government have made at a very late stage of the Bill. The amendment requires a review of how the amended clauses that I listed at the start of my speech are working and the impact of the use of the extreme pornography category after two years, with the option of restoring the current enforcement standards, which Amendment 25W would remove, after three years. This at least gives us time for further consideration, and I hope that the House will warmly support that opportunity.

Lord Gordon of Strathblane (Lab): My Lords, I make the same point I made in Committee, which is that offline and online should be aligned. I am relatively agnostic as to exactly where the line is drawn, but it should be consistent across offline and online. Otherwise, I invite the Minister to confirm that under the government amendments, material it is prohibited to see offline, in that it is refused any form of certification by the BBFC, will now be available online. If the answer is that it will not, I cannot see why the Government do not maintain the original position in the Bill. If, on the other hand, it will be available online, does the Minister recognise that—not fortunately and, I fully recognise, unintentionally—the Government may subvert the efficacy of the offline legislation? The internet is recognised not merely as a method of disseminating information. People frequently do not buy music in the form of CDs; they download it. They do not buy videos; they download them. If we do not do something about this, we will unintentionally subvert the offline legislation.

Lord McColl of Dulwich (Con): My Lords, I rise to support Amendment 25YD. I find myself very surprised by Amendments 25H, 25W and 25YC. I appreciate that in some technical sense these amendments may not jeopardise the principle that what is illegal offline is also illegal online, but as a matter of practice and enforcement, they most certainly do jeopardise the spirit of the principle. The Bill is very clear that the age verification regulator must enforce the law with respect to illegal pornography to the same standard that exists offline. These amendments, however, deliberately change this and thereby, albeit without perhaps making significant amounts of illegal pornography legal, certainly ask us to support the proposition that our law should instruct the regulator to make space for all but the most violent, illegal pornography. What kind of message are we sending to society? If we vote for these amendments today we will be giving the wrong message. We cannot go to the length of using valuable parliamentary time to change the Bill as it stands through these amendments, which as a matter of practice make space for violent pornography, without sending a message that violence against women is in at least some sense acceptable.

The definition of extreme pornography and material is an inadequate replacement for the prohibited material category which the amendments seek to remove. It will cover only the explicit and realistic portrayal of violence which is life-threatening or likely to result in serious injury to just a few specific parts of the body—breast, anus and genitals. This leaves a range of violent acts and behaviour which we would be saying, courtesy of amendment to Clause 16, is acceptable to be portrayed in online pornography but which would not be granted an R18 certificate, or indeed any other certificate by the British Board of Film Classification for distribution in other ways.

The British Board of Film Classification guidelines state that material to which it refuses to give a certificate includes depictions of the infliction of pain or acts that may cause lasting physical harm; sexual threats, humiliation or abuse; and material, including dialogue, likely to encourage an interest in sexually abusive activity which may include adults role playing as non-adults. I believe that if such material is to be included in the new standard for the acceptable level of violence and abuse in pornography online, we are setting the standards in the wrong place. It puts a sheen of acceptability on materials portraying violent and abusive actions and, in doing so, communicates to the viewer that such attitudes and behaviour towards women are permissible.

In the light of what is already known about the overlap between the use of violent pornography and the development of attitudes which condone violence against women, and sexual aggression, this is deeply concerning. The government Amendment 25H to the definition of pornographic material, and what material can be blocked by the regulator, also places question marks over the standards applied to other formats, by which I mean DVDs and video-on-demand services. I recognise that the internet is a vast place, but simply because there might be different values reflected in different corners of the web, should we capitulate and reduce our standards? I would say not.

The Government have tried to protect the application of different standards set out in other legislation with Amendment 25YU to Clause 27. While the actual legislation may not be changing today for DVDs and video on demand, the pressure to adjust how that legislation will be enforced will be hard to resist. Furthermore, Amendment 25YV implicitly recognises that there are different standards applying in other formats that will no longer apply to the internet, breaking the premise that what is illegal offline is illegal online. This not only disproportionate but extremely risky.

I understand that there are concerns about the original definition of prohibited material, which is being removed by Amendment 25W because of out-of-date CPS guidance, but surely that is a temporary state
[LORD McCOLL OF DULWICH]

that will in time be remedied. Making a permanent change to the definition of what pornography is acceptable to supply behind age verification goes beyond addressing the issues for which the CPS guidance needs updating. On touching on the CPS point, I must engage with the argument made by some that the Government are compelled to make these changes because the CPS guidance on the Obscene Publications Act is out of date. As the noble and learned Lord, Lord Mackay, has pointed out, that argument is absurd. If the CPS guidance is out of date, it should update it; it is ridiculous to argue that Parliament, which is sovereign, should have its freedom to do the right thing fettered by the fact that CPS guidance has been allowed to get out of date.

Anyone voting for Amendments 25H, 25W and 25YC will be voting to make space for violent pornography online which the Bill as currently defined does not do. If there is a Division, I shall be duty bound to vote against, because I could not possibly associate myself with an attempt to make violent pornography more available than this Bill currently suggests that it should be, respecting as it does the offline enforcement standards. A vote for these amendments must inevitably have the effect of conferring some level of approval and some measure of normalisation of violence against women. If there is a Division, I shall vote against.

In the unfortunate event of the amendments passing, I shall vote for the excellent Amendment 25YD proposed by the noble and learned Baroness, Lady Butler-Sloss, to which I have added my name. The amendment allows for the definitions of extreme pornography to revert to the current definition of prohibited material in three years’ time, subject to a review in two years. It future-proofs the Bill and provides a means of dealing with this problem without needing to bring forward new legislation and take up valuable amounts of parliamentary time. The three years will provide ample time for the CPS to update the guidance that it should never have allowed to get out of date and provide time for proper public debate.

The internet is a wonderful invention in many ways, but it can be used for ill. Standards on harmful material and pornography have been honed and developed in relation to videos and DVDs in the offline world over many years. It would be ill advised permanently to establish a separate and lower set of standards for the internet. Amendment 25YD will allow the Government’s amendments to address out-of-date guidance but restore consistency in the approach to pornography across all media after an appropriate time. I commend it to the House.

**Lord Alton of Liverpool (CB)**: I support Amendment 25YD in the name of my noble and learned friend, to which she spoke so well earlier on, and the comments of other noble Lords in the debate so far. The problem with coming to this point in legislation, which has proceeded all the way through the other place and is now on Report in your Lordships’ House, on a day when some 174 government amendments have been laid, is that it is very hard to do justice to genuine discussion or indeed scrutiny, which is what this House is supposed to do with these measures. Although I welcome the measured way in which the Minister, the noble Lord, Lord Ashton of Hyde, introduced the amendment today and his assurance that there will be a Green Paper, I was also very taken by my noble and learned friend about the difficulties there would then subsequently be in having legislation. That is all the more reason not to legislate in haste, lest we end up repenting at leisure.

3.45 pm

Secondly, and in parenthesis before I turn to my substantive points, I was struck by what my noble and learned friend said about public opinion on this issue. Although some might think this a very narrow view, polling over the weekend showed significant opposition to the Government’s proposal. Indeed, support for it ranged from 5% to 10% in the ComRes poll. Some 83%, rising to 85% in the case of women, thought that online standards should be the same as those offline or stronger—the point made by the noble Lord, Lord Gordon. Only 4% thought that online standards should be weaker but, as we have heard, that is the ultimate, though probably unintended, consequence of the amendments before your Lordships’ House.

I have long had an interest in the subject of children and media safety, after the tragic death in February 1993 of James Bulger, near the constituency in Liverpool which I represented when I was in another place. The 24th anniversary of his murder has just passed. I promoted a cross-party amendment to bring in increased protections for video material. As a result, the Government introduced the amendment, which is now Section 4a of the Video Recordings Act 1984, into this House on 14 June 1994. That section has become known as the “harm test” and I hope noble Lords will indulge me while I quote what was said in this House at the time by Earl Ferrers, who was speaking for the Government:

“There may be some works which the board believes would have such a devastating effect on individuals or on society if they were released that there should be the possibility of their being refused a video classification altogether, and the clause leaves the board free to do that. The criteria mean that the British Board of Film Classification must consider who is in fact likely to see a particular video, regardless of the classification, so that if it knows that a particular video is likely to appeal to children and is likely to be seen by them, despite its classification being for an older group, then the board must consider those children as potential viewers. That does not mean that the board must then ban the video altogether. The board will still have discretion on how, or whether, to classify it; but it must bear in mind the effect which it might have on children who may be potential viewers … our amendment goes wider and is not confined to psychological or physical harm but to potential viewers … our amendment goes wider and is not confined to psychological harm or harm only to children. Harm to adults and to society in general can be taken into account” —[Official Report, 14/6/1994, col. 1592].

Earl Ferrers was right then and those words stand the test again today.

This framework has underpinned video regulation since and was adopted into the regulation of video on demand in 2014. It was totally logical that it should be included in this Bill when it was introduced in the other place. In parenthesis, and before saying anything further, I commend the Government for taking on the regulation of pornography on the internet through the Bill. I particularly support what the Minister has been saying about age verification and the effort he has been putting into that issue. Our principal, but not
only, concern is the protection of children; hence the emphasis on age verification. However, we should not delude ourselves into believing that this can be enough to meet the significant challenge. The evidence of the damage being done to children and young people through easy access to pornography is deeply disturbing and should give us all pause.

Last November, the Justice Minister, Dr Phillip Lee, the Member for Bracknell, said that the internet is, “driving greater access to more worrying imagery online. In the extreme, the sexualisation of youth is manifesting itself in younger conviction ages for rape”.

Hopefully, this legislation will make a significant dent in the amount of material seen by children and will lead to a reduction in the concerns that have been so extensively documented over the last couple of years. However, having stepped on this worthy but difficult road, some potholes have appeared, not least whether and how we should regulate what adults see. I am aware that some noble Lords are of the view that it is out there; we do not need to worry about it; it has all been going on for ages; adults should be able to see what they like and we should not interfere. However, we have not taken that view in the offline world, under the Video Recordings Act 1984.

One reason for that is that it became abundantly clear that children were accessing gratuitously violent material because adults simply left it lying around. It also became clear that what we see influences our behaviour, whether we are children or adults. The advertising industry certainly believes that what we see influences us. I looked at figures for advertising over the weekend. In the last 12 months, more than £5 billion was spent on TV advertising—a record amount. Taking UK advertising expenditure as a whole, in 2016 it increased by 7.5% to £20 billion, and internet ad spend increased by 17.3% to £8.6 billion. What we see affects what we eat and wear, how we spend our money and how we behave. What is true for the advertising industry is manifestly true for these other influences too. Indeed, Parliament has rightly rejected a disinterested, laissez-faire approach to the online world of video on demand, as is evident in the Communications Act 2003. We have had to say that some material simply is not appropriate, even behind age verification, with the harm test being a consideration in what the British Board of Film Classification will classify.

The Government are saying that nothing will change with their Amendments 25H, 25W and 25YC: what is illegal offline is, and will remain, illegal online. Yes, but only up to a point. For instance, we are saying, “Don’t possess explicit animated images of children, but it is okay for a website to supply this to you if it is behind age verification as it does not meet the definition of extreme pornography”. We are telling retailers that they cannot supply an unclassified video work without committing an offence, but that if they are a website the regulator will not bother them unless the work is unclassified because it contains extreme pornography. Extreme pornography is a very narrow definition of very violent pornography. It is a much narrower category than prohibited material, against which the law is enforced offline and against which the Digital Economy Bill currently suggests that the regulator should enforce the law. Violent pornography will be caught via the extreme pornography offence only if it is life threatening or likely to result in not just injury but serious injury to specifically named body parts—as we have heard from my noble friend Lady Howe—clarifying that serious injury to other body parts would not be caught, as she mentioned.

Rejecting the current prohibited material standard would also mean making space for sexually violent material that would not fall within one of the criminal offences but which the BBFC would not classify, “in line with the objective of preventing non-trivial harm risks to potential viewers and, through their behaviour, to society”. I understand that some may say that even with these amendments the provision of an age verification regulator with the power to enforce the law online would be beneficial to the extent that it means extreme pornography would be caught. For me, however, and I suspect much of the country, the presenting issue is quite different.

We are at Report stage of a Bill that has completed all its stages in the Commons and almost all its stages here. These issues should have been more widely aired and these amendments should have been considered in the House of Commons and in depth in Committee in both Houses. There should be a public debate about the changes the Government are proposing and how they will impact on other media standards, which they inevitably will over the longer term. Unless there is evidence that there is no detrimental impact, the definition of extreme pornographic material will revert to that originally used for prohibited material and the ability to provide all this material via age verification with impunity will be removed. Amendment 25YD would give us all time for reflection and to review what the evidence says on the impact of violent pornography on women, and whether the Government have got the regulatory framework right.

Twenty-four years ago, I was talking about concerns arising from violent videos. Technology and accessibility to media have changed dramatically over that time but human nature has not. The same principles of harm to children, adults and the wider society need to be weighed and confronted. It was this House that introduced the harm test in 1994 and it is this House that should now ask the Government to reflect further, which is precisely what my noble and learned friend’s amendment seeks to do.

Lord Mackay of Clashfern (Con): My Lords, my name has been mentioned in connection with something that I said on this issue. I had understood that the Government’s reason for widening the scope of permissible pornography from prohibited material to exceptional pornography was to do with standing CPS guidance, which is supposed to be out of date. I said that it certainly does not require an Act of Parliament to bring prosecutorial directions up to date: if the judges have changed the rules, the prescription should be changed immediately. When I was told about this matter, I raised it with the Minister, from whom I understood that that was not the reason for this change, so my point about bringing the guidelines up to date does not really matter. There is a different reason for making this change, but I am not sure that I understand it and it will be for the Minister to explain it now. When he introduced these amendments, I did not understand him to say exactly what the reason was for
[Lord Mackay of Clashfern] wanting to make the change, but it is clear that there is a substantial change allowing pornography which is not permitted as prohibited material to be allowed now. I am not sure what the basis for that is and why it is being done.

I am extremely sorry that I have an appointment in connection with another Bill with which I am involved, so I will have to leave. However, as my name was mentioned, I thought that I should say exactly what my position is. I do not understand the justification for this change and it is for your Lordships to say whether it is justified.

Baroness Kidron (CB): My Lords, I find myself very much in the same school as the right reverend Prelate in not understanding how we can justify a form of sexual violence by one group towards another. It is very upsetting. However, I want to raise a slightly different issue that I tried to raise in Committee. I suppose that it is covered by government Amendment 25B in that it refers to commercial providers. I keep feeling that we are missing the point here—missing the business model that is fuelling all this pornography. If the amendment were to refer to those who monetise pornography—that is, those who receive money from pornography—we could make a much cleaner sweep of this issue. I think that many noble Lords will have noticed this morning—

Lord Ashton of Hyde: My Lords, would it help the noble Baroness if I mentioned that later in the debate we will be talking about the definition of commercial providers?

Baroness Kidron: It certainly would. I beg the Minister's pardon.

Lord Farmer (Con): My Lords, I wish to speak in support of Amendment 25YD, tabled in the name of the noble and learned Baroness, Lady Butler-Sloss. It would have the effect of requiring a review of the use of the term “extreme pornography” after two years and provide the opportunity to replace it after three years with a broader standard of protection enforced offline. I shall also speak against the Government's amendments to Clauses 22 and 23. They would water down the Bill by deeming only the narrow category of “extreme pornographic material” unacceptable and not the wider category of prohibited material.

I understand that Part 3 of the Bill is primarily about protecting children and that the Opposition Front Benches do not want to provoke a discussion about adult access to porn. However, by asserting that adults should have online access to what is prohibited offline, it is they who have opened up this debate.

I also understand that the Government have legally founded reasons for their amendments. As we have heard, they are concerned, for example, about the mismatch between the Crown Prosecution Service guidance and what is actually prosecutable following developments in case law. Amendment 25YD would create a window of time in which to deal with this.

Standing back for a minute, it seems incomprehensible to a non-lawyer like myself that juries can determine that henceforth something is now acceptable that would, until fairly recently, have been considered obscene under law, and yet they bear no responsibility for meeting the societal costs that accrue when such lines of acceptability are moved.

4 pm

Many of the practices portrayed in porn scenes and films that would now be deemed acceptable under case law are medically harmful. For example, a very cursory glance at NetDoctor reveals that fisting—putting the whole hand into the rectum—which case law now deems acceptable in porn scenes, “may be acceptable and enjoyable for some couples. But the diameter of the hand is so much greater than that of the penis that there’s an increased risk of anal injury. For that reason, we do not recommend this practice”.

There is no public recognition whatever of the medical harms and, therefore, costs, associated with these sexual practices. We know that around 510,000 new STI diagnoses were made in the UK in 2011, with estimated treatment costs of £620 million. While these are obviously not all directly related to porn use, they are an indicator of the social and medical costs that hyperliberalism in sexual activity is exacting.

There is also scant regard for the well-documented effects on people’s intimate relationships. I have already talked in this Chamber about increasing numbers of young girls being injured, even to the extent of incurring lifelong fistula conditions, by anal sex that has been inspired by their partners’ consumption of porn. Researchers also point to how very dubious it is that men will properly obtain consent from their girlfriends and to the social pressures that girls endure: that they should like it or that the pain will decrease as they get used to it. To me this points straight back to the ubiquity of porn, which is normalising not just potentially harmful sexual practices but also coercion and aggression.

We will never deal with the appalling prevalence of violence against women in our society—our Prime Minister’s laudable ambition—unless we face up to the intense violence in relationships being played out every night on millions of computer screens. Research indicates that extensive exposure to porn can make it impossible to obtain sexual satisfaction without also releasing the aggressive drive. In other words, as tolerance to porn grows, sexual excitement is no longer satisfying and aggression must also have an outlet.

The noble Baroness, Lady Jones, stated in Committee, with no apparent irony, that her party’s opposition to existing Clauses 22 and 23, which passed in the other place, is based on the fact that:

“We are simply trying to protect the status quo so that adults who currently look at material can carry on looking at it—and this has nothing to do with child protection and children’s access to pornography”.—[Official Report, 2/2/17; cols. 1362-63.]

Again standing back, the status quo is not one that responsible legislators should defend. The prohibited material she wants adults to be able to access, which the BBFC has determined they would not be able to view offline, is sowing violence and relational misery across the nation.

Of course, not all consumers of porn are compulsively so or addicted to the material, but we are beginning to learn from research that the effects of compulsive or addictive responses to porn are harrowing and ultimately avoidable. Experts on porn addiction say that, just like
other forms, it is progressive and destructive. I am aware of one individual who started watching adult porn and found it was a gateway into child sex abuse images. He followed a few links and found himself hooked. He was caught after downloading a huge number of pictures and narrowly escaped a custodial sentence. However, he can now only see his own children under supervision and will never work in his profession again.

The internet has made porn more accessible, affordable and anonymous. It has radically changed the terms of society’s engagement with porn. The libertarian argument is that we should cease from regulating anything until we are sure, beyond any doubt, that it is intrinsically harmful. I am surprised that a Conservative Government do not instinctively see the need to act before more harm has been perpetrated as a result of such an enormous change in behavioural norms.

The BBFC offers protection offline, which the Bill could have extended to the online world, but this has been swept away by these amendments. The Government have abrogated their responsibility in order to preserve people’s freedom to walk in a minefield that they could have done something to help clear and make safer. Talking with one young man who has struggled to stop watching porn because he feels compulsively drawn to it but hates the way it affects him—a common paradox in porn consumption—he said it would make a difference if the top 50 sites were effectively blocked. It would cut down on the accessibility of the best-quality porn—they are the top sites for a reason, after all—and undermine porn’s acceptability.

When the Government use their powers to restrict access to something for the public good it sends an important message, and when they choose not to use those powers it sends another message—that the practice is neutral or even positive. Neither are the case. By the time we had irrevocable evidence that smoking was harmful, about 85% of the population smoked. However, the Government acted in the teeth of vested interests and public practice. This Government should also act in this area. If they are intent on passing their amendments in order to get their age verification legislation through, then shame on the Opposition for exacting so high a price. The amendment of the noble and learned Baroness, Lady Butler-Sloss, will at least ensure we revisit this issue in a timely fashion.

The Earl of Erroll (CB): The noble Lord, Lord Farmer, is right about the huge dangers in viewing much of this pornography online but I do not think this Bill is the right place to deal with it—that is the challenge—because we are confusing two issues. This Bill is about protecting children—that is what was originally intended—and the idea is to have age verification to stop children watching any sexually explicit material online regardless of how bad or innocent it is. If it is sexually explicit, it has got to be hidden behind age verification.

The challenge is that we have now introduced into the Bill the concept of protecting adults. However, there is other legislation that already does that. If it is not working properly, we should cure that legislation. I agree that we should bring the CPS guidelines into line with what is going on and probably review the Obscene Publications Act. The Criminal Justice and Immigration Act also deals with issues around this problem. It is covered in lots of places.

However, inserting a blanket cover in the Bill is dangerous because suddenly the BBFC will act on its own initiative to close down websites, which will then be appealed against and cause chaos to the system while the law courts are possibly doing something else. Once it is appealed to the law courts you will have a problem because two sets of measures will be fighting each other. We need to keep it consistent. Yes, we should have protection for adults, but let us do it properly and in the right place.

I support the Government on these amendments for that reason because it brings the Bill back to where we can protect children against watching anything unsuitable. The government amendments align what is in the Bill with the Visa and MasterCard standards, which helps with the enforcement measures in the Bill. They will apply internationally and this will help the ASPs—the ancillary service providers—to comply with the Bill and help to enforce measures against websites that do not have age verification in place. They will align the Bill with the Criminal Justice and Immigration Act as well, which, again, will mean that there are no other loopholes by using one Act against the other. I have already spoken about the CPS guidance.

I understand that the topical Fifty Shades of Grey—I do not know anything about it because I have never read the book nor seen the film—involves bondage, pain and S&M. Should that book be allowed or should it have been banned? Should the film have been allowed for general release or not? It is those kinds of issues that cause confusion and we need to realise that.

The Bill does not legitimise what is behind the age verification. That is for other Bills to do. This Bill seeks to make sure that children cannot get at anything that is sexualised. Let us not cause confusion. Let us stick to one thing in one place and one thing in another place. I support the Government on this.

Lord Elton (Con): My Lords, I cannot support the noble Earl. I follow most of his argument, but when we are considering legislation in one area we have to take into account its effect in other areas. What we have here is a proposal to narrow a definition of maximum control and to place anything that is not within that narrow definition in an area of less control where a larger population is affected by it.

I do not apologise for coming to this very late because Her Majesty’s Government are doing the same. In 1985 I was in the unfortunate position of taking through this House the Bill to abolish the GLC. After it had gone through the Commons and just before the Report stage here, the then Leader of the House, Willie Whitelaw, said, “My friends down the Corridor want me to abolish the Inner London Education Authority as well”. Noble Lords can see what political dynamite that was. To bring forward proposals at the second stage in the second House without wide consultation with those concerned seems to me pretty late in the day, so we are right to look at this closely.

I view it in a simple way. Powerful arguments have been put by the noble and learned Baroness and others in favour of her amendment, which I warmly
support. The central issue is a simple one. If you take the least harmful of a bunch of very harmful material out of control, you may make the control of the remainder more effective but you also release more harmful material to less strict control. That must be wrong. Other noble Lords have spoken much more academically and legalistically than I am able to do. I merely wish to say that I have listened with my heart and my head and I stand entirely behind the noble and learned Baroness’s amendment.

Lord Browne of Belmont (DUP): My Lords, I support Amendment 25YD. In Committee I set out in detail all the reasons why I thought that the Government should not do what they have done in this series of amendments. They will remove “prohibited material” and replace it with “extreme pornographic material” and put the remainder of the prohibited material category behind age verification. I concluded my speech by saying:

“The Bill takes significant strides in the cause of child protection. It would be a shame if we in this House took steps to undermine this”.—[Official Report, 2/2/17; col. 1359.]

I start my speech today with the same sentiment and by quoting the Minister whose comments at Second Reading agreed with the sentiment that I set out in Committee:

“It is a complicated area. Free speech is vital but we must protect children from harm online as well as offline. We must do more to ensure that children cannot easily access sexual content which will distress them or harm their development, as has been mentioned. We do not allow children to buy pornographic material offline, and this material would not be classified for hard-copy distribution. The BBFC has a well-understood harm test and would not classify material that, for example, depicts non-consensual violent abuse against women, and it may not classify material which is in breach of the Obscene Publications Act, as clarified in guidance by the CPS. Prohibited material has always been within the regulatory framework of this Bill. We consider that having a lesser regime for prohibited material than lawful material would be unsustainable and undermine the age-verification regime”.—[Official Report, 13/12/16; cols. 1228-29.]

I want to repeat that final sentence:

“We consider that having a lesser regime for prohibited material than lawful material would be unsustainable and undermine the age-verification regime”.

The general public agree with that principle. ComRes polling from last weekend and published today shows that 82% of the public think that the online standards for regulating internet pornography should either be the same as those for offline or be stronger. Yet contrary to public opinion, the Government have turned on their head and performed a major U-turn on the basis of mumbles about the Obscene Publications Act.

First, the Government are trying to convince us with an amendment to Clause 27, government Amendment 25YV, that this situation will be sustainable. Just last week the noble Baroness, Lady Shields, said in answer to a question from the noble Lord, Lord Elton:

“I should say to my noble friend that we are clear that what is illegal offline is also illegal online. Legislation is in place to deal with internet trolls, cyberstalking, harassment, revenge porn and the perpetrators of grossly offensive, obscene or menacing behaviour”.—[Official Report, 15/3/17; col. 1861.]

But she did not add, “From next week, when we pass amendments on Report, not for pornography”. We are bringing in different rules about what can be supplied online and offline. If you are a retailer of DVDs you cannot sell an uncategorised work. If you are a UK-based video-on-demand service you cannot have a programme service that includes prohibitive material. But if you are a website you can supply all of this material to the UK as long as it is behind age verification, unless it is extreme pornographic material. I cannot see how this position can be sustainable. Therefore, in the longer term we are changing the rules about how we approve or supply this material. I argued in Committee that such sweeping changes to long-standing arrangements should be made only with a full and public consultation. We have not had that. It has been slipped in at the end of the Bill’s parliamentary scrutiny.

Secondly, there is no explanation of how this new plan does not undermine the age verification regime, which is at the heart of this whole part of the Bill. We started in the Bill with 18 and R18 being acceptable behind age verification checks. Now we are saying that it is okay for a website to supply all of this material if it is behind age verification. How do we explain that to our children? I suggested in Committee that the one scenario I could foresee was to place prohibited material behind age verification checks. I warned that we should not fall into the trap of thinking that age verification makes children safe across the board and that therefore adults can access what they like without concern. I quoted at length evidence that the Government and BBFC have been very clear that enforcement will be targeted at the bigger sites. I will not repeat those statements, but I remind noble Lords that the Explanatory Notes say that Clause 24 gives the age verification regulator discretion to,

“exercise its functions in a targeted way, to those providers of pornography who reach the most people or have large turnovers”.

We have no reassurance that age verification will be implemented across the board. I am not saying that children will not be safer. I think they will—that is something I commend the Government for—but they will not be completely safe. Indeed, I hope that the noble Baroness, Lady Jones, will not mind me quoting her. She said in Committee:

“I do not think that anyone considers that what is being proposed in the Bill is going to be 100% deliverable or enforceable. We are on a journey and, if we can attack 50% or 75%, we are making progress in this area. It is inevitable that we will have to revisit the whole issue in the future, so we are taking steps towards what I hope will be a fully robust system”.—[Official Report, 2/2/17; col. 1350.]

The point is we know that it will not be fully robust, but the Government seem happy to bring forward proposals that they previously stated, presumably on good advice, would undermine age verification. I very much look forward to hearing what they have to say on this point.

In closing, I make it clear that I appreciate that, even with the proposed amendments, internet regulation will be moved forward by the Bill and the extension of blocking to extreme pornography. It is indeed better than the current scenario, but there is nothing in place to prevent the supply of such damaging material.
However, that it is better than nothing is not an adequate argument for adopting a definition that is inconsistent with other legislation regulating pornography and makes certain violent material acceptable.

I urge noble Lords to join me in calling for the retention of equivalent protections on the internet as are in place for the distribution of pornography offline by rejecting these amendments. I shall be pleased to vote for the excellent “review and rethink” amendment, Amendment 25YD, in the name of the noble and learned Baroness, Lady Butler-Sloss.

The Earl of Listowel (CB): My Lords, I offer my strongest support to my noble and learned friend Lady Butler-Sloss in her Amendment 25YD. She is of course a former president of the family courts and a chair of the adoption Select Committee which recommended additional support for adoptive families, a recommendation which has now been implemented. She has a long record in protecting vulnerable children.

I apologise for rising for the first time at this late stage in proceedings on the Bill. I felt bound to do so because I am vice-chair of the parliamentary group for young people in local authority care. On my noble and learned friend’s concern that the relaxing of the regime might to some degree encourage an increase in the level of domestic violence, many young people coming into care come from backgrounds where there is domestic violence. I agree with her entirely that we need a review to make sure that such a change does not contribute towards violence towards women.

I thank the Minister for the additional protections in the Bill for children accessing pornography; they are very welcome indeed. I extend my thanks to his colleagues in the other place for introducing a statutory requirement for personal, social, health and economic education, which will ensure that all children receive high-quality sex and relationship education. I heard from Professor Sue Berelowitz last night, an academic who has produced a number of reports on child sexual exploitation. She highlighted to me the correlation between violent pornography and domestic violence. It is only a correlation, but because there is such a correlation, we should give it careful attention. I support my noble and learned friend’s amendment and I hope that your Lordships will choose to do so.

Lord Morrow (DUP): My Lords, I support Amendment 25YD in the name of the noble and learned Baroness, Lady Butler-Sloss. I fully support powers to block the supply of damaging pornography both to support the requirement for age verification and to prevent the distribution of material that is harmful even for adult viewing. I support the Government’s intention announced last month for a “major new drive on internet safety”.

I support the Prime Minister’s launch of a plan to “transform the way we tackle domestic violence and abuse”. But the principle of joined-up government seems to be lacking as we review the Government’s amendments to Clauses 16 and 22 and the new clause defining extreme pornographic material.

The Government have recognised that the internet with its many amazing facets can also be extremely detrimental to the well-being of our young people if they are accessing pornography. That fact no longer seems to be in dispute. We recognise its impact on young people’s self-perceptions and relationships. I hope your Lordships will bear with me as I quote from the 2013 report prepared for the Children’s Commissioner for England. It concluded: “Access and exposure to pornography affect children and young people’s sexual beliefs … maladaptive attitudes about relationships; more sexually permissive attitudes; greater acceptance of casual sex; beliefs that women are sex objects; more frequent thoughts about sex … Pornography has been linked to sexually coercive behaviour among young people, and, for young women, viewing pornography is linked with higher rates of sexual harassment and forced sex.”

This is why we want to protect children and I fully support the Government’s intentions.

I find myself perplexed as to why we think this material has no impact on a person when they turn 18. I accept that being an adult brings certain freedoms, but they are not infinite. I accept that we have laws that make it an offence to possess certain types of material and that that position remains, as set out in government Amendment 25YV, but at the same time government Amendment 25H is saying, “It is okay for a person running a website to supply that very same material into the UK as long as it is behind age verification”, with an exception for a very small number of very realistic images. I hope that the Government will reassure us that there are, indeed, a significant number of prosecutions for those offences, but I have my doubts. Even if there are cases that come to court in the coming years, are we going to be hearing, “This material was behind age verification systems, which the Government have said are what is needed. Therefore I thought material X and Y was within the law”? We are sending very mixed messages to the public about violent pornography.

I am particularly concerned about animated images of child sexual abuse, which would be against the law to possess in the UK and would be considered “prohibited material” under the present definition but will not be caught by the definition of “extreme pornography” the Minister intends to replace it with.

I greatly value the work of the Internet Watch Foundation in taking down online child abuse images, but it does not have the remit to cover animated or drawn images if the websites on which they are found are hosted outside the UK. This limitation is compounded when we understand that 99% of criminal content is hosted outside the UK. It disturbs me greatly that we are being asked to purposefully amend the Bill to remove from the regulator the power to prevent those images being made available in the UK via the internet when there is no other body able to fulfil that role. I cannot agree to changing a definition to one that will class such images as acceptable behind age verification. Therefore I will not be supporting the government amendments in this group.

I am not alone in my concerns about the kind ofpornography these amendments would make permissible. Polling undertaken by ComRes over the weekend and published today—my colleague has made reference to it already—asked more than 2,000 adults what sorts of violent acts should be allowed in pornography online. In responding to different forms of content against which the age verification regulator would not have
the power to act if the government amendments pass today, public opposition to allowing access to that material varied from 74% to 81%. Not surprisingly, these figures were bigger among women, who clearly feel particularly worried about these changes. Whatever pressure the Government may have been under to make the changes proposed today, the great majority of the general public do not want the material described as “prohibited” to be accessible.

I have consulted John Larkin QC, the Northern Ireland Attorney-General, about how the Bill will impact Northern Ireland and he advises me that he can “see no good reason for a change from the prohibited material category to the extreme pornography category.” Noble Lords will understand that I am inclined to agree with him. I am not convinced by the Government’s arguments that such a wholesale change of approach is needed and do not support the government amendments. As someone who took Northern Ireland’s equivalent of the Modern Slavery Bill through the Northern Ireland Assembly, I am particularly alive to the reality of violence against women. I find it very surprising that a Government led by a female Prime Minister who took the Modern Slavery Bill through Westminster should countenance the amendments before us today. I wonder whether she has been properly briefed on their consequence.

If there is a Division on the government amendments, I will vote against. In the unfortunate event that the amendments pass, I will vote for Amendment 25YD in the name of the noble and learned Baroness, Lady Butler-Sloss, and other members of your Lordships’ House. It proposes that there should be a review of the effect of this change and a sunset clause that would revert the effect of the Bill back to that in Committee, because it is time we looked at the evidence for how this material is impacting adults as well as young people. We are a digitally connected people—for good and ill. I am not suggesting that every violent sex crime is fuelled by pornography but it is time we had an open discussion about the impact of this material on violence against women and children, so that there can be reasoned policy responses.

The Relate counselling service has indicated that counsellors are increasingly seeing problems with “relationships and sexual functioning” as a result of internet pornography. In The Way We Are Now: The State of the UK’s Relationships 2015, Relate reported that 23% of 16 to 34 year-olds in a relationship reported an “overall negative impact” on their relationship from use of online pornography. The report said that pornography use is, “an increasingly common topic in the counselling room”.

Last year, a journal article reported, based on interviews with 55 women in rural Ohio, all of whom were trying to leave their male partner, that, “pornography is a major component of the problem of rural woman abuse”.

I hope Amendment 25YD will get overwhelming support from your Lordships that there needs to be a careful review of this change and the brakes put on, if necessary.

4.30 pm

The Lord Bishop of Chester: My Lords, I know we want to get to the Front-Bench speakers so I shall be very brief and, like the contestant on “Just a Minute”, not repeat anything that has been said so far in the debate. I will say just two things.

First, virtually the only defence of the Government was from the noble Earl. He is half right and half wrong, in my view. The problem is that the Bill is not about the regulation of what adults should be watching, but changing the designation of pornographic material does just that. That is the internal problem in the Bill.

Secondly, there seems to be an agreement between the Government Front Bench and the Opposition Front Bench that the government amendments are going to go through. Then we have the amendment in the name of the noble and learned Baroness, Lady Butler-Sloss. When he replies, I would like the Minister to speak about the White Paper and the further review that is in prospect. What are its terms of reference? If the Bill goes through in the form in which the Government now want it to go through, it will leave a very unsatisfactory state of affairs in terms of how adult pornography is dealt with in our country, with the distinction between offline and online, and all the questions about the actual impact of what will be accessible. It would be helpful to me if the Minister would say a little more about what the review that the Government have in mind is intended to cover.

Lord Framlingham (Con): My Lords, I, too, shall be extremely brief because this matter has now been dealt with in great detail by a number of speakers. Few issues that come before your Lordships’ House make me quite as angry and distressed as this. Given the role that Parliament plays in the welfare of our nation and our children, it saddens me hugely that we are even debating it as we are. I understand why we have to but it is an enormous comment on the state of our country. It took me a while to realise that we now accept porn on a regular basis. That should be cause for concern for us all. The noble Earl made the point about Fifty Shades of Grey—which I have to say immediately that I have neither read nor seen—but that makes the point for us, does it not? We are talking about a medium into which our young children slip away from us—we do not know where they have gone. It is a world we cannot join them in. I think it is a dreadful world—interesting, fascinating, fun, in some ways; but in other ways, absolutely dreadful. Those primary school children are not going to go out to Waterstones and buy Fifty Shades of Grey or pay for a ticket to go to the cinema to watch the film of it. They are going to their bedrooms to slip into this other world and watch all these horrible things we are talking about.

How often have I heard us say in this House that the welfare of the child is paramount? We say it time after time, relating to one Bill after another. If we
really mean it when we say it, we should be much tougher on issues such as this. That should be reflected in how we vote today. I do not know what will happen to the government amendments but if we divide on them, I shall vote against them. I shall certainly support Amendment 25YD, in the name of the noble and learned Baroness, Lady Butler-Sloss. I hope very much that the House will show what it really thinks about these issues and support that amendment as well.

**Lord Paddick (LD):** My Lords, the debate this afternoon shows the importance of noble Lords participating in every stage of the Bill. My understanding of what has happened here is that the Bill was never intended by the Government to deal with protecting adults from pornography; it was to fulfil a manifesto commitment to protect children from accessing pornography. At a very late stage in the other place, a Conservative Back-Bencher brought protection against adult pornography into the Bill. The mess that we are currently in is completely down to the Government accepting that amendment.

The current law does not allow anybody to take down either prohibited material or extreme pornography from the internet with the exception of child pornography, which is dealt with separately through the Internet Watch Foundation and so forth. The Government’s problem, having accepted that amendment in the other place to do with prohibited material, is that people are losing confidence in such a definition of pornography. While prohibited material is not allowed in films and DVDs classified by the BBFC, that material is not prosecuted as obscene by the Crown Prosecution Service. The law on what is and is not obscene—on what it is lawful to have and not lawful to see and possess—is in a mess. That is why we are in this situation.

The Government have tried to remedy the situation by picking on something that is not disputed: a definition of obscenity that is a concrete foundation on which to build for the future. They have therefore decided to replace this definition of prohibited material that is falling into disrepute—

**Lord Gordon of Strathblane:** Can the noble Lord produce a shred of evidence to say that this definition has fallen into disrepute? I see no evidence of it in the yearly polling done by the BBFC on its classifications.

**Lord Paddick:** I will try to say it again more clearly. It is the fact that the Crown Prosecution Service is not prosecuting people for possessing prohibited material. That brings the definition of prohibited material into disrepute, as far as the law is concerned. I am not quite sure what it is that the noble Lord does not understand about it being brought into disrepute in that respect.

**Baroness Butler-Sloss:** Why cannot the CPS just change its guidance?

**Lord Paddick:** Indeed. What the Minister said backed up what the noble Lord, Lord Browne of Belmont, said about the criticism of there being no public consultation. There has been no public consultation about introducing adult pornography into the Bill, in the form of prohibited material. There needs to be a public debate on this to decide whether the British Board of Film Classification’s operation, where it does not issue certificates for prohibited material, is the right standard or whether the CPS standard is right. There has not been a public debate about that, and we need one.

Having said all that, I entirely agree with the noble and learned Baroness, Lady Butler-Sloss, about the impact that gratuitous violent pornography can have in terms of domestic violence and the impact that it then has on children in those families. That needs to be debated and addressed. However, that is not what the Bill was primarily intended to do. Contrary to what the noble Lord, Lord Farmer, suggests, this is not some deal that has been done between the opposition parties and the Government over keeping age verification. A Conservative Back-Bench amendment was introduced in the other place at a late stage, which is why there has not been sufficient time to debate the subject in this place either, and certainly not enough public consultation on the issue. In accepting that amendment, the Government introduced this complication.

Many noble Lords around the Chamber today have said, although I do not know if they realised this, that the definition of prohibited material does not go far enough either. You can get the sort of things that they want banned from the internet on a DVD, albeit an R18, bought from a shop. The noble Lord, Lord Farmer, gave examples of the sort of sexual activity that he disapproves of. I do not know whether he knows that some of the activity that he talks about is legal to buy in a shop on a DVD. We are getting into a mess here because there is no agreement generally about what should and should not be allowed to be seen.

**Lord Farmer:** I made the point about the medical ramifications of certain practices. That is the point I was making about that.

**Lord Paddick:** Forgive me if I misunderstood the noble Lord. I thought he was using that as an argument for why that sort of activity should not be allowed to be seen by anyone, but I could be wrong.

**The Earl of Erroll:** This may assist the noble Lord and the rest of the House—

**Baroness Buscombe (Con):** I remind noble Lords that this is Report.

**The Earl of Erroll:** Very quickly, for clarification, the problem is that some material is regulated by ATVOD, some by the BBFC and some by Ofcom. That is where the noble Lord’s problems are coming from when he talks about “prohibited material”.

**Lord Paddick:** I am grateful for the noble Earl’s intervention, but for clarity I will stick to what I was saying. The noble Lord, Lord Alton of Liverpool, talked about the harm test that was introduced in 1994. I challenge anyone to suggest that some of the things that are not allowed in R18 videos cause harm to anyone. They might be unpleasant or, in some people’s eyes, morally reprehensible, but certainly there are things that are not allowed because of the definition of prohibited material but cause harm to no one.
[LORD PADDICK]

That is an illustration, without going into specific gory details about what is and what is not allowed. That is why we are in the mess that we are in.

Clearly the question of what is and is not acceptable pornography needs to be reviewed, and my understanding is that is what the Minister has said will happen as part of an online safety review. Were the House to divide, we on these Benches would prefer Amendment 25YW from the Labour Front Bench, under which a review would take place but without specifying what the outcome of that review should be—that is, a reversion to the discredited definition of prohibited material.

4.45 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the Minister for introducing his amendments today. I am also grateful to the noble Lord, Lord Paddick, for bringing some clarity to what has been quite a complicated and emotional debate this afternoon. I urge noble Lords to look at Amendment 25YW in this group, which is in my name, because I believe that would take us some way through some of the dilemmas that we face this afternoon.

As has been said, these amendments arise from a dialogue we have been having over the last few weeks about the definition of “prohibited material” and “extreme pornography”. That arose as a result of late additions to the enforcement measures in the Commons, which meant that the Bill did not receive the scrutiny it deserved at that stage. Hence we have been scrambling to understand and to consider the new requirement for internet service providers not only to block sites that do not have age verification filters in place for children but also to block access to other illegal pornographic material. I agree with other noble Lords that it is very unfortunate that this has come at such a late stage and that we are trying to deal with this important issue so late in the process. We are all at a loss and have lacked something because of it.

Since then, several variations of wording have been taken from Acts that already exist and put forward as the best way of defining the new obligation. We find ourselves having to take a significant decision on which of these various options would best benefit the law going forward. All of them would benefit from further debate.

In this context, and given the sensitivities involved, we welcome the Government’s attempt to strike the right balance on this issue. Government Amendment 25YW is crucial in this regard. It is a short amendment that says:

“Nothing in this Part affects any prohibition or restriction in relation to pornographic material or extreme pornographic material, or powers in relation to such material, under another enactment or a rule of law”.

In other words, if pornographic material is illegal offline, it would also be illegal online. The amendment underlines that point. This is the parity between offline and online that many people have sought, and it echoes the position that the Minister spelled out when we met him recently. We support this approach because we believe that any definition of illegal material transposed into the Bill at this late stage should be based on current statutory definitions.

We also recognise the added challenge that the current legal definitions are not being applied consistently, and that the Crown Prosecution Service guidelines need to be updated—which is another issue that we have been debating this afternoon. Only then will we achieve that true parity in removing offline and online material. But we are firmly of the view that this disparity should be addressed separately, and thoroughly, in conjunction with the Home Office. We are also firmly of the view that today we should focus on the intent of this Bill, which is to introduce age verification processes to stop children under 18 from accessing pornography. The debate this afternoon has muddied the water, because that is very clearly the intent of this part of the Bill, and the way that the government amendments are set out achieves that very important aim.

This is a huge step forward and a key policy prize. It is something that not just the Government but all the main political parties have been committed to. There is no doubt that if it is implemented successfully—although that is a huge ask—there will not be the opportunities for children to access the illegal material that is concerning noble Lords today. I accept of course the point made by the noble Lord, Lord Browne, that this cannot be 100% watertight—none of these things can be. We are on a journey. I think it was one of the right reverend Prelates who said that children are very tech-savvy and we have to keep up with them. Of course we do, so this will not be 100%. But it is a massive step on a journey that will stop an awful lot of casual viewing by children of internet pornography.

That is why we believe that we should retain our focus on children—to prevent all damage to their relationships, self-esteem and mental health, and all the issues which we, understand, result from underage viewing of pornography, which we have debated repeatedly during the course of the Bill.

Of course, that is not to say that there are not other huge social issues about adults viewing violent or degrading pornography—and we all have our views on the level of acceptability of that. I resent the fact that some people think that I am in favour of a free for all, because that is certainly not my position. Some of the issues have been raised by noble Lords today, and of course it is right that they are debated and resolved in the public realm. I agree with the noble Lord, Lord Alton, that there needs to be a public debate. It has been lacking until this debate today, which I believe is the beginning rather than the end of a debate which should take place.

We welcome that debate, but we do not feel that amendments to change the definition of illegal pornographic material which adults can access online is appropriate for a part of a Bill that is intended for another purpose. We believe that this should be part of a wider debate which factors in such matters as our traditional tolerance towards consenting adults and the potential consequence of more online material being driven out of reach on to the unregulated dark web if we do not get the regulation right. In this context, we appreciate the opportunity which the Minister
has proposed for a wider round-table debate on internet safety and will happily work with colleagues away from the Bill on how we can best deliver solutions to some of the wider concerns that have been expressed today.

In the meantime, we recognise that the definition of extreme pornography now proposed by the Government is not ideal. It may be only a backstop pending a fuller review of more appropriate wording. That is why our Amendment 25YW would require consultation on the definitions used in this part of the Bill and a report from the Secretary of State back to Parliament within 18 months. We think that that would be a real step forward.

Although we have sympathy with the amendment in the name of the noble and learned Baroness, Lady Butler-Sloss, we are concerned about the more prescriptive end of her review. We agree that there should be a review, but the very fact that she has already spelled out what the outcome should be causes us concern.

Our view remains that we should be looking for an updated definition based on something deliverable online and offline with equal strength. A number of definitions are out there—not just the definition of extreme pornography that we have been debating today. In other pieces of legislation there are other definitions. We need to do a job of work which is more than we can do today to consider all those definitions, consider what the Crown Prosecution Service can deliver in terms of taking action against people, and work on that basis.

I really hope that we can work together on this, because this has felt like a very divided debate. It is not; there is an enormous amount that we agree on. It is the tactics of how we go forward that we are struggling with.

In conclusion, we support the government amendments, as far as they go, but I hope that the Minister will be able to commit to a wider review with a deadline for reform—in conjunction with his Home Office colleagues, because we recognise that this goes wider than his department’s remit. I hope that noble Lords will look at our amendment and support it. I look forward to the Minister’s response.

Lord Ashton of Hyde: My Lords, this has been a wide-ranging debate and I find myself in a slightly uncomfortable position: I am taking issue with several of my noble friends but I very much agree with the noble Baroness, Lady Jones, and the noble Lord, Lord Paddick. If I may, I shall start with the amendments tabled by the noble and learned Baroness, Lady Butler-Sloss, and the noble Baroness, Lady Jones, and then move on to our amendments and reply to some of the points that noble Lords have made.

Obviously, Amendment 25YD, in the name of the noble and learned Baroness, Lady Butler-Sloss, is dependent on the preceding government amendments being passed. It provides that, three years after the Act passes, the definition of “extreme pornographic material” will cease to have effect and will be replaced by a definition of material which would not be classified—in effect, the current definition of “prohibited material”.

The debate on this has been strong on both sides, and it is an interesting idea that we have considered. However, our aim with this Bill, as has been said by several noble Lords, is to protect children from accessing pornographic material. We are creating parity between the offline and the online worlds in protecting children from being able to access pornographic material. These are different and incomparable places, and this is the closest we can get on parity of content through the age verification regime. Subject to the Bill shortly gaining Royal Assent, to specify that this should happen in spring 2020 unless a review finds otherwise by spring 2019 is in our view unnecessarily restrictive. It presents a binary choice that predetermined the outcome of any review. We know this is a fast-moving environment, and we do not know what the landscape will look like in two years’ time. Forcing the legislation into doing something which restricts the response to how children are protected online could have unintended consequences.

What we are doing now is: through the guidance to the regulator, we are providing for the regulator to report annually on the effectiveness of the regime. This will provide the opportunity to review the regime and take any necessary action. This is a big step forward without precedent, and to focus on this one issue, which is undoubtedly important, risks being able to ensure that the regime as a whole is as effective as possible in the future at preventing children from accessing pornography online.

The amendment in the name of the noble Baroness, Lady Jones, seeks to introduce that the Secretary of State must produce a report on the impact and effectiveness of the regulatory framework provided for in this part and must consult on the definitions used within this part. The report must be laid 12 to 18 months after the powers come into force. We must aim to lay the groundwork for success before the powers are introduced, and the regulatory framework we are providing will do that. However, this will be a bold new regime with many challenges and it is right that the effectiveness of the regime is reviewed. That is why, as I have just said, through the guidance to the regulator we are providing for the regulator to report annually to the Secretary of State on the impact and effectiveness of the regime. Placing a formal requirement on the Secretary of State to do this is, in our opinion, unnecessary.

The Bill is neither the end nor the extent of our interest in child internet safety. The implementation of age verification will be watched closely from day one. We have consistently recognised the need to be flexible in our approach and this will remain the case in addressing any issues that may arise. This work forms part of our wider response to online safety, and the work that has begun in the internet safety strategy demonstrates our clear commitment to ensuring that people in the UK have a positive experience online. I shall come to that a bit later. With that explanation I hope noble Lords will not press their amendments in due course.

I turn now to replies to some of the points noble Lords made about the government amendments. I echo very much the remarks of the noble Lord, Lord Paddick. For those who have not participated before in this Bill’s process, it would be helpful to repeat some of the things he said about how we got here. In some ways it is a mischaracterisation—not malicious, I hasten to add, and maybe “misunderstanding” is a better
Because it covers non-photographic child sexual abuse remarks that we were extending the remit of the IWF, the IWF. I do not think that I said anywhere in my stronger protections than currently exist online. is criminal online. But age verification will provide has made that absolutely clear—what is criminal offline will continue to be liable to be investigated by the noble and learned Baroness; violent and obscene acts not condone serious violent porn as described by the might want to think about later. For example, there is online censorship, because that is what it is, and that is wrong, and I think that noble Lords would be very reasonable question—"Why doesn't the CPS just change it?". Well, it may do in time, but one thing is certain is that the Government cannot tell the immediately? Well, it may do in time, but one thing is certain is that the Government cannot tell the its guidelines?". Well, it may do in time, but one thing is certain is that the Government cannot tell the is better than relying on the CPS guidelines. The noble and learned Baroness asked a very reasonable question—"Why doesn't the CPS just change its guidelines?". Well, it may do in time, but one thing that is certain is that the Government cannot tell the CPS to change its guidelines. That would be quite wrong, and I think that noble Lords would be very upset if we did. So we have moved to an acceptable definition of what should be blocked in the line of online censorship, because that is what it is, and that is the definition that we are proposing in our amendments. The noble and learned Baroness asked some specific questions. We accept that in using the pre-agreed definition in the 2008 Act there are some areas that we might want to think about later. For example, there is violence to women. We are absolutely clear that we do not condone serious violent porn as described by the noble and learned Baroness; violent and obscene acts will continue to be liable to be investigated by the police and other law enforcement bodies. Our amendment has made that absolutely clear—what is criminal offline is criminal online. But age verification will provide stronger protections than currently exist online. The noble Baroness, Lady Benjamin, talked about the IWF. I do not think that I said anywhere in my remarks that we were extending the remit of the IWF, because it covers non-photographic child sexual abuse images hosted in the UK, and we are not going to extend that—but we will continue to work with the IWF to strengthen the response to child sexual abuse material. We do not want to open up the scope of the line between the BBFC and the IWF. The noble Lord, Lord Gordon, asked why online prohibition was not the same as offline. The fact is that content should be aligned, and our aim has always been to ensure that protections that exist for children offline are also provided online. There is the Obscene Publications Act, for example, under which the CPS can prosecute, but it has discretion whether to do so or not; it still exists, and the CPS will still be able to prosecute in exactly the same way as before. So this Bill should be viewed alongside other work that is done in relation to online material, in particular the work of the IWF.

We have listened carefully to the criticisms that, in defining prohibited material in Part 3 as anything that would not be classified, we were going too far. Some noble Lords may not agree with that, but freedom of choice should be curtailed only after a lot of thought. We have agreed, in our internet safety strategy, to provide the opportunity to think about these things and some noble Lords have already been asked. We are not kicking it into the long grass: we have already planned round tables. The right reverend Prelate the Bishop of Chester asked about the White Paper. It is a Green Paper; we have promised to publish it in June and we are having round tables before that. As far as legislative time is concerned, I too heard the “Today” programme this morning. Of course, Brexit is going to take a lot of time, but there is still room for the domestic agenda. I think we can be certain that protecting women against violence, and other things like that, are going to be high on it, but I am giving no promises. I may be new, but I have been around long enough to know that I am not going to commit the Government to that from this Dispatch Box. However, we are taking it seriously and producing a forum, led by my department and in conjunction with the Home Office, to look at the internet safety strategy.

I do not think we have moved from an existing regime which has been around for a long time. We are not kicking it into the long grass; we have accepted amendments all the way through the progress of the Bill. We have work to do but, to get child protection online, we hope noble Lords will consider supporting the government amendments in the meantime. I beg to move.

Lord Mackay of Clashfern: The noble Lord, Lord Paddick, said that the definition of prohibited material had become somewhat “suspect”—I think that was his word. Why is that? Is it a legal definition and why has it become suspect?

Lord Ashton of Hyde: It should not really be me answering that.

Lord Mackay of Clashfern: You accepted his way of putting it.

Lord Ashton of Hyde: The reason is that the CPS decides whether to prosecute on offences as it sees them. It has guidance, which has been around for some time. The fact is—and some noble Lords may
not agree with this—that views have changed and the CPS does not always prosecute in line with its own guidance.

A noble Lord: Why?

Lord Ashton of Hyde: The reason it does not is because it has discretion in individual cases. Sometimes it thinks it is in the public interest to prosecute and sometimes it does not. When the noble Lord said that it is discredited, I think he means that the CPS does not always prosecute every situation in line with its own guidance. If I have misinterpreted what he said, I am sure he will be able to tell us.

Lord Paddick: The noble and learned Lord asked a good question. My understanding is that the definition of prohibited material which the British Board of Film Classification uses is supposed to incorporate all the different definitions in different laws about what is obscene and not acceptable. The fact is that, in regard to a number of elements of those laws, the Crown Prosecution Service no longer prosecutes people for possession of that material. The definition of prohibited material therefore includes material for which someone would never be prosecuted. To that extent, the definition of prohibited material has fallen into disrepute.

Amendment 25B agreed.

Amendment 25C

Moved by Lord Ashton of Hyde

25C: Clause 15, page 18, line 11, leave out subsection (2)

Lord Ashton of Hyde: My Lords, these government amendments are primarily designed to address the concerns of the Delegated Powers and Regulatory Reform Committee. The committee’s first challenge is defining who exactly is in scope of the new age verification regime. Amendment 25D provides for the Secretary of State to make regulations on the circumstances in which persons should or should not be treated as making pornographic material available on a commercial basis. We have provided these in draft to aid understanding of how this power will be used and welcome views before a final version is subject to affirmative parliamentary procedure. The intention of the regulations is primarily to capture those who make money or benefit from making pornography available online, including making it available free of charge. It is not the intention to capture those sites, for example, that mostly contain non-pornographic content. However, it is the intention to cover those who, for example, market themselves as making available pornographic material and who may benefit from it.

Questions have rightly been asked about pornography on social media and our approach has been to not rule out specific platforms. In the regulations we are suggesting the scope should not include sites where an overwhelming majority of users are clearly not accessing to view pornography or where an overwhelming majority of the content is not pornographic in nature. We do not want to let anyone off the hook and where pornographic material is available but not within scope, it may be that the site will be enabling and facilitating the availability of commercial pornography and subject to an ancillary service provider notification. It will depend on the facts of any given case. Many social media sites already act responsibly. We will also look at the issue further as part of the cross-government work on the internet safety strategy that my department is leading. I will say more about this later.

We accept the committee’s argument for greater parliamentary scrutiny of who the regulator is. Amendment 25R would ensure that the first designation to be made for any given function is by the affirmitive parliamentary process. As noble Lords will be aware, we have been working closely with the British Board of Film Classification as the intended regulator for much of the regulatory framework, including directing ISPs to block sites. We will come back to this in a later group, but let me say now that we have absolute confidence in the BBFC and will strongly resist anything that endangers the introduction of these important measures to protect children.

We have also addressed concerns that the regulator has too much flexibility in setting its own guidance. Amendment 25YQ provides for the Secretary of State to issue guidance to which the regulator must have regard, as is standard practice for statutory guidance. The regulator cannot choose to ignore this guidance. It provides direction to the regulator in a number of areas, including the important power of internet service provider level blocking. ISPs will be expected to take all reasonable steps to enact a notice from the regulator. We have circulated this guidance in draft. It is based on the many discussions and debates that have taken place over the previous months, but I stress that this is a draft, and we are now seeking views from parliamentarians and others before a final version is laid in Parliament.

In addition to the guidance to the regulator, we have also strengthened the requirements on the regulator in relation to the guidance it issues in Amendments 25YM and 25YA. The age verification regulator must publish guidance about the types of arrangements for making pornographic material available that the regulator will treat as being compliant and guidance about the making available of pornographic material or prohibited material. Government believe that internet sites, including social media, can be classified by the regulator as an ancillary service provider, where they are enabling or facilitating the making available of pornographic or prohibited material. This would mean they could be notified of pornographers to whom they provide a service. This guidance will now be subject to an affirmative parliamentary procedure the first time that it is made, providing further opportunity for scrutiny.

Amendment 25M requires the Secretary of State to be satisfied that the intended appeals arrangements are “sufficiently independent” as part of the designation process and we provide further details on this issue in the draft guidance to the regulator, on which I will say more in a moment. Again, we will come back to this in a later group, but we are confident that further parliamentary scrutiny at the time of designation provides an appropriate time to ensure that the arrangements are right. I beg to move.
5.15 pm

Lord Paddick: My Lords, my noble friend Lord Clement-Jones and I have Amendment 25N in this group. It is a probing amendment to test whether a “sufficiently independent” appeal mechanism against a decision of the age verification regulator is good enough. Government Amendment 25M, regarding appeals against a decision of the age verification regulator, describes the arrangements as “sufficiently” independent of the age verification regulator. Our amendment would remove the word “sufficiently” so that the amendment read: “any person hearing an appeal under those arrangements will be independent of the age-verification regulator”.

The British Board of Film Classification currently operates its own appeal mechanism against its decisions either to classify a film or DVD with a particular age classification or to refuse to grant a classification at all. That appeal mechanism is operated by the BBFC but by a panel that is independent of those who made the initial classification. To that extent, it is not wholly independent of the BBFC but it is arguably sufficiently independent to command the confidence of those seeking classification for their films and DVDs—that is, the industry can have confidence in the process.

Although this works well in practice with the proposed age regulation regulator, what if that regulator changes? This “sufficiently” independent arrangement appears to be designed around the proposed age verification regulator, the British Board of Film Classification, in a counterintuitive way—that is, not having an appeal mechanism that is totally or completely independent seems counterintuitive—because of the reputation that the BBFC has, which might not be the case were the age verification regulator to change. The wording “sufficiently independent” appears to be BBFC-specific in a way that might not be acceptable were any other regulator to be chosen. Perhaps the Minister can reassure the House on that point.

The Earl of Erroll: My Lords, I want to comment on Amendment 25D and to thank the Government for proposing new subsection (2B). One thing that worried those of us who had been thinking about how to make age verification work was the definition of “commercial basis”, which was a potential loophole for some websites. My Lords, I have read: “any person hearing an appeal under those arrangements will be independent of the age-verification regulator”.

Baroness Jones of Whitchurch: My Lords, I am grateful to the Minister for explaining the thinking behind these many amendments. I have read them and think that I understand them but I am sure that he will correct me if my interpretation is wrong. They underline the considerable amount of additional work that is still to be done if we are to get a comprehensive age verification scheme properly up and running.

The Minister will know that the Delegated Powers and Regulatory Reform Committee was of the view that many of the details should be spelled out on the face of the Bill. For example, it expected details such as the definition of “commercial basis” and the identity of the regulator or regulators to be specified at this stage. However, the provision of this information, like many other details, has been put off by the Government to a later date, to be included in the guidelines to which the noble Lord has referred and to be discussed in further debates that will be taken under their auspices.

The DPRRC also requested that guidelines on how the financial penalties should operate should be brought before this House as an affirmative resolution. I remind the House of a particularly stark criticism that it wrote at the time. It said:

“We consider it objectionable as a matter of principle that a regulator, who is to be clothed with extensive powers to impose fines and take other enforcement action, should itself be able to specify how key concepts used in clause 15(1) are to be interpreted”.

I would be grateful if the Minister could justify why what seems to be a rather straightforward piece of advice from that committee has once again been rejected. As I understand the noble Lord’s amendment, it is the offer of a negative procedure that is now being put before us, which of course does not carry the same weight.

The amendments deal also with the provision for appeals, which again were debated at length in Committee. The Minister will know that the DPRRC recommended that a statutory right of appeal should be placed in the Bill. Again this advice seems to have been rejected by the Government and, instead, they are relying on a new formulation of words specifying that those hearing any appeal should be “sufficiently independent” of the age verification regulator. As we have heard, the detail of this “sufficiently independent” regime is spelled out in the draft guidance.

I have to say that we share the view of the noble Lord, Lord Paddick, that this really is not good enough. The guidelines specify that the independent appeals panel will effectively be appointed and funded by the regulator. However, we have tabled a separate amendment—Amendment 25P, which will come up in a later group—that specifies our belief that the appeals process should indeed be fully independent of the regulator. We believe that our amendment is more appropriate than that of the noble Lord, Lord Paddick. It would be helpful if the Minister could explain why the DPRRC’s advice on this matter has been rejected.

I return now to the overall package of government amendments in the group. As I have said, they seem to flag up a great deal of further work that will need to carry on outside the Bill. As it is worded, the Secretary of State will issue guidance to the regulator and the regulator will, in turn, issue guidance for approval to the Secretary of State. That seems a rather cosy arrangement of swapping guidelines back and forth, but it is not quite clear to me at what point Parliament will have the final say in all these matters.

Some of the outcomes will come before the House in the form of affirmative regulations but others will not. We do not yet know who the regulators will be, how the age verification regime will work, how the privacy checks will work, what the definition of “commercial activities” will be, how ancillary services will be defined and, crucially, we do not know how the
internet service blocking system will work or what kind of fines will be imposed on those who fail to comply. Without wishing to overlay this, it all feels like a rather unsatisfactory piece of legislation. The amendments before us today and the guidelines that have recently been issued do little to reassure us that the Government really have got the detail of this in hand.

Regrettably, we feel that the Government are in danger of delegating far too many powers to the as yet unspecified regulator. This is an issue that we will return to in the next group of amendments. In the meantime, I look forward to hearing the Minister’s response on the points I have raised.

Lord Ashton of Hyde: My Lords, Amendment 25N in the name of the noble Lord, Lord Paddick, seeks to remove the word “sufficiently” from the appeals guideline. I will explain why we do not think that is necessary.

The draft guidance to the regulator specifies that an appointments board engaged by the regulator must appoint an independent appeals board—indeed of the regulator, government and the industries that are most likely to submit an appeal. The draft guidance explains that the members of the independent appeals board, appointed by the appointments board, should be appointed on terms and conditions that ensure their independence. Members should represent a broad spectrum of opinion and experience and be respected in their field. They should also be able to demonstrate a commitment to the standards of conduct set out in the Committee on Standards in Public Life’s The 7 Principles of Public Life. We agree that it is important that there is an independent, open, fair and transparent appeals process. Our amendment to the designation and guidance achieves this. It will deliver an appeals process that gives those affected recourse to an independent appeals panel which is not part of the regulatory body, and where the regulator has no say on who is a member and has no role in making the appeal decision.

Further parliamentary scrutiny at the time of designation will provide an opportunity to ensure that the arrangements are right. As part of the designation process, government Amendment 25Q requires the Secretary of State to lay before Parliament a statement of the reasons why she is satisfied that, for example, any person hearing an appeal will be sufficiently independent. Parliament will then have an opportunity to scrutinise this. In this case, “sufficiently independent” is an adequate description of a most robust appeals process. On that basis, I invite the noble Lord not to move his amendment.

I was somewhat taken aback by the noble Baroness’s criticism of our response to the DPRRC. We thought we had addressed—

Lord Framlingham: I hope I am right. I think Amendment 25N is in the next group.

Lord Ashton of Hyde: I am sorry, that has rather thrown me. I was saying that I was surprised by the noble Baroness. We think that we have agreed to the spirit of nearly all of the DPRRC amendments. We have not done everything to the letter but we have agreed to the spirit of its amendments. However, we have written back to the DPRRC about the classification of a regulator—which we will come to later—but that is purely because we are following other legislation.

Baroness Jones of Whitchurch: I specifically asked about the ability to impose fines and so on. That appears to be under a negative resolution in the government amendments.

Lord Ashton of Hyde: We have not designated the financial regulator. We will have to do that. I will check if it is under a negative resolution and undertake to write to the noble Baroness and talk to her about it. I cannot remember what it is, to be quite honest.

The point about the financial regulator—we will come to this in a later amendment—is that we have a disagreement about the extent to which the BBFC should carry out functions. The one thing that we are agreed on is that it should not carry out financial enforcement. We will talk later about what exactly it should and should not do. We have not yet designated who the financial regulator is—we will do that later—but we want to get the regime up and running before we decide.

The government amendments have addressed many of the points raised today and by other noble Lords during the passage of the Bill. They provide for greater parliamentary scrutiny, include affirmative procedures where there were none and provide greater clarity and direction to the regulator. The direction to the regulator will be laid before Parliament and we have invited noble Lords to contribute to that draft guidance. In all, that will give greater confidence that the measures will be in the best place possible to be successful. I beg to move.

Amendment 25C agreed.

Amendments 25D to 25F

Moved by Lord Ashton of Hyde

25D: Clause 15, page 18, line 16, at end insert—

“(2A) The Secretary of State may make regulations specifying, for the purposes of this Part, circumstances in which material is or is not to be regarded as made available on a commercial basis.

(2B) The regulations may, among other things, prescribe circumstances in which material made available free of charge is, or is not, to be regarded as made available on a commercial basis.

(2C) Regulations under subsection (2A) may provide for circumstances to be treated as existing where it is reasonable to assume that they exist.”

25E: Clause 15, page 18, line 17, leave out subsection (3)

25F: Clause 15, page 18, line 36, at end insert—

“( ) Regulations under subsection (2A) may make different provision for different purposes.

( ) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.

( ) But a statutory instrument containing the first regulations under that subsection may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Amendments 25D to 25F agreed.

5.30 pm

Clause 17: The age-verification regulator: designation and funding

Amendment 25J

Moved by Baroness Jones of Whitchurch

Baroness Jones of Whitchurch: My Lords, in moving Amendment 25J I shall speak also to Amendments 25K and 25P. They tackle three key aspects of the regulation regime as set out in Part 3. First, as we have said, we believe that a great deal more work needs to be done on the detail of the Bill, specifically on the functions of the regulators. It is important to get this right.

For example, potentially huge new powers will be available in Part 3, underpinned by large fines and considerable and as yet untested obligations laid on internet service providers, banks and advertisers. The core expectation is that these large institutions are going to help us to police pornography sites, but for this to work there has to be confidence in the competence of the regulators and that their judgments will be proportionate and legally watertight.

From our discussions so far with these groups, I do not think that we have quite reached that point. Like most people, they have sympathy with the aim of protecting children, but they remain somewhat confused about how this is going to work in practice and what their role will be. This is why we suggest in proposed new subsection (14) set out in Amendment 25P that there should be further widespread consultation about the designated functions and powers of the regulators before they are laid down in statute.

Secondly, there is the issue of who the regulator or regulators might be. As noble Lords will recall, the lack of detail about the roles that they are to perform was discussed at length by both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee, which fed their comments through during the Committee stage. I will not rehearse all the arguments again because they have been spelled out, but as an example, the DPRRC concluded:

“We think it inappropriate to delegate to the Secretary of State, with only a modest level of Parliamentary scrutiny, the decision on whom to designate as the regulator”.

The truth is that the Government have not been clear on this issue, and indeed they seem to have changed their position as the Bill has progressed without a legitimate explanation for doing so. The original letter of intent, which was sent by DCMS to the BBFC last year, made it clear that it would carry out the front end of the regulatory framework with a different, unnamed regulator of equal status carrying out the enforcement functions set out in Clauses 20 and 21. This position was maintained by the Government throughout the Commons debates on the Bill. Thereafter, in the Lords Committee stage debate, the Minister said:

“We propose that the BBFC should carry out the initial monitoring, assessing and notification work, and we are carefully considering alongside this the option for an enforcement regulator”.

[Official Report, 2/2/17; col. 1297.]

Our amendment is consistent with that position.

However, the Government’s view has changed again. In a more recent letter to the DPRRC, they say that it is intended that the BBFC should carry out all the functions apart from issuing financial penalties. Finally, at a recent meeting the Minister, Matt Hancock, began to speculate that the BBFC could in fact carry out all the functions in the Bill and that a second regulator was not really necessary. This is confirmed in the draft guidance that was produced last week. It is clear that a degree of mission creep is taking place here without an adequate explanation. That underlines our concerns that the Government have not really thought this through. It is not clear why there has been a change of heart. It might be purely pragmatic because, as we understand it, Ofcom has shown a reluctance to take on the enforcement role, but that is not a good enough reason to load all of the powers on to one body with little experience of the scale of enforcement that is spelled out in the Bill.

We continue to be clear that there are two separate regulatory functions, both with considerable responsibilities and heavy resource commitments. They are, first, identifying persons who contravene the requirement to provide age verification filters or who display extreme pornography—it may well be
that the BBFC is qualified to do that—and, secondly, taking the widespread range of enforcement actions, including imposing fines, cutting off payments and advertising revenue, and blocking sites as specified in Clauses 20 to 23. This is how the Government originally intended the system to work, and it is a mark of good governance that the two roles should be kept separate.

Our amendment would remove the option of having just one regulator and specifies that there should be two or more. The relationship between the two bodies is set out so that appropriate checks and balances are in place.

The amendment also specifies that the appeals mechanism for decisions by the regulator should be fully independent and not appointed, overseen and funded by the regulator. Again, this is an issue that we have debated previously. We do not believe that the measures set out in the draft guidance address our concerns about appeals, and I hope that even now the Minister will concede that the Government need to revisit the level of independence of the appeals mechanism and to reassure us on that matter.

Finally, our amendment specifies the need for the regulators to have the status of a body corporate, independent of the Government and with all appointments made openly and transparently. Compelling arguments on this matter were put forward in Committee by my noble friend Lord Stevenson, and we continue to believe that they should be addressed before any regulator is appointed. Unlike most regulators, the BBFC is a private company with private arrangements for board appointments. It lacks the transparency and accountability of most organisations operating in this public sphere.

It is to be appointed to a role where it will take on considerable extra functions that will be funded by the Government and with complex moral responsibilities at their heart, as we have heard in the earlier debates. We need a reassurance that its governance is of the highest standard, in keeping with the Nolan principles and open to scrutiny.

We believe that our amendments cover the essential factors which underpin a solid and credible regulatory structure. The Government should take time to make the appointments of regulators and they should think again about the drift towards one regulator, which was never originally envisaged. It is important to ensure that all the parties that will play a role in this new regime have confidence in the competence and authority of the regulators, and we believe that this can be achieved only if we consult further and widely about the functions as set out in our amendments. On that basis, I beg to move.

Lord Paddick: My Lords, I shared some of the concerns that the noble Baroness has just articulated about the role of the BBFC as both the group that will reach these decisions and the one to enforce them. However, having met with representatives of the BBFC, I have to say that I do not agree with the noble Baroness about heavy resource commitments. The BBFC is content that it should be able to carry out these roles with a minimal increase in resources. Also, bearing in mind the confidence that the industry currently has in the BBFC around classification and the awarding of certificates for films and DVDs, we are confident that were the BBFC to become the regulator, it could carry out both roles.

At the end of the day, the BBFC is not at all confident about how effective the financial penalty elements of the Bill will be, bearing in mind that the overwhelming majority of pornographic websites are hosted in other countries. In its view, the enforcement of financial penalties will be almost impossible, but it is confident that it could quickly and easily ask internet service providers to block websites that fail to provide adequate age verification. In these circumstances, we do not believe that we can support the amendments.

The Earl of Erroll: My Lords, this is an important point. Without enforcement, nothing will work. If you do not enforce age verification, no one will bother with it. For exactly the same reasons as the noble Lord, Lord Paddick, gave, I think that the notice and take-down—the blocking—is the only thing that will work. Fines will not work; it is probably a waste of time even trying them. The only thing that might work is to ask the credit card companies not to take payments for those sites, because they like to observe the law. I am concerned that the BBFC will not have resources to do this properly, but even if it goes elsewhere the BBFC should still be able to notify ISPs to block sites. That bit must certainly be enforced.

Lord Ashton of Hyde: My Lords, I am grateful to everyone who has spoken in this brief debate. The introduction of a new law requiring appropriate age verification measures for online pornography will help protect young people and children from potential harms from online pornography. It will also rightly hold commercial providers of online pornography responsible for the material they provide and profit from.

The Government of course take the protection of children and young people very seriously. To provide effective protection it is important that we have a robust regulatory system in place. These amendments seek to limit the scope of the regulatory functions that may be fulfilled by the BBFC by seeking the requirement that the same regulator must not be responsible for both identifying a non-compliant site and taking enforcement action against it. I shall first explain why, in identifying the BBFC as the preferred regulator, we think we have made the right choice.

The Government's intention is that, subject to parliamentary approval, the BBFC will be the regulator responsible for identifying websites that do not have adequate age verification or are hosting extreme pornography, and then to give notice to the appropriate persons, be they payment service providers, ancillary service providers or ISPs. It is not intended that the BBFC will be designated as the regulator responsible for issuing financial penalties. That will be a role for a separate body, yet to be determined, but which will be approved by Parliament.

We are pleased to be working with the British Board of Film Classification as the intended age verification regulator, again subject to parliamentary approval. To respond to the remarks of the noble
Baroness, Lady Jones, on structure, the BBFC is an independent, not-for-profit company that has a proven track record of interpreting and implementing legislation as the statutory authority for age rating videos under the Video Recordings Act. It has unparalleled expertise in classifying content and it is committed to delivering the aims of age verification. It is the expert on editorial judgments over pornographic and other content.

The BBFC has been classifying cinema films since it was set up in 1912 and videos and DVDs since the Video Recordings Act was passed in 1984. It continuously has to make judgments on classification, openly and transparently. These decisions relate to a multimillion-pound industry and are subject to challenge. The BBFC’s work with mobile network operators on the self-regulatory regime for mobile content is a good example of where it successfully sets content standards, implements them and adjudicates transparently and accountably.

The BBFC will not operate without oversight. It must have regard to the statutory guidance from the Secretary of State to the regulator. This will provide a further opportunity to ensure that the regulator fulfils its duties in the way Parliament sees fit. As I said earlier, we are seeking views on this guidance before a final version is laid. Ultimately, the regulator’s decision-making process will be subject to oversight by the courts as there is the possibility of challenge by way of judicial review. This prevents it acting arbitrarily.

In our view, these amendments are unnecessary for the following reasons. First, Clause 17 already enables the Government to designate a person, or any two persons or more jointly, as age verification regulators. The importance of getting this measure right means that the Government remain open-minded and retain flexibility as to how best to respond to changing circumstances. If the BBFC is proven to be unable to deliver certain regulatory functions the legislation has the flexibility to overcome these problems.

Secondly, splitting the regulatory functions in the Bill so that the same regulator cannot identify non-compliant sites and enforce against them unnecessarily creates a middleman in the process. The BBFC will have to give notice to a second regulator, which will then pass that notice on to an ISP or other appropriate body. This is just red tape for no benefit. It makes sense that the body that makes the original determination should also be responsible for notifying relevant parties affected by that determination and for ensuring that that notification action is effective in achieving compliance.

Thirdly, our ambition is to have the age verification regime in place by spring 2018. We are determined to stick to that timetable. The NSPCC has set out the scale of the problem we face and we need to get on with protecting children as quickly as we can. If we need to invent an additional regulator that can only delay the result.

5.45 pm

There will always be challenges when working with a pre-existing body on something new such as this. Equally, there are probably bigger challenges and potential delays in starting anew with the new regulator. We have every confidence in the BBFC’s ability to take on this role and the procedure for designation provides a further opportunity for Parliament to scrutinise this.

I am grateful to the noble Earl, Lord Erroll, for talking about the BBFC’s role. I remind noble Lords that it was always our intention that the BBFC would be responsible for notification of ancillary service providers, so notifying ISPs to block is an extension of this role and was introduced following an exchange of letters with the BBFC. The question of who will be the regulator for financial penalties is valid. We will continue to consider the appropriate timing for introducing financial penalties for non-compliant providers and decide who the regulator for this will be. This is the new system. This approach provides the appropriate level of flexibility and provides the right levers to ensure that providers of pornographic material will be incentivised to comply. The Government and the BBFC agree that much can be achieved through the initial stages of the regulatory framework—that is, before we get to financial penalties. This should interfere significantly with the pornography providers’ business model and provide them with a real incentive to comply with the age verification requirements.

I therefore hope that, with that explanation and reassurance, the noble Baroness will feel able to withdraw her amendment.

Baroness Jones of Whitchurch: My Lords, I am grateful to the noble Lords who contributed to the debate. Of course I accept that the BBFC has considerable experience of dealing with classification. I will not rehearse the arguments that noble Lords put forward: it is of course the case. It is well known and well documented. The part of the Bill that we are concerned with concerns the enforcement role, which goes into uncharted waters.

The noble Earl, Lord Erroll, is quite right that the idea of notice and take-down is a very different way of operating and achieving your end goals. It is quite a novel way, and I am sure we all look forward to finding out whether it will work. The idea that to get pornographers to play ball, if you like, we will cut off their advertising or their money is a great initiative, but we do not know whether it will work. More importantly, I do not know whether the BBFC has any experience of trying to oversee a regime that operates on this basis.

As I said in an earlier debate, I have spoken to some of the internet service providers, and all of the organisations we are talking about here have every sympathy with what we are trying to achieve. However, they have a huge number of questions about how this will work in practice. It is very easy to say that we should block access to the sites, but it is much more difficult technically to implement and to oversee.

We could get carried away with the BBFC being in a position to take all of these functions over. I recall that when the BBFC gave evidence in the Commons before debate on the Bill started there it had much more modest ambitions about what it was able to do. It is interesting that it has been persuaded during the past few months that it should expand its horizons, but I have seen no evidence of it having been tested whether it has the staffing, the expertise or the funding
in place, or whether it has the confidence of those whom they will regulate to carry out this role. It is with the back end of all this that we are concerned.

The Minister has implied that the Government’s thinking is the same, but if we look at what was said in the Commons, more latterly in debate here and now in writing, we see that the Government’s position on this has changed as well. I do not know that there has been an adequate explanation. As I said originally, I suspect that they do not have another obvious person lined up, so the people at the BBFC are the only ones volunteering to do it. I am not sure that that is the best basis on which to try out something which I believe could be an exciting way of achieving our aims. I am not convinced that we have yet seen the evidence that the BBFC has the skills to do it.

The Minister may not be surprised that I do not accept what he had to say. There is an issue about subcontracting all this work to a private company that is not properly overseen and regulated in the way that we would want. I beg leave to withdraw Amendment 25J but will seek to test the opinion of the House on Amendment 25P.

Amendment 25J withdrawn.

Amendment 25K not moved.

Amendment 25L agreed.

Amendment 25M agreed.

Amendment 25P disagreed.
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Arbuthnot of Eromd, L.
Ashton of Hyde, L.
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Amendment 25Q to 25S

Amendments 25Q to 25S agreed.

Amendment 25T

Amendment 25T agreed.

Amendment 25YD

Amendment 25YD agreed.
(i) if it is reasonable to assume from its nature that the video work was produced solely or principally for the purposes of sexual arousal, and
(ii) if the video works authority has determined the video work not to be suitable for a classification certificate to be issued in respect of it;
(b) material whose nature is such that it is reasonable to assume—
(i) that it was produced solely or principally for the purposes of sexual arousal, and
(ii) that the video works authority would determine that a video work including it was not suitable for a classification certificate to be issued in respect of it.

(2) Following the publication of a report under subsection (3) the Secretary of State may by regulations made by statutory instrument provide that the provisions of this Act do not cease to have effect in accordance with this section but are to continue in force indefinitely or for a specified period of time.

(3) The Secretary of State must, within a period of two years beginning with the day on which this Act is passed, review and prepare a report on the operation of the provisions mentioned in subsection (6).

(4) The review and report must consider the effect of the introduction of the definition of “extreme pornographic material” on the regulation of pornographic material under this Act and other enactments.

(5) The Secretary of State must lay a copy of the report before each House of Parliament.

(6) The sections are—
(a) section 16,
(b) section 22,
(c) section (meaning of extreme pornographic material),
(d) section 23,
(e) section 25,
(f) section 27.

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

Baroness Butler-Sloss: My Lords, I shall make a few points, although this was discussed in rather greater detail a little earlier. I start with the use of the word, “suspect” in relation to prohibited materials. It seems to me that it is suspect with the Crown Prosecution Service; it is an odd definition and does not mean that it is generally applicable. The words, “prohibited materials” were removed from the Bill as a result of the Perry amendment in the Commons: they were in the Bill anyway. It is important that that point is known. I have to say to the Minister that the move by the Government from children to adults in the amendments is due to the government amendments, which have been picked up by myself and other noble Lords. We would not have raised these issues without the government amendments. It is important to say that because I have no desire whatever to frustrate or inhibit the excellent work on age verification to be found in the Bill.

I think everybody agrees that this is now a mess. There is need for a proper debate on internet safety strategy, but it needs, if I may say so, a review with some teeth and pressure on the Government because of all the other government work there will be in the light of Brexit. The otherwise admirable amendment of the Labour Front Bench is, in my view, insufficiently strong because it has no teeth.

My amendment is not, despite what has been said, unduly prescriptive. If one looks with some care at the wording, which I am glad to say someone else drafted, subsection (1)(a) of the proposed new clause says that, “section 16(1)(g) to (i) ceases to have effect”, but that is a fallback position. It is there to require the Government, under proposed new subsections (2) to (6), to have a review and to draft a report which will be laid before Parliament. It applies only if that is not achieved within two years, and since the Government are offering at least a Green Paper by June it should not be all that difficult to have a review and a report. Consequently, the work that is suggested in this amendment meets what is needed, which is two things: that the mess should be reviewed; and that the Government should be under a degree of pressure to make sure they get on with it and do not put it into the long grass, not because they want to do so but because of the pressure of other government business. I beg to move and, if no one else wishes to speak, I should like to test the opinion of the House.

6.12 pm

Division on Amendment 25 YD

Contents 46: Not-Contents 176.

Amendment 25 YD disagreed.

Division No. 2

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Carrington of Fulham, L.
Amendments 25YE to 25YL
Moved by Lord Ashton of Hyde

Amendment 25YM

Moved by Lord Ashton of Hyde

25YM: After Clause 24, insert the following new Clause—
“Guidance to be published by age-verification regulator
(1) Subject to the following provisions of this section, the age-verification regulator must publish, and revise from time to time—
(a) guidance about the types of arrangements for making pornographic material available that the regulator will treat as complying with section 15(1); and
(b) guidance for the purposes of section 22(1) and (6) about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or extreme pornographic material.
(2) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(a), it must submit the draft to the Secretary of State.
(3) When draft guidance is submitted to the Secretary of State under subsection (2), the Secretary of State must lay that draft guidance before both Houses of Parliament.
(4) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(b), it must submit the draft to the Secretary of State for approval.
(5) When draft guidance is submitted to the Secretary of State under subsection (4), the Secretary of State may approve it either without modification or with such modifications as the Secretary of State decides should be made.
(6) Once the Secretary of State has approved draft guidance under subsection (5), the Secretary of State must lay the following before both Houses of Parliament—
(a) the draft guidance, incorporating any modifications the Secretary of State has decided should be made to it under that subsection, and
(b) if the draft incorporates such modifications, a statement of the Secretary of State’s reasons for deciding that those modifications should be made.
Amendments 25YE to 25YL agreed.
Amendment 25YM agreed.

Amendment 25YN

Moved by Lord Paddick

25YN: After Clause 24, insert the following new Clause—

"Anonymity

(1) Age-verification providers must be approved by the age-verification regulator.

(2) In this section an "age-verification provider" means a person who appears to the age-verification regulator to provide, in the course of a business, a service used by a person to ensure that pornographic material is not normally accessible by persons under the age of 18.

(3) The age-verification regulator must publish a code of practice to be approved by the Secretary of State and laid before Parliament.

(4) The Code must include provisions to ensure that age-verification providers—

(a) perform a Data Protection Impact Assessment and make this publicly available,

(b) take full and appropriate measures to ensure the accuracy, security and confidentiality of the data of their users,

(c) minimise the processing of personal information to that which is necessary for the purposes of age verification,

(d) do not disclose the identity of individuals verifying their age to persons making pornography available on the internet,

(e) take full and appropriate measures to ensure that their services do not enable persons making pornography available on the Internet to identify users of their sites or services across differing sites or services,

(f) do not create security risks for third parties or adversely impact security systems or cyber security,

(g) comply with a set standard of accuracy in verifying the age of users.

(5) The code must include provisions to ensure that publishers of pornographic material take full and appropriate measures to allow their users to choose the age-verification provider of their preference.

(6) Age-verification providers and publishers of pornographic material must comply with the code of practice.

(7) To the extent that a term of a contract purports to prevent or restrict the doing of any act required to comply with the code, that term is unenforceable."

Lord Paddick: My Lords, Amendment 25YN is in my name and that of my noble friend Lord Clement-Jones. This is a retabling of the amendment that we tabled in Committee to ensure that the details of those applying to have their age verified in order to access adult material on the internet remain anonymous.

I will not repeat at length the arguments I made in Committee. The Government are going to force individuals to go through an age verification process which they did not have to engage in before. To do that, they will have to prove their age by providing sensitive personal information to an organisation. Many of those organisations will create databases containing that sensitive personal information, which could become the target for hackers and criminals. As I said in Committee, there have been some high-profile cases of such unauthorised access to sensitive information in relation to porn sites and other similar sites in the past, with devastating consequences for those exposed. This amendment seeks to guarantee that age verification solutions ensure that the identities of those seeking to do the right thing and to have their age verified, rather than getting around the regulations by using for example a VPN, are protected. It would require the age verification regulator to approve age verification solutions and ensure that, as part of that, anonymity is protected.

Rather than accepting the amendment, the Government appear to be moving in the opposite direction. On page 6 of their draft guidance to the age verification regulator, the Government state in paragraph 5:

"There are various ways to age verify online and the industry is developing at pace. Providers are innovating and providing choice to consumers. The Regulator will not be required to approve individual age verification solutions".

Whatever your Lordships may think of anonymity, the first and most obvious question is: how will the age verification regulator know whether the solution will effectively verify age if it does not have to approve that solution? At paragraph 6, the draft guidance goes on to say:

"The privacy of adult users of pornographic sites should be maintained and the potential for fraud or misuse should be safeguarded".

The draft guidance talks about not duplicating the role of the Information Commissioner’s Office and says that the focus of the age verification regulator should be on age verification.
In my discussions with the British Board of Film Classification, it has said that it has no particular interest or expertise in the area of data protection in relation to keeping confidential the details of those seeking age verification. We will end up with an age verification regulator that forces users of adult material on the internet to use an age verification solution but has no responsibility for approving such solutions.

In any event, the draft guidance is something to which the regulator has only to regard to. We believe that if UK users of online adult material are to be forced to verify their age—it is only UK users, as those in other countries will not have to do this—the Government have a particular responsibility to ensure that their sensitive personal data, which they would not otherwise have to put at risk, does not get into the wrong hands. That is what this amendment seeks to achieve and I beg to move.

6.30 pm

The Earl of Erroll: My Lords, I will say a few words on this very quickly. I thoroughly approve of the premise of the amendment, which is to ensure that some websites do not try to cheat; in fact it would not be a bad idea to put it in the Bill.

I ought to declare an interest: I have been chairing a steering group working on British Standards Institute Publicly Available Specification 1296 on age checking. The whole idea is that this could be used in order to test the procedures and organisations doing age checking.

One of the things that it mandates is privacy; it mandates that age checking must be general data protection regulation compliant. The real purpose behind this is that at the point when someone thinks of visiting a pornographic website there should be no requirement for that person to identify themselves to that website. It is perfectly possible at that point to bounce off the website with a token from that website to someone outside who may know about the person and can check their age, and then they can send back an encrypted token that can be stored saying, “This person, whose name I am not going to reveal to you, is over 18”. That is all it does. That can then be data checked and unwound by someone with proper judicial authorisation, if something goes wrong. However, it could be that some websites will try to get around that. That is why the amendment is good: they would have to comply. I do not know whether that is somewhere else in the regulations, but having it in the Bill would be a good thing.

Some people say, “How can you stay anonymous?” The simple answer is that if you then wish to subscribe to the website and buy some of its product, and you freely give up your credit card, I am afraid that you will not be anonymous. However, that is your choice once you are in. The initial stage of just wanting to view the site should be anonymous, and we should reinforce that.

Baroness Jones of Whitchurch: My Lords, I echo many of the concerns raised by the noble Lord, Lord Paddick. We added our name to a similar amendment in Committee and there was a broad degree of support for the principles that were expressed. The amendment returns to the essential need to protect the identity of those who are over 18 and legitimately want to access pornographic sites without having their personal details compromised in the age verification process.

The noble Earl, Lord Erroll, has been very helpful in explaining how the privacy systems would work, using a two-stage process to prove someone’s age and then giving them an encrypted token to use on adult sites. We agree with this model and would like to see it widely adopted. It assumes that age verification would be carried out by a separate age verification provider who has the specific technical skills to carry out these checks securely. However, we also agree that technology is moving on apace and that it would be a mistake to be too prescriptive. We believe that a code of practice, as set out in the amendment, would deliver the protections while allowing that to happen.

That brings us to the draft guidance on the regulator, which the Government published last week and which addresses the issue of privacy. We believe that of all the parts of the draft guidance, the section on privacy is indeed a step forward. It puts the onus on the regulator to work with the Information Commissioner’s Office to ensure that systems are in place to check a user’s privacy while having regard to the Data Protection Act. While we welcome that, we would also like it to address the need for users to have a choice of provider. Again, that is something that we debated at an earlier stage.

In addition, we have a continuing concern that the only provision for data protection breaches is for the ICO to be informed, rather than necessarily for it to act. I hope that the Minister will be able to reassure us that, if there are such breaches, they will indeed be followed up by action.

I hope that the Minister will be able to reassure us on these points. However, we feel that progress is being made on this subject. Depending on what the Minister is able to say in response, it may well be that we will ask the noble Lord, Lord Paddick, not to press the issue at this time.

Lord Ashton of Hyde: My Lords, I thank the noble Lord, Lord Paddick, and the noble Baroness, Lady Jones, and I thank the noble Earl, Lord Erroll, for his expertise in this area—age verification, I am talking about.

I have some sympathy with the noble Lord and the noble Baroness on this because we, too, have absolute desire for anonymity in these matters. So the Government have sympathy for the intention behind the amendments, but we feel that they go too far and that this amendment is therefore unnecessary. We have already made provisions to cover these concerns under government Amendment 25YQ, which provides that the Secretary of State may issue guidance to the regulator. I assure noble Lords that we approach this issue with the utmost seriousness. We have set out the draft guidance, which noble Lords have mentioned. It is of course draft guidance and, as we say at the beginning of it, we welcome comments—so perhaps some of the comments from today’s debate can be incorporated.

A person making pornographic material available on a commercial basis to persons in the United Kingdom must have an effective process in place to verify that a
user is over 18. This age verification already takes place online, from the gambling industry to mobile phone content to purchasing age-protected goods. There are various ways to age-verify online, as the noble Earl explained, and, as the industry is developing rapidly, it is expected that new age verification technologies will develop over time.

Providers are innovating and providing choice to customers. We agree that the process of age verifying for adults should rightly be focused on the need to establish that the user is aged 18 or above, rather than seeking to identify the user. As I have said, age verification controls are already in place without the approval of the age verification providers. For example, licensed gambling sites are required to have age verification controls that are not subject to pre-approval by the regulator but must take account of data protection laws.

We recognise that pornography provides a unique challenge in this space, which is why we are ensuring that the measures in place are stronger than currently exist. As such, the draft guidance to the regulator—I am pleased that in this area at least the noble Baroness, Lady Jones, gave her qualified approval—sets out the detail of how this should be done. Rather than setting out a closed list of age verification arrangements, the regulator’s guidance should specify how it will assess in any given case that the requirements have been met.

The draft guidance, which was published last week, is clear that the process of age verifying for adults should be concerned only with the need to establish that the user is aged 18 or above, rather than seeking to identify the user. The privacy of adult users of pornographic sites must be maintained. We do not want the regulator to duplicate the role of the Information Commissioner’s Office, the UK’s independent body set up to uphold information rights. The draft guidance states:

“The process of age verifying for adults should be concerned only with the need to establish that the user is aged 18 or above, rather than seeking to identify the user. The privacy of adult users of pornographic sites must be maintained. We do not want the regulator to duplicate the role of the Information Commissioner’s Office, the UK’s independent body set up to uphold information rights. The draft guidance states:

That is pretty clear, I think.

As also set out in our draft guidance, the age verification regulator should work with the ICO. The regulator should be clear in its guidance on the requirements that age verification services and online pornography providers will have regard to under data protection legislation and, furthermore, that a privacy-by-design approach should be taken, as recommended by the ICO.

It is right that we do not seek here to duplicate the existing legislative and regulatory framework, but we must ensure that they are built into the age verification process in a meaningful way. We have always been clear that adults should be able to access legal pornographic content and individuals should rightly be protected from unintended consequences when doing so. As I said, we have produced a draft of the Secretary of State’s guidance and are certainly happy to have further discussions ahead of the final version being laid.

Baroness Thornton (Lab): Could I invite the Minister to be slightly less gentle with those supporting this amendment by saying not that it goes too far but that it is a wrecking amendment? It would drive a coach and horses through this legislation.

Lord Ashton of Hyde: I had not thought of that. I am absolutely sure that that was not the intention. However, in the meantime, I would like the noble Lord to withdraw his amendment.

Lord Paddick: My Lords, I thank in particular the noble Earl, Lord Erroll, for his support on this amendment and acknowledge the work that he is doing in this field. The noble Baroness, Lady Jones of Whitchurch, said she echoed many of our concerns—and in Committee, Labour Peers added their names to the amendment. It proposes a code of practice, the content of which would be specified in the Bill, but it would provide flexibility, in that it sets out only the minimum requirements of such a code.

The Minister said that the Information Commissioner’s Office is responsible for data protection, but the Information Commissioner’s Office is designed to ensure that people who voluntarily put their personal information into the internet are protected—and this is not a voluntary process. This is making it compulsory for anybody who wants to access adult material to give their personal data, which they would not otherwise have to do. We therefore think that the protections should be greater than those provided by the Information Commissioner’s Office.

As the Minister himself said, privacy is more important when it comes to accessing pornography than it is when accessing, for example, gambling sites. We are not reassured. The draft guidance that the Government have issued is only guidance that a regulator should have regard to; it does not have teeth at all. We therefore find both the draft guidance and the explanation given by the Minister inadequate for protecting the identities of those who seek age verification. I therefore wish to test the opinion of the House.

4.63 pm

Division on Amendment 25YN

Contents 74; Not-Contents 199.

Amendment 25YN disagreed.

Division No. 3

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Fox, L.
Garden of Frognal, B.
Gardiner, R.
Goddard of Stockport, L.
Amendment 25YP

Moved by Baroness Buscombe

25YP: Clause 25, page 27, line 7, leave out “prohibited” and insert “extreme pornographic”

Amendment 25YP agreed.

Amendment 25YQ

Moved by Baroness Buscombe

25YQ: After Clause 25, insert the following new Clause—“Guidance by Secretary of State to regulator
(1) The Secretary of State may issue guidance to the age-ve regulator in relation to the exercise of the regulator’s functions, and may from time to time revise that guidance.
(2) The guidance may cover (among other things) the following matters—
(a) considerations to be applied in determining—
(i) whether arrangements for making pornographic material available comply with section 15(1);
(ii) whether a person is an ancillary service provider, for the purposes of section 22;
(b) the approach to be taken by the regulator to the exercise of its powers to give notices under sections 20, 22 and 23;
(c) the preparation and publication of guidance and reports by the regulator and the content of such guidance and reports;
(d) the maintenance by the regulator of arrangements meeting the requirements of section 17(4)(a) and (b).
(3) The regulator must have regard to the guidance.
(4) The Secretary of State must lay before both Houses of Parliament the guidance, and any revised guidance, issued under this section.”

Amendment 25YQ agreed.

Amendment 25YR

Moved by Baroness Jones of Whitchurch

25YR: After Clause 26, insert the following new Clause—

“Code of practice for commercial social media platform providers on online abuse
(1) Within six months of the passing of this Act, the Secretary of State must publish a code of practice about the responsibilities of social media platform providers to protect children and young people from online abuse and bullying.
(2) The Secretary of State may bring the code of practice into force by regulations made by statutory instrument.
(3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
(3) The code of practice must include—
(a) the overarching duty of care of internet service providers and social media platform providers to ensure the safety of a child or young person involved in any activity or interaction for which that service provider is responsible;
(b) the obligation to inform the police with immediate effect if notified that content on social media sites contravene existing legislation;
(c) the obligation to remove content with immediate effect if notified that posts on social media sites contravene existing legislation;
(d) the obligation to have specific terms of use that prohibit cyber-bullying and provide a mechanism for complaints of cyber-bullying to be received and for the offending content to be removed; and
(e) their responsibility to work with education professionals, parents and charities to give young people the skills to use social media safely.
(4) Commercial social media platform providers must comply with the code of practice, once it is in force.
(5) The Secretary of State may from time to time revise and re-publish the code of practice.

(6) The Secretary of State may bring into force a revised and re-published code of practice by regulations made by statutory instrument.
(7) In this section—
“commercial social media platform provider” means a person who operates on a commercial basis an internet site on which people can interact;
“cyber-bullying” means material that has the effect of seriously threatening, intimidating, harassing or humiliating children and young people.”

Baroness Jones of Whitchurch: My Lords, I beg to move Amendment 25YR and support Amendment 33A in this group.

Our amendment requires the Secretary of State to publish, within six months of the Bill being passed, a code of practice for all social media sites obliging them to put in place mechanisms to prevent children from being abused and bullied online. In the context of the rest of Part 3, we have specifically focused the amendment on the protection of children and young people, although we would expect such a code to have a wider benefit for adults suffering abuse. The amendment would require both Houses to approve the code and, once in place, it would be a statutory requirement on social media sites to comply. Although the full detail of the code is not spelled out, it would include requirements to inform the police if advised of illegal posts, and to take them down with immediate effect. In addition, it would require social media sites to have terms of use to prevent cyberbullying and abuse, including clearly spelled-out mechanisms for taking down the offending material.

We believe that these measures will ensure, finally, that the social media companies begin to take their responsibilities seriously. Action is overdue, which is why we have inserted a relatively tight but achievable timetable—and we make no apologies for that.

We have rehearsed in Committee many of the arguments why this intervention is crucial. I will not repeat them all, but we believe that the case for action to rein in the social media sites is now compelling. The charity Childnet has reported that one in four teenagers suffered hate incidents online last year, and that figure continues to rise. The NSPCC has reported that two-thirds of young people want social media sites to do more to protect them, with exposure to hate messages, pro-anorexia sites, self-harm sites and cyberbullying all on the increase.

Girlguiding revealed in a survey last year that 20% of girls were sent unwanted pornographic films or images without their consent. When I met a delegation of Girl Guides last week, they described how the bombardment of sexualised images was creating huge body-confidence issues and normalising sexist behaviour in schools.

I could go on, but the point is that all these statistics are going in the wrong direction. There is no culture of safeguarding children’s safety and well-being online. As a result, children are being frightened, intimidated, bullied and coerced on social media sites.

Since our last debate in Committee, we have received further evidence of the failure of the social media sites to act when illegal material is brought to their attention. If anyone is in any doubt about the need for our amendment, they have only to recall the example of Facebook, which, on being informed by the BBC that
obscene images of children were being posted on its site, failed to remove the vast majority of those posts and then had the audacity to report the BBC to the police when it was sent further examples for it to follow up. Similarly, the Home Affairs Select Committee. Google’s vice-president admitted that it had allowed a video entitled “Jews admit to organising white genocide” to remain on its site despite admitting that it was anti-Semitic, deeply offensive and shocking. This latest evidence underlines why we feel that action is needed now.

When we debated this issue in Committee, the Minister gave what I felt to be a rather complacent response. He argued that a statutory code was unnecessary and that the onus should be on companies to develop their own in-house processes to deal with the issue. Of course, shortly after that, the Secretary of State decided that leaving it to the companies to sort out on their own was not really good enough after all, and that a new internet safety strategy would be launched, including round tables with the media companies and, as we have heard, a Green Paper in the summer. That is okay as far as it goes, but it does not go far enough. We believe that we have left it to the social media companies to change their behaviours on a voluntary basis for far too long. That is why our amendment has a timetable and a requirement for the eventual code to be placed on a statutory basis.

7 pm

Finally, for all those who are worried that these are global companies and therefore difficult to regulate, I ask noble Lords to look at the Australian system. They have already passed the Enhancing Online Safety for Children Act 2015. This Act requires all social media sites that have terms of use to prohibit cyberbullying and abuse. It also establishes a children’s e-safety commissioner to deal with complaints and ensure that material is taken down. Of course, the social media sites being regulated are precisely the same ones which operate in the UK. At the same time, the Sunday papers over the last weekend reported that Germany is talking about introducing a similar statutory scheme. So let us not say that this cannot be done.

In conclusion, we believe that whatever discussions are now taking place with social media sites—and of course any discussions are welcome—they would be more fruitful if they concentrated on a draft code of practice that would ultimately be binding on them. Surely we owe our children and young people reassurance if we are finally to act on this issue.

Baroness Janke (LD): My Lords, I support Amendment 25YR and will speak to Amendment 33A, which is in my name. We certainly need to look much more closely at the duty of online providers and their responsibilities. Amendment 25YR refers to the overarching duty of care that agencies must have to children. Both amendments address the need to oblige these online providers to report incidents on content that are likely to contravene existing regulations and likely to come up to the criminal test as used in prosecutions.

The obligations also include that the content should be removed with immediate effect. As we have already heard, this has proved difficult in many cases and very many people say that they have tried to have offensive material removed unsuccessfully. Amendment 25YR refers to a code of practice, and mentions that it needs specific terms that prohibit cyberbullying and provide a mechanism for complaints, as well as for the removal of the offending material. The other thing I particularly welcome about this amendment is the obligation to work with educators, technical professionals and parents to ensure that young people have safe use of the internet.

Amendment 33A would extend this principle rather wider. I am sure we all support measures to prevent cyberbullying of children. It is also fair to say that it is not just children who suffer in this way. Many members of minority groups, disabled people and people with learning difficulties—in fact, people who are in some way different—come in for regular forms of abuse. People just like you and me, having disagreed with somebody, come in for torrents of vile, unpleasant and absolutely unacceptable bullying on the internet. I believe that this would not be allowed in newspapers. Somebody would not be allowed to abuse someone else in a pub. The landlord would be responsible and I believe that it is time we took the online providers to task and made them take some responsibility for what appears and what they allow.

The Minister, in reply to my amendment last time mentioned the fact that existing legislation already provides the means to do this. In fact, I think over 30 statutes refer to these measures and have not yet been consolidated—added to which, there are laws coming online that will make it even more difficult to have a consolidated approach, such as the revenge porn legislation and law on streaming of child abuse. It is becoming increasingly complex and we need a much firmer approach.

It was also mentioned that the Home Office had £4.5 million to address this issue; I understand that this was largely for the measures and resources that the police needed to prosecute criminal acts in this way. The last thing the Minister referred to was that the Law Commission was consulting on this issue. My understanding of that consultation is that it is about improving people’s behaviour on the internet. It does not at all address the online providers. This Bill offers an opportunity to address an appalling practice that is becoming even more prevalent, and I hope that the Minister will agree to incorporate these amendments in the Bill.

Baroness Howe of Idlicote: My Lords, I am very happy to support the amendment—to which I have added my name—which would bring in a statutory code of practice for media platforms with the important aim of preventing online abuse.

As I said earlier, Part 3 is a child protection measure. Young people use social media. The 2016 Ofcom children and media report devoted an entire chapter to YouTube, social media and online gaming. Around 72% of 12 to 15 year-olds have a social media profile, with Facebook being their main social media profile, and three in 10 of these 12 to 15 year-olds visit their social media account more than 10 times a day. In the last few weeks we have heard about Facebook not taking down child sexual abuse images. Last week, the
Baroness Howe of Idlicote: Home Affairs Select Committee in the other place grilled representatives of Google, Facebook and Twitter on their response to online abuse and hate crime as part of their inquiry into hate crime and its violent consequences.

This amendment is in line with the Government’s objectives to keep children safe. I am expecting the Government to come back and tell us that the UK Council for Child Internet Safety produced guidance for social media sites in 2015, entitled Child Safety Online: A Practical Guide for Providers of Social Media and Interactive Services, and that therefore this code of practice is just not needed. While I commend the good work of UKCCIS, the news of the last few weeks leaves me convinced that without a statutory code we are not doing enough to protect children and to support parents. Parents have to navigate completely new technological terrains. They have no reassurance that there are consistent standards across social media sites, nor what they are. Last year a third of parents said they were concerned about their child being the subject of cyberbullying. Part of the requirements of the code would ensure that social media sites worked with, “education professionals, parents and charities to give young people the skills to use social media safely.”

I fully support this initiative. Ofcom reports that 52% of parents of eight to 11 year-olds and 66% of parents of 12 to 15 year-olds talked to their children about cyberbullying. This is encouraging, but how much more encouraging if parents know that if they talk to their child about Facebook, the same rules apply on other social media sites and vice versa.

We expect to make our children safe in the physical spaces they occupy every day and have no hesitation in using the law to do so. We need to be doing the same online so I fully support Amendment 25YR to introduce a statutory code of practice for social media platforms.

Lord Alton of Liverpool: My Lords, I support the amendment proposed by the noble Baronesses, Lady Jones and Lady Janke, but also the remarks of my noble friend Lady Howe. I want to ask the Minister, when he comes to reply, about an issue that I raised in your Lordships’ House previously, and that is the issue of suicide sites on the internet. It concerns me that young people can be encouraged to visit those sites and take their own lives. Only a year ago I attended a school prize giving in a north-west school, and the headmaster told me when I arrived how a child in that school had taken their own life only the day before. As noble Lords can imagine, that was a terrible tragedy not only for the family but for the whole school, and it rather changed the atmosphere on that occasion. That child had been visiting one of the suicide sites on the internet, and the headmaster discovered that several other children had been doing the same.

It can be revenge porn or the kind of trolling to which the noble Baroness referred, the harassment of young women in particular, or the whipping up of xenophobia, racism or anti-Semitism, but it is right that there should be a code of practice, and we should get on with it. I hope that the Minister will tell us more about the Green Paper, what the framework will be for it and when we are going to start to look at these issues seriously.

Lord Ashton of Hyde: My Lords, I am grateful to all contributors on this important subject. We take the harm caused by online abuse and harassment very seriously. The measures that we have introduced in this Bill show that the Government are taking this seriously. I hope that I can offer some comfort in this area since we last discussed these two amendments in Committee.

Amendment 25YR seeks to require Ministers to issue a mandatory code of practice to ensure that commercial social media platform providers show a duty of care to ensure the safety of a child or young person using their service; to report and remove illegal posts on social media; prohibit and remove cyberbullying; and to undertake to work with the education profession and charities to provide children with digital safety skills. Amendment 33A seeks to impose a duty on “social media services” to respond to reports posted on their site of material which passes the “criminal test”, being that the content would, if published by other means or communicated in person, cause a criminal offence to be committed. I have two responses to these amendments—first, an explanation of the work that this Government have started to address these issues through our internet safety strategy; and, secondly, some fundamental concerns about their drafting.

The UK is leading the way in online safety, and will continue to do so, with the support of industry, parents, charities, academics, and other experts, and this is a firm priority for this Government. We have been absolutely clear that abusive and threatening behaviour is totally unacceptable in any form, online or offline. On 27 February, my department announced that it is leading cross-government work on an internet safety strategy which aims to make the UK the safest place in the world to go online for children and young people. This work will also address the abuse that women suffer online, as we look at trolling and other aggressive behaviour, including rape threats. We will ask experts, social media companies, tech firms, charities and young people themselves about online safety during a series of round tables later this month, and we will use these discussions to understand more about the scope of the problem and identify where there are gaps in our current approach to tackling online harms.

We will continue to consult closely with interested parties throughout the spring, including Members of this House with expertise in this area. Indeed, we have already invited several noble Lords to take part. A key part of this work will be to clearly set out the responsibilities of social media in respect of online safety as part of a Green Paper which will be published in June. Other priorities will include: how to help young people to avoid risks online; helping parents to face up to the dangers and discuss them with their children; and how technology can help provide solutions.

We have not ruled anything out at this stage, including a code of practice, but this is a complex field and to find the right solution we need to take the time to have a proper conversation with all the leading stakeholders. We would not want anything to prejudice the outcome.
of these discussions. We believe that this will result in a properly considered, comprehensive approach to online safety which stakeholders are fully signed up to, and one that will deliver the long-lasting protections that these amendments are seeking to secure.

7.15 pm
I turn to the amendments. We have some fundamental concerns about how they are drafted. We have three main concerns about the amendment that would require a code of conduct for social media companies. First, while we fully agree that social media companies should be socially responsible to their users, to require them to have an “overarching duty of care” for “any activity or interaction” of young people on their platforms goes too far. It is unclear how this would be measured or what the parameters of such a duty would be.

Secondly, the amendment would require social media companies to inform the police about posts that contravene existing legislation. This would require social media companies to take a judgment role about whether content is legal or not, effectively handing them the power to police the internet. We would be extremely concerned about giving these companies this degree of authority.

Finally, the definition of social media companies is unclear and goes wider than the sorts of sites we think that the amendment seeks to cover. It would include any website or forum where users can interact, including through comments, live chats or reviews, from major retail websites to newspaper sites. That clearly goes far beyond the remit of child protection and would be unworkable, unwelcome and disproportionate.

In relation to the “criminal test” amendment, we have similar concerns about the definition of “social media service”. More fundamentally, the law is very clear that what is illegal offline is illegal online, and we have processes in place to establish this. It should not be left to social media companies, or their users, to take a judgment on whether in their view content is criminal or not.

It is clearly right that we take the most effective action possible to remove vile material from the internet. We strongly believe that the internet safety strategy is the best mechanism to consider what more social media companies can do in this area. In the meantime, government is already working with social media and interactive services to have robust processes in place quickly to address inappropriate content and abusive behaviour on their sites.

We have all read the recent news stories about vile content hosted on social media companies. This Government believe that those companies have a responsibility to make sure their platforms are not used as a place to peddle hate or celebrate horrendous acts of violence. We are already talking to those companies and they are responding to those concerns. In particular, advertising revenue is an effective and salutary lesson for them.

We also expect online service providers to play a key role to protect their users and to ensure they have relevant safeguards and reporting processes in place, including access restrictions for children and young people who use their services. Social media companies already take down content that is violent or incites violence, if it breaches their terms and conditions. However, it is extremely difficult to identify where the threat has come from and whether the threat is serious.

We have referred already this evening to the Internet Watch Foundation, and its data confirm that good progress is being made. It works with companies to identify and remove illegal child sexual abuse material. In 2015, it processed 112,975 reports, and 68,543 were confirmed as child sexual abuse material. Yet only 1% of URLs were on social media sites.

I apologise if I gave the wrong impression in Committee—we are not complacent at all. We know that there is more to do and I give a firm commitment to the House that we will consider all available options through our internet safety strategy. For example, the noble Baroness, Lady Jones, mentioned the Australian system. We are carefully considering those international best practices, including Australia’s approach, as part of the strategy.

The noble Baroness, Lady Janke, mentioned the problem of the plethora of relevant laws on, for example, cyberbullying. There are laws in place to protect people when bullying behaviour constitutes a criminal offence, for example under the Protection from Harassment Act 1997, the Malicious Communications Act 1988, the Communications Act 2003 and the Public Order Act 1986. I think that proves her point. We will take those things into account in the internet safety strategy.

The noble Lord, Lord Alton, mentioned suicide sites. That is, of course, something that needs to be looked at and we will include those in our strategy.

We are working on this now. As I said, it will be published in June. We will bring forward the implementation of proposals as quickly as possible thereafter. I hope that noble Lords, especially the noble Baronesses, Lady Jones and Lady Janke, are reassured that we are taking the necessary strides to keep children and young people safe online. I therefore ask the noble Baroness to withdraw the amendment.

Baroness Jones of Whitchurch: My Lords, I am grateful to the Minister. We support and agree with many of the initiatives that he has outlined. As has been said before, there are opportunities for us to participate in discussions on the Green Paper and the wider issues of internet safety. We welcome all those initiatives, but the list which the Minister gave very much puts the onus on parents, children and everyone else in society to behave well, be better educated and have the proper tools to navigate the internet safely. It did not put so much of an onus on the actual problem, which is that social media sites are encouraging and facilitating this bad behaviour.

Although we do not want to take anything away from the Government, there is still a major problem. The voluntary initiatives that we have so far required social media sites to take have not come up with the goods. The Minister said that things were getting better. I disagree; things are getting worse. We have heard examples from around the Chamber that children are feeling more intimidated and bullied; they are accessing suicide sites in a quite unacceptable way. Sites are not taking down this material when it is
drawn to their attention. There continues to be a rather urgent challenge. Without wishing to overplay the Australian model, one can put systems in place to make this happen. It is not beyond their technical capacity to put the measures in place—they just need the proper encouragement. I do not want to take anything away from what the Government have said, but there is a level of urgency with this particular problem about social media sites.

The Minister also said that he had a problem with the wording of the amendment. I do not see what is wrong with an “overarching duty of care” for young people. It is all encompassing and I would hope that any responsible social media site would broadly welcome it. The wording of the amendment. I do not see what is wrong with an “overarching duty of care” for young people. It is all encompassing and I would hope that any responsible social media site would broadly welcome

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7.35 pm

Clause 27: Interpretation of this Part

Amendments 25YS to 25YV

Moved by Baroness Buscombe

25YS: Clause 27, page 28, line 19, at end insert—

“(extreme pornographic material) has the meaning given in section (Meaning of “extreme pornographic material”).”

25YT: Clause 27, page 28, line 22, at end insert—

“(pornographic material) has the meaning given in section 16:”

25YU: Clause 27, page 28, line 23, at end insert—

“(2) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this Part as it applies for the purposes of that Act.”

25YV: Clause 27, page 28, line 23, at end insert—

“(3) Nothing in this Part affects any prohibition or restriction in relation to pornographic material or extreme pornographic material, or powers in relation to such material, under another enactment or a rule of law.”

Amendments 25YS to 25YV agreed.

Amendment 25YW

Moved by Baroness Jones of Whitchurch

25YW: After Clause 27, insert the following new Clause—

“Report on this Part

(p) Within 18 months, but not before 12 months, of the coming into force of this Part the Secretary of State must produce a report on the impact and effectiveness of the regulatory framework provided for in this Part.

(2) Before publishing this report, the Secretary of State must consult on the definitions used within this Part.

(3) The report must be laid before each House of Parliament.”

Baroness Jones of Whitchurch: My Lords, I do not intend to reopen the debate but we were not reassured by what the Minister had to say at the time. Therefore, we wish to test the opinion of the House on this matter.

7.36 pm

Division on Amendment 25YW

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Amendment 25YW agreed.

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7.46 pm

Consideration on Report adjourned until not before 8.35 pm.

Non-Domestic Rating (Rates Retention) and (Levy and Safety Net) (Amendment) Regulations 2017

Motion to Approve

7.46 pm

Moved by Lord Young of Cookham

That the draft Regulations laid before the House on 20 February be approved.

Lord Young of Cookham (Con): My Lords, the business rates retention scheme, which was introduced in 2013-14, allows local government in England as a whole to retain 50% of the business rates it collects locally. These regulations change the regulatory framework governing the day-to-day operation of the business rates retention scheme. The changes, which are highly technical, are necessary, first, to ensure that the scheme adapts to the impact of the 2017 business rates revaluation and, secondly, to reflect the fact that from 1 April 2017 a number of authorities will be piloting 100% business rates retention.

Starting with the changes that need to be made because of the revaluation, the business rates retention scheme currently provides that some of the 50% of business rates that authorities retain is redistributed between them to ensure that no area is disadvantaged by having a small business rates base. This redistribution is achieved through what are known as “tariffs” and “top-ups”. Tariffs take money from authorities which are relatively rich in business rates when compared to their spending needs, and this is then redistributed through top-up payments to authorities which are relatively poor.

Tariffs and top-ups were set in 2013-14 based on the difference between the business rates that authorities were expected to collect in that year and their relative need, as established in that year’s local government finance settlement. Thereafter, they were uprated annually by inflation. Any growth, or decline, in local business rates after 2013-14 has not been taken into account in future years’ tariffs and top-ups—hence, authorities have an incentive to grow their business rates bases, as, by doing so, they keep 50% of the benefits of growth.

However, as a result of the business rates revaluation that will take effect on 1 April 2017, the amounts of business rates that authorities will actually collect in 2017-18 will be very different from what they collected in 2016-17. If, for 2017-18, we were simply to uprate the existing tariffs and top-ups by inflation, as we have done in the past, authorities could find their income from business rates substantially changed for reasons quite unconnected to their efforts to secure growth but due to revaluation.

Therefore, when we set up the scheme in 2013, we announced that we would adjust tariffs and top-ups to strip out the impact of revaluations. During the summer we consulted on the methodology for doing that, and new tariffs and top-ups for each authority were approved by Parliament as part of the most recent local government finance report.

Because business rates can decline as well as grow, the business rates retention scheme, under which local government keeps 50% of locally collected business rates, also provides for safety net payments to authorities that see their business rates income fall significantly. These are paid for by charging a levy on authorities whose business rates income grows. Tariffs and top-ups are used as part of the calculation of levy and safety net payments. The detailed calculations are set out in secondary legislation, which currently sets out the “old” tariffs and top-ups due to and from authorities. Therefore, these regulations amend the regulatory framework to ensure that the new tariffs and top-ups are used in these calculations.

The regulations also give effect to the 100% rates retention pilots, which the Government have set up to take effect from 1 April 2017. These were announced in the summer as a way of testing elements of the new 100% business rates retention scheme that will be rolled out more widely in 2019-20. Local authorities in Cornwall, Greater Manchester, the Liverpool City Region, the West Midlands and the west of England will be piloting the new arrangements in 2017-18 and, as a result, will keep all the local business rates they collect, subject to the normal arrangements in the system which redistribute some of their business rates income through tariffs and top-ups. In return, they will forgo some revenue grants from central government—most notably, revenue support grant—and their tariffs and top-ups will be further adjusted to ensure that the pilots are effectively cost-neutral.

The GLA will also keep a higher share of the business rates that will be collected by London boroughs in 2017-18. In return, it will give up its revenue support grant and take on responsibility for funding nearly £1 billion of grant to Transport for London. The regulations will make the necessary changes to the administration of the business rates retention system to ensure that the sums paid and received by the pilot authorities over the course of the year reflect the new pilot arrangements.

To sum up, the regulations make technical changes to the administration of the business rates retention system to reflect the impact of the revaluation and to
allow the 100% rates retention pilots to operate from 1 April 2017. Without the changes, authorities would not receive the income from the business rates retention scheme that they are expecting and for which they have budgeted. I commend the regulations to the House and beg to move.

Lord Beecham (Lab): My Lords, I must first apologise to the Minister for missing the first minute of his speech; I hope it was not full of fresh information that I ought to be aware of. As far as I am concerned, and I think the same goes for my noble friend, there is no particular objection to these regulations. It is interesting, however, to hear about the proposed pilot schemes—I suspect that the good citizens of Surrey will be waiting with bated breath to see whether they will be included in the pilot scheme. Although the Minister cannot indicate the outcome of ongoing discussions with other authorities, perhaps he can tell us when a decision will be made.

Part of the problem faced by authorities, and by the Government themselves, is the delay in this revaluation—I think it should have occurred in 2015. Will the Minister tell us whether it will be possible to decide on and then stick to a regular period for revaluation? The longer the gap, the greater the impact appears to be, and that is certainly part of the current reaction.

There is also a real problem, not dealt with in these regulations, about the appeals process. The Local Government Association—I remind the House, such as it is, of my local government interests—points out that there have been more than a million appeals from business rate properties since 2010, and 200,000 of those appeals are still waiting to be decided. This has led councils to hold back £2.5 billion in reserves in case they have to meet their 50% share in respect of refunds; 50% is payable by councils and 50% is payable by the Government. The system is clearly creaking around what it is capable of resolving in relation to the appeals system. I wonder whether the Government will look at that system and at the funding that is required to be put in place when there are appeals.

Finally, one of the reactions to the announcement was to point out the strange apparent outcome that very large operations such as Amazon and Sports Direct, with their massive out-of-town sheds, get a very low business rate, whereas the shop on the corner pays a disproportionately high amount relative to those very large concerns. Are the Government looking at that anomaly and, if so, when will it be resolved? It certainly concerns anybody living in a city area, where business rates income will now be crucial to the services that the authorities can provide, and yet these large institutions, mainly outside urban areas, will both compete with those in our towns and cities and themselves have very little to pay by way of business rates. That anomaly should surely be addressed.


The context of these regulations is one in which there is an increasing lack of confidence in the sustainability of local government finance over coming years. There are several reasons for this, which have been well documented. It is partly about rising demand and it is partly about reducing income. However, there is no doubt that there is simply not enough money to do all the things that local government needs to do.

Despite declining income, however, business rates have not been reducing, and they are very high in international terms. They have become a major burden for many small businesses, even for some that will gain from the revaluation. The situation has become acute for many high street shops and pubs. Competition through internet purchasing from retailers not in shopping centres and that have lower business rate bills has become a major source of concern.

It is true, as the Government keep reminding us, that this revaluation is revenue neutral overall. Three-quarters of businesses will not pay more, but that means, of course, that one-quarter will pay quite a bit more. I acknowledge that there are transitional arrangements, and they will be important. However, the revaluation still means very high bills for some.

Thirty years ago we had a local domestic tax, a local business rate and a revenue support grant from central government, with a strong needs-based element in the government grant regime. I think that that needs assessment is now in danger of being inadequately reflected in government thinking. Much has changed since business rates were nationalised almost 30 years ago, but one thing has not: need remains in both absolute and relative terms and should be fully reflected in government policy.

I draw the Minister’s attention to a comparison that I think is important, between corporation tax and business rates. Business rates raise around £28 billion and corporation tax raises around £43 billion. Corporation tax is being reduced to 17% by 2020, and in my view that reduction cannot be justified when business rates could be made lower. I think that the continued reduction of corporation tax helps bigger businesses—that those that pay corporation tax—but smaller businesses that pay business rates but not corporation tax are getting a higher bill as a consequence of their exposure to business rates.

8 pm

The noble Lord, Lord Beecham, asked about the scale of appeals, and he said there was a backlog with the Valuation Office Agency of some 200,000 cases. I thought there were around 280,000 cases, so it will be interesting to have the up-to-date position from the Minister. However, the current rate of resolution of those appeals is only a quarter of the 280,000 that I think the figure is in a year. In other words, there is already a backlog of about four years. There will then be a huge rise in the number of appeals as a result of the revaluation. Has there been any discussion about the number of staff that the Valuation Office Agency has? It seems that it needs more.

Can the Minister also confirm what the Government have agreed for meeting the cost of appeals? The noble Lord, Lord Beecham, talked about the 50:50 split, but the Government have indicated that they are willing to pay more money as a contribution. I would be grateful if the Minister could confirm the detail of what that means.
I think it is wise to have the business rate retention pilots, and I am really pleased that they are taking place in as many places as is now planned. It is important to understand the impact of government policy, in terms of both need and equalisation, on some areas. I draw the Minister’s attention to HS2, a long-term project. There is clear evidence that where major infrastructure goes in, much of it with government/public funding support, it raises values. Where the Government decide to invest in infrastructure, values rise; and when values rise, the business rate income for those areas will also rise. One of the consequences is that, because development investment is likely to be higher in the places where the infrastructure investment has taken place, those parts of the UK that do not have major infrastructure investments may find they have lower business rates income, in comparative terms, as a consequence. It is not wise for government policy to lead to a situation in which some parts of the country have greater difficulty in raising money from business rates. For that reason, equalisation will matter in the years ahead. It is not something that will just disappear in the course of the next two to three years.

Baroness Pinnock (LD): My Lords, I draw the attention of the House to my entry in the register of interests as a councillor in the borough of Kirklees and as a vice-president of the Local Government Association.

I wish to draw the House’s attention to the significant number of factors that are changing in the system of a 100% business rate retention and the consequences of those changes. We welcome the move to more locally raised funding for local services because it brings with it less reliance on the variation in perception of local government by different national government Ministers. Such a substantial change brings considerable uncertainty, and as local authorities are already grappling with substantial funding changes, this adds to the risks of councils being able to budget to meet local needs. The fact that the move to 100% retention coincides with the significant and overdue business rates revaluation has added to the complexity of what is being considered and how it will work out in practice. Consequently, there is an expectation that there will be a large number of business rate appeals, to which the noble Lord, Lord Beecham, and my noble friend Lord Shipley have already drawn attention. While it is to be welcomed that the Government have established a central fund for payment where appeals are successful rather than the existing system of a 50:50 share with local authorities, it must be fully funded; otherwise it will fall into disrepute.

A 100% business rates retention scheme brings with it both winners and losers. An analysis by the House of Commons Select Committee last year estimated that the winners are more likely to be in all the regions to the south of Birmingham, with the northern regions and the Midlands being net losers. Although government estimates are that local government as a whole will gain by between £10.5 billion and £12.5 billion a year, many local authorities will not gain and will rely on the system of tariffs, top-ups and the new levy system to allow equalisation.

This redistribution through tariffs and top-ups will be absolutely critical if local authorities that are currently not in a position to raise sufficient funding are to be able to meet local needs. This must be done on the basis of an individual council’s needs and not on a regional, sub-regional or combined authority basis as there can be wide variations even between adjacent local authorities, again as the House of Commons committee report of 2016 demonstrated. The safety net is a critical factor and the detail of how this will operate is fundamental to enabling local authorities to deliver essential public services.

The other crucial factor in these considerations is the frequency of the so-called resets—the length of time between business rate revaluations. Obviously businesses, wanting certainty, would want a longer period, but local authorities, reliant on income from business rates and with fluctuation in need, will want a more frequent reset. It will be interesting to hear from the Minister about the lengths of time between resets that the Government are considering. It will also be interesting to hear what action the Government propose to take if, for instance, a large retailing business closes within a local authority and it therefore loses the income from that company’s business rates. Would there be compensation for what could be a significant loss of income?

In addition to these variables, the Government are proposing that local authorities should have new responsibilities as a result of the increase in funding that will be gained by them from the 100% retention scheme. I am relieved that the attendance allowance scheme has now been excluded from the suggestions that the Government originally made, but I hope—perhaps the Minister will be able to give some reassurance—that they will not use the opportunity of local authorities gaining from additional funding to pass on more responsibilities than the funding available. That would be quite a cynical move and would just add to the cuts in local authority funding.

The Government have yet to spell out the arrangements for sharing business rates in two-tier authorities. Perhaps the Minister can throw some light on how that will happen. I would also like to hear from the Government about the central list of major public utilities whose business rates are centrally gathered. It would be nice to know which is on that list, what business rates in total they bring in, and how the money will be redistributed. I have not been able to find a list. I am sure there is one, but it is a little list that I have not been able to find.

A final uncertainty in this major reform of local government finance is the fair funding review, which I hope will live up to its name. The assessment of need referred to by my noble friend Lord Shipley is the fundamental building block for providing local councils and the people they serve with an assurance that councils will be able to meet their basic needs.

The Government are making substantial changes to local government finance at the same time as large cuts are being made to local government funding. This brings with it risks and uncertainty as well as an inability to plan for the long term. We seek assurances from the Government that these changes will not, first, result in even more significant cuts to funding for those councils that will struggle to increase business
Baroness Pinnock: I have some information on it. Secondly, can the Minister give an assurance that there will be a fair equalisation mechanism? Thirdly, will he take into account the significant changes in income or, as I have referred to, between the reset periods? Fourthly, will the fair funding review enable all local authorities to meet the needs of the people they represent?

Finally, I look forward to the Government providing information about the one-liner I spotted today in the Local Government Finance Bill:

“The Government will amend the related approach to the setting of council tax referendum principles”.

I have thrown that in in the hope that the Minister will have some information on it.

Lord Kennedy of Southwark (Lab): My Lords, in debating these regulations I refer noble Lords to my entry on the register of interests. I declare that I am a local councillor in the London borough of Lewisham and a vice-president of the Local Government Association.

The first set of regulations, as we have heard, governs the payments to and from authorities and to the Government, while the second set governs the operation of the levy and the safety net for 2017-18, taking into account the revaluation and the 2017-18 business rates pilots. The amendments make provision for the following: allowing the pilot authorities, including in Greater Manchester, Liverpool City Region, West Midlands and West of England and Cornwall, not to pay a central share. There is to be a reduced central share in London to allow for the fact that the GLA will now receive Transport for London investment funding through business rates rather than a grant. The West of England Combined Authority is to receive 5% of business rates as well. There are changes to the baseline funding level for all authorities in line with the 2017 revaluation and the rise in RPI. Changes are made to the levy rates to reflect revaluation and the fact that the levy will not be payable for authorities in the pilot areas.

I have no issues with these regulations as they stand, but I have a few general observations and questions for the Minister. As we move to a system whereby local authorities keep their business rates, the Government need to ensure that the implementation is fair and provides councils with the resources they need to deliver services. Some areas will be able to generate large sums of money from their business rates while others, despite working on and growing their local economies, will struggle to generate sufficient business rate income to meet the demands placed on them. We have heard about the schemes in place to equalise that—the noble Baroness, Lady Pinnock, referred to them. Can the noble Lord comment on ensuring that the scheme to take account of imbalances has a very local focus rather than the focus being at the regional and combined authority level? I agree strongly with the comments of the noble Baroness in that respect. Can the Minister give local authorities some comfort by saying that the Government are aware of this issue and will be responding to it?

Can the Minister also comment on the trend of the Government to place more and more obligations on local authorities but not to provide the funds to meet them? It is a worrying trend that we have seen developing. I would certainly want to see extra business rates income being used to relieve existing funding pressures before we get to the additional responsibilities to be funded through business rates retention.

Can the Minister also say something in respect of business rates appeals, a point raised by other noble Lords in their contributions, and the risks associated with them for local government? My noble friend Lord Beecham and the noble Lord, Lord Shipley, both referred to this issue. I contend that local authorities holding £2.5 billion in case they need to refund money due to successful appeals is not the most efficient way to proceed.

8.15 pm

I also agree with the comments of my noble friend in respect of large organisations having little to pay in respect of business rates in comparison with high street shops and the important loss of income to local authorities. The noble Lord, Lord Shipley, made an important contribution about the question of need and the issue of corporation tax paid by large companies falling while the business rates faced by small businesses and the high street rise year on year, as they are doing again today. The noble Baroness made the point about the significant risk to local authorities caused by a number of factors in the larger than normal expected rate of appeals due to the revaluation.

I have also been thinking about the position of hospitals. We often hear about hospital budgets being under pressure, but they too have the potential to be affected by the increase in business rates. Again, I do not know whether schools pay business rates, and if so they could well be affected in terms of pressures on their budgets. It would be helpful if the noble Lord could respond to these points. However, I have no issue per se with the regulations before the House and I am happy to agree to them.

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in what has been on the whole a consensual debate and I shall try to answer the questions that have been raised. If I cannot, I will write. I did not think that we would get through this debate without Surrey being mentioned. The position is that Surrey County Council informed the Government that it wanted to become a 100% business rates retention pilot area, but was told that would not be possible for 2017-18. We said that, subject to due process and meeting the necessary criteria, it could participate in the 2018-19 pilot scheme. We explained that other councils had also had discussions with the department about becoming 100% pilots. We went on to announce that all councils will be free to apply to participate in a 2018-19 pilot programme and that the Department for Communities and Local Government would publish more information shortly.

I agree entirely with what the noble Lord, Lord Beecham, said about the need for regular revaluations, both to minimise the turbulence each time you do it and to make sure that we have an up-to-date tax base for local government. We have already said that we are looking at the revaluation cycle with a view to reducing the time between revaluations.
A number of noble Lords mentioned appeals. We are looking at changing the way in which appeals are dealt with under 100% rates retention so that individual authorities do not have to bear the risk of appeal losses. We are currently discussing the mechanics of doing this with the LGA and the sector with a view to removing some of the risks to their income from these appeals. Perhaps I can write on the backlog when I have the most up-to-date figures.

The noble Baroness, Lady Pinnock, asked what would happen if a local authority lost a substantial business rate payer in its area. When I introduced these regulations I mentioned that there was a safety net. There will continue to be one under 100% rates retention. We are discussing the detail of a new safety net with the LGA and the sector and will announce detailed proposals later in the year. The noble Baroness also made the valid point that not all local authorities will gain from 100% business rates retention. That is indeed the case. Redistribution and the timing between resets—in other words, how frequently we assess or reassess the needs of an authority—will be critical. Again, we are discussing the timing of this with the LGA, but we have indicated that we might reset the needs more frequently than under the 50% schemes. I hope that is of some reassurance to the noble Baroness.

We then heard about the anomalies in business rates between large rural businesses and small urban businesses. As noble Lords know, business rates reflect the rental value of the properties that businesses occupying them take. Businesses take decisions on location reflecting those differences. In recent years we have taken a number of steps to reduce the bills of small businesses, including some measures in the Budget and the permanent doubling of small business rate relief. Perhaps I could write about the question raised on the staff of the VOA who are needed to deal with appeals and the resources behind them.

The noble Lord, Lord Shipley, made the point that corporation tax has been going down whereas business rates have been going up. He drew attention to the imbalance. The only point I would make on that is that the rate of corporation tax is important to ensuring that this country remains competitive in an international world. The rate of corporation tax is a barometer of competitiveness in a way that business rates are not.

There was a valid point on Amazon. All businesses pay rates on the property they occupy, including Amazon. It is true that businesses that do not use high-value property or have a high internet profile will reduce their business rates bill, but of course business rates are not the only tax on those businesses. They will pay national insurance contributions on their employees and if they are making a profit they will pay corporation tax.

An issue was raised that is raised in every debate about local government about the Government putting more responsibility on local authorities without giving them the resources to discharge them. I remember making those points back in the 1960s when I was a local councillor. As part of the move towards 100% business rates retention we will give authorities some £12.5 billion of additional resources from which to fund the new responsibilities that they assume. To meet the perfectly valid point raised by a number of noble Lords, we are discussing the functions that will be devolved to local authorities with the LGA and with the local government sector. The new scheme will take account of imbalances through redistribution via tariffs and top-ups, and of the frequency with which, as I said a moment ago, we reassess the needs and reset the tariffs and the top-ups, in response to a point made by the noble Lord, Lord Kennedy.

We have stressed the importance we place on the fair funding review. We have been discussing the methodology of assessing needs with the LGA and with the sector. Again, we hope to publish further details in due course.

The noble Baroness, Lady Pinnock, raised the central list, which brings in about £2 billion per year. Perhaps I could write to her on the details of exactly where that money goes. The noble Lord, Lord Kennedy, raised a number of issues. As always happens when he winds up, I do not always have time to assess the in-flight information in time to respond to him, but he made valid points about hospitals, schools and a number of other issues. Perhaps I could write to him when I have assembled an up-to-date and authoritative response.

These regulations provide for changes to the day-to-day administration of the business rates retention system. The changes reflect decisions already made by Parliament in the Local Government Finance Report for 2017-18 about the percentage share of business rates that local authorities are to keep and the tariffs and top-ups that they are to pay or receive during the course of 2017-18. They deliver on the Government’s commitment to ensure that authorities are not financially disadvantaged as a result of the business rates revaluation that comes into force on 1 April. They also provide for the 100% business rates retention pilots in Greater Manchester, Liverpool City Region, Cornwall, the West Midlands, and in the West of England, and, to a more limited extent, in London. They ensure that the agreements reached with those authorities can be implemented and that the Government can learn lessons from those pilots before 100% business rates retention is rolled out more generally in 2019-20. I commend them to the House.

Motion agreed.

8.23 pm

Sitting suspended.

Digital Economy Bill

Report (2nd Day) (Continued)

8.35 pm

Clause 31: Disclosure of information to improve public service delivery

Amendment 25YX

Moved by Baroness Hamwee

25YX: Clause 31, page 30, line 22, after “person” insert “to the extent the disclosure is necessary and proportionate”

Baroness Hamwee (LD): My Lords, on behalf of my noble friend Lord Clement-Jones and myself I beg to move Amendment 25YX and will speak to the other amendments in this group, which are all about...
limiting disclosure—but, I want to stress, limiting it in what we regard as an appropriate way, accepting that there are benefits in information sharing but perhaps with more of an eye to privacy considerations than are in the Bill.

The first of the amendments would provide that disclosure of information should be only to the extent necessary and proportionate in connection with public service delivery. This is both because we regard “no more disclosure than is necessary and proportionate” as being important but also, in this context, because disclosure goes outside and beyond public authorities. We have tabled similar amendments to clauses dealing with debt, fraud and research.

In evidence to the Public Bill Committee, the Information Commissioner wrote:

“Proportionality and necessity are key to ensuring data sharing complies with data protection and human rights law”,

and that,

“the Bill does not directly correlate with these concepts”.

Our amendments would put these notions in the Bill. The ICO also commented on bulk data sharing. She wrote:

“As more data is shared ever more widely … big data analytics are used in complex and unexpected ways”. Our Amendment 28CB would require the civil registration official to be satisfied that disclosure is proportionate to the recipient’s requirement.

Bulk data sharing is so significant that we think it should be reviewed after three years. Amendment 28CF refers particularly to the review covering public attitudes, the use of the powers, the availability of alternative mechanisms, and security considerations.

Amendment 26A takes us to a point that I raised in Committee. We would like to understand what is meant by individuals’ and households’ contribution to society in the context of improving their well-being. This is a condition for disclosure. What is additional in this phrase to the health and social and economic well-being provided for elsewhere in the clause? The expression is paternalistic and judgmental—and, probably more importantly for this purpose, it suggests a concern more for an advantage to society than to the individual or household. That goes against the thrust of the data sharing for public services, which is framed as being for the benefit of individuals and households.

We are also concerned that the exceptions to the protections include the prevention of anti-social behaviour. In Committee, the Minister said that people have a right to be protected against such behaviour. We would not argue against that, but “balance” is a term often used from that Dispatch Box and we think that the balance here is right out of kilter. Protection against anti-social behaviour is very different from protection against serious physical harm and so on. By definition— the definition being that there is a provision elsewhere— anti-social behaviour is not criminal behaviour.

The Government have explained this, as I said at the previous stage, but we do not believe that they have justified it. Nor have they justified exceptions for any crime, which is why our amendments would limit crime here to serious crime, which we have defined using the definition used in the Investigatory Powers Act.

I have to say that not a lot of Clause 36 would fall within the DPA “vital interests” provision.

Next, in Committee we asked about the use of the definition of personal information rather than building on the DPAs personal data. The Minister told the Committee that to the extent that personal information is not governed by the DPA,

“we still expect that information will be handled in accordance with that framework because of the requirements of the codes of practice”.—[Official Report, 6/2/17; col. 1259.]

Indeed, it would be the codes of practice, not the statute. Our Amendment 28AU is an opportunity for the Minister to answer the Information Commissioner’s observation that there is a gap here. There are compensatory safeguards under the DPA—they apply under the DPA but seem not to apply under the Bill.

We remain concerned that an individual whose information is disclosed should be informed. My noble friend Lady Janke referred to the transparency that is necessary for public trust in the process. I completely agree with that. The Minister was concerned that, if a fraud were being investigated, you would not go out and tell the alleged fraudster what you were doing. I hope that the amendment answers that point, because it is a relatively narrow situation that should not preclude doing what is right more generally.

Amendment 28BM has been tabled to seek an explanation of Clause 40(4), in particular its wording, “similar to that made by section 38”.

Clause 38 gives powers to HMRC and, as I read it, HMRC will have powers to lift restrictions on disclosure. So, under Clause 40, does this mean that a specified person has a power to lift the restrictions? That does not seem right to me. I have undoubtedly misunderstood it—but, if I have done so, perhaps one or two other people would misunderstand it, too.

Amendment 39 is rather different: a sunrise clause—it could have been a sunset—to explore further how all this fits with the new rules that will come into effect in May 2018, when we will still be in the EU, under the EU general data protection regulation and the law enforcement directive. The GDPR will strengthen provisions on processing only the minimum data, on privacy notices with explicit requirements for data protection by design and default, and on data protection impact assessments.

We were assured in Committee that Part 5 is “compatible”—that was the word used—with the GDPR. Thinking about that afterwards, I wondered whether that meant that Part 5 was not inconsistent but possibly not as wide as the GDPR. We were told:

“When the regulation comes into direct force, we”— that is, the Government— “will look at the provisions of the Act and the codes of practice to ensure that they are consistent with it”.—[Official Report, 6/2/17; col. 1490.]

Given that there will be a need to share certain data with other EU states after the date when we leave, how will all this be done? I hope that the Minister can share with the House the Government’s proposals for checking that there is more than just consistency and that, more particularly, nothing is left out. I beg to move.
The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I am obliged to the noble Baroness, Lady Hamwee. Amendment 25YX and the related Amendments 28CB, 28CG, 28DV and 28FD seek to impose an express requirement that the public service delivery power may be used to share information only to the extent that it is necessary and proportionate to do so. That covers the changes to debt fraud research and similar civil registration provisions in the Bill. With respect, the amendments are unnecessary as the powers will need to be exercised in line with the Data Protection Act and the codes of practice, which already require that only the minimum data necessary to fulfil the particular objective may be shared. It is therefore unnecessary to amend in accordance with this proposal.

The effect of Amendment 25YYD would be that the list of specified persons permitted to use the public service delivery power could be amended only to add or remove bodies. The removal of the word “modify” would affect the way that minor amendments could be made. I do not believe that the noble Baroness, Lady Hamwee, expressly referred to this amendment, but as it is listed in this group as her amendment I just mention the point because clearly it is necessary that there should be a degree of flexibility in how that provision operates.

Baroness Hamwee: I apologise; I thought that was in another group, though I received a note later. I would like to understand how extensive a modification might be.

Lord Keen of Elie: I am obliged to the noble Baroness. I am happy to explain within this group, where I understand the amendment remains. The removal of the word “modify” would affect the way in which minor amendments could be made. For example, where a body changes its name or the description of the category of a body needs to be adjusted, you would then want to modify rather than delete and start again.

Amendment 26A seeks to remove reference to, “the contribution made by individuals or households to society”, from the public service delivery chapter. Again, I venture that the amendment is unnecessary because subsection (10) gives examples of “well-being” but does not provide an exhaustive list. Therefore we have three categories by way of example—but only by way of example. In response to the specific observation made by the noble Baroness, Lady Hamwee, I respectfully suggest that there is nothing paternalistic or judgmental about any of the examples given in the Bill. Indeed, where a party makes a contribution to society, that benefits the contributor as well as society, which is why it is appropriate that it should be given as an example in this context.

Amendment 28AU would provide a new definition of “personal information” for the purposes of the public service delivery power. This point was raised in Committee as well. The amendment expressly incorporates the definition of “personal data” under the Data Protection Act 1998 into the definition of personal information for the purposes of these powers, as well as making clear that the Bill’s extended definition also includes deceased individuals and companies. We consider that the existing provisions set out the same position, albeit in slightly different words. I note that reference was made to the issue in Committee, and to the provision of codes of practice in that context.

The intention of Amendment 28AY seems to be to provide greater transparency by ensuring that individuals would know when information about them has been shared. Existing provisions in the Bill already require those using the powers to comply with Data Protection Act requirements as to the information that people are given about the usage of their personal data. This, supplemented by the requirements imposed by applicable codes of practice, ensures that the use of these powers will be as transparent as it can be.

Amendments 28AR and related amendments seek to narrow the exceptions to the general rule in Clause 36(1) that personal information received under the public service delivery powers may be used only for the purpose for which it was shared, to the effect that such information may not be shared for the purpose of preventing anti-social behaviour, and to restrict the exception permitting disclosure for the purpose of preventing or detecting crime to “serious” crime, as indicated by the noble Baroness. These amendments would also bring in an offence of disclosing personal information for the purposes of anti-social behaviour. The prevention of anti-social behaviour and the prevention or detection of crime are matters of significant public interest. If information sharing indicates potential criminal activity, public authorities should be able to take action. Similarly, if information received under the powers indicates that anti-social behaviour is occurring or is likely, we consider that this information should be disclosable to maintain public order. Anti-social behaviour may itself be seriously harmful to those who become its victims.

Amendment 28BM seeks to remove the power given by Clause 40(4), which allows regulations to make disclosures by newly specified persons subject to the same conditions that apply to disclosures of information provided by HMRC. That power would be used to require the consent of the original provider to any subsequent disclosures of particularly sensitive information, as is the case for information provided by HMRC under Clause 38. The amendment is undesirable, as it would remove flexibility to give enhanced protection to information from certain sources. I do not believe the noble Baroness read the provision in that form, but it is there so that enhanced protection may be given in a particular circumstance.

Amendment 28CF would impose a duty on the Secretary of State to review the civil registration power after three years, akin to the powers already provided in the debt and fraud powers. This duty was included in the debt and fraud powers to assess whether the powers deliver demonstrable benefit via an initial piloting process. The information gathered in the course of the pilot process will provide evidence for the review. It is our view that a similar duty to review the civil registration power would not be appropriate. First, civil registration information is already a matter of public record. Secondly, the powers are simply looking to update outmoded legislation to simplify and provide the flexibility to
share civil registration data within the public sector to avoid the need to enact specific powers whenever a new need arises. The power has been developed to support a range of public authorities at national and local government level to transform the services that they can provide to citizens.

Finally, Amendment 39 is intended to ensure that Part 5 could not be brought into force until after the GDPR comes into effect, which would be in May 2018. This would prevent the use of the powers until that date, which would be unhelpful given that a number of bodies are keen to use the powers to achieve particular objectives, such as extending the warm home discount scheme. As we have said before, we consider that the present provisions are compatible with the GDPR—compliant, therefore, in that context—and we are committed to revisiting the codes of practice before May 2018 to ensure that they reflect the latest best practice of compliance with the GDPR.

In those circumstances, I invite the noble Baroness to withdraw her amendment.

Baroness Hamwee: My Lords, I thank the Minister, but all that will bear some reading. We felt it important to extend some of the comments that we made in Committee to get a more extended response. Noble Lords will be pleased to know that I shall not respond to all those points. On the Minister’s first point about “necessary or proportionate”, I do not know whether he means that I misread the ICO’s comments, that the Government disagree with the ICO, or whether some of the changes to the Bill since its initial form have dealt with them. Perhaps I should just leave that hanging.

The fact that the “contribution to society” is an example does not answer our concerns. I remain anxious about it, as I do about “anti-social behaviour”, which the Minister described as being a matter of significant public interest. I do not dispute that, but data sharing is a matter of significant public interest—I suggest, possibly greater. We are told that anti-social behaviour may be seriously harmful, but it is not criminal in this context, because we have other provisions to deal with crime.

I was indeed confused about the application of the HMRC powers to other bodies, and I remain confused about whether that extension is appropriate.

Finally, of course civil registration information is a matter of public record, but the updating takes us into a very different regime. The ability to share information in bulk is very different from that to look up individual pieces of information. Can the Minister tell the House today whether the consultation to which he referred extended beyond the sharing organisations to the sort of bodies concerned with privacy? He may not know, and I may be quite out of order in asking this on Report. I do not think he is going to leap to his feet—pause—no, he is not. I do not hold that against him. It is probably not in his brief. If there was not such consultation, that answers my point.

However, clearly, I should beg leave to withdraw the amendment.

Amendment 25 YX withdrawn.
information disclosed under Clause 60(1), and which originates from one of the tax authorities, now applies only to disclosures made by the person who first receives the information but not those within the accreditation system who subsequently receive the information—for example, to undertake peer review or via intermediaries. These amendments therefore restore a key safeguard to the research power, which ensures that information is protected in all parts of the process.

Amendments 28FW, 28FX, 37 and 38 provide new data-sharing powers for Scottish Revenue and the Welsh Revenue Authority. Clause 70 provides the power for HMRC to share de-identified data, allowing HMRC to share aggregate and general information more widely, for purposes in the public interest. Following discussions with the Welsh Government and the Scottish Government, as requested by them, we are providing equivalent powers for devolved tax-raising bodies.

Amendment 28FY, tabled by my noble friend Lord Hunt, is supported by the Government. There is a recognised sound public policy argument for supporting the more effective operation of the Employers’ Liability Tracing Office, referred to as ELTO. The discussions at Lords Committee sparked further conversations between HMRC and ELTO officials, resulting in an agreement to take this amendment forward. This Bill has offered a timely opportunity therefore to legislate. The current clause meets the objective of helping ELTO improve its records of employers’ liability insurance policies, making it easier to identify insurers and so enable claimants to pursue compensation. Both parties recognise that there remains some work to do and it is currently unclear as to how effective HMRC data may be in helping to populate missing data. However, an enabling provision would allow more robust testing of the possibilities, with the opportunity to take these forward.

Amendments 40 and 41 enable commencement of measures by area so that the Government can ensure that measures are not commenced for Northern Ireland in the event that the Northern Ireland Assembly has not given legislative consent. Consent from the Northern Ireland Assembly is required on a number of measures, including the extension of public lending right to e-book loans, Part 5 of the Bill on digital government, the Northern Ireland provision in relation to Ofcom and, should the government amendment be agreed, the offence of breaching limits on ticket sales.

In consequence of the potential need to commence the Bill by area, these amendments also provide the power to make necessary transitional provision. The transitional powers will also be used to define small businesses in the statistics chapter of Part 5 until definitions in the Small Business, Enterprise and Employment Act 2015 come into force. I beg to move.

Lord Hunt of Wirral (Con): I declare my interest as a partner in the global law firm DAC Beachcroft, and other interests set out in the register, including chairing the British Insurance Brokers Association and being president of the All-Party Parliamentary Group on Occupational Safety and Health. Taken at face value, Amendment 28FY would appear somewhat technical, but the Employers’ Liability Tracing Office is working well, but it could work better, and this amendment would help to facilitate that.

I am so grateful to the Minister and his colleagues for the support that they have given to this amendment, which could make a substantial difference to the capacity of the office to help to secure compensation, expeditiously and effectively, for those affected by industrial illnesses. When someone faces a reduced quality of life and possibly an avoidably and unnecessarily early death because of an industrial illness innocently contracted, the least that we can do is to deliver compensation as quickly as possible in the hope that the individual with the illness can enjoy at least some benefit from it. I believe that in some small way the amendment will serve to make this a more civilised and compassionate country.

Baroness Hamwee: My Lords, we have two amendments in this group. The Minister was just a little previous in answering Amendment 25YYD on modification, so we do not need to go back to that. Amendment 33ZYD would remove several organisations from the list of specified persons for the purposes of fraud provisions, and the amendment is here to enable us to ask whether all these require the data-sharing gateway or, conversely, whether there are many other government-related organisations; I am not quite sure what the correct term might be for organisations such as the National Lottery or the British Council, but I shall use the term government-related organisations tonight. Are there not others that might use the power? What were the criteria used to select the ones that are in the schedule?

Lord Keen of Elie: I am obliged to my noble friend Lord Hunt and note what he said with regard to the amendment. On the amendment proposed by the noble Baroness, Lady Hamwee, Amendment 33ZYD, which seeks to remove a number of non-departmental public bodies listed in the schedule for the fraud power, I accept that the list in the schedule is long but the fact is that many public authorities are at serious risk of fraud. Each of the bodies was considered individually before being added to the schedule, and the NDPBs have been included because they each administer many millions of pounds in grant expenditure each year, which exposes them to a significant risk of fraud.

Baroness Hamwee: Were any organisations considered and discarded for that purpose?

Lord Keen of Elie: I am not in a position to say what number of bodies were considered and discarded, but I will undertake to write to the noble Baroness on that point. All the public bodies included in the schedule must, of course, comply with the data-sharing safeguards in the Bill. Clearly, public authorities may not enter into data sharing lightly. They will have to follow the codes of practice, comply with the Information Commissioner’s requirements on data sharing and privacy and have in place all necessary protections to prevent unlawful disclosure.

The list of public bodies in the government amendments is shorter than the lists we have previously published in draft regulations although, as I indicated to the noble Baroness a moment ago, I do not know
[LORD KEEN OF ELIE]

how many bodies were considered and removed before the process of listing them in the draft regulations took place. Care has been given to ensuring that we share only where there is a clear benefit, as required by the legislation. I hope that, with that explanation, the noble Baroness will withdraw her amendment.

Lord Collins of Highbury (Lab): My Lords, I will take this opportunity to briefly comment on this group of amendments. These Benches did submit a series of amendments in Committee. The Minister responded that the Government were giving due consideration to the Delegated Powers Committee report, so there was no opportunity to go through some of those issues in detail. We welcome the Government’s amendments and the fact that they have responded to the Delegated Powers Committee. I have read the Information Commissioner’s briefing for Report, and I welcome the fact that she strongly supports the Government’s adoption of these amendments, which she believes will strengthen parliamentary scrutiny and government accountability.

The next group of amendments deals with the code of practice, on which we had lengthy debates in Committee, but I believe that the Government are now striking the right proportional balance between improving public and government services and the need to protect data.

Lord Keen of Elie: I am obliged to the noble Lord.

Amendment 25YY agreed.

Amendments 25YYA and 25YYB

Moved by Lord Ashton of Hyde

25YYA: Clause 31, page 30, line 24, leave out “Chapter” and insert “section”

25YYB: Clause 31, page 30, line 25, leave out “regulations made by the appointed national authority” and insert “Schedule (Public service delivery: specified persons for the purposes of section 31)”

Amendments 25YYA and 25YYB agreed.

Amendment 25YYC

Moved by Lord Ashton of Hyde

25YYC: Clause 31, page 30, line 26, leave out subsection (3) and insert—

“(3) The appropriate national authority may by regulations amend Schedule (Public service delivery: specified persons for the purposes of section 31) so as to add, remove or modify an entry relating to a person or description of person.

(3A) Regulations under subsection (3) may add an entry relating to a person or a description of person to Schedule (Public service delivery: specified persons for the purposes of section 31) only if—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority, or

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.”

Amendment 25YYD (to Amendment 25YYC) not moved.

Amendment 25YYC agreed.

Amendments 25YYE and 25YYF

Moved by Lord Ashton of Hyde

25YYE: Clause 31, page 30, line 33, leave out “(2)” and insert “(3)”

25YYF: Clause 31, page 30, line 38, leave out from “which” to “, whether” in line 39 and insert “remove a person from Schedule (Public service delivery: specified persons for the purposes of section 31)”

Amendments 25YYE and 25YYF agreed.

Amendment 25YYG

Moved by Baroness Hamwee

25YYG: Clause 31, page 30, line 40, leave out “had regard to” and insert “complied with”

Baroness Hamwee: My Lords, the published groupings include Amendment 28CY, which should not have been tabled. I apologise to the House; it was a hangover from drafting before the Government tabled their amendments, which we have just dealt with, in response to the Delegated Powers and Regulatory Reform Committee. I will not be speaking to it and am sorry for the confusion. Similarly, Amendment 28CUA, published on the supplementary list, should not have been tabled—it was drafted a while ago but somebody panicked late on Friday afternoon and thought it had better be published.

9.15 pm

Amendment 25YYG and a number of other amendments in this group return us to the status of codes of practice. Some amendments are amendments to the Bill and some are amendments to government amendments. However, the short point is that we believe the codes are documents which should be complied with rather than documents to which regard is to be had, as “regard” seems to us insufficient. The operation of the Bill, when it is an Act, will be heavily reliant on the codes of practice.

In their reply to the DPRRC, the Government refer to handling information to the same standards as public authorities, “including compliance with the codes of practice and the Data Protection Act”.

If the obligation is the lesser provision—that is, having regard to—it will be enough for an organisation to think about the codes of practice and then decide not to follow them. That is a little too casual for us. We consider that organisations should follow the codes, although we of course appreciate that they do not have the force of law—they are good practice. However, having regard to them, as stated in the Bill, seems to us at two removes from following them more precisely in the way that we would like to see.

As regards Amendments 28BC and three others, the Bill requires the codes of practice to be, “consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act”.

We wondered whether there should not also be reference to Section 51 of the DPA, which relates to codes promoting good practice.

Digging around, as it were, on screen in preparation for today’s debate, I found the Information Commissioner’s
code of October 2016 on privacy, privacy notices, privacy information and privacy impact assessments. That code mentions when it is beneficial to go beyond legal requirements, and many matters to which reference has been made in the debate. The next little clutches of amendments, of which the first is Amendment 28BD, would require the codes to provide specifically for privacy impact assessments and privacy notices.

As regards Amendment 28BF and similar amendments, the Bill contains requirements to consult on the codes, including consultation with such other persons as the Minister thinks appropriate, which is a formula with which we will all be familiar. However, the named consultees might lead the reader to think that other persons would not extend beyond the arms of government, who are referred to specifically, apart from the ICO, which obviously is independent. There is a clear role for the third sector here and for the active, energetic and very knowledgeable organisations working in the privacy and human rights fields. We feel that to have some such reference as we are suggesting and not leave it to the normal sweeping-up provision would be appropriate and, we think, necessary. I beg to move.

**Lord Collins of Highbury:** My Lords, in Committee I had my name to an amendment regarding the status of the codes of practice. At that time, the noble and learned Lord referred to the appropriate level of legal obligation. He certainly persuaded me that the wording “having regard to” or “complying with” did not relate to whether a public authority could ignore a code, but whether there were reasons for doing so. I was persuaded about that level of flexibility.

Of course, we were really concerned about what the codes of practice would ultimately look like, what the engagement of the Information Commissioner would be and what the Information Commissioner’s view was. On these Benches we were pleased to see not only the Government’s amendments but the Information Commissioner saying that she was extremely pleased that the Government had accepted her recommendations on there being references in the Bill to codes of practice and the privacy impact assessments.

In the light of the Information Commissioner’s overall comments and the fact that the Government have responded, we certainly welcome these amendments. However, I give notice that—the noble Baroness, Lady Hamwee, referred to this—what is in the codes and how public authorities operate them will be very important, and parliamentary scrutiny of and engagement in them will be critical in the future. I hope that we will see further drafts of the codes before they are ultimately laid before Parliament. It is really important not only that there is the highest level of consultation on them but that Members of Parliament are properly engaged in them.

**Lord Keen of Elie:** I thank noble Lords for their observations on these matters. There are of course government amendments in this group as well and perhaps I may begin with those.

This group of amendments concerns the codes of practice issued under Part 5 and those issued by the Information Commissioner’s Office. It includes the government amendments that implement the recommendations of the Delegated Powers and Regulatory Reform Committee and, as the noble Lord, Lord Collins, observed, the recommendations of the Information Commissioner’s Office. In addition, there are some opposition amendments on similar points.

We have already published draft codes of practice on data sharing. The Delegated Powers and Regulatory Reform Committee recommended that the first codes of practice and the UK Statistics Authority’s statement of principles should be laid before Parliament in draft and should not be brought into force until they had been approved under the affirmative procedure. Revisions were to follow the draft negative procedure. We agree and have tabled amendments to achieve this, and it is intended that Parliament should have a suitable opportunity to consider these drafts and any amendments thereto in due course.

A further series of government amendments will require persons disclosing personal information under relevant chapters of Part 5 to have regard to the Information Commissioner’s codes of practice on privacy impact assessments and privacy notices, transparency and control in so far as they apply to information which is being shared. As the noble Lord, Lord Collins, observed, the Information Commissioner called for explicit reference to these two codes to be made on the face of the Bill. We have worked with her office to develop these amendments, which supplement the existing requirement that the codes of practice prepared under the Bill must be consistent with the commissioner’s own code on data sharing, and I understand that she is satisfied with the steps we have taken in that regard. I hope that this will provide further assurance to noble Lords that we are committed to ensuring that best practice concerning compliance with data protection and transparency will be applied to the exercise of powers under Part 5 of the Bill.

I now turn to the opposition amendments in the names of the noble Baroness, Lady Hamwee, and the noble Lord, Lord Clement-Jones. I hope I can persuade them that their amendments are no longer necessary, as the government amendments fully address the concerns of both the Information Commissioner’s Office and the DPRRC.

As the noble Baroness has explained, the amendments in their names seek to ensure further consistency with the ICO’s codes and to strengthen the role of those codes in the regime set up by Part 5, as well as providing for greater parliamentary oversight of the Government’s codes, and I believe that we are now there. The Bill already requires that codes of practice issued under Part 5 of the Bill must be consistent with the ICO’s data-sharing code of practice. The government amendments further require persons to have regard to the ICO’s codes on privacy impact assessments and privacy notices, transparency and control when exercising relevant powers under Part 5. So we are now referencing all the codes which the ICO felt were critical for the operation of Part 5.

Of course, this is not the first time we have discussed amendments that seek to strengthen enforcement of the codes of practice by requiring authorities that use the powers of determined specified bodies to “comply with” rather than “have regard to” these
Amendments 25YYH and 25YYJ agreed.

Amendment 26

Moved by Lord Whitty

26: Clause 31, page 31, line 9, at end insert—
“( ) the facilitation of improvements in health conditions which could be exacerbated by living in a cold home.”

Lord Whitty (Lab): My Lords, I raised this issue in Committee. It concerns one of the major justifications for data sharing that was proclaimed by the Government in their original justification for this Bill, which relates to dealing with fuel poverty. I first record my appreciation for the fact that both the noble and learned Lord, Lord Keen, and the noble Lord, Lord Ashton of Hyde, met me last week to discuss these amendments, which may well shorten proceedings this evening. My main concern is that all public authorities should interact in order to deal with the problem of fuel poverty. Take, for example, the support that the fuel poor get from the warm home discount. There is a certain group, mainly the elderly that is automatically subject to the provisions of the warm home discount. However, there are other groups—in particular vulnerable families or families that are subject to certain illnesses—that have to be referred specifically in order to gain that benefit. They also, in those areas where there is still some local authority provision for intervention on fuel poverty, have to get through that hoop in order to qualify. As we know, there is no nationally financed fuel poverty eradication programme any more in England; there is, however, in Scotland and Wales, and there are a number of local authorities that do intervene in these matters.

9.30 pm

People in that particular group are most likely to be identified through health provisions. In other words, doctors, district nurses and other health professionals are most likely to identify the fact that they have a problem in relation to the state of their home and the lack of heat or ventilation which results in respiratory, pulmonary or other diseases. I have been engaged in the fuel poverty area for 10 or 15 years and it has always been the reference of that group into whatever scheme has been available at the time which has been lacking.

As I say, the easiest and most obvious way in which they are referenced into the scheme is through health professionals. That is why Amendment 26 deals with the ability of data sharing to come into effect through the identification of a potential benefit for improving the health of people whose condition is aggravated by living in damp or poor housing with poor heating and ventilation. It is not explicitly a benefit and not explicitly a service and therefore it needs to be added to the criteria in this respect.

The other reason for my concern about the inadequacy of the provisions in this area is that the amendments which your Lordships debated two groups ago while I was still dining downstairs dealt with the list of public authorities to which data sharing would apply. Government Amendment 33ZX and the next two amendments cover government departments and local authorities but do not cover health authorities. I understand from the other debates that have been engaged in on this Bill that the issue of health information is particularly sensitive. However, here I am simply talking about a GP or a district nurse identifying that one of the problems of a family is that they cannot afford to heat or ventilate their house on their income and that the health conditions from which they suffer are being aggravated thereby.
This is not disclosing their whole health record. It is not even necessarily sharing it with the energy companies or anybody else in the private sector; it is simply alerting DWP or, indirectly, the energy supplier, through information that this particular group ought to qualify for the warm home discount and for any locally available interventions to improve their homes.

I understand from having spoken to Ministers that this is a difficult issue for them. The inclusion of health professionals and health bodies within the list of people who share data is delicate and controversial. All I am asking from the Minister tonight is to indicate that it would be possible under secondary legislation, at the point where these issues are more positively resolved, to add GPs, district health authorities and other health authorities to the list of people who could share data in this particular respect. The addition of my paragraph (c) would allow them to refer or identify people who are potentially affected through their health condition but not disclose their total health record.

That is what this is about. I accept that it is complicated and delicate, but I would like a positive indication from the Minister that in this way, if all the other difficulties about health information were overcome, they could add health authorities to the list and thereby deliver what I am asking for in this respect.

My other two amendments were largely dealt with in Committee. I retabled them because I would like to be a bit more explicit. Having discussed the issue with Ministers, I think that they have the authority to add gas and electricity networks to the list. They are the bodies with which fuel-poor households are increasingly likely to engage, as distinct from the supply companies, so at some point they should be added to the list. If that is a relatively easy process, I will not pursue Amendments 27 and 28. However, I would like on the record a clearer indication from Ministers that the ability to add health authorities and health professionals, including GPs, to the list could come further down the line, because it would address an issue that was clearly identified by the Government as one of the most important reasons for engaging in information and data sharing in the first place. I beg to move.

Baroness Finlay of Llandaff (CB): My Lords, I have tabled amendments in this group. I start by thanking the noble and learned Lord, Lord Keen of Elie, and his Bill team for having met with me and for dealing patiently with my queries. I know from that meeting that the Government are not minded to accept my amendments, but I would like the arguments to be put on the record.

I have listened carefully to the noble Lord, Lord Whitty. While I do not dispute at all that his amendments are well intentioned, I can see enormous difficulties arising in determining the threshold of the condition—how severe it has to be, which co-morbidities might be aggravating one another, which members of the family would be involved and so on. I am not sure from the way he argued for his amendment whether an email notification system against a set of clear criteria that had been pre-negotiated with the consent of the patient or family would meet the needs and be simple and straightforward. Would it be a communication system free from the risk of mining the patient’s clinical records? The reason I ask is that at the moment health bodies are not specified in the Bill, but if they were included, that would certainly need legislation because in effect it would override the common-law duty of confidentiality.

I know that at the previous stage the noble and learned Lord, Lord Keen, said that the Government were minded to consider bringing health and social care bodies within the scope of these powers in the future and that that would be done using a statutory instrument passed by the affirmative procedure. I appreciate that the Minister said that there would be wide consultation before that happened.

The difficulty is that in Clause 36(7) it appears that the duty of confidence, which could apply to the duty of medical confidentiality, could be removed if health is brought within the scope of the Bill. It could provide a legal gateway for sharing medical records for purposes that are not currently specified among a wide range of government departments and public service providers. The concern is that to date a special legal status has been afforded to health data in the common-law duty of medical confidentiality due to its sensitivity and the importance to the public of a confidential health service. This common-law duty of confidentiality protects health data over and above the safeguards provided by the Data Protection Act, so simply referring to the Bill’s requirement to comply with that Act when making disclosures does not maintain the current level of protection.

If the Bill proceeds unamended and the Government include health bodies in the list of specified bodies, which they could do by statutory instrument, I think that would be viewed as a serious assault on medical confidentiality because it would open up the power to share confidential information. Indeed, problems with the failure of the current safeguards in the system were aired this weekend over TPP, the IT system that many general practitioners use. In a way, that demonstrated that the current practitioners use. In a way, that demonstrated that the current practitioners use. In a way, that demonstrated that the current safeguards in place around the IT systems are, frankly, inadequate.

NHS Digital could be drawn into the Bill’s information-sharing powers. It holds vast quantities of confidential data, which would mean that the Bill could give the Government direct access to them without consent, because the process would override the current common-law duty. This needs to be considered in the context of the National Data Guardian, who has spoken about the need to build trust in the health system’s ability to handle data, and a real concern among many patient groups of the general mistrust that their very confidential data could be shared.

I believe that my amendments will not be accepted, but if they are not I hope the Government will be able to reassure me that if health data were to be brought into the Bill’s information-sharing powers they will not just be added to the current framework created by the Bill and then the duty of medical confidentiality deemed to be protected, but that there will be full public engagement and full parliamentary scrutiny prior to proceeding, and that the protections in place would include independent oversight and real-time monitoring of the data sharing. In Wales, the IT system overseeing NHS Wales has instituted real-time
monitoring because there was concern that staff could have used their access rights to unprofessionally access healthcare records of people with whom they did not have a direct care relationship. I am afraid that human nature is that people are rather inquisitive about what may be happening to people they know, but those may be very sensitive and very private data. Therefore, they need the highest safeguards around them.

The problem is that once there is a data leak it really cannot be pulled back and closed. I hope the Government will provide the reassurance that, as well as the other aspects, there will be real-time monitoring and independent oversight of the whole process, with additional sanctions that will be of a high enough level to, I hope, act as a major deterrent for any breaches of any data-sharing agreement.

Baroness Hamwee: My Lords, we have Amendment 28AV in this group, which is also about the common-law duty of confidentiality. Obviously that includes doctor-patient confidentiality. We are with the noble Baroness in her concerns. Apart from wanting to see that duty preserved, the reason for the amendment is to seek confirmation that it is to be overwritten rather than preserved. I found subsection (7) quite difficult. When we were contacted by a member of the public who was clearly qualified to read the legislation with a query about it, it seemed appropriate to raise this because it is quite difficult to follow. Clearly, one should be quite certain about what we are doing.

9.45 pm

Lord Collins of Highbury: My Lords, I hesitate before intervening in this group of amendments because, the last time I intervened, my noble friend said that I must be slightly confused, as I was talking about electoral rolls, bread rolls and toilet rolls. We are, of course, conflating a number of issues in this group, but I think that there is a really good point. My noble friend has raised an important area where the public good can be served not by sharing confidential information but by ensuring the availability of information that will serve a specific purpose in relation to fuel poverty. We on these Benches are very sympathetic on that point. In Committee we tabled amendments on the common-law duty of confidentiality, and the noble and learned Lord responded to those amendments. The only point I would make now is that it is vital that medical records remain confidential. They contain information that can affect not only people’s health but their access to jobs and to insurance. Access to a whole range of things is at risk if it is felt that this information will not remain confidential. Of course, the consequence of that is another public health issue, because if people do not have confidence that their records will remain confidential, they will not go to their doctor, they will not tell their doctor and they will not seek the treatment that they perhaps should. So there is a very strong case here.

One other point—it is not related to this group of amendments so I ask for forgiveness—is that there is a balance between maintaining confidentiality and security. Many of the problems in the health service, and why people lack confidence in it, are not about policies and procedures but about the health service’s ability to maintain a secure IT system. I hope the noble and learned Lord will be able to address those issues. The assurances that my noble friend has sought about future ability are really important. The ability to communicate—not the details of people’s confidential records but one government department to another and one public agency to another, to serve a very clear public need—is vital.

Lord Keen of Elie: I am obliged to noble Lords, and in particular I thank the noble Lord, Lord Whitty, for his continued interest in this area and for taking the time to meet and discuss this matter at some length with me and the Bill team. Clearly, as the noble Lord, Lord Collins, observed, this is an important part of the fuel poverty agenda. That is why it takes on such considerable importance even when faced with issues such as medical confidentiality.

On the point about common-law confidentiality, and medical confidentiality in particular, it is not an absolute; there are already statutory gateways through which information can and must flow on occasions, and therefore one must not take it that medical confidentiality is somehow completely ring-fenced and separate from the world that we actually live in. There are circumstances where there should be, has to be and is disclosure. It may be possible—I put it no higher in terms of this Bill—to address a further gateway. However, one should not confuse any mechanism within the Bill with the consequences of human or IT failure, however regrettable they may be. I agree with the noble Lord, Lord Collins, that one has to have regard not only to the structure within which information is shared but to the need to ensure that the sharing process is itself secure. But they are separate issues.

The noble Lord, Lord Whitty, acknowledges that some parts of his amendment may not be necessary. Amendments 27 and 28 would provide that information can be shared with licensed electricity and gas distributors for the provision of fuel poverty assistance. They can already be added to the data-sharing arrangements in Clause 32 by regulations. The Government will consider whether to exercise this power in the context of considering the future role of electricity and gas distributors in delivering fuel poverty schemes. I reassure the noble Lord that the provision made by Amendment 26 is already covered by Clause 31, which provides powers to share information for, “the improvement of the well-being of individuals or households”. Of course, this includes, “their physical and mental health and emotional well-being”. While we do not consider the noble Lord’s amendment necessary in this instance, the objectives that he highlights are an example of how in appropriate circumstances information held by healthcare providers could, in future, be valuable to support the more effective delivery of public services to those in need. It underlines why the Government are unable to accept Amendments 28AV, 28AW and 28AX, tabled by the noble Baronesses, Lady Finlay and Lady Hamwee.

The Government do recognise the particular sensitivities with identifiable health information, as highlighted in the National Data Guardian for Health.
and Social Care’s recent review of data security, consent and opt-outs. Health bodies in England are therefore not included in the list of bodies now in the Bill that will be permitted to use these powers. However, as the noble Lord, Lord Whitty, noted, health issues are a key factor in the complex social problems faced by people, whom we are aiming to support with these powers. Excluding the use of identifiable health information altogether would remove the possibility of including such information in the future without amending legislation. It would be premature to take this step in advance of the implementation of the National Data Guardian’s review and the public consultation that that will engage.

An amendment to maintain the common-law duty of medical confidentiality is not considered necessary. Those powers enable information to be shared only where it is already held by specified persons, acquired in a different context from the patient-doctor relationship. Where it is already held by specified persons, acquired where it is already held by specified persons, acquired in a different context from the patient-doctor relationship.

Those powers enable information to be shared only where it is already held by specified persons, acquired in a different context from the patient-doctor relationship. Where it is already held by specified persons, acquired in a different context from the patient-doctor relationship. Where it is already held by specified persons, acquired in a different context from the patient-doctor relationship. Where it is already held by specified persons, acquired in a different context from the patient-doctor relationship.

Any information that would have been subject to medical confidentiality would have found its way into a specified person’s hands only through an existing gateway. As I indicated earlier, there are already statutory gateways through which such information can move. Of course, we are dealing with permissive powers.

At this late hour, I will attempt the impossible: to satisfy the interests of all parties in the context of these provisions. Beginning with the inquiry from the noble Lord, Lord Whitty, health bodies are not presently included in the schedules. As drafted, it would be possible for health bodies to be added to the schedules at a future date but—and I emphasise this—no decision will be taken until, first, the Government publish their response to the Caldicott review and any recommendations have been embedded and assessed; secondly, there has been a public consultation on the issue and the views of the National Data Guardian and appropriate representative health bodies such as the GMC and BMA have been sought; and, thirdly, there has been a debate in both Houses pursuant to the affirmative procedure required to add bodies to the schedule. I hope that that reassures the noble Lord, Lord Whitty, that it can be done, although it has yet to be done, and that there are steps that we will take to reassure the noble Baronesses, Lady Finlay and Lady Hamwee, before any such step is implemented.

If health bodies or information were to be expressly excluded in the Bill, it would require primary legislation to enable those bodies to share information under the powers. If and when we decide that it would be helpful to have those powers—in implementing the fuel poverty initiative, for example—it would be most unfortunate if we were delayed by literally years before we could actually achieve the objective, when in fact there is provision here to do it by way of the affirmative procedure so that both Houses have ample opportunity for debate.

If we take those steps, there will be safeguards. When considering whether to add any health bodies to the schedules in the public service delivery, debt and fraud chapters, clear safeguards will apply. First, before a new body may be added to the schedule, it must show that it fulfils the relevant criteria relating to that specific power designed to ensure that only bodies with relevant functions for holding or requiring information relevant to that particular power may be added. The Minister must consider the procedures in place for secure handling of information before any new body can be added to the schedule—a point raised by the noble Lord, Lord Collins. A decision will be taken on whether it is in the public interest and proportionate to share identifying health information in order to achieve a specified objective. There would be no question of simply sharing this information more widely. The powers must be exercised in accordance with the Data Protection Act, which requires that only the minimum information necessary to achieve the objective may be shared. Under the Bill—and under the Data Protection Act—personal information may be used only for the purpose for which it was shared and data must be stored securely to ensure compliance with that Act. Again, this point was raised a moment ago.

Identifying health information will constitute sensitive personal data and so to ensure fair and lawful processing, it must fulfil one of the more onerous Schedule 3 conditions as well as the Schedule 2 condition under the Bill. In addition, new criminal sanctions have been included for wrongful disclosure with a maximum penalty of up two years’ imprisonment, a heavy fine or both. Further steps can of course also be taken to remove a body from the schedule if it does not comply with the requirements of the Act.

I do not suppose that I have satisfied anyone with that explanation at the end of the day. But, if nothing else, I hope that it has assisted in informing your Lordships as to why we consider that these amendments are not appropriate and that it would be appropriate to retain the ability to introduce health bodies by way of appropriate regulation. We feel that there will be appropriate safeguards and extensive consultation before any such step is taken, so I invite the noble Lord to withdraw his amendment.

Baroness Finlay of Llandaff: May I ask for clarification over one issue? Would a statutory instrument, when brought forward, envisage adding health bodies to the Bill in a blanket way, or would it be envisaged that there would be statutory instruments for specific purposes, such as health bodies for the purposes of identifying fuel poverty, and that when something else emerged it would require a separate statutory instrument so as to keep that gateway as narrow as possible?

Lord Keen of Elie: With respect, we clearly intend to maintain any gateway in as narrow a manner as is reasonable. The point that the noble Baroness raises is really a question for another day. We are not there yet; health bodies are not included in the schedule. If and when it is contemplated that they will be, there will be extensive consultations on the very issues that she raises.

Lord Whitty: My Lords, I am grateful to the Minister for his ability to deliver a compromise position between what appeared to be diametrically opposed attacks in this group of amendments. He has done very well and almost satisfied me—I thank him for that and for his previous discussions.
Amendment 26B agreed.

Amendment 26A not moved.

Amendment 26 withdrawn.

Amendment 26B moved by Lord Ashton of Hyde

26B: Clause 31, page 31, line 16, at end insert—
“(" The third condition is that the objective has as its purpose the supporting of—
(a) the delivery of a specified person’s functions, or
(b) the administration, monitoring or enforcement of a specified person’s functions.”

Amendment 26B agreed.

Clause 32: Disclosure of information to gas and electricity suppliers

Amendment 27 and 28 not moved.

Amendments 28A to 28AH moved by Lord Ashton of Hyde

28A: Clause 32, page 31, line 44, at end insert “so as to add, modify or remove a reference to a fuel poverty measure”

28D: Clause 32, page 31, line 44, at end insert—
“(1) Regulations under subsection (4)(za) may add an entry relating to a person or a description of person to Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33) only if—
(a) the person is a public authority or (as the case may be) each person of that description is a public authority,
(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.”

28AE: Clause 32, page 31, line 44, at end insert—
“(1) Regulations under subsection (4)(a) may add a person or a description of person to subsection (1) only if the person or (as the case may be) each person of that description—
(a) provides assistance of a kind mentioned in subsection (2) to people living in fuel poverty,
(b) monitors or enforces the provision of such assistance to such people,
(c) administers a fuel poverty measure, or
(d) provides services to a person within paragraph (a), (b) or (c).”

28AF: Clause 32, page 32, line 1, leave out “(4)(a)” and insert “(4)(za) or (a)”

28AG: Clause 32, page 32, line 6, after “from” insert “Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33)” or

28AH: Clause 32, page 32, line 17, at end insert—
“......fuel poverty measure” means—
(a) a scheme, arrangement or set of arrangements, or
(b) a function or set of functions, which has as its purpose (or one of its purposes) the provision of assistance of a kind mentioned in subsection (2) to people living in fuel poverty;”

Amendments 28AA to 28AH agreed.

Clause 34: Disclosure of information to water and sewerage undertakers

Amendments 28AJ to 28AP moved by Lord Ashton of Hyde

28AJ: Clause 34, page 33, line 8, at end insert—
“(1) In this section and section 35 “specified person” means a person specified, or of a description specified, in Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35).”

28AK: Clause 34, page 33, line 8, at end insert—
“(3A) The appropriate national authority may by regulations—
(a) amend Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35) so as to add, remove or modify an entry relating to a person or description of person;
(b) amend subsection (1) so as to add or remove a person or description of person to whom information may be disclosed;
(c) amend subsection (3) so as to add, modify or remove a reference to a water poverty measure.”
Amendments 28BG and 28BH

Moved by Lord Ashton of Hyde

28BG: Clause 39, page 36, line 38, at end insert—

“(6A) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(6B) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.

(6C) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(6D) In subsection (6C) “the 40 day period” means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(6E) For the purposes of subsection (6D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

28BH: Clause 39, page 36, line 42, leave out paragraph (a)

Amendments 28BG and 28BH agreed.

Amendment 28BJ

Moved by Lord Ashton of Hyde

28BJ: Clause 39, page 37, line 2, at end insert—

“(8) In disclosing information under any of sections 31 to 35, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(9) The duty in subsection (8) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.”

Amendment 28BK (to Amendment 28BJ) not moved.

Amendment 28BJ agreed.

Clause 40: Regulations under this Chapter

Amendment 28BL

Moved by Lord Ashton of Hyde

28BL: Clause 40, page 37, line 14, leave out subsection (3)

Amendment 28BL agreed.

Amendment 28BM not moved.
Amendments 28BN to 28BR

Moved by Lord Ashton of Hyde

28BN: Clause 40, page 37, line 19, leave out from “of” to first “this” in line 20 and insert “—
( ) regulations under section 31 (3) which amend Schedule (Public service delivery: specified persons for the purposes of section 31) so as to add an entry relating to a person or description of person.
( ) regulations under section 32 (4)(za) which amend Schedule (Public service delivery: specified persons for the purposes of sections 32 and 33) so as to add an entry relating to a person or description of person, or
( ) regulations under section 34 (3A)(a) which amend Schedule (Public service delivery: specified persons for the purposes of sections 34 and 35) so as to add an entry relating to a person or description of person.”

28BP: Clause 40, page 37, line 20, leave out “provision amending this Chapter so as” and insert “power”

28BQ: Clause 40, page 37, line 39, leave out “or 32(4)(b)” and insert “, 32(4)(b) or 34(3A)(c)”

28BR: Clause 40, page 38, line 7, leave out “31(2) or 32(4)(a)” and insert “31(3), 32(4)(za) or (a) or 34(3A)(a) or (b)”

Amendments 28BN to 28BR agreed.

Clause 41: Interpretation of this Chapter

Amendments 28BS to 28CA

Moved by Lord Ashton of Hyde

28BS: Clause 41, page 38, leave out line 32

28BT: Clause 41, page 38, line 34, leave out “31(2) which specify” and insert “31(3) or 32(4)(za) which add, modify or remove an entry relating to”

28BU: Clause 41, page 39, line 1, leave out “31(2) which specify” and insert “31(3), 32(4)(za) or 34(3A)(a) which add, modify or remove an entry relating to”

28BV: Clause 41, page 39, line 3, after “32(4)(a)” insert “or 34(3A)(b)”

28BW: Clause 41, page 39, line 5, leave out “or 32(4)(b)” and insert “, 32(4)(b) or 34(3A)(c)”

28BX: Clause 41, page 39, line 7, leave out “relates to a matter” and insert “could be specified by provision falling”

28BY: Clause 41, page 39, line 16, leave out “31(2) which specify” and insert “31(3) which add, modify or remove an entry relating to”

28CA: Clause 41, page 39, line 35, at end insert—
“( ) The power of the Secretary of State in section 69(2) of the Wales Act 2017 to amend an enactment contained in primary legislation in consequence of any provision of that Act includes power to amend this Chapter, and section 97 so far as relating to this Chapter, in consequence of section 48 (water and sewerage) of that Act.”

Amendments 28BS to 28CA agreed.

Clause 42: Disclosure of information by civil registration officials

Amendment 28CB not moved.

Amendment 28CC

Moved by Lord Ashton of Hyde

28CC: Clause 42, page 41, line 39, at end insert—
“(6) The Registrar General may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
(7) Before reissuing the code the Registrar General must lay a draft of the code as proposed to be reissued before Parliament.
(8) The Registrar General may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.
(9) In subsection (8) “the 40 day period” means—
(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
(10) For the purposes of paragraph (9) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

Amendment 28CC agreed.

Amendment 28CD

Moved by Lord Ashton of Hyde

28CD: Clause 42, page 41, line 39, at end insert—
“(7) In disclosing information under section 19AA, a civil registration official must have regard to the following codes of practice issued by the Information Commissioner under section 31(3) of the Data Protection Act 1998, so far as they apply to the information in question—
(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
(8) The duty in subsection (7) does not affect any other requirement for the civil registration official to have regard to a code of practice in disclosing the information.”

Amendment 28CE (to Amendment 28CD) not moved.

Amendment 28CD agreed.

Amendment 28CF not moved.

Clause 44: Disclosure of information to reduce debt owed to the public sector

Amendment 28CG not moved.

Amendments 28CH to 28CU

Moved by Lord Ashton of Hyde

28CH: Clause 44, page 42, line 30, leave out “specified person” and insert “public authority”

28CJ: Clause 44, page 42, line 32, after “section” insert “and Schedule (Specified persons for purposes of the debt provisions)”

28CK: Clause 44, page 42, line 32, leave out “specified person” and insert “public authority”

28CL: Clause 44, page 42, line 34, leave out “specified person” and insert “public authority”
Amendments 28CU to 28DB not moved.

Amendment 28DC to 28DJ

Moved by Lord Ashton of Hyde

28DC: Clause 48, page 48, line 38, at end insert—
“(6A) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(6B) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.

(6C) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(6D) In subsection (6C) the “40 day period” means—
(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(6E) For the purposes of subsection (6D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

Amendments 28DD to 28DJ agreed.

Clause 50: Regulations under this Chapter

Amendments 28DK to 28DR

Moved by Lord Ashton of Hyde

28DK: Clause 50, page 48, line 34, leave out subsection (3)

28DL: Clause 50, page 48, line 39, leave out “44(4) which specify” and insert “44(5) which amend Schedule (Specified persons for purposes of the debt provisions) so as to add an entry relating to”

28DM: Clause 50, page 49, line 1, leave out “44(4)” and insert “44(5)”

28DN: Clause 50, page 49, line 10, leave out “44(4)” and insert “44(5)”

28DO: Clause 50, page 49, line 25, leave out “44(4)” and insert “44(5)”
Amendment 28DV not moved.

Amendments 28DK to 28DR agreed.

Clause 51: Interpretation of this Chapter

Amendments 28DS to 28DU

Moved by Lord Ashton of Hyde

28DS: Clause 51, page 50, line 14, leave out “44(4) which specify” and insert “44(5) which add, modify or remove an entry relating to”

28DT: Clause 51, page 50, line 17, leave out “44(4) which specify” and insert “44(5) which add, modify or remove an entry relating to”

28DU: Clause 51, page 50, line 20, leave out “44(4) which specify” and insert “44(5) which add, modify or remove an entry relating to”

Amendments 28DS to 28DU agreed.

Clause 52: Disclosure of information to combat fraud against the public sector

Amendment 28DV not moved.

Amendments 28DW to 28EE

Moved by Lord Ashton of Hyde

28DW: Clause 52, page 50, line 28, after “section” insert “and in Schedule (Specified persons for purposes of the fraud provisions)”

28DX: Clause 52, page 50, line 37, leave out “The reference in subsection (1) to” insert “For the purposes of this section and Schedule (Specified persons for purposes of the fraud provisions)”

28DY: Clause 52, page 51, line 2, leave out from “in” to end of line and insert “Schedule (Specified persons for purposes of the fraud provisions)”

28EA: Clause 52, page 51, line 3, leave out subsection (6) and insert—

“(6) The appropriate national authority may by regulations amend Schedule (Specified persons for purposes of the fraud provisions) so as to add, remove or modify an entry relating to a person or description of person.

(6A) Regulations under subsection (6) may add an entry relating to a person or a description of person to Schedule (Specified persons for purposes of the fraud provisions) only if the following conditions are satisfied.

(6B) The first condition is that—

(a) the person is a public authority or (as the case may be) each person of that description is a public authority,

(b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.

(6C) The second condition is that the person or (as the case may be) a person of that description (“P” in either case)—

(a) requires information from a public authority or a person providing services to a public authority to improve P’s ability to identify or reduce the risk of fraud against P or a public authority to which P provides services,

(b) has information which, if shared with a public authority or a person providing services to a public authority, has the potential to improve that authority’s or that person’s ability to identify or reduce the risk of fraud against that authority, or

(c) has functions of taking action in connection with fraud against a public authority, the exercise of which may be improved by the disclosure of information by or to P.”

28EB: Clause 52, page 51, line 10, leave out “(5) and insert “(6)”

28EC: Clause 52, page 51, line 15, leave out from “which” to “, whether” in line 16 and insert “remove a person from Schedule (Specified persons for purposes of the fraud provisions)”

28ED: Clause 52, page 51, line 19, leave out “(5)” and insert “(6)”

28EE: Clause 52, page 51, line 24, leave out “(5)” and insert “(6)”

Amendments 28DW to 28EE agreed.

Clause 56: Code of practice

Amendments 28EF to 28EJ not moved.

Amendments 28EK to 28EM

Moved by Lord Ashton of Hyde

28EK: Clause 56, page 55, line 7, at end insert—

“(6A) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(6B) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.

(6C) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(6D) In subsection (6C) “the 40 day period” means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(6E) For the purposes of subsection (6D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

28EL: Clause 56, page 55, line 11, leave out paragraph (a)

28EM: Clause 56, page 55, line 14, at end insert—

“(8) In disclosing information under section 52, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(9) The duty in subsection (8) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.”

Amendments 28EK to 28EM agreed.

Clause 57: Duty to review operation of Chapter

Amendments 28EN to 28ER

Moved by Lord Ashton of Hyde

28EN: Clause 57, page 55, line 37, at end insert—

“( ) The power in subsection (5) to amend this Chapter—
(a) may be exercised for the purposes only of improving the effectiveness of the operation of the power in section 52 (1), and
(b) may not be used to remove any of the safeguards relating to the use or disclosure of information in section 53, 54 or 55."

28EP: Clause 57, page 55, line 42, leave out “52(5)” and insert “52(6)”
28EQ: Clause 57, page 56, line 10, leave out “52(5)” and insert “52(6)”
28ER: Clause 57, page 56, line 22, leave out “52(5)” and insert “52(6)”

Amendments 28EN to 28ER agreed.

Clause 58: Regulations under this Chapter

Amendments 28ES to 28EY

Moved by Lord Ashton of Hyde

28ES: Clause 58, page 56, line 46, leave out subsection (3)
28ET: Clause 58, page 57, line 5, leave out “52(5) which specify” and insert “52(6) which amend Schedule (Specified persons for purposes of the fraud provisions) so as add an entry relating to”
28EU: Clause 58, page 57, line 6, leave out “provision amending this Chapter so as” and insert “power”
28EV: Clause 58, page 57, line 13, leave out “52(5)” and insert “52(6)”
28EW: Clause 58, page 57, line 15, leave out “52(5)” and insert “52(6)”
28EX: Clause 58, page 57, line 18, leave out “52(5)” and insert “52(6)”
28EY: Clause 58, page 57, line 21, leave out “52(5)” and insert “52(6)”

Amendments 28ES to 28EY agreed.

Clause 59: Interpretation of this Chapter

Amendments 28FA to 28FC

Moved by Lord Ashton of Hyde

28FA: Clause 59, page 58, line 19, leave out “52(5) which specify” and insert “52(6) which add, modify or remove an entry relating to”
28FB: Clause 59, page 58, line 22, leave out “52(5) which specify” and insert “52(6) which add, modify or remove an entry relating to”
28FC: Clause 59, page 58, line 25, leave out “52(5) which specify” and insert “52(6) which add, modify or remove an entry relating to”

Amendments 28FA to 28FC agreed.

Clause 60: Disclosure of information for research purposes

Amendment 28FD not moved.

Amendments 28FE and 28FF

Moved by Lord Ashton of Hyde

28FE: Clause 60, page 59, line 6, at beginning insert “subject to sections 63(5), 64(5) and 65(5)(information disclosed by tax authorities),”
28FF: Clause 60, page 59, line 7, leave out subsection (6)

Amendments 28FE and 28FF agreed.

Clause 62: Bar on further disclosure of personal information

Amendment 28FG

Moved by Lord Ashton of Hyde

28FG: Clause 62, page 61, line 1, leave out paragraph (b) and insert—
“( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose”

Amendment 28FG agreed.

Clause 63: Information disclosed by the Revenue and Customs

Amendments 28FH and 28FJ

Moved by Lord Ashton of Hyde

28FH: Clause 63, page 62, line 42, at end insert “, or ( ) by a person to whom the information is disclosed by virtue of subsection (3).”
28FJ: Clause 63, page 62, line 46, leave out paragraph (b) and insert—
“( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose”

Amendments 28FH and 28FJ agreed.

Clause 64: Information disclosed by the Welsh Revenue Authority

Amendments 28FK and 28FL

Moved by Lord Ashton of Hyde

28FK: Clause 64, page 63, line 39, at end insert “, or ( ) by a person to whom the information is disclosed by virtue of subsection (3).”
28FL: Clause 64, page 63, line 43, leave out paragraph (b) and insert—
“( ) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 67 as a person to whom such information may be disclosed for that purpose”

Amendments 28FK and 28FL agreed.

Clause 65: Information disclosed by Revenue Scotland

Amendments 28FM and 28FN

Moved by Lord Ashton of Hyde

28FM: Clause 65, page 64, line 43, at end insert “, or ( ) by a person to whom the information is disclosed by virtue of subsection (3).”
28FN: Clause 65, page 65, line 3, leave out paragraph (b) and insert—
Amendments 28FT to 28FV agreed.

Clause 66: Code of practice

Amendments 28FP to 28FS not moved.

Amendments 28FT to 28FV

Moved by Lord Ashton of Hyde

28FT: Clause 66, page 66, line 17, at end insert—

“(8A) The Statistics Board may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(8B) Before reissuing the code the Statistics Board must lay a draft of the code as proposed to be reissued before Parliament.

(8C) The Statistics Board may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(8D) In subsection (8C) “the 40 day period” means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(8E) For the purposes of subsection (8D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

28FU: Clause 66, page 66, line 20, leave out paragraph (a)

28FV: Clause 66, page 66, line 23, at end insert—

“(10) In disclosing information under section 60, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(11) The duty in subsection (10) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.”

Amendments 28FT to 28FV agreed.

Amendments 28FW to 28FY

Moved by Lord Ashton of Hyde

28FW: After Clause 70, insert the following new Clause—

“Disclosure of employer reference information by the Revenue Scotland

(1) A Revenue and Customs official may disclose employer reference information held by the Revenue and Customs to the Employers’ Liability Tracing Office for use by it for the permitted purpose.

(2) Information is non-identifying information for the purposes of this section if—

(a) it is not, and has never been, identifying information, or

(b) it has been created by combining identifying information, but is not itself identifying information.

(3) Information is identifying information for the purposes of this section if—

(a) is specified in the information,

(b) can be deduced from the information, or

(c) can be deduced from the information taken together with any other information.

(4) In this section—

(a) “relevant official of the Welsh Revenue Authority” means a person within any of paragraphs (a) to (d) of section 17(2) of the Tax Collection and Management (Wales) Act 2016, and

(b) “relevant information” means information which—

(i) is held by the Welsh Revenue Authority in connection with its functions, or

(ii) is held by a person to whom any of the functions of the Welsh Revenue Authority have been delegated in connection with those functions.”

28FY: After Clause 70, insert the following new Clause—

“Disclosure of non-identifying information by Revenue Scotland

(1) A relevant official of Revenue Scotland may disclose to any person information held by a relevant person in connection with a relevant function if—

(a) the information is non-identifying information, and

(b) the official thinks that the disclosure would be in the public interest.

(2) Information is non-identifying information for the purposes of this section if—

(a) it is not, and has never been, identifying information, or

(b) it has been created by combining identifying information, but is not itself identifying information.

(3) Information is identifying information for the purposes of this section if—

(a) is specified in the information,

(b) can be deduced from the information, or

(c) can be deduced from the information taken together with any other information.

(4) In this section—

(a) “relevant official of Revenue Scotland” means a relevant official as defined by section 15(2) of the Revenue Scotland and Tax Powers Act 2014,

(b) “relevant person” has the meaning given by section 13(2) of that Act, and

(c) “relevant function” means a function mentioned in section 13(3)(a), (b)(i) or (c)(i) of that Act.”

28FY: After Clause 70, insert the following new Clause—

“Disclosure of employer reference information by HMRC

(1) A Revenue and Customs official may disclose employer reference information held by the Revenue and Customs to the Employers’ Liability Tracing Office for use by it for the permitted purpose.

(2) The Employers’ Liability Tracing Office is the company registered in England and Wales with the company registration number 06964651.

(3) The permitted purpose is the purpose of providing assistance in connection with—
Amendment 28GA agreed.

Amendment 28GB (to Amendment 28GA) not moved.

Amendments 28FW to 28FY agreed.

Clause 71: Disclosure of information by HMRC to the Statistics Board

Amendment 28GA
Moved by Lord Ashton of Hyde

28GA: Clause 71, page 69, line 29, at end insert—
“( ) After subsection (4) insert—

(6) In this section—

(a) “Employer reference information” means any of the following information relating to an employer—

(b) any combination of numbers, letters or characters that is uniquely associated with the employer and used by Revenue and Customs to identify or refer to the employer, whether generally or for particular purposes.

(5) References in this section to an employer include references to a person who has at any time been an employer.

(6) In this section—

“employer” and “employment” have the same meaning as in the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003;

“Revenue and Customs official” has the meaning given by section 184(4)(a) of the Commissioners for Revenue and Customs Act 2005;

“the Revenue and Customs” has the meaning given by section 17(3) of that Act.”

Amendments 28GE and 28GF agreed.

Clause 72: Disclosure of information by public authorities to the Statistics Board

Amendment 28GC
Moved by Lord Ashton of Hyde

28GC: Clause 72, page 70, line 18, at end insert—

“(7A) In disclosing information under subsection (1), a public authority must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(7B) The duty in subsection (7A) to have regard to a code of practice does not affect any other requirement for the public authority to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.

(7C) In determining how to comply with the duty in subsection (4A) the public authority must have regard to any views of the Board which are communicated to the authority.”

Amendment 28GD (to Amendment 28GC) not moved.

Amendment 28GC agreed.

Clause 73: Access to information by Statistics Board

Amendments 28GE and 28GF

Amendment 28GG
Moved by Lord Ashton of Hyde

28GG: Clause 73, page 76, line 18, at end insert—

“(9A) The Board may not publish the original statement under this section unless a draft of the statement has been laid before, and approved by a resolution of, each House of Parliament.

(9B) Before publishing a revised statement under this section the Board must lay a draft of the statement as proposed to be published before Parliament.

(9C) The Board may not publish the revised statement if, within the 40-day period, either House of Parliament resolves not to approve it.

(9D) In subsection (9C) “the 40 day period” means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(9E) For the purposes of subsection (9D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

Amendments 28GE and 28GF agreed.

Amendment 28GG agreed.
“(11) In exercising any of its functions under section 45B, 45C or 45D to require the disclosure of information, the Board must have regard to any code of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998 which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information, so far as the code applies to the information in question.

(12) The duty in subsection (11) to have regard to a code of practice does not affect any other requirement for the Board to have regard to a code of practice under the Data Protection Act 1998 in exercising the function.”

Amendment 28GH (to Amendment 28GG) not moved.

Amendment 28GG agreed.

Amendments 28GJ and 28GK

Moved by Lord Ashton of Hyde

28GJ: Clause 73, page 77, line 26, at end insert—

“(5A) The Board may not publish the original code of practice under this section unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(5B) Before publishing a revised code of practice under this section the Board must lay a draft of the code as proposed to be published before Parliament.

(5C) The Board may not publish the revised code of practice if, within the 40-day period, either House of Parliament resolves not to approve it.

(5D) In subsection (5C) “the 40 day period” means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(5E) For the purposes of subsection (5D) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.”

28GK: Clause 73, page 77, leave out line 29

Amendments 28GJ and 28GK agreed.

Clause 74: Disclosure by the Statistics Board to devolved administrations

Amendment 28GL

Moved by Lord Ashton of Hyde

28GL: Clause 74, page 78, line 39, at end insert—

“(8A) In disclosing information under subsection (1), the Board must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

(a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;

(b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(8B) The duty in subsection (8A) to have regard to a code of practice does not affect any other requirement for the Board to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.”

Amendment 28GM (to Amendment 28GL) not moved.

Amendment 28GL agreed.

Amendment 29A

Moved by Lord Foster of Bath

29A: Clause 80, page 84, line 3, at end insert “and taking due account of the merits of the case”.

Lord Foster of Bath (LD): Wow, my Lords, what a tour de force.

Some time ago, we were debating the last string of amendments, during which the Minister sought to achieve the impossible and, according to the noble Lord, Lord Whitty, almost succeeded. In moving Amendment 29A, which is in my name and that of my noble friend Lord Clement-Jones, I am going to ask the Minister not to achieve the impossible, but merely to give a very clear statement to the House at the end of the debate, with which I hope we will then be satisfied, so that we can move on.

In Clause 80 at the moment, the Government seek to change the regime for appeals from Ofcom decisions from an appeal on the merits to one which follows a judicial review standard. As the Minister is well aware, the move is opposed by the vast majority of the telecoms industry, including the most significant investors in telecoms infrastructure. It is also opposed by many smaller players, by new entrants and by the industry bodies, the CBI and techUK.

Ofcom is an immensely powerful regulator which can make life-or-death decisions for these companies and their investors. The industry players feel that it is only fair that they should have the protection of due process. They believe that changing the appeals regime in the way proposed introduces significant regulatory uncertainty into the UK investment environment.

There is no evidence that has convinced us that Clause 80 is necessary, let alone desirable. Many claims have been made to support the need for a change that has transpired to be simply wrong. For example, it was initially claimed that it would bring Ofcom appeals into line with other sectors, but that point has now been dropped. The Minister made that very clear at col. 1737 in our deliberations in Committee on 8 February. It was also claimed that the new approach would be quicker, but evidence clearly shows that judicial reviews can take at least as long as current telecoms appeals. Many other claims were made which were effectively debunked in Committee by my noble friend Lord Clement-Jones.

Despite all that, in Committee, the Minister refused to accept an amendment which would have done no more than duplicate the wording of the EU directive, which implements the right to appeal under consideration. Rather strangely, the Minister said:

“I acknowledge that the amendment essentially replicates the wording of Article 4 of the EU framework directive, albeit it is not identical to it. While this would in one view remove the gold-plating of the existing standard in a technical sense, the Government consider that it would not lead to any substantive change in approach”.—[Official Report, 8/2/17; col 1739.]
In that statement, he seems to indicate a lack of faith in the judicial bodies responsible for hearing appeals, almost implying that they are not capable of applying the law properly. I say that because the only alternative interpretation of what he said is that the Government now intend to underimplement the framework directive and put in place a standard which does not meet the European requirements.

On the one hand, we are assured by the Government that the words in Clause 80 will allow appeal bodies to take due account of the merits, but the noble and learned Lord, Lord Keen, by saying that a substantive change of approach was required, implied something different. After all, the language of Clause 80 plainly refers only to judicial review. As traditionally understood, this would absolutely not encompass consideration of “merits”.

I argue that there is a real risk of ambiguity that could cause confusion when the first cases are taken under the provision. I hope that the noble and learned Lord will not only respond to the general point but give a clear statement about what exactly is intended by Clause 80 and whether the appeal bodies will be allowed to do what the framework directive says, which is to ensure that, “the merits of the case are duly taken into account”.

Just before I finish, I ask the Minister to give one more clarification on an issue about which there is confusion. He will recall that during debate in Committee, my noble friend Lord Lester raised with him the point that judicial review in cases that do not relate to European directives do not have merits taken into account, whereas in relation to European directives they do. The debate was about proportionality. The Minister was very clear when he said, “here we are dealing with judicial review in the context of the EU framework directive, which requires that the merits of the case are duly taken into account in any appeal”. —[Official Report, 8/2/17, col 1738.]

That is the sort of clear statement that I hope that he will repeat today. I hope that he can go further and explain what will happen post Brexit—although I assume that the entire EU directive will be transposed into UK law. Then, perhaps we will maintain the proportionality to which he referred and the merits will continue to be taken into account. I hope that he can clarify that for me, as well as give that clear statement—not an impossible task—and we can then quickly move on.

10.15 pm

Lord Aberdare (CB): My Lords, I should like to speak briefly in support of Amendment 29A. Removing merit-based appeals, as Clause 80 would do, seems both unfair to appellants in cases where Ofcom may make decisions that are materially wrong even if they reflect due process, as will inevitably occur on occasion, and undesirable, potentially harming consumers and deterring investment. This seems precisely the opposite of what is needed in such an important, strategic, high-value, fast-changing, innovative and growth-oriented sector.

I will not try to restate the arguments made in Committee, or those made by the noble Lord, Lord Foster. I just make two points in response to the helpful letter from the noble Lord, Lord Ashton, on 14 March. The letter describes the merits appeal as, “akin to a retaking of the whole decision”, but an appeal will normally be made only on specific grounds where an appellant believes there is a clear error. So the amendment would not require whole decisions to be re-examined, only those aspects specified in the notice of appeal.

Secondly, I accept that the judicial review process is, “perfectly able to meet the current EU law requirement that the merits of the case are duly taken into account” if the judges so decide in a given case. Rather than leaving it to judicial discretion, however, why not spell out in the Bill that they should be taken into account even after they are no longer banned by the EU framework directive, thereby future-proofing it for the post-Brexit world?

Ofcom decisions are of crucial importance for both consumers and telecom providers, and indeed for investors. As we have heard, the change to a judicial review standard is strongly opposed by the great majority of industry participants, from the major incumbents such as BT and Virgin to much smaller, newer market entrants, such as CityFibre, along with the CBIs and techUK, the latter representing 900 tech sector companies, the majority of them SMEs.

I claim no specific expertise on judicial review, and I am no great fan of BT, but it is important that the relatively modest requirement set out in Amendment 29A should be incorporated into the Bill.

Lord Stevenson of Balmacara (Lab): Briefly, the ground has been well covered by the noble Lords, Lord Foster and Lord Aberdare, and I have little to add. Three things strike me. I recalled in Committee that this was one of the areas where we had received the most external communications and correspondence. It is still something that we need to take carefully. As has just been said, it is surprising that almost the entirety of the industry affected by the judgments of Ofcom have joined up to make the case.

Following on from both speeches, what is required is a statement from the noble and learned Lord. I am sure he is straining at the leash to give us all another compromise solution that will do the trick. He is shaking his head; maybe there are other things he has to cover as well. However, the situation seems to hinge on whether Article 4 of the EU directive applies sufficiently well after this Bill goes through, as before. Yet, as has been mentioned, there will be an opportunity, presumably in the great repeal Bill, to cover exactly this point. So what is the hurry?

Lord Keen of Elie: My Lords, I am obliged to noble Lords. As the noble Lord, Lord Stevenson, observed, there have been quite a lot of external communications on this. Indeed, I notice that the quotation that the noble Lord, Lord Foster, gave on my observations in Committee was identical to that quoted in a letter from Towerhouse LLP to the Department for Culture, Media and Sport on 17 March. Everybody seems to be singing from the same hymn book.

At present, Section 195 of the Communications Act 2003 requires that appeals against Ofcom’s regulatory
decisions are decided by the Competition Appeal Tribunal on the merits. I shall come back to "on the merits" in more detail in a moment.

Appellants argue that appeals “on the merits” should allow for a bottom-up review of the decision, inviting the tribunal to substitute its own view for that of the regulator—in effect, two tiers doing the same thing. Appeals are therefore seen as an opportunity to rerun arguments that were considered and rejected by Ofcom in reaching its decision, or to put forward swathes of new evidence to persuade the tribunal to reach a different decision. Such appeals can lead to extremely lengthy and costly litigation, with extensive cross-examination of experts and witnesses. This depletes the regulator’s resources and means that other regulatory action by Ofcom is inevitably delayed, allowing for the potential for providers to frustrate the regulator with speculative or even spurious appeals causing considerable uncertainty in the market and delay to other regulatory decisions.

The Government consider that appeals in the communications sector need to be rebalanced to ensure that Ofcom is held properly to account for its decisions, but also enabled to regulate in an effective and timely manner in the interests of citizens and consumers, as it is required to do. Clause 80 does just that; it requires that instead of merits appeals, the tribunal must decide appeals against Ofcom’s decisions by applying the same principles as would be applied by a court on a judicial review. Judicial review is generally a well-understood standard of review against which very significant decisions made by most public bodies are tested. Importantly, this will ensure that appeals are focused on identifying errors in Ofcom’s decisions, rather than simply seeking to persuade the tribunal to reach a different conclusion.

Those affected by Ofcom’s decisions will remain able to challenge them effectively. In Committee, the noble Lord, Lord Clement-Jones, said that judicial review was,

“solely concerned with whether the decision is unlawful in a technical sense—that is, was the correct process followed?” [Official Report, 8/2/17; col. 1734.]

I hope I can reassure him that this is simply not the case. First, appellants are able to argue that Ofcom’s decisions are based on material errors of fact or law. Material errors will therefore be identified and corrected in a judicial review process. Secondly, judicial review is a flexible standard of review, which allows the court to decide on the appropriate intensity of review according to the individual circumstances of the case. For example, there may be more intensive review processes in the context of matters pertaining to human rights. In particular, Ofcom has various statutory duties to ensure that its decisions are proportionate—in other words, that they go no further than is appropriate and necessary to attain a legitimate aim. In reviewing whether a decision is proportionate, the courts can carry out a closer and more rigorous review of the decision.

Of course, appeals in the communications sector are required to ensure that,

“the merits of the case are duly taken into account”,

as a matter of EU law under Article 4 of the EU framework directive. That will remain the case under a judicial review standard. I understand that there is uncertainty about the extent to which requirements in EU law may become a part of UK law after the United Kingdom leaves the EU, but that will be a matter for Parliament to determine when the great repeal Bill is introduced, as the noble Lord, Lord Stevenson, observed, and will be looked at in the context of the overall future regulatory framework for electronic communications, including the appeals regime, once the UK has left the EU.

A number of Ofcom’s regulatory decisions are already appealable only by way of judicial review, and the Court of Appeal confirmed as long ago as 2008 that judicial review is capable of taking account of the merits of the case, as required by EU law and, in particular, by Article 4 of the EU directive. Lord Justice Jacob in the Court of Appeal in the T-Mobile case in 2008 said that it,

“is inconceivable that Art. 4 in requiring an appeal which can duly take into account the merits, requires Member States to have in effect a fully equipped duplicate regulatory body waiting in the wings just for appeals. What is called for is an appeal body and no more, a body which can look into whether the regulator had got something material wrong”.

He also held that,

“there can be no doubt that just as JR was adapted because the Human Rights Act so required, so it can and must be adapted to comply with EU law and in particular Article 4 of the Directive”.

Indeed, in a more recent case involving judicial review and Article 4 in 2016, Mr Justice Cranston observed that, as the Competition Appeal Tribunal had said:

“Ofcom enjoys a margin of appreciation on issues which entail the exercise of its judgment”,

and that,

“the Tribunal should apply appropriate restraint”.

It is not a second-tier regulator, and the fact that it might have preferred to give different weight to various factors in the exercise of a regulatory judgment would not in itself provide a sufficient basis to set aside Ofcom’s determination. It should not interfere with Ofcom’s exercise of a judgment unless satisfied that it was wrong.

These are the relevant judicial review standards that will be applied in these circumstances. We do not want a complete retrial—if I can call it that—or a situation in which, at two levels, we begin at the beginning and end at the end with an entirely different opinion and approach to the evidence, and, perhaps, entirely new arguments being advanced evidentially in support of the merits of a case. That is a never-ending process and is not common to any other area of regulation by a public authority.

The judgments I have referred to have been considered in a number of subsequent cases and it is clear that a judicial review standard is consistent with the requirements of Article 4 of the framework directive. In these circumstances, it is not considered that there is any real need for this amendment. It is appropriate that we proceed with Clause 80 and I therefore invite the noble Lord to withdraw the amendment.
Lord Foster of Bath: My Lords, it is late but I would love to rebut some of the Minister’s remarks about rerunning arguments, swathes of evidence, frustrating delays, uncertainty and so on. If he looks at the Ministry of Justice’s own figures over the last 10 years, judicial review took on average between 9.3 and 13 months. I can compare that with many merits-based cases that have taken considerably less time under the current Ofcom regime. He talked about no other regulators operating in that way: I point out that the water, electricity, health, aviation and post sectors all currently face scrutiny under regimes that do require consideration of merits.

However, I do not want to go into all those details. I thank the Minister because he has, in effect, said what I wanted him to say. It was half put on the record on 8 February when he talked about the requirement for the merits of a case to be, “duly taken into account in any appeal”.—[Official Report, 8/2/17; col. 1737.]

That has been repeated today. Disappointingly, the Minister said no more about what will happen post Brexit, other than that it is a matter we will consider in due course. Nevertheless, I thank the Minister for at least going some way to providing what I asked for and beg leave to withdraw.

Amendment 29A withdrawn.

Amendment 30 had been withdrawn from the Marshalled List.

Amendment 31

Moved by Lord Inglewood

31: After Clause 81, insert the following new Clause—

“The independence and funding of the BBC

(1) The Communications Act 2003 is amended as follows.
(2) After section 198ZA (inserted by section 81 of this Act) insert—

198ZB The independence and funding of the BBC

(1) The BBC is to be independent in all matters concerning the content of its output, the times and manner in which its output is supplied, and the governance and management of its affairs.
(2) The Prime Minister, the Secretary of State, the BBC, OFCOM, and all other persons and bodies with responsibility for matters relating to the governance and establishment of the BBC must ensure that the BBC is able to operate independently from Ministers and other public authorities in the United Kingdom.
(3) The licence fee is to be for the exclusive benefit of the BBC when the independence is under threat.
(4) Subject to sections 365 and 365A, the Secretary of State may not transfer to the BBC responsibility, including liability and costs, for any public expenditure.”

Lord Inglewood (Con): My Lords, in the absence of two of the United Kingdom’s leading courtroom advocates, it is left to me to make the case for Amendment 31. The rationale for the amendment—and for a number of others to which I and other noble Lords put our name—is very simple. It is based on the fact that we have here, as your Lordships all know, a state-funded broadcaster: the BBC. It seems to us to follow that, in a democracy subject to the rule of law, its independence from government must be honoured and seen to be respected. At the same time, for very obvious reasons, they have got to have a relationship with each other, and it seems to us that the nature of that relationship is not properly defined.

With many others, not least the Lord Speaker in his previous incarnation, I have felt that establishing the BBC by royal charter, using the royal prerogative, is, in the reality of the world we live in, no guarantee of its independence. Indeed, it is rather the opposite, since we all know that, over the years, there has been a whole series of deals completed in smoke-filled rooms—not least in the case of money, where Governments of all persuasions have seemed to take Dick Turpin as their role model.

10.30 pm

In the context of this matter, it seems relevant and germane that there has been over recent years and months—we have had a lot of it in this Chamber—debate about press regulation, and the Press Recognition Panel and its relationship to statute and the use of the royal prerogative. At heart, the essence of what we are talking about is the same, and the principles that apply seem to me the same—which is why we hope that the Government will accept the logic, and hence the desirability, of what is proposed in these amendments.

The purpose of this amendment is to point out the flaws, weaknesses and shortcomings of the existing arrangements and to draw attention to the need for a clear, simple public set of properly legally founded rules of engagement for this relationship. In so doing, it sets the ground rules for the parties and gives the rest of us, both in Parliament and more widely in the country, a benchmark against which we can judge the propriety and sense, or otherwise, of what goes on. I very much hope that the Government will be able to indicate that they feel sympathetic—indeed, supportive—of this approach, which seems to me a very fundamental one in a society of the kind in which we are living. I beg to move.

Lord Wood of Anfield (Lab): I thank the noble Lord, Lord Inglewood. I think the principle of maintaining the independence of the BBC unites virtually everyone in this House. However, the question is: do we agree on what constitutes a challenge to that independence, and do we agree to provide extra protection to the BBC when the independence is under threat?

This amendment sets out concerns about three kinds of independence being compromised: editorial independence, operational independence and financial independence. As the debate in Committee showed, there are widespread concerns about independence of these three varieties being challenged in different ways. Therefore, I think the statements of intent and principles in the amendment of the noble Lord, Lord Inglewood, enjoy widespread support. I think most people would agree that they should govern the approach of the legislature and the Executive to the BBC. However, I wish to bring a couple of issues to the surface. Although
[LORD WOOD OF ANFIELD]

the amendment raises these crucial principles, it also suggests the difficulty of using the power of the state to protect bodies outside the state against interference from the state.

I have two concerns in particular. First, there is a larger principle here of putting the independence of a major institution of British public life on a statutory footing. I am personally sympathetic towards that but it is a principle which deserves debate on its own terms, both as a principle and as applied to specific cases such as the NHS, which has been debated before, or the BBC. Secondly, what exactly constitutes independence—not simply politically but legally—needs clarification and precision. Imposing a duty on Ministers and other bodies to ensure that the BBC can operate independently opens the question of how that can be defined, both so that we can recognise it in the observance and the breach, and enforce it. Again, this is something that needs further debate and discussion.

The amendment touches on a cornerstone issue for the BBC and broadcasting policy and the ethos and integrity of public life more generally. However, it raises a broader issue which deserves a more lengthy scrutiny in future.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to noble Lords for their remarks. In returning to this issue, I am sorry that the noble Lord, Lord Lester, is not here to speak to his amendment as we have debated this issue at length with him as part of the recent discussions on the BBC’s royal charter. We have debated it at Second Reading, in Committee and in other debates and Questions. The amendments that the noble Lord, Lord Lester, has tabled, and my noble friend Lord Inglewood has proposed, seek to constrain future royal charters for the BBC through statute. I should have said that I hope the noble Lord, Lord Lester, makes a speedy recovery and returns not to bring this subject up again but other subjects.

I note that, following the discussion we had in Committee, the noble Lord, Lord Lester, made a number of changes to his amendments proposed tonight in the areas of governance and funding. I appreciate the thought that he put into this and the dialogue that we have had on this so far. However, we still maintain that very serious risks are associated with the amendments and therefore we cannot support them.

As noble Lords will by now appreciate, the disagreement between the Government and those who tabled this amendment comes down, as the noble Lord, Lord Wood, said, to a matter of principle. Is the BBC best governed and protected through a charter or through a charter underpinned by legislation? I accept that there are instances where it is desirable and appropriate for a charter to be underpinned in statute but it is the Government’s view that this does not apply to the BBC.

Noble Lords may be interested to know that this is a discussion as old as the BBC itself—indeed, it is almost exactly 10 years older than the noble Lord, Lord Lester. When the then Postmaster-General announced in July 1926 that the BBC would be established through its first royal charter, he remarked that the new corporation would derive its authority from royal charter rather than from statute to make it clear to the public that it was not, “a creature of Parliament and connected with political activity”.

In practical terms, noble Lords will appreciate that there is little difference between the effect of the BBC’s charter and its accompanying framework agreement and an Act of Parliament. Both are binding on the BBC and on Ministers. Article 3 of the current charter provides:

“The BBC must be independent in all matters concerning the fulfilment of its Mission and the promotion of the Public Purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs”.

That carries the same weight in a charter as it does in primary legislation, but in my view the latter option carries unacceptable risks to the independence of the BBC. From a practical point of view, amending an Act of Parliament in the event that a change is required— with all the party-political debate and pressure that would entail and the uncertain legislative timetable—is not the right vehicle to make sure that the BBC can be governed effectively. Who can tell what political pressures will exist entirely unconnected to the detail of the BBC charter when the charter comes up for renewal?

Charter review remains the right vehicle. It affords an ample opportunity for debate and consultation but also allows for full consideration of all the connected and complex key issues, for effective decision-making and, crucially, for a negotiated agreement with the BBC.

Incidentally, I cannot resist mentioning that my noble friend Lord Inglewood referred to the Government as Dick Turpin in this case. I may be entirely unfamiliar with the story of Dick Turpin but I did not realise that he gave £3.7 billion annually to his victims.

Therefore, I submit that a statutory underpinning will leave the BBC under constant threat of change and monitoring what the Parliament of the day sees as the national interest. I fear that fellow parliamentarians, some of whom may not have my noble friend’s pure motives, will find it an irresistible temptation to tinker here and there, and, even with the best of intentions, we cannot expect the BBC to operate effectively and plan for its future in such circumstances.

I believe that this should be a matter for the Government of the day to decide ahead of the next charter review. The charter model has stood the test of time since 1926—through economic depressions, world war and huge technological change—to achieve what has been praised throughout the passage of this Bill as the BBC we have today. Given your Lordships’ ongoing interest and informed views, I am confident that the Government of the day will be minded to consider this carefully. With that explanation, I hope my noble friend will be able to withdraw his amendment.

Lord Inglewood: My Lords, I am very grateful to my noble friend for his very full response to the remarks that have been made on this amendment. He went to the heart of it at the outset when he said that he was opposed to the suggestion in the amendment because it would constrain the royal charter in the future. But that is precisely the reason why we moved the amendment.
The mechanism of the royal charter enables the Government, in practice, to have a huge and relatively unscrutinised and uncontrolled ability to adapt and adjust the framework for the relationship they have with the BBC to their own preferred ends.

As I listened to my noble friend, it occurred to me that it was about 25 years ago that I stood at the Dispatch Box at which he was standing a moment ago, discussing the same issues. It crossed my mind—ignoble though it may be to say it—that almost the same speech could have been given to me to deliver all those years ago.

It is perhaps a mistake to simply assume that because something gives the impression of having worked reasonably well for 70 years—it may or may not have—it will continue to work equally well in the years to come. I look around the Chamber this evening and see that some of us are perhaps not quite yet 70 years old but heading that way—and that some may even have passed it. I am afraid that it is the nature of the human condition that when you get to 70 years old, you may not be as fit, spry and sharp as you were in years gone by. So it is not good enough to say that because it has worked well in the past—and it has worked only moderately well—it therefore follows, as night follows day, that you can extrapolate that it will work well indefinitely.

However, I was encouraged by the concluding remarks of my noble friend. He said that he was confident that Governments in the future would seriously consider the point that was being made. I think that is important. On any measure, we have just started a BBC charter and there is a bit of time until the next one comes into effect. While I think that it would have been desirable to have placed in the Bill the statutory provisions that are contained in the amendment, not to do so may not be fatal to the underlying project. Certainly this is something we ought to think carefully about in the hours and days to come—not least the noble Lords, Lord Lester and Lord Pannick, who have not had the advantage of listening to the remarks of my noble friend. Against that background, I beg leave to withdraw the amendment.

Amendment 31 withdrawn.

Amendment 32 had been withdrawn from the Marshalled List.

Consideration on Report adjourned.

House adjourned at 10.42 pm.
House of Lords  
Tuesday 21 March 2017  

2.30 pm  
Prayers—read by the Lord Bishop of Leeds  

International Development: Forestry  
Question  

2.37 pm  

Asked by Baroness Parminter  

To ask Her Majesty's Government, in the light of the Department for International Development's Economic Development Strategy, whether they plan to commit to supporting forest programmes across the globe to improve forest governance and reduce deforestation.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, stopping deforestation is an essential part of global efforts to promote sustainable economic development. DfID already supports programmes focused on governance, tackling illegal logging and related corruption, and working with companies to eliminate deforestation from supply chains for palm oil, cocoa and other commodities. This makes an important contribution to DfID's economic development strategy.

Baroness Parminter (LD): My Lords, I pay tribute to the work of both this Government and previous Governments in the fight against global deforestation. Given that we are losing an area the size of a football pitch every two seconds, and that deforestation accounts for 10% of our global carbon emissions, will the Minister commit to the fact that the Government will not lose any further funding to take forward this important work?

Lord Bates: I do, and that is what DfID provides through many of its programmes and by working in public/private partnerships in this area. We recognise that tropical forests regulate weather patterns and that 25% of global greenhouse gases are a result of deforestation and land-use changes. It is therefore crucial that we make efforts in this area. Regarding my noble friend's opening point about the US Administration's policy, I would comfort him to an extent and say that that policy is a proposal. A full budget will be published in May and has then to find its way through Congress.

Lord Clark of Windermere (Lab): My Lords, I declare an interest as a former chair of the Forestry Commission. As the Minister is aware, Britain has a unique reputation as one of the few countries in the world that has successfully reforested its landscape. Traditionally, the Forestry Commission has offered much expertise and experience to countries seeking to reforest their landscape but of late, due to the financial cuts, it has been unable to sustain that at the level it would like. Will the Minister look again at how we could use money to utilise the expertise of the Forestry Commission to practically help countries grow more trees?

Lord Bates: I certainly pay regard to the noble Lord's great experience and commitment to this area over many years. However, I would also say that, through DfID, we fund a number of programmes, such as the international forestry knowledge programme, which does a great deal around the world in terms of forest governance and partnerships in forests, and are part of the forest investment programme with the World Bank. A key part of those initiatives takes place in areas such as Indonesia, for example, where 80% of forestry was formerly illegal but now 90% is legally audited. We want to see more of that type of work and I assure the noble Lord that that will continue to happen.

Lord Cameron of Dillington (CB): With DfID's new and welcome emphasis on the promotion of agriculture as the bottom rung of our wider economic agenda, does the Minister agree that forestry and agri-forestry have a vital role to play in sustaining soils and encouraging the sustainable management of water and grazing, and that therefore forestry has a really important role to play in the wider economic agenda generally within sub-Saharan Africa in particular?

Lord Bates: Absolutely. That is why it is such a prominent part of the sustainable development goals. As the noble Lord says, it is about livelihoods and climate change. It is also about direct livelihoods, as about a billion people around the world depend on forests for their livelihoods. That is a very important part of our economic development strategy.

Lord Naseby (Con): Will my noble friend look again at the decision of DfID not to give any help to Chile, our greatest ally in South America, following the extensive deforestation from the wildfires and the subsequent difficulties of rehabilitation for the people who were devastated in that part of Chile?
Lord Bates: My noble friend and I have had a number of discussions on this. Of course, because Chile is not ODA eligible due to its middle-income status, it is difficult to do that. However, we have corresponded and are looking at ways, through the Cabinet Office, to extend technical support and advice to the people of Chile, who are of course great friends of the UK and who we want to support in their hour of need.

Lord McConnell of Glenscorrodale (Lab): My Lords, do the Government agree that if their fine objectives in this strategy of securing greater prosperity and tackling poverty are to be achieved, then tying aid to trade as part of any DFID economic strategy would be the wrong course of action? Will they support continued improvements in the business environment in developing countries, including in forestry, to ensure that there is greater prosperity in those countries in the future?

Lord Bates: The noble Lord is absolutely right that tying aid to trade benefits no one in the long run. We want to get the most competitive people who can deliver the best services to the countries that are in need of our help. We remain resolutely committed to that. That was set out again in the economic development paper.

Lord Collins of Highbury (Lab): Global co-operation is absolutely critical, as the Minister mentioned, in achieving the SDGs. Can he tell us how we will ensure that co-operation post Brexit? How will we maintain a relationship with our European partners in delivering the SDGs, particularly on deforestation? I must admit that on days like this, hearing his responses, I wish he was the Secretary of State.

Lord Bates: Let me go straight to the points that the noble Lord has raised. As has been said many times from this Dispatch Box in recent years, we are leaving the European Union, not leaving Europe. We work with Europe around the world on delivering those sustainable development goals, and we will continue to do so. We also have other commitments. There is the New York Declaration on Forests, which is an international commitment of 190 NGOs, Governments and multinationals that contribute towards that effort. We will be working with everyone in pursuit of those global sustainable development goals.

Police: Pension Rights

Question

2.46 pm

Asked by Lord Bach

To ask Her Majesty’s Government what is their policy with regard to the pension rights of spouses and civil partners of police officers who have been killed in the line of duty.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in January 2016, this Government changed legislation to the benefit of widows, widowers and civil partners of police officers in England and Wales who have died on duty. As a result, from 1 April 2015, those survivors who qualify for a survivor pension will now continue to receive their survivor’s benefits for life, regardless of remarriage.

Lord Bach (Lab): My Lords, I declare an interest as the serving police and crime commissioner for Leicester, Leicestershire and Rutland. I thank the Minister for her Answer and for seeing me earlier today to discuss these matters with her and her officials. On 15 August 2002, two Leicestershire police officers—Police Constables Andy Munn and Bryan Moore—were brutally killed by a criminal driver on the A42. They not only both died in the same incident but both left young widows and small children. One widow remarried seven years later in 2009 and lost her police widow’s pension. The other widow remarried in 2015 and, because of a change in the law, has kept her police widow’s pension. How in all conscience can it be right that two women, both of whose husbands were killed while bravely fighting crime and in the line of duty on the same occasion, can be treated so differently by the country that owes so much to both of them? Will the Minister please look at this case again? Does she not agree that such obvious unfairness offends against every principle this House believes in?

Baroness Williams of Trafford: I thank the noble Lord for his Question, for the way in which he has always constructively engaged with me, and for coming to see me this morning. I pay tribute to him as Parliament’s only PCC. Without talking about individual cases, I say that it is absolutely tragic that police officers are killed in the line of public duty. When it happens, we should honour the officers’ memory and sacrifice. That is why this Government have changed the rules so that all survivors of police officers who die on duty do not now face the prospect of losing their pension on remarriage. That is a change that no previous Government have felt able to make. However, we must continue to have regard to the wider implications of a change to public service pensions. It is the duty of government to ensure that any policy changes are legally and financially sound. I do not pretend that the judgment is always easy but it is one that we must make. Successive Governments have maintained a general presumption against retrospective changes to public service pensions, and I am afraid that that remains in place.

Baroness Harris of Richmond (LD): My Lords, I declare my interest as an honorary member of the National Association of Retired Police Officers, which has been instrumental in championing this campaign. Should the Government not recognise the principle that the widows and widowers of police officers who have given their lives in service to the community should receive pensions for life no matter when their partners were killed?

Baroness Williams of Trafford: I agree with the noble Baroness that the Government recognise the principle and that is why we made these changes back in 2016, to be applied from 2015. But as I have said, the retrospective judgment is not one that is made across the public service.
Lord Kinnock (Lab): My Lords, may I recommend to the Minister the principle of “When the facts change, I change my mind” as wise guidance in issues like this? Does she accept from me that the principle of no retrospection, although applicable in many circumstances, simply does not meet the moral obligations that arise from cases like those which have been raised properly by my noble friend?

Baroness Williams of Trafford: I agree with the noble Lord that, when the facts change, the Government change their mind. That is why in 2016, after decades of widows who remarried not being able to claim the survivor’s pension, the Government did indeed change their mind. The issue of retrospection is something about which no Government have changed their mind.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I declare my interest as a current police pensioner. I have often heard Ministers both in this House and in the other place, and indeed at conferences, committing the Government to giving priority to the victims of crime. Does the Minister agree that in homicide cases the definition of victim by necessity applies to the spouses and partners, in this case of police officers who have died in the line of duty? Is there not therefore a justified need to reflect that in the pension arrangements for those officers?

Baroness Williams of Trafford: I certainly recognise the difficulties faced by the families of members of the Armed Forces, the police service and the fire service and how they could be seen as the indirect victims of crime themselves. The noble Lord talks about provisions for death in the line of duty. There most certainly are awards under the police injury benefit arrangements which ensure that higher benefits are payable when an officer is killed in certain circumstances. These are broadly if death resulted while seeking to apprehend a suspect, protecting life, or if the officer was targeted for the reason of being a police officer. I take this opportunity to recognise the incredible public service that police officers, fire officers and our Armed Forces make to public life.

Gaza Strip

Question

2.53 pm

Asked by Lord Hylton

To ask Her Majesty’s Government what assessment they have made of the present state of public health in the Occupied Territories of Palestine; and the prospects for agreed international action, in particular action by Israel, to keep the Gaza Strip habitable.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, health indicators in the Occupied Palestinian Territories are relatively good in comparison with regional averages, but they are at risk of deterioration due to conflict and restrictions on movement and access. Increased water and electricity supplies are a prerequisite to improving life in Gaza. We welcome recent initiatives by Israel to increase such supplies and are monitoring their implementation. Further easing of restrictions on materials entering Gaza is also needed.

Lord Hylton (CB): I thank the Minister for that full reply. The health situation inside Gaza is already bad under the partial blockade by Israel. In the interests of all sides, will the Government keep calling for water, sewerage and electricity supplies to be addressed without delay so that Gaza remains habitable from 2020 onwards? Will they make constructive proposals for all to consider, given the help that is available from British doctors who visit Gaza regularly?

Lord Bates: I reiterate that the Government will continue to make representations to ensure that the suffering of the Gaza people is alleviated as far as possible. We are doing a number of things, such as in the area of reconstruction. We are contributing to the Gaza Reconstruction Mechanism, which has rebuilt 2,100 houses destroyed in the 2014 conflict. We are urging the Israelis to honour the obligations they gave in 2015 about the supply of water, which is critical to Gaza. We are also urging them to progress with the connection of the high-voltage 161 kilovolt transmission line to the area. At the same time, we urge those militant organisations in Gaza to restrain themselves and resist and renounce those violent attacks that are at the heart of the cause of this conflict.

Baroness Eaton (Con): Will the Minister outline what steps, if any, are in place to ensure that none of the £25 million that the UK has pledged to the Palestinian Authority for 2017 to fund salaries for 30,000 officials in the West Bank health and education sectors goes towards rewarding terrorism and teaching hate?

Lord Bates: This is a very good example of where we are working with our European colleagues. We work through the EU PEGASE fund to distribute that part of aid. There is strict vetting to ensure that the only people who receive that salary support are legitimately providing healthcare and other medical services and teaching support in those areas. It is very important that we make sure that British taxpayers’ money ends up exactly where it is intended, helping those in need, and not funding people who have been guilty of terrorist acts.

The Lord Bishop of Leeds: My Lords, does the Minister agree that the health sector in the Gaza Strip is really on life support and that while the blockade remains and while there is a lack of public water, this will continue? Does he see any way of encouraging direct aid from the United Kingdom towards particular hospitals? There are two Anglican hospitals, for example, serving the whole community, often free of charge: the Al Ahli Arab Hospital; and the Al-Wafa Medical Rehabilitation Hospital, which has had to be relocated because of damage to St Luke’s Hospital in Nablus. These are beacons of hope in a fairly desperate place. Is there a way of enabling direct funding there as we continue to urge an end to the blockade?

Lord Bates: As the right reverend Prelate may know, our support of healthcare in this area is directed through the UN Relief and Works Agency, which channels support into the health sector there. A number of hospitals, particularly in Jerusalem, are providing help, particularly for those in Gaza, but there has been...
significant difficulty, to which the noble Lord, Lord Hylton, referred, in getting those in medical need to those hospitals to get that care, so we have been providing help at the border through an access and co-ordination team, to try to facilitate that. The situation is very fraught, tense and difficult, and there needs to be a political solution very shortly.

Baroness Sheehan (LD): My Lords, does the Minister share my concern that a lack of credible investigation and accountability for repeated attacks on medical facilities, such as the destruction of the Al-Wafa Hospital in Gaza in 2014, is hindering the development of grossly overstretched health facilities? Can the Minister reassure me that the UK will support the resolution at the UN Human Rights Council on Friday calling for accountability for such attacks so that hospitals can be rebuilt with some guarantee of future protection?

Lord Bates: For the people who are suffering so terribly in Gaza in a situation that looks so bleak as we move towards 2020, as the UN forecast, there should be several steps in addition to our supporting resolution, in various bodies. First, Hamas and the terrorist organisation should cease their terrorist attacks. Next, the Palestinian Authority should take over control of the operation of Gaza. Finally, we need to see the opening of the borders, not just with Israel but the border at Rafah with Egypt as well.

Lord Anderson of Swansea (Lab): My Lords, the situation in Gaza is indeed dire, particularly for children, and this is due not only to Hamas. Do the Government at least recognise that on the latest WHO figures, albeit they are a little dated, over 4,000 Gazans have been received in hospitals in Israel and well over 90% of applicants from Palestine as a whole are accepted by Israel? Would it not be better if Gaza were to seek to build bridges rather than tunnels to Israel?

Lord Bates: That lies at the heart of this situation. There will be no relief for the people in Gaza, who are suffering so terribly, until there is a political solution and an easing of the tensions, and those should be based on mutually recognised rights to exist. That has to be the only way forward and the noble Lord is right to point to it as we try to apply these urgent humanitarian responses. There needs to be a longer-term political solution.

Schools: Funding Formula

3.01 pm

Asked by Baroness Massey of Darwen

To ask Her Majesty’s Government what is their response to the Education Policy Institute report on the new funding formula for schools which indicates that primary schools may lose funding equivalent to two teachers and secondary schools may lose funding equivalent to six teachers.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, through our careful management of the economy, we have protected the core schools budget in real terms. In 2017-18, schools will have more funding than ever—over £40 billion—set to rise to £42 billion by 2020. The IFS analysis shows that per pupil funding in 2020 will be over 50% higher in real terms than in 2000. While we know schools are facing pressures, we know that there is scope for schools to become more efficient and we are supporting them to achieve this.

Baroness Massey of Darwen (Lab): I thank the Minister for that interesting reply. Could he say whether he recognises the concerns of teachers at schools with more disadvantaged pupils, who are more likely to suffer than others under this funding formula? Could he predict what the future for those schools might be?

Lord Nash: I think that the EPI, to which the noble Baroness refers, supports our national funding formula and agrees that we should proceed with it, and it confirms that we will be focusing money on the disadvantaged.

Lord Storey (LD): My Lords, in the next four years, the budget of an average primary school will be £74,000 worse off. That is the equivalent of two teachers. The budget of an average secondary school will be £291,000 worse off, which is the equivalent of six teachers. Does the Minister think that it is wise to be spending £240 million on expanding grammar schools and £320 million on creating new free schools when these budgetary pressures exist?

Lord Nash: All public services are facing budgetary pressures. We are still trying to recover from the deficit that we inherited. The National Audit Office has made it quite clear that it is reasonable to look to schools to make efficiency savings. The Education Endowment Fund has said that there is significant scope for better deployment of staff in schools. We find that many of our best schools educationally are also running themselves financially very efficiently. We believe that there is significant scope for saving, in non-staff costs in schools, of over £1 billion.

Lord Polak (Con): Will the Minister join me in recognising that the current funding system for schools is fundamentally flawed? It is a postcode lottery, where resources provided to identical schools depend not on their needs but on location. This is unfair and needs to be addressed urgently.

Lord Nash: I wholeheartedly agree with my noble friend. As I have already said, the EPI, to which the noble Baroness, Lady Massey, referred, has agreed with him that the system as it currently stands is broken, is unfair and must be addressed urgently. Underfunded schools do not have access to the same opportunities as others do, and this cannot be right. This is why we are introducing a much clearer, fairer and more transparent system.
Baroness Symons of Vernham Dean (Lab): My Lords, does the Minister accept that these proposals have a disproportionate effect on small primary schools in rural areas? I declare an interest because the school in my village, of Vernham Dean in Hampshire, will have suffered a cut of £64,000 in relation to the money that was available to it only a year and a half ago. I wonder whether the Minister can accept that these proposals will adversely affect young children in small, rural schools in relation to their counterparts in larger towns.

Lord Nash: Rural schools are of course essential to their local communities and ensure that children do not have to travel long distances to school, but we are including an enhanced sparsity factor in our formula to target additional funding to our smallest and most remote schools. This sparsity funding is over and above the lump sum that all schools will receive to help them meet costs that do not vary with their pupil numbers.

Lord Evans of Weardale (CB): My Lords, while I welcome the additional efficiency and flexibility that come from the multi-academy trust system, and from trusts and free schools overall, does the Minister agree that a reduction in funding per pupil at a time when greater skills are needed to compete internationally, and when mental health problems among young people are increasing so rapidly and causing problems for many schools, is a bad allocation of money?

Lord Nash: I am grateful to the noble Lord for his comments about the efficiency of multi-academy trusts. One study shows that multi-academy trusts can achieve a saving of £146 per pupil. As I said, we are still recovering from the financial hole that we inherited in 2010 and we all have to adjust our resources. Schools have had a huge increase in money in recent years. We are trying very hard and have a lot of resources available on our government website to help them become more efficient.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister apologise for the fact that the Government are taking money out for their own pet schemes for grammar schools and depriving children in other schools in other parts of the country? Will he agree to go away and look at whether the Government’s pet schemes should have additional money that is not stolen from children in other schools?

Lord Nash: I will not apologise any more than the party opposite has apologised for the probably £10 billion that it wasted on its Building Schools for the Future programme.

Parking Places (Variation of Charges) Bill
Third Reading

3.07 pm

Motion

Moved by Baroness Redfern

That the Bill do now pass.

Baroness Redfern (Con): My Lords, I would just like to thank David Tredinnick MP, the Member in charge of taking the Bill through the Commons—he is in the Chamber today—and Marcus Jones, the Local Government Minister, for his support. I particularly thank my noble friend Lord Young of Cookham for his kind words in responding for the Government and the noble Lord, Lord Kennedy of Southwark, for speaking in support of the Bill at Second Reading. I also thank the RAC Foundation, the Federation of Small Businesses and the Association of Convenience Stores for their support and, finally, the Department for Communities and Local Government. I beg to move.

Bill passed.

Broadcasting (Radio Multiplex Services) Bill
Third Reading

3.09 pm

Bill passed.

Armed Forces Act (Continuation) Order 2017

Motion to Approve

5.10 pm

Moved by Earl Howe

That the draft Order laid before the House on 20 February be approved.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the brave men and women of the UK’s Armed Forces are, even as we debate, stationed around the globe keeping us safe. Yet, ever since the 1689 Bill of Rights, the vital protection they afford us rests upon the consent of Parliament. The specific legislation governing our military is contained in the Armed Forces Act 2006. It provides the legal basis for the system of command, discipline and justice that makes our personnel the best in the world.

Every five years, that legislation must be renewed by an Act of Parliament and, in the interim, by annual Order in Council. Since the Act itself passed in 2016, today our job is to consider, and I hope approve, the order, which will extend the force of legislation until May 2018. To appreciate its significance, one has only to imagine the consequences of allowing the Act to expire. The prospect of having our Armed Forces unregulated and our nation no longer able to defend itself is not to be contemplated.

It is in all our interests to ensure a speedy renewal, and I urge the House to agree to that, not least because the dangers we are facing are growing in complexity, diversity, multiplicity and concurrency. That was the expert opinion of our SDSR in 2015, and I firmly contend that nothing that has happened since has given us cause to alter it. Let us consider just a few of the main security challenges that we face in the world today: Daesh in the Middle East, and the prospect of its fighters returning to the continent; an increasingly aggressive Russia, menacing its neighbours in eastern Europe; an ever more assertive China in the South Pacific; and a belligerent North Korea, testing nuclear weapons and the patience of the international community.
All the while, we are contending with humanitarian crises in Syria and South Sudan, mass migration in Europe, rising Islamist fundamentalism, cyberwarfare, piracy on the high seas, and the perils of climate change. Individually, each represents a greater or lesser threat to our nation. Collectively, they pose a direct danger to our international rules-based order—which, in turn, underpins our values and our way of life.

As we have discussed many times before, the UK’s Armed Forces are working tirelessly to protect our nation today. The real question hinges on their ability to react tomorrow. Indeed, that was precisely the focus of our SDSR in 2015. Its response was to restructure defence to make us better prepared for the future, so it is worth reflecting on three of its most significant elements.

First, it ensured that we are investing in the full spectrum capability necessary to deter any danger. The Government chose to grow their defence budget, at a time of austerity and in the face of many other competing interests, so that they could spend £178 billion on the best kit money can buy: digitally enhanced Ajax armoured vehicles, upgraded Apaches, new frigates, a new fleet of drones and a regenerated carrier strike. We are investing not just in conventional forces but in nuclear deterrence, putting aside billions to build new Dreadnought submarines to provide our nation’s ultimate safeguard well into the 2050s. All the while, the exponential pace of technological advance means that we must continually stay ahead of the curve. So we are putting our emphasis on innovation, using an £800 million fund to generate a wide range of disruptive capability in laser weaponry, cyber and big data.

Secondly, the SDSR makes government far more integrated. The global problems we are facing transcend Whitehall borders and boundaries. Consequently, we have brought together all levers of government—whether defence, diplomacy, development, trade or engagement—to pack a more powerful punch. So today we do not just have a National Security Council offering collective strategic leadership across Whitehall on national security and crisis concerns: we have cross-Whitehall funds and joint policy and delivery units covering defence, the Foreign Office and DFID to focus our combined energies on the most pressing issues.

This holistic approach is paying dividends on the ground. When it came to tackling Ebola in Sierra Leone, our Armed Forces built treatment centres staffed by NHS volunteers, while officials from DFID, the FCO and our charities educated villagers about prevention. Together with our international partners, we stopped a deadly disease in its tracks. Meanwhile, today we are applying persistent simultaneous pressure to the Daesh terrorists on multiple fronts—militarily, economically and in cyberspace.

The third element of our SDSR was about ensuring that UK defence becomes international by design. In a world of complex global problems, it is vital for us to work more effectively with our partners. That means much more than collaborating to counter imminent threats; it is about joining forces to stop crisis morphing into regional chaos. It is about building the capability of partners to support good governance and doing more to understand international perspectives. It is also about working collectively to strengthen our trade and increase our prosperity.

Since the decision of our people to leave the EU, we have become even more determined to step up to defend global security. So we are doubling peacekeeping support for the UN, as well as working more closely with the OSCE, the African Union and the Commonwealth. Above all, we are strengthening our support for NATO. Sixty-eight years after the alliance was formed, it remains as relevant as ever. As US Defense Secretary James Mattis said recently, it is, “a fundamental … bedrock … for all the transatlantic community”.

That is why the UK continues to meet the 2% GDP target. It is why we are leading the very high readiness joint task force—sending 3,000 of our own personnel to join the 14-nation force. It is why we are contributing to the enhanced forward presence in Estonia and Poland, as well as policing Black Sea skies. Finally, it is why we are playing a key role building up the alliance’s cyberdefences as part of the Cooperative Cyber Defence Centre of Excellence in Estonia.

However, the alliance is only as strong as its weakest link. It is not enough for us to pull out all the stops; we need other nations to up their game. We agree with President Trump and General Mattis that it is time for the allies to pay their way. US taxpayers cannot subsidise European defence. Currently, 19 of the 28 EU member states are failing to spend 1.5% of GDP on defence. Five—by no means the poorest five—do not even spend 1%. It is salutary to think that, after we leave, EU countries will pay only 20% of NATO’s bills.

NATO adaptation also goes beyond money. We need the alliance to streamline its political and governance structures to make faster decisions, just as we need it to take a 360 degree view, offering total security against threats both from the east and the south.

The UK is also looking to develop combined military formations with like-minded allies that complement NATO. Our joint expeditionary task force working with our northern European partners—Denmark, Estonia, Latvia, Lithuania, the Netherlands and Norway—gives us greater speed and flexibility to respond to crises. At the same time, we are strengthening our ties with our closest allies such as the US, France and Germany. Together we are building a tapestry of capability to tailor our response to any threat. With France, besides creating a combined joint expeditionary force, we are co-operating on future combat air systems, which will give us the most advanced unmanned combat air system in Europe.

No one would deny that the international environment is becoming more challenging, that the dangers are increasing daily and that we need to do more. In fact, the great advantage of debates such as this is that we have the chance to listen and learn from the opinion of our finest military minds and thereby become even stronger.

All that said, I believe SDSR 2015 has put us in a better position to deal with the unexpected. The UK is investing more, integrating more and doing more to work internationally. The future remains uncertain but we are now on a more secure path towards peace and prosperity. I beg to move.
Lord Touhig (Lab): My Lords, the House will note that I am not my noble friend Lord Rosser. I apologise at the outset for my part in any confusion caused to the very excellent staff who drew up the speakers list. The House will not be denied my noble friend’s comments; he will speak at the end of the debate.

Seventy years ago last month, on 24 February 1947, the British ambassador to Washington was instructed by Labour Foreign Secretary Ernest Bevin to deliver a memorandum to George Marshall, the American Secretary of State. The memorandum made it clear that Britain’s economic position would no longer allow her to continue as the reservoir of financial military support to Greece and Turkey. The shockwaves it produced throughout the Truman Administration were just what Bevin wanted. He believed that, following the end of the Second World War, the United States was in Europe but not yet of it in defence terms. His memorandum forced the US Government to take a decision that they had been unwilling to make up to that time. It led to the creation of NATO, and it was a Labour Foreign Secretary who was the midwife at that birth.

Moreover, it was also Bevin who conspired with Prime Minister Clem Attlee to create Britain’s independent nuclear deterrent, against opposition from some hard-left members of the Labour Party—alas, so far as our nuclear deterrent is concerned, some things never change. His memorandum forced the US Government to take a decision that they had been unwilling to make up to that time. It led to the creation of NATO, and it was a Labour Foreign Secretary who was the midwife at that birth.

More recently, in 2010, the then Foreign Secretary, the late William Hague, and his Conservative colleagues decided to scrap the Trident nuclear programme. The Secretary of State for Defence at the time, Michael Fallon, told The House magazine last year:

“We've got to have this thing over here, whatever it costs. We've got to have the bloody Union Jack on top of it”.

Labour has always had a proud record on defence when in government. Indeed, the Defence Secretary, Michael Fallon, told The House magazine last year:

“It was the Labour Party that gave us the two most important pieces of our defence architecture today—NATO and our independent nuclear deterrent. It was the Labour Government who committed to the 2% and the Labour Government who was the founding member of NATO—every time Labour has been in Government they have taken a responsible view of defence”.

Labour in government has committed resources to the defence of Britain, which this Government have failed to do. In particular, we spent on average 2.3% of GDP when we were in office. The present Government have failed to match this, preferring instead to use creative accounting to massage the figures by including some £1 billion of pensions in the 2%. Will the Minister’s Government match my Government in this? As we urge other NATO states to spend 2%, we would have more credibility if we were genuinely spending that amount ourselves.

The SDSR 2010 was the most misnamed of government publications. In the foreword, David Cameron and Nick Clegg wrote about bringing the defence budget into balance. They meant cuts. They offered a sop by saying that defence and security would contribute to the deficit reduction on a lower scale than other departments. That document was not about our strategic defence and security; it was about cutting back on defence spending. It was a document promoted not by the Ministry of Defence but by the Treasury. It talked of reconfiguring our Armed Forces. Having worked for some time as Gordon Brown’s PPS, I know that is Treasury-speak for cuts.

Today our Army is smaller than the one we put in the field against Napoleon. The latest figures show an Army of just 75,840 personnel. The Royal Navy is reduced to 19 ships, of which six have propulsion problems and two are laid up in Portsmouth because they are short of crew as a result of spending cuts. On top of this, we have no aircraft carriers. I look forward to the Government’s response to the National Audit Office report published last week on the carriers. We have no marine patrol aircraft and there are currently only seven RAF fighter squadrons. Two of these exist only because the life of the Typhoon has been extended until 2040.

There is an overdependence on recruiting reservists. Despite millions of pounds spent on recruitment, targets for all three services have been missed. Morale is poor. Some 54% of service personnel are dissatisfied with service life. The most valuable asset that Britain’s Armed Forces have are the men and women who serve. They have had their pay frozen and their pensions reduced, and their accommodation is in need of major investment. According to the 2016 continuous attitude survey, almost half believe that the quality of their accommodation has fallen. The Armed Forces’ Pay Review Body has revealed that almost every group spoken to believed that their pay increases were unreasonable. The 2016 survey revealed that only one in three of our Armed Forces personnel believed they were valued and just one in three planned to stay as long as they possibly could.

The failings I have identified are not the responsibility of our Armed Forces, but the consequence of government policy of cuts, mismanagement and poor forecasting. Concern at the state of our Armed Forces is not the exclusive interest of this side of the House. In recent debates, Conservative, Liberal Democrat and Cross-Bench Peers have expressed their concerns.

While continuing my criticism of the Government, I want to say that the whole House values the work of the noble Earl who has constantly demonstrated his commitment to the well-being of our Armed Forces. He comes to the Dispatch Box time and again, often to defend the indefensible, which he does with such great style that he is almost convincing. Those of us who are the Government’s critics in this House have nothing but admiration for him personally and value the fact that he listens and responds. For this, we are all grateful.

The SDSR 2015 was a missed opportunity. It failed to give a vision of the future which could have given us confidence that the Government were tackling the problems that they had created in 2010. There is a strong case for revisiting SDSR 2015. A revised SDSR would afford the opportunity to look afresh at Britain’s position in the world. We, on this side, happen to believe that defence and foreign policy are two sides of the same coin. The SDSR 2015 should have been based on our key foreign policy objectives. It was not. These are bound to be revised now, as a result of Brexit, and this will impact on defence. If the Government shared that view, we would not have the Foreign Secretary going around the Middle East proclaiming:

“Britain is back East of Suez”.

3.20 pm
and even announcing a military spend of £3 billion over the next 10 years—all before the Ministry of Defence has published its Gulf strategy.

We cannot have major foreign and defence policy decisions made on the wing. Of course we have a role to play in the Middle East, but we have interests in the Far East and around the globe. We are a maritime trading nation. Keeping open the world’s shipping lanes and being able to protect and defend our global interests are essential. We are—and remain—a world power, one with a nuclear capability available to deter and protect. If we have clear foreign policy objectives, linked to defence, we can answer the question: what do we want our Armed Forces to be capable of doing? It is not rocket science. It is about asking the basic, obvious questions about what we want from our Armed Forces.

My noble friend Lord Robertson of Port Ellen most skilfully set out how such tasks could be approached. In a speech in 2015 about the NATO objective of spending 2% on defence, he said that, “the 2% only makes sense if it is spent on the right things—deployable troops, precision weapons, logistics and specialist people”.

This simple and basic approach sums up what needs to be done. The SDSR 2015 could have set out those objectives clearly, made provision for the resourcing and funding and included the defence-industrial strategy. Perhaps I may commend this booklet, A Benefit, Not a Burden, which clearly sets out the case for the strategic value of Britain having a defence-industrial strategy. I am grateful to the noble Lord, Lord Sterling, for drawing my attention to it. In this debate, I look forward to listening to and learning from the noble Lord, Lord Levene, whom I suspect might have a different view.

We face challenges not known by previous generations. Challenges posed by cyber have the capacity to change warfare into something we have never known or imagined. The Government are right to invest in cyber, but we must be willing to use it in an offensive, as well as defensive, mode if we are determined to deter. The other threat is from terrorist groups such as ISIL, which would turn high streets anywhere into a war zone. Some of the most evil and barbaric acts witnessed by humanity have been carried out by religious extremists who are in fact betraying the beauty of their faith.

We face a resurgent Russia, which has spent billions modernising its forces. We face an economically ambitious China, making dubious territorial claims in the South China Sea and increasing defence spending, and we face the evil regime in North Korea, which enslaves its people and threatens the peace of the region. We face the crisis of failed states such as Libya and Syria and the awful consequences of civil war, which has forced millions to flee and try to get to Europe.

NATO remains the bedrock of our defence, and I hope that at the May summit, Britain will make it clear to President Trump that, while we agree with him that all states should spend 2% of GDP on defence, NATO is not obsolete, irrelevant or out of date, as he said during his election campaign.

The first duty of the British Government is the care and welfare of our people, and at the heart of that is our defence. For that reason, we have no hesitation today in supporting the Armed Forces Act (Continuation) Order, to which the noble Earl referred in opening the debate.

Coming full circle, I return to Ernest Bevin. His shock tactics led to the creation of NATO, but it also led directly to the Truman doctrine of 12 March 1947. For me, the most powerful part of the President’s statement remains true today. He said that, “totalitarian regimes imposed on free peoples, by direct or indirect aggression, undermine the foundation of international peace”. The world is no safer today than it was in 1947, and we must therefore be ever vigilant.

3.31 pm

Lord Wallace of Saltaire (LD): My Lords, I think we all accept that we have moved on from the apparently benign international context of the post-Cold War years to a much more unstable international order in which the advanced democracies of western Europe and North America can no longer set the rules without carrying with them the rising Asian powers. Multilateral co-operation with like-minded Governments who share our values has been among the most important levers of British foreign policy since the Second World War—through NATO since 1949 and through the European Union since 1973. It has been a force multiplier and an influence multiplier in international institutions and in negotiations such as the six-power nuclear negotiation with Iran. We will need to work more closely with others as we face this global shift in power.

The most significant change in the UK’s international environment since the publication of the 2015 strategic defence and security review has been the defection of the United States from its position as promoter and protector of the rules-based international order, to which the Motion refers. We do not yet know what the Trump Administration’s foreign policy will become or exactly their approach to NATO and their European partners, but we have seen enough to know that Trump will put America first, as he promised throughout his campaign, and pay less attention to international order and North Atlantic security, and that Britain cannot expect any greater favours than such other close US partners as Canada, Mexico, Germany or Japan.

I want to focus on the future relationship between Britain and our other long-standing allies and partners with whom we share values in promoting and protecting the rules-based international order: our European NATO allies, which are also, with the exception of Iceland, Norway and Turkey, our partners in the European Union.

Successive Governments have kept from the public and the media how close and effective our security and defence co-operation with our European neighbours has become. Tony Blair signed a bilateral treaty on defence co-operation with France in 1998, to add to our existing collaboration with the Netherlands and Belgium, the most long-standing example of which being the British-Dutch marine amphibious force. His Government, with the then George Robertson—later NATO Secretary-General and now the noble Lord, Lord Robertson—as Secretary of State for Defence, attempted to widen this into a network of European defence partnerships. He recognised that the UK could no longer afford to procure a full spectrum of military capabilities under UK sovereign control and that it
therefore made sense to share capabilities to meet shared threats. But when the Daily Mail dubbed this initiative “the European Army”, he backed off and went quiet. Co-operation continued to strengthen but Ministers said as little as possible about it.

When the Conservatives came to power in coalition in 2010, they fought with their Liberal Democrat partners to keep from the public this pattern of undeclared co-operation. Liam Fox, then Secretary of State for Defence, signed a new and closer defence co-operation agreement with France but told the official responsible for UK-French co-operation that he would do his best to keep it out of the newspapers. Since then I have read about major UK-French exercises in the French press, but rarely in the British. I have been told of the exchange programmes under which British pilots fly French military aircraft and that one interception of a Russian plane not far from UK airspace was made by a French pilot in an RAF fighter. But nobody told the Daily Mail, of course.

The level of ignorance within the Conservative Party about the extent of European defence co-operation was and is astonishing. I recall a meeting in Whitehall in which a serving Minister repeated the common prejudice about the uselessness of the Belgians, to be asked by officials whether he was unaware that the strike in Libya which had just knocked out Colonel Gaddafi had been a joint British-Belgian mission. Since the 2015 election, the latest SDSR has spelled out for those willing to read as far as chapter 5 the importance of our links with France, Germany, Italy and the Nordic and Baltic states, both through NATO and through the European Union which, it reminds us in paragraph 5.41, “has a range of capabilities that can be complementary to those of NATO”.

It goes on to say:

“We will...continue to foster closer coordination and cooperation between the EU and other institutions, principally NATO, in ways which support our national priorities and build Euro-Atlantic security”.

This underpublicised admission of the extent of our security interdependence with our neighbours did not prevent the leave campaign from repeatedly insisting that the European Union has no security role or value, and no relevance to NATO. When the noble Lord, Lord Forsyth, repeated this piece of fake news in a debate in this Chamber I gave him a copy of the 2015 SDSR, with chapter 5 carefully annotated; he seemed genuinely surprised to read what it said. I made some effort when in government to persuade Conservative colleagues to give more publicity to the impressive UK-led EU operational headquarters for Operation Atalanta, the anti-piracy mission off Somalia, based at Joint Forces HQ Northwood. Conservative colleagues agreed to invite ambassadors from other EU states to visit, and I understand that a number of Conservative MPs were also invited, but the press was kept well away. The same happened with the Review of the Balance of Competences between the United Kingdom and the European Union Foreign Policy, which stated in its executive summary that “the key benefits” of common action to the UK,

“included: increased impact from acting in concert with 27 other countries; greater influence with non-EU powers, derived from our position as a leading EU country”.

and, “the range and versatility of the EU’s tools, as compared with other international organisations”.

But again, No. 10 delayed publication until the day after Parliament rose for the Summer Recess, and allowed David Lidington and me to brief EU ambassadors but not the domestic media.

Yesterday several newspapers carried the story that the Prime Minister is now seeking a defence pact with Germany. No mention that we already have one with France, I noted: the Government still seem unwilling to admit how close our security and defence co-operation with our neighbours has become. The Government, from the Prime Minister downwards, endlessly repeat the empty phrase, “We may be leaving the EU, but we are not leaving Europe”, with the implication that it will be in the defence and security sphere that we will remain engaged as we cast all economic integration away.

So can the Minister tell us what sort of defence pact is now planned with Germany? Will it be modelled on the treaty with France? Do we plan any other bilateral treaties of this sort—for example, with the Netherlands, Spain or Italy, or with the Nordic states, which are very grateful for the co-operation that the British quietly gave them in increasing their own multilateral integration? Or do we even consider a network of arrangements that might become in time a multilateral organisation—a sort of revived Western European Union of blessed memory?

Does this announcement mean that security in Europe and around its neighbourhood remains the first priority for UK defence, in contradiction to Boris Johnson’s promise that British forces are going to sail off again east of Suez to defend India and confront China? Do we intend to remain a member of the EU caucus within the United Nations and other international organisations, if it is possible to negotiate that? Are the Government willing to face down the hostility of the Europhobes within their party to any continuing links of this sort with our continental neighbours? Unless the Government are willing to reassert our commitment to continuing European co-operation in foreign policy, security and defence, clearly and publicly, our ability to meet the current challenges to the rules-based international order, severe as they are, will be sadly diminished.

3.40 pm

Lord Stirrup (CB): My Lords, this important debate comes at a crucial time for our country and I am grateful to the Government for making space for it in the timetable. We will shortly be immersed in the considerable legislative agenda attendant upon Brexit and then there will probably be little time for anything else. Yet while we are devoting our attention to the Brexit trees, it would be very dangerous for us to lose sight of the whole wood. Much of our attention over the next two years will understandably be taken up with economic and trade concerns. Yet we stand at a time when our underpinning assumptions about the world in which we live, and in which we will need to trade and carry on business more widely, are threatened in a way that we have not seen for decades.
[LORD STIRRUP]

Over the past three years we have been commemorating various centenaries connected with the First World War, and the Government are now thinking about the appropriate way to mark the end of major European hostilities in 1918. In doing so it will be important to reflect on the fact that the war was a strategic failure for the supposed victors. This was not because of events on the numerous, blood-soaked battlefields, but because the politicians of the day were unable to create a lasting political settlement. The treatment of Germany, the retreat of the United States into its more traditional isolationism, and other such misjudgements, set us on the path to the Second World War and another 60 million deaths.

This is in contrast to the situation after 1945. The sustained engagement of the United States in setting up and supporting international institutions, the reduction in barriers to trade, the economic and political resurrection of Germany, and even the sense of collective endeavour in containing the Soviet Union all contributed to the development of stability and prosperity. Yet that post-war order, which most of us in your Lordships’ House have taken for granted for most of our lives, is being shaken. The foundations have not yet been destroyed, but the building is at serious risk. The threatened—and, to some extent, actual—retreat of the United States from a position of leadership in the wider world, the rise of nasty nationalism and xenophobia in many countries, the growing popularity of beggar-my-neighbour trade policies and the pursuit of amoral opportunism, particularly by Russia, have all left Europe in a state of insecurity that some had rather naively hoped we would never see again.

Further afield, the increasing muscularity of China’s policy in the Asia-Pacific region risks miscalculation and conflict with its neighbours. Above all, North Korea’s almost ineluctable progress towards a nuclear-armed ballistic missile capable of reaching Hawaii and Alaska poses a challenge that no US President could ignore. Some people believe that these problems are remote from the UK and should not concern us directly. They are wrong. War in the Asia-Pacific region would have serious and possibly disastrous consequences for us all, and we must take the danger seriously. Within that wider context, we have a continuing threat to our security from extremist Islamic terrorist groups, and a whole new dimension of conflict within cyberspace. Economic, resource and population pressures are all contributing to increasing levels of instability in many parts of the world, and mass movements of people seem likely to be a feature of the international scene for some time to come; indeed, they could well become worse. I could go on, but I have already depressed myself enough.

Of course, the world is not all bad. There are developments that give one cause for hope and some problems that we once thought intractable have succumbed to patient persistence. But what worries me most about the current situation is not simply the scale and nature of the individual challenges—it is the evident weakening of our will to combat them vigorously and collectively. For us, in Europe, the bedrock of such an approach has long been our commitment to NATO. Those who talk about the alliance becoming irrelevant must ask themselves what sort of collective security arrangement might replace it. Certainly, it will not be the EU. In fact, there is no substitute for NATO—at least, not in the near future. Our first response to the challenges of the turbulent present must, therefore, be to ensure the solidarity and capability of the alliance.

NATO’s responses to the challenges posed by Russia’s actions over the past few years have been rather slow, although they go in the right direction, and the strengthening determination to stand behind Article 5 is reassuring. To be successful, NATO needs the wholehearted involvement of the United States, and we cannot take that for granted. President Trump’s demands for European nations to spend more on defence are neither new nor wrong. Germany does not, as he claims, “owe” money to NATO, nor should the United States be “paid” for the large contribution it makes to the security of Germany—not least because it does so to safeguard its own security. However, Germany owes it to itself, and to Europe as a whole, to spend at least the NATO minimum of 2% of GDP on defence. Others also need to do more, but Germany’s example in this regard is crucial. I therefore welcome Chancellor Merkel’s commitment to increase spending to that level.

However, we need to be clear about the significance of the 2% figure. It is a bare minimum, designed to provide a clear baseline against which one can measure delinquency. It is not like some fundraising target, which we should celebrate reaching. I say to the noble Lord, Lord Touhig, that while he is right to question what lies beneath our own figures, the present Government are far from the only ones to have used creative accounting when it comes to defence expenditure.

In any event, the UK’s commitment to the 2% floor merely raises us above the level of those who should be named and shamed; it does not imply an adequate level of investment in our future security. Indeed, I argue that our public expenditure on security remains woefully inadequate in light of the present challenges to international order. We undoubtedly have first-class military capabilities, as the Minister has said, but we do not have enough of them. Our ships, ground combat formations, aircraft and people are spread too thin, and it is obvious that financial pressures within the MoD are mounting. We ought to be spending more like 3% of GDP on defence, not just the minimum of 2%. We also need greater investment in diplomacy and in other elements of soft power. There will always be arguments about how the money should be spent: about the balance between platforms, weapons, people and new capabilities—such as unmanned vehicles and cyberwarfare. But when such arguments are about the division of an already inadequate cake, they rather miss the point.

The mantra of the moment seems to be about taking back control. With control comes responsibility, and with responsibility comes the duty to will the means as well as willing the ends. Successive Governments have paid lip service to the fact that preserving the safety and security of their citizens is their first priority, but their actions—particularly their spending decisions—have said otherwise. The Minister has pointed to all that the present Government are currently doing in this regard, and I acknowledge that they have at least
reversed the miserable downward trend of investment in recent years. They have made a start, but they must do more. We cannot provide all the resources necessary to tackle such a dangerous world ourselves, but we can—and should—set the example for others. It is clearly in our interest to do so.

If we are to be a great global trading nation we shall require a reasonable degree of stability and predictability in the world. Without that, not only our security but also our prosperity will be at risk. Perhaps, as we approach Brexit, it is time to remember, with Thucydides, “that prosperity can be only for the free, that freedom is the sure possession of those alone who have the courage to defend it”.

I hope that the Government will find the courage to make that defence a financial practicality.

3.49 pm

The Lord Bishop of Leeds: My Lords, I hesitate to follow such eloquent speeches on so much detail, but I want to make one or two general points about a more specific area. I do so from an interest that began when I was a Soviet specialist at GCHQ in a previous incarnation, although I realise that that is probably not the right religious phrase to use.

It still seems to me that an SDSR should enable us to be flexible enough to cope with whatever changes are likely to come. My fear, which I have expressed in the House before, remains that in 15 to 20 years’ time we may end up with a force that meets the demands of now but perhaps not the demands of the situation 15 or 20 years down the line because the world changes so much. When I left GCHQ, the Soviet Union was intact, and we see what has changed since then. Therefore, I want to focus on Russia in particular.

It seems pretty obvious that one of Russia’s tactics at the moment, either deliberate or incidental, is to divide the allies one from another—and it seems to be quite effective in that at the moment—enabling the threat against Russia to be diminished, at least in its mind. When we talk about “challenges to the international rules-based order”—the words of the Motion—this begs the question of whose rules. There always are rules, but the question is whose rules they are, on what basis and criteria they are agreed and who adheres to them. What happens if countries decide to change the rules and operate in a different way, which is clearly what is going on at the moment?

Two things that characterise Russia are not only pride and the nature of glory—and there is much more that could be said about that—but the fact that Russians identify themselves through their suffering, which is why I am still a little suspicious of the assumption that the application of greater and greater sanctions will have a big impact. That might be the case in the material West but I think that in Russia a different narrative is running.

How do we look through the eyes of Russia, for example, in determining our response to how we shape our forces for the future? I draw your Lordships’ attention to an article by Richard Sokolsky from the Carnegie Endowment for International Peace, entitled The New NATO-Russia Military Balance: Implications for European Security. I found this one of the most easily understood and probably most helpful and accurate surveys of the situation at the moment, drawing attention to the political and military challenges or perspectives that we face. One point that he makes is that it is incumbent on NATO to draw clear lines if we are to maintain an international rules-based order. For example, when the INF treaty is violated by Russia, even if we think it will not go back on it, we should at least make it clear that that is a violation of rules—a transgression over lines that have previously been drawn in the sand—and perhaps attention should be drawn to that a little more loudly.

The other point that he goes on to make is the importance of keeping dialogue with Russia open, including through back-door diplomacy, and this could be extrapolated to other contexts. When the divisions are increasing in the foreground, how do we maintain those perhaps unofficial back-door routes where the conversation can keep going? If we are to maintain a situation where the same rules can be adhered to whatever the change in circumstances, that conversation will be essential.

I end, noble Lords will be glad to hear, largely where I began. How do we enable our forces to have the confidence that they are being set up to exercise power in a changing environment that has already changed from the assumptions that were set out when the SDSR of 2015 was established? That is where the challenge lies as we pay attention to some of the dynamics of relations with countries such as Russia.

3.54 pm

Lord King of Bridgwater (Con): My Lords, the right reverend Prelate ended on a challenging question, which relates to the success in recruitment that may be essential to underpin the programme that the Government have before them. I start by echoing the tribute that the noble Lord, Lord Touhig, paid to my noble friend Lord Howe for the way in which he conducts defence matters. I shall also, if I may, pay tribute to the noble Lord himself, for the very constructive and serious way in which he speaks from the Opposition Front Bench on defence matters, which I think the whole House appreciates.

Noble Lords, including my noble friend in his introduction, have already said—and I agree with them—that this is the most unstable world that we have seen since the Second World War. The threats are greater. I notice the changes since my time in office and in defence. We never had global Islamic extremism, which is a completely new variety of terrorism of a particularly nasty and dangerous kind. Now we never know where the next terrorist outrage in support of Islamic extremism will be—whether in Australia, Brussels or New York. The range of this is challenging and extremely difficult.

The range of problems is much greater than I remember in my time. The population explosion in the world undoubtedly underpins some of the mass migration of people; I have referred to this in an earlier speech. I remember my noble friend Lord Hague saying that although we may look at what is happening at the moment and think that this may be near the end, it may be just the beginning of the problems of migration—underpinned in part by climate change, which does not make things easier.
[LORD KING OF BRIDGWATER]

We can add to that the extraordinary complications of the internet and cyber, and the whole new dimension that they have introduced, including social media, which underpin much of the communication of terrorist activities in a way that we still have not suitably mastered. These are all new. Then there is the total chaos of Syria, the situations in Iraq, in Libya, in Yemen—and in Afghanistan, I believe, at the moment—and in North Korea, including its possibly aggressive activities. To pick up a phrase from the noble and gallant Lord, Lord Stirrup, I must not get too depressed about this—but it seems to me that it is all leading to a lack of confidence in the West. That has undoubtedly been made worse by Brexit, which, whatever its outcome may be, introduces instant uncertainty into the world at present.

There are also uncertain signals coming out of Washington, which I hope, with the help of General Mattis, may become more reassuring shortly, to the effect that America is soundly in support of NATO, notwithstanding the absolutely justifiable request by President Trump that the other members of NATO, including the European members, make their proper contribution.

The other danger that I see is the re-emergence of Russia as it tries to reassert itself after the humiliation of the collapse of the Soviet Union. I was briefly Secretary of State for Defence, yet in my time I moved from recognising a President of the Soviet Union—President Gorbachev—and a Berlin Wall, to, before the end of my time in office, welcoming President Yeltsin of Russia, the whole Russian Soviet empire having collapsed. We all know that part of President Putin’s appeal to his own people is the fact that he is creating a sense that Russia matters again in the world. Russia was once a superpower, and he is determined to have it recognised as such again. We have to learn how to deal with that. It poses major challenges to the West. We are moving into Estonia. We are waving a big flag called Article 5, as our 800 troops and those from the other contributing countries make the front line of NATO.

We are just in the process of commemorating the First World War and the various years of it. Any of us who have been involved in studying it, and the Second World War, will realise how tragedies and terrible wars occurred because people did not believe treaty obligations and had not properly understood the responsibility they had. That was certainly true in the First World War for undertakings of that kind to Belgium under treaty, and in the Second World War for undertakings to Poland, both of which were dismissed by potential adversaries because we perhaps would not really be prepared to stand over them.

I do not want to depress the House too much, but we have a very similar situation now in which the humiliation and collapse of the Soviet Union has left pockets of Russian citizens in various territories. We saw what their activities were in Ukraine, when they were positively begging President Putin to get involved, and you can see their presence in the Baltic states, where they represent about 25% of the population. They were abandoned in the collapse of the Soviet Union and have been left there. If they seek to stir up grievances in those areas, handling that could pose a major challenge. That is part of the dangerous situation that we have.

The Prime Minister, in her speech to the Republican gathering in Philadelphia, referred to the phrase that President Reagan coined to describe his approach to President Gorbachev: “trust but verify”. Prime Minister May said that her approach to President Putin is “engage but beware”. I am not sure whether she said “beware”, or whether that was a misprint and she said “be wary”, but that is how it came out.

We have to look at the situations that we face. Others have referred to China. How ready are we to cope with this situation? I worry that we are not very well prepared or ready. I am not going to say a word about the naval programme, because the noble Lord, Lord West, is about to follow me and he will cover that in some detail. However, I will be very interested to see what an old friend of mine from Northern Ireland, Sir John Parker, and his national shipbuilding strategy will produce. I understand that that is coming out in spring 2017. Today is the second day of spring, but I do not know whether we can expect an early delivery of the strategy. Looking at the naval programme and whether we will be ready for anybody by 2025—although according to the latest report from the Defence Committee, that might even be a bit late—I worry about the very lumpy programme we have got involved in and whether it has the flexibility that we need.

When I was Defence Secretary, I was privileged to have responsibility for considerably larger Army numbers than we have now. I see the challenge that numbers represent at a time of austerity and difficulties in recruitment. However, I think that we need everyone we have got, and we probably need more. It underlines the importance of working with allies if we do not have the resources that we might like for everything. I say to the noble Lord, Lord Wallace, that I do not regard Brexit as a reason to stop work on the common security and defence policy. I see every reason why we should continue in the work we are doing against piracy and on helping refugees in the Mediterranean. There is no reason why we should not also lead some projects, which is a role we could well play.

The other critical issue is the difficulties we face in looking after NATO. We have to make sure that the US stays firmly committed and that our European allies keep their contributions up.

There are other issues that I think are even more essential because of the present difficulties. One of the things that has kept us ahead so many times in the difficult and dangerous world we are in is our skill in intelligence. Intelligence co-operation with the United States is vital. Everybody is familiar with the “Five Eyes” partnership. We have a very high standard on that and we must ensure that it is not undermined any more than it has been—partly by Mr Snowden, and with the situation not helped by the recent row in the United States. Other issues are cyber defence and the Prevent programme at home against terrorism. Lastly, and most importantly to avoid military activity, is soft power. I worry whether the Foreign Office is sufficiently resourced in the light of the difficult problems it faces and now has to take on, as its role in Brexit and
thereafter is crucial. It is important not only for our relations with other countries but for the defence of our own country.

4.05 pm

Lord West of Spithead (Lab): My Lords, I thank the Government for the opportunity for this debate, which is extremely timely. Indeed, there is so much going on at the moment that our nation and the Government seem to have lost sight of the growing threats to our security and, in the worst case, our very existence.

I draw noble Lords’ attention to my speech in the defence debate on 12 January when I articulated the perfect storm of threats and uncertainties threatening global security. I spoke in some detail of Russia, the Middle East and the countries there, terrorism, Afghanistan, Pakistan, North Korea, China and cyberthreats. Today, I am sure that many noble Lords will talk about the significance of cyber in all of our considerations. As the country’s first ever cybersecurity Minister who produced the nation’s first cybersecurity policy, I am well aware of that threat. However, I reiterate what I said in the last defence debate: spending on cybercapability is not an alternative to conventional defence spending, as some, particularly the Treasury, seem to think. It is necessary spending, but it is additional.

We are entering a hypercompetitive age in which illiberal power is growing and liberal power declining. It is a world made dangerous by Europe’s retreat from power and its wilful refusal until recently to invest in power. There are real dangers of an even more chaotic and highly dangerous world developing over the next decades, not least within the context of possibly irreversible climate change and an ever-increasing competition for resources of all kinds amidst a rapidly expanding world population. That population pressure is enormous and worrying. The dramatic rise in the numbers of migrants fleeing either war and persecution or economic hardship are a stark reflection of this.

Recent events have shown that the late 20th-century consensus that rested on the perception that the international system benefited both the US and global interests seems to be breaking down. We cannot be sure how much longer the US will be willing or able to bear the burdens of being the protector of last resort for the free world and will remain the ultimate guarantor of a rules-based international system. Nor can we assume that the idea of a multilateral rules-based world for global reach and stability, as well as the protection of our shipping and dependencies. The Defence Secretary himself called this year the Year of the Navy. The simple fact is that the Royal Navy has too few ships to do what the nation expects of it. It has been underfunded against its core programme by £250 million a year for the last three years. That is three-quarters of a billion pounds. It also took a forced reduction of 4,000 men in the dreadful 2010 SDSR, recovering only 400 in SDSR 2015. We must fully fund an uplift of people for the Navy, I believe by around 3,000 people, and we need to put that in the programme and ensure that we recruit to it. The combined effect of a lack of funding and lack of people, particularly engineers, is having a profound impact on our nation’s maritime capability.

Before looking at the Navy in more detail, it is worth reflecting on the very real problems that exist in our procurement world—although I know that the Government are trying to tackle those. Indeed, there are some interesting articles in the House magazine this week—I wrote one myself but there are some from other contributors as well—on this specific subject. Moving back to the Navy, the decision to proceed with the Successor programme is fundamental to the ultimate security of our nation and I compliment the Government on the fact that we are proceeding with it. However, Trident is not a war-fighting weapon. I remain convinced on the fact that we are proceeding with it. However, Trident is not a war-fighting weapon. I remain convinced that the capital costs of the Vanguard replacement submarines should fall outside the defence vote and come from Treasury contingency funds. Such a move would remove the yawning cash black hole that is appearing in our defence programme.

Two new Queen Elizabeth-class aircraft carriers are being built and again I must congratulate the Government on recognising their importance. The future carrier battle group is the only conventional asset our nation will possess that has global strategic significance, and the US cannot wait for them to be operational. But it appears that there are problems. There seems to be no certainty about when sea trials will commence and there is a lack of transparency over whether the delay is being caused by a major technical problem or just the sort of snags one would expect from a highly complex programme of this type. Perhaps the noble Earl could update us on where the programme stands. The build-up of the Sea Lightning squadrons is crucial, as is the operational availability of the Crowsnest...
[LORD WEST OF SPITHEAD]

early warning system and the new solid support ships. When will all this come together to allow us to deploy a fully functioning carrier battle group? Perhaps the noble Earl could tell us when we will be able to do that with our own resources.

A carrier battle group, if facing a peer threat, needs a nuclear attack submarine, two Type 45 destroyers and two to three Type 26 frigates in company. At present our great maritime nation with its huge maritime history has in effect only 11 escorts fully capable of operations. When I joined the Navy it was 110. Today we have 19 altogether in our order of battle, which is a national disgrace—something I have said before. If five of the 19 are needed for the battle group, 14 are left to provide presence and stability in the south Atlantic, around the UK, around the Horn of Africa, in the Gulf, in the Mediterranean and the Far East. To provide one ship on task you need three, so simple arithmetic shows that we need 30, not 19—and there is no allowance in that for attrition.

In the Falklands we lost four escorts and 12 were badly damaged. When you fight, you have attrition. Delays in ordering the Type 26 frigate have resulted in cost rises and the initial plan to build 13 has been cut to eight. The much-vaunted Type 31 frigate is still a doodle on the drawing board and we await the much-heralded shipbuilding strategy with interest. It is difficult to see how the present Type 23s will be replaced one for one on their present planned disposal dates. Perhaps the Minister will let us know when we need to start cutting steel on the Type 31 frigates that will replace the last of the Type 23s.

Our amphibious force is about to take a major hit. Manpower and funding problems in the Navy have led to the decision to pay off HMS “Ocean” after a £65 million refit to run her on until 2025. The Government appear to be most complacent and have said that “Ocean’s” capability will be provided by other shipping. This is rubbish. I have commanded task groups and amphibious assault groups, and it is clear and well known that the only way of providing simultaneous two-company lift is to have a large deck with at least six spots that can be operated simultaneously and a hangar that can carry up to 12 or 14 helicopters. Anything else will not achieve it, and that amphibious capability is clearly laid out clearly in our doctrine. So we will lose our full amphibious capability until the “Prince of Wales” starts operating in the mid-2020s. I beg the noble Earl, as I have done before, in this highly dangerous world, the most chaotic I have known in my 50 years on the active list, to put “Ocean” in reserve in the way we are doing with “Bulwark”, so that if there is a crisis we can pull her out and use her.

Delays in ordering Type 26s have led to the ordering of extra, highly overpriced offshore patrol vessels to fill the Clyde yard—but any ship is of value and has utility. Hence I find the decision to pay off the relatively youthful batch 1 River class offshore patrol vessels, which are between 11 and 15 years old, slightly strange.

It is quite clear that there are insufficient maritime assets to ensure the security of UK inshore waters, particularly post Brexit, and there is a need for an urgent study into what craft are available, how many we need, and how command and control are to be executed and by whom. There may be a role for the RNR and batch 1 OPVs in this. Will a study be undertaken to look at this yawning gap in our nation’s maritime border security? Having robust defence forces makes a war involving our nation less likely. If Ministers get defence wrong, the nation will never forgive them. The costs in blood and treasure are enormous. It can be argued that the planned saving of £16 million by getting rid of HMS “Endurance” precipitated the Falklands War, at a final cost of 300 lives and £6.5 billion. The Government have a choice in whether to spend what is required to ensure the safety of our nation, dependencies and people, or not. At present, I believe that they are getting the choice wrong.

4.16 pm

Lord Hennessy of Nympsfield (CB): My Lords, I declare my membership of the Chief of the Defence Staff’s strategic advisory panel and of the Foreign and Commonwealth Office’s diplomatic excellence external panel, and that I shall shortly become, at an advanced age, an honorary captain in the Royal Naval Reserve.

In the life of a nation, it falls to certain generations to undertake a rethink of their country’s place in the world, its means of defence, its instruments for projecting international influence, the limits as well as the possibilities of what it can sensibly seek to do and the states of mind needed to reconcile aspiration and reality. The outcome of last June’s referendum on our membership of the European Union requires us to be just such a generation—a generation that truly rises to the level of events.

The multiple resetting of our national and international dials, the plethora of overlapping uncertainties, is, I think, creating a growing and unsettling realisation that, for probably a decade to come, we will be a destabiliser nation in the world. It is a condition we can scarce forbear to recognise in ourselves, for it cuts deeply against the grain of how we have imagined ourselves in the past, as a nation that strives to bring stability to others and tries to turn down the heat and to lower the noise in international affairs. But cut against that comforting grain it does.

In view of this, I should like to make the case this afternoon for taking a long, hard look at ourselves in a way that goes beyond the scope of our five-yearly cycles of strategic defence and security reviews. The model I have in mind is the Future Policy Study, part of a series of post-Suez rethinks that Harold Macmillan commissioned. He established the Future Policy Study in 1959 and tasked it to take a searching forward look at where the United Kingdom would be by 1970 on current policies. It was conducted in secret, reporting in 1960, but saw the light of day only 30 years later, as it was a Cabinet document. But, at the time, it undoubtedly added its weight to the tilt away from Empire and towards Europe which led the Macmillan Cabinet to undertake the first application for British membership of the European Economic Community in the summer of 1961, which began the long years of “Brentway” negotiations that eventually concluded in 1972.

In the cold light of “Brexit”, may I suggest that we wait neither for the conclusion of the Article 50 process in 2019 nor for the next SDSR in 2020, but instead encourage the Government to create a royal commission,
or equivalent, on Britain’s place in the world, peopled by a widely drawn and knowledgeable membership recruited to do in public what Macmillan’s study group did nearly 60 years ago? It could, if so commissioned, divide its work into two parts. The first would be an audit of our assets as a nation, motivated by an appetite, which I share, to play a careful but substantial role in the world. The second would be to draw up the options and possibilities that our new, post-Brexit geopolitical position will present.

General de Gaulle famously opened his memoirs by declaring, “I always had a certain idea of France”. Each of us carries in our heads a certain idea of Britain, of our country’s gifts, accomplishments and what it can bring to the international table. Here, briefly, is my own certain idea, and the ingredients of our debate today are naturally central to that idea—to that audit of our assets that I mentioned earlier on.

We live on top of the world’s sixth-largest economy.

Thanks to our history, we are a member of more international organisations than any other country, with, in addition, our permanent seat on the United Nations Security Council, though of course we are about to leave a mega-international organisation thanks to Brexit.

As others in this debate have mentioned, we possess a range of top-flight Armed Forces, albeit in my judgment not enough of them, including some stunning specialities—special forces, submarines and many more—plus a substantial nuclear deterrent. We have a cluster of top-of-the-range security and intelligence services, as well as a position as one of only three nations with genuine global intelligence reach, thanks to our so-called “Two Eyes” relationship with the United States and our “Five Eyes” relationship when you add Canada, Australia and New Zealand. The other two powers with global reach are, of course, Russia and the United States, with China coming up fast.

We are served by a top-flight Diplomatic Service, and a meritocratic and uncorrupt Civil Service.

We undoubtedly think above our weight in the world. Just linger for a moment on the most stunning of our specialities—special forces, submarines and many more—all to that audit of our assets that I mentioned earlier on.

4.22 pm

Lord Astor of Hever (Con): My Lords, I echo the very warm words of the noble Lord, Lord Touhig, about my noble friend the Minister.

I want to say a few words today about legacy issues arising from the Troubles in Northern Ireland. This is relevant to the morale and recruitment of our present-day Armed Forces. I pay tribute to all those who helped bring about the Northern Ireland peace process, and am aware of the huge effort and difficult compromises that brought about the current settlement. It is in everyone’s interest that the peace process continues and endures. Along with the police, the Armed Forces paid a huge price for the part they played in the Troubles: 520 Army, Royal Navy and Royal Air Force regulars, reserves and veterans, and 243 from the Ulster Defence Regiment and the Royal Irish Regiment, including veterans, were murdered by terrorists. Countless others were seriously injured, and left to bear the mental and physical scars.

We should not forget that the Army was originally called to Northern Ireland to restore order and to protect Catholics. Quite by chance, serving with the Life Guards I was one of the first soldiers sent to Northern Ireland in August 1969. I can vouch that our soldiers, mostly young men, conducted themselves to the highest possible professional standards, despite some very difficult times. I am concerned, however, about the legacy issues and, as an example, want to raise one particular case—that of former Life Guards Corporal Major Dennis Hutchings, whose committal hearing took place in Armagh today. I declare an interest in that I am on the Life Guards regimental council and served with Dennis Hutchings in this country and in the Far East. However, I do not raise the issue for this one case alone. It is of great interest to other veterans who may face similar problems to his in the future.

In 1974, the Life Guards were sent to Northern Ireland. In June, Dennis was on patrol and came across an IRA unit with weapons being readied for an attack. He exhibited great bravery in engaging the terrorists in a firefight; several terrorists were arrested. This shows that Dennis was an exemplary soldier who used proportionate force and exhibited great bravery. A couple of days later, while soldiers were sweeping a locality for terrorists who had escaped, John Pat Cunningham was shot dead. This was a tragic incident. The soldiers who are alleged to have fired the shots, including Dennis Hutchings, were interviewed under caution at the time. A file was submitted to the Director of Public Prosecutions, who concluded:

“I do not consider that the evidence warrants any criminal proceedings”.

The incident was reviewed by the PSNI Historical Enquiries Team—the HET—in 2012, which concluded that there was no new evidence and that nothing had changed. On the basis of the HET report and following a request by their solicitors, the MoD issued an apology to the family of Mr Cunningham in January 2013.
Baroness Crawley (Lab): My Lords, I, too, welcome this timely debate and thank the Minister, who has great respect in the House, for setting out the Government’s thinking and spending on present and future UK defence strategy.

Although I was a Government defence Whip for several years in the last Labour Government and recently co-chaired the Parliamentary Labour Party’s defence committee, it has been some time since I took part in a major defence debate in your Lordships’ House. As I focus again on our domestic and international responsibilities, I am reminded how like the 1980s it seems out there and how the Cold War did not really go away—yet how our response is still inadequate.

As Yeats put it in his poem “The Second Coming”,

“the centre cannot hold...
The best lack all conviction, while the worst
Are full of passionate intensity”.

The new and old forces ranging against the West today, and against NATO in particular, have a new strength and determination. Our major ally, the US, despite its recent announcements on NATO and defence spending, seems very unsure of its value base when it comes to its global responsibilities. The enfant terrible of cyber and hybrid warfare often appears out of control.

I welcome our emphasis on NATO this afternoon. Sweden, one of the shining examples of a modern democracy, is bringing in a new military service obligation, which is being imposed on all men and women there, which allows us to see the anxiety it has for its borders in the face of the emerging Russian aggression. That anxiety is prevalent also in the Baltics, Poland and elsewhere. I welcome the deployment this past weekend of the first of 800 British troops to Estonia, and I know that we all wish them well in their extremely important work there. Could the Minister go into more detail on the discussions the Secretary of State for Defence has had with the new US Defense Secretary, James Mattis, on how we can reaffirm our joint commitments to our NATO allies in the face of Russia in its new bastion mode and in the face of President Trump’s suggestion that he may not come to the aid of a NATO ally unless it has paid its dues?

I welcome the progress, albeit slow, that is being made by NATO members towards meeting the 2% of GDP target for defence spending, agreed in Wales of course in 2014. I understand that five countries in NATO now meet that target, while 10 meet the 20% pledge on major equipment and research. However, like my noble friend Lord Touhig, I would like to press the Minister on his response to the defence committee’s findings that Britain can claim to meet the 2% target only by including areas such as pensions that were not previously counted—certainly not during the last Labour Government. Can the Minister tell us what defence expenditure would be if we used the same accounting rules that we did in 2010? Does the Minister agree that we would have more credibility when urging our NATO allies to meet their spending commitments, were we not barely scraping over the line ourselves? Surely, as other noble Lords have said, the proportion should be whatever is required to allow the UK to respond to the threats of today.

Those of us who grew to adulthood under the chill of the Cold War have seen our hopes for a stabilised and globalised peace grow ever more threadbare in the last few years. Whatever is required should be the only limit to our spending. As someone who grew up in Plymouth—that great naval city—I was particularly
pleased to see that the Ministry of Defence has confirmed that Plymouth will be the centre for the Royal Marines. I ask: what additional naval expenditure will come the way of Devonport in the near future?

However, does the Minister feel that there has been an adequate government response to the defence select committee’s report of last November, which concluded that there was a woefully low number of Royal Navy warships? We could not possibly miss out on that position, as we have with us the noble Lord, Lord West, who manages wonderfully and creatively to get the Royal Navy into most Questions in Oral Question Time. As we look to the future, it is still the Government’s planning assumption, I take it, under the Joint Force 2025 of the SDR 2015, that there will be a maritime task force centred on the Queen Elizabeth-class aircraft carrier, with F35 Lightning combat aircraft and consisting of 10 to 25 ships and 4,000 to 10,000 personnel.

While still on naval matters, I for one was content with the vote in the House of Commons last year enabling the Government to take the Successor submarine programme forward into the manufacture phase. The Labour Party remains committed to a minimum credible independent nuclear deterrent, delivered through a continuous at-sea presence. Will the Minister update the House on the various investment stages that will replace the Vanguard class of submarines?

I add my heartfelt thanks and gratitude to the dedicated RAF crews who are working around the clock to defeat Daesh in Iraq and Syria. We all wish success to the coalition forces in the battle to liberate Mosul. I know that the Government are doing what they can to encourage, once Daesh is routed there, a more lasting peace that has political reconciliation between Sunni and Shia people at its heart.

Finally, we come to Brexit. We seem to be doing that a lot. As we leave the European Union—and with it the EU Foreign Ministers’ monthly meetings, the daily meetings of EU ambassadors and diplomats and the thousands of meetings that form the EU’s foreign affairs co-ordination at the United Nations—what detailed planning is going on to set up a meaningful structure for exchange of information, intelligence and assistance between the UK and our EU partners on common positions in international policy? I will give an example from when I chaired the Women’s National Commission at the UN some years ago. Then, the UK always met with other EU countries to form a common EU position—in that case on women’s rights—before meeting with other UN members and coming to UN decisions on issues such as abortion rights, FGM and girls’ education. There was always a European common position—usually the most progressive position at the UN. It would be foolhardy in the extreme for this country to lose its influence and partnership in EU decision-making on international matters. However, at present I am not optimistic.

Do noble Lords think that once the Brexit deal is done, the whole of NATO as a force for democratic solidarity—here I disagree with the noble Lord, Lord King, for whom I have a lot of respect—will be stronger, weaker or just the same as it was when the referendum was but a twinkle in a badly misguided Prime Minister’s eye? This is a very bad time to create friction with our allies. I see a hard Brexit as little more than organised friction, as we can be sure President Putin knows only too well. Brexit is a geopolitical windfall for the Kremlin and all who despise the West. While I wish the Government well in their future defence policy, we are all aware of how rocky that future is going to be.

4.40 pm

Lord Craig of Radley (CB): My Lords, I should like for a moment to narrow the focus of this very welcome debate and turn to an issue that I have repeatedly raised in debates in your Lordships’ House: combat immunity and the legislative fog that surrounds it. I have long argued that it is essential to tackle incompatibilities between the Armed Forces, human rights and international humanitarian legislation—that is, incompatibilities between international humanitarian law and the European Convention on Human Rights as interpreted by the European court in Strasbourg, and incompatibilities between the current Armed Forces Act and the Human Rights Act. I first raised this matter in 1998 when the House was considering the Human Rights Act. Since then, and particularly in the past decade, I have pressed and encouraged the Government of the day to come forward with new proposals, particularly to provide a clearer definition, understanding and reach of combat immunity.

A series of judgments handed down by the Strasbourg court about the geographic areas and the exercise, even for a limited time, of effective mandate of the European Convention on Human Rights, have overridden some of the judgments of our national courts and blurred the primacy that is due to the lex specialis of international humanitarian law in combat situations. The Supreme Court judgment in Smith and others in 2013 upheld the defence of combat immunity, narrowly defined, but invented an area of middle ground edging the land of combat immunity, where the writ of Article 2 and other articles of the European convention were deemed not automatically excluded. The judgment was not unanimous; three of the seven judges did not support the finding. They were concerned that the courts would be drawn into the judicialisation of combat and potentially inhibit the actions of commanders and others in operations.

However, the majority finding of the Supreme Court, in the absence of any clear guidance from Strasbourg, was that the boundary between combat immunity, narrowly defined, and that putative middle ground had to be determined on a case-by-case basis. For the service man or woman, however, that is not a clearly described or marked boundary. To them, the meaning of the phrases “narrowly defined” and “the middle ground” are unclear. It does not help them to appreciate in advance, or at the time, whether their operational activity in the course of hostilities or a threat of hostilities is or is not combat-immune. The services operate to, and respond to, executive direction. They need to be clear what their mission is, what the constraints on the exercise of force are and whether their actions can be deemed combat-immune. Faced with conflicting interpretations of legislation, and the practical experience in the past decade or so of the complexities and protracted nature of claims and counterclaims arising out of injury or death to their fellow service men and women, this situation cries out to be clarified.
Indeed, as far back as October 2013, I asked, "will Her Majesty’s Government consider new legislation to define combat immunity, in order to clarify the current position?"—[Official Report, 23/10/13; col. 1003.]

Happily, after a number of false starts and some indecision, the Government have set about doing just that. The MoD’s consultation paper, circulated earlier this year, briefly set out their case and sought views on a variety of issues relating to the scope and definition of combat immunity. The nub of their proposals is that the Government will legislate to enshrine the position that combat immunity should apply to deaths or injuries that occur in the course of combat. This will be combined with awards of compensation for the death or injury of entitled individuals equal to that which a court would have awarded as if the Government and their servants had been negligent, even when no negligence arises. This will remove a requirement to take legal action against the Government to gain the fullest compensation for a death or injury in combat.

I do not underrate the challenge of a statutory description and definition of combat immunity. The Government have put their mind to it and I welcome that. This time they must see it through—no ifs, no buts. Clearly, new legislation will be required. In so far as the enlarged compensation package is concerned, this can be achieved by secondary legislation to the Armed Forces (Pensions and Compensation) Act 2004. This Act allows for the Secretary of State to make orders about pensions and compensation schemes. With an affirmative order, it would seem straightforward.

Combat immunity, however, will call for primary legislation, presumably led by the MoD, rather than by the Ministry of Justice, which had been involved previously in the legislative considerations. The Bill of Rights—of forgotten memory—was trailed for some considerable time as a possible statutory vehicle for combat immunity. Now that the MoD has the lead, it should consider whether new legislation should be by amendment to the Armed Forces Act, rather than by a new, free-standing Bill.

The Armed Forces have been disadvantaged in the past by serious incompatibilities in primary legislation to which I have already referred. The existence of combat immunity, as defined by statute, would directly relate to many of the disciplinary provisions in the Armed Forces Act. It would be helpful if those who have responsibility for and oversight of service behaviour—when deployed on operations—had all the statutory provisions, including for combat immunity, within one service statute. I urge the Government to give this suggestion serious consideration.

A further suggestion for legislation is to enact a time limit to forestall historic investigations and the charging of individual service personnel many years after they have been actively involved in a combat scenario. Recent experience of historical allegations relating to Iraq—and their inept handling—shows the obvious problem of finding witnesses and reliable evidence 10 years after the event being examined, let alone 20 or even 40. This points to having some time limit, as the noble Lord, Lord Astor of Hever, suggested a few moments ago. Combat immunity compensation claims will surely have to be time-limited. Why not also have a similar time limit for allegations made about behaviour when combat immunity obtains? These two proposals clearly do not refer directly to the continuation order that is the subject of this debate and to which I give my full support.

4.49 pm

Lord Sterling of Plaistow (Con): My Lords, I have been involved in international trade for pretty well all my working life and, since the Falklands War, heavily involved with the armed services. Indeed, I have the great honour of being an honorary vice-admiral. I start by thanking my noble friends Lady Evans, Lord Taylor and Lord Howe for agreeing to hold this debate.

There is an obvious difference between history and memory, and we often confuse the two. History is what we have been taught and read about. We are a product of it but in danger of forgetting it. Nelson’s Navy, Wellington’s Army and Churchill’s Air Force are a reassurance. One thing we did in history: we maintained our credibility. Memory is shorter term. It is what we are all imbued with as a product of our experience. It is the ability to have a visceral reaction to that which is within our experience; it colours all that we do and the way we think. I believe that today it is adversely affecting our credibility. Due to relatively short-term financial expediency, we are in great danger of undermining that credibility on which, I am sure that your Lordships will agree, our reputation depends.

Late last year, the noble Lord, Lord Touhig, said that the world had changed to such a degree that the role and therefore the needs of our armed services had changed dramatically since the defence review in 2015, and that a re-examination was therefore required. I stated that I totally agreed, but that this must also include the needs of our foreign and intelligence services. I am sure that many in both Houses concur.

The timing of this debate is critical. One thing that history teaches us is that we cannot dictate events. In 2010, it is worth remembering, the only major area of conflict was Afghanistan. Ukraine, Crimea, the so-called Arab spring—Egypt, Tunisia, Morocco, Libya and Syria—and the potentially more extreme ambitions of Russia were totally unknown. Our military chiefs must have the firepower and flexibility to react at a moment’s notice to the unexpected.

As your Lordships are aware, defence has always had all-party support in both Houses, and many have participated in the armed services scheme. I have had discussions with Dr Julian Lewis—who, by the way, has joined us tonight—chairman of the powerful Select Committee on Defence, and with Bernard Jenkin, Crispin Blunt, James Gray and Graham Brady, who head influential committees in the other place. They are all concerned that resources for our long-term needs are inadequate, and are particularly troubled that our present capability is being heavily emasculated.

I entirely agree with the views of the noble Lord, Lord West, on what is needed. Indeed, I would go further, if he does not mind me saying so: the £250 million he talked about is not just for the past three years, but goes back to a major mistake in 2010. As he said, for 40 years the capital cost of the deterrent was carried by the nation, not by the Ministry of Defence. Following
what I hope will be a robust debate here, a strong debate in the other House will carry much greater weight.

I have thought long and hard whether there is a key new factor that will galvanise the Government. Sadly, it appears that only the need to go on to an immediate war footing would have that effect.

Although today’s debate must concentrate on the present and future, it should be noted that the so-called defence review of 2010 proved to be a highly damaging major cost-cutting exercise. Our armed services are still recovering from those ill-thought-through decisions leading to unintended consequences. I vividly remember the immediate destruction of the Harrier jets on board the “Ark Royal” in advance of taking it out of service in days to stop any reversal of the decision. The massive reductions in Army numbers and Air Force squadrons were brutal.

The savage reduction in people across all services—salami slicing—has had the most damaging effect on morale. In my experience, organisations are usually at their best when they are growing and have a very clear view of their role in both the short-term and the long-term future. It was almost worse than receiving friendly fire. We were left without a carrier strike force for well over 10 years between that period and the early 2020s.

How different history might have been if we had retained that capability. Perception of our international standing could have been quite different. The last defence review was infinitely more professional, and covered the equipment needs for the future as then perceived, accompanied by a re-examination of sovereign procurement, namely the strategic value of Britain’s defence industry, including a major uplift in cybersecurity. However, the key logistical build-up is still under immense pressure, due to continued hollowing-out, together with the extra required savings to be made by 2020. I do not think it is fully realised how adverse an effect this is having.

Like all major living structures, can the Ministry of Defence improve on its use of moneys? The answer must be yes. It is clear to me that its present structure may be understandable, but not acceptable, that of peacetime and not that of wartime. Peacetime always creates unnecessary bureaucracy and interference from other departments. In time of war, a clear command structure would demolish the present totally unacceptable timescales. Ethos in our armed services is still outstandingly high. Despite life changes in the last 50 years, it must never be forgotten how crucial a part pride in the cap badge plays in ethos. We must never take those serving for granted and expect them to live on love alone. Those of this nation who serve in our Armed Forces are most vital. In the United States, public support is unqualified and those serving in their Armed Forces are most appreciative. It is key to the ethos of those prepared to risk their lives for their country. Sadly, I am not sure we could say the same here today. Positive public backing is essential in encouraging parliamentarians to insist on the requisite level of support for the defence of the realm.

Trade has been the driving force for this country throughout history. Since the 1660s, the role of the Royal Navy and Royal Marines has been to protect the merchant marine in delivering world trade. As the empire expanded, the Army in general and, more recently, the Royal Air Force played vital roles. Enhanced hard power, together with our elite submarine nuclear deterrent capability, is of critical importance and will only increase our influence in the Security Council.

Since leaving Aquitaine and Calais, our role in Europe has, for several hundreds of years, been as a power broker between France and Germany, mainly to protect the empire. Such military capability could prove to be an important element of our coming negotiations with those countries in the European Union where defence concerns have, to say the least, been more than heightened. We will be the only European and global nation to operate two dedicated fifth-generation aircraft carriers, and these will represent the nation’s conventional strategic deterrent. Although we are no longer a superpower, our future role, as outlined by the Prime Minister, requires a larger Army, more squadrons for the Royal Air Force and, for example, a considerably larger number of the new Type 31 frigates—the workhorses—if we are to have a real presence east of Suez, in Asia, et cetera, particularly serving with the Commonwealth where necessary. China’s possibly increasing ambitions must not be underestimated. As we
are the USA’s closest allies, this would undoubtedly be warmly welcomed in Washington, particularly following its recently significantly increased military budget.

Finally, the positive, worldwide progress of mankind over thousands of years has been quite extraordinary and the human brain has given us so much to wonder at, not least music, the arts, science, medicine, philosophy et cetera. However, the natural competitiveness of mankind is such a driving force that, unless controlled, it still leads to the strong dominating the weak. Despite all these wonders, today this House still needs to debate the defence of the realm as our number one responsibility.

Will peace ever prevail? We go to war in order to achieve peace; even better, our capability, and therefore credibility, can deter war. I am sure we all agree that peace must be the goal of a country like ours. It is our responsibility to achieve these aims, and they are the right legacy to leave for future generations. I am sure the Minister, with his great personal sense of history, would agree with these sentiments.

5.02 pm

Lord Davies of Stamford (Lab): My Lords, it is a great pleasure, and not for the first time, to follow the noble Lord. He brings to this House a whole lifetime of experience both in business and in maritime affairs and defence. I very much agree with what he said.

I think the whole House is well aware that I was the Defence Procurement Minister in the last Labour Government, under Gordon Brown. In that role, I was often, and continue to be, accused of having overspent and having created, or culpably presided over, a procurement deficit of £30-odd billion—the actual figure varies from time to time. I have dealt with this matter in correspondence with the Minister and asked him to put that in the Library. I do not know whether he did so: I found that only members of the Government can place correspondence in the Library. Briefly, I could not possibly have overspent because the Treasury would not have allowed me to do so. What I never did, unlike the subsequent Government, was underspend. They did so on two occasions and a large amount of money was permanently lost to defence. I would have regarded such an action as a betrayal of the very important fiduciary responsibility which had been confided to me.

There is always a degree of uncertainty about the cost of a future programme, but the bulk of the procurement deficit was created, when the new Tory-led Government came to power, by the simple expedient of changing, from 1.5% in real terms to 0% in real terms, the rate of increase in defence expenditure, both currently and prospectively. Doing that, given compound interest and a defence budget of £35 billion, you can create a very large potential deficit and that is exactly what they did.

When he appointed me, Gordon Brown said that my first task was to make sure we got the right equipment out to Iraq and Afghanistan. We did that, and commissioned seven or eight new, bespoke armoured vehicle programmes. On one occasion, we actually got down to six months between specification and delivery to the theatre, which was an absolute record. Anybody familiar with defence procurement will realise what that means. It is a tremendous tribute to the ability, determination and morale of the people working in the DE&S—people who were subsequently, quite disgracefully, attacked publicly by the man who the incoming Tory-led Government put in charge of them. We also made some considerable breakthroughs in areas such as ground-penetrating radars, which were a vital part of the anti-IED programme.

I did not neglect in any sense the core programmes. When I arrived, I found that the two carriers were running into considerable cost overruns and delays. The Defence Board had decided that the programme should be extended by several years—at an enormous increase in cost, because you are doubling and trebling the fixed cost as each year goes by. It was obvious to me that, if that happened, we would ultimately end up cancelling the whole programme. I managed to persuade the Secretary of State—my noble friend Lord Hutton, who unfortunately is not in his place today—as well as others in the MoD and indeed in the Treasury, in due time, that we should go for a quite different option which had not been considered by the Defence Board. This was Option C, as the noble and gallant Lord, Lord Stirrup, may recall, which involved some delay and some additional cost, but of a relatively manageable kind. Fortunately, as a result, it was possible to save that vital programme.

On the Type 45, I thought they were wonderful ships and I still think so. I believe three were launched in my time; they were ordered long before I arrived. But I admit to the House that I never asked—it never occurred to me to ask—the brilliant naval engineers, admirals, shipbuilders and ships’ architects that I was meeting on that programme the key question: are you quite sure you specified enough power to run both the propulsion system and the radars at the same time? I have no idea how such experienced people would have reacted to a Minister asking a question of that type. However, I say with culpability that I should have asked it. It was a pertinent question. I still want to know what happened, and I think the public need to know what happened. There should be a public inquiry about it. I would look forward to taking a full part in such an inquiry to get to the truth.

The other great naval programme was Astute, which I shall come to.

On the RAF, I found when I arrived that the MoD was attempting to push forward as far as possible, in order to save money, the purchase of tranche 3 of the Typhoon. We managed to turn that one round, and I managed to negotiate with our partners for the tranche 3 programme to move forward. I am glad it has done so, because that aircraft now provides the cutting edge for our air capability in the period between the retirement of the Tornado and the arrival of the F35. It will continue—with the Meteor missile—to be the key power we have in the air-to-air area, prospectively into the 2030s.

I was also keen that we get into the unmanned aircraft business. I brought the French into that, because it was important to have partners to share the cost and, particularly, to secure longer production-runs than would have been possible if things were run purely on a UK basis. In addition, we had to renegotiate the
A400M programme. I believe we did so successfully. I am a great believer in that aircraft—I think it will be the Hercules of the 21st century—though at times it too looked under threat.

With Nimrod, I inherited something that has now gone down in business schools as a classic example of how not to procure a military project. At the time I arrived, as I recall, the cost was around £2.3 billion for four aircraft. But I believed then, as I believe now, that economic decisions should be taken on the basis of marginal cost, not sunk cost. It was clear to me that almost all the capital cost had already been incurred—certainly, by the time of the election, all the capital cost had been incurred. Therefore, I looked open-mindedly at whether we should stay with that, or buy the P3, which was another possibility in those days. I became convinced that the right thing to do in those circumstances was to stay with the Nimrod programme. Had the Government done so—compared with what they are now doing in buying the P9—I believe they would have saved a lot of money. What is more, we would not have this irresponsible gap in our long-range maritime surveillance capability which we have been running now for many years, and which is quite frightening.

From these experiences, I am left with one or two conclusions, which I want to share with the House. One is that an awful lot of nonsense is talked about how defence procurement would be much more efficient if it were based on fixed-price contracts and if competition were involved. In most cases, you cannot do either of those things in defence procurement in our country because we have to operate at the frontiers of technology. We can send our brave young men and women to risk their lives only if we provide them with the very best equipment that money will buy. That means investing in new technologies, and you cannot speculate in advance what the costs or problems will be.

Every first of class is a prototype. If it costs £1 billion, like an Astute-class submarine, you cannot throw it away, saying, “It was a prototype; we’ll start again”, but it is still a prototype. You are going to spend an awful lot of money at the beginning of these programmes and you cannot tell what the costs will be. If you force the contractors to accept a fixed price, as happened with BAES over Astute and Nimrod, they will just blackmail you after a few years, saying, “We can go bankrupt if you want but we can’t come up with £5 billion”, or whatever it costs to change the programme, so you have to renegotiate, as we did on those occasions. However, that is the worst of all possible worlds.

The solution to that problem is the one that we devised in the case of Astute—that is, to have a target price with a reward for the contractor if it comes in under it and a penalty if it comes in over it. The whole thing was kept under very close and constant review, and that worked for the rest of the Astute programme. I think that that has a very wide application in defence.

Another thing that I want to share with the House is that there are a lot of illusions about exportability. I think that it was General O’Donoghue and I who first laid down that exportability must be considered at the specification stage and reported on at the “initial gate” stage. I am very much in favour of it and I commend the Government for trying to do what they can to achieve some exportability for the Type 26. However, again, because we need the best in this country, we will always tend to overspecify. Therefore, in practice the opportunities for export will be really quite small, and we have to face that uncomfortable fact. That may be the case with the Type 26. If it is not, and even if we export some variants of that frigate, we may well find that there are diseconomies of scale by virtue of the fact that we have split up that programme.

Finally, we must go over to modern accounting principles, particularly present value accounting, in defence procurement. I could have saved a large amount of money—perhaps £300 million or £400 million—by purchasing all the supplies and components that we needed for boats 3 to 7 of the Astute programme at one go in bulk, but that was impossible because the Treasury would not let me bring forward the purchases in relation to subsequent parts of the programme, even if I paid it back, as it were, with a substantial discount rate, which of course I was prepared to do, representing the costs of the capital involved. In the private sector, you would always make investment and purchasing appraisal decisions on a present value basis, but we cannot do that in the public sector.

Another good example was the MARS programme for naval tankers. I wanted to take advantage, opportunistically, of the collapse in the shipbuilding market after the Lehman Brothers disaster and so forth and buy in the market, for about $50 million each, tankers that were in the programme at £200 million. Even with the discount rate, the Treasury would not let me do it. By the time of the election, I persuaded not only my own finance director but the head of the National Audit Office, Sir Amyas Morse, to move in that direction, and I was in the process of persuading the Treasury to do so. I set out to my successor the importance of doing this and I thought that I had persuaded him as well. Sadly, I do not think that any progress on that has been made but I raise it this afternoon in the hope that that matter too will be looked at again.
5.14 pm

Lord Burnett (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Davies of Stamford, who has extensive experience of defence procurement as a Minister. I am grateful for the opportunity to debate with him, and I draw the attention of the House to my entries in the register of interests. Like the speeches of the noble Lord, Lord Astor of Hever, and the noble and gallant Lord, Lord Craig of Radley, what I have to say has a bearing on morale in the Armed Forces, and the morale of veterans and their families.

On 15 September 2015 we had a defence debate in the Moses Room. I confined my speech to the case of Sergeant Alexander Blackman, Royal Marines, and I stated that he had been, “the victim of a terrible miscarriage of justice”. —[Official Report, 15/9/15; col. GC 228.]

Last Wednesday the Court Martial Appeal Court quashed the murder conviction of Sergeant Blackman and substituted a verdict of manslaughter due to diminished responsibility. I very much welcome this decision, and so will many others.

Right at the start, I pay tribute to all the men of 42 Commando Royal Marines who served in that unit during its 2011 tour of Afghanistan. It was a most stressful, demanding and exhausting tour. Seven members of the unit were killed and 45 seriously wounded. I can do no better than quote Sergeant Blackman’s company commander, Major Steve McCulley, who has been medically discharged from the Royal Marines after being blown up by an IED. He said that his men were operating, “in the most dangerous square mile on earth”.

He added: “They were superb men and their skills were excellent”.

Sergeant Blackman had an excellent, exemplary record, and has retained his dignity throughout this dreadful ordeal; he has been an exemplary prisoner. I also wish to put on record my admiration for Mrs Claire Blackman, his loyal, courageous and steadfast wife. She has worked and campaigned tirelessly on his behalf.

I explained in my speech in 2015 that I had visited Sergeant Blackman in prison and spoken to him for some hours. I also explained that: “To become a senior non-commissioned officer in the Royal Marines is an immense achievement. Being accepted for training in the Royal Marines is extremely competitive. The training is rigorous and long.” —[Official Report, 15/9/15; col. GC 229.]

He would also have been selected for, and passed, long and arduous courses for promotion to corporal, and thereafter promotion to sergeant. In addition, he would have had to be selected for, and have passed, long and arduous courses for his specialist qualification.

Sergeant Blackman served for approximately 15 years in the Royal Marines and his behaviour would have been observed closely and scrutinised throughout his time in the corps, especially on the courses that he attended and passed. As I have said, he was an exemplary Royal Marine. In the years leading up to the incident in 2011, he had been deployed on operational service six times. That means six six-month tours involving intense combat operations. As I have said before, no one in the Royal Marines complains about that level of deployment—but it will have its consequences.

I am very much reassured by Sergeant Blackman’s acquittal. The Court Martial Appeal Court recognised the severe, grave and prolonged stresses that will affect even the best-trained, bravest troops of the highest calibre, impairing their ability to think through the consequences of their actions, with potentially lethal consequences. Day after day, night after night, week after week, month after month, 42 Commando were dealing with an enemy which has no respect for human life, and has nothing but contempt for the rules of war. The commandos were in continuous mortal danger. Whether in the dreadful conditions in which they were living or out on patrol, they were under constant threat of mortar fire, rifle fire and improvised explosive devices that could blow them to shreds. And this was all in the searing heat.

Mr Christopher Terrill’s excellent documentary on “Panorama”, shown on the evening of Wednesday 15 March—the day after the Court Martial Appeal Court had handed down its decision—gave the public an insight, but no more than that, into some of the terrible stresses inflicted on our fighting troops. Again, no one is complaining about that, but allowances have to be made, and there will be many in the Armed Forces who are reassured by the Court Martial Appeal Court decision, precipitated by the report of the Criminal Cases Review Commission. I and probably many millions of people in the country wish to ensure that no other member of our Armed Forces has to endure the ordeal that Sergeant Blackman and his wonderful wife have had to endure over the past five years.

My first point is that when charges like this are contemplated, what mentoring and assistance is given to a proposed defendant? He will have no idea of the criminal courts or courts martial and will need an experienced individual to monitor and guide him through the maze so that he can choose the very best defence team available. Remember that Sergeant Blackman had served his country with distinction on active service for years. He deserved to have a fair trial and a fair hearing right from the start. What level of assistance is available at the start of criminal proceedings for someone in that position?

Secondly, was there any psychological testing right at the start of this legal process to gauge the effect of the immense stress and demands made on him and other troops in Afghanistan? As I have said, these troops are constantly shot at, existing in the most basic conditions in the searing heat. They suffer constant exhaustion, knowing that they are always in mortal danger. I said in my earlier speech on this matter that our troops must in all circumstances comply with the law. However, the law itself recognises that stress, provocation and other factors should be taken into account in assessing criminal liability. What tests were offered or given to Sergeant Blackman right at the start of this process? I could list extensive, exceptional stress factors that impacted on both the unit and Sergeant Blackman.

My third point is that I read with interest my noble friend Lord Thomas of Gresford’s letter to the Times, published last week on Saturday 18 March. I am grateful to see him in his position today. I just ask whether it was...
the duty of the court—in this case, the Judge Advocate-General—to bring the possibility of battle fatigue and diminished responsibility to the attention of the panel.

My fourth point is that my noble friend Lord Thomas was in the Moses Room when I spoke on 15 September, when I raised the point that the Judge Advocate-General and others have criticised the fact that a simple majority at a court martial can convict a person. In Sergeant Blackman's case, five of the panel found him guilty and two found him not guilty. I went on to say that that ratio would be insufficient to convict in a civilian criminal court. We have a military covenant which states that the members of the Armed Forces should not be disadvantaged in relation to their civilian counterparts. The least that could be done is to change the court-martial rules so that they mirror those that prevail in the civilian criminal courts.

My fifth point, which I also raised in my speech in September 2015, is that the entire ethos of a court martial is that a person is supposed to be tried by their peers, who fully understand through shared experience all the surrounding circumstances. No one who has not served through the hell and horrors of the front line in Afghanistan or similar conditions can hope to appreciate the stresses and dangers that will affect even the strongest and best-trained human being. A number of the panel members would have failed this test—in other words, a number of panel members had not served on active service, let alone even heard a shot fired in anger.

My sixth point is that, after Sergeant Blackman was convicted, it emerged that a member of the panel sent a message to the effect that the panel had come under immense political pressure to convict. If this is true, it is outrageous.

Finally, I believe that the Ministry of Defence is going to inquire into the surrounding circumstances of this case. I hope that it will look into all the matters I have raised and that the findings will be made available to the public.

I put on record again my thanks to the members of the extensive Royal Marines family and the millions of citizens throughout the United Kingdom and beyond who have supported Sergeant Blackman, including the Daily Mail's defence and campaigns team and the readers of that paper who contributed so generously to his defence fund; to Mr Goldberg QC and his team; and to Mr Frederick Forsyth and Mr Richard Drax, a Member of the other place. I said in September 2015 that we owe it to our fine men and women who continuously and selflessly protect us to fight for them in their hour of need.

5.26 pm

Lord Empey (UUP): My Lords, the brave contribution of the noble Lord, Lord Astor of Hever, drew to the House's attention the case of Corporal Major Hutchings. In his contribution, the noble Lord, Lord Burnett, described it. We are all for fairness, but we need a level playing field and we do not have one. That is a matter of deep regret.

The 2% target, to which many noble Lords have referred, is a purely arbitrary figure. The figure should reflect what is necessary, not what is arbitrary. We have ring-fenced 0.7% of our GDP for international aid. However, I am always against ring-fencing departmental money because it usually ends in tears and it makes some departments bear the brunt of reductions in spending in a totally disproportionate and chaotic manner. While I am in favour of well-targeted international aid, I do not believe that the scatter-gun tactics we are using at the moment, whereby we pour millions of pounds into all sorts of weird and wonderful projects, are working. We should concentrate on certain things, such as clean water, trying to rid areas of diseases such as malaria, emergency relief to tackle what we are confronted with in Africa, disasters such as earthquakes and so on. I am in favour of all that, but it is ridiculous that while this country steps up to the plate in this, other, wealthier countries are virtually not even on the pitch in terms of their contributions.

Given the international instability we face, the benefits that we say we are getting from soft power do not, I have to say, register particularly strongly with me. When we are dealing with the North Koreans of this world and a resurgent Russia, which many noble Lords have mentioned, the fact is that the capability of hardware makes a difference. The one point that has been made so blatantly obvious by noble and gallant Lords with their lifetimes of experience in this area is that our surface fleet is wholly inadequate to deal with the circumstances that we face. When the aircraft carriers come on-stream, are we saying that we could simultaneously send two battle groups off to two different parts of the world to work with those carriers? Could we protect the carriers or is it the case that if there was a conflict, they would end up alongside without the capability to protect them? There are huge issues to face here and I do not believe that we will serve our country well if we knowingly, year on year, leave huge areas of our defence capability basically out of action. We have not had the ability to seriously project air power for years and, as has been said, HMS “Ocean” is to be retired early. We have no fixed-wing anti-submarine capability, yet the one thing we need to protect is our nuclear deterrent.

I just do not get it. We are fixated on keeping social programmes going, but there has to be a balance in these things. It has been said: look at what will happen in terms of persons and treasure if this goes wrong.
I think we have the balance wrong. I am 100% in favour of co-operation with our European partners and 100% for joint projects to share costs because that makes sense, but we have the balance wrong and continuing to limp forward as we are will not work. Yes, we are getting some great kit, and I do not doubt that that is good, but it comes down to the question of whether we go for gold-plated equipment at the expense of having a spread of volume. That balance must be struck.

I turn to the issues with regard to NATO. I was encouraged by the comments of the American Vice-President Mike Pence in Germany. He reassured us on the commitment of the US to NATO, but as many speakers have already pointed out, many European countries are not stepping up to the plate. It is not that they do not have the money, but as long as someone else is prepared to do it, why bother? The message from the United States is clear: it is not going to carry the can any longer, and who can argue with that? Colleagues in this part of the world have to realise that we have a resurgent Russia, international terrorism and developments taking place, whether in laser technology or weapons that can be triggered from space to identify and damage surface vessels. Not only unmanned aircraft but unmanned naval vessels will be a thing of the future. We must spend enough on protecting our country. Even for an issue such as immigrants trying to cross the Channel, we have three vessels to deal with it. It is ridiculous for an island nation to be in that position.

I ask the Minister to address some of these points when he sums up the debate. Of course, if we press Her Majesty’s Government to spend more on defence, they will have to take decisions to spend less on something else. It is the inevitable piece of arithmetic that has to be done. It will not be pleasant and, as has been said by those who have experience of the military, the price will be high. The Falklands have been mentioned, in particular HMS “Endurance”—all to save a few quid. Everyone looks for economics, but that was being penny wise and pound foolish. There is a fundamental error in the balance between our foreign and defence policies and our aid policies. They are closely linked and it is important that we get the balance right. The noble Lord, Lord Hennessy, who is not in his place at the moment, made a good suggestion. He has called for a commission or whatever it might be. We should not have to wait for the next five-year defence review; this is something we need to get on with now.

On that point, I would argue that unmanned vehicles of all types are likely to replace pilots and surface vessel personnel. Where does the Minister think we are in all of that? Moreover, does he really believe that we have sufficient surface vessels to deploy simultaneously two battle groups for the new aircraft carriers while at the same time meeting our international commitments and dealing with hot spots? You always need to keep a contingency in reserve to deal with an emergency, but we seem absolutely flat out. Some of our surface vessels do not seem able to propel themselves adequately, so how on earth are we going to deploy two aircraft carriers with their battle groups with such a small surface fleet?
immediate and reality of the challenge from North Korea. Clearly, our own position can only be an ancillary one, but do the Government share the view that China has to be a key player in any effective response? Antagonising China, either politically or in trade policy terms, is unlikely to be the best way of securing its support.

As to Iran, we have the rather oddly acronymed JCPOA. Can the noble Earl confirm that the Government’s policy is to remain committed to that agreement and its rigorous implementation, whatever the US attitude may turn out to be? Is that policy properly understood in Washington? Is it not time, too, that we began thinking about globalising and generalising the constraints in the Iran agreement, thus extending its duration, which is rather on the short side, and ceasing to make it so Iran-specific, which makes it less attractive to Iran?

The United Nations, too, is under stress, even as it has more than 100,000 peacekeepers, both military and civilian, deployed worldwide. Often, as in South Sudan, the Democratic Republic of Congo and the Central African Republic, they are the only forces that fulfil the responsibility to protect civilians — forces that the rulers of those countries are either unwilling or unable to provide. The Government’s decision to strengthen our commitments to UN peacekeeping in South Sudan and Somalia is very welcome. Can the Minister say something about the Government’s medium and long-term policies on UN peacekeeping? Is the shift in policy we have seen in the last year here to stay? Is it built in to our security strategy and destined to play a more prominent part in it than has been the case in the recent past?

Others have covered the crucial issue of NATO and the uncertainties about its deterrent capacity as a result of some of the things that the new President of the United States said during his election campaign. My neglect of that issue merely shows, I think, what an extremely wide scope for debate today has offered us and how important it is to focus on all parts of it.

5.44 pm

Lord Howell of Guildford (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Hannay, with whose analyses I almost invariably agree — although with his conclusions a little less than invariably. Like him, I shall concentrate on the rules-based order part of the Motion we are discussing. I do so not because I question for one moment the crucial role of a fairly funded NATO and a strong and agile military and maritime power on a far greater extent than we have today, but because our defence and physical safety now rely on so many other things, in a totally transformed and disrupted world security environment that is unlike anything that existed even five years ago, let alone a decade or so ago.

A year ago the then Foreign Secretary, Philip Hammond, observed that the distinctions between military capability, intelligence agency capability, diplomatic capability and capacity building through development programmes et cetera, are “becoming more blurred at the edges” — in other words, very interrelated. To his list I would add: the sheer pace of digital technology, which has empowered the streets and the masses and transformed the balance of power throughout the globe; the fragmentation of states, which we have seen in the Middle East particularly; the vast shift of power, production and capital construction to the east and south and away from the north and the west in the 21st century, away from the Atlantic powers and especially to Asia; and, above all, the vital need to win, and keep winning, the narrative through adroit projection of soft power and through maximum connectivity, all the time and everywhere. It is what the Chinese call winning the discourse war, or the information battle, and it is now central in a way that it was not even five years ago.

The signals for a change of gear have been there long enough. None of what has happened now is very new. Long before Brexit or Donald Trump, the need for a fundamental rethink in our position was there. First, for example, it has been obvious for three decades that power was shifting in the world, away from the Atlantic hegemony of the 20th century and from Governments and hierarchies of power generally. Major changes in the co-ordination and configuration of Britain’s international policies were bound to be necessary. In many ways, the whole pace of innovation and investment is being set at the other end of the planet.

Secondly, it has been equally obvious that conventional military size and big spend were going to be challenged everywhere by small and agile methods, and that the whole scale of power and influence deployment has changed. The microchip has outpaced tiny miniaturised weapons force and power dramatically. The Davids have been vastly empowered against the Goliaths everywhere. Almost any small organisation, tribe or cell can operate a lethal drone. An inexpensive shoulder-launched missile can destroy a $100 million plane or disable a $1 billion warship.

Thirdly, it has long been clear that in the digital age military engagement has to accept entirely new rules. The battle may no longer be on the battlefield. The ubiquity of the web and total connectivity, on a scale never before known in human history, mean that infinitely greater audiences have to be persuaded and influenced. There are no clear decision points between victors and vanquished. Trust becomes the new and essential winning weapon. Subtle new mixtures of force and friendship have to be crafted and assembled if permanent instability is to be overcome in any theatre and any kind of settlement reached.

As I have already said, none of this is very new. Indeed, our own military thinkers and leaders have responded with growing vigour over the decades. I remember the days of Frank Kitson’s low-intensity warfare, the practice of which I was involved in in Northern Ireland in the 1970s. Profound and innovative ideas have been continuously developed by military thinkers in response to the new conditions and new types of engagement. Yet there seems to me to be one colossal piece missing from this plethora of activity and all this dedication to new forms of power deployment in a radically transformed international milieu. The missing piece is clear: motivating purpose and cause. What exactly is it all aimed at? What is the central story, the truly coherent, graspable, definable strategic
narrative that should be the common and compelling theme right across this landscape, and in the minds of every service man and woman at all levels all the time?

A central lesson from our House of Lords soft power report three years ago, *Persuasion and Power in the Modern World*, from the many experts who gave evidence to it, and from the current International Relations Committee inquiry into the UK Middle Eastern policy, is that for our power and influence to be effective, and our interests to be well protected and promoted, there have to be some defined policy priorities and goals. These can be derived only from a clear and overall articulation of our national purposes and direction, against a background of an increasingly confused and altered world. We need to be prepared for, believe in and be fighting for some definite goal.

As the noble Lord, Lord Hennessy, said, we need a certain idea of the United Kingdom—to adapt, as he said, General de Gaulle’s phrase—in the new networked international landscape that has replaced the 20th-century order. One has to ask what this certain idea, now in its British clothing in this age of global turmoil, is to be. Does the prospect of Brexit—possibly positively—and the arrival of Donald Trump, in a more negative way, point to the answer? I believe that they do. We now have to build a partnership for European security, although not under but liberated from the old EU treaties. This is plainly a major opportunity for creative leadership in the digital age.

We can cast off the image of a Britain of limited, downsized ambitions, as some American commentators keep saying we are signalling. They are frankly reading the wrong signals. However, they can hardly be blamed, when they see that we are spending less on our diplomacy through the Foreign and Commonwealth Office budget—now about £800 million net—than we blow, for example, on cavalier aid dispersals to international agencies or on subsiding carbon reduction by the most expensive conceivable means. Billions have gone in that direction with little to show for it. The sooner that these international departments dovetail, and in some cases even reunite—in the words of my noble friend Lord Howe, to pack a more powerful punch—the better.

As for America, it is obvious that Pax Americana is finished, even if some Americans still believe otherwise. America, spending more than the next eight major countries combined on defence, no longer wins wars. Anyway, I doubt whether President Trump is quite the power everyone seems to think, as power slips away from all Governments into the hyper-connected worldwide network. His attempts to impose trade protection on the fluid and revolutionised international trade scene are bound to fail in an age of internationalised production. Should not our strategic and unifying vision be something quite different from either of these 20th-century tableaux? Should not our story be of a more confident Britain, superbly placed to operate with agility in today’s networked and heavily interdependent world, making full use of its huge experience and extensive global friendships, and an amazing latticework of relationships, trust, common understanding and brilliant connections all across the globe? Is not the inspiration a resourceful Britain, wonderfully woven into the Commonwealth network of 2.3 billion people using the same working language, language being, of course, the ultimate conveyor of complex ideas, common understanding and trust—the default protocol of the planet? For deploying Britain’s undeniably immense but still underused soft-power assets, the Commonwealth—with its ready-made trust network—is the ideal forum and platform, although there are some backsliders.

To see things through this lens demands a changed mindset among policymakers and those in all branches of government, civil and military, who are charged with safeguarding Britain’s security, and its global business, brand and reputation. We are talking about nothing less than a grand repositioning of the United Kingdom in a world utterly transformed by the digital age. For this we need a new strategic synthesis, ready to work bilaterally, with America as a partner, to a degree with China and closely with our European neighbours, but not permanently tied or overcommitted to any of them.

The Army speaks rightly of its core purpose, but whatever form power, deployment and projection take nowadays, soft, hard or smart, one purpose above all others needs to be clear, inspirational and a source of commitment at every level. This is to uphold the nation’s changing role and interests in an age of global turmoil, and to provide its security with a rock-solid basis. That is the unambiguous message that our society and its leading voices need to send to all three branches of our armed services, so that they can perform at their best, with a clear sense of direction. We owe them nothing less.

5.55 pm

**Baroness Dean of Thornton-le-Fylde (Lab):** My Lords, I thank the Minister for introducing this debate. I would like to interpret in that also his support for its taking place, as it would be a foolish Chief Whip who listed a debate without the Minister saying, “Yes, let’s go for it”.

I would also like to say how pleased I am that the noble Lord, Lord Astor, is back with us, debating defence issues. This House has been blessed in the past 10 years with two Front-Bench Ministers, the noble Earl, Lord Howe, and the noble Lord, Lord Astor, as defence spokespeople whom we have respected and certainly find most helpful in the work that we are trying to do.

I declare an interest. I chair the House of Lords defence study group, an informal grouping of about 60 Members, comprising experienced former military Members, politicians who have worked in defence and the MoD, and also lay Members, such as myself, who, while not working in either of those areas, have had some experience. I was chairman of the Armed Forces’ Pay Review Body. For the rest of my life I will carry with me a recognition of the huge debt that we as a nation owe to our Armed Forces, young men and women, day in and day out, year in and year out, often without being thanked for it.

A member of that group, possibly one of the oldest in it—no in years but in service—was Lord Lyell. I think that this is the first main defence debate that we have had since his passing. On behalf of the group I would just like to pay our respects and thank him for the work that he did over many years.
In their assessment, *National Security Strategy and Strategic Defence and Security Review 2015*, the Government said that they had concluded that the threat to our nation had not significantly changed. This is a view that many would challenge—and indeed it has been strongly challenged in this debate. A number of noble Lords have dealt with it quite factually, about how actually the threat has increased. The Minister alluded to it, even if he was not blunt about it. I suggest that, were it not for the distraction of the media with Brexit day in and day out, we would be seeing security issues much more on the front pages of the press than they are at the moment.

Introducing the debate, the Minister referred to the 2% contribution to NATO, as a number of other noble Lords have, too. One of our House of Lords study group Members, who is absent—a number have written to me to apologise and express regret for not taking part—was the noble and gallant Lord, Lord Richards of Herstmonceaux, recently the Chief of the Defence Staff, as we all know. He wrote:

“I am sorry to report I am abroad until 24 March and therefore will not be able to take part. What I would have emphasised is that while hitting the 2% target is a good thing, it has become a veil behind which Her Majesty’s Government is obscuring the true state of the UK’s defence capability. In itself the 2% target means little if a country’s ambitions, or the perceived threat, require more, as would appear to be so in the case of the UK.”

I think that that is view with which many of us would agree. The noble Lord, Lord Empey, who I think is not in his place at the moment, said that he did not agree with the 2%, that we should not have it there and that we should pay what we need to. I agree with the 2% as a base and a minimum entry to NATO. Certainly we need to pay more.

My noble friend Lord Touhig said in his excellent opening address that the most valuable asset was the people. Obviously I agree with that, having chaired the Armed Forces’ Pay Review Body. Two days after the strategic defence and security review in 2015, the Government announced in their spending review and Autumn Statement that they had included in that Statement a decision to spend £11 billion on new capabilities, innovation and the defence estate. Good—but where was the money coming from? Well, £7.2 billion of it was from efficiency savings, including military and civilian pay restraint. That restraint continues—the restraint, as I mentioned in our last defence debate, of a 1% maximum—yet other areas of public service, including MPs, were not limited to it. It also included a cut in the civilian headcount in the MoD of some 30%. So how can it be extra expenditure when it just shifts the deckchairs on the deck—and the people paying for it are, in my view, the least able to do so—at a time when as a nation, we face a higher security threat?

It is no wonder that the Armed Forces’ Pay Review Body talked in its last report about morale dropping, as has been mentioned in this debate. I am not at all surprised about that. Members of the Armed Forces see the statements that are made and what they themselves experience. The reality is—we have probably been too small-minded to say this out loud as we are now—that we need to spend more on the defence of our nation because of the state of the world today. The chairman of the Defence Select Committee in another place, who was sitting with us until a short while ago, has called for 3% expenditure. He reminded us that when we were last in a period of major terrorism and security threat—the 1980s, as has been referred to in this debate—defence expenditure varied between 4.3% and 5%. I do not think anybody is being so bold as to suggest that. The noble Lord, Lord Dannatt, another member of our group, has called for 2.5%—which, on nearly £40 billion of expenditure, is a not significant amount.

This is not just about the pounds and pence; it is about what we need for the security of this nation. How do we properly resource our young men and women and our defence capability in a world which is probably less secure now than it has been for many decades? In fact, between 2010 and 2016 defence spending reduced in real terms by 6.9%. We are still clawing that back. We also face the drop of 15% in the value of the pound since 23 June last year, which is having a negative impact on the MoD budget of around £700 million. I hope that the Minister will be able to confirm in his response that that will not come out of the set budget and that the Treasury will find that money. Talking of resources, is the Minister able to inform the House how progress is being made on an issue which was very topical a short while ago but has gone quiet recently? I refer to the recruitment of reserves, up to the total of 35,000 that was talked about.

Many Members of the House have taken part in this debate today and I respect hugely their expertise and experience. I say to the Minister, as gently as I can, that there has not been one demurring voice in this debate on the assertions, first, that we are in a more insecure world and, secondly, that we need to look at our defence budget. That voice has come from across the House, irrespective of party or which Benches we sit on. Can the Minister please pass that message back? I hope that a similar debate will take place in the House of Commons, because only by raising our voices in this joint, across-the-House way will we stand any chance of being listened to. We are not warmongers or people who call for expenditure because it is politically convenient to have a go at the Government. If we had a Labour Minister sat on those Benches now to answer the debate, my contribution would be exactly the same. I hope that that message can be carried back to the Government.

6.05 pm

**Lord Levene of Portsoken (CB):** My Lords, it is a great pleasure to follow the noble Baroness, Lady Dean, whose wise words on defence are always worth paying attention to. I thank her for her chairmanship of the group to which she referred, from which we all benefit. I also pay compliments to the noble Lord, Lord Touhig, for the efforts that he always makes to promote the importance of defence in Wales. He does a great job on that. I declare my interests as chairman of General Dynamics UK.

At a time when there is so much uncertainty in international relations, both in Europe and the wider world, our thoughts must always turn towards our defence to ensure that the nation is well protected. During this debate, with so many distinguished contributors, we are
learning much of how our Armed Forces and others are properly prepared. But for those Armed Forces to be prepared, that preparation can be most effective only when they are supplied with the best equipment embodying the latest technology. The task of procuring this equipment is undertaken by the Defence Equipment and Support division of the Ministry of Defence, which is staffed by serving officers and civilians. For years, that division and its results have been, all too often, the subject of uninformed criticism centred on perceived delays or excessive cost when, very often, a fuller examination of these issues reveals a different picture.

Defence procurement around the world always gives rise to such feelings and countries have different approaches to dealing with it. The noble Lord, Lord West, recently asked a Question in your Lordships’ House relating to defence industrial policy. I was at pains to say that I did not believe that we should revert to an approach of “national champions”, which we had some years ago and which failed. So I shall speak today about the way in which we go about procuring our equipment for the Armed Forces and the DE&S organisation which is responsible for that task. It is a task for which some 30 years ago I had responsibility and, having been asked more recently by successive Defence Secretaries to oversee a process known as defence reform, I think that my perception of this area is relatively up to date.

Defence procurement requires a thorough understanding of the interaction between technology, production and commercial realism. I have argued for a long time that this was not necessarily very different from imperatives in other industries and that that process should be led by an experienced businessman, who understood both the development and the commercial imperatives. In my opinion, and at long last, the Government have managed to recruit an outstanding individual to head the organisation in the person of Tony Douglas, the man who previously ran the Abu Dhabi airport authority. Your Lordsships will understand that that was no mean feat. This is a man used to getting complex projects completed on time and on cost: precisely what is needed in the Ministry of Defence post which he now holds.

To give further credit to those making this appointment, it was decided a little earlier to appoint a non-executive chairman to oversee the division. An inspired choice was made in choosing Paul Skinner to do this, a man whose reputation precedes him from his time spent at Shell and Rio Tinto. The top of the organisation is now in place and we should be able to deliver what we need, on time and on cost.

So far, so good, your Lordships may think, but like any other efficient organisation, it requires a clear line of control. In my view, it requires the chief executive to have authority and control over all the parts of his organisation. I have therefore been greatly concerned to look at the way in which the acquisition of the nuclear submarine successor programme is being largely hived off to a separate procurement organisation, over which DE&S will only have much reduced influence. It may be that that decision was driven by the Treasury, whose understanding of procurement in the past, I have to say, has been far from perfect, but it has taken years to find the right person to run DE&S and now the Ministry of Defence seems to be looking for yet another person to run the submarine programme. I believe that is fundamentally wrong. I know what has driven it, but I do not agree with it.

I hope that it is not too late for the Minister to discuss this with his colleagues to see whether a more suitable arrangement can be arrived at. The nuclear submarine programme is a very complex one, involving the design, development and construction of the most modern vessels. I can say from my past experience that this interface is complex but needs, in every way, to be closely connected with the rest of our defence procurement programme. A separation is wrong, and I believe it will not deliver the outcome that we really need.

I hope your Lordships may concur that we have some extremely dedicated people working on both the military and the civilian side in procurement, who rarely attract praise but very frequently are blamed for faults that often do not really exist or have been misinterpreted. As I said, we need the very best equipment to be procured. We need the best people to enable us to achieve this, and those people deserve our absolute support.

LORD JOPLING (CON): My Lords, I am sure this debate has been immensely enhanced by the contribution of the noble Lord, Lord Levene, who has just sat down, whose huge experience is of massive value to all of us. I begin by reminding the House that for many years I have been a member of the delegation to the NATO Parliamentary Assembly, where I am currently chairman of one of the committees.

It is only seven weeks or so since we had our last defence debate, but in view of continued tensions which confront us it is timely that we have another one today—I pay tribute to my noble friend the Minister for that. That is especially so when one contemplates what I describe as the “arc of trouble”, which stretches from the Baltic states in the north, through the Middle East and North Africa, to the Atlantic Ocean, where Nigeria continues to struggle with Boko Haram. Not all of it, but much of this tension, which has increased in recent times, stems from Russia’s increasing posturing and provocation, and I will concentrate most of my remarks on Russia.

This increased provocation by Russia comes despite a faltering economy, which we should remind ourselves has been compared in scale to that of Spain and which is mainly a consequence of crude oil prices that are near $50 a barrel. At the same time we are seeing burgeoning defence spending—admittedly from a comparatively low base when we remind ourselves that Russian defence expenditure only four years ago was less than that of the United Kingdom—and an intensification of Moscow’s military build-up throughout the entire region from the Arctic through to the Mediterranean. We have seen evidence of their tinkering in Libya recently.

Our allies in NATO and the east continue to feel threatened by the hard power imbalance in their neighbourhoods. Russia has the ability rapidly to amass significant forces on its border, and continues to mount anti-access and area-denial capabilities in the Baltic,
Black Sea and Mediterranean regions. The Russians have threatened nuclear strikes against NATO allies and have withdrawn from or violated key arms control agreements. In addition, very importantly, they have developed a highly sophisticated propaganda and disinformation campaign, often blatantly distorting facts and the truth—a matter I shall return to in a few moments.

One cannot help feeling that, with the mounting threat from Russia, the NATO allies are relatively sleeping through all of this, and it is not helped by the continued uncertainty which comes from Washington. That is not only down to the wild and sometimes contradictory tweets and speeches from the President himself but down to this period of uncertainty in the formation of a new Administration in the United States. In the past, it has often taken up to June before all the political appointments are made, but last week upstairs in the International Relations Select Committee, of which my noble friend Lord Howell is chair, we heard evidence that the current appointments in the United States are proceeding very slowly and that some of the most senior Pentagon political offices remain unfilled.

Perhaps one of the few firm messages, though, to come from Washington recently is President Trump’s dissatisfaction at the poor response to the target declared at NATO’s Welsh summit of moving towards 2% of GDP going to defence. When the noble Earl, Lord Howe, opened the debate, he referred to the five states whose defence spending comes to less than 1%. The noble and gallant Lord, Lord Stirrup, in his speech, talked about the need to name and shame those that do not spend even 1%. Unfortunately, he did not name them, and therefore I will. It has been implied in the past that it is bad manners and not very friendly to name the backsliders, but it is Belgium, Luxembourg, Spain, Slovenia and Hungary that currently spend less than 1%. That is a disgrace, particularly given that some of those countries are extremely wealthy and really ought to be moving towards the Welsh summit target. Indeed, some of them, particularly Belgium, seem to be spending less each year, which again I would have thought was indefensible.

This has been said before, but I repeat that it is a sad reflection on our European friends that after Brexit—I speak as one who was not in favour of it—80% of the spending on NATO’s defence will come from non-members of the European Union. That is also a disgrace. However, one constructive and praiseworthy development in recent times has been the decision to deploy battalion-size battle groups in the three Baltic states and Poland. I have expressed concerns in the past about the delay in their deployment, and I am very relieved that the first of the UK-led contingent has already arrived in Estonia. I have felt for some time that these months, which we are in the middle of now, covered a dangerous period of change and uncertainty which could have encouraged Mr Putin to warn Moscow that to engage with them would have immediate Article 5 implications.

Finally, I referred earlier to the propaganda and misinformation programme which the Russians are so good at. I ask the Minister to confirm that all preparations have been made, alongside our Estonian battle group deployment, to have adequate back-up of Russian speakers and media facilities to counter the inevitable sniping and vilification which we can be assured that the Russians are bound to spray over them in the months and years ahead.

6.22 pm

Lord Hunt of Chesterton (Lab): My Lords, this is an important debate about the very serious international situation facing the UK in terms of its capacity to defend itself in collaboration with its allies. I declare an interest as a scientific consultant to a defence contractor working for the MoD. I am also a consultant with a university in Toulouse, working on new wings for Airbus, and some of these Airbus facilities are of course important for the UK now. When I was head of the Met Office, I also saw a bit of how the MoD works—some of which made your hair stand on end—and, during that period of focus, the ability of the Met Office to forecast the atmosphere and oceans greatly improved. I should also declare that, when I was a professor at Cambridge, one of my research students used our research techniques to provide high-tech shelters for all the women protesting at Greenham Common.

Since this is a debate on the politics of defence, I should begin by asking HMG whether they are satisfied with the understanding and support of the British people for the main aspects of UK defence strategy. The first point of controversy has been about the size of the Armed Forces, which is now smaller in total than for many years and significantly lower than is needed to confront the main opponents to the UK and its allies, in Asia and the Middle East especially. This is a technical and financial question, depending on the choice of strategic goals, but we should learn more about the arguments.

The second major controversy, which is much more political, concerns whether the UK armaments should continue to depend on nuclear weapons systems. I believe that this is essential. It is of course the official Labour policy, as my noble friend Lord Touhig mentioned earlier this afternoon. The Labour and the Lib Dem parties continue to be split about this, with many members inside and outside Parliament being opposed. Also, of course, many countries in the NATO alliance are opposed to the use of these weapons.

A lesser but more recent controversy about the UK’s defence is to what extent it should be used to support Governments in the Middle East and Africa where civil war is taking place, or where there are outbreaks of disease and civil emergencies such as the breakdown of government systems in Libya and elsewhere. The noble Earl, Lord Howe, in his introductory speech commented on how our defence forces are used for these civil issues—and very effectively too.
[Lord Hunt of Chesterton]

There is very little political controversy about the use of the UK’s world-class defensive capability in cyber and security services to protect the UK and our allies.

I should like to make a suggestion that the Government need to build up support of their defence policies among all parts of society, including schools, universities, industry, trade unions and so on, in order to have support for their defence forces and their infrastructure within government. There is also a need to build up understanding about the role of the private sector.

I believe new approaches are necessary. I came to this conclusion when visiting with my grandson the excellent Royal Air Force Museum at Hendon, and I have told the noble Earl, Lord Howe, about this story. The technical and scientific aspects of the RAF over the past century were well displayed, and I assume that there will be some centennial celebrations at this museum in a year or two. But there needs to be more emphasis on current operational policies, as well as the developing technologies, and the existence of nuclear weapons in UK defence should not be ignored. It is also important, in museums and other places providing public information, to explain why the UK has defence forces in 2017—giving information about countries which are the UK’s allies and, controversially, which countries are not our allies.

In some schools, I am afraid to say, the governors prevent school visits to defence facilities. The RAF Museum, as an example, provides information about our former enemies. Surely there should now be considerable emphasis in all such information displays on how these former enemies are now our allies. There is a great misunderstanding by many young people on these issues. I look forward to the Minister’s response to this question.

Demonstrations, museums, and videos about modern defence forces and their infrastructure should also include displays and information about their use of technology and scientific developments, including systems collaborating with our allies. An example is the large Airbus transport plane I mentioned, one of which is used by the UK Prime Minister now, who, I am glad to say, no longer goes on a Boeing.

However, it is not realistic to pretend that our forces depend only upon UK industry and technical products. For example, the Met Office, which provides world-class meteorology and environmental data and forecasts for the UK forces, benefits from information provided through NATO from other forces, but it also provides its information to allied forces—such as weather forecasting, which is now used by the US Air Force. It is important that technical defence collaboration between NATO forces should not be impeded by the UK withdrawing from the current EU technological projects, which other noble Lords have mentioned. That may happen without considerable diplomacy. Perhaps the Minister could say how this issue is also being addressed.

Finally, there should be greater collaboration between UK defence scientists and those of our allies. When I was at the Met Office—perhaps it is not the case now—there were none on the Defence Scientific Advisory Committee, DSAC, and I hope that may have changed by now.

6.29 pm

The Earl of Cork and Orrery (CB): My Lords, in contrast to the large number of qualifications and interests which many noble Lords have professed, I can only profess to having been a Cold War submarine commander, but I have the interests of the senior service very much at heart. I thank the Minister for this debate, which has given us the opportunity to revisit and examine the entire defence area. We have heard the challenges to the rules-based order listed by many. They include, among others that have perhaps not been listed, famine of both food and water, nuclear proliferation and, perhaps we should say, even the new US regime.

In times of peace, military expenditure tends to be the Cinderella of government spending. Large parts of the population see it as neither necessary nor desirable, and it falls to Parliament to persuade the voting public to accept spending in defence when so many other areas command their attention. History tells us that although we are seldom fully prepared for conflict when it arises, we occasionally get it right. Henry VIII regularly ran out of money to maintain his forces; indeed, he began wars only when he had received a new injection of cash. Elizabeth I’s expenditure on warfare was remarkably modest, but it cost the King of Spain two-thirds of the entire revenues of the Spanish Empire in 1585 to build the Spanish Armada. Note that he started three years before the date on which the fleet was to set sail.

Between 1690 and 1815 Britain was involved in a semi-continuous global struggle, generally against France and Spain. In this period, spending on the Royal Navy consumed the largest share of government revenues, with the results that we all learned about in school. I am of course assuming that most of us come from an era when such matters as Napoleonic history and the Industrial Revolution still formed a part of the history curriculum. In 1814, the last year of the Napoleonic wars, the British national budget stood at £66 million, of which £50 million was spent on the war. The Navy spent £10 million, but Trafalgar was behind it; the Army, pre-Waterloo, spent £40 million; and another £10 million was spent on mercenaries from Austria and Prussia.

Post 1815, and during the 100 years or so of the Pax Britannica, we were probably the most confident country on the planet—confidence has been mentioned in several contexts. The peace was substantially maintained by the large but increasingly outdated Royal Navy. Defence expenditure fell steadily as a percentage of GDP, partly because of the vast rise in GDP itself during the 19th century, but by 1900 it stood at just under 4%. The arrival of Admiral Jackie Fisher as First Sea Lord in 1904 saw a complete change in defence thinking. Fisher was convinced that war with Germany was inevitable, and set about modernising the Navy and preparing it for war with enormous enthusiasm. He retired for the first time in 1911, with the job done so effectively that defence spending, at 3% of GDP, was lower than when he had arrived, due to the massive efficiencies and savings that he had been able to make while completely renewing the battleship fleet.
Fisher had the public on his side. He was such a popular figure that, as he bullied Parliament into supporting his new building programmes, the public coined the phrase, “We want eight, and we won’t wait”, referring to yet another class of Dreadnoughts. As a result, the Royal Navy entered the First World War as probably the only military arm in Europe ready for the conflict, and defence spending at 3.15% of GDP. There is a magic quality to this figure of three; it crops up time and again. From 1920 to 1935 it remained fairly steady at around 3%, before rearmament began in 1936. The arguments of Churchill and others surrounding that process do not need rehearsing in your Lordships’ House; suffice to say that they were highly controversial at the time. I apologise to your Lordships for reciting all this history, but I hope my point is clear: we ignore the lessons of the past at our peril. The visionary Fisher managed to revitalise the Navy within 10 years—but it took him 10 years, in an age far less technologically advanced than today. The equally visionary Churchill managed to get the ball rolling in 1936, although we were far from ready when the war started.

In more recent times, we entered the Cold War in the 1950s with defence expenditure at 6% of GDP, and it was still at 4% by the early 1990s. Since then, the so-called Cold War dividend has had the psychological effect of lulling the country into a false sense of security, which is now, 25 years on, starkly apparent. Other speakers have detailed, and no doubt still more will do so, the effects of the obvious lack of “mass”—that is, numbers—manpower shortages, the reduction in the procurement for stocks of weapons and equipment, and the scrapping of useful equipment because its maintenance or manning cannot be funded.

My principal point is that we must start to think the hitherto unthinkable of casting aside some of the shibboleths of 21st-century expectations and politics. Today, real spending as a percentage of GDP, in figures that are not widely understood by the public, includes the following figures: pensions at 8%, health at 7.4% and welfare at 6%. Add all those together and you get one-quarter of our entire GDP. Education gets 4.4% but defence gets 1.76% for pure defence spending and 0.25% for other things that have been creatively accounted into the defence calculation.

We simply do not have 10 years, or even three, to prepare for the next conflict that may be forced upon us. Despite the rapid advance of technologies, development times have lengthened. Fisher built “Dreadnought”, the first of a new type of battleship, in a year. The latest “Dreadnought”, the first of the successor class submarines, will probably take 15 years. It took 10 years from project start to launch of the first Daring class destroyer. The Type 26 frigate project began in 2010 and the first vessel has yet to be ordered. The numbers of both these projects have been halved since inception. The Type 31 frigate—perhaps you could call it the other half of the Type 26—is still a figment of the collective imagination. I could start on the Astute class submarine programme, but embarrassment for my old service forbids further comment.

The elephant in the room is clearly social spending in all its forms. While most would agree that such spending is only right and proper, I argue that the balance has been dangerously upset by the post-Cold War lull in military need. I also argue that the 2015 SDSR has quite possibly already reached its sell-by date, and that another serious look needs to be taken at our defence needs rather than looking through the other end of the telescope—or periscope—at what we can afford when all the other budgetary pressures have been contained. The SDSR addresses development but fails to address personnel recruitment and retention to any great extent. To quote the Secretary of State for Defence:

“Nothing is more important than defending our country and protecting our people”. I offer another quotation, which I think came from the Prime Minister:

“The first duty of the Government is the defence of the people”.

In conclusion, I point out that while we aim to spend 2% of GDP on defence, Russia spends 5.4%, the US only 2.3%—but of course from a vastly higher GDP base—China 1.9% and Saudi Arabia a huge 13.7%. I have a final question for the Minister, which has already been asked: what consideration has been given to removing the costs of building, maintaining and operating the strategic deterrent from the defence budget to its own separate vote?

Other than all of that, the main issue that seems to come across from noble Lords’ speeches is morale and recruitment—the hollowing-out of services personnel. Equipment can and will be built and budgets will provide for that, but we have to create an attractive enough platform for recruitment to bring enough people into the services and benefit them in order to create the kind of task forces and numbers that we have been talking about.

6.38 pm

**Lord Robathan (Con):** My Lords, it is a pleasure to follow the noble Earl. He brings naval experience to our discussions but I bring rather more of an Army bias. He is also a relative newcomer to this House. As a relative new boy myself, I note that your Lordships’ House has taken a bit of a kicking recently in the press but, having sat through most of this debate, I have been extraordinarily impressed by some of the excellent speeches, which have been interesting, well-informed and informative. It is of course invidious to mention names but I shall mention in particular the noble Lords, Lord Robathan, Lord Alton, Lord Hennessey, and the noble and gallant Lord, Lord Stirrup, who I thought spoke particularly well. I am glad to see that the Secretary of State and indeed the chairman of the Select Committee from the House of Commons are both here listening. I hope that I can live up to that high standard, though I rather doubt it.

I shall make two points. The first relates to the standing of the Armed Forces, which was partially covered by the noble Earl. The second is about the current international situation, which was mentioned in the Motion, and our preparedness for it.

It is a cliché to say—quite rightly—that our Armed Forces are highly regarded. When I was working in the MoD, they were probably more highly regarded than they ever had been in my lifetime, largely because of Afghanistan, Iraq and the tragedies there. To digress, a friend of mine in the United States army told me that, after Vietnam, he flew back into Los Angeles airport
My noble friend Lord Jopling, who is not now in his place, congratulated on that and on the SDSR as well. They were right to congratulate on it. SDSR 2015 is a step in the right direction but we need to go a lot further. Other people have said so too.

My noble friend Lord Jopling, who is not now in his place, talked about Russia. I will not cover other strategic threats but let us home in on that. Nobody has been held to account for the murder of Litvinenko 10 years ago—not a mile from here—nor for the Downing of a civilian airliner over Ukraine by Russian missiles. The Baltic states have a joke: “Visit Russia, before Russia visits you”. They are worried, and with good reason. The other threat, closely linked to Russia, is from cyberattacks. We have heard about whatever happened during the US election. We have heard about Montenegro. These attacks are non-stop, asymmetric and will grow.

I say to my noble friends on the Front Bench that the situation has changed. When I joined the Army in 1974, we had a complement of 150,000 or so. Some 55,000 were in West Germany, with tanks, missiles, tactical nuclear weapons and aircraft facing the East. We spent about 5% of our GDP on defence throughout the 1980s. Now it is around 2%. I will not dwell on how this is accounted for. We have only a vestige of the BAOR left. We do not expect invasion forces crossing the Elbe or the Rhine, but we should expect asymmetric warfare, as it is called, be it “little green men” such as we saw in Crimea and the Ukraine or by undermining the Baltic states by winding up their Russian minorities. We should remember that the Baltic states are guaranteed by Article 5 and an attack on one is an attack on all.

As a country, we need a bigger stick, as does NATO. Much has been heard about how NATO’s spending should rise; of course it should. We need to up our spending as well. I pay tribute to the Government—that it might not seem like it—and especially to the current Defence Ministers. I know what they think, but we need to go further. The Chancellor of the Exchequer had rather a bad week last week, but I believe he understands the need to spend more on defence.
We need to educate our public, our politicians and government Ministers that defence is the first duty of government. There is always the danger that old men—and there are quite a few in this place—look back through two-tinted spectacles at the good old days. We need a balance and to understand history. We could draw analogies with the 1930s, to which the noble Lords, Lord Hannay and Lord King, have referred. There is some validity in this—disarmament, isolationism, aggression and invasion of small parts of countries, such as the Sudetenland. I urge my Government to up defence spending so that the Armed Forces feel valued; so it becomes an attractive career for young men—and women; and, most of all, to ensure that British interests are safe in this deteriorating world situation. The first duty of government has always been the defence of the realm. We all need to remember that.

6.48 pm

Lord Judd (Lab): My Lords, the noble Lord was absolutely right to draw attention to the non-accountability of the Russians for their actions. I was for some years rapporteur to the Council of Europe on the conflict in Chechnya. One thing that drove me to despair was not only their brutal behaviour but the way in which they were recruiting for extremists. People were driven into the arms of the extremists by their behaviour.

It has been a very interesting debate, due in large part to the thoughtful and wise speech by the noble Earl and the firm and trenchant speech by my noble friend Lord Touhig. We should in debates of this kind always take some time to pay the warmest, unlimited tribute to the men and women of our armed services, the security services and the police, who carry so much responsibility in such demanding and exacting circumstances on our behalf.

I should perhaps declare an interest. I had a short service ground commission in the RAF during the Cold War. I was subsequently Minister for Defence responsible for the Navy, when we still had Service Ministers. Despite the awful circumstances, I found that a very fulfilling and enjoyable role.

Surely the first thing we should do in debating defence is to examine and define the threat. We should not start by talking about percentages of expenditure. We should ask: what is the real threat that faces us? What should we be doing to respond to that threat? What does that demand of us? How much is it responsibly essential to pay to respond to that? We sometimes forgo that debate, which leads to a great deal of misunderstanding. What is the threat?

For most ordinary people, one of the biggest threats in their lives is terrorism and extremism. What does that demand of us? It demands extremely good, highly qualified security services—we are deeply grateful for all they do on our behalf. It also requires a great deal of support from the police. However, we have to ask what leads people into extremist positions. We have always to remember that we are in a battle for hearts and minds. This can at times be extremely exacting, but it demands the highest conduct in the values that we proclaim because, if we slip from them, we play into the hands of the recruiters for the extremists.

I get very worried by some of Trump’s language. When Trump starts advocating waterboarding again and talks loosely on Twitter about the acceptability of torture, I get extremely worried. How many new recruits for extremism has he made by those few ill-judged remarks? We therefore have a great responsibility as a long-standing ally of the United States to stand firm in our position and not yield an inch. I know from my long-standing involvement with people in the United States that many will rejoice if we do that.

The Minister is absolutely right to emphasise the unpredictability, instability and complexity of the situation. It is unnecessary to mention all the places in the world which have been listed several times in this debate, but I am glad that we have also talked about migration—refugees and displaced people—and climate change. Those two factors taken together might make anything we face at the moment seem like child’s play by comparison. We have also touched on the issue of world trade—of moving from an ordered approach to a phase of possibly aggressive free markets, without that moderating influence. That in itself becomes threatening.

I congratulate the noble Lord, Lord Empey, on raising another point. We must ask ourselves whether the carriers as we now have them and Polaris as it now stands are not distorting the expenditure of the overall defence budget compared to the real needs and threats that we will face and the action we may need to be able to take to contain those threats. I am not and never have been a unilateralist. I have always been a multilateralist on disarmament, but we have to ask that question, because it would be unfortunate if we end up muscle-bound because we are unable to respond to the real situation and the demands made of us.

The Minister emphasised working with others. That will be desperately important. I can think of few situations in which we can ever contemplate acting alone. All of them, including terrorism of course, demand international collaboration. Therefore, working out new ways of collaborating with the European Union, continuing our close collaboration with France and others and playing our role within NATO is crucial.

Before I conclude, I mention one other point of which I am convinced. If we are to talk about effective defence policy, we have to see the relationship between arms control and regulation of the arms trade as central. In the situation in which we are operating, with extremism and terrorism as a factor, we cannot afford any danger of lethal weapons ending up in the wrong hands or weapons being used in a way that recruits extremists. We have to be certain of the end use of arms that are exported; we need to be certain of accountability. That is not an alternative. It is central to the defence programme. How are we recognising the danger and significance of armaments and ensuring that we are not inadvertently playing into the hands of people who will exacerbate the terrifying issues with which we are confronted?

6.58 pm

Lord Walker of Aldringham (CB): My Lords, as we have heard from many noble Lords who have spoken, we are living in a very troubled and insecure world—
militarily, politically, economically and socially. Everything seems to be in turmoil. It does not matter where you look, the landscape is littered with issues that Governments and international institutions are finding it increasingly difficult to handle. In this Chamber, we pray daily for peace and tranquillity in the realm. But we are clearly not doing enough.

So what does all this mean for our military in the second decade of the 21st century? The most pressing item on people’s agenda is Brexit. At first sight it seems to us that Brexit itself is unlikely to have a vast impact on our Armed Forces—certainly on their roles and tasks. We are firmly attached to NATO and expect to be able to continue to co-operate with our European allies. More indirectly, there are big unknowns. What will happen within and to our defence industries? How will a change in the value and exchange rates of the pound affect our ability to fund the ever-increasing costs of procurement of military equipment and manpower?

Added to that is the spectre of the Scottish independence referendum. Should it become a reality, there will presumably be a requirement to give Scotland her share of the combat units and vehicles, aircraft squadrons, warships, intelligence, logistics and maintenance assets, and of course to sort out our nuclear base at Faslane. That will all take some doing. I wonder whether the Minister will be able to give us a view as to the Government’s thinking, should that happen.

The central lesson of our experience of the last 60 years is that forces equipped and capable of prosecuting warfare at the highest-intensity level are absolutely capable of less demanding operations. But the reverse is not true. That is why our national engine is and must remain warfighting. Indeed, the Minister referred to it as full-spectrum capability, so that we can change down through the gears when demands require it. This equation is as much about organisational attitudes and methods as about the physical fabric of our capability, although the former is nothing without the latter. To use an Army analogy, the sort of mentality that can position an armoured division tactically in an area equivalent to that inside the M25, supply it with 70 tonnes of food and 1,600 tonnes of ammunition on a daily basis and then use some 30,000 to 40,000 men and more than 10,000 vehicles to destroy or defend against an enemy at night, should be able to burn a few sheep when everyone else is panicking.

However, you cannot hope to keep the peace if those who threaten doubt your will or your ability to wage war. They will laugh in your face. Contingencies in which the enemy is an abstract noun, such as famine, terror, poverty and disaster, may be more likely at present, but we must never forget that we still have potential enemies whose senses are stimulated only by the weight of conventional force brought to bear on them—and there are more than 120,000 main battle tanks out there. High-intensity warfare is, thankfully, relatively low on likelihood, but we should not forget that we used a version of this capability as recently as the Gulf War in 1991 and again in Iraq in 2003—although thankfully both times against a very weak enemy. But the risk level has gone up a notch or two, as we have heard, particularly in the last couple of years. We have seen the sabre rattling of Russia with its latest modern battle tank and enhanced capabilities across the board—and only the other day Iran announced the development of its own version of the Russian tank.

We currently claim to have a set of forces structured to be capable of high-intensity warfighting as part of an alliance. In this type of warfare, operations are conducted in five dimensions: in and from the air; in and with the electromagnetic spectrum; on the land; and, if sea is involved, with both surface and subsurface operations. Our contribution would in effect be a one-shot weapon which would consume most of our available resources.

In a recently leaked memo, the last commander of our Joint Forces Command cast grave doubts on the efficacy of this capability. Even if only part of what he claims about the shortcomings in our strategic thinking, cybercapability and fragile naval, air and land capabilities is true, our ability to fight a conventional war must be in doubt. At the same time, there is much uncertainty about all our allies in NATO increasing their defence spending, as we have heard from so many noble Lords, and the impact that it might have on our US ally’s intentions. Were we to engage in an endeavour requiring us to deploy this capability and fail, we would be faced with one of two very unpalatable options: either accept defeat or resort to our nuclear capability.

A capability for high-intensity warfare is high on cost—and getting higher by the day. Once that capability is lost, it takes a long time, a lot of money and a lot of training to reconstitute it. Moreover, if Scotland votes for independence, the repair bill will be large and could come sooner than expected. Everybody agrees that the defence of our nation is the first duty of our Government. I believe that that duty to maintain such a capability should be followed, whatever the future costs may be.

I will talk briefly about one other aspect because it has been touched on by a number of noble Lords. It is about our people. Being a service man or woman is not better or cleverer, or necessarily braver, than being in another occupation—but it is different. That is because we require our youngsters to be sent off at a moment’s notice to a place they may have difficulty finding on a map, where they are required to risk life and limb alongside an ally whose language they may not be able to understand and in defence of an issue that they may not even have begun to grasp. In this distinctive chemistry of the military world, men and women, as we have already heard, wish to be valued. They wish to be valuable as well. They are paid folk and they have a contract that takes them to the door of death.

Nothing about the future suggests that tomorrow’s service men or women will have to be any less brave, less physically and mentally tough or less resilient than their predecessors. There will continue to be a premium on the men and women who are prepared to put up with the dreadfulness of an environment that is at best exceptionally unpleasant. There will be an equal premium on those leaders capable of persuading others to accept that dreadfulness.

These folk have hardly been highly rewarded by the nations they have defended. The New Model Army of the 1640s—the most reliable force to emerge from the
English Civil War—was eventually driven to oppose the Parliament for which it had fought so well by the fact that its pay was in arrears. Time and again, servicefolk, who have been perfectly prepared to face physical risks, have sulked, grumbled or even mutinied over pay and conditions. The feeling that their country is not honouring its part of the contract or the fear that the well-being of dependants is threatened, strikes at the very basis of their loyalty. It is indeed ironic that our country has oft been best defended by those who owe it the least.

In 1957, when conscription ended, the Regular Armed Forces were some 700,000 strong; the defence budget was some 7% of GDP; and the average per capita cost of a service man or woman was some £41,000. By 2011, we had shrunk to186,000; the defence budget was just over 2% of GDP; but the average per capita cost was some £220,000. The full-time trained strength as of December last year had dropped to just over 139,000—some 4% below establishment. The jury is out on whether full manning can be achieved.

Today, after the last SDSR, one of the main areas in which savings are being sought is in personnel. Military pay will increase by only 1% over the next four years—well below projected levels in the private sector. For a private soldier this is 1% on £18,000—some £7,000 below the national average. Service allowances are being targeted for savings, and the 30% savings in numbers of MoD civilians could well require backfilling with military personnel. There are, too, concerns about the legal pursuit of 60 year-olds in Northern Ireland, as we heard from the noble Lord, Lord Astor, the damage done by the IHAT allegations, and concerns about service accommodation and work/life balance. I believe that we need to do better for our people, for it seems that our country still seeks to be best defended by those who owe it the least.

7.09 pm

Earl Attlee (Con): My Lords, I remind the House of my somewhat technical interest. I support the Motion in the name of my noble friend the Minister. I echo some of the observations about Russia made by my noble friend Lord Jopling. We know that it is an economic basket case with a GDP equivalent to that of Italy. It makes little that is good enough to export to the rest of the world, apart from armaments, and is far too reliant on mineral wealth. To cap it all, it has a perfectly rotten system of justice and the rule of law, which will make it very hard for ordinary, decent Russians to construct a healthy, modern economy. The right reverend Prelate the Bishop of Leeds made important points about the nature of Russia and its population. It is also important to understand that the Kremlin’s map of the world will look very different from the one in the Ministry of Defence. Its leader has no regard for an international rules-based world order and, unfortunately, many of his population hold him in high regard. That might change, however, if his armed forces took a number of casualties. In other words, Mr Putin cannot afford to get a bloody nose.

Russian armed forces have some good capabilities but they are not balanced and have weaknesses as well. Mr Putin’s strategic objective must be to break up NATO and Article 5 by intervening in the Baltic states, possibly by using Russian-speaking minorities as an excuse, as other noble Lords have said. I warmly applaud the Government for not being overreactive and provocative and for avoiding the trap of deploying at medium scale. A battalion group lays out a thin red line, or trip wire, while avoiding the expense of deploying at medium scale, which would fix a large proportion of our deployable combat power. At the same time, Mr Putin is incurring the cost of having large numbers of troops deployed, or at least at high readiness. However, we need to take special care to monitor the position of Russian-speaking minorities, as referred to by my noble friend Lord Jopling and other noble Lords.

Several noble Lords have referred to difficulties with the carrier programme. Yes, it is a capability that we do not yet have in place, but when we do have full operating capability it will be game-changing. Of the western states, only the Americans, the French and we will be able to deploy a carrier battle group to support a brigade deployed out of area. We should be positive and look forward to the increased capacity to be a force for good when the carriers come on stream. They are not in service today, but we do not face an existential threat today. It is perfectly clear, however, that we do not have enough surface warships or submarines and we need to do something about this. Perhaps addressing this concern properly will be unavoidable when the carriers start being deployed. The noble Lord, Lord Empey, suggested that we might have to deploy two carrier battle groups at once. Clearly, we could always have one carrier available, but I believe there is no intention to operate two groups at the same time. We do not have the resources to do that.

Many noble Lords have talked about manning, which is of great concern to me and others. I am content for Regular Army phase 1 soldiers to be counted as part of the trained strength of the British Army. This is because most of them will be trained to a basic trade standard quite soon—in most cases within, say, six months—after phase 1. In addition, they would have some military utility even if not fully qualified at trade. Furthermore, in a period of heightened international tension it would be possible to retain fully trained regulars currently in service, especially in terms of PVR and manning control points. The same cannot be said for a phase 1 trained reservist. I have to be blunt: they may well have attended only a few training weekends prior to a two-week recruits’ course. Conversely, a regular’s phase 1 training course would be about 15 weeks. After reservist recruits’ course, they will attend a few weekend training exercises, but they will gain military experience at a painfully slow rate. They will really learn to be effective only after they have completed their initial trade course and at least one annual camp. Anyone who thinks that a phase 1-trained reservist has military utility is living in a fool’s paradise.

Everywhere I look outside defence, there is a problem with insufficient professional and technical engineers. Pay has been more or less frozen everywhere in public service and conditions reformed—we know what that means. Forgetting the problems with MPs and Ministers, we see problems with getting QCs to be judges because the pay is so poor that it is not worth doing. In Parliament, we have problems recruiting IT technicians.
[EARL ATTLEE]

We face similar problems in the Armed Forces. You can have public sector pay freezes for only so long. Careers advisers have a duty to school leavers to brief them honestly about career opportunities and the likely rewards. The Armed Forces simply do not have as good an offer as they used to. The Treasury appears to be interfering with the implementation of the conclusions of the Armed Forces’ Pay Review Body. I agree with everything said by the noble Baroness, Lady Dean.

There is something else that parents and careers advisers need to take into account. The Armed Forces were always a hard taskmaster. Nevertheless, a good serviceperson could be confident that, if they did the right thing—especially on operations—they would be backed by the chain of command and, ultimately, by Ministers on behalf of the sovereign. That is no longer the case: noble Lords need only to think about the IHAT inquiry. It also does not seem to be a problem to torment an old-age pensioner about some incident that occurred decades ago, which was thoroughly investigated by the authorities at the time and many of the witnesses to which have since sadly passed away. There is nothing wrong with our Ministers, but for one reason or another they are powerless to intervene.

Serving on military or aid operations is a risky business, so we need courageous, able and prudent risk-takers for this activity. Defence Ministers may point to reasonable recruiting and retention figures, but I fear that prudent risk-takers will shy away from the Armed Forces and the gap in numbers could, to some extent, be made up with—shall we say?—not such good quality. Of course, it will be exceptionally difficult to measure the difference, and impossible for the Treasury.

I will say a few words about the need for large-scale—more than one brigade—overseas deployment exercises. The whole point of having credible Armed Forces is to be able to deter aggression. It is immaterial how much is spent on defence if your opponent is not convinced that you can inflict unacceptable harm on him using conventional forces. There is also the risk of overestimating one’s own readiness and capability and then overlooking any weaknesses. Of course these exercises have a marginal cost, but it might be better to spend slightly less on capability and more on exercises if one can increase one’s conventional deterrent effect. In this connection, I pay tribute to my noble friend Lord Astor of Hever for his work with Oman. I look forward to the Minister making an announcement about Exercise Saif Sareea at some point in the future.

The world is far less stable than in the early 1990s, when I first made a contribution to a defence debate in your Lordships’ House. Nevertheless, we should be proud of what we do and aspire to do even better.

7.19 pm

Lord Ramsbotham (CB): My Lords, in addition to adding to the tributes to the noble Earl, I congratulate the noble Lord, Lord Sterling, on his persistence in trying to persuade the Government to hold this debate—the first one in which I have taken part whose title comprises three separate subjects.

I declare an interest as a former council member of the International Institute for Strategic Studies, because the starting point of my contribution is the conclusion reached in the most recent publication in its Adelphi series, entitled Harsh Lessons: Iraq, Afghanistan and the Changing Charter of War, in which, as a former soldier, I found it sad to read:

“In both Iraq and Afghanistan, the United States and its allies came extremely close to strategic defeat, due to inadequate leadership, reconstruction efforts, political strategy, military strategy, operational concepts, tactics and equipment. These shortfalls combined with failures, at every level, to adapt quickly enough to unforeseen circumstances, provided opportunities that were exploited by insurgents and militias”.

These are harsh and sobering words, particularly in the context of today’s uncertain world, when the United Kingdom, whose Armed Forces are now weaker than at any time in the last 200 years, has embarked on leaving the Union of its closest geographical allies.

The other interest that I must declare is as a member of the Joint Committee on the National Security Strategy, in which capacity I have already voiced my concern that—despite the lessons of the imperfect 2010 strategic defence and security review, and in defiance of their undertaking to base SDSR 2015 on the national security strategy—the Government published both at the same time. I submit that, in the light of Brexit, SDSR 2015 is now out of date and ought to be reviewed. Of course, we remain a member of NATO, but it is feeling the draught of President Trump’s variance from the long-accepted wisdom that the provision of a large NATO commitment is vital for the security of the United States, and not merely a favour to Europe.

The most visible evidence of that membership is the 2% of GDP that we guarantee to spend on defence—to the inadequacy of which, in real terms, I am not surprised that so many noble Lords have drawn attention. I note, too, that, in this year’s Military Balance, the IISS has suggested that spending amounted only to 1.98%, because the actual amount is blurred by pensions and other associated, rather than actual, costs. In this connection I must repeat what I have said many times in this House: namely, that, like the noble Lord, Lord West, I regret the coalition Government’s decision to lay the cost of the nuclear deterrent on the defence budget. I have also mentioned Field Marshal Lord Carver’s two definitions of affordability: whether you can afford something, and whether you can afford to give up what you have to give up in order to afford it. I suggest that the question of whether you can afford to give up capabilities such as the size of the Army or the number of surface ships needs to be re-examined in the context of today’s uncertainties.

Currently, the West, including both NATO and the EU, are preoccupied with the production of cohesive responses to the various challenges being posed by Russia. In theory, this should encourage European states, including the United Kingdom, to increase their focus on defence, including defence spending. However, rather than just spending more, they need to spend more smartly. Boosting R&D and equipment spending, and driving industrial collaboration, will prove, in the long term, to be much more useful than simply aiming to meet arbitrary financial targets.
Post Brexit, I hope that the United Kingdom will still be able to play a part in EU security structures. Europe’s defence R&D has long been fragmented, with only minimal co-ordination and collaboration. But, in light of the European Commission’s plan—as part of the European Defence Action Plan—to boost defence procurement and establish a European defence fund for defence technology and equipment R&D, I hope that we will also maintain access to EU-wide science and technology developments.

The only word one can use with certainty about the future is “uncertainty”. Currently, the NSS Joint Committee is conducting an inquiry into the national cybersecurity strategy, in the context of which I have been thinking about the whole concept of deterrence, to which cyber adds a new factor. Deterrence must have a strategic goal of preventing crisis, not just responding to it. But what is required to wage deterrence today is more complex than in the days of the uncertain stability of the Cold War. It includes not only operational analysis, strategy development, planning and execution, but understanding and achieving the integration of hard and soft power. In addition, Governments need to understand the potential uncertain regional and global effect that deterrent actions may have on actors other than the adversary, including allies. More significantly, the rise of non-state threats and the pursuit of offensive cyber capabilities and long-range precision conventional capabilities by some nuclear-armed states bring further risk and uncertainty to the efficacy of nuclear deterrence.

In addition to nuclear and cyber, we must not forget that conventional levers play an essential part in promoting our defence and security interests. As so much has happened in the interim, it is easy to forget the so-called revolution in military affairs and its presumption that, “greatly improved surveillance, communications and precision-strike weapons would produce superior knowledge of the enemy and better-targeted and more effective strikes and manoeuvre, allowing a modernised and networked force to defeat a larger but less modernised one”.

That was announced only in 2001, before the burgeoning of wars among the people. Sadly, it will be some time before British forces are modernised sufficiently for our contribution to NATO’s readiness action plan to allow a credible full-time spectrum combat capability against a peer competitor such as Russia.

Returning to my earlier point about the size of the Army, any plans to increase the size of the forces we can deploy overseas—and the speed with which they can deploy—as many other noble Lords have pointed out, are more likely to be limited by personnel numbers than equipment availability. If we are to meet the challenges to the international rules-based order, and increase our preparedness to satisfy defence and security interests, I agree entirely with my noble friend Lord Hennessy that we should take a cold, hard look at the future, starting with an examination of whether the SDSR 2015 is fit for purpose.

7.28 pm

Baroness Jolly (LD): My Lords, over the last seven decades, the liberal international order has been a bedrock for promoting global stability and prosperity. Throughout my life, this nation—outward-looking and globalist—has been at the heart of the international rules-based project. From the start, British Armed Forces, diplomats and lawyers devoted their lives’ work—and, sometimes, their lives—to build and protect the many institutions and values which are now remarkable set pieces on the international landscape.

Those values have guided our foreign policy for generations: the rule of law; respect for human rights and the dignity of all people; and international relations driven by process, diplomacy and rules, rather than shows of aggression and force. This liberal international order has not only allowed us to bend the arc of history towards ideals we believe are right—it has striven to move the world away from the games of “great powers”, wars of aggression and the rule of the strong. The institutions that have arisen out of this post-war international order—many of which the UK helped to build and lead—have also directly benefited the lives of UK citizens.

Nowhere is this truer than when it comes to defence and security. Our leading roles in the UN Security Council and a host of other key international institutions have allowed us to shape the international discourse. NATO—and other treaty organisations designed to promote collective security—has allowed us to spend less on defence while still being able to defend ourselves and our interests abroad.

In short, international laws and institutions have made the world, on aggregate, safer and more peaceful. Overall, that world is a more tolerant, wealthy and democratic place than the world of our parents and grandparents. Britain’s place in this world has been assured, and the rules-based system has promoted the norms and values that have made that possible. That order is as much a part of our defence as our Armed Forces and intelligence services. It is not possible to calculate the immense value that we reap from year on year. Yet we have heard many times today that this international order is under threat, and I feel it—a protective safety net for seven decades, not guaranteed to last another.

Nor is it clear that we have the capacity to defend it. It is clear that without today’s order we will not ever have the capacity to defend ourselves. We must treat threats and challenges to the international system as seriously as we treat direct threats to our own security. Some of these challenges have arisen naturally. We live in an era of huge progress—the pace of change near inconceivable to the international order’s architects of the 1940s. Fast-paced developments have transformed international relations, armed conflict and the relationship between individuals and states.

Many noble Lords have spoken about developments in cyber technology which have left our infrastructure and secrets vulnerable. The expansion of the use of drones in conflict has put pressure on laws of armed conflict and human rights norms. The proliferation of technology allows individuals to threaten national interests inexpensively. If the rules-based order is to avoid slipping into irrelevance and if our place on the world stage is to be assured, we must develop new international laws—and reform old ones—to meet the challenges brought by change.
But not all of today’s challenges to our world order originate from the changing times. We must acknowledge that there are those who seek to damage and destroy the system. Vladimir Putin’s Russia has set out to aggressively delegitimise, discredit and undermine western policies and institutions, as well as the entire post-Cold War norms-based security order. International institutions and the entire European security architecture stand in the way of Russia’s strategic aims, and Moscow is determined to undermine and render them irrelevant.

At the same time, Russia is a repeat violator of international laws—be they human rights laws, laws of armed conflict or treaty laws—in its domestic actions, in its annexation of the Crimea, in Syria and across cyberspace. The noble Lord, Lord King of Bridgwater, pondered how to deal with the Russians, and the noble and gallant Lord, Lord Stirrup, had the answer: we have to start by talking to them. But Russia is not alone. In the South China Sea, China has taken “nation building” all too literally; Syria uses chemical weapons with alarming frequency; and then there is North Korea. Other nations watch the abuses and annexations, and they wonder whether they might reap similar results with impunity. How much chipping away can the rules-based order take before it is damaged beyond repair? The rise of non-state players such as the Taliban, Boko Haram and Daesh ignores the rules-based order altogether.

However, our soft power—second to none—can get us only so far in defending those structures and laws which have kept us so safe through our lives. In 2017 it is not clear that we have the capacity to defend vital interests or deter enemies. We must acknowledge that our Armed Forces have been hollowed out, and other noble Lords have spelled this out in detail: we have spent too little on defence, taking the peace dividend for granted; that which we have spent has sometimes been spent unwise on pet projects built for yesterday’s wars; and we face a chronic shortage of personnel—young people do not see a future with our Armed Forces as a lifelong career. We may have state-of-the-art fighter jets and capital ships but, without the men and women and funds to run them efficiently, we may struggle to defend our interests abroad.

Our Armed Forces are our national insurance policy or our pension pot. Spending today is less painful and expensive than spending when it is too late. Spending on defence in a world of international rules, international institutions and NATO is much cheaper than spending when it is too late. Spending today is less painful and expensive than spending when it is too late. Spending today is less painful and expensive than spending when it is too late. Spending today is less painful and expensive than spending when it is too late. Spending today is less painful and expensive than spending when it is too late.

Lord Rosser (Lab): My Lords, as one could have safely predicted from the speakers list, this has been an informed and thoughtful debate, during the course of which a number of different concerns have been raised, to which no doubt the Minister will respond shortly.

As my noble friend Lady Dean of Thornton-le-Fylde reminded us, the 2015 spending review and Autumn Statement said that the Government would invest £11 billion in new capabilities, innovation and the defence estate, of which some £7.2 billion would come from efficiency savings. Those efficiency savings apparently included military and civilian pay restraint, which is an interesting definition of the word “efficiency” and, as has been said, will inevitably have repercussions for recruitment and retention, as well as for morale. In the light of views expressed by the Joint Committee on the National Security Strategy that the savings target presented “a significant risk” to the delivery capabilities set out in the strategic defence and security review, and a statement in a Royal United Services Institute paper that the Ministry of Defence is “struggling” to produce the efficiency savings required, can the Government say where those efficiency savings will actually come from, and when?

In July 2015, the Government stated that they would meet the properly measured NATO pledge to spend 2% of national income on defence every year of Lords have alluded to the 1930s. These demands are not compatible with the globalism, the multilateralism and the idealism of shared values upon which our post-war order was built.

Brexiteers and Trumpeteers alike have railed against institutions which have secured us for decades: the EU, the WTO and NATO—all have come under fire. We must commit ourselves to a political fight to protect those institutions which keep us safe. Though an inward-looking or isolationist foreign policy may be comforting for many, the challenges that we face in today’s complex world cannot be solved by going it alone. Tomorrow’s global powers are not guaranteed to share our values and most certainly do not share our interests. Preserving institutions which promote the international rule of law and prevent the worst excesses of power politics must be as important to our defence as building new ships. Today, our building blocks of peace and security are our alliances, our global institutions and an international order which resolves most disputes without shots fired. This is not idealism. The number of international armed conflicts has fallen decade on decade since 1945, and the number of deaths as a result of war has fallen consistently since the 1970s. Britain is a world-leading soft power and has the hard-power levers which come with permanent membership of the UN Security Council and key roles within NATO. These levers must become our “smart power” to preserve the international rules-based order. But more than that, the UK should take the lead in working to develop those institutions and rules to suit modern realities. Technologies may change but our commitment to values such as internationalism, openness, human rights and peacebuilding should not.
this decade. However, concerns have been expressed about how the 2% spending target is measured—not least by the House of Commons Defence Committee, which stated that the Government had achieved their commitment to spend 2% of GDP on defence partly by revising the criteria used to calculate the UK defence budget reported to NATO so that it now included expenditure that had not previously been included but had been incurred, such as, but not exclusively, pensions. According to the House of Commons Library, the Government’s Ministry of Defence net cash requirement for 2015-16 was £36.4 billion, compared to the £39 billion on the UK’s NATO return. No doubt the reason is that the NATO return includes elements of the Government’s cybersecurity spending, parts of the Conflict, Stability and Security Fund relating to peacekeeping, war pensions, and pension payments to retired Ministry of Defence civil servants.

However, creative accountancy and moving items from one set of accounts to another will not ease the pressures on our Armed Forces, at a time when the world hardly seems to be becoming a stable and more secure place, with the threats to our country and our interests diminishing rather than increasing. The Government anticipate moving more items from one account to another in future years, in a bid to stick to their commitment to increase defence expenditure by 0.5% annually over the next five years and keep pace with meeting the 2% NATO target. Under the Government’s projected growth targets, in terms of GDP defence expenditure is likely to fall below the 2% figure by 2020-21, which means that fulfilling the 2% commitment will require further financial contributions. Could the Minister indicate what those further financial contributions to meet the deficit are likely to be, if the Government’s most recent projected growth targets are hit?

The Government have already indicated that the deficit will be met by an additional inclusion of intelligence funding, on the basis that a significant proportion of the annual expenditure that funds the UK intelligence agencies is in support of military activities, with further sums coming from the new joint security fund, which provides money for security-related activities. Again, this does not represent additional resources available for increasing or even maintaining the capabilities of our Armed Forces. It is simply moving existing items of expenditure around, from one account to another, in order to be able to claim that the percentage expenditure commitment has been met.

Could the Minister say how much additional money would have been available for enhancing the capacity and capabilities of our Armed Forces if the additional money to bring us to the 2% of GDP figure on defence spending had been new, additional money, and had not been achieved by including in the figures items of expenditure already being incurred but previously not included in the total?

The reality is that defence spending has fallen, even taking into account the latest accountancy wheezes. The House of Commons Library has calculated that, between 2010-11 and 2015-16, defence spending as measured by the UK’s NATO return has, as my noble friend Lady Dean of Thornton-le-Fylde pointed out, been reduced by 6.9% in real terms. Using NATO’s data, the UK’s average proportion of GDP devoted to defence expenditure dropped from 2.6% to 2.1% between 2010 and 2015.

A further factor impacting adversely on the level of defence resources is the weaker pound, which appears to have been the result of Brexit, and with it an increase in the cost of defence imports. The National Audit Office expressed concern about that issue in a report the other day. Can the Minister say what the fall in the value of the pound since the referendum vote would mean in additional defence import costs over the next five years, if the value of the pound against other currencies were to remain unchanged? One estimate from a Royal United Services Institute source has suggested that, if the decline in the pound is sustained, the cost of our defence imports could increase by around £700 million per year from 2018-19—or around 2% of the total defence budget.

Concerns have been expressed by the Joint Committee on the National Security Strategy about the ability of our Armed Forces to fulfil the tasks given to them in the National Security Strategy and Strategic Defence and Security Review 2015, in the light of the capabilities, manpower and funding allocated. A recently retired head of the UK’s Joint Forces Command was reported last autumn as having said that the capability of our Armed Forces had been “withered by design”, and that there were capability shortfalls, dependence on small numbers of highly expensive pieces of military equipment, and dangerously squeezed manpower.

On top of this, we now have the potential impact of leaving the European Union, which must surely have an impact on some of the assumptions and strategies in the 2015 strategic defence and security review, to which the noble Lord, Lord Wallace of Saltaire, referred, as well as on our foreign policy objectives, to which the SDSR should be closely related if we are to ensure that the money spent on defence is spent on the right things. Do the Government have a view on whether our withdrawal from the EU will have an impact on the tasks set out for our Armed Forces in the National Security Strategy and Strategic Defence and Security Review 2015, and on our present alliances? If so, do they anticipate that fewer or more resources will be required by our Armed Forces to carry out their future role post Brexit? Or is this another Brexit-related issue on which the Government have no public view at all, despite the fact that the Foreign Secretary has already opined that we are now back east of Suez? The noble Lord, Lord Hennessy of Nympsfield, spoke about the need to reassess, determine and clarify our future role and place in the world as it has become today.

Before concluding, I would like to place on record once again our admiration for, and gratitude to, the members of our Armed Forces, who protect our nation at home and our interests abroad, and in so doing are prepared to put their own personal well-being and safety on the line. As my noble friend Lord Touhig said, the most valuable asset our Armed Forces have is the men and women who serve. Yet the 2016 continuous attitude survey revealed that only one in three of forces personnel believes they are valued, with just one in three planning to stay in service as long as they can. The noble Lord, Lord Robathan, referred to that issue.
One of the concerns that has often been expressed in this House is how we address the issues faced by many veterans—issues related, for example, to health, to employment and to housing. On the issue of housing for veterans, I want to refer to recent reports about the disposal of parts of the defence estate and accommodation in London, and apparent suggestions that it might be sold off and developed as up-market luxury housing or offices. What are the Government’s intentions in respect of the disposal of parts of the defence estate in London? There is a shortage of accommodation for those on low incomes in central London, not least among veterans, despite the fact that London is a major centre for jobs and employment. Can the Minister give an assurance that, where parts of the defence estate, particularly in central London, are disposed of, every effort will be made to ensure that it is developed to provide low-cost housing for Armed Forces veterans, and not sold off to be developed only for those with great wealth, whether from this country or from abroad? When it comes to considering bids, there can surely be no higher bidders than Armed Forces veterans and those on low incomes.

My noble friend Lord Touhig asked a question in his opening contribution from these Benches, to which the Minister will no doubt respond. He pointed out that Labour in government committed resources to the defence of Britain, and spent on average 2.3% of our GDP on defence between 1997 and 2010—a figure, incidentally, well below that called for by the noble and gallant Lord, Lord Stirrup, in this debate. My noble friend asked whether the Government would now give a commitment to match that figure of 2.3%—and not through more creative accounting—in the light of the many new challenges we now face. My noble friend referred to those challenges in some detail. They include cyber conflict and cyber warfare, and they mean that the world can hardly be described as a safe place today—as the Minister himself recognised, and on which subject the noble and gallant Lord, Lord Stirrup, my noble friend Lord West of Spithead, and the noble Lord, Lord Howell of Guildford, among others, spoke so powerfully.

Particularly in the current climate of significant change and uncertainty, it is vital that we are clear about the role and capabilities of our Armed Forces in protecting our nation and meeting our foreign policy goals. It is equally important that we then provide our Armed Forces with the necessary resources, manpower, training and skills to undertake effectively the objectives we require them to meet and deliver. Doubts have been expressed today about whether that is what is happening in reality, and we now await the Government’s response to the many questions and concerns that have been raised by noble Lords in this debate.

7.50 pm

Earl Howe: My Lords, it is a mark of the experience that resides in this House that we have had the privilege of listening to so many well-informed, constructive and well-argued contributions to this debate today. It has been a truly memorable occasion in that sense. I begin by thanking most warmly all noble Lords and noble and gallant Lords who have spoken. In fulfilling the role that I occupy in government, I carry with me the reassurance that on all Benches in this House, without exception, there is unshakable support for the men and women of our Armed Forces and a passionate wish to ensure that they are led, equipped, trained and looked after to the highest standards in a way that enables them to fulfill, credibly and well, the tasks placed upon them by government. It is not surprising, with so many contributors and a Motion that is so deliberately broad in its scope, that the subject matter of your Lordships’ speeches should have been equally wide-ranging. I shall do my best, as I always do, to respond to as many noble Lords as I can in summing up. All questions asked of me will receive an answer, either today or in writing afterwards.

Let me start with some key aspects of the big picture and, first, the topic raised by a number of noble Lords: the UK’s defence budget. Not for the first time the noble Lord, Lord Touhig, raised questions around the 2% spending target. In particular, he cast doubt on whether we are genuinely spending 2%, a question echoed by the noble Baroness, Lady Crawley, and the noble and gallant Lord, Lord Stirrup, who urged us to spend more, as did my noble friends Lord Sterling and Lord Robathan, the noble Earl, Lord Cork and Orrery, and the noble Lord, Lord Ramsbotham. Let me remind the House that we spend in excess of the NATO 2% minimum and are pledged to increase our defence spending in real terms year on year during this Parliament.

The noble Lords, Lord Rosser and Lord Touhig, accused the Government of creative accounting. As they would expect me to say, we do not accept those accusations. The House of Commons Defence Committee’s own report on the matter confirms that all UK spending on defence, including intelligence, cyber, war pensions and others, falls firmly within NATO’s guidelines. Given that defence spending will increase by £5 billion over this Parliament, it is nonsense to suggest that there is no new funding. Our plans will deliver more ships, more planes and more troops at readiness, better equipment for Special Forces and more on cyber, to help keep Britain safe.

However, I want to be fair. The question posed by a number of speakers is, essentially, whether 2% is enough for the UK to be spending. First, the noble Baroness, Lady Dean, rightly reminded us that 2% is a base figure. However, the commitment to spend at least 2% of GDP on defence came after a thorough examination of threats and risks, after which the Government decided on an appropriate level of funding. I acknowledge the honourable motives of noble Lords who urge us to spend substantially more. However, I challenge the Government’s critics to show how the strategic defence and security review failed to set out a clear and affordable strategy for delivering one of the most capable Armed Forces in the world. That was our aim, and the SDSR did that by including an expeditionary force of 50,000 by 2025, £1.9 billion for cyber investment, new capabilities for Special Forces and a commitment to spending more than £178 billion on equipment and equipment support, which is £12 billion more than in previous plans.

The noble Lord, Lord Rosser, and the noble Baroness, Lady Dean, referred to the drop in the exchange rate since last year. I can tell them that we built headroom
into our forward plan to use in the SDSR, and that is what we did. We hold more than £5 billion of contingency in the equipment plan against an independently assessed financial risk of £4.8 billion. The forward purchase of foreign currency has provided gross stability in the early years of the programme. Longer-term challenges will, if necessary, be met through the normal planning process.

In addition, the noble Lord, Lord Rosser, rightly referred to the MoD’s efficiency target. We have a demanding target, as we should, given the Government’s objective to drive down the deficit. We are absolutely focused on delivering it.

The noble Lord, Lord Empey, questioned our commitment to spend 0.7% of GDP on overseas development aid. The rationale for this is to enable government to prioritise prevention and preparedness in fragile states and regions. By doing so we build stability and tackle the root causes of conflict as part of a whole-government approach to national security, alongside diplomatic, defence and law enforcement capabilities. That is particularly important for countries and regions at risk of instability. These strategies are co-ordinated and owned by the National Security Council. An expanded Conflict, Stability and Security Fund now exists to direct cross-departmental effort in fragile states, and the MoD is able to draw from that.

I was grateful to my noble friend Lord Attlee for his helpful comments on military capability. On that theme, let me address my noble friend Lord Sterling’s concerns about hollowing out and shortfalls in capability. No one in this debate has referred to the clear plan set out in the SDSR 2015 of Joint Force 2025. The key to understanding this concept is a simple proposition: it is to strengthen our Armed Forces while increasing their adaptability. Joint Force 2025 is designed to meet the more complex real-world challenges of today and to provide a greater ability to undertake the full range of different operations, including warfighting under NATO Article 5. It will enhance our ability to work alongside our key allies and partners, including providing a framework for the UK-led joint expeditionary force.

With the joint force, by 2025 we will be able to deploy a force of around 50,000 drawn from a maritime task group of around 10 to 25 ships and 4,000 to 10,000 personnel; an Army division of three brigades and supporting functions of around 30,000 to 40,000 personnel; an air group of around four to nine combat aircraft squadrons, six to 20 surveillance platforms and five to 15 transport aircraft, and 4,000 to 10,000 personnel; and joint forces, including enablers and headquarters, of around 2,000 to 6,000 personnel. This capability will allow us to meet the demands of multiple smaller and geographically dispersed operations, and to respond to the most significant challenges to national security, including a call to warfighting under NATO Article 5.

The large, sophisticated expeditionary force of around 50,000 at the centre of Joint Force 2025, combined with the development of our Special Forces, sends a powerful message to our adversaries and, I am sure, reassures our allies. While it is perfectly true that various capabilities announced through the SDSR 2015 will not come online until the 2020s, we have a significant equipment programme already delivering and we will be making improvements to our cyber and intelligence capabilities well before the next Parliament. Policy changes, particularly innovation and efficiency, will take root immediately, as will international by design.

Let me follow the latter theme. The noble Baroness, Lady Crawley, drew attention to the UK’s relationship with our most important ally, the United States. The UK and the US have the broadest, deepest, most advanced defence relationship of any two countries. Our collaboration extends across the full spectrum of defence, including intelligence and nuclear co-operation, scientific research and flagship capability programmes. This has continued under the new Administration. The Defence Secretary spoke to US Secretary of Defense, Jim Mattis, on his first day in office. They had a substantial bilateral in the margins of the February NATO Defence Ministers meeting and teams are looking at a future meeting in the next month. We have shared priorities. President Trump, Vice-President Pence and Secretary Mattis have all confirmed the US commitment to NATO. I am sure that will be welcomed by my noble friend Lord Jopling, whose speech I listened to with particular care and attention.

Similarly, no one can listen to the noble Lord, Lord Hennessy, without paying careful attention to his advice. I listened to the noble Lord’s reflections about the UK’s place in the world with great interest and I noted with care the rationale he advanced for establishing a royal commission. However, although eloquently argued, I cannot agree with his characterisation of the UK as a destabiliser nation. Our exit from the EU does not equate to a retreat from the world stage—quite the reverse. The policies that we committed to in the last SDSR will bring us into closer co-operation with a wider range of allies and partners. Brexit does not change that. It reinvigorates—it does not diminish—our capacity to bring stability to the vexing world that he describes.

The noble and gallant Lord, Lord Walker, and the noble Baroness, Lady Crawley, asked about our defence and security relationship with the EU after Brexit. The negotiations with the EU Commission, of course, are yet to commence, but we want to use our tools and privileged position in international affairs to continue to work with the EU on foreign, security and defence policy. Defining the specifics of the UK’s future foreign and security policy relationship with the EU will be an important consideration as we leave.

The noble and gallant Lord, Lord Walker, asked about the effect on defence were Scotland to vote for independence after Brexit. I hope he will not be disappointed by the answer I am about to give. The people of Scotland have already voted to remain in the UK. The UK Government continue to be strongly committed to Scotland remaining in the UK, so the MoD is not making any plans for Scottish independence. I can, however, say that the Government are firmly committed to the future of defence in Scotland and its continued vital role in defence. Scotland is home to military bases that provide essential capabilities for the defence of the UK as a whole. It benefits from billions of pounds of MoD contracts placed directly and indirectly with companies which sustain hundreds of jobs and careers.
On the subject of Brexit, I am led to the speech of the noble Lord, Lord Wallace of Saltaire, who referred to our bilateral defence links in Europe, as did the noble Baroness, Lady Crawley. The noble Lord asked about Germany. The UK is committed to strengthening its defence and security ties with Germany. Germany is a key ally for us, as recognised in the SDSR, in which Germany was elevated to a tier 1 defence relationship alongside the US and France. Germany has since reciprocated in the publication of its own 2016 defence review. We are enhancing our bilateral co-operation with Germany in the areas of operations, training and equipment. We are seeking to enhance our interoperability as well. We are driving towards closer joint working on innovation and equipment projects—which should, in the case of common aircraft such as Typhoon and A400M, for example, reduce support costs—improving our information sharing and working more closely in other areas such as cyber and capacity-building in countries outside Europe.

Our bilateral links in Europe will grow in importance, as I have said. The UK and France have been bound by mutual security commitments for over 100 years and we are now building an ever closer bilateral defence relationship through the 2010 Lancaster House treaties. These recognise that our history, interests, values, challenges and capabilities are so closely aligned and so deeply interlinked that it is the right strategic choice, and plain common sense, to work together to address the security challenges that we face.

As I expected, the noble Lord, Lord West, challenged the Government on the size of the Royal Navy. I entirely understand his perspective—as I do that of the noble Baroness, Lady Crawley, who spoke on a similar theme—but I do not share it. Not only is our fleet set to grow for the first time since World War II but its high-end technological capabilities will allow it to provide a better contribution and to retain a first-class Navy up to 2040 and beyond.

Lord West of Spithead: I asked the noble Earl whether there would be more ships in the Navy by 2025 or fewer and, after a dialogue, we decided it would be one fewer. So it might be growing in weight but not in numbers.

Earl Howe: It is certainly growing in weight but our ambition is for it to grow in numbers once the Type 31E destroyer comes on stream. We will maintain a destroyer and frigate fleet of at least 19 ships and we will look to increase that number by the 2030s. The Queen Elizabeth-class aircraft carriers will be coming into service and the fleet will also be supported by a capable and renewed tanker fleet, with four new fleet tankers to add to our existing new fast fleet tankers in the short term and three new fleet solid support ships in the longer term. A fleet of up to five offshore patrol vessels will support our destroyers and frigates in delivering routine tasks and enhance our contribution to maritime security and fisheries protection.

The noble Lord, Lord West, asked about carrier capability. The first of our carriers, HMS “Queen Elizabeth”, will enter service in 2018, after which she will conduct flying trials. As he knows, in relation to the situation currently, where he asked about technical issues, there have been a number of issues associated with bringing the ship’s systems on line, but there is sufficient flexibility within the programme to allow us to complete the schedule on time. We still expect HMS “Queen Elizabeth” sea trials to commence in the summer of 2017.

I welcome the remarks of the noble Baroness, Lady Crawley, and the noble Lords, Lord Touhig and Lord West, on the Dreadnought programme. I can tell them that the construction of the first new Dreadnought-class submarines is under way following the contract award announced by the Defence Secretary on 1 October. On 20 December we published the 2016 annual report that updated Parliament on the United Kingdom’s future nuclear deterrent. This was the fifth update and, as with previous reports, it detailed the progress that we have made on the programme and its governance since the last update in the 2015 SDSR.

Also as set out in the SDSR, we are creating a new submarine delivery body for the procurement and in-service support of all nuclear submarines, to stand up in April 2017. I recognise that the noble Lord, Lord Levene, has concerns about this delivery model. The establishment of the submarine delivery body reflects the Government’s commitment to the nuclear enterprise and the unique scale, complexity and importance of this national endeavour. Its establishment reflects lessons learned from successful capital programmes found elsewhere in government which demonstrate that a dedicated organisation with a single focus can make a major contribution to successful delivery. It will also enable targeted investment to further enhance our performance on procurement and support, building on work taken forward under DE&S transformation.

As an executive agency, the submarine delivery body will have a clear cultural focus on delivering submarine procurement and support, time, cost and quality, and be the sole organisation responsible within the MoD for doing so. That provides for clear lines of accountability and allows us to create a closer relationship between the delivery body and its customers.

I depart from those noble Lords who argue that the deterrent should not feature in the defence vote. If the budget for the deterrent lay elsewhere, it is certain that the MoD budget would go down. However, it surely is right that the MoD pays for the nuclear deterrent as the Royal Navy is responsible for delivering it 24/7, all the year round, and has done so without rest for nearly 50 years.

The noble Lord, Lord Judd, asked what we were doing to promote nuclear disarmament. In February 2016 the UK proposed a programme of work at the conference on disarmament in Geneva with the aim of reinvigorating the conference’s work. The P5 process initiated by the UK brings together nuclear weapon states to build trust and confidence to help develop the conditions which would enable disarmament. Over the coming year we will continue to press for key steps towards multilateral disarmament, including the entry into force of the Comprehensive Nuclear Test Ban Treaty and successful negotiations on a fissile material cut-off treaty in the conference on disarmament.

I agree with much of what the noble Lord, Lord Levene, said about the principles underpinning our approach to defence procurement, and the same applies
to the remarks of the noble Lord, Lord Davies of Stamford. The noble Lord, Lord Davies, spoke about the propulsion issues affecting the Type 45 class. There is good news on that front about which I will write to him, and I will write to the noble Lord, Lord West, about Type 31E. The noble Baroness, Lady Crawley, asked about Plymouth Devonport. The naval service is developing a strategy that will focus on centres of specialisation. This includes an amphibious centre of specialisation in the south-west based around Devonport.

My noble friend Lord Robathan spoke about the importance of maintaining our efforts to recruit into the Armed Forces, in particular into the Regulars, and I agree entirely with his sentiments. I will write to him to flesh out the picture that we are now experiencing, which is on the whole positive as official statistics indicate that intake levels are showing a steady increase. The noble Baroness, Lady Dean, asked in particular about recruiting into the Reserves. We remain committed to reaching our target of 35,060 trained reservists by 2019 and we are moving fast in that direction. Central to that is an improved offer, including better training, equipment and remuneration along with an improved experience for reservists.

The right reverend Prelate the Bishop of Leeds and the noble Baroness, Lady Jolly, reminded us compellingly of the threat posed by Russia. Russia is seeking to re-establish itself as a great power. In doing so it has become more aggressive, authoritarian and nationalist, and its risk appetite to take action in pursuing its interests has increased, hence the decisions taken by NATO at the Cardiff and Warsaw summits. My noble friend Lord Jopling asked about our enhanced forward presence in Estonia. The UK will deploy an enhanced forward presence HQ commanded by a colonel and an armoured infantry battle group to Estonia from early next month on an enduring basis. The battle group advance party deployed on 19 March and the main body will deploy in early April. The UK will also deploy a light cavalry squadron to Poland, and that deployment too will be completed next month.

My noble friends Lord King and Lord Robathan and the noble Lords, Lord Ramsbotham and Lord Touhig, referred to the importance of cyber. In 2014, GCHQ dealt with 100 cyber national security incidents per month. In 2015 the figure had risen to 200 a month. Each of these attacks damages companies, their customers and the public’s trust in our collective ability to keep their data and privacy safe. The Government recognise that we must take steps to defend our national security in cyberspace as we do in any other domain. We have a substantial budget for this across government and, to co-ordinate properly this whole-nation effort, the Government created the Cyber and Government Security Directorate in the Cabinet Office, which runs the national cyber security programme. We have also announced the creation of a national cyber centre to provide a unified platform to handle cyber incidents.

I cannot do full justice to the speech of the noble Lord, Lord Hannay, to whom I listened with great respect, but I will write to him. He asked whether we will remain committed to the agreement with Iran. We do remain committed to the full implementation of the joint comprehensive plan of action, often known as the Iran nuclear deal. We will continue to work with the United States on ensuring its implementation. As regards the UK’s contribution to UN deployments, we are increasing our support for UN peacekeeping efforts and we will continue to do so. As the noble Lord, Lord Hannay, will know, we have current deployments in South Sudan, Somalia, Mali and Cyprus, where we have been patrolling the green line for 50 years.

The noble and gallant Lord, Lord Craig of Radley, spoke about combat immunity, and I thank him for his constructive comments and for his continued and long-standing interest in this matter. As he will be aware, we have said that we will be bringing forward our proposals on combat immunity shortly. We are considering the responses to the Government’s recently concluded consultation, which did not propose specific drafting terms for achieving a policy. He will understand that I cannot pre-empt the process or anticipate what the Queen’s Speech may say, but I can assure him that we share his desire to provide greater clarity on this matter.

My noble friend Lord Astor, in a powerful speech, mentioned Northern Ireland and the issue of investigations currently under way in relation to incidents that took place during the Troubles. There are many of his remarks with which I and the Government, and I am sure many others present on these Benches, would wish to associate themselves. Against that background I can understand his questioning the justice of pursuing criminal cases against members of the military over events that may have taken place more than 40 years ago. It is a matter that concerns the Ministry of Defence, as it concerns him, but I hope he will understand the limitations over what I can say in response to his comments about the specific case he raised of Corporal Major Dennis Hutchings. I understand that the local magistrate in Armagh has today decided not to commit on the charge of attempted murder, but he has committed Corporal Major Hutchings to be tried in the Crown Court on a charge of grievous bodily harm. The case is now before the court and is clearly subject to a process that is independent of the Ministry of Defence and indeed of the Government. That specific case aside, I accept absolutely what my noble friend said about the need for the whole issue of criminal inquiries into conduct during the Troubles to be balanced and that many perceive this currently not to be the case, a point also made by the noble Lord, Lord Empey. My right honourable friend the Secretary of State for Defence has previously undertaken to work with the Secretary of State for Northern Ireland to ensure that in any proposals he brings forward to deal with legacy matters, there is a fair, balanced and proportionate approach to investigating the past.

The noble Lord, Lord Burnett, asked me a number of questions. I am being reminded that I have overshot the expected time but with the leave of the House I will continue for another couple of minutes. He asked about Sergeant Blackman and what monitoring and assistance is given to a defendant charged with serious offences, such as those Sergeant Blackman faced, at the start of the process. Ensuring that those facing legal proceedings have the appropriate welfare and legal support is a responsibility that the MoD takes extremely seriously. A wide range of welfare support is available...
[EAL. Howe] to both current and former personnel and these policies are kept under review. For suspects, legal funding for service personnel and veterans facing criminal allegations is provided through the Armed Forces Criminal Legal Aid Authority.

We understand that neither the prosecution nor Sergeant Blackman’s original defence team obtained psychiatric evidence before the start of his court martial, and that no psychiatric evidence was called during the trial itself. The defence did obtain a psychiatric assessment for the purposes of sentencing. In the recent CMAC judgment the court stated:

“If the expert evidence of the psychiatrists and other evidence set out fully at paragraphs 86 to 106 below had been before the court martial, we are in no doubt but that the defence of diminished responsibility would have had to have been left to the Board and that it could have affected their decision to convict”.

The Government have been successful in establishing, both in the European Court of Human Rights and in the civilian courts, that the court-martial system is in principle safe, independent and impartial. The current system of majority verdicts has been considered twice by the Court Martial Appeal Court in the last five years and was on both occasions held to be fair and safe. The Court Martial Appeal Court, which is made up of the same judges as sit in the civilian Court of Appeal, has held that there is no ground for deciding that a verdict by simple majority of the lay members of a court martial is inherently unfair or unsafe.

The rules regarding membership of the court martial focus on and recognise the importance of experience of command and the exercise of service discipline at a sufficiently high level to enable lay members to assess the actions of those who appear before them in the court martial in the appropriate command and disciplinary context. We have seen no evidence that a member of the panel allegedly sent a message to the effect that they had come under intense political pressure to convict. We respect the court’s latest judgment in relation to Sergeant Blackman, which found no basis to criticise the original court martial and indicated that the issues raised at the time were dealt with in an entirely fair and proper manner.

In closing, I thank noble Lords once again for taking part in today’s debate. The message conveyed by noble Lords will not be lost on the Government. As ever, it has been a valuable discussion around some of the most demanding challenges that face our nation today. I am struck by the fact that we all appear to agree on the reality and nature of those challenges. They are the same ones that the Government wrote about in the SDSR 2015. We believe that to meet these challenges we need to strengthen the bonds of co-operation that have been a valuable discussion around some of the most demanding challenges that face our nation today.

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total workforce in Gibraltar—to cross from Spain every day, is absolutely fundamental to Gibraltar’s long-term prosperity, as it is to that of Andalusia, the neighbouring region of Spain.

We urge the Government here to do everything possible to maintain Gibraltar’s access to that pool of cross-border workers. That will require intense diplomacy with Spain, the European Union institutions and the other 26 member states, which have played an important part in promoting dialogue between Gibraltar and Spain and which have a strong interest in maintaining the prosperity and stability of Gibraltar going forward. That diplomacy will become even more important after our withdrawal, when United Kingdom Ministers have ceased to participate in regular European Council meetings, and have lost that forum for frequent and informal dialogue with their Spanish counterparts.

I do not underestimate the challenges that the Government may face. Some are technical. The Government will need to explore the options in legal terms for maintaining a free-flowing frontier and we flag up the Chief Minister’s suggestion to us that the Local Border Traffic Regulation could provide a suitable basis for this. We also note that in the area of policing, the land frontier becoming part of the European Union’s external border could create difficulties. As in the case of the Irish land border, close co-operation between police forces on both sides of the border and flexible extradition arrangements will be vital.

There are other important issues such as aviation, Gibraltar’s access to the single market in services, particularly financial services, and Gibraltar’s territorial waters. I am sure that other noble Lords will touch on some of these tonight and I look forward to their contributions to this debate. Reaching solutions on these issues, in particular on the vital issue of the border, will require compromises on all sides and I hope that the Minister in responding to this debate will take the opportunity to outline the Government’s approach in more detail than we have heard thus far.

However, on one key issue no compromise is possible. The Government have made a commitment never to enter into sovereignty discussions against the will of the Gibraltarian people, and our Committee fully endorses that commitment. The reaction in Madrid immediately following the referendum was watched closely in Gibraltar and there is always the risk that someone will seek to inflame tensions with a view to their domestic political gain. The United Kingdom Government therefore need to be alert to any attempts by Spain to advance territorial claims over Gibraltar, by whatever means.

I emphasise that the rest of the European Union is potentially a useful ally in this process. The European Union and its member states have invested in Gibraltar. They have a real stake in the stability and prosperity of neighbouring states, and will not take kindly to any attempt by Spain to derail Brexit talks over Gibraltar. It would be unwise and potentially counterproductive for the Government here to try to play off Spain against the other 26 member states. I hope that the Minister will agree that, as we approach the Article 50 negotiations, the last thing the Government should do is to try to undermine the unified approach of the EU 27. The challenge, in contrast, is to identify common interests and shared practical solutions that will underpin a durable continuing partnership.

Within the United Kingdom that partnership has to be built up across our constituent nations and regions. It needs to embrace Gibraltar, the Crown dependencies and the other British Overseas Territories, which each have a distinctive constitutional relationship with the United Kingdom and European Union. There also needs to be a partnership between the United Kingdom and European Union—that is, the whole European Union, including Spain—if we are to maintain a fruitful relationship for the future. It is important to acknowledge the strong bilateral relationship that the United Kingdom enjoys with Spain and to accept that that relationship should not be seen solely through the prism of the dispute over Gibraltar.

I will end as I began. Our view is that the United Kingdom Government have a unique moral responsibility to ensure that Gibraltar’s voice is heard and its interests respected as we approach Brexit and beyond. I look forward to the noble Baroness’s reply, in which I hope that she will clearly set out how the Government plan to fulfil that responsibility.

Viscount Younger of Leckie (Con): My Lords, timings are particularly tight for this 90-minute debate and I therefore request that Back-Bench speeches are wound up as the Clock reaches four minutes, and no later.

8.29 pm

Lord Selkirk of Douglas (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Boswell, the chairman of the EU Select Committee, on the needs of Gibraltar, which must not be overlooked. It has long been popular to invoke the Rock of Gibraltar as a symbol of steadfastness and safety. Now, as a result of Brexit, the Government must strive vigorously to ensure that that massive limestone promontory, the territory that surrounds it and its infrastructure should remain in excellent condition and that the people will thrive.

Greek myths describe the Rock as one of the Pillars of Hercules. In more recent times, we have had 300 years of shared history to uphold after Gibraltar was ceded by Spain in the treaty of Utrecht in 1713. Since then, like the ravens at the Tower of London, the Barbary apes that live on the Rock have often been depicted as legendary guardians of Britain’s political fortunes. Well aware always of the need to boost morale, during the Second World War, Winston Churchill was anxious that the apes, whose numbers had fallen as low as seven, were seen to continue to flourish. As the Battle of Arnhem was raging, he sent a message to the Colonial Secretary demanding that action be taken to ensure that the troop of animals on the Rock should total no fewer than 24.

To return to the present day, clearly the United Kingdom’s decision to leave the European Union has raised complex and hugely important issues for the Gibraltarians, who voted by 96% to remain in the EU. Almost immediately, the Spanish Government once more raised the vexed issue of possible joint sovereignty to allow Gibraltar to stay in the EU. However, this was
8.35 pm

Lord Selkirk of Douglas: angrily rejected by its Chief Minister, Fabian Picardo, who characterised it as the generosity of the “predator”, towards a wounded prey. Borrowing words from President John F Kennedy’s inaugural speech in 1961, the Chief Minister movingly told the House of Commons Exiting the European Union Select Committee that:

“Gibraltar will pay any price, bear any burden and meet any hardship in the context of ensuring that we have a future that is bright and exclusively British post-Brexit”.

Gibraltar, through no wish of its own, finds itself on the front line of the consequences of our planned exit from the European Union. After Brexit, the UK will have two land borders with the EU: one between Northern Ireland and the Irish Republic and the other between Gibraltar and Spain. Currently, around 12,000 people cross that Spanish border every day to work in Gibraltar, making up 40% of the workforce there. I strongly support the report’s call for the maintenance of a frontier between Gibraltar and Spain which is as free flowing as possible following Brexit. It emphasises the need for all parties, “to work together in good faith to reach an agreement that supports ongoing regional cooperation and trade, and avoids undue disruption to the lives of thousands of border residents who cross the frontier daily”.

The report also stresses—the noble Lord, Lord Boswell, made this point firmly a moment ago—that the Government of Gibraltar have placed their trust in the UK to negotiate on their behalf. It goes on to state that, “the UK Government has a moral responsibility to ensure that Gibraltar’s voice is heard, and its interests respected, throughout the Brexit process”.

I believe that Britain’s negotiators must also be vigilant over any attempts by Spain to use the constitutional future of Gibraltar and the issue of sovereignty as a bargaining tool.

EU funding has played an important role in Gibraltar’s development in recent years. Does the Minister agree that there is an urgent need for the Government to clarify what kind of UK financial assistance will be available for projects in Gibraltar after Brexit, especially beyond 2020? After Brexit, can we also be assured that the Government will support opportunities for Gibraltar to benefit from any new trade deals which are negotiated by the UK in the future? In conclusion—I am on my last sentence—I hope the Minister will be able to promise us that in every way possible in the months ahead, the Government’s negotiators will shoulder their historic responsibility and work to secure the best possible outcome for this uniquely patriotic and enterprising British Overseas Territory.

8.39 pm

Lord Chidgey (LD): My Lords, I too congratulate the noble Lord, Lord Boswell, and his committee on their report, called simply Brexit: Gibraltar. I make no apology for being a friend of Gibraltar, having been a member or officer of the All-Party Parliamentary Group for Gibraltar almost since it was established, some 20 years ago.

As a member of the Foreign Affairs Select Committee in the other place, I took part in the inquiry that revealed the attempt to pass the sovereignty of Gibraltar to Spain without first engaging with the UK Parliament. I had the privilege to be invited to act as an official observer to the 2002 referendum on whether Gibraltarians wished to remain British and reject joint sovereignty with Spain, in which 95% voted to remain. I have spoken at Gibraltar Day rallies in Casemates Square, addressing crowds of over 20,000 joyous Gibraltarians, fervently displaying their patriotic desire to remain British. Members of our family walked through the
Alameda Gardens in the 1920s, watching the Rock Hotel being built. And I have stood beside the statue of the young Gibraltarian family, commemorating the deportation of many thousands of women and children to the UK for their safety during World War II, only for many to find their safe haven turned out to be London. Some were not allowed to return home until long after the war had ended.

Her Majesty’s Government of Gibraltar, have no doubt about the commitment of the UK Government and the British people towards protecting British sovereignty of Gibraltar, in accordance with that 2002 referendum. I agree that it is important, in the present uncertain climate, particularly given recent statements by Spanish Ministers, that this commitment continues to be publicly and robustly restated. Gibraltar has, since the early 18th century, been of great military significance to the UK’s defence strategy, following the ceding of Gibraltar to the UK in perpetuity by the treaty of Utrecht.

While the UK is re-establishing an interest in projecting power east of Suez, access to Gibraltar’s airport and base, the harbour and the underground arsenal is integral to her ability to project power through the Indian and Pacific Oceans and beyond. There are two key issues for Gibraltar: the freedom to provide services and a free-flowing frontier. With regard to services, analysis shows that 90% of her financial services industry relies on trade with the UK. So far, the UK has committed to preserve and underpin the existing access to the UK markets. The UK Government have said they are prepared to look to extending the scope of market access into the UK, and take account of Gibraltar’s priorities, as they negotiate post-Brexit deals around the world.

The Government must ensure that Gibraltar attains the same level of access to the single market as covered in the scope of any trade deal the UK secures. It should be the duty of Parliament to oversee any draft deal that the Government bring back from the negotiating table and to ensure that this condition is met. It will be the duty of Parliament to ensure that the Government stand ready to robustly defend Gibraltar if Spain exerts heavy-handed border controls during the EU negotiations. A fluid border is essential to cater for the movement of cross-frontier workers.

Above all, there must be no attempt to compromise on Gibraltar’s sovereignty. Joint sovereignty was comprehensively rejected in the 2002 referendum by 98% of the population. Parliament must be on its guard to expose any attempt to hand over sovereignty to Spain through the side door while attention is diverted by wider Brexit issues.

8.42 pm

**Lord Luce (CB):** I declare an interest as a former Governor of Gibraltar and as the current chancellor of the new University of Gibraltar. When I arrived as Governor, exactly 20 years ago this month, one of my tasks was to help and encourage Gibraltar to transform from a defence-oriented economy—although defence remains very important today—to a diversified economy, in which it could be financially more resilient. During that time this has happened. Today we have a resilient, strong economy: tourism, port and bunker services, online gaming and financial services are well regulated and transparent, in conformity with the standards expected by the European Union and the OECD. This transformation is being brought about and led by two notable people: Sir Peter Caruana, the former Chief Minister, and the present Chief Minister, Fabian Picardo, who may be listening to this debate.

Gibraltar has faced many challenges in the past 312 years under British sovereignty; now it faces Brexit. It faces the challenge of Brexit, and I therefore welcome this report led by the noble Lord, Lord Boswell. It seems to me that there are three issues for Gibraltar. First, there is access to the single market. As we have heard, 90% of the financial services are with the United Kingdom. Secondly, there is the need for the free flow of people and goods on the frontier, with 12,000 people every day going into Gibraltar from Spain, 7,000 of them Spanish, with the EU Commission playing the role of arbitrator regarding the flow of people across the frontier. Thirdly, there is the need for co-operation in security and judicial matters—for example, the European arrest warrant.

Against that background we have this excellent report, published under the chairmanship of the noble Lord, Lord Boswell. I welcome the point that everyone—above all the noble Lord himself—has made, that Her Majesty’s Government have a moral responsibility to the people of Gibraltar. It goes without saying that Her Majesty’s Government must keep up the commitment on sovereignty but, as always, with the backing of this Parliament. However, there are other practical recommendations, such as keeping the UK and Gibraltar as a single state for the purposes of negotiation; suggesting that we should strengthen Gibraltar’s financial and business links with the UK; suggesting that Her Majesty’s Government should underpin EU funding arrangements in the future; and, if the frontier becomes an external one, taking up the Chief Minister’s suggestion of some kind of local traffic management plan that works in other areas.

Our relations with Spain would benefit enormously from collaboration across the frontier, Gibraltar contributing 25% of regional GDP in the local Spanish area and being the second-highest employer in the region of Andalusia. The co-operation is enormous, as are the benefits, so the choice for Spain is quite straightforward: either return to the stale old Francoist bullying and use Gibraltar as a diversion from political problems, or recognise an overall mutual interest of close economic and political relations with the UK against the background of the EU negotiations and the achievements of the previous Spanish socialist Government in collaborating more closely with Gibraltar to the benefit of all in that region—Britain, Spain and Gibraltar. That must now be our aim.

8.47 pm

**The Lord Bishop of Leeds:** My Lords, I endorse all that has been said so eloquently. The report is excellent, but for me it raises a number of questions. The main one concerns the fact that throughout the referendum campaign, and subsequently, we have repeatedly heard statements such as, “We will get a good deal”, and, “We will do this and we will do that”, when in fact we do not hold the power in a lot of this—it will have to
be negotiated. Despite urging that we get the best for Gibraltar, I want to be assured that the Government are stress-testing all the scenarios, including the worst-case ones. We owe it to the people of Gibraltar to do that because it was not done in preparation for the referendum itself.

If you look through the eyes of Spain, you find that it is not good enough for us simply to say, “We mustn’t compromise on sovereignty”. What if the Spanish hold out sovereignty, play a long game and say, “We’ll just sit this out. We won’t give equivalence”? What if the EU does not give us equivalent status? What if Spain wants to use sovereignty or cross-border access and frontier issues as a bargaining chip? We cannot simply stand there and say, “Well, you can’t”. I want to know that we are stress-testing this. Who has the power? After all, we have spoken of having a clean Brexit; what if the Spanish take us at our word? That has to be thought through and our response to it considered.

Particular questions are raised here. As I indicated, if the EU declines to give equivalent status after Brexit, what then? What is the cost to the UK, already alluded to in this debate, if Gibraltar is given no access in future to EU programmes? Has that been costed out? In paragraph 29 of the report, we read about the strong economic links to the UK, specifically the City, should the single market be infringed in some way. But what if the City effectively moves to Frankfurt or Paris? We keep saying, “Well, it won’t”, but what if it does? We do not hold all the cards.

Paragraph 36 says that, if access to the single market is restricted, “the rest of the world beckons”. So does outer space. It does not mean that we can get what we want. Where is the realism that comes from looking through the eyes of those who do not hold the best interests of the UK as their priority?

Paragraph 50 says that, for Spain to intensify border controls would be regarded as an “aggressive act”. Frankly, why should it not? I did not choose this. I suspect that, if the boot were on the other foot, we might be rather aggressive as well.

I just want to be reassured that these scenarios are being stress-tested in the way that they were not before we went into this business in the first place. We owe it to the people of Gibraltar.

Baroness Hooper (Con): My Lords, I declare an interest as honorary president of the Friends of Gibraltar. This is a UK-based group which brings together Gibraltarians and others who have lived and served in Gibraltar and who are concerned about keeping in touch with what is going on on the Rock, politically, economically and especially in terms of its history and heritage. I am also a long-standing member of the All-Party Parliamentary Group for Gibraltar.

As an erstwhile member of the European Union Committee, I congratulate my noble friend Lord Boswell on the way in which he introduced this debate and his committee for its comprehensive, first class report. It succinctly and clearly covers the economic, border and sovereignty issues and the uncertainties resulting from our referendum decision. Although all our overseas territories have been affected in one way or another by Brexit, Gibraltar is the only one in Europe and is most at risk. I had always hoped that, under the umbrella of the European Union, it would have been possible to sort out some of the challenges and issues with Spain which have made life so difficult for Gibraltar in the past.

I also know Spain well and have many friends there. I find it hard to believe that the Spanish Government would try to exert undue pressure and heavy-handed controls during the period of the Brexit negotiations or, indeed, once we are out. I understand the fears. We have all had experience of the past, such as the queues and delays at the border and the airport problems. Let us hope that the newly arrived Spanish ambassador to this country will be watching or at least listening to this debate and the signals it sends out.

I welcome in particular the setting up of the dedicated joint ministerial council, and I trust that it will ensure, to some extent, a less uncertain feeling about the future for Gibraltarians. I hope that it will also give the Government of Gibraltar the realisation that the United Kingdom Government are giving Gibraltar a special place and space in the negotiations.

As has already been said, the key issue for Gibraltar is access to the single market and services, as well as the border issues and air flights. If a week is a long time in politics, two years gives us an opportunity to use ingenuity, imagination and circumstances as they change to find a solution. This has to be the main concern of the joint ministerial council. If the Minister could give us more information as to the council’s agenda, that would be very welcome.

My special interest in Gibraltar started when, after the first direct elections to the European Parliament in 1979, as a newly elected MEP, I was asked to be one of a small cross-party group to keep an eye on Gibraltar’s interests. That was when Sir Joshua Hassan was First Minister, and the late Lord Bethell led the group. At that time, the big issue for Gibraltarians was voting rights to the European Parliament. Eventually, a solution was found. I hope that those MEPs who benefit from Gibraltarian votes are also looking to protect Gibraltar’s interests.

It seems to me that anyone who knows Gibraltar loves Gibraltar and its people, and that must augur well for the future. Loyalty should be repaid by loyalty.

Lord Hoyle (Lab): I am very pleased indeed to follow the noble Baroness: I know what a firm friend indeed she is of Gibraltar. I thank the noble Lord, Lord Boswell, for an excellent report. It gives us this opportunity to ensure that the needs of Gibraltar are not forgotten.

First, I must declare an interest in Gibraltar: an interest of which I am very proud. I am a freeman of Gibraltar. I announce that with great pride here tonight.

I am not suggesting for a moment that the Government have forgotten or will forget Gibraltar; nevertheless, it is essential that we put the case here tonight and keep reminding them that Gibraltar is part of the negotiation, as well as us.
When we say that 96% of them voted to remain in Europe in 2016, we must not forget that in 2002, 98% voted to stay with us in Britain. They made their position very clear: yes, they want to remain and have access to the European market if that is possible, but, above all else, they want to remain with us. They are remarkable people. When we think about it, it is not long ago that they were totally dependent on defence. They have now turned around the economy so they are no longer dependent just on defence; financial services are very important to them. Some 90% of those depend on access to the British market, but we must not forget the other 10% which are very important to Gibraltar.

It cannot be repeated often enough that the border is essential to the economy. It has been said—but there is nothing wrong in repeating it—that every day 12,000 people cross the border to work in Gibraltar, 7,000 of whom are Spanish citizens. Gibraltar is the second biggest contributor to the GDP of the neighbouring region of Spain. So it is of great benefit to the Spanish people and the adjoining region. Emphasising that is very important.

We have been talking about the economy, but let us not forget that every year 10 million people visit Gibraltar, and many of them come across that border. When we are having discussions with Spain—we have been good friends and allies of theirs—it is right that we put that point to them. We have heard that they have said—I do not know quite what this means and the Minister may explain it to me—that waving a passport will not be sufficient. If producing a passport is not sufficient, what are they talking about? Are they talking about limited visas? That is why this debate is essential.

I will finish by saying that the people of Gibraltar have always been good friends of the country. They want to remain in this country and we must not let them down in our negotiations on Brexit.

8.58 pm

Viscount Waverley (CB): My Lords, the Gibraltar quagmire is easy to define but mighty difficult to resolve. The cocktail of complexities is varied and impacts on all participants, including the challenges of a determined Madrid, the time immemorial socialist province of Andalusia and that mother of all complexities, the region of Spain. So it is of great benefit to the Spanish people and the adjoining region. Emphasising that is very important.

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9.03 pm

Baroness Harris of Richmond (LD): My Lords, I join other noble Lords in thanking the noble Lord, Lord Boswell of Aynho, and his committee for this excellent report on the challenges facing Gibraltar—and the UK—after the decision to leave the European Union. As the report says—I quote from the summary—“Negotiating on Gibraltar’s behalf, the UK Government will be responsible for ensuring that Gibraltar’s voice is heard, and its interests respected, throughout the Brexit process. The UK also has a responsibility to support Gibraltar in benefiting from any opportunities that arise following Brexit, including by participating in any new international trade deals”.

My interest in Gibraltar stems from having helped the Gibraltar Defence Police a number of years ago to come to a happier place when it was being threatened—I use the word advisedly—at that time with a merger
with the Royal Gibraltar Police, in itself a seemingly reasonable move. Unfortunately, it was anything but, and was being handled appallingly by our own MoD and the commander-in-chief on the Rock at that time. Fortunately, a change of Government in Gibraltar, and a change of personnel at the highest level—plus some timely and much-welcome advice—helped calm things down and a few years later we found an amicable move towards the merging of the two forces, which undertake different duties, to the mutual satisfaction and benefit of the security of Gibraltar and its citizens.

I mention this as Gibraltar is a dependent territory of the UK, as the report says. We have an absolute responsibility and a fundamental duty to ensure its security—militarily and economically—once we leave the EU. Chapter 3 of the report talks about the frontier with Spain. As we have heard, this is one of the most important areas we have to address. Gibraltar’s strategic location affords the Royal Navy unique naval intelligence, including the ability to monitor nuclear-capable submarines, which is crucial for our contribution to NATO. Spain has consistently sought to detract from Gibraltar’s military role, especially as it provides services to the US and NATO, and believes it is better placed to control the Strait of Gibraltar than the UK, and so displace the UK’s strategic role in the region. Spain encroaches on British Gibraltar territorial waters frequently and this poses a very real threat to our global military and strategic interests.

Brexit also poses an enormous challenge to the economic status quo in Gibraltar. As we have heard, at present more than 12,000 people cross the border daily for work, making up 40% of the entire Gibraltar workforce. As noted in paragraph 48 of the report, any arbitrary closing of the border will cause enormous harm, and an abrupt exit from the single market—which this Government seem intent on inflicting—will have dire consequences for Gibraltar, with an immediate 10% loss of business. We must consider the needs of the Government and residents of Gibraltar, who have put their trust and loyalty in the UK. We have an absolute moral duty to do that, as the report states in paragraph 110. At the moment, Gibraltar is fearful of the future, as there is absolutely no clarity on how we will actually leave the EU. If the Government persist in telling us that they cannot divulge their negotiating stance, how does that help Gibraltarians? Do they get a Goldilocks deal for Gibraltar, outside the customs union, exempted from the requirement to introduce a value added tax and inside what became, over the years, the biggest single market in the world. That deal has stood the test of time, which is attested to by the fact that 96% of Gibraltarians voted to remain last June. To complete my declaration of interests, some 35 years ago I was sent to Madrid by Lord Hurd of Westwell—then Minister for Europe at the FCO—to persuade the Spanish Government that they needed to open their border with Gibraltar if there was to be any chance of their EU accession treaty being ratified by this Parliament. The Spanish Government were so persuaded, and the border was reopened.

This declaration of interests is no vanity project. It reflects the reality, recognised by the Gibraltarians themselves, that Britain’s—and thus their—membership of the EU has been the basic cornerstone of their prosperity today. That cornerstone is, alas, about to be removed. I do not know whether those who campaigned for Britain to leave the EU really understood what their success might mean for Gibraltar. Given that many of them are among the most vociferous parliamentary supporters of Gibraltar, if they did understand then this was a shameful act of betrayal. But let us give them the benefit of the doubt; they acted in ignorance. They threw Gibraltar under the wheels of that infamous battle bus, without having a clue what they were doing. They broke it, and we own it.

What can be done? Well, there is no doubt what would be best for Gibraltar—that is, the status quo. But the status quo is not on offer, because Gibraltar’s status depends on the UK’s status. If noble Lords do not believe that, they should read the treaties of Utrecht and of Rome and our own accession treaty. We are set to become a third country in 2019—and Gibraltar’s border with Spain is set to become an external border of the EU, with all that implies. The Prime Minister has stated that she excludes the possibility of Britain remaining in the single market.

So what can be obtained for Gibraltar from an EU shorn of our membership? That remains to be seen in the negotiations about to begin but—in one of those superbly British understatements—the report we are debating, in paragraph 111, states:

“We note, however, that Spanish opposition may present an insuperable barrier to any perceived special treatment for Gibraltar”.

There you have it; the report did not need to say a word more than that. I wish the Government well in their endeavours to save something from this unintended shipwreck, but I do not envy them. Next time the Foreign Secretary makes one of his “sunlit uplands” speeches about Brexit, or says that it will be perfectly okay if there is no deal, he might first take a look towards the Rock of Gibraltar—at the dark clouds gathering there, caused by the very success of his own endeavour to remove us from the European Union.
9.12 pm

Lord Suri (Con): My Lords, this report made for fascinating reading. So often in the debate that has engulfed this place and another place, we are told of the importance of keeping a soft border on the island of Ireland. However, Gibraltar is, as the Under-Secretary of State in DExEU said, “part of the British family”. I was gladened to see the Under-Secretary travel over to Gibraltar recently to restate his commitments.

Ensuring the softest possible border between Gibraltar and Spain must remain a priority of the Government, and I am pleased to see them take it seriously. The Spanish Government have used Brexit as another opportunity to call for joint sovereignty over the Rock, but I repeat again the words of the Treaty of Utrecht, which cedes to the Crown,

“the full and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and he”—

the Catholic king—

“gives up the said propriety to be held and enjoyed absolutely with all manner of right for ever”.

This report covers a number of important points. I welcomed the submission by the Government that EU funding commitments would be guaranteed by the Treasury until 2020. However, given that the final deal, if there is one, will come into force at roughly the same time, I would wish to see a more long-term commitment, perhaps until 2025, in order to start, post Brexit, with a clearer base and offer more certainty.

As I have called for before in relation to arts funding here, this report is refreshingly clear on the risks faced by Gibraltar especially from any cliff-edge removal from the single market. This should further focus minds on the importance of having a short-term transitional deal, about which both the Secretary of State for DExEU and the Prime Minister have signalled in favour. The fundamental point is that Gibraltarians were given a vote in the referendum and are being brought given a vote in the referendum and are being brought out despite being the most pro-remain voting district. The ultimate responsibility for ensuring that Gibraltar does not suffer lies with the Government. If its access to the single market is limited and prosperity is threatened, the Government should be prepared to further open up the British single market to ease financial pressure. In any case, the vast majority of Gibraltar’s business in the single market is with the UK.

The border with Spain is already fairly hard, given that Gibraltar is out of the Schengen zone and the customs union. It should be borne in mind that people having the freedom of movement to work in industries such as financial services and online gaming remains an abiding concern. If Spain were to make it harder for Spanish citizens to go to well-paid, secure jobs in Gibraltar, that would be an act of extreme pettiness, but it should not be ruled out. However, it would be surprising, given the ameliorating tone that Spanish diplomats and their Prime Minister have taken, calling for “calm” and “good negotiations” with reference to Article 8 of the Treaty on European Union.

Overall, I welcome the assurances given by the Government on funding and keeping sovereignty with the Crown, and I think that the focus of this report on negotiating as a single state with no bilateral Spanish talks is sensible, as is the rejection of a microstate-style status. The Government ought to bear in mind their responsibility to Gibraltar, and I have all confidence that they will.

9.16 pm

Lord West of Spithead (Lab): My Lords, I first visited Gibraltar by sea in September 1948 and have done so dozens of times since, and I know it well. I intend to speak only on the military significance of Gibraltar to the United Kingdom, the United States and NATO in this troubled and ever more chaotic and dangerous world.

Gibraltar commands one of the world’s seven key strategic global choke points for maritime trade. It is a southern outpost of Europe facing the north African littoral, from which we are able to monitor all surface and sub-surface traffic through the strait, and it is important in tension and war but also in combating terrorism. One thousand miles closer to the Mediterranean, the Middle East, the South Atlantic and the West Indies than the United Kingdom, its strategically important location has proved invaluable for three centuries.

With large dry docks, as well as oil fuel and ammunition storage supported by air links to the UK, its maintenance capability has proved of crucial importance on numerous occasions. Gibraltar’s naval docks and storage facilities are important today, with British and US nuclear submarines frequently visiting the Z-berths. Indeed, the US would like to make more use of Gibraltar, preferring it for security reasons to Rota, but it is constrained by the Spanish attitude to such visits.

Gibraltar’s position makes it important in combating Islamic terrorism based in the Sahel or north African littoral. It is also a useful base from which to conduct trials and training in rather more benign sea conditions than are found around the western UK. Our military presence on the Rock has been reduced to a minimum but is sufficient to ensure maintenance of sovereignty. Having said that, I believe that the Gibraltar squadron boats need to be rather more powerful and heavier, so possibly should be enhanced.

The constant infringement of Gibraltar’s territorial seas by Spanish vessels is completely inexcusable, not least as she is a NATO ally. It is to be hoped that Brexit will not be used as a reason to heighten tensions, because it is extremely dangerous when you do that sort of thing: things can escalate and go beyond what anyone wanted.

In purely military terms, Gibraltar and its brave, resolute people are important to the security and stability of our nation and NATO in this very dangerous world.

9.18 pm

Baroness Butler-Sloss (CB): My Lords, it is always a great pleasure to follow the noble Lord, Lord West of Spithead, who, I notice, has been engaged in something of a marathon with this, his second speech this evening.

I first went to Gibraltar in 1949 as a teenager with my father, and I have been going there ever since. I very much admired the report produced by the committee chaired by the noble Lord, Lord Boswell, as well as his very valuable speech at the beginning of this useful debate.
Baronet Butler-Sloss

I am a vice-chairman of the Anglo-Gibraltar parliamentary group, of which I am proud to be a member.

Gibraltar, as we all know, has a special position as part of the European Union—but, as we also know, is set to leave. It is staunchly British in its support of the United Kingdom and is a thriving centre of excellence, despite Spain’s constant interference and incursions, which the noble Baroness, Lady Harris, mentioned. It is abundantly clear that during the Brexit negotiations and post Brexit we must publicly and effectively support Gibraltar in all the situations that may arise in which that will be necessary, including continuing threats from Spain. The Government have, I am glad to say, promised again and again to do so, and they must carry out their promise. That is something that others have said, and I just follow.

I would also like to speak briefly about something completely different—the Criminal Finances Bill, which I think has its Committee stage next week. Gibraltar, which is potentially affected by it, is happy with the intentions of the Bill, but is understandably concerned about possible amendments. Some were tabled in the Commons, but fortunately they were unsuccessful.

Gibraltar has a commitment to transparency in the financial services sector, and is used as an example for other jurisdictions. It is committed to the central register of beneficial ownership under the EU anti-money laundering directive; it works closely with the United Kingdom Government on financial issues; it has an excellent record on the exchange of information, recognised by the OECD; and it has the same rating on that as the United Kingdom. I am sure that we in this House all hope that Gibraltar will remain a strong financial centre, whatever may happen in the future.

I must therefore tell Members of this House that it is very important that inappropriate amendments, which are being suggested by some Members, should not be allowed to have any adverse implications for Gibraltar. This measure must not be allowed to be to the detriment of Gibraltar. I therefore ask your Lordships to watch this House all hope that Gibraltar will remain a strong financial centre, whatever may happen in the future.

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9.22 pm

The Earl of Dundee (Con): My Lords, I begin by thanking the noble Lord, Lord Boswell of Aynho, and his committee for their excellent report. In referring to our obligations toward Gibraltar, I shall talk briefly about the sovereignty question and how it connects to certain obvious economic priorities, yet how both matters together perhaps call for a new approach and structure, which we should now start to devise.

On sovereignty, the key aspect is the preference of the Gibraltar people. They are fiercely loyal to the United Kingdom. Post Brexit that is still the position, although, as has already been said, 96% supported the case for the UK to remain in the EU. Correctly, the report endorses the UK Government’s view. This is to reject Spain’s proposal for joint sovereignty as the only way for Gibraltar to retain its relationship with the EU—for it does not want joint sovereignty.

This, of course, sets the main theme, which is that of principle and the expression of democratic will. Clearly, these transcend economic and other issues. Nor in any case are they necessarily even inconsistent with other considerations. Democracy and human rights also form the priorities of the affiliation of 47 members, including Spain, of the Council of Europe—of which the UK, post Brexit, remains an important member. Does my noble friend the Minister therefore agree that it is within this simultaneous context of principle and mutual practical advantage that dialogue and understanding between the UK and Spain should now be progressed?

There is also the need to protect sovereignty, not just immediately but in the long term. The report draws attention to that distinction, and to Gibraltar’s later vulnerability when, post Brexit, the UK is “out of the room”. In view of this, what steps will the Government take under international law to help prevent the undermining of Gibraltar’s future preferences?

No doubt economic anxiety will persist for as long as it takes new deals to be struck. Yet does my noble friend concur that there are a few commitments which, if now given by our Government, would serve considerably to reduce Gibraltar’s current plight of economic uncertainty? Such are also recommended by the report.

First, there should be clarification of what future UK-based funding beyond 2020 can be accessed by Gibraltar if it should not be able to benefit from EU programmes after Brexit. Secondly, arising from our moral duty towards it, emphasised by the noble Lord, Lord Boswell, and others, there should be an undertaking that, post Brexit, any new international trade deals for us will also be designed to benefit Gibraltar. Thirdly, there should be an early and timely negotiation with Spain jointly to endorse the local border traffic regulation, EC 1931/2006, and as pointed out by the noble Lord, Lord Luce, so guarantee the movement of labour between Spain and Gibraltar, in which regard Spain, Andalusia and the Campo de Gibraltar region stand to gain along with Gibraltar itself.

Then there is a much wider priority shared by Spain and the UK: joint co-operation on security and policing reflecting the importance of the European arrest warrant, to which the noble Lord, Lord Luce, has referred, and which prevents those wanted for crimes from escaping justice by crossing the EU’s external border, in either direction.

Does my noble friend concur that detailed government attention to these various matters, as advocated by the report and as strongly supported by many of us today, would in itself help a great deal to construct a new and lasting framework, within which our responsibilities can be discharged, good practice advanced and Gibraltar’s sovereignty and economy best protected?

9.26 pm

The Earl of Kinnoull (CB): My Lords, it is a pleasure to follow the noble Earl, Lord Dundee, who spoke with his customary acumen and clarity. I remind the House that I am a member of the EU Select Committee.
I start by thanking the Select Committee staff for the sustained high quality of their output. I note that this was the 11th Brexit report, which now number 15, that has been produced since 24 June last year, with more in the pipeline. I also pay tribute to the noble Lord, Lord Boswell, for his leadership of the EU committee structure and his continued and continuous good humour.

I want to make just three brief comments tonight. The first relates to the context of this report and in particular the special nature of the relationship between citizens of the UK and those of Spain. I dare say that there are many here tonight who have, as I have, a long history of enjoyable experience of both business and leisure in Spain. While I hang no argument on that, this proximity is borne out by the numbers: 310,000 UK citizens live in Spain and 125,000 Spaniards live in this country. In addition, there was much evidence in our inquiry of this citizen engagement, not just the economic interdependence described by many noble Lords tonight but friendliness at the citizen level, including that described in paragraph 58 for instance: unofficial and commendable police and customs co-operation. It would be a travesty if politicians mucked this up and a great detriment to many lives. Can the Minister confirm that this citizen-led warmth will be hammered home during the Brexit discussions?

The second area that I want to touch briefly on is the way in which the Gibraltarians are approaching matters. In evidence, we met three in person, including the Chief Minister and the Deputy Chief Minister, who are here tonight. Other Gibraltarians gave us written evidence. Their contributions were without exception measured, constructive and helpful, while remaining strong in advancing Gibraltar’s position. It would be very helpful if the Minister recognised that and confirmed that the Government will maintain their current level of engagement with Gibraltar during the Brexit process.

My third and final point concerns the local border traffic regulation. In our report we discuss this from paragraph 62 onwards and describe it in detail in box 1 and appendix 3. In the time available for our inquiry, we were not able to take any evidence on how such agreements are working elsewhere. However, our staff did reference a 94-page report, a copy of which I have with me, published in November 2012, and the news is good. The report, Ex Boreæ Lux?, on cross-border co-operation on the EU’s eastern border, was prepared by the Institute for Stability and Development and funded by the Finnish and Norwegian Governments. It details the experience of a number of successful situations where local border traffic agreements have been concluded, particularly between Finland and Russia and Poland and Russia. Will the Minister comment on the use of this regulation as a potential route to consider for the Gibraltar/Spain land border post Brexit?

9.30 pm

Lord Collins of Highbury (Lab): My Lords, I too thank the noble Lord, Lord Boswell, for his excellent introduction and for the excellent report of your Lordships’ sub-committee. I also welcome the Chief Minister, the Deputy Chief Minister and other representatives from Gibraltar who are here tonight.

My first visit to Gibraltar was in 1984, just prior to Spain fully reopening the border. I was there to meet T&G representatives of the 6,000 Moroccan workers who were then critical in maintaining the economy of Gibraltar. As we have heard, over recent decades the development of Gibraltar’s economy has been underpinned by access to the EU single market and the pool of more than 10,000 workers who cross daily into Gibraltar.

However, what matters most to Gibraltar, and will do in the future, is access to the UK market for its services. Britain and Spain have a mutual interest in good relations. We invest and trade with each other on a huge scale. According to a leaked report to El País from the Spanish Brexit commission, the UK’s departure from the EU will leave Spain hugely exposed economically, with tourism and the food, pharmaceutical and automotive industries being hit the hardest, together with the innumerable repercussions for the hundreds of thousands of Britons who live in Spain and the hundreds of thousands of Spaniards in the UK. I declare an interest as one of those citizens is my husband.

I hope the committee’s aspirations for all parties to work together positively and pragmatically to secure an agreement that reflects all their economic interests will be the primary factor in negotiations, rather than what Spanish sources allegedly told El País, which was simply not to do mutual damage. The framework behind the Brexit negotiations must be the absolute commitment of the UK Government never to enter into sovereignty discussions against the will of the Gibraltar people.

In their White Paper on Brexit, the Government said that Gibraltar’s interests and priorities will be expressed and understood through the new joint ministerial council. At the conclusion of its second meeting held only a few weeks ago, the Minister, Robin Walker, promised to continue engagement with Gibraltar throughout the negotiations. It is vital that the people of Gibraltar have confidence in that process and that its Government are fully involved. Will the Minister give us more detail on the engagement process once Article 50 has been triggered next week? What priority will be given to Gibraltar in the Government’s formal notice to trigger Article 50? Will the Gibraltar Government be part of the negotiation team when matters affecting them are considered?

EU membership has seen police and judicial co-operation. What priority will the Government give to this in the negotiations to ensure that the border with Spain cannot again be exploited by those seeking to evade justice? As my noble friend Lord West said, we should not forget the military importance of Gibraltar and its brave and resolute people for the security and stability of the dangerous world in which we now live.

9.34 pm

Baroness Goldie (Con): My Lords, I begin by thanking the noble Lord, Lord Boswell of Aynho, for tabling this debate. I also thank the European Union Committee for its report, Brexit: Gibraltar, which provides a valuable analysis of the opportunities and challenges presented to Gibraltar by the UK’s decision to leave the European Union. The Department for Exiting the European
Union is considering the findings of the report and will publish its response in the coming months. I hope sooner rather than later. I also thank noble Lords for their contributions to this debate, which has been fascinating.

As noble Lords will know, my honourable friend Robin Walker, the Member for Worcester and the Parliamentary Under-Secretary of State at the Department for Exiting the European Union, appeared before the committee in February of this year to discuss the extensive engagement with the Government of Gibraltar that has taken place since the referendum. We remain steadfast in our support of Gibraltar, its people and its economy—the referendum has not changed that—and we have committed to fully involve Gibraltar to ensure that its priorities are properly taken into account as we prepare to leave the EU. It is, as the report rightly notes, the Government’s responsibility to ensure this, and I can reassure noble Lords that it is a responsibility that we take very seriously. I wish in particular to reassure the noble Lord, Lord Boswell, on that point.

This is demonstrated by the fact that the Prime Minister met the Chief Minister of Gibraltar on the day she took office, and has had regular engagement since. As a number of your Lordships pointed out, the Government have established a new joint ministerial council for Gibraltar which is chaired by the Member for Worcester. It brings together Ministers from the UK Government and the Government of Gibraltar to discuss the opportunities and the challenges presented by EU exit. The first meeting took place on 7 December and the second on 1 March 2017, with both DExEU and FCO Ministers taking part alongside the Chief Minister of Gibraltar, the Deputy Chief Minister and the Attorney-General. I know that the honourable Mr Picardo, his deputy and the Gibraltarian Attorney-General are taking a keen and tangible interest in these proceedings. Perhaps I may also say what a pleasure it was to meet them earlier this evening.

There has been a wide range of other engagements with the Government of Gibraltar at both official and ministerial level. The Secretary of State for International Trade met with the Chief Minister of Gibraltar on Monday to discuss the valued links between our economies, and just last week the Parliamentary Under-Secretary visited Gibraltar to get a first-hand view of its unique context and to speak to representatives from across its thriving economy, from the business community to the trade unions. The Chief Minister of Gibraltar said of the visit that, “symbolised the relationship that exists between the Governments of Gibraltar and the UK, and is a clear reflection of the real action there is on the real pledge that Gibraltar would be fully involved in exiting the European Union”.

Mr Picardo also said that Gibraltar has had access to the highest levels of the UK Government and believes that that access will continue. I hope that that reassures your Lordships, not least the noble Lord, Lord Collins, who expressed a particular interest in how this process is working. I hope that it demonstrates that this is not just a close but an informed relationship.

Through our engagement with the Government of Gibraltar we have built an understanding of Gibraltar’s particular priorities in the EU exit. We welcome this report as an important contribution to that process and we are pleased with its finding that the Government of Gibraltar have been satisfied with the UK Government’s engagement to date. Let me reassure the noble Earl, Lord Kinnoull, that we very much welcome that relationship. It is positive and it is important.

Let me turn now to some of the issues and priorities raised both in the report and by noble Lords over the course of this debate. Perhaps not surprisingly, the economy featured consistently. There are challenges and opportunities which EU exit presents to Gibraltar’s economy. Gibraltar is rightly proud of the strong economy it has built for itself. It has the fourth highest GDP per capita and the second lowest unemployment rate in the world. The committee heard how Gibraltar’s economy has been transformed in recent decades from one dominated by military spending to a thriving and resilient economy based on financial services, tourism and commercial port services. That is testament to the hard work, creativity and ingenuity of all Gibraltarians. If I may say so, it is testament also to that vision of 20 years ago conceived by the noble Lord, Lord Luce, to whom I pay tribute.

The noble Lord, Lord Hannay, with some justification, described Gibraltar’s position in the EU as a “Goldilocks deal”. I do not disagree; it is a fairly accurate description. But I also observe that the UK has been an important support and bolster in that relationship. The UK remains and Gibraltar remains—and with that tandem of talent I am unable to share the pessimism of the noble Lord, Lord Hannay.

On market access, the report highlights the strong links between the economies of Gibraltar and the UK, particularly when it comes to financial services. For example, as others mentioned, 25% of UK car insurance policies are underwritten in Gibraltar and around 80% of Gibraltar’s trade is with the UK. The Government are clear that we should work together to maintain and strengthen these economic bonds after we leave the European Union. When it comes to financial services it is important that the strong mechanisms already underpinning Gibraltar’s access to the UK market are enshrined in UK law. That is worth remembering. The Government’s clear intention is to maintain that access.

We have also agreed that, together with the Government of Gibraltar, we will take into account the priorities of Gibraltar and the other overseas territories as the UK looks to establish new trade and investment opportunities with the wider world. This is a very important aspect of what lies ahead. The Secretary of State for International Development confirmed this position to the Chief Minister of Gibraltar during their meeting yesterday. I hope that that reassures the noble Lord, Lord Anderson, that we approach these matters positively. It was an issue to which my noble friend Lord Dundee also referred.

On the issue of access, the Government have been clear that Britain is seeking a new, strong partnership with the European Union: a partnership that maintains the close relationship we have with member states and builds further on them for both the UK and Gibraltar. Although we are not seeking to maintain membership of the single market, this agreement should allow for the freest possible trade in goods and services between
the UK and EU member states. The Government are confident that if we approach these upcoming negotiations in a spirit of good will, we can deliver a positive outcome that works for all, including Gibraltar. The noble and learned Baroness, Lady Butler-Sloss, raised a somewhat technical issue to which I confess I do not have the answer. I apologise for that. I undertake to write to her to provide clarification. I noted her concern about what possible amendments to the Criminal Finances Bill might mean and I will ensure that we look at that.

A number of issues were raised in relation to EU funding. My noble friends Lord Selkirk and Lord Dundee wanted to know what lies ahead, post Brexit. I am afraid that that is not something I can comment on in detail; it is too early to say what the position of Gibraltar and the other overseas territories may be in regard to such funding, but we will continue to work closely with the Government of Gibraltar to understand their concerns in this important area.

Not surprisingly, many contributors referred to the issue of the Gibraltar-Spain border. We recognise the importance of a well-functioning border to the economy, as well as to the surrounding Spanish region and to the thousands of Spanish workers who cross the border every day. We are clear that politically motivated delays are unacceptable. They cause serious problems for people on both sides of the border and we stand ready to work with the Government of Gibraltar and the Government of Spain to ensure that the border continues to function well after we leave the European Union. We approach these negotiations with good faith and determination and in a spirit of good will.

A number of contributors raised points and I hope that I have answered them. The noble Lord, Lord Boswell, made the point about the importance of the border very powerfully, as did my noble friend Lord Suri and others. The issue of the Local Border Traffic Regulation was raised by the noble Lords, Lord Boswell, Lord Luce and Lord Hoyle, my noble friend Lord Dundee and the noble Earl, Lord Kinnoull. The UK Government are working with the Government of Gibraltar to consider all options on the crucial issue of the border. As the committee noted in its report, the Local Border Traffic Regulation would, of course, require commitment from Spain.

The noble Lord, Lord Luce, also raised the issue of police and judicial co-operation, as did my noble friend Lord Dundee. That is a very important area. We have been clear that we will do what is necessary to keep our people safe. One of the 12 objectives for the negotiations ahead is to seek a strong and close relationship, with a focus on operational and practical cross-border co-operation, to fight crime and terrorism.

By way of encouragement I can say that there have been some very good examples of how that partnership with Spain and Gibraltar has been working. Spanish and Gibraltar agencies often co-operate to tackle issues such as drug smuggling. In January of this year, approximately €4 million-worth of cannabis was seized in a joint operation on the waters. So there is a mutuality of interest in trying to make these positive arrangements continue.

The issue that came out of the debate perhaps more cogently than any other was that of sovereignty. A number of noble Lords referred to this. I want to reiterate that the UK has reaffirmed its double-lock sovereignty commitment to Gibraltar. We will never enter into arrangements by which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes, nor will we enter into a process of sovereignty negotiations with which Gibraltar is not content. We will, in short, continue to stand beside Gibraltar and its people. That is the metaphorical foundation of the Rock. My noble friend Lord Selkirk made a colourful analogy when he equated the steadfastness of the Rock with the steadfastness of our relationship with Gibraltar and its people. I could not have put it better.

I am conscious of time, which is a pity as there are important issues here that I wanted to cover. The noble Lord, Lord West, asked about the strategic significance of Gibraltar in relation to defence and free maritime passage. If he will permit it, I will write to him in fuller detail on the points that he raised. Questions were also asked about the general intentions of Spain. My colleague, my noble friend Lady Hooper, made a very helpful comment in that respect, echoed by others, that is that there is a mutuality of interest in the negotiations for both Spain and the UK. That has been reiterated by the Spanish Government. The indications are that they wish to take a pragmatic and constructive approach. The Prime Minister of Spain has said that he is confident that the Government in Madrid are sitting squarely behind the objective of achieving a positive relationship between the UK and the EU after Brexit.

In conclusion, this has been an important and interesting debate, with many positive and helpful suggestions. I am sorry that I have not been able to deal in detail with all the points raised by noble Lords. I would like to end on a note of optimism. I was aware that the noble Lord, Lord Luce, is currently Chancellor of the University of Gibraltar. I had a look at its motto: “Scientia est Clavis ad Successum”. I know that noble Lords are all scholars of Latin and do not require a translation, but it is simple: “Knowledge is the key to success”.

I suggest that knowledge by the UK of what Gibraltar and the Gibraltarian people need, knowledge of what our EU partners wish to achieve and their knowledge of what we seek to achieve make a good starting point for how we embark on these vital negotiations. If we approach these matters based on knowledge, all will benefit. The UK will benefit—and if the UK benefits, Gibraltar, too, will benefit.

House adjourned at 9.48 pm.
House of Lords  
Thursday 23 March 2017

11 am

A minute’s silence was observed in memory of the victims of the London attacks on 22 March.

Prayers—read by the Lord Bishop of Leeds.

London Attacks

11.07 am

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I want to say a few words on behalf of the House in response to yesterday’s tragic events. People from all over the world visit our capital city and this iconic building, the centre of our democracy. As is already beginning to become clear, the horror of yesterday’s events will be felt not just in this country but across the globe. We know that victims included citizens from Romania and South Korea and children from France on a school trip.

What yesterday’s rapid and effective response has shown is that the Metropolitan Police, the fire service, the ambulance service and the staff of both Houses have been well prepared for such a terrible event.

Yesterday was a shocking day for everyone who works within the Palace of Westminster, but what has shone through is the support and care that Members and staff showed for each other. I would like to thank all noble Lords for their patience and co-operation as events unfolded yesterday. All of us join together to extend our heartfelt sympathy to those who have tragically lost their lives, those who have been injured, and to their families. The thoughts of the whole country will be with them.

I am sure that all noble Lords will also want to join me in expressing our admiration and gratitude to the police and the security staff who selflessly put our safety before their own each and every day, especially those injured during yesterday’s devastating events. It is a reminder to us all of the risks they take in order to protect us and members of the public. In particular, our thoughts are with the family and friends of PC Keith Palmer. We will never forget his bravery and sacrifice.

Baroness Smith of Basildon (Lab): My Lords, I endorse the Leader of the House’s comments. After the numerous meetings we had yesterday, I also thank her for the personal leadership that she has shown. I also thank the right reverend Prelate the Bishop of Leeds for leading us in Prayers today. I think all of us feel the need to join in collective recognition of what London and our country have faced.

Last night as we returned home we were very grateful—not just because of the shocking and tragic events of the day but simply because we could return home and others would never do so. As the noble Baroness said, those injured and killed on Westminster Bridge were visitors and locals of our great global city. They were just going about their everyday business and enjoying their day. For many of the survivors, life will never be the same.

Each and every day, our police and security staff come to work not knowing what challenges and risks they may face. We all hope for the best—but their training, experience and commitment prepares them for the worst. They never know when they will be called upon to protect the public and those who work in the Palace of Westminster—and, indeed, protect the very home of our parliamentary democracy and all that it represents.

In doing so, police officer Keith Palmer lost his life. Every instinct he had was to protect others. There are no words that can do justice to the sense of loss felt by his family and friends, and by everybody across the Palace of Westminster—his parliamentary family.

In the Statement that follows we can perhaps look forwards to some of the wider issues, but now our thoughts are only for those affected in any way yesterday. It is hard to express the level of gratitude and appreciation due to all of those involved in the security and care operation. We pay tribute to the police, the medical and ambulance services, those staff at St Thomas’ who ran out to help those on Westminster Bridge, the fire and rescue service, our own Westminster security staff, and all staff and members of the public who sought to support those affected by these truly shocking events. In the worst of circumstances, they have given their best.

Lives have been lost and some lives will never be the same. Friends and families will share the pain and distress, as do we.

Lord Newby (LD): My Lords, I begin by associating myself with the remarks made by the Leader and the Leader of the Opposition. From these Benches, our thoughts and prayers are also with the families of those who lost their lives yesterday and our profound sympathies are with the innocent victims—members of the public who were on Westminster Bridge and also subject to this senseless attack.

I of course also pay tribute to PC Keith Palmer, who lost his life yesterday—an extremely brave man—and to all the police and security staff who do so much every day to protect all who come to Parliament to work or visit. I also pay tribute to all those from the emergency services who attended the scene yesterday and who worked with such bravery and professionalism. In particular, on behalf of my noble friend Lady Thomas of Winchester and others, I thank those who helped Members of your Lordships’ House who are disabled and who needed particular help in being taken to a place of safety. Finally, I thank the Dean of Westminster Abbey and his staff, who opened their doors as a place of sanctuary to MPs, Peers and staff.

This morning we stand together against those who want to diminish our democratic freedoms. We are an open, tolerant country and we will never let those who spread terror and fear win—and we will not let them divide us.

Lord Hope of Craighead (CB): My Lords, as the noble Lord, Lord Newby, has reminded us, many of us were taken to the sanctuary of Westminster Abbey or to Westminster Hall as events unfolded yesterday afternoon. The Dean of Westminster invited those in the Abbey to join him in a prayer for the deceased, the injured and their families. Such information as we had at that stage gave us little idea of the enormity of what had happened—of the horror and brutality of the
We remember, too, the families and friends of the members of the public who were killed and all those who were injured, including the students from France whose visit to our city was so devastated by what happened. The fact that the incident did not develop into something very much worse owes much to the teams of security personnel and police officers who guard us every day. Like others, I pay tribute to their courage and dedication as we seek to follow their example of standing firm against attacks of this kind, from wherever they may come. I pay tribute, too, to others in the security services up and down the country who work so hard in the service of this country’s peace and security. For that, amid so much sadness, we must all be grateful.

The Archbishop of Canterbury: My Lords, I associate myself with the thanks and tributes paid today, and especially our prayers and thoughts for PC Keith Palmer and for his family. I also acknowledge the work of so many members of the public who pitched in and did what they needed to do when faced with things for which they had never been trained or prepared. Yesterday afternoon one of our own security staff at Lambeth Palace, a Muslim, arrived at the gate having been very narrowly missed by the vehicle and having spent time helping those who had been injured. It was typical of this community and this country that he refused to go home until the end of his shift and simply spent the time doing his job as he expected.

This was typical of so many in this city, including the emergency services who contained the incident within six minutes and the staff at this extraordinary place who give so much of themselves on both normal occasions and extraordinary occasions. Especially in our hearts today are those who wait at bedsides, who are suddenly caught up in things for which they could never have been prepared and which they never expected. Our prayers continue for them on this day. Much shock has been expressed, but we know from the reactions we saw yesterday that we have the strength to persevere through it. We will talk more generally about that later.

The Lord Speaker (Lord Fowler): My Lords, perhaps I may add my condolences to those already expressed today to those affected by these tragic events. A book of condolence has been placed in the Royal Gallery and in Westminster Hall. The usual channels have agreed to take the Statement on yesterday’s events before Questions. Before that Statement I reassure the House that the House of Lords Commission, which I chair, and our Commons counterpart will be reviewing with the police and other stakeholders the arrangements in Parliament relating to yesterday’s incident to see whether there are any lessons for the future. Above all, I reiterate the thanks of this House to those who work to protect us, and the others who work in Parliament, for their brave actions yesterday to keep us safe.
At 7.30 pm last night, I chaired a meeting of the Government’s emergency committee, COBRA, and will have further meetings and briefings with security officials later today. The threat level to the UK has been set at “severe”, meaning an attack is highly likely for some time. This is the second-highest threat level. The highest level, “critical”, means there is specific intelligence that an attack is imminent. As there is no such intelligence, the independent Joint Terrorism Analysis Centre has decided that the threat level will not change in light of yesterday’s attack.

The whole country will want to know who was responsible for this atrocity and the measures we are taking to strengthen our security, including here at Westminster. A full counterterrorism investigation is already under way. Hundreds of our police and security officers have been working through the night to establish everything possible about this attack, including its preparation, motivation and whether there were any associates involved in its planning. While there remain limits on what I can say at this stage, I can confirm that overnight the police searched six addresses and made eight arrests in Birmingham and London.

It is still believed that this attacker acted alone, and the police have no reason to believe there are imminent further attacks on the public. His identity is known to the police and MI5, and when operational considerations allow he will be publicly identified. What I can confirm is that the man was British-born and that some years ago he was once investigated in relation to concerns about violent extremism. He was a peripheral figure. The case is historic, and he was not part of the current intelligence picture. There was no prior intelligence of his intent or of the plot. Intensive investigations continue.

As acting Deputy Commissioner Rowley confirmed last night, our working assumption is that the attacker was inspired by Islamist ideology. We know the threat from Islamist terrorism is very real, but while the public should remain utterly vigilant, they should not, and will not, be cowed by this threat. As acting Deputy Commissioner Rowley has made clear, we are stepping up on the public. His identity is known to the police and MI5, and when operational considerations allow he will be publicly identified. What I can confirm is that the man was British-born and that some years ago he was once investigated in relation to concerns about violent extremism. He was a peripheral figure. The case is historic, and he was not part of the current intelligence picture. There was no prior intelligence of his intent or of the plot. Intensive investigations continue.

Since 2013 our police, security and intelligence agencies have successfully disrupted 13 separate terrorist plots in Britain. Following the 2015 strategic defence and security review, we protected the police budgets for counterterrorism and committed to increase cross-government spending on counterterrorism by 30% in real terms over the course of this Parliament. Over the next five years, we will invest an extra £2.5 billion in building our global security and intelligence network, employing over 1,900 additional staff at MI5, MI6 and GCHQ and more than doubling our global network of counterterrorism experts working with priority countries across Europe, the Middle East, Africa and Asia.

In terms of security here in Westminster, we should be clear first of all that an attacker attempted to breach the security measures in place around the government secure zone. All of us in this House have a responsibility for the safety and security of our staff, and advice is available to Members who need it.

Yesterday we saw the worst of humanity, but we will remember the best. We will remember the extraordinary efforts to save the life of PC Keith Palmer, including those by my honourable friend the Member for Bournemouth East.

Noble Lords: Hear, hear.

Baroness Evans of Bowes Park: And we will remember the exceptional bravery of our police, security and emergency services who once again ran towards the danger even as they encouraged others to move the other way. On behalf of the whole country, I want to pay tribute to them for the work they have been doing to reassure the public, treat the injured and bring security back to the streets of our capital city. That they have lost one of their own in yesterday’s attack only makes their calmness and professionalism all the more remarkable.

A lot has been said since terror struck London yesterday. Much more will be said in the coming days, but the greatest response lies not in the words of politicians but in the everyday actions of ordinary people, for beyond these walls today, in scenes repeated in towns and cities across the country, millions of people are going about their days and getting on with their lives. The streets are as busy as ever. The offices are full. The coffee shops and cafes are bustling. As I speak, millions will be boarding trains and aeroplanes to travel to London and see for themselves the greatest city on earth. It is in these actions, millions of acts of normality, that we find the best response to terrorism, a response that denies our enemies their victory, that refuses to let them win, that shows we will never give in, a response driven by that same spirit that drove a husband and father to put himself between us and our attacker, and to pay the ultimate price, a response that says to the men and women who propagate this hate and evil: you will not defeat us. Let this be the message from this House and this nation today: our values will prevail. I commend this Statement to the House”.

11.31 am

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating today’s Statement. I understand that some of the words at the beginning of my previous comments were lost, so I will just repeat them. The noble Baroness and I had a number of meetings yesterday until quite late in the evening, and I add my personal thanks to her and pay tribute to the leadership she has shown.

The Prime Minister, in her words last night and as we have heard today, has I believe spoken for the nation. Yesterday showed us the best and the worst of society, the worst being those who seek to maim and murder. Yesterday’s atrocities can never be justified by any belief or cause. But we also saw the best, as the
[Baroness Smith of Basildon]

noble Baroness has said. We have paid tribute to Police Officer Keith Palmer, who was killed as he protected others. I hope we will be able to have a permanent memorial in the Palace of Westminster to him. Many others from inside this great building and across Westminster ran towards trouble to care for and give comfort to others. That is the London I know.

The full facts may not be clear for some time, but it is clear that this was a vile attack both on innocent individuals and on the institution and symbol of parliamentary democracy. As we receive more information, I have no doubt that security will be reviewed and assessed. That is right. Those who work here in the Palace of Westminster and in London and beyond, and those who seek to protect Parliament, public institutions and the public, should expect nothing less. We must do all we can to ensure the security and safety of our Members of Parliament and their staff. It is less than a year ago that I stood here after Jo Cox, our Member of Parliament for Batley and Spen, was murdered as she worked for her constituents. In seeking to protect lives, we must also seek to protect our way of life, our values and our democracy. At this stage I ask only that the noble Baroness keeps Parliament informed and engaged in this process.

Yesterday’s attack, as truly shocking as it was, ultimately failed—but at a very high price. Our determination to continue our work and our way of life is not false heroism, but based on sound values and responsibility. It is only possible because of the courage, commitment and professionalism of those such as Police Officer Keith Palmer who stand day in, day out in front of danger and evil to protect us all.

Lord Newby (LD): My Lords, I too thank the noble Baroness the Leader of the House for repeating the Statement. The horrific events of yesterday were an attack not just on Parliament but on democracy. It was an attack on the values that are represented by this building and recognised across the world: freedom, openness, tolerance, human rights, mutual respect for our neighbours and the rule of law.

No doubt there will be lessons that we can learn from the events of yesterday, but we must not lose sight of the fact that the person who carried out this horrific attack was, as the noble Baroness said, prevented from entering the building and was stopped a matter of yards within its precincts. The security arrangements in place for such an attack swung into action, for which we thank our security staff and of course PC Keith Palmer in particular.

I hope that, as we move forward from yesterday’s events, we maintain the sense that Parliament is an open place which the public can visit to lobby parliamentarians and to see our democratic processes in action. But we must listen to the individual experiences of Members and staff to determine where improvements can be made.

I welcome the statement by the Lord Speaker that the House of Lords Commission will be considering these matters next week. No doubt individual Members will have views of their own. I, for example, would like us to look again at the long-standing proposals to pedestrianise some of the streets around this place. However, there are many other sensible suggestions that we need to look at tomorrow.

I have only one question for the noble Baroness the Leader of the House. We do not know at this stage the extent to which this particular incident was entirely home-grown, but we do know that terrorism is an international business. I hope she can give the House an assurance that as we move forward in the months and years ahead, the Government will do everything they can to ensure that our strong and growing security links with our closest neighbours across Europe are maintained and strengthened.

I hope that today, as we condemn this senseless violence, that condemnation will be expressed by both faith and secular communities across the country, for the greatest tribute we can give to those who have lost their lives is to come together as a country and uphold our way of life and democracy.

Lord Hope of Craighead (CB): My Lords, it is not the usual custom for the Convener of the Cross Benches to respond to a Statement of this kind, but this is a very special occasion. I pay my own thanks to the Leader for repeating the Statement in the other place by the Prime Minister.

There are lessons to be learned from yesterday, and they certainly will be. One of the things that struck me as the evening wore on was the challenge faced by the security forces, police and staff—including the doorkeepers in this Chamber—in moving so many people about without risk to themselves. It was an enormous undertaking. I do not have the exact figures but something like 800 people were in Westminster Hall, while it was said that 2,500 people were present in Westminster Abbey. You have to imagine the process of moving people from place to place. They included children who were kept in Westminster Hall, who kept themselves and many other people happy by singing songs, which was a remarkable achievement by their teachers. That is just one of the examples of the good-natured way in which people responded to the demands of the evening.

I pay my own tribute to the doorkeepers, because we depend upon them. It was stressed in a recent rehearsal for something similar to this incident that we would be subject to the direction of the doorkeepers and, with their usual tact and firmness, they made sure that we were in the right place at the right time and guided to the places where we ought to be taken.

As I said at the end of my short statement, there are things to be thankful for, and there are certainly things we can learn from. Thank goodness the incident was not worse than it was. Just imagine the real horror if the person had broken into the Chambers with his knife. It is for that, the fact that the incident was stopped so early, that we owe so much to PC Palmer and his colleagues.

The Archbishop of Canterbury: My Lords, I add a welcome from these Benches to the Statement by the Prime Minister, which, as the noble Baroness the Leader of the Opposition said, rightly set the tone and spoke for this country. I also convey to the House the messages of sympathy and support that I have received through the night from faith leaders around the world.
and across this country who want this House and Parliament, particularly its staff and those who have suffered, to know how much those people are in their hearts and minds.

With regard to values, I want to refer to something that seems to me to go deeper, to something that is at the foundation of our own understanding of what our society is about, and I want to do so in three simple, brief pictures. The first is of a vehicle being driven across Westminster Bridge by someone who had a perverted, nihilistic and despairing view of objectives, and of what society and indeed life are about, that could be fulfilled only by death and destruction. The second is of that same person a few minutes later, on a stretcher or on the ground being treated by the very people whom he had sought to kill. The third is of these two Houses, where profound, bitter, angry disagreement is dealt with not with violence, despair or cruelty but with discussion, reason and calmness.

Those three pictures point us to deep values within our society—deeper even than those that have rightly been mentioned in the Prime Minister’s Statement and other statements. You would expect to hear this from these Benches, but it is the sense that comes from a narrative that has been within our society for almost 2,000 years. It speaks at this time of year, as we look forward to Holy Week and Easter, of a God who stands with the suffering and brings justice, and whose resurrection has given to believer and unbeliever the sense that where we do what is right—where we behave properly, where that generosity and extraordinary sense of duty that leads people to treat a terrorist is shown, where the bravery of someone such as PC Keith Palmer is demonstrated—there is a victory for what is right and good over what is evil, despairing and bad. That was shown yesterday; that is shown not just in our expression of values but in our practices, which define those values; and that is the mood that we must show in future.

**Baroness Evans of Bowes Park:** My Lords, I thank the noble Baroness, the noble Lord, the noble and learned Lord and the most reverend Primate for their comments. I also thank the noble Baroness and the Opposition Chief Whip for their help and support yesterday. It showed that we can all work as a team in times of great distress and difficulty.

I am sure that the noble Baroness’s suggestion of a permanent memorial to PC Palmer will be something that the Houses reflect on in due course as we come together to think about our reaction to these tragic events. I also confirm that we will of course keep Parliament updated of developments as and when we are able to do so.

The noble Lord, Lord Newby, and the noble and learned Lord, Lord Hope, rightly raised the experiences of Members of this House, the public and the other place yesterday. I reiterate the words of the Lord Speaker: we will be assessing with the police and other partners what happens and how we can improve things, but I echo all of our thanks to the police, the doorkeepers and all members of staff, who had as traumatic a day as we did yesterday but helped us throughout and put us first, as ever.

I also reassure the noble Lord, Lord Newby, that we will continue to work closely with our international partners to combat terrorism. The warm and strong words we have already heard from our partners around the globe show the strength of the relationships we have and will continue to have.

Finally, I thank the most reverend Primate for his powerful words. There is nothing I can add to them, so I will leave the last word to him.

### Education: Nursery and Early Years

**Question**

11.44 am

**Asked by Lord Storey**

To ask Her Majesty’s Government what estimate they have made of the level of annual funding required for nursery and early years provision, in order to ensure quality of service.

**The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con):** My Lords, we will be investing an additional £1 billion per year in the free early years entitlement by 2019-20, including over £300 million per year to raise hourly average funding rates. Our record level of investment was based on our review of childcare costs, which was described by the National Audit Office as thorough and wide-ranging. More children than ever now benefit from high-quality early education: 93% of settings are now rated good or outstanding.

**Lord Storey (LD):** I am very grateful for the Minister’s reply. He may know that UK and international research shows that high-quality early years education, led by a graduate teacher, is one of the most decisive interventions for tackling poor preschool attainment and has the biggest impact on children, particularly those from deprived communities. What are the Government doing to make this a reality?

**Lord Nash:** The noble Lord is extremely accurate in this, and I know he has great experience in this area from his career in the primary school sector. Of course the early years workforce is the sector’s greatest asset in ensuring that we continue to maintain such a high standard, with 93% of providers rated good or outstanding, in the future. The proportion of staff in group-based providers with a level 6 qualification, degree level or higher, is 10%; and 79% of staff in group-based providers and 69% of child minders have at least a level 3 qualification. Earlier this month we published the workforce strategy, which outlines a range of activities to help employers attract, retain and develop high-quality staff.

**Baroness Massey of Darwen (Lab):** My Lords, I thank the Minister for that, and I am pleased that he mentioned the development of staff in his reply. I wonder if he could be more precise. Surely he will agree with me that the quality of service in education of any kind depends on the quality of the staff. Can he say something further about the notion of the qualified status of nursery school teachers and what the Government are doing to develop it?
Lord Nash: We are investing heavily in improving the quality of the status of nursery teachers, and increasing the funding rate will help with recruiting more high-quality staff. A lot of details on that are set out in our workforce strategy.

Baroness Howe of Idlicote (CB): Will the resources that the Government make available cover the particular requirements and needs of those with special needs?

Lord Nash: Yes. Our recently published workforce strategy sets out how we will support staff to offer good-quality provision for children with SEND. We are funding a range of training and development opportunities in this regard, working with organisations that specialise in SEND. We have a new targeted £12.5 million disability access fund and a requirement for local authorities to set up a local inclusion fund to support providers for better outcomes for children with SEND.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister undertake to look at research into high-quality preschool experience combined with adult education for children who fail later in life? Will he look at the Midwinter experiment in Liverpool, which did so much many years ago to demonstrate that the most important investment is high-quality nursery education combined with help for parents who sometimes have difficulty themselves in helping their children unless there is high-quality adult education for them?

Lord Nash: The noble Baroness is quite right in her remarks. We all appreciate that helping children at an early age, particularly those who have a difficult home life, is absolutely essential. The payback on that for both those children and our society is massive. I certainly would be delighted to look at the research to which she refers, and I would be happy to discuss it with her because I know that she has experience in relation to this.

Baroness Walmsley (LD): My Lords, the early years sector is very diverse in relation to types of governance. We have the state-funded sector, private settings, and not-for-profit and voluntary settings. Can the Minister ensure that the money to employ qualified early years teachers is easily available to all kinds of settings?

Lord Nash: Yes, I think that that is the aim. As the noble Baroness says, there is a mixed range of providers and we must ensure that they all have access to the appropriate funding. As I have said, the quality of provision speaks for itself.

Lord Lexden (Con): Does my noble friend have confidence in the inspection arrangements that exist for these sectors of education and in the part that they can play in helping to raise standards?

Lord Nash: The inspection arrangements are absolutely essential and Ofsted’s role in this is crucial, so I agree entirely—we have confidence in it.

Lord Blankett (Lab): My Lords, leaving aside the tragic demise of the Sure Start local programmes, can the Minister comment on how we can implement better the report by Sense, the organisation for deafblind men, women and children, which was published last year, in terms of early years settings and the training not just of professional staff but of volunteers, which is absolutely crucial in ensuring that those with the severest disabilities have the best possible start in life?

Lord Nash: I agree entirely with the noble Lord in this regard. I am not familiar with that report but I will look at it and, I hope, have the opportunity to discuss it with him.

Lord Watson of Invergowrie (Lab): My Lords, if the Government really are serious about social mobility, then children’s first four years is where they should be concentrating—and doing so relentlessly. As the noble Lord, Lord Storey, said, early years teachers are crucial to the development and effectiveness of childcare. In the workforce strategy, launched earlier this month and to which the Minister referred earlier, the Early Years Minister, Caroline Dinenage, said that if we are to prepare “the best” for our children, “in their earliest and most formative years, we must ... value”, and train adequate staff to ensure their development. That is fine—that is as it should be—but the Family and Childcare Trust recently reported that one in 10 nursery workers do not receive the national minimum wage. Will the Minister work with Ms Dinenage and other Ministers to ensure that all childcare workers are properly and fairly paid and that public, taxpayers’ money does not go to employers that are breaking the law?

Lord Nash: That is an extremely good point. Nurseries are of course legally required to pay the national minimum wage and, just as any other organisation or business, they risk fines or even prosecution if they do not. We will be vigilant in this regard.

Young Carers

Question

11.53 am

Asked by Baroness Hussein-Ece

To ask Her Majesty’s Government what progress they have made in ensuring that children and young people who care for family members are identified and supported.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, we introduced changes to the Children and Families Act 2014 to ensure that local authorities identify needs and assess and support young carers. We have considered recently published research and are exploring policy avenues to help local authorities, schools and professionals to improve young carers’ identification and support. We will be setting out our vision and future plans in the cross-government carers strategy, led by the Department of Health, to be published later this year.

Baroness Hussein-Ece (LD): I think the Minister for that response. Is he aware of any more accurate figures of the sheer numbers of children and young
people who care for family members with disabilities and those with mental disabilities? Barnardo’s has estimated that it is somewhere in the region of 200,000, possibly more. Can he say whether, in the strategy that will be published, health professionals will be trained to identify children who are carers? Can he also say what is being done about 16 to 18-year-olds who are twice as likely as their peer group to not be in employment or education? What support will they get to reach their full potential?

Lord Nash: My Lords, we have supported various programmes in this regard, such as the Suffolk Family Carers programme, to raise awareness of young carers among teachers and other staff. We have focused on embedding a whole family approach to this issue and have trained school nurses to be champions for young carers. As I say, we will set out further proposals in the carers strategy. I agree entirely with the noble Baroness: although we collect some data centrally, we need to work harder to collect data and identify young carers wherever they are.

Lord Laming (CB): My Lords, I know the Minister will agree with me that there is deep concern when you meet young carers that some of them do not want the teachers to tell children’s services about them in case that leads to care proceedings. Will the Minister assure the House that in the new strategy everything will be done to tell and reassure young carers that the state services are there to support them, not to add to the burden that they carry?

Lord Nash: The noble Lord makes an extremely good point. I know from experience that this can be a very sensitive issue with children, who may not wish even to tell anybody that they have these responsibilities. Our training of school nurses can help greatly with this.

Lord Watts (Lab): My Lords, would it not be a good idea for young carers to be given a statement setting out the support mechanisms that would be put in place to support them and their families?

Lord Nash: Again, I make the point that the first step is to identify them. The Children and Families Act now places an obligation on local authorities to assess their needs and support them, where they request it. However, we need to do more to identify them in the first place.

Baroness Thomas of Winchester (LD): My Lords, I remind the noble Lord’s department that some young carers do not identify themselves with the words “caring” or “carer” if they care for a disabled parent. The noble Baroness, Lady Grey-Thompson, has confirmed this. They undertake this caring as a matter of course and have done so all their lives. They need to be identified but they may not know the word “carer”.

Lord Nash: The noble Baroness makes a very good point. Again, our guidance to schools is helpful in this regard. As I say, the work we are doing with schools and school nurses will, I hope, make sure that all pupils are aware of what the terminology means.

Baroness Finlay of Llandaff (CB): My Lords, I declare my interest as chair of Dying Matters. Do the Government accept the figure that approximately 10% of schoolchildren are bereaved, a third of those of a parent or sibling, and that many of them have cared for that person during their final illness and, after death, often provide care and support for the other bereaved members of the family? Will the whole House join me in expressing the most sincere condolences to the two children who were bereaved because their mother was killed yesterday on Westminster Bridge?

Lord Nash: I agree entirely with the noble Baroness on child bereavement. I suffered from that myself and share the sympathy that she expresses.

Lord Cormack (Con): My Lords, further to the point made by the noble Baroness, Lady Thomas, do general practitioners as a matter of course annotate their records where there is a child carer looking after a patient?

Lord Nash: I am afraid that I do not know the answer to that question but I shall talk to the Department of Health and write to my noble friend.

Lord Watson of Invergowrie (Lab): My Lords, the Children’s Commissioner recently reported that four out of five young carers were not receiving support from their local authority and that not enough local authorities take steps to identify children in their area who may be providing care. Too often, it seems that funding under the Care Act is used for assessment purposes rather than providing support and activities that would allow young carers to enjoy some aspects of the childhood that every child surely should have. Will the Minister say what steps the Government are taking to ensure that young carers receive appropriate assessment and support, no matter where they live, through inspection and other forms of monitoring?

Lord Nash: The noble Lord makes a very good point. We welcome the Children’s Commissioner’s report. We have just concluded our analysis of its findings and are considering what more we can do. We know that many local authorities are making great progress in their data analysis and capabilities but, as the noble Lord says, there is more for us to do. We are considering that in the light of the Children’s Commissioner’s report.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister undertake to ensure that psychiatric nurses treating patients are very careful? Often they have responsibility for doing what is best for the parent in a case of severe and distressing mental illness, but sometimes no one looks to the needs of the child, who may be in a home with a parent in an extremely distressing state. Surely there should be somebody there to protect the child from what can be a rather frightening and very paranoid parent.

Lord Nash: As I am sure the noble Baroness knows, we are working with the Department of Health to commission a major countrywide thematic review of
children and adolescent mental health. We will bring forward a new Green Paper on children and young people’s mental health, and I shall certainly feed the noble Baroness’s comments into that thinking.

**Premium Bonds**

**Question**

*Noon*

*Asked by Lord Lee of Trafford*

To ask Her Majesty’s Government what is their policy on encouraging further premium bond sales.

**Lord Lee of Trafford (LD):** My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and I declare an interest as a bond holder—one among 21 million.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, premium bonds are a popular savings product. They date back to 1956 and were introduced by Harold Macmillan, the Chancellor of the Exchequer of the day. They provide a way for government to raise debt financing through the retail savings market. Depending on the Government’s financing requirement, NS&I promotes sales through its website, through direct correspondence with customers, through media coverage and through advertising.

**Lord Lee of Trafford:** My Lords, is it not time, after 60 years, to look again at the aims of premium bonds? Specifically, why cannot clubs, societies and charities own premium bonds? Could not those who win, say, £25 but do not wish to receive that prize have it designated and directed to a national charity by ticking a box? More radically, could we not think about reconstructing and converting premium bonds into something perhaps rather more popular, such as national care bonds? I think that would generate much greater public support, particularly if the unclaimed prizes were hypothecated to the care sector.

**Baroness Neville-Rolfe:** My Lords, that is for a debate, not a Question. I am not a fan of hypothecation. The Government raise premium bonds to fund government expenditure, as I have explained, and obviously there is nothing to stop anybody giving their tax-free winnings to charity as they see fit. We do not have any plans to introduce a direct transfer to charities, which would require stakeholder consultation and a systems change. The product is a good part of the portfolio of savings products that we have and, as I said, it is very popular.

**Lord Dubs (Lab):** My Lords, would not more people buy premium bonds if there were not such a miserably low rate of interest?

**Baroness Neville-Rolfe:** We try to make sure that premium bonds are a reasonable deal in the market for savings. The noble Lord will probably know that we delayed reducing the rates on premium bonds until quite recently. They continue to be popular, and it makes sense to look at them in the round, aiming for a balance for savers and taxpayers, as well as stability in the sector, obviously, in which they have a role as part of NS&I’s work.

**Lord Lansley (Con):** My Lords, will the Government consider giving pensioners who are eligible for the winter fuel payment the option of electing to receive premium bonds instead of a cash payment, thereby helping to meet the Government’s funding requirement and reducing the cash call on government?

**Baroness Neville-Rolfe:** That is another innovative idea for premium bonds. I will certainly think about it, but the basic point about premium bonds is that they have to be part of a portfolio of sensible savings, such as the investment bond that we are bringing in. That seems to me the right way to go. They are popular and successful, and they give people a bit of excitement, as well as easy access to saving, and there is a 100% Treasury guarantee.

**Lord Davies of Oldham (Lab):** My Lords, every statistician and financial adviser can establish that premium bonds are a pretty poor deal, and the Government are in the business of reducing the rate yet again, so the deal is not getting any better. What they are is a flutter but, as my horse will fall at the second fence in the Grand National in the fairly near future, I am not going to argue against gambling at this point.

**Baroness Neville-Rolfe:** I think we can agree on the excitement, but there is also a more serious point underlying this. When you are choosing how to save, you need to look at a number of options, which we have debated here in this House, including having a pension through the auto-enrolment system and taking advantage of other savings products such as ISAs and so on. I see premium bonds as a very important part of the savings market. And I am so glad that the noble Lord likes to have a flutter.

**Baroness Kramer (LD):** My Lords, I exclude my noble friend Lord Lee from this but many people who purchase premium bonds also have an adverse amount of credit card debt or personal loans outstanding. They are attracted rather to the prize element of the premium bond. Would it be sensible to have on the website some advice to encourage people to think first about paying down their debts before they go for a low-interest savings product?

**Baroness Neville-Rolfe:** As I said, it is important that people have choice and look at a sensible way of saving. Having material on different websites is important but, in the round, we try to make sure that government advice gives people a sound sense of direction on savings, including what is good value for money. Again, I emphasise the point about pensions: investing in a pension is a very good form of saving.

**Lord Forsyth of Drumlean (Con):** My Lords, would my noble friend look at the rules, which, while respecting the importance of avoiding money laundering, make it extremely difficult for grandparents and others to gift premium bonds to young children? That would be a very useful way of encouraging saving.
Baroness Neville-Rolfe: I am grateful to my noble friend. I will certainly look at the point without commitment.

Lord Brooke of Alverthorpe (Lab): My Lords, I am not sure whether the Minister is old enough to qualify for the silly £10 a year Christmas bonus that most of the people in this Chamber will receive. Apparently it was introduced decades ago and if it had been updated with inflation it would now be worth £187 a year. Building on the suggestion of the noble Lord, Lord Lansley, why should that not be converted into savings rather than paid out, when many people do not know what it is about, why they are receiving it or what they do with it?

Baroness Neville-Rolfe: The noble Lord highlights that there are many good pension benefits in this country. I take his point but this is a difficult area in which to make sudden changes.

East Africa: Famine

Question

12.08 pm

As asked by Baroness Hayman

To ask Her Majesty’s Government what assistance they are giving to those suffering from famine and acute food shortages in East Africa.

Baroness Hayman (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a trustee of the Disasters Emergency Committee.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the scale of the humanitarian crises facing the world in 2017 is unprecedented. The UK is leading the way on the response, stepping up life-saving emergency assistance for those affected by food insecurity in east Africa, and calling on the international community to urgently step up its support before it is too late.

Baroness Hayman: My Lords, I thank the Minister for that reply and for the work that his department is doing. The humanitarian crisis in east Africa is, as the Minister said, of horrifying proportions, with 16 million people on the brink of starvation and cholera a growing threat. But lives are being saved as we speak thanks to the work of British humanitarian agencies on the ground in east Africa, funded by the £30 million that has been raised already in the DEC appeal. Will the Minister join me in acknowledging the generosity of the British public, who always respond very generously to appeals like this? The theme of the DEC appeal is “Don’t delay, donate”. Does the Minister agree that that is a message not only for individuals—who might think about their winter fuel payment, in fact—but for Governments? Will Her Majesty’s Government agree to continue to urge other nations to replicate the generosity that the UK has shown and to keep the UK contribution under review?

Lord Bates: I am very happy to do that. I also pay tribute to the work of the Disasters Emergency Committee in this instance. The immediate response to the crisis and the generosity of the British people in raising £20 million, which was then aid matched by DFID, is typical of the character of the British people, to which the most reverend Primate referred earlier, and their humanitarian concern for their neighbours. That commitment is there and is being built upon by the £100 million that has been announced for South Sudan and Somalia. We are keeping those numbers constantly under review because the situation is at crisis point.

Baroness McIntosh of Pickering (Con): Will my noble friend look closely at the work that Nestlé and other multinational companies have been doing in countries such as South Africa? Will he inform the House of what we believe to be the underlying causes of the famine and whether we can use technical assistance from companies in this country to improve irrigation in east Africa to enable it to secure its crops against future droughts and floods?

Lord Bates: Certainly, part of the cause is the drought that is affecting many countries because of the record level of the El Niño effect in the region. However, overwhelmingly this is a man-made crisis; this is because of conflict. If it was not for the conflict we would be able to reach people in the same way we are able to reach people in Ethiopia and Kenya. It is the fighting and insecurity in South Sudan, Yemen, north-east Nigeria and Somalia that are causing the difficulty, and people are dying as a result. The fighting has to stop.

Lord McConnell of Glenscorrodale (Lab): My Lords, the Disasters Emergency Committee has done a fantastic job over recent years in focusing the attention of the British public on particular crises as they happen. However, one of the knock-on effects of that focus can be to reduce the donations going to other humanitarian problems, in some cases happening nearby. North-east Nigeria, mentioned by the Minister, may be a case in point. It is not covered by this appeal but the situation there is desperate at the moment. Can we be reassured that the Government will do what they can in the international arena to ensure that the global community, while perhaps focusing for the moment on east Africa, do not forget the other humanitarian problems close by, and ensure a balanced approach over time to make sure that even more lives are saved?

Lord Bates: I can give that assurance; the noble Lord is absolutely right. As the noble Baroness, Lady Hayman, will recognise, there is great thought and soul searching about whether to launch a second appeal on the back of Yemen so soon—normally there is a one a year. This reflects the fact that the situation is extraordinary. Stephen O’Brien referred to the situation in 2017 as being the greatest humanitarian challenge that the United Nations has ever faced. These are huge issues when Syria is included, and our response has to be there. There also has to be a recognition of the wider response needed in Nigeria.

Lord Collins of Highbury (Lab): My Lords, the UN estimates that £4.5 billion is needed to address urgent needs, but only 2% of that is in the pipeline. The noble...
Lord Collins of Highbury

Lord mentioned the need to mobilise the international community. He also responded to my noble friend a few weeks ago about taking up the idea of working within the European Union. Surely the time is now for the G7, the G20 and the World Bank to convene an urgent financial summit. Will the Minister commit the Government to making that call?

Lord Bates: I have taken my opportunity to do so. I was grateful to the noble Lord, Lord Foulkes, for his excellent suggestion. I attended the EU Foreign Affairs Council for Development last week and made exactly those points and the plea. The Secretary of State also wrote to High Representative Mogherini on the same issue. Later today, the Foreign Secretary will be chairing the Security Council on this issue at about 8 pm GMT. That will be an opportunity to reinforce the need for the international community to do more—and do it quickly.

Baroness Sheehan (LD): My Lords, I commend the Government on their high-profile response to the famine in east Africa, which has helped to galvanise not just public support but support among the international community. DFID’s hunger safety net programme in Kenya provides small, regular cash transfers through secure biometric systems and has been shown to be very effective in reducing extreme hunger. Notwithstanding attacks from the Daily Mail, are there plans to extend this proven programme to other countries in east Africa—and if not, why not?

Lord Bates: Certainly this is a tool that has been used to get relief to the people who need it most, but often there is a scarcity of food supplies. To come back to insecurity, when there are terrorist organisations, conflicts and civil wars, sometimes just handing out cash to individuals fuels the conflict because the money finds its way to the terrorist organisations. We need to be extremely careful in these areas that we provide relief to those who need it and not resources to those who are causing the conflict.

Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017

Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017

Electricity Supplier Payments (Amendment) Regulations 2017

Electricity and Gas (Energy Company Obligation) (Amendment) Order 2017

12.15 pm

Moved by Lord Prior of Brampton

That the draft Regulations and Order laid before the House on 20 and 8 February be approved. Considered in Grand Committee on 21 March.

Motions agreed.

Collection of Fines etc. (Northern Ireland Consequential Amendments) Order 2017

Public Guardian (Fees, etc.) (Amendment) Regulations 2017

Judicial Pensions (Additional Voluntary Contributions) Regulations 2017

Judicial Pensions (Fee-Paid Judges) Regulations 2017

Judicial Pensions (Amendment) Regulations 2017

12.16 pm

Moved by Lord Keen of Elie

That the draft Orders and Regulations laid before the House on 6, 9 and 27 February be approved. Considered in Grand Committee on 21 March.

Motions agreed.

Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017

Motion to Approve

12.16 pm

Moved by Viscount Younger of Leckie

That the draft Order laid before the House on 23 February be approved. Considered in Grand Committee on 21 March.

Motion agreed.
Immigration Skills Charge Regulations 2017
Motion to Approve

12.16 pm

Moved by Lord Nash

That the draft Regulations laid before the House on 20 February be approved. 27th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 21 March.

Motion agreed.

Homelessness Reduction Bill
Third Reading

12.17 pm

Bill passed.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017
Motion to Approve

12.17 pm

Moved by Baroness Neville-Rolfe

That the draft Order laid before the House on 9 February be approved.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, the order that we are looking at today forms part of the UK’s transposition of the markets in financial instruments directive II. The directive is accompanied by the markets in financial instruments regulation. I will, if I may, refer to these collectively as MiFID II.

Before I turn to the specific changes made by the order, let me start by explaining the important context in which the changes are made. MiFID II is a key part of our post-financial-crisis regulatory reform. Agreed by the EU in 2014, it will have a significant impact on the FCA and PRA. Given this, perhaps it is not surprising that the Minister for failing to contact her yesterday and give her some indication of one or two of the anxieties that I had about the order, but I am afraid that the disruption that affected the Palace also affected my liaison. Consequently, I was not able to warn her of what is to come. Nevertheless, I am sure she will be able to answer the points I make with great facility, as she usually does, or, if not, perhaps she will write to me in due course on the issues which are not covered.

Of course, we support MiFID II and bringing it into our national law. It entrenches consumer protection. If we learnt one thing from the financial crash of 2008, it was the need to guarantee consumer protection in the most adverse circumstances. MiFID is a European response to that worldwide crisis, which affected our colleagues in Europe as it did us here in Britain. I appreciate the fact that the Minister has brought the instrument forward.

The consultation for the Government’s transposition plans revealed that, along with this order, two further statutory instruments were required in order to deliver MiFID II: the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations and the data reporting services regulations. When can this House expect to scrutinise and debate those instruments? They are a crucial part of the package. As the Minister will appreciate, they have at least an indirect impact on the workings of the instrument in front of us today—I am thinking particularly of the extended regulatory provisions and their subsequent impact on the FCA and PRA. Given this, perhaps it would have been more helpful to debate all three instruments in the round, but we are making progress on this one first.

The public consultation on transposing MiFID closed in June 2015, nearly two years ago. The Economic Secretary to the Treasury, when moving this order in the other place, stated that, “last month we concluded our consultation on the legislation needed”. —[Official Report, Commons, Second Delegated Legislation Committee, 14/3/17, col. 1.]
What were those discussions, who were they with and why did they last so long? Where are the documents on those proceedings, which, as far as I know, are not available to your Lordships’ House?

We of course support the supervision of binary options being transferred from the Gambling Commission to the Financial Conduct Authority. We agree that they are financial instruments and as such the FCA is clearly better placed to regulate their use. When does the Minister expect the FCA to produce its guidance, particularly about how it intends to protect potentially vulnerable consumers? The Minister will clearly appreciate that consumers need full disclosure about the product they are purchasing and we need the greatest clarity. Related to this, the consultation document says:

“Ahead of the legislation coming into force, the Government will consider whether consequential amendments to the Gambling Act 2005 are necessary in order to support the transfer of the regulation of relevant binary options from the Gambling Commission”.

I was somewhat involved in the Gambling Act. The experience does not rate enormously highly on the list of my joys in speaking in this House and introducing legislation, so I am very glad to see that the Government are taking a very different view in this instance.

The consultation document goes on to say that further consideration will be given to the fee arrangements for firms that hold a Gambling Commission licence and to the implications of these legislative amendments for the relevant tax framework. Again, I do not expect an immediate, full answer today—perhaps I will get one—but I hope we will get an indication as to the progress that is to be made. Can the Minister say where the Government are on these issues, given that they are not included in the order? I am sure that firms will be grateful for clarification as to where they will stand when this legislation comes into force.

I feel particularly guilty about dropping my last question on the Minister at this point, but she has enormous support and great experience and she will handle it readily. I would have given her notice had I not been so disrupted by events yesterday. An issue was raised in the Explanatory Memorandum which accompanies this order. It says:

“The Treasury is working closely with representatives from local government and the FCA in order to mitigate the possible effect on local government’s participation in financial markets”.

Yet we have not been able to find anywhere in the impact assessment or the consultation document what the Government expect those effects to be. Is the Minister in a position to outline the key monetised and non-monetised issues involved in the transposition of MiFID II for local government in this country? What discussions have taken place between local government representatives and the Treasury?

My final point relates to costs. The estimated annual net cost to business has been calculated at £105.2 million, while the impact assessment states that the direct impact on business will be £148.5 million. Can the Minister clarify the disparity between these two figures?

Baroness Neville-Rolfe: My Lords, I thank the noble Lord for offering to accept a written response to some of his detailed points. We were all disrupted yesterday; it was an extraordinary day. My officials have had a great deal of difficulty advising me because nobody without a parliamentary pass is now allowed into the building. That makes it somewhat difficult for me to answer all his questions. I will do my best and will then follow up, copying the reply to anybody else who has an interest in the issues.

I very much agree with the noble Lord that these changes enhance consumer protection. We have to transpose vital parts of the post-financial crisis legislation into UK law and, indeed, until exit negotiations conclude we have an obligation to do so: we need to move ahead. The noble Lord asked about the transposition of MiFID II in the round. As he said, in February we concluded our consultation on the legislation needed to transpose the instruments and there will be three statutory instruments. One is the order we are discussing today. As I explained, that applies from 3 January and we are under an obligation to transpose it into law by July, which I understand is very important in terms of people making preparations.

Of the other two statutory instruments, one transposes relevant requirements on the provision of data reporting services and the second transposes a wide range of other MiFID II requirements. For example, in accordance with MiFID II, it creates a position limits regime and imposes obligations on certain persons engaging in algorithmic trading. Regulators have also been consulting on the proposed rules to transpose MiFID II, one or two of which the noble Lord mentioned. I will obviously take away the point he made about consultation and debate on those issues.

I was glad to have the noble Lord’s support on the changes on options and I will look carefully at what he asked about the Gambling Act. However, there is a fair amount of agreement that it is right to bring that into the curtilage of the FCA. I am afraid that I do not have a reply on local government and I will ensure that I respond properly in my forthcoming letter.

It seems to be agreed that these are important reforms to ensure that our financial system is transparent and resilient. This is important to the City of London and other financial service operators right across the UK, which actually provide more employment outside London than in London. The changes form part of the wider regulatory reforms since the financial crisis to ensure the efficient functioning of our financial markets. I hope that we have learnt lessons from the past; this legislation puts those into practice by ensuring that our financial markets are effective and stable. There has been a fair degree of consultation. The noble Lord knows that I always value that, but I will ensure that his specific questions are answered and if necessary, we can have a further word about that.

Lord Davies of Oldham: Let me say how much I appreciate the Minister’s response. She will know that we are enthusiastic about the developments contained in the MiFID position. I was therefore not in any way being critical of the Government, merely seeking to elucidate things further. I am grateful for her response.

Motion agreed.
Crown Estate Transfer Scheme 2017  
Motion to Approve

12.32 pm  

Moved by Baroness Neville-Rolfe

That the draft Scheme laid before the House on 1 March be approved.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, this instrument seeks to ensure that it is Scottish citizens who benefit from the revenues raised from the wholly-owned assets of the Crown Estate in Scotland. That was a specific recommendation made by the Smith commission agreement in its report on the further devolution of powers to the Scottish Parliament. We have worked closely with stakeholders to make sure that we are ready to implement it, and to transfer the management of the Scottish assets efficiently. The draft scheme has been agreed with the Scottish Government.

Allow me to clarify two important aspects of the provisions in this scheme: first, the nature of the change and, secondly, the important protections it incorporates. Under this draft scheme, all rights and liabilities connected to managing these Scottish assets will be transferred to Crown Estate Scotland (Interim Management). Revenues will henceforth go to the Scottish Consolidated Fund and the commissioners currently managing these assets will have no further role in doing so. Assets will, however, continue to be managed on behalf of the Crown and maintained as an “estate in land”, which ensures that any sale receipts must be reinvested. This is in accordance with the Scotland Act 1998.

I should also be clear that the assets include both rural and urban holdings, and mineral and salmon fishing rights. This includes an area that incorporates around half of the coastal foreshore and almost all of the sea bed, covering all the Crown Estate’s activities up to the 200 nautical miles limit. Your Lordships will recall the amendment proposed by the noble and learned Lord, Lord Wallace of Tankerness, during debate on the Scotland Bill to ensure devolution of aspects of the management of the Scottish assets to the island authorities. As my noble friend Lord Dunlop said at the time, we believe that the devolution of management responsibilities will be quicker, simpler and come with fewer practical difficulties if the UK Government devolve these responsibilities in a single transfer to Crown Estate Scotland (Interim Management). This is what the transfer scheme delivers.

A consultation is now under way by the Scottish Government to consider the long-term management of the Scottish assets. The Government will make a Written Ministerial Statement to Parliament six months after the transfer of the assets. This Statement will outline the progress that the Scottish Government have made on the onward devolution of these assets.

I now turn to the second point, the important protections set out in this instrument. One of the key considerations is that this scheme ensures the continued safety of citizens across the UK by ensuring that the transfer is not detrimental to defence or national security. The Scottish assets are key to delivering strategic capabilities for the defence and security of the whole of the UK. It is prudent to ensure that there are powers which the Secretary of State for Defence can exercise where there is an overriding public interest to do so. These powers will enable the UK Government to protect all of their citizens both now and in the future. It also protects other UK-wide interests, such as maintaining a consistent approach to telecommunications throughout the UK and keeping pipeline rental increases at market value so as not to hold back our oil and gas industry.

Lastly, the draft scheme protects the rights of existing members of staff as they transfer to Crown Estate Scotland (Interim Management). Provisions are in place to cover dismissal, contract variation and pensions. They will ensure that the arrangements for transferred staff will be no less favourable than those that they currently enjoy.

We are now in a position to make this transfer of powers to Scotland smoothly on 1 April 2017. I beg to move.

The Earl of Kinnoull (CB): My Lords, I thank the Minister for her usual eloquence in explaining the transfer scheme. However, I ask her for help on a number of matters in relation to the scheme. I should say that I am not in any way wanting to object to the devolution contained in the Scotland Act 2016, of which this forms a part and which was the statutory embodiment of the Smith commission agreement of November 2014. I emphatically feel, however, that where these precious assets are concerned, we must be very careful to go no further than the Smith commission agreement, especially in relation to their status.

The framework document between the Treasury and the Crown Estate puts the status of these assets well. It is, “a trust estate, independent of government and the Monarch”. These assets are not therefore available for political uses. The first issue I will ask the Minister about is that of the onwards devolution which she spoke about a moment ago. Paragraph 33 of the Smith commission agreement saw this onward devolution going to named local authorities and to other authorities that ask. We debated this at length. As the Minister pointed out, the noble Lord, Lord Dunlop, made a ministerial undertaking in respect of the report six months after the transfer. In making the commitment, he also said that the UK Government would continue to press the Scottish Government on this issue. Can the Minister can update us on what progress has been made on that issue?

The Crown Estate is governed by the Crown Estate Act 1961, which sets out the duties and powers of the Crown Estate Commissioners and the general environment under which the assets are held. In her remarks, the Minister went some way towards this, but can she confirm that these provisions remain fully in force, now and in the future, over the Scottish assets that are transferring and the only real change is in the people and institutions who will be involved in the management of those assets?
can the Minister tell us whether a similar framework document is ready for 1 April in Scotland, given its importance in underlining the independence of the Crown Estate commissioners and providing clarity?

Lastly, I turn to the Scottish Government’s Crown Estate consultation document. The noble Baroness referred to the consultation, which started in January and finishes on 29 March. The document is 70 pages and contains, early on, a “Way forward” statement which says:

“The Scottish Ministers intend to introduce legislation which puts in place a new legislative framework for management of Crown Estate assets in Scotland”...

then, the part I emphasise—

“that ensures ... alignment with Scottish policy objectives”. Later on, it says:

“After the transfer, the Scottish Parliament will have the power to legislate on the new framework for managing Crown Estate assets in Scotland”.

Then there is the part that I would emphasise:

“This will include the ability to depart from the Crown Estate Act 1961”.

Could the Minister comment on those two assertions as well?

Lord Wallace of Tankerness (LD): My Lords, as the Minister indicated, I moved an amendment on Report, and possibly also in Committee, on the Scotland Bill, which the noble Earl, Lord Kinnoull, has already referred to. The Minister has already answered one of the questions I was going to ask, which was whether it was still government policy to have a statement after six months. I am delighted to hear that it is, and we look forward to the statement.

The noble Earl has asked the second question, which is a request for a bit of colour and flavour to the commitment made by the noble Lord, Lord Dunlop, when he was replying to the debate on my amendment and said that the Government would continue to press the Scottish Government to deliver what was promised to the island communities and other communities in the Smith agreement: some detail as to what the Government have been doing to “hold the feet of the Scottish Government to the fire” on this matter, which I think were the words used during the debate. This is a welcome first step in fulfilling the intention of the Smith commission and we hope that onward devolution will become a reality sooner rather than later.

Lord Adonis (Non-Att): My Lords, I am sorry to add to the questions that have been posed to the Minister, but could she tell the House a bit more about the relationship between the income from the Crown Estate that is being devolved to Scotland and the sovereign grant? Under the Sovereign Grant Act, a substantial proportion of profits from the Crown Estate go to fund the monarchy, and that proportion is rising significantly with the arrangement that the Government have entered into for the refurbishment of Buckingham Palace. The agreement in respect of the Crown Estate profits in England is for 25% to be used that way. Will a similar share of the profits from the Crown Estate in Scotland be allocated to the sovereign grant from the profits of the Scottish Crown Estate under this arrangement? If not, are the Scots making any contribution to the monarchy at all?

Lord Davies of Oldham (Lab): My Lords, I have no wish to pile Pelion upon Ossa, because the Labour Opposition of course fully endorse this instrument. It would be surprising if we did not, as after all we were closely associated with the development of the Smith commission. We are very much in favour of devolution of income tax to Scotland and of course see the benefits to the Scots of them being able to obtain financial advantage form the Crown Estate in Scotland, so I am very much on the Minister’s side. She has been asked some interesting questions, which I am sure she will answer in a moment or two. I have only one, very general question, which was asked by a colleague in the other place, to which I think we have been given indication of an answer subsequently. On the question of resolving disputes between the UK and Scottish Governments, there has been a substantive change since the publication of the original draft seen by Parliament in October 2015.

Will the Minister say a little about the negotiations with Scottish Ministers, particularly as the process seemed to involve the resolving of disputes through determination by independent experts? We do not know who those experts might be, nor do we know how they will be chosen. That seems a very important point, to which the Minister should address herself in the context of this instrument.

12.45 pm

Baroness Neville-Rolfe: I am grateful to so many noble Lords for taking an interest in this important order. Again, I apologise for not being able to answer every question due to the difficulties that our officials have had getting into our House, which I fear may be a problem for a day or two.

I think there is general agreement on the usefulness and timeliness of this order, which follows on from the Smith report and many hours of constructive debate in this House. It was good to hear the noble and learned Lord, Lord Wallace of Tankerness, express his general satisfaction. I will agree to check on the latest position relating to the conversations that my noble friend Lord Dunlop has had with the Scottish Government, and write to noble Lords with an interest.

The noble Lord, Lord Adonis, has asked me quite a detailed question about exactly how finances work. I would prefer to take advice and write to him with a proper answer on that.

Baroness Campbell-Savours (Lab): To all of us.

Baroness Neville-Rolfe: To all noble Lords, of course.

Lord Adonis: The Minister says my question was detailed, but in fact is it not a quite fundamental one? One-quarter of the profits of the Crown Estate in
England are going to fund the monarchy. Under this arrangement, are one-quarter of the profits of the Crown Estate in Scotland going to fund the monarchy or not? If not, is the inference to be drawn that it is only the English who will be funding the monarchy henceforth?

**Baroness Neville-Rolfe:** In the absence of expert advice, I would rather write to the noble Lord and engage if the need arises.

**Lord Adonis:** I am very sorry to detain the House but, given how important a point of principle this is, if the House is not yet fully aware of what the situation is, it is reasonable for us to agree to the order today with no knowledge at all of how the funding of the monarchy is going to continue henceforth?

**Baroness Neville-Rolfe:** If I may, I will answer the other questions that have been raised, and we will see if we can get an answer for the noble Lord.

The noble Earl, Lord Kinnoull, asked a number of questions following on from the debates in this House at an earlier stage. Devolution, as he knows and as I have said already, is a matter for the Scottish Parliament to determine. The Scottish Government are currently consulting on the long-term management arrangements.

On the question of whether Scottish Ministers will adopt the Treasury Crown Estate framework, particularly regarding the independence of the Crown Estate commissioners, Scottish Ministers will make their own arrangements for the oversight of Crown Estate Scotland interim management, consistent with the Scotland Act and the Smith commission agreement. The Crown Estate commissioners will not be involved in the management of Scottish assets once they are transferred. This will have no impact on the independence of the Crown Estate commissioners, who will continue to manage Crown Estate assets in the rest of the UK.

The Scotland Act 2016 will enable the Scottish Parliament to legislate for the management of Scottish assets. Section 1 of the Crown Estate Act will not apply since this makes provision for the giving of directions by UK government Ministers to the Crown Estate commissioners. Scottish Ministers are currently consulting on the long-term management arrangements, as I have already said. On the management of assets, the ownership will remain with the Crown.

To respond to the noble Lord, Lord Adonis, we will ensure fiscal neutrality by making a block grant adjustment, ensuring that the Scots do not profit from the transfer.

Finally, the noble Lord, Lord Davies, asked me about the process for resolving disputes between the UK and Scottish Governments and how independent experts will be chosen. In the current draft of the scheme, we have ensured that dispute resolution processes will be carried out by an independent person. Where there is a dispute about market value, an appropriate independent person with specialist expertise will be appointed by agreement between the interested parties, or between Treasury and Scottish Government Ministers, as the case may be, and in the event that agreement cannot be reached, the Royal Institute of Chartered Surveyors can be asked to nominate an appropriate person instead.

This is an important transfer of powers to the devolved Administrations. We want the administration to be seamless and to take effect, as I said, from 1 April.

**The Earl of Kinnoull:** I am not sure I have quite had an answer on the simple issue of whether the assets can now become political footballs: whether the Crown Estate Act absolutely applies, or whether the Scottish Government can depart from the Act or order the managers of the Crown Estate assets in Scotland to ensure alignment with Scottish policy objectives. Those are critical points—certainly for me.

**Baroness Neville-Rolfe:** Those points were considered. The order before us today reflects what was agreed during the passage of the Bill. We have consulted and come forward with these arrangements. I have reassured the House that the Scottish block grant will be adjusted to take them into account, so the Scottish Government will not be getting extra funding from the UK and Scottish taxpayers will continue to contribute to the sovereign grant. It is paid out of the Consolidated Fund, to which all taxpayers contribute and is calculated with reference to the Crown Estate revenue, but not paid directly out of it.

**Motion agreed.**

**EU Membership: UK Science**

**Motion to Take Note**

12.52 pm

Moved by The Earl of Selborne

That this House takes note of the report from the Science and Technology Committee *A Time for Boldness: EU Membership and UK Science after the Referendum* (1st Report, HL Paper 85).

**The Earl of Selborne (Con):** The report *A Time for Boldness*, which is the subject of this debate, is a follow-up to the April report of the Science and Technology Committee on *EU Membership and UK Science*, which explored the principal links between EU membership and the effectiveness of United Kingdom science. I first thank our committee clerk Anna Murphy, our policy analyst Daniel Ratcliffe and our specialist adviser Professor Graeme Reid, who once more gave valuable help to the committee.

Our previous report noted that a large majority of the UK science community highly valued European Union membership, but with some important qualifications. They particularly valued the ease with which talented scientists could move between member states, thereby enhancing scientific collaboration, the advantages—in most cases but not all—of harmonised regulations and the ability to access substantial funding.

In the light of the referendum result, the core question we resolved to address in this follow-up report was what actions are needed to ensure that United Kingdom science continues to flourish as the United Kingdom negotiates its exit from the European Union and thereafter plays an ever stronger role in delivering international competitiveness for the United Kingdom, as well as further progress to enhancing our quality of life.
The Government have recognised the key role that science, technology and innovation must play. The White Paper on exiting the EU has a chapter entitled “Ensuring the UK remains the best place for science and innovation”. It highlights the funding commitments made in the Autumn Statement and the Green Paper published in January on a new industrial strategy which seeks to, “...put the UK and British companies at the forefront of innovation by developing the products and services that address the challenges of the future”. The Green Paper stresses our dependence in future on becoming a more innovative economy and on the need to do more to commercialise our world-leading science to drive growth across the United Kingdom.

While our report predates both the White Paper on exiting the European Union and the Green Paper on a new industrial strategy, it can be seen as a contribution to addressing the agenda of these policy papers. Our report considers the following issues: the future funding of science and the need for scientists to continue to move between borders; the Government’s role in providing research infrastructure; and the potential opportunities offered by and after Brexit.

First, on funding issues from 2007 to 2013 the United Kingdom received €8.8 billion for research development and innovation from the European Union, while contributing about €5.4 billion to the European Union for research. So we were net beneficiaries in that respect. The Government gave welcome assurances that it would underwrite approved Horizon 2020 projects funding with new money, in addition to the science funding already committed for the period to 2021. Even more welcome in November, the Prime Minister announced a real-terms increase in government investment, with £2 billion a year by 2020 for research and development, “to help put post-Brexit Britain at the cutting edge of science”, and technology discovery. This money will be challenged through a national productivity investment fund and a new industrial strategy fund. This was an encouraging response to the implications of Brexit but the new money promised by the Government should not be seen as a replacement for European Union funding after the United Kingdom has left the EU. The EU funding should be replaced with new money.

There remain reports about discrimination against UK researchers post the Brexit vote in seeking EU funding and collaboration. Both the Minister, Jo Johnson, and the EU Commissioner have urged scientists to provide hard evidence. In paragraph 39 we suggest that for the sake of transparency, any evidence received of discrimination, together with an assessment on whether the concerns have been adequately addressed, should be published in “anonymised aggregate form”. The White Paper states that researchers should continue to bid for competitive EU research funding such as Horizon 2020 while the UK remains a member of the EU, and that existing EU students and those starting courses in 2016-17 and 2017-18 will continue to be eligible for student loans and home fee status for the duration of their courses.

Once negotiations on the terms of our leaving the EU start, it will be highly desirable at an early stage to secure longer-term assurances both for European Union students in the United Kingdom and for British students in EU member states. In order better to refute any perception that we are less welcoming than before to students and researchers we recommend in the report that the Government should maintain the Chevening scholarships and create additional scholarships for the most talented career researchers at PhD and post-doctoral levels, expand the global challenges fund and the Newton fund and make additional resources available for international research collaboration.

In paragraph 69 we recommended that the Government initiate a search for “outstanding scientific leaders” from around the globe and attract them to the United Kingdom with compelling offers of research funding. It was therefore highly gratifying to hear in the Budget Statement from the Chancellor of the Exchequer that £100 million is to be used to attract best minds to the UK over the next four years to make us a world leader in science and engineering. I congratulate the Government on this welcome initiative.

I turn to the free movement of scientists. The committee’s report is one of many to draw attention to the idiocy of not treating student numbers separately for immigration purposes. Can the Minister say whether the Government will seek to reverse the amendment made in this House to the Higher Education and Research Bill last week, which would remove students from the immigration figures? The Government’s response to the committee says that the calculation of net migration statistics is in line with best practice around the world. I would refute that—it simply is not the case, as has so often been stated in this House.

The title of the report, A Time for Boldness, refers in particular to our recommendation in paragraph 76 that we identify opportunities for bold long-term moves to reinforce the UK’s global standing in science. This could include hosting, in partnership with Governments and funding bodies from other countries, one or more new international research facilities, subject of course to a rigorous review and appraisal of value for money. We already host six pan-European research infrastructures in the UK, about whose long-term future the Russell group expressed some concern in its evidence to us. We also host such major research stations as the European Space Agency and the European Centre for Medium-Range Weather Forecasts. I know that the noble Lord, Lord Krebs, in his intervention today will speak on the need to ensure that the European Centre for Medium-Range Weather Forecasts is retained in this country, although its data centre will be moved to Italy. I would very much support that.

The Committee recommended that the voice of the scientific community should be heard alongside the voice of business during the Brexit negotiations and in making future alliances. We need science at the centre of the negotiations. We urged the Government to assess in the short term the need for a chief scientific adviser in the Department for International Trade, bearing in mind the scale of scientific analysis that underpins the international trade regulations which will be required for trade negotiations. The Government’s
response said that the Department for International Trade is considering the case for appointing a chief scientific adviser. Can the Minister tell the House of any progress in this respect?

Lastly, I turn to such opportunities as might be offered for science after Brexit, in spite of the very obvious challenges. The Science and Technology Committee is currently taking evidence on the Green Paper, Building our Industrial Strategy. As I said earlier, this Green Paper gives encouraging priority to investing in science, research and innovation and recognises that our future ability to attract inward investment will depend heavily on the quality of our science base. The Green Paper furthermore says that the United Kingdom is fortunate to be a nation of science and technical progress. I would put it more strongly: without excellence in science, research and innovation, our prospects would be dire. We need to invest wisely and more generously in our science base to match the funding of our competitors, build on excellence, reform our public procurement to support innovative businesses, and expand the scale and scope of the research and development tax credit to cover a wider span of business innovation. Could Brexit be the catalyst that leads to continuity of policies for science, technology and innovation for more than just a few years at a time? I beg to move.

1.03 pm

Lord Winston (Lab): I first thank the noble Earl, Lord Selborne, for his extraordinarily good chairmanship of the Select Committee; I remember very well from when I was a member of that Select Committee some time ago his wisdom in leading our inquiries and debates. In response to the excellent report that the Select Committee has produced, the Government state that,

“a global Britain must … be a country that looks to the future. That means being one of the best places in the world for science and innovation”.

It also goes on to assert:

“The Government made a series of announcements on EU research and innovation … to provide assurance and certainty to stakeholders”.

But the Government’s response to the recommendations to distinguish immigration statistics and student entries is, I am afraid, totally inadequate. Moreover, it gives no reassurance at all to the backbone of British science, the post-doctoral fellow—the first stage in a scientist’s career when he or she is working independently, supervising students, publishing key scientific advances and making innovations. Often these post-docs are underpaid and naturally insecure, because they are really only good for as long as their grant income lasts, and they have a constant problem with that. The added insecurity under which they are now placed is a very serious threat to them indeed. I repeat: they are undoubtedly the backbone of British science.

In a powerful speech yesterday, Alice Gast, president of one of the country’s leading scientific universities, Imperial College, pointed out the need for the Government to resolve the uncertainties that they have created and to demonstrate practically our continued welcome to this important science research force and not to use this research force as a tool for negotiation. I agree with that completely. She also pointed out in her speech the richness of the collaboration that universities in this country have with the EU—I can testify to that in my statement.

I understand some of the evidence that the Select Committee received, but not all of it. It suggests that there had not been a downturn yet in EU doctoral students and postgraduates applying to work in the UK, but I do not find this evidence convincing. In any event, it is far too soon after the referendum to make a judgment on the longer-term prospects. From our practical experience in our labs—for example at Imperial College, in my research building, which houses up to, I suppose, 100 scientists—we are hearing of many students who are increasingly reluctant to come to Britain to train and work here because of this longer-term insecurity. As we have been saying to the Home Office for years—particularly as the Science and Technology Select Committee has been saying—we need to have much better records from the Home Office of those entering the UK for study, exactly what they are studying and how they are contributing to our universities. But, yet again, I am afraid that the Government’s response to what is a basic and important request has been totally inadequate.

I have worked in reproductive medicine; it may seem a trivial area, but it is not just about in vitro fertilisation and infertile couples, this research is important to human growth and development, the ageing process, regenerative medicine and stem cell biology, and genetic disease—there are some 6,500 gene defects that cause serious diseases, many of which are a result of thousands of different mutations. This research also involves cancer treatments, because how the early cell reacts, how you see apoptosis—cell death—and how you regulate cell growth is of vital importance in cancer research. Most importantly of course, reproductive medicine is important in public health, because of the epigenetic and environmental influences that affect all medicine. In my view—though as a reproductive biologist I would say this, wouldn’t I?—reproductive biology is the very foundation of biological science.

At the height of my laboratory’s international impact, we had scientists and doctors from France, Spain, Germany, Holland, Portugal, Belgium, Poland, Italy, Scandinavia and the Republic of Ireland, as well as from some eastern bloc countries. It is not an idle boast to say that we trained most of the Greek scientists here in Britain, at Hammersmith hospital at Imperial College. They are still in practice and their research is now starting to lead our research, as is happening generally across Europe.

Regrettably, the work that is going on in Belgium, and sometimes in France, has in my view a higher impact than the work we are doing in Britain. In a typical academic year, we might have once had some 15 global languages spoken in the laboratory, mostly European, of course, and usually 10 to 20 EU nationals working on research and clinical translation of research. Now things are beginning to look very different and the number of EU nationals in our laboratories has undoubtedly decreased. For example, we now need a new chair in reproductive medicine at Imperial College. We have been looking for a long time for this chair but
we cannot find a single British candidate who is up to the standard that we need. The best chance we have of finding such a person is to look to Europe, but I do not think we will find a professor in Europe who will be prepared to come here, given the uncertainty I have mentioned. We cannot find sufficiently well-qualified candidates from Britain. The situation does not look at all hopeful. We need more people from the EU to apply. In excluding post-doctoral fellows who have received the best training and then refusing their access to continued research in the UK we are, I am afraid, further bruising UK science. They go elsewhere and become eventually not our collaborators but our competitors. We need to consider the effect that immigration policy is having, and will increasingly have, on British science.

1.11 pm

Lord Fox (LD): My Lords, I too thank the noble Earl, Lord Selborne, for his wise leadership of the committee, and I thank fellow committee members for their tolerance of my interventions. The advice we received and the support that we had from the team as well as the evidence that we received from the inquiry was all very helpful for the report. As the noble Earl pointed out, science and research are central to the economic future of this country. Its importance was recognised in the industrial strategy paper and I welcome the opportunity to debate it today.

As our chairman pointed out, a preceding report in April set out the challenges and some of the reasons why Brexit would be a problem for British science. The role of this report is to set out how we can address the challenge of Brexit and make it work for this country. The word “boldness” in the report’s title is an appropriate injunction. For that we have to thank the noble Lord, Lord Hennessy, for persuading us to adopt such stridency.

There is certainly complexity around this issue. There is Brexit, of course, but also the industrial strategy, as previously mentioned, and the Higher Education and Research Bill, to name but two elements of that. There are a lot of moving pieces. However, it is important not to let these moving pieces divert us from the scale of the task that we should undertake. The enormity of that is set out in the report. Therefore, I shall try to simplify my remarks around the themes of people, money and co-operation.

People are the cornerstone of science in this country, as the noble Lord, Lord Winston, set out very spiritedly, and their future and how it will be mapped out as we go through the disengagement process?

My next theme is money. The noble Earl set out the huge amount of money that is at stake. Underwriting the approved Horizon 2020 funding was a good, reasonable first step and the Government should be commended for that. However, time moves on and the next programme is already being considered. We need to understand where we are going on that. The report raises those concerns. In today’s Times Higher Education, a leading German academic pointed out that the current confusion makes it very difficult to understand whether the United Kingdom will be part of the EU’s multibillion research funding system. How do the Government view our position within the funding system as regards Horizon 2020 and the other schemes? If they are not planning to be part of that system, what is the plan? Will all the money from which we benefit be replaced from somewhere else in the United Kingdom?

The additional funding set out in the Autumn Statement was welcome. Can the Minister confirm that this is additional funding and not the first down payment to replace money that we are going to lose? If the Minister could confirm that, it would be helpful. I also note that the first tranche of the industrial strategy challenge fund money—£270 million—was allocated to three important technology areas. However, I wonder whether the cart has not been put before the horse a little in that the industrial strategy itself is still just in the form of a consultative Green Paper and something of a twinkle in the Minister’s and the Government’s eye, and yet money has already been pitched into it. I hope that the Minister will explain how, without an industrial strategy, they plan to focus the industrial strategy challenge fund.

The report is strong on the need for continued and enhanced co-operation. I am sure that no one in this House would disagree with that. However, we have a very good example of where existing co-operation is already being threatened, which sends out a bad message. I am sure that other noble Lords will have their own examples, but that message and the speed with which we are dealing with the Euratom issue throws the future of Culham into full and stark relief. In the context of seeking future co-operation, will the Minister explain how we are going to deal with the current co-operation issues vis-à-vis this very important institute? More importantly, would he tell the House what is the position of the scientists at Culham today? What is their future and how will it be mapped out as we go through the disengagement process?
The report rightly calls for boldness. Boldness requires bravery on the part of the Government in unilaterally assuring EU and EFTA scientists that they have a place here as long as they want to stay, in stating how the European funding of British science will be managed in future, and in admitting that we are sending out the wrong signals through our handling of the Euratom issue, and changing the way we deal with it. I ask the Minister to see the report as a call for action to achieve the best ends. At the risk of sounding like the title of a South American soap opera, I urge him to be bold and brave.

1.18 pm

Lord Krebs (CB): My Lords, I add my congratulations to the noble Earl, Lord Selborne, and his committee on an excellent and timely report. As the noble Earl hinted, I intend to speak about the European Centre for Medium-Range Weather Forecasts—ECMWF—as an example of how co-operation with other European countries and hosting European science centres bring great benefit to the UK. I seek reassurance from the Minister, as the noble Lord, Lord Fox, has just done, that in spite of Brexit, we as a nation remain committed to hosting such institutions. The Minister of State for Science and Universities said in his evidence to the Select Committee:

“We are already host to a number of important research facilities and we are continuing to develop our networks ... We continue to analyse all the opportunities to make more such commitments when they present good value for money”.

The ECMWF was established in 1975 in the UK after an international competition to host a new European institution. It is an intergovernmental institution independent of the European Union. Today it has 22 member states and 12 co-operating states from Europe. Its budget is around £85 million a year, half of which comes from member states and the other half from competitively won research and service contracts. It employs around 300 people located in Reading.

The role of the ECMWF is to advance the science of weather prediction and provide operational weather predictions, out to two weeks ahead, to the national meteorological services of its member states and other weather service providers. It was created to have facilities, such as a supercomputer, that one nation alone could not provide. The ECMWF quickly established itself as the world leader—a position it still holds today, recognised by all in the field. Its forecasting skill is the best in the world. It has become a magnet for atmospheric scientists worldwide to come to the UK to discuss and develop the science of weather, atmospheric pollution and climate projection. It works closely with the Met Office and the two together are seen internationally as a powerful scientific axis in the field of weather and climate. The ECMWF’s supercomputer is the largest in the world devoted to weather science and prediction.

The ECMWF’s accommodation at Shinfield Park in Reading was fully provided by the UK Government as part of the deal to locate it in the UK. But its success and growth mean that it has outgrown the site in Reading both in terms of office space and the computer centre. The governing body—the ECMWF Council—decided that the priority was to rehouse the data centre. As the noble Earl, Lord Selborne, has already said, on 1 March this year, the council made a provisional decision to relocate the data centre to Italy, with the final decision, after contract negotiations, coming in June.

The United Kingdom was not even second in the race to house the new data centre: Finland was the runner-up, with no third choice. Although the United Kingdom Government identified at least three possible sites in the UK for the data centre—near the University of Reading; at Harwell; and in Exeter near the Met Office—the financial input offered by the Government to provide the new facility was dismally and of a different order of magnitude from the Italian offer. I ask the Minister why the UK decided not to mount a competitive bid to house the one of the largest supercomputing facilities in the world for weather and climate. Why is something that was so attractive in 1975 no longer attractive in 2017?

Although it is clearly not ideal to have the computer in a different country from the scientists, it is workable from a purely technical point of view. So why is this a bad outcome for the UK? First, while we have housed the data centre, other countries have been investing in our infrastructure and engineering capacity; in other words, we get leverage. Secondly, this computing capacity enables us to be the hub of a global telecommunications network. Thirdly, it has given us technical know-how and experience in procurement, which has been valuable in the Met Office’s procurement of its new Cray supercomputer. Fourthly, it has been of benefit to the ECMWF to have the computer co-located with the scientists so that they can code in the most efficient way to get the most from the machine. But perhaps most worrying of all, in the longer run, the loss of the data centre from the UK may be a prelude to the loss of the ECMWF itself, if the UK is signalling, by its lack of willingness to invest, a lack of interest in the centre.

There could have been a good news story here for the UK. We could have demonstrated at the time of Brexit that the UK was still committed to collaboration with our European partners, whether in the EU or not. But by letting the ECMWF data centre go from the UK, the Government have given exactly the opposite message. I hope that the Minister will be able to respond by clarifying the Government’s position on the ECMWF and its data centre—either now or perhaps later in writing. I end by paraphrasing Oscar Wilde: to lose one centre may be regarded as misfortune; to lose both looks like carelessness.

1.25 pm

Viscount Ridley (Con): My Lords, like others, I commend my noble friend—and indeed, my noble kinsman—Lord Selborne for his very skilful chairing of this report. Like the noble Lord, Lord Fox, I thank the other members of the committee for putting up with my strange interventions from time to time.

I will focus on regulation and its impact on innovation; in particular, the first item of the Government’s response to our December report. The Government say in that response that, thanks to UK influence, “the EU has changed its approach to regulation”, and that, “Brussels is now more focused on reducing burdens for businesses”,...
“A failure to implement sweeping changes to regulation and its institutions in the UK would be to miss an important opportunity. We need light touch regulation similar to Switzerland so that Britain can become a global leader in life sciences, data, genomics, regenerative medicine and other innovation-based fields”.

In the hearings for this report we heard similar responses in evidence. Dr Beth Thompson of the Wellcome Trust told us that,

“we are discussing where we might be able to tweak legislation or look for advantages for the UK”,

so,

“there is real potential that we can use the UK as almost a testbed to try new regulatory approaches and within a more robust framework be more experimental”.

Sir Michael Rawlins of the Medicines and Healthcare Products Regulatory Agency said:

“We could be swifter than the EU. Right at the very end it is not the European Medicines Agency that gives marketing authorisation; it is the Commission en college, and it takes 67 days on average. Someone I know very well in the pharmaceutical industry told me that each day of delay for a pharmaceutical marketing authorisation costs the company about $1 million. That is $67 million gone waiting for the Commission to decide to meet en collège”.

When we leave the EU we need an innovation principle, alongside a sensible version of the precautionary principle. It should state that all regulators must take into account whether the enforcement of a new rule would stifle innovation that could be beneficial. So in replying, I ask my noble friend to assure us that, in contrast to the message delivered by the response I quoted at the start of my remarks to our December report, he agrees this is a time for boldness, in regulatory reforms as well as in every other respect.

1.31 pm

Lord Hennessy of Nympsfield (CB): My Lords, I declare my membership of the Science and Technology Committee and add my tribute to the chairmanship of the noble Earl, Lord Selborne. I also declare my fellowship of the British Academy and my professorship of contemporary British history at Queen Mary, University of London.

When violence strikes, as it did yesterday, taking lives, injuring individuals and assaulting the central institution of our open society, it scarcely seems right, in the shadow of tragedy, to return to our disagreements over Brexit. Yet today we find ourselves on a significant patch of the post-referendum landscape, where I hope we can find more to fall in about than to fall out over. By this I mean the desirability—more than that, the powerful necessity—of our country remaining a world-class player in science, technology, the arts, humanities and social sciences; in short, the indispensability of continuing to think heavier than our weight in the world.

We may agree on this crucial shared purpose, but how best to sustain it—even to burnish it still further—in our new geopolitical circumstances, raises a host of questions, many of which are captured in the Select Committee report before us. Ours really is, as other members of the committee have said this afternoon, a time for boldness, not timidity, for building purposefully on past achievements and striving for an even greater national performance.
A powerful contributor to this cause will, I hope and think, be a knowledge of how we acquired our existing prowess—how it has been achieved over many decades. I am delighted to say that the British Academy, encouraged by your Lordships’ Science and Technology Committee, is working on precisely this, analysing the singular and, I have to admit, rather baffling mixed economy that supports the life of the mind in the United Kingdom. I look forward to the results of that study with keen anticipation. We each have a kind of idea of the key factors in our prowess, ranging from the admirable Haldane principle, which helps keep the state an indispensable sponsor but not an unwelcome, overdirecting intruder into the free play of independent inquiry, right through to the dual support system for our university research.

Critical, too, I am sure, to past and current success is the scope given in the UK universities to young researchers to question orthodoxies and to open up new lines of thought; in other words, to not defer to their seniors. Crucial to this is the free movement of talent, not least to and from the nations of the European Union. There can be no tariffs on the exchange of knowledge. Nor should there be post-Brexit any barriers to the free movement of scholars who carry these ideas. The most precious of all common markets has always been the common market of the mind.

In the unfolding cartography of Brexit, the avoidance of boundaries on the scientific, technological and scholarly fronts is therefore a first-order question. Both the Department for Exiting the European Union and the Department for International Trade will need bespoke chief scientists of polymathic gifts to patrol the new rimlands, providing early warning of both problems and possibilities ahead and helping to ensure that our requirements and existing prowess are safeguarded during the great repositioning to come. For the free trade of the mind, in both people and knowledge, is as critical to our fortunes as the free trade of goods and services. Our intellectual and economic well-being depend upon it. It is a question of both funding and spirit—of recognising the sense of urgency required—and it links the uncertainties of Brexit with the wider industrial strategy that Mrs May has striven to make such a shining badge of her premiership so far.

Of all the eight previous industrial strategies since the Second World War, science and technology has more prominence in this one—if last January’s Green Paper is a guide—than in any since the early 1960s, when Harold Wilson used the “white heat” of his wished-for technological revolution to illuminate his path to 10 Downing Street in the autumn of 1964 and his promulgation of Labour’s National Plan a year later. Perhaps the noble Lord, Lord Prior, for whom I have the greatest respect, could promise us a bespoke debate on this, the ninth industrial strategy of his and my lifetimes. I hope he will forgive me if I make plain to other noble Lords that he and I have been engaged in a rolling conversation about what the magic ingredients of the 2017 version might be that were lacking in the previous eight. He might like to give us a little hint of that when he winds up.

What I am sure of is that when economic historians in the 2050s look back on the anxious, neuralgic politico-economics of the early post-referendum period through which we are now living, they will notice just how much was riding on the UK’s science and technology—on Britain as a knowledge power. If we do not get this aspect of our national life right this time, those historians will not spare us, and nor will our people, whose current and future needs this Parliament exists to serve. We have here a consensus in the making. We should act on it—and seize the hour.

1.37 pm

Baroness Morgan of Huyton (Lab): My Lords, I am pleased to take part in this important debate and particularly pleased to be a member of the Select Committee under the able chairmanship of the noble Earl, Lord Selborne. We are served by a strong team, and particularly by a specialist adviser whom we regard highly, who puts up with a great deal of trouble from some of us at times. He is truly an asset to us. I also draw attention to my relevant interests as outlined in the register, specifically that I am a chairman of the Royal Brompton & Harefield Trust and vice-chair of Council at King’s College London.

The committee’s report in April, ahead of the referendum, reflected the overwhelming balance of opinion we heard. The UK science community hugely valued the UK’s role and partnerships within the EU. was concerned about the loss of strategic influence—including positions of leadership in important areas of research—recognised the significant funding advantages enjoyed by the UK, the harmonised regulatory environment, access to research facilities, and the easy movement of talented individuals and teams.

It was right to return quickly post-referendum to this subject—and no doubt we will do so again repeatedly. Indeed, I suspect that we would all argue that support for science—in its broadest definition—has become even more important since 23 June and will be vital to the success of a post-Brexit economy.

There are real concerns about future funding beyond the period of funding guaranteed by the Government. I do not doubt that government, particularly the Treasury and BEIS, understands the need to fund science and research, but the reality of the financial pressures piling up makes me extremely nervous. Scientists have heard the reassuring confirmations from the Government about funding in the near future, but collaborations take time to develop and, as we know, they can last for very many years. There is no certainty at the moment for that sort of period.

However, in my brief contribution I will focus on the area that most concerns me: attracting, growing, retaining, valuing talent—in other words, people. In the end, they are the most valuable resource. International funding follows brilliant people, and they in turn create strong teams and attract more funding and talent. It is a sort of circle of excellence.

Throughout our hearings for the April and December reports, we heard repeatedly from academia and from business—from start-ups to large companies—that attracting talented, highly skilled people was top of their collective agenda. I am aware of, and was pleased to read about in the industrial strategy Green Paper, the drive for technical education, whether through new post-16 qualifications or apprenticeships. This reskilling and upskilling of our population both at
school and throughout life is essential to harness opportunities now and particularly in the future as it becomes, presumably, more difficult to attract workers from overseas and as jobs change fundamentally and require new skills. The report from the Digital Skills Select Committee, before the referendum, highlighted the priority that should be given to improving digital skills at all levels in our population and the need to enhance these skills throughout life, but digital is only a small part of the STEM story.

However, I am anxious that there is still a lack of proper "joined-upness" across government on all this. In particular, I am somewhat anxious about the involvement of the DfE in a coherent approach to STEM. One example is maths. Last year I chaired a commission looking at how to strengthen STEM teaching and outcomes for students in Haringey. Among a range of recommendations around attracting strong teachers, getting STEM into primary schools, creating new partnerships with the independent schools sector and greater specialisation post 16, we looked in particular at maths in schools. We were told very clearly by employers and economists—from Sir Roger Carr at BAE Systems through to very small local start-ups and local health employers—that they all were looking for a similar thing in young people. They were looking for strong basics, confidence and the ability to work in teams and to think and question—in other words, rounded, bright individuals—but they also all emphasised the importance of confidence around numbers, at whatever level these young people left formal education. That meant, they argued, that students should continue with maths for as long as possible to develop capability and confidence, whether or not it was to lead to a further qualification.

However, we found that there was a widespread under-the-radar approach, whereby only students with an A at GCSE were being allowed to take maths in sixth forms. This is obviously the negative effect of blunt accountability—I confess that I speak with history on accountability—where head teachers are anxious about their students not getting a high enough grade at A-level, affecting what is out there in the public realm, and so are not allowing them to take maths post 16, coupled with difficult finances in schools. The Institute of Physics, among others, said that it was wrong and limited participants in higher-level STEM studies across the piece. Limiting students who take up maths to only those who get the top A-level grades goes against the stated government intention of increasing STEM skills at all levels. I hope very much that the maths review headed by Professor Sir Adrian Smith makes clear recommendations around this issue, and in particular I hope that the DfE recognises its responsibility to sort this out.

When our Select Committee heard from Sir Mark Walport this week about UKRI, we asked about the promotion of STEM in schools. His reply gave little comfort that his team had any links with the DfE. He said that it would produce a "narrative" about why STEM is important. That is not to criticise Sir Mark but, rather, to emphasise the need to understand the whole picture of education and training rather than segment it according to government department. But of course the attraction of highly skilled individuals to university, post-doc and beyond, and to industry is crucial. We know that the intertwining of universities and industry is fundamental to the UK's future success and in particular to less favoured, non-golden-triangle regions and sub-regions of the UK. The industrial strategy Green Paper is pretty weak on the attraction and development of high-level skills and I hope that it will be strengthened post consultation.

We know that EU students make up about 5% of the UK university population, with non-EU international students making up about 14%, the figure being particularly high in the postgraduate sector, but in leading research universities the proportions are much higher. I know that at King's College London, for example, across the student body over 14% are from the EU and a further 22% are from countries outside the EU. Among academics, 28% are from EU/EEA countries. I have been involved in interview processes already where candidates are hesitant about either staying here or, in particular, moving here from another EU country, and even people outside the EU are now affected by the general uncertainty.

At the Royal Brompton and Harefield NHS Foundation Trust, I have had a look at the relevant figures. The starkest figures are that 52% of nurses and 20% of doctors are EU nationals, and in cardiology the figure rises to over 26.5%. The reason that that matters is obvious: the Royal Brompton and Harefield trust, like other highly regarded specialist trusts, is important both to the delivery of healthcare and to the standing of the UK. It delivers top-end, innovative treatment, and it works with its academic partner, Imperial College, to push the boundaries in respiratory and cardiac medicine. That needs bright and highly capable people. The UK needs such places and such people as beacons post Brexit.

However, when I talk to colleagues at the hospitals and at King's College, they report insecurity, nervousness and instability. That is hugely damaging for teams that rely on each other to deliver results in research and treatment. Such reactions are not surprising. To be blunt, at its best, they are getting mixed messages from government and throughout the media. The cacophony is confusing: positive one day and negative another, depending on the Minister, the department and the press reaction. They read distressing personal stories about long-standing residents of the UK being ejected, and they wonder what that means for them.

The Government say that it is important to attract the brightest and the best but then say that they collect statistics on students so that local authority services can be planned. That really does not wash. We already know that existing visa arrangements for non-EU students and highly skilled employees from non-EU countries are cumbersome and at best unfriendly. I have talked personally to many post-doctoral students moving away from the UK. In other words, as we heard very elegantly from my noble friend Lord Winston, we train them and then we lose them, and these are our new trading partners of the future. It is crazy.

It seems to me that the real problem is this: people are not run by algorithms—even scientists. They are not 100% rational. They have emotional reactions and
are affected by stories and rumours and by someone saying something unpleasant on the train, in the supermarket or outside the school gate. They wonder whether their families will really be welcome here and whether their place they had understood it to be. There should be no more mixed messages and justifications, and no more concerns about Daily Mail reactions. This needs to be sorted out for our productive future but also for our collective values as a country. I look forward to the Minister’s response.

1.47 pm  
Lord Trees (CB): My Lords, I am not a member of the Science and Technology Select Committee but I have read its report with great interest—it provides a forward-looking sequel to the earlier report of July 2016. I join other noble Lords in congratulating the noble Earl, Lord Selborne, and the committee on the production of an excellent report and I welcome its conclusions. I should perhaps declare my interests as an emeritus professor at the University of Liverpool and as chair of Moredun Research Institute in Edinburgh.

I want to make a few brief points, some of which have been alluded to already. The first is about the international nature of our science and technology, on which the noble Lord, Lord Winston, spoke passionately. That internationalism undoubtedly contributes to the quality of UK science. In my own field of veterinary science, in the latest global rankings of quality, the QS World University Rankings, of the top five veterinary schools in the world, three are in the UK—a fact of which I am very proud. In our veterinary schools in the UK, nearly a quarter of our academic staff are non-UK EU nationals and they make a vital contribution to our academic discourse in teaching, in clinical teaching and research, and in bench research. It is essential that we retain such people for the future.

Especially in the smaller disciplines, the critical mass which so often fertilises and nurtures new ideas and innovation can be achieved only by interinstitutional and international contact, collaboration and exchange. That is why continuing participation in EU framework programmes, the latest of which is Horizon 2020, is so important. Yes, the research funding is valuable and UK scientists have been incredibly successful in winning EU research grants, as the noble Earl, Lord Selborne, mentioned in his opening remarks—but it is the collaborations that are intrinsic to those EU research grants that are so important.

I will mention a particular EU networking programme that I do not think was referred to in the report: namely, the European Cooperation in Science and Technology—COST—programmes. I have been a participant in a number of these. Funds are awarded specifically to support networks of scientists, funding meetings and laboratory exchanges and so forth on defined topics. They do not fund actual research, so the value of the awards is relatively modest: between about €100,000 and €150,000. However, as a catalyst for multicentric research co-operation, they give a big bang for the buck. I hope that the Government can ensure in the forthcoming negotiations that the UK will continue to participate in the EU COST programmes. Will the Minister give the House that assurance? If we are not able so to do, I urge the Government to find the relatively modest budget from our future science budget to set up a UK-led equivalent scheme, which could be globally inclusive and would be real testament to the Government’s global aspirations in science and innovation.

The other aspect of EU funding that I want to mention—I declare an interest as a beneficiary historically—is that the framework programmes have often funded what one might call “applied research”, bridging the gap between more basic research for which we can seek research council funding and the downstream R&D which industry may fund. Many researchers, particularly in the biomedical and health fields, recognise the so-called “valley of death” in funding, which can result in promising areas of research never getting to commercial application. It is essential for our country’s economic success that we ensure in our future funding environment, with or without EU involvement, a steady continuum, progression and sequence of research support from basic science to ensure that ideas reach a finished outcome.

The last point I wish to make is on the report’s recommendation that the Government, working with the UK scientific community and international bodies, seek to establish one or more new international research facilities: on the scale of the Francis Crick Institute, for example. That is a long-term aspiration with which of course I completely concur. However, could I make a plea on behalf of the UK regions? Let us please look beyond the golden triangle of Oxford, Cambridge and London in which to site such initiatives. Of course, a clustering of scientific industrial and commercial activities is important for the success of such ventures, but there are good universities up north and burgeoning high-tech industries in other parts of the UK. Our goal should be to foster several golden triangles.

1.53 pm  
Lord Hunt of Chesterton (Lab): My Lords, this is an important debate for the future of UK natural and social science, technology, medicine and research in humanities—which I will loosely call “science” in my remarks. I declare my interests concerning scientific research in various organisations, including in Europe. I was an emeritus professor at UCL and I am a former director of the Met Office and chairman of a small environmental company.

Broadly, UK science has become more integrated with European science over the past 40 years. Indeed, the science programmes and associated technology programmes of many countries outside Europe have become more European, as the New York Times has sometimes commented, with most leading countries taking up European scientific and technical standards and regulations. I agree with the noble Viscount, Lord Ridley, that improvements are needed. But surely, if you want to make improvements, you do not walk away, you walk in there and make the improvements—so I have a different attitude from his, which seems to me too pessimistic.
[Lord Hunt of Chesterton]

Many UN agencies are also influenced by the European lead, yet the UK is walking away from this global trend. Examples of this global scientific integration with Europe are the major facilities such as the CERN hadron collider and the ITER fusion, with strong US and Japanese involvement. Major international companies also have research establishments in Europe as well as in the UK.

This global Euro trend is reflected in our House of Lords Science and Technology Committee report, under the able chairmanship of the noble Earl, Lord Selborne. However, it is not reflected in the rather insular approach of the Government’s response. The European dimension has greatly helped the UK develop its science since it joined the EU. To start with there was reluctance among many UK scientists to apply for EU grants that had to involve many European countries—jokes were made about having always to have somebody from eastern Europe or Cyprus—but that idea has now gone. As European science funding increased, so too did the recognition that EU research projects were generally of the highest international standard and rigorously refereed: indeed, sometimes the refereeing of these EU projects has been higher than in the UK, as has been commented by our European colleagues. The UK recognised that the excellence of its research was intimately linked with UK researchers being involved in EU projects.

Our committee heard evidence that the EU dimension of UK research has also enabled humanities research to expand greatly and that, with Brexit, there will be probably much less funding for this area of research. That is despite the fact that creative and humanities research is now recognised as an essential part of the UK’s industrial strategy, which we welcome. The EU, however, will not be left behind because, as I saw in some emails this morning, it now has an expanded programme on the funding of creative research, with some interesting new openings. The quote that guides its programme on this creative research and economics is that of Steve Jobs of Apple.

The first point for a future strategy should be partnering in research excellence with EU programmes, as the noble Lord, Lord Trees, commented. One way will be to provide funds to UK research groups, centres and networks to enable this to happen. Again, that is not referenced in the government response. The leaders of EC programmes are already putting out feelers to see if the UK will continue participation, as they do with other non-EU countries such as Israel, north Africa, Norway and Switzerland. These programmes are for all areas of technology and science.

An example of how collaboration might develop in future is the fact that, in my own area of fluid mechanics, the EPSRC has an excellent UK network which is now considering how it can organise in collaboration with the European-wide network of special interest groups, which UK scientists took a lead role in setting up in 1989 in the great Henri Poincaré lecture theatre in Paris. This will be important for keeping Europe and UK industry in the lead, for example with new aircraft design for the 2020s.

Our committee recognised that a central component of European research is the intergovernmental science, technology and regulatory agencies and laboratories, such as—as was mentioned by the noble Lord, Lord Krebs—the medium-range forecasting centre, the space centre, the drug regulation centre and others. Some of these were set up before the UK joined the EU and they have, in all cases, been very successful in their specific technical role. For example, the ECMWF forecasts are now generally superior to those of the USA. It always talks about tomorrow’s weather being defined in Europe as this, and defined in America as that—and we usually see what the result is.

We also have to stimulate Europe and UK business. For instance, Tim Peake’s involvement with the European science agency part-funded space station was hugely successful as a stimulus to UK science—as are the Christmas lectures at the Royal Institution and school events at the Science Museum.

The committee did not also point out that there is now a very close working relationship between the research and development commissions in the EC, which leads to the applications of much of the research of these intergovernmental agencies. The UK will not be involved in directing future EU research programmes—which, as I say, will be increasingly important for these intergovernmental agencies in which the UK is participating. We need to think about finding a diplomatic way to lead in this role in future.

There is considerable concern, therefore, about future UK involvement in these European agencies. Although it is likely that the UK will continue its membership, there is concern as to whether the research and computer centres will continue to be located in the UK. The recent decision about the European centre has already been mentioned. However, I emphasise that this kind of centre is an example of how science is applied. The centre is now working on energy and environmental applications of atmospheric and ocean science, showing the value to the UK and to the consulting company of which I am chair in Cambridge. We also work with the European centre and this leads to practical benefits.

Similarly, the UK Government should affirm their commitment to the recently established data and modelling centre at Harwell for the European Space Agency. Will the UK continue to support it? Now there is a possibility that these centres may leave the UK, it will be very important for the Government to affirm their continuation.

The report of the House of Lords Science and Technology Committee went further than just calling for the UK’s continued involvement in Europe, it called for the UK to consider setting up new major R&D institutes where opportunities might arise. These should be located where the UK already has strengths and be planned to contribute to the UK’s new industrial strategy. As the noble Lord, Lord Trees, says, they should also be in locations where there are no such centres at the moment.

I suggest—the committee is considering this—we should establish a world centre for nuclear energy and nuclear waste. This would obviously be in Cumberland, an area that is not well supported in science. This is the kind of thing we need to have. That would certainly be bold.
Lord Mair (CB): My Lords, I speak as a member of this House’s Select Committee on Science and Technology, chaired by the noble Earl, Lord Selborne. I declare interests as a fellow of the Royal Academy of Engineering and of the Royal Society. I am also professor of civil engineering at Cambridge University, where I lead a large research group, many of whom are non-UK EU nationals.

My principal point relates to the Select Committee report’s recommendations regarding people, the subject of chapter 3. One of those recommendations is: “In the short term the Government should send repeated signals to the global science community that the UK remains a welcoming place for talented scientists”.

This recommendation could not be more important. The continued success of our science and technology research is absolutely vital for the economic growth of the country, and it is the people who are crucial. At present, UK research is world-leading, second only to the USA. It is worth noting that in 2015 half of the UK’s research output was a result of international collaborations. About a third included EU partners. Losing this ability to collaborate freely would be very damaging.

The noble Lord, Lord Winston, referred to post-docs being the backbone of research teams. I fully agree. In my own Department of Engineering at Cambridge, we have over 300 post-doctoral researchers, most of them employed on research grants. This community of young dynamic scientists and engineers from all over the world is the engine room for the research that underpins the university’s world-leading reputation. One-third of these people are non-UK EU nationals. The picture is similar across the whole of Cambridge University and for other leading UK science and technology universities.

Perception is most important here. Since the referendum, young researchers around the world have the perception that they are no longer welcome in the UK. We have a huge cohort of young scientists and engineers currently in the UK contemplating their futures, who, to put it bluntly, are looking elsewhere, and the generation just behind them will not choose to come to the UK in the first place. This perception is also damaging for young UK academics contemplating their future. I am seeing this with my own eyes. Let me give an example. Only last week, a bright young British Cambridge scientist told me that, faced with a choice of applying for a position at Durham University or Trinity College Dublin, he was minded to go to Dublin. For him, the key questions were access to EU funding and freedom of movement of academics around Europe. Key non-UK EU nationals in my research group are already looking for positions outside the UK for the same reasons. The story is the same everywhere.

It is not only universities that are affected. According to the Royal Academy of Engineering, 25% of UK start-up technology companies were founded by non-UK EU nationals, and 45% of UK start-up employees are non-UK EU nationals. A clear message is urgently needed from the Government if these vital start-ups are to remain and thrive in the UK.

Many of these start-up employees are engineers. At the very time when our country faces an engineering skills crisis—with an estimated 186,000 new engineers and engineering technicians needed per year until 2024, according to recent figures by Engineering UK—we risk making recruitment and retention difficult. Engineering in the UK is highly dependent on non-UK nationals. We cannot afford to lose them or to deter new ones from coming.

Speedy removal of uncertainty is clearly of paramount importance. The Government should act now, without delay. There needs to be a reconfigured immigration system which promotes academic and researcher mobility, enabling UK universities to continue to attract and retain these talented individuals, both now and post-Brexit. Such a system should be simple and not a deterrent. It should be designed to support the dynamic nature of research by facilitating mobility for academics and innovators of all nationalities.

I have concentrated on the crucial importance of people because without people there will be no research, and, of course, without funding there will be no people. The noble Earl, Lord Selborne, referred to the announcement in the spring Budget that the Government will invest over £100 million over the next four years to attract the brightest minds to the UK to help maintain the UK’s position as a world leader in science and research. This is a welcome announcement.

The Select Committee report recommends that the science and research budget will need to be adjusted at an early opportunity to compensate fully for the reduction of funding from the EU. The Government must ensure that there is no decline in overall public funding for UK science and technology.

The proposed industrial strategy has already been referred to by the noble Earl, Lord Selborne, the noble Lord, Lord Hennessy of Nympsfield, and others. The development of an industrial strategy during the UK’s departure from the EU is a major opportunity for the Government to strengthen their support for UK science and technology and to increase its role in the economy. The recent Green Paper on industrial strategy identifies 10 pillars, two of which are “Investing in science, research and innovation”, and “Developing skills”, both requiring the brightest minds and fully adequate public funding. As the committee report notes, the Government have the power to mitigate many effects of Brexit. They could use the industrial strategy not only to compensate for Brexit but to further increase the attractiveness of the UK as a place to pursue science and engineering careers.

In summary, the Government should take decisive steps to promote the UK both as a first-class location for research careers and an attractive partner for international collaboration. As soon as possible, the Government must provide certainty and stability for those researchers and innovators who are non-UK EU nationals. This is needed both for those currently working in the UK and for those contemplating a future here. This is indeed the time for boldness and I hope that the Minister will agree.

Baroness Walmsley (LD): My Lords, the tone of our debates at Question Time this morning was more subdued than usual for obvious reasons, but in this debate we have rightly returned to a considerably more
forthright tone. We have heard words such as “idioty”, “derisory” and “carelessness”, so if I continue in that forthright tone, I hope the Minister will accept it in the spirit of returning to business as usual as soon as possible.

No scientist in her right mind would think of Brexit as being anything other than the worst challenge we could impose on UK science. Why would we want to lose access to major sources of funding, put at risk valuable international collaborations, deter top scientists from coming here and leave our biggest market for the outputs of science that make our lives better, healthier and longer? The committee’s report does its best to be optimistic, but it expresses very clearly the serious downsides of the choice this hard Brexit Government have made. As someone who is particularly concerned about the effect of Brexit on our life sciences, UK patients’ access to cutting-edge medicines and treatments, and the survival of our health and care services, I welcome the committee’s report, which highlights many of the concerns I have felt ever since 24 June last year, and it proposes some solutions to mitigate the worst of them.

One of the first effects I heard about, within a week of the referendum, concerned a research scientist I know who was in the early stages of a collaborative research funding application to the EU with scientists from elsewhere in Europe. He was asked to withdraw on the basis that his presence in the team would reduce the chances of the application being successful. So, while the committee states that there is a scarcity of hard evidence for this effect, it accepts that there is anecdotal evidence of discrimination in ways that may never be documented. I know that to be true.

A great many of our research projects are funded by the EU. The UK has benefited more than any other member country from EU money for science, partly because we are very good at spending it well, so the Government’s commitment to underwrite Horizon 2020 funding with new UK money is very welcome. However, what happens when Horizon 2020 comes to an end? It would be better if the Government tried to negotiate continued access for UK scientists to Horizon 2020, its successor and other EU funding, given that other countries outside the EU already have such access. The Prime Minister may not have the stomach to try to negotiate continued access to the single market, but surely our negotiators can have a try at this one, given its importance to our economy.

Harmonised regulations are particularly important to the development of medicines and medical technologies. While I agree with the noble Viscount, Lord Ridley, on the issue of GM crops, I find myself more in agreement with the remarks of the noble Lord, Lord Hunt of Chesterton, about regulation. Regulation is not necessarily a burden, and if it was faulty we could have tried to improve it from within rather than walk away. We have the freedom to sell and the confidence to buy when our regulations are identical to those of our major customers. It is therefore not surprising that most of the submissions to the committee called for UK regulations in the scientific domain to remain harmonised with the EU.

In the medical domain, UK scientists have played a major role in the European Medicines Agency, and we have here in London a great deal of the expertise in medicines licensing and regulation. Where will that expertise go after Brexit? Professor Dame Jocelyn Bell Burnell pointed out that if we wish to trade with Europe, we are going to have to abide by the European regulatory system. But of course, that system will not remain static; it will change over the years, so I ask the Minister, how are we going to keep up? If the Government decide to set up our own system it will be very expensive, as pointed out by Mr James Lawford Davies, a solicitor and partner at Hempsons, in his submission to the committee. The UK would have to set up its own infrastructure and administration, with no additional benefit to us. It looks to me like a classic example of shooting yourself in the foot. The Government tell us that it will be all right but I am afraid that, based on their record to date, I doubt it.

Have the Government assessed the cost of setting up such a system, and if not, why not? The Government appear not to have heard of the phrase “plan B”. Will the increased trade we are supposed to be expecting post Brexit be in excess of the costs of this system? The committee recommends that such an assessment be made and published prior to the introduction of what my noble friend Lady Ludford calls, “The not so great cut-and-paste Bill”. Can the Minister assure us that that will happen so that we can assess the damage? Of course, the costs of an independent system are a fact, while the potential for increased global trade is speculation. No sensible business person exchanges facts for speculation, and neither do they take on unnecessary costs. That is why much of business is against Brexit, although as we know, big business is very flexible and resourceful and will survive.

UK science depends not just on international collaborations but on attracting top-flight scientists and student scientists to the UK. Here, the committee expresses serious concerns in its report about the Government’s approach to immigration. On the one hand, Jo Johnson MP stated:

“We remain fully open to scientists and researchers from across the EU”,

while on the other hand, the Home Secretary, Amber Rudd, told the Conservative Party Conference that she would,

“look again at whether our immigration system provides the right incentives for businesses to invest in British workers”—a not so veiled threat that is to be followed up by action. In two weeks’ time the immigration skills charge—a charge of £1,000 per year for workers brought in from abroad on a tier 2 visa—will be implemented. There are exemptions for PhD chemists, physicists, social scientists, research and development managers and so on, but there are no exemptions for health and care employers bringing in essential doctors and nurses to fill the gaps in our health service. When we discussed the regulations two days ago, I demanded an exemption for the NHS and social care, and I repeat that demand today. The tax will cost front-line services £7.2 million per year and add to the black hole in funding, at a time of severe Brexit challenge to the health workforce. It is a very short-sighted thing to do. The committee pointed out that the Government are also being “less than
helpful” in refusing to exclude international students from their immigration targets, rightly described as “idiocy” by the noble Earl, Lord Selborne. The financial viability of many of our universities depends on being able to attract international undergraduate and graduate students and staff, so no wonder they are concerned about the Government’s intransigent attitude.

There are other avoidable threats. When the Health Service Medical Supplies (Costs) Bill went through the House, we passed an amendment to ensure that when the Government use their new powers in the Bill, they have to take account of the need to promote a thriving life sciences sector and access for UK patients to new medicines. Considering the challenges outlined by the committee in the report we are debating today, I am surprised that the Government overturned the amendment in another place. I hope that noble Lords will stand their ground on this when the Bill comes back to your Lordships’ House in a couple of weeks’ time.

I end by congratulating all members of the committee on their forensic examination of the threats of Brexit to British science, and I congratulate them on their valiant effort to be optimistic. I hope the Government will accept the committee’s helpful recommendations.

2.19 pm

Lord Mendelsohn (Lab): My Lords, I start by declaring my interest as an investor in the UK science and research base. I congratulate the committee on an outstanding report. Its extraordinary strength is only complemented by its remarkably few pages. It is extremely well judged. It makes all the right points with tremendous impact, it is extremely well written, it is comprehensively researched and it is a helpful” in refusing to exclude international students from their immigration targets, rightly described as “idiocy” by the noble Earl, Lord Selborne. The financial viability of many of our universities depends on being able to attract international undergraduate and graduate students and staff, so no wonder they are concerned about the Government’s intransigent attitude.

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then we put their economic contribution in tourism. That is a huge duality I have never been able to figure out.

The crucial point at the moment is our level of ambition. With all our strengths and requirements, to stand still is not just to replace what we have done before—and do we have done what we have done before—to stand still takes a huge amount of effort. But I do not think that we need to do that. We have to forge a new future, understanding what our strengths have been and what they are. In many ways the plan has to be to double down on our support for science and research. I am particularly grateful to the committee for using the notion, “A time for boldness”—not really a word I expected to see in a House of Lords report, but it is entirely apt to use such a phrase. It sends an important message that we will have to change fundamentally our approach to our commitment to what we will do in support of our science and research base, using it as a key instrument of our future economic success.

It is also important that we understand the central need for us to expand international collaboration and co-operation. Part of that is the problem of risk. We are the beneficiary of 20 bilateral science and technology agreements between the EU and nations including Brazil, China, India, Japan and the United States. The EU has 850 joint research projects with 160 nations. These are important projects that we are keenly plugged into and agreements that we have benefited hugely from. To maintain that level of co-operation and connection we need to have a tremendous amount of force and resource associated with our effort. To get ahead will require even more.

It is important for us to understand that international co-operation is increasingly a prerequisite for world-class scientific research. More than half our research output is now internationally co-authored. Much of our international collaborations are with EU partners. I think that seven of the UK’s top 10 strongest collaborators are EU countries. It is also important to recognise that people’s perceptions of the nature of international collaboration have changed. In preparation for this debate I recently read a survey of students who were asked the question, “Which country is having the most significant scientific impact on the world?” Number one was international collaboration. The future of outstanding science and research is about international collaboration. Our place is to ensure that we remain at the very heart of it. That is also important. I add my voice to the committee’s point on making sure that sufficient scientific expertise is drawn into the Government’s Brexit negotiations and appointing scientific advisers to key departments.

Connecting our research base to business and industry will also be key in the years ahead. Innovate UK and UKRI will play an increasingly important role related to these matters. It is also essential to ensure that that partnership with business and other areas accompanies our expansion of facilities.

I strongly endorse the committee’s recommendation that at least one major research facility be introduced in this country—to say “at least one” is a good indication of ambition. More would be better, but if we fail to introduce one, we will fail to do more than stand still.

I have been to Harwell and seen this tremendous new instrument, the Diamond Light Source, adding to the central laser facility and the ISIS neutron and muon source synchrotron. These are not the only facilities of this nature: others are being built across the world, in other continents as well as in other parts of Europe. We have to do more to centre more on such facilities and to back them more strongly.

On the importance of ensuring that our research base is connected with business, we need to do more to ensure a good circularity in our scientific and research application. It is especially important as we witness business investment, including R&D, falling for the first time since 2008: a drop of 1.5% in 2016 compared with 2015 according to the OBR’s most recent report. The OBR forecasts a further fall in 2017, citing, “heightened uncertainty following the EU referendum”.

We will not return to 2015 levels until the end of the decade. Depressed private sector spending on R&D was a crucial factor in the economic slowdown that preceded the financial crisis. This is a dangerous and worrying sign and one we really have to address.

It is important in promoting our scientific and research base that we give some attention to the other sources of funds that are required—to being able to encourage instruments such as the Rainbow Seed Fund. I must declare that I have invested in companies that it has put money into as an early stage venture capital instrument. That was established by the department—I cannot remember its acronym at the time it was established, but noble Lords know the department I mean—and by the research councils in co-operation. It is a very small fund. It is an outstanding group of individuals who have backed an outstanding series of companies across the UK research base. It is exactly the sort of instrument we should be backing. There are also people such as Neil Woodford and foundations such as the Wolfson Foundation and the Wellcome Trust. Such places are where we look for new capacity. We must find new ways to encourage more to act like them and more instruments. This is a crucial time for us to take this challenge very seriously.

It has been an honour for me to participate in this debate and to reflect upon the committee’s outstanding report. As we focus on what we can do to benefit the people of this country and the world by expanding science and research, the particular importance of being an outward-looking nation, able to address other countries and other peoples is crucial. After a day such as yesterday, we have to show not just how importantly we treat our role as hosts to those people who unfortunately had their lives transformed by those events, but how much we value our place in the world. Science and research is one of our great contributions.

2.33 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, I add my congratulations to those of other noble Lords to my noble friend Lord Selborne on this extremely good report. I hope that his committee can build on that report and that it will form a very big part of our industrial strategy.
I do not think there is any doubt that research is one of the jewels in the UK’s crown, but we should never take it for granted. The report is called *A Time For Boldness* and I agree with the noble Lord, Lord Mendelsohn, that while it may be an unusual title for something from the House of Lords, we do need boldness. I have heard, in talking to many other people about the industrial strategy, that the UK is incorrigibly incrementalist. When the noble Lord, Lord Hennessy, asks, “Where is the magic?” or “Where has the magic not been?” it is because we have been incorrigibly incrementalist. So it is a time for boldness. If Brexit does only one thing, if it acts as a catalyst for change and boldness, then it will have achieved considerably more than the eight industrial strategies that the noble Lord, Lord Hennessy, referred to. We should take Brexit as a catalyst for change.

As noble Lords have mentioned, of course there are risks, but I say to noble Lords who are naturally enthusiasts and naturally positive people that, if they become too pessimistic about the future, they will help create this perception that post-docs and younger academics to whom they referred have—the feeling that somehow things are not good. I say to the noble Lord, Lord Winston, for whom I have huge respect, that although I cannot comment on the state of current reproductive medicine at Imperial, if he walks down the corridor he will see one of his colleagues, the noble Lord, Lord Darzi, and what is being done on robotic surgery, for example. Imperial is at the absolute forefront of many technologies and the noble Lord, Lord Winston, should not forget that.

The noble Lord, Lord Mair, referred to issues at Cambridge. Again, if we take an area such as artificial intelligence, Cambridge is clearly among the world leaders. Look at robotics and go down to Bristol and see what Bristol University is doing in robotics. We have some world-class technology still in the UK. If we want evidence of recent investments, we can look at the £60 million Novo Nordisk investment around diabetes at Oxford University, or the new investments that GSK and Apple are making in this country. Google has made huge investments, through DeepMind, in artificial intelligence in this country. So let us not be too depressed about the future when a lot of very good things are happening.

It is not unreasonable that we have focused today on what I will call the consequences of Brexit rather than looking slightly more fundamentally at the causes of Brexit. Actually, the causes of Brexit, together with the consequences of Brexit, are what we should be looking at, because, if we are honest, many of our difficulties predate Brexit. They predate even our accession to the European Union back in 1972. I think we set these out pretty clearly in the industrial strategy. We have gone through various stages of industrial strategy. We have gone through big government, nationalisation after the war and the sort of tripartite power-sharing of the 1960s and 1970s, with the CBI, the TUC and the Government sitting around trying to sort things out. We then went to the privatisation and markets of the 1980s and then, more recently, with the coalition Government, we had more of a focus on sectors, but the one common constant throughout that time is that we have had low productivity in this country. Today, after all the iterations we have gone through, we are still 20% or maybe 30% behind the leading countries of Europe and the USA. The Green Paper is explicit about that, as indeed was Andy Haldane, the chief economist of the Bank of England, in his speech, if anyone saw it earlier this week. We have a productivity problem in this country.

It is not just a productivity problem. Since the 1980s—with the third Industrial Revolution, the information technology revolution and, as we move increasingly into what is called the fourth Industrial Revolution, with machine learning and artificial intelligence, as ever more cognitive skills get replaced by machines, rather than just manual skills—we have seen to some extent a hollowing-out of the labour market, as Andy Haldane put it, which is resulting in more inequality. In our country, we have not just societal inequality but geographic inequality. We have a hugely successful and productive area in London, particularly, and the south-east more generally, but that level of productivity is not shared in the rest of the country. That is why what we face today is a productivity question but also an inequality question. Those are the questions we really have to address and that is the context in which we should see the research and innovation strategy.

The emerging themes of the industrial strategy—some of the magic that I hope we will be able to identify—are, of course, around the vocational skills that the noble Baroness, Lady Morgan, mentioned earlier. It is clearly critical that we address that. Looking back, perhaps one of the great policy mistakes that successive Governments made was to encourage too many people to go to university at the expense of vocational training, apprenticeship training and the like. The work that David Sainsbury—the noble Lord, Lord Sainsbury—has done in that area is hugely important and I hope that it will be a critical part of our industrial strategy.

Then there is place: we have to address the fact that many parts of the UK have not done as well as they could. Look back at the history of towns such as Liverpool, Manchester, Sheffield and Birmingham: if we can rebuild those civic institutions, there is a chance that we can rebuild those clusters of technology and manufacturing that we used to have.

I turn to research, which is the specific issue that we are debating. In terms of the message and narrative, the Government could not have been more explicit that science and innovation are critical to our future. As noble Lords know, that was set out in the White Paper published in February this year, from which I will read a short extract:

“The Government is committed to building on the UK’s world-leading science base—including more Nobel Laureates than any country outside the United States—and making the UK the go-to nation for scientists, innovators and investors in technology”.

I appreciate that fine words butter no parsnips but look at the actions we have taken: the Treasury has underwritten all successful bids for Horizon 2020 funding and we have provided further assurance by confirming that existing EU students and those starting courses in 2016-17 and 2017-18 will continue to be eligible for student loans and home fee status. We have also provided assurance about
postgraduate support through research council studentships. These will remain open to EU students starting courses in 2017-18.

We have gone further to support a healthy science and technology ecosystem in this country than ever before. We are spending an extra £4.7 billion on research over the rest of this Parliament, with an extra £2 billion a year by 2020-21. That is the biggest increase in research spending since 1979, so we are putting our money where our mouth is. Our new industrial strategy challenge fund will direct some of that investment to scientific research and in particular to the development of a number of priority technologies, helping to address Britain’s historic weakness on commercialisation and turning our world-leading research into long-term success.

I tend to look to the USA—just look at the work that DARPA has done over the years. The federal funding of research in the US is far higher than it is in our country. That country, which purports to have small government, spends on a per capita basis significantly more on research than we do. Through institutions such as DARPA, the USA has managed to turn that into huge commercial success. Just look at the iPhone, which is probably the most obvious success: nearly all the technology in the iPhone, whether it is the chip, the global positioning, the LCD or whatever, it happens to be came out of federally funded research.

That was of course taken up by great entrepreneurs, backed up by deep capital markets to turn it into a huge commercial success. That is something we need to do but in many of these areas, whether in robotics, AI, machine learning or whatever, we still have some fantastic technology in this country.

I turn to the issue that I think concerns noble Lords the most: attracting people. Can we attract the world’s best people into this country? I agree that if we cannot do that, then we have a serious problem. It has been said that perception is hugely important, but let me quote the Prime Minister:

“...I want this United Kingdom to emerge from this period of change stronger, fairer, more united and more outward-looking than ever before. I want us to be a secure, prosperous, tolerant country—a magnet for international talent and a home to the pioneers and innovators who will shape the world ahead. I want us to be a truly Global Britain—the best friend and neighbour to our European partners, but a country that reaches beyond the borders of Europe too”.

David Davis also said that pulling out of the European Union does not,

“...mean pulling up the drawbridge. That’s also not in our national interest. We will always welcome those with the skills, the drive and the expertise to make our nation better still. If we are to win in the global marketplace, we must win the global battle for talent. Britain has always been one of the most tolerant and welcoming places on the face of the earth. It must and it will remain so”.

We should not confuse our rightful desire to have control of our immigration policy with a policy that is anti people coming into this country. The two are not in conflict with each other. It is perfectly reasonable for any country to want to have some control over levels of immigration. That does not mean that we are in any way against immigration or, in particular, against encouraging people to come in with the skills and talents that we need to grow and maintain our research base.

I turn to what we are doing in that area. In terms of putting our money where our mouth is in that respect, we have announced a £250-million investment from the national productivity investment fund, which will include £90 million to fund 1,000 new PhD places. At least 85% of those will be in STEM disciplines and 40% will directly help to strengthen collaboration between business and academia through industrial partnerships. There will be a further £160 million to support new fellowships for early and mid-career researchers. We also announced over £100 million on global research talent over the next four years to attract the brightest minds to the UK and help maintain the UK’s position as a world leader in R&D. This includes £50 million which will be ring-fenced for fellowship programmes to attract global talent in areas that align with the industrial strategy. For example, that could be in life sciences or battery technology. Over £50 million of existing international funds will support fellowships that attract researchers to the UK from emerging research powerhouses such as India, China, Brazil and Mexico.

Not only do we have a compelling narrative in this Government about wanting to attract the best of the world to this country; I also believe that we are putting a lot more resource and funding into research in this country. Yet there is a perception out there that we are somehow not doing either of those things. To some extent, that perception is built up by people in this House who are incorrigibly pessimistic. We have some great technology and research in this country and we should start to talk it up.

Lord Winston: I was going to be very trivial by wondering whether the Minister might care to apply for the vacant post of the reproductive professor at Imperial.

Lord Prior of Brampton: I may have many talents but I think that is one post that I am not qualified to do.

I did not address the particular issue that was raised by the noble Lord, Lord Krebs. I would like to meet him on that issue to understand more about it before I reply to him.

The Earl of Selborne: My Lords, it remains for me to thank all participants for their positive approach to our report. I was particularly pleased to hear from the Front Benches that they rather liked our title, for which the noble Lord, Lord Hennessy, should take a bow. He had an even more exuberant title for a later report, which I am afraid I vetoed—but he got away with this one.

If there is a takeaway message from this, I think we accept that my noble friend the Minister is absolutely right: there is a compelling narrative from government and more resources have indeed been made available. But it is not just in this House that perceptions are created and what we have heard from the noble Lords, Lord Winston and Lord Mair, and others who could
be described as at the coalface is an accurate representation of perceptions which simply have to be changed. It is not just the Government who have a responsibility for doing this; I quite accept that academia will have to do its bit as well. We will all have to do our bit, including those of us like me who just sit on the sides and commentate or criticise.

This debate has given a lot of positive messages as to how the perceptions could change. We have unanimously recognised the internationalism of science and how critical international collaboration is. We need welcoming signals for both people and institutions. This has been a very helpful debate.

Motion agreed.

**Brexit: Environment and Climate Change**

**Motion to Take Note**

2.50 pm

Moved by Lord Teverson


Lord Teverson (LD): My Lords, as Members depart or come in and Ministers shuffle their seats, I shall note that I am a board member of the Marine Management Organisation, which has responsibility for the marine environment that might be covered to some degree in this debate.

It is important for us to remember that all the reports from the European Union Committee are looking at not just the challenges but the opportunities of Brexit, the pluses and the minuses, the good things that can happen and the things that we have to beware of and look out for. In this report, there is probably more that we have to look out for than benefits. Some of the benefits on the environmental side are probably better described in the fisheries report that the House has already debated and in the report on the common agricultural policy, for which my committee has finished taking evidence but which has yet to be published. Both those areas have important environmental aspects. There are a number of positives and opportunities in those areas, and in this report as well.

I will concentrate on some of the areas where we have to be careful. As recognised in the Conservative Party manifesto, looking 25 years or even further ahead, the environment is key in our quality of life as a country and as a continent. Opinion polls suggest that the environment is an area on which British citizens think that Europe has an important role. It covers climate change, energy efficiency, standards for chemicals, biodiversity, migrating species, biosecurity, clean seas, the atmosphere, wastewater and the circular economy—the list goes on. I shall not go any further but that gives noble Lords an idea of the huge spectrum of issues that are vital to our future which we are talking about.

I shall highlight and headline some of the key issues. A number of them were not ones that I or the committee expected to be at the top of the list when we started this report. The first issue I shall go into, on which I could speak for many minutes but shall not, is the great repeal Bill. We welcome the Government’s undertaking that they will transfer the current legislation into UK domestic law. One of the questions is what it includes. Findings and case law from the European Court of Justice have been particularly important in environmental legislation. I will be interested to hear from the Minister whether that case law will also be incorporated into how UK courts look at European environmental legislation post Brexit.

There are 1,100 instruments that need to be translated. One of the areas that particularly concerned us is that the Secretary of State said that one-third of environmental legislation is going to be quite difficult to bring into UK law. I welcome her candid openness about this. We pursued that further and asked her and her officials what that one-third is. We had a very flaky reply, which suggested to us that not only is that roughly one-third going to be difficult but we do not yet know what it is going to be. As in other areas, there is concern about how much will be in primary legislation or in secondary legislation, but I will leave that debate for other reports.

One of the strongest points that was made to the committee was that the key issue is not regulations or laws but implementation and enforcement. We can have lots of laws and lots of good intentions, but we have to have adequate enforcement. One of the key areas of success in environmental legislation in protecting and improving our environment has been that we have strong enforcement mechanisms. I am sure other members of the committee will talk about this. The Commission as an overseer of implementation and the European Court of Justice as a strong enforcement mechanism behind that legislation have meant that not only have Governments of all stripes been careful to make sure that environmental legislation is implemented but so have citizens and other organisations. There have been a number of instances where the UK has not been that keen on implementing environmental laws—I think back couple of decades ago on wastewater and more recently on clean air—and the role of the ECJ and the Commission has been particularly important. I know from experience that the threat of infraction by the
Commission is a strong motivator for senior officials of departments and Ministers and Secretaries of State to make sure that European environmental law is implemented, and it is not only a reputational issue for the nation but a financial one. Infraction means fines, which can be considerable, and departments do not wish to lose their budgets because they have not performed. It was the very strong opinion of our witnesses that enforcement in the UK as it is at the moment would not be sufficient. There is judicial review and other areas, but this is key and one that other members of the committee will wish to discuss.

The other area which I have not really thought about quite enough, which also applies to the agricultural reports that are due to come out, is that of certainty. One thing relevant to the environment and indeed to agriculture is the acronym MAFF. We always think of MAFF as being the old Ministry of Agriculture, Fisheries and Food, but in this instance I am talking about the multiannual financial framework from Europe, which lasts for seven years and gives a degree of financial certainty to programmes that cannot be changed year on year, or in domestic terms, Budget to Budget. It is also quite difficult to change legislation and update laws throughout Europe. That can be negative, but it does provide certainty and time horizons in which investment can take place. In the environmental area, that is important for flood defences, clean energy and all sorts of other areas where investment takes a long time. The challenge is going from a seven-year financial framework—legislatively perhaps sometimes even longer—to a framework where we have annual Budgets, and laws that can change maybe year to year but certainly Parliament to Parliament. So we have that greater uncertainty.

There is even more uncertainty in financial areas and investment when it comes to the role of the European Investment Bank. This might seem not that important for the environment, but the figures show that something like €37 billion has been invested since 2000 in the environmental sector, particularly in energy. That is a huge sum. Since we have been a member of the European Union, particularly through the wastewater directive, some €12 billion has been invested in the water industry in the UK by the EIB. Yet we were unable to pinpoint where this sort of core foundation investment was going to come from in the future. Outside the EU, we are still entitled to European Investment Bank expenditure or investment, but it will be on a much lower scale than we have at the moment. So there are challenges there.

I will very quickly go through the other key areas. The first is trade and industry. We had a number of witnesses who I suspect we expected to say, “Great, let’s be buccaneering; let’s go ahead and deregulate and be successful without European red tape”. I am being perfectly objective in saying that that was not the case at all. Concerns were expressed that we should be able to enter the single market easily and that therefore our product standards needed to be the same, in terms of energy efficiency and similar areas. There was particular concern around chemicals, where there has been huge investment by companies that have had products approved by European agencies. There was a great fear of having to go through another process if we have a bespoke UK system, which would not only be expensive but would not necessarily allow access through equivalence into European markets. On trade and industry, there was a concern that we should keep equivalence when it comes to standards.

I will leave the noble Lord, Lord Krebs, to talk about climate change. I conclude by saying there are two other elephants in the room, one of which is devolution. Like agriculture and fisheries, the environment is a devolved area of policy-making. How do we bring all of this legislation back into the UK and then distribute it among the nations and various parliamentary assemblies of the UK, while keeping some semblance of common ground within? That of course will also be the responsibility of Defra; given all the responsibilities that the noble Lord will have over the next two years, we are deeply concerned about Defra’s capacity and influence with the Brexit departments to make sure all this can be achieved. There is a huge and extremely challenging agenda here. It is regrettable in a way that we do not yet have Defra’s 25-year environmental plan, which we look forward to. We would also like to see this great repeal Bill and everything that needs to be done within that context. I would be interested to hear from the Minister when that will be produced.

The environment is one area where Brexit does not mean Brexit. We are inevitably tied to the European environment through our seas, our atmosphere, our migrating species and many other aspects. It is imperative that we continue to be strongly involved with our European neighbours. I would be interested to hear from the Minister how he would pursue, for the benefit of all our peoples, that co-operation into the future. I beg to move.

3.05 pm

Baroness Byford (Con): My Lords, it is my great pleasure to follow the noble Lord, Lord Teverson, and to thank him and his committee for producing this worthwhile report, Brexit: Environment and Climate Change. I follow his introduction by making three points. First, yes, there are challenges but I believe there are opportunities as well. The second is on the width and the span of issues that the committee looked at. In a way, we are missing the agricultural aspect. I know the committee is looking at that at the moment, which will perhaps slightly overlap with some of my comments—I apologise to members of the committee if I touch on things that they are dealing with currently. The third thing is the two reports we are awaiting, which the noble Lord just spoke about. To take that a bit further with the Minister, these two reports should be looked at together. It is not a question of, “This is the environment, that is climate change and that is farming and food production”. They are inextricably intertwined and should not be separated.

In following the previous debate, moved by my noble friend Lord Selborne—that committee’s report is headed A Time for Boldness, and the same is true of this report—we are reminded of how the issues of science and technology and those in this report are linked. Good things are happening and investment in the UK is still very high in both technology and...
science, as we heard earlier today. One extra thing that I would stress in terms of both reports is that often we are full of ideas but do not necessarily see them through to the conclusion of a product. As a country, we are very good at the first part, but not so good at the final product.

Over the years, science and technology have transformed the way land is farmed. One example is GPS. Another is the technology which enables farmers to apply the relevant amount of dressing in different areas of a single field so that unnecessary applications are not made, which avoids spoiling soil quality. It is a win-win situation for the farmers themselves, but more importantly for the environment, as fields are not overdressed, avoiding the run-off and pollution that can otherwise result.

Caring for the environment should be at the heart of any farming business, and here I remind the House of our family farming interests in Suffolk, where we grow cereals but are also committed to enhancing the natural environment. The report, in its summary, rightly acknowledges that those seeking to preserve and invest in improving the environment require long-term stability in policy, to which the noble Lord, Lord Teverson, referred. The report states: “EU environment and climate change laws do not stand alone”.

Their implementation, monitoring and enforcement by EU institutions, as has been mentioned already, have made a great impression so far. That is something we need to look at. The committee goes on to express concerns about what will happen post Brexit and questions the self-regulation that may be imposed by the Government, which it is a little concerned may not be adequate. Perhaps the Minister will come back to that later.

Later in the summary, the committee’s report states: “The UK would need to comply with, or seek to adopt measures equivalent to, EU environmental standards in order to continue to trade freely with the EU”.

Chemicals regulations are highlighted, along with pesticides, greenhouse gases and many other aspects. I would have included GM and modern breeding techniques there as well.

Thirdly, the report reminds us that the environment is shared, referring to terrestrial, marine and atmospheric challenges. Finding a way forward will certainly require the UK’s devolved countries to come together in planning future policies. Nowhere will this be more challenging than within the common fishery policies, which we debated earlier this year. I would also throw into that how much the climate changes in our own nation in any case: there is a lot of rain on the west side of the country but we are very dry on the other side, in the east and south. So it is not just a pure question of the devolved countries themselves. At the end of the day, what matters for us as a country and for our environment is soil quality. That is the one item over which we have some form of control, and we need to give it greater thought. We cannot control the amount of water that falls, but looking after the soil is extremely important.

I turn now to some of the simple recommendations. Chapter 15 talks about shaping farm practices and the way the former CAP has included crop rotation and green payments. Paragraph 57 says that the Secretary of State, Andrea Leadsom, reflected to the Environmental Audit Committee that two-thirds of the existing legislation can be translated straight away, and the noble Lord, Lord Teverson, highlighted the other one-third that still has to be brought forward. Paragraph 64 says that each department has been challenged to review how the legislation in their policy areas will be affected by Brexit, to ensure that environmental protection is maintained. Chapter 7 is entitled “Influence”. Here I refer to formal influence and the way in which informally we can continue to influence what happens outside these shores, in the European Union and in a much broader way. Within that I would include many of the NGOs and those involved in wildlife trusts.

The report poses many questions. I would add my belief that we can all individually make a difference. We can waste less food and refrain from dropping litter both on land and in the sea; the pollution in our seas is just horrendous at the moment, and we must tackle the commercial dumping of waste in the countryside and in our cities. We can belong to wildlife groups, and many do. We can belong to areas where they help and support our rivers and engage in work in the countryside. All this brings benefits to us individually and generally to the environment. Ultimately, it is the farmer, the landowner, the tenant or the contractor who cares for 70% of our countryside. As former president of LEAF and now a patron, I can say that we see and practise good farm-management systems and better terms for wildlife, alongside quality crops and goods food production. It is not perfect, but we should use best practice.

Farming is simply a business like any other. At the end of the day we need to ensure that farms make a profit. I do not think they should necessarily be supported in the way that they have been, but farms have to be profitable or in the long term they will simply go out of business. Areas of the UK where profit cannot be made—there I would look to quite a bit of our upland area or small farms, where that is not possible—the challenge following Brexit will be what will happen there. What the majority of farmers need, and I think this has been highlighted by the report, is some long-term commitment. Their investment is long term, and without it we cannot produce the food that we so need.

A balance has to be struck between food production, the environment and climate change. Others will talk about climate change. All I would say from our point of view is that the pattern of climate has changed. I will not go into great detail; others will. There is a lot that we as individuals, NGOs, farmers and people who purely love the countryside and go into it can do, but financial uncertainty blocks investment—although I have to point out that at the moment the bank loans that have been given to the farming community have some of the highest rates, so the banks believe that there is a long-term future there.

The report is a good one. I am sorry I was not able to be a member of the committee, having enjoyed being one formerly, but I congratulate it because it has been drawn in a fairly short time. I look forward to hearing other noble Lords’ contributions.
Lord Hunt of Chesterton (Lab): My Lords, I am speaking in what in the speakers list was my noble friend Lord Grantchester’s spot, and he is going to speak near the end of the debate. We have just been castigated by the Minister in the previous debate for being so gloomy, so I will try to make one or two non-gloomy remarks. This is the second important debate today on issues of science and technology as applied to the environment and climate change. I declare an interest as an emeritus professor of climate change at University College, a fellow of the Royal Society and chairman of a small company that works on the environment.

This debate is not only about science and technology but about legislation, regulation and finance. We face big issues in improving the environment and dealing with climate change. How will the UK continue to work and collaborate with other organisations across Europe as the UK leaves the EU? Some of the organisations currently present in Europe, and with very important roles, are intergovernmental—such as those for the regional seas, pollution and nuclear energy—while some are specifically European organisations, such as the European Environment Agency. An important point to understand is that, whether these organisations are intergovernmental or regional, many of them are involved in programmes with the European Commission. They use a lot of their research programmes to help provide guidance, decision-making and data. We are going to leave the EU, so what is going to happen to our cross-involvement in the UN, regional organisations and so on? The EU currently involves non-EC countries and areas such as Norway, Switzerland, Israel and north Africa, and they are very effective on some of these environmental programmes. It would be useful to hear from the Minister how he sees the strategy. There needs to be consultation with all sorts of organisations. The research and environmental organisations of Britain are deeply involved in all these environmental organisations, which are proving very effective.

The other important point is that we need to evaluate the benefits of the different levels of these organisations. Some of them are involved in UK Government standards, but we need to understand exactly how Brexit will affect that. One of the consequences is that the UK will no longer have to maintain environmental standards, even though we should recognise that they have steadily improved over the past 40 years—for example, cleaner beaches and higher air quality standards. I am afraid the standards provided by the UK Government may well come under some suspicion because there have been some dodgy practices with air quality in London in the last couple of years. It is very important that we have clear verification of what is being done when we start out on our own.

Having Europe-wide standards has been very important in enabling local authorities and the Government to keep saying, “This is the reference standard against which we are working”. How will this confidence be maintained in future? We should hear that from the Minister.

Another feature of the worrying future is the UK Government introducing standards and providing data which will be almost unchallenged. On what basis will those changes be made? Some standard analysis is necessary. We need to evaluate the economic, health and environmental factors in such studies.

The report reviews the EU climate change legislation and the EU Emissions Trading System, which currently guide UK investment in carbon and non-carbon energy systems. Even if the UK follows the EU and the Intergovernmental Panel on Climate Change agreements on reducing carbon emissions, that does not tell us how the UK will develop its future policy. It may be working on existing policies, but many of the standards—those run by the UN and those run by the European Commission—will change.

The question is how the UK will find a partnership to work with European and other major emitting countries and their organisations. Although the Prime Minister assures us that the UK will be in Europe, this general assurance needs to be explained. Will the UK focus simply on the IPCC, or will it develop some ad hoc discussions in, for example, the G20, and therefore rely on UN agencies to provide the standards?

Importantly, we must also ensure that we have extremely high standards of multilateral climate change research programmes. The UK has substantial and well-respected climate change research laboratories and centres, such as the Hadley Centre, Scott Polar and other arctic institutions. What future arrangements are envisaged for how those UK research institutions will work towards these practical objectives with other countries? I assume that Her Majesty’s Government expect increasing involvement of the UK research institutions to guide them in their transition.

Finally, the noble Baroness, Lady Byford, just talked about standards in the countryside—for example, concerning rubbish—and how they are distributed. In Italy, there is widespread use of data on the state of the environment, and there is an excellent webpage called Q-cumber. There are a lot of innovative ways in which we can use IT, and we have a lot of interesting IT companies in Britain to help us monitor the environment much more closely, which will be an essential part of this new world in which the UK is out on its own.

Baroness Sheehan (LD): My Lords, I start by thanking my noble friend Lord Teverson for his expertise in chairing the committee as it took evidence and discussed the diverse issues raised. I also take this opportunity to thank the clerks for their unflaggingly high standards.

I aim to restrict my remarks to the enforcement of environmental legislation, which will be crucial to the successful transfer of the EU approach to environmental protection back to one under the jurisdiction of the UK. The report notes the importance of EU membership to UK environmental protection, with no less than 80% of UK environmental legislation being shaped by the EU. The overwhelming majority of witnesses to the inquiry believed that the UK’s membership of the EU had improved the UK’s approach to environmental protection and ensured that the UK environment had been better protected.
During the referendum campaign, environmental issues did not feature large, but a national poll conducted by YouGov for Friends of the Earth found that support for the same or better environmental protection with high even among those who voted to leave the EU. The fact is that a majority of the British public remember and value the impact of our membership of the EU in cleaning up our beaches and our drinking water.

In its evidence to the Environmental Audit Committee, National Parks England reported that most environmental professionals feel that EU legislation has proved to have more clout than UK laws. It stated: “An important issue will be (if, as seems likely, the Habitats Directive no longer has to be applied) how the UK establishes equivalent fully independent administrative systems, to protect the most important wildlife sites. This seems likely to require some new legislative mechanisms if the current system for enforcing the Habitats Directive (ultimately, via the Commission and ECJ) becomes irrelevant.”

Although European law will be transposed to the UK, governance arrangements would not. We stand in danger of losing the stable policy environment that complex, well-enforced EU law has created—one that is resistant to change. The upshot of that has been higher investor confidence among businesses. This stability could be lost with the increased freedom of the UK to set its own laws.

The EU governance structure also allows the Government to be held accountable for their environmental actions—for example, through NGOs being able to challenge air quality policy in court. Professor Andrew Jordan told the committee that without the European Environment Agency, the European Commission and the European Court of Justice, there was a risk of legislation becoming “zombie legislation”—either no longer enforced or no longer updated to the latest scientific understanding.

The European Commission is a key player in the current enforcement of environmental legislation. Professor Lee said that, as things currently stand, we have, “obligations to report on how we intend to comply, then to report on how we did comply, and to explain how we will come into compliance if we fail to do so. We report to a well-resourced, well-informed, named body—the Commission”.

The Wildlife Trusts noted that the Commission, “provides a great deal of support on environmental legislation, including sharing information, monitoring progress, facilitating reporting on progress across Member States, providing guidance and interpretation of legislation”. None of that currently exists in the UK, and how will we continue to provide that level of expertise to organisations and businesses?

Environmental NGOs have welcomed the role of the European Court of Justice and its right to bring infraction proceedings against member states of they failed to comply with their obligations under EU law. This is a powerful adjunct to the role of the Commission. It has the clout to levy meaningful fines, and its rulings are attended to carefully by member states.

This is the crux of the matter. The European Court of Justice has the resources and information at its fingertips to bring member states to book. Following Brexit, it would be for the domestic courts to enforce public authorities’ and Ministers’ compliance with environmental legislation, typically by means of judicial review. However, we heard evidence from Professor McCrory and Mr Andrews of ClientEarth that the cost of a judicial review could be prohibitive, as could its time-consuming nature. It was also pointed out that although the Commission can fine, the Supreme Court does not.

At the moment, the Government, spurred on by the Commission, drives a lot of thinking about how not to be infracted. Ms Mukherjee raised this fundamental question: “If it is not the Government but a sector, or the Environment Agency in the any of the four UK Administrations that raises the question, would there be that impetus and that brainstorm behind assuring an avoidance of infraction?”

To conclude, the Committee found the Government’s confidence in its ability to hold themselves to account was at odds with the concern expressed by the large majority of witnesses. I therefore strongly endorse the words found in paragraph 84 of the report that, “an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum left by the European Commission”.

I shall leave noble Lords with the words of the Game and Wildlife Conservation Trust: “There is little use in having good legislation if there is limited means to enforce it”.

3.30 pm

Lord Rees of Ludlow (CB): My Lords, I should first crave the House’s indulgence for my delayed arrival this afternoon, and I apologise to the noble Lord, Lord Teverson, for missing the first few minutes of his speech. As his excellent report makes clear, we learn a great deal about the earth’s climate and environment by monitoring it from space, and I should like to comment on the highly sophisticated pan-European Copernicus programme, in which this country has a big stake.

We have become aware in recent months of unsuspected extra downsides to Brexit—those stemming from the EU’s pervasive involvement in high-tech activities that can be handled only on an integrated European level. For instance, there has been a disconcerting realisation that our membership of Euratom would lapse after Brexit, necessitating the hassle of somehow ensuring continuity in its essential activities.

Many had thought that our involvement in space activities would be unperturbed, because the European Space Agency—ESA—is governed by a separate convention, and we will remain part of it. That is fortunately true of the scientific parts of ESA’s programme, but it is not true of other space activities. The EU and ESA have a joint European space strategy and the EU is the biggest financial contributor to ESA’s budget. In consequence, our participation in Galileo, the European counterpart of GPS, will need some renegotiation. However, what is relevant to today’s debate is that the same is true for the Copernicus programme—a very ambitious European suite of satellites, important for monitoring many aspects of the environment and climate Copernicus promises to be the world’s pre-eminent earth observation system.

Outside the EU, the UK will have a weaker voice in Copernicus programmes, and in Galileo’s too. It is unlikely that significant infrastructure related to these
programmes will be located in this country. The UK has so far invested around £860 million in the Copernicus programme—initially via ESA but latterly via our membership of the EU—through strong alliances with other EU member states, especially France and Germany. We have shared the costs of a system that would be unaffordable by any one country.

Copernicus has been enthusiastically utilised in the public and private sectors across the UK. Its use is growing rapidly, and it is highly diverse. For example, radar data from one of the Sentinel satellites are hugely important in cloudy countries such as the UK because it allows crop and habitat mapping and monitoring where optical data are often limited by clouds. The Copernicus programme is ambitious and wide-ranging. It provides data relevant to air-quality because it allows crop and habitat mapping and so forth.

Scientists and engineers based at the Rutherford Appleton Laboratory in Oxfordshire have made major contributions to building and testing satellites for the Copernicus programme. The most recent was launched just this month. It will beam back images capable of tracking iceberg movements, illegal logging, and water pollution. The system is also designed to allow real-time monitoring of areas hit by natural disasters.

The current Copernicus programme provides data from four Sentinel satellites of three different types. The fleet will reach an operational state of eight satellites by 2020. Despite the UK’s involvement in building the hardware and its great interest in the programme, it is now unclear what access British teams will have to Copernicus’s observations if the UK loses its status as a full collaborator, which it now has through EU membership.

Before Brexit, UK industry was expected to win contracts for satellite manufacturers and providers of downstream services, valued at £350 million during the current programme and, we hope, adding up to £1 billion for the period up to 2027. All such pan-European projects will be in jeopardy, especially if we are not in the single market. So an exit from the Copernicus programme without mitigating measures would be damaging to UK industry and environmental projects—both the satellite construction industry and business operating in downstream services. Our scientific and industrial capacity has grown as a result of these investments and contracts. If the private sector is to continue investing, it needs long-term guarantees of data availability. But, of course—and this is what is most relevant to today’s debate—it threatens the UK’s full participation in a world-leading programme of huge benefit to our environmental and climate policies.

The Copernicus data policy will be reviewed by 2020. Optimists would bank on the current free and open data policy continuing, thereby allowing continuing basic data access to most UK users, but this cannot be taken for granted. Constraints on the data portals and pipelines could render data and some instruments hard to access, or the relevant data may no longer be collected over the UK in the first place. We may, as it were, go to the back of the queue. Even if data access continues, the UK would have less influence over the future evolution of the programme, and lose the ability to tune the satellites or services to our needs. This would inhibit our efforts to manage environmental issues, as well as eroding the benefits from the investments we have already made.

As I have emphasised, UK scientists and politicians have played important parts in developing Copernicus. This is a world-leading project that has given Europe a strong voice in international fora that address how we manage our planet better. This lead will be even more crucial if the Trump Administration carry through their threatened cuts to parallel efforts in the United States. The UK cannot do projects on this scale alone. If we leave the EU, some alliance with our European partners that allows continuing full participation in Copernicus will be needed if we are to foster our own environmental interests, and if our voice is to be heard in global environmental and climatic policy. Therefore, it would be welcome if the Minister could give some assurance that these concerns will be prominent on the radar when negotiations begin.

3.38 pm

The Lord Bishop of Leeds: My Lords, a number of questions have already been posed, and I pity the Minister for having to go through them in some detail. We heard earlier that we in this Chamber tend to be gloomy, and now we should be cheerful. I am neither; I am just puzzled—which is not a new experience.

From reading the report, which is a model of clarity, as are most of the Brexit reports that come from the various committees, it seems that, as we peel back the layers of the onion, we end up with more layers. I realise that that sounds paradoxical, but it seems to get more and more complex. The other night in the debate on Brexit and Gibraltar I tried to ask some questions about stress testing, to which I got no answer. So I shall try again, focusing very briefly on just one or two questions.

Is any stress testing going on in varying scenarios in relation to what happens when the legal and regulatory costs come away from the EU and have to be borne by the UK—for example, after the European Commission has lost its role and the European Court of Justice is out of the picture? Do we have to create other bodies? I ask the question because I do not know the answer—maybe everybody else does. Have these things been costed and, if so, what are the options for us likely to be?

If I were to press one point it would be derived from experience in my own diocese, which comprises the whole of West Yorkshire, a slice of South Yorkshire and a big chunk of North Yorkshire—particularly those upland areas and farming communities that were referred to earlier. Not only do they face challenges in relation to farming and the effective financing of that, but the problem of second homes, where local people can no longer afford to buy and the children of local people cannot afford to live in the same communities. Rural schools are being closed because the Government’s definition of what constitutes a small school is about three times the size of many of the schools in that part
of my diocese. There are also areas within the diocese where broadband access is non-existent—so that is another challenge of top of those challenges.

When the common agricultural policy ceases to apply, what will be the impact on the land and on the countryside management that is so essential? You cannot just have farms closing down and abandoning territory. What happens to land management? Who will replace the subsidies that allow many of these farming communities to survive, if not thrive? There is an assumption among some farmers to whom I have spoken that the Government have promised to replace what is taken away. I am not sure that I have heard that—but maybe it is in addition to the £350 million that is going to go to the NHS. Is someone going to inform the farmers? As I also pointed out in the debate the other day, it seems that we get a lot of bland statements of optimism, and I keep asking myself in my puzzlement where all the realism is in this. It might be that the department is facing those questions, but it seems to me that those of us also involved in those communities need them to be addressed fairly soon.

We have heard that there needs to be policy stability, but I identified in the report a distinction that I thought was very helpful between technical and political questions. If some of the decision-making is being politically driven, what happens to the prioritising of the technical questions? This seems to add enormously to the complexity that we have already described. We have heard in a number of these debates that we need to be ambitious and to raise our ambition in the light of Brexit. This leads me to ask: will our ambition be diluted under the weight of the complexity that is being revealed as we go into the detail of these matters?

3.43 pm

Baroness McIntosh of Pickering (Con): My Lords, it is a great pleasure to follow the right reverend Prelate the Bishop of Leeds, and I thank him for leading Prayers today on such a poignant occasion; it was very appropriate indeed. I declare my interests as listed in the register: I give advice on the environment and work particularly closely with the water regulator of Scotland, the Water Industry Commission for Scotland, I am a member of the Rural Affairs Committee of the Church of England Synod, and I am honorary vice-president of the Association of Drainage Authorities. I particularly welcome the report before us today and warmly congratulate the noble Lord, Lord Teverson, I consider him my noble friend; we had the honour to serve together in the European Parliament—and his committee on the report and on securing this debate today.

I will focus my remarks on the impact of a changing environment, extreme weather events and climate change, in particular on farming. I have been closely associated with farming, originally in the Vale of York and latterly in Thirsk and Malton. I grew up in Teesdale, where I think farm incomes are probably the lowest in the country—they are often quoted as that. I echo the words of my noble friend Lady Byford regarding hardship; I know that many farmers are turning to welfare groups on a scale that we have not seen for a number of years. We should set the debate in that context. I am mindful also that farming and fisheries are the two most dangerous industries, where people are working in significant peril.

Responsibility for damage to the environment, as my noble friend Lady Byford said, including run-off and even nitrates in the soil, is often pinned on farming practices whereas, in reality, farmers have a very positive role to play in shaping the environment and reducing the potential impact of climate change through adaptation and mitigation. Currently—we know that the moneys will be secure until 2019-20—farmers benefit through Countryside Stewardship and other schemes; they are reimbursed for the public good that they do, particularly through water management and flood alleviation schemes. It would be helpful to know from the Minister how this might continue in the future.

I will share with him and the House today one of the most imaginative schemes that I have heard about, which came from the Tenant Farmers Association, which argues for a flat rate of, say, £25,000 a year for all active farmers. I know that that would be significantly less than many of the larger farmers have earned, but it is significantly more than some of the graziers and smaller farmers in the uplands have received.

I also echo my noble friend Lady Byford on the very strong arguments in favour of having one 25-year plan, focusing on the mutual interests of farming and the environment. Farmers produce food and we all need to eat. Farmers in the hills and uplands play a very special role in food production. Ideally, eating more home-produced food could be one of the benefits which flow from Brexit. It could benefit the environment, make the UK more self-sufficient in food and boost food security. The Vale of York is home to one of the largest livestock producers in the land. If the hills and uplands were taken out of production in North Yorkshire, Cumbria, Northumbria, the Welsh hills and the Scottish hills, it begs the question of what would replace that. So it would be appropriate for the Government to consider merging these two programmes going forward. What impacts on the environment also impacts on farming and agriculture. Running them in parallel rather than as one is, I believe, a missed opportunity.

We have to give farmers and landowners the chance to plan their business at least two or three years ahead. They need to plan what crops to grow and what animals to stock on the land. Currently, many EU directives and regulations are policed by the Commission—a point that the noble Lord, Lord Teverson, set out. This is a strand running throughout the report. Any breaches are resolved on referral to the European Court of Justice. That begs the question: if we remove ourselves from the jurisdiction of the European Court of Justice and from policing by the Commission, what body will police any infringements committed in this country, and what dispute resolution mechanism will there be in those circumstances?

I will share with the House an example of the success of European environmental policy: namely, acid rain, which respected no boundaries and blew over from parts of central and eastern Europe, and probably the Soviet Union at the time as well, and wafted over parts of Scandinavia and Australia, and came close to our shores as well. The way that all the
European Union member states came together to defeat acid rain was a great success story. So European environmental policy, with Britain’s contribution, has revolutionised the UK. Far from being the dirty man of Europe, as we were in the 1980s, we have now come to a stage where we have some of the cleanest rivers and beaches. Great steps are being taken to improve air quality but more needs to be done on that and to ensure that our water and our environment remain as clean as they are at present.

I would like to pose a number of questions to the Minister. As I have already mentioned, who will police the environmental acquis going forward? What will the dispute resolution system be if we remove ourselves from the jurisdiction of the Court of Justice? The Minister will be aware that many of the current directives are undergoing revision, notably the mother directive—the water framework directive—the drinking water directive, the bathing water directive and the urban wastewater directive. These will all be concluded exactly at the time that we leave the EU in 2019. So the question to the Minister is: will we sign up to and abide by those directives, as revised, or will we simply transpose them? Obviously, we cannot do that through the great repeal Bill as they are not in place at this time.

I echo other noble Lords’ remarks about the role of the European Investment Bank. Water companies are less reliant on that at the moment because it is cheap to borrow money, but what will the capacity be for water companies or other firms involved in the environment to borrow or seek grants from the EIB post 2019? The Right reverend Prelate the Bishop of Leeds asked whether any economic or regulatory impact assessment had taken place. If no such economic impact assessment has taken place, it would be a matter of great regret as it would be the first time that such a major issue for the country had been addressed without the backdrop of an economic assessment to inform the House and others.

I seek an assurance from the Minister that the department will have sufficient staff and resources to undertake all the work that we are asking it to do between now and 2019? I echo the importance of ongoing partnerships with others and to seek an assurance from the Minister that there will be scope for bodies such as the NFU to work with Copa Cogeca, and for water companies to work with the water regulatory association—WAREG—going forward.

We have had a wonderful opportunity to debate these issues today. I know that we will have other occasions to do so in the context of the great repeal Bill and the primary legislation that we anticipate with great interest.
farming and farmers and, indeed, the wider rural communities of which they are a key part. There is a great deal of rural poverty in our country, which we are not beginning to face up to and deal with as we should.

All these things are going to be as pressing as ever. We keep telling the world how wonderful our countryside is. We all know how vital it is to our own values but how will we sustain that countryside without the arrangements that have been increasingly put in place within the European Economic Community? It is the evidence of what will really be there that is needed.

I conclude by applauding what the noble Lord, Lord Teverson, said. It is absolutely clear that our involvement with Europe and our dependency on that relationship with Europe are so great that it would be the height of irresponsibility if we did not stop using oversimplified, negative rhetoric. Instead, we must start to face up to the challenge of how we have continuing close co-operation with Europe, without which we cannot have a decent future.

4 pm

Lord Trees (CB): My Lords, as a member of the EU Energy and Environment Sub-Committee, I thank the noble Lord, Lord Teverson, for his excellent chairmanship of the committee and of this report, and I thank our clerks for their excellent hard work in producing it.

The Treaty on the Functioning of the European Union sets out, very early on, the objectives for its environmental policy. The main bullet points are:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change’.

I am sure that we would all agree that those are excellent aspirations. So it is no surprise that a huge proportion of our environmental improvements, brought about by the legislation underpinning them, has emanated from the EU, which the noble Lord, Lord Teverson, referred to in his introduction—some 80% of legislation. That is not to say that, irrespective of the EU, we might not have done these things ourselves—who knows?

However, the fact is that, according to Defra, there are something like 1,100 core pieces of EU legislation relevant to Defra, to which the noble Lord, Lord Teverson, previously referred. These comprise regulations, directives and decisions, but also guidance and case law. Therefore not only are there a large number of measures but a diverse range, comprising the EU acquis in this area. While the great repeal Bill will convert EU law into domestic law, the complexity of this environmental legislation—the number of different instruments involved—will present considerable challenges.

As one of our witnesses said:

“There is a question over whether it will be, literally, all EU law, Treaties, Regulations, Decisions and Directives, or whether it is just EU law that currently finds its home in the domestic system through secondary legislation. If we do not do all EU law, then there will be an enormous gap because we will miss everything that has not already been put into secondary legislation”.

A second issue to consider is the long-term stability of environmental policy and regulation. Environmental policy is a long game—there needs to be consistency and stability in policy and execution which, it has to be acknowledged, the EU has provided. Once the custody of our environment is entrusted to a single Government with a five-year time horizon, there is intrinsically rather less long-term certainty. So there are challenges relating to transposition of EU legislation in its broadest sense into UK law, and challenges to the stability of environmental policy and law.

However, my major point concerns what I call the “governance gap”, which, without using that term, the noble Lord, Lord Teverson, and the noble Baroness, Lady Sheehan, have referred to briefly. Many witnesses expressed concern to us about the fact that, post Brexit, we will lose the oversight and enforcement potential of the EU Commission and the Court of Justice of the European Union. Much maligned as they have been in UK public opinion, these bodies have provided an independent refereeing system to reassure us citizens that the environmental improvements proposed and agreed by EU member states are indeed being enacted. They have had the power to hold member state Governments to account and to fine them for infringements. The loss of that potent external governance role is a matter that we need to consider carefully going forward.

It has been suggested that the UK courts can adequately fulfil this role, typically by judicial review, but I understand that there are limitations to the potential of the application of judicial review, particularly related to its costs. There are also limits to the power of our UK courts. Notably, as one of the witnesses commented,

“The Commission can fine. The Supreme Court does not fine.”

Although this vulnerability—this governance gap—may extend to all EU laws and their transposition into UK law in lots of areas, the environment is particularly vulnerable because, as one of our witnesses, Professor Macrory, told us, there is, “no clear economic owner to protect it”.

 Ministers reassured us that they want to leave a better environment than they inherited, and that is an undoubtedly sincere and commendable aspiration, but of course the current Government may not be the Government in five, 10 or 15 years’ time. We need to ensure that there are systems and mechanisms in place so that, whatever the ephemeral policies of different Governments dictate, they will protect our environment for future generations.

What are the responses to these challenges—to the governance gap? It has been argued that the electorate can hold Governments to account, and indeed this gives me some personal confidence that our current standards will be maintained and improved. We have in the UK a very high level of awareness of the status of our environment. We have very influential NGOs and charities, such as the RSPB, the Wildlife Trust, the National Trust and so on. They are very active lobbyists and their role in the future will be hugely important. We also have within Parliament the Commons Environment, Food and Rural Affairs
Committee and the Environmental Audit Select Committee, which maintain scrutiny of the Government to hold them to account on environmental matters.

Notwithstanding that, given the governance gap that will follow Brexit, I suggest that there is a case for further strengthening the monitoring of the actions of future Governments in environmental matters, as the noble Baroness, Lady Sheehan, suggested. Perhaps this is an area where this House could play a valuable role, given the remarkable range of expertise that we have here. Ultimately, there will not be a need in the post-Brexit era for our EU Select Committee and its sub-committees, but maybe we should consider one or two new committees to deal with the regulatory deficits—the governance gap—that will arise post Brexit.

4.08 pm

**The Earl of Caithness (Con):** My Lords, I thank the noble Lord, Lord Teverson, and his committee for this report, but I would add how disappointed I am at the timing of this debate. We had a debate in October on exactly this subject and not much has changed since then. I am sure that the assurances that the Minister gave at that time have been implemented within the department, but I suggest that what we needed before we had this debate was the Government’s 25-year plans. Those would have given us an idea and a focus for this debate, because there has not been much that is new over the last six months on which we can hang our hats. On those 25-year plans, I commend the speech of my noble friend Lady Byford. She is absolutely right that you cannot separate the environment and farming. Those two 25-year reports have to mesh into one report for the whole of our environment.

I agree with much of what the committee says. It will be difficult to transfer all the legislation from EU into UK law. It will be by no means impossible, although it may very well take longer than we thought. I agree with it on the enforcement of the environmental order that is mentioned in paragraph 85. It is right to suggest that there should be some sort of independent body as there is in Europe now; that would be very helpful. I agree that environmental pollution is no respecter of national boundaries, but that argues that we should be working at the world level and not an EU level—there is nothing to stop the pollution coming to our country. Those two 25-year reports have to mesh into one report for the whole of our environment.

I voted to remain in the EU, and one of the reasons for that was the environment. But then I asked myself how we managed when we were outside the EU, and started to look at what we have done. There is the Public Health Act 1845. That was to do with the environment and predates the formation of Germany and Italy as national states. We have been at this for a very long time, as the Acts of 1866, 1875 and 1936 show. In 1907, we set up the National Trust without the help of the EU. The noble Baroness, Lady Sheehan, in her speech mentioned how important the habitats directive is. But in 1949, even before the European Coal and Steel Community, this House passed the National Parks and Access to the Countryside Act. In 2015, we created the world’s largest marine nature reserve in Pitcairn—without the help of the EU. Yes, we can do it by ourselves; we did do it by ourselves; and I have no doubt that life will be pretty good in the future.

Let me use a personal experience to make a point. In 1988-89, when I was Minister for the Environment, I was very involved with work on the ozone layer. It was British scientific advice from the Antarctic Survey that convinced Mrs Thatcher that something ought to be done for the ozone layer. She was very good with the environment because she acted on scientific advice. She said to Nicholas Ridley and me, “This is so important, we have to have a world conference”. So we organised a world conference in 1989, and we did that without the help of the EU, but the EU clung on to our coat-tails and came trundling along very rapidly behind. Just before we had the conference, the EU voted unanimously to phase out CFCs, not 100%, by 2000. We had a very successful London conference: 20 countries signed up to the Montreal Protocol and a further 14, including China, committed to sign up. What did the European Commission do? It decided to bring forward the date that we had just agreed, from 2000 to 1996. Mrs Thatcher gave exactly the right answer: it depends on innovation in science and the ability of industries to create the alternatives.

That proved one thing to me: it is terribly easy for countries in the EU to sign up to resolutions and directives when they have no industries that are going to be involved. As a developed, industrial country, we did have difficulties. It also proved to me that much of what the European legislation was about was emotion and capturing the public mood, rather than proper scientific innovation. That has not changed; it remains the situation. The impact on the environment and how we handle it is not down to some European regulation but to innovation, trade and planning rules. When we are outside the EU, we will be able to move much faster in those areas. I commend the previous debate today on science. We have to look forward and seize these opportunities, and Britain can be very good at that.

In 2000, the EU announced that its Lisbon strategy would make the EU the world’s most advanced knowledge-based economy by 2010. What a load of rubbish. It has totally failed to do that. It is a sadness that the EU, far from being the leader and the important world player it was 20 years ago—when 30% of the world’s economy was transacted in the EU; it is down to 15% now—has become a drag because it does not innovate and cannot respond quickly.
I could wax lyrical about that, but I shall move on quickly to two other matters. As the noble Lord, Lord Judd, said, the environment is international, national and local. I firmly believe that the environment is best protected at local level. If local people are involved in their environment, they will help look after it, especially farmers and people who live in the countryside. However, if you take away that responsibility for the environment and give it to a third party in a different country, the incentive to look after your home patch is diminished. We are lucky. We are an island nation and all our rivers are in our own country and we cannot blame pollution on anyone else. Unlike Holland, we cannot say that the pollution comes from Germany or, in the case of the Danube, that it comes from another country. We have responsibility for our own rivers, water catchment areas and water pollution, so let us do it ourselves.

I conclude with the issue of money. The environment comes down to money. The report refers to resources and how much we depend on Europe. Is that accurate? No. When we leave, the EU budget will be cut by 12%, so what will happen to some of this EU funding? The noble Lord, Lord Krebs, is right that no one country can fund a lot of this itself. When you take 12% out of the EU budget, many of its programmes will have to be massively cut and the incentive for it to work with Britain, with its financial strength, will be hugely increased. The EU will need our expertise in science and our funds in order to maintain its own programmes.

Who will win with Brexit? Both the EU and Britain will be losers to one extent, but it is far from all gloom for us.
Baroness Featherstone (LD): It is an honour to follow the noble Lord, Lord Krebs, who really made my role redundant as he has said everything I would wish to say. On Brexit, of which I am sure it is clear I am not a great fan, I think of the phrase, “How do you eat an elephant? One bit at a time”. This is obviously the environment and climate change bit. I congratulate my noble friend Lord Teverson and the committee on beginning its gargantuan task identifying and categorising the issues and actions needed even to begin to address extracting ourselves from the EU in this regard. I sometimes think that everyone who works on this, whether a remainor or leaver, must have at some point thought, “Wow, it would be much easier to stay”—at least, that is what I hope they think.

I hope and trust that much of what we are about to do will be to recreate what currently exists. My particular portfolio is energy and climate change. I will confine myself to those aspects of the report and perhaps look at some of the compensatory actions that we will need to take. The report rightly says that we have established in UK law our commitment to those measures contained within the Climate Change Act, including the carbon budgets and of course the well-respected Climate Change Committee—thank goodness. As I said, I thought the speech from the noble Lord, Lord Krebs, covered beautifully all the aspects of climate change policy that need to come into play. But while the Climate Change Act protects us to a degree it goes only so far.

The Government have stated on many occasions, in this House and in the other place, that they will uphold their agreements, standards, targets, commitments et cetera, but I confess that I lack confidence in the Government. When we are not held to those standards or targets, when we are no longer monitored by the EU institutions and fail standards enforced by the EU, I fear we will not meet our targets. I fear a decline and a rush to deregulation. I was a Minister in the coalition. I cannot forget those occasions when the Conservative part of the coalition went on and on about deregulation. It was almost a religion with them. Statements made on becoming a virtual tax haven and other comments in that direction do not encourage confidence in the maintenance of standards.

The emissions reduction plan was mentioned by the noble Lord, Lord Krebs. I ask the Minister: where is it? Is it ever disappearing into the future? Although I understand that the Government believe they can hold themselves to account, I do not share that optimism. Sadly, I prefer supranational oversight in this regard. We will need to set up new institutions to deal with compliance, infraction and additional enforcement. There will need to be biting sanctions on non-compliance. If we adopt EU regulations on energy efficiency into our own law, as I think we should, and if we keep up fuel standards for land vehicles and product standards for appliances, we will surely have to comply in order to trade. We need that alignment of standards. The report rightly says that the emissions trading scheme is not super-effective but it is very important. How and with whom will we trade emissions? What will happen about updates to EU regulations? They do not stand still, so even if we adopt them as they are, we will very quickly fall behind on, for example, the energy efficiency directive.

I do not want to just go through the report: it lays out well the areas and issues of importance. I trust that we will work towards reconstituting literally all of this. If this is the opportunity that we are encouraged and enjoined to support, then we have not only to reconstitute outside the EU what we subscribed to and benefited from in the EU but to go further. We need to change gear. There is no sense of urgency currently from the Government about meeting our targets or taking new actions and producing new policies to help us reach the level of emissions reductions that the Paris agreement committed us to. That was not an EU commitment but a world commitment. If the argument that there is a big, wonderful world out there with which to trade is to hold water, we need to capitalise on the economic opportunity that the clean economy offers us. We need to act faster and more urgently to make it clear that the rest of the world that we are open for clean business and completely committed to decarbonisation.

Our future prosperity is going to depend on developing an economy that is innovative, entrepreneurial, internationally open and environmentally sustainable, and one where the benefits of growth are shared fairly across the country and with future generations. Our membership of the EU guaranteed our commitments to the climate change agenda and was a safeguard against this Government or any Government undermining our ability to deliver on our legally binding targets. Will the Minister say, outside the EU, what our guarantor of delivery will be?

We must improve the efficiency of resource use and decarbonise the economy. That will help create high skills and high value-added industries able to compete
in the new global markets for low-carbon and resource-efficient products, technologies and services and create jobs throughout the country. It is really as plain as the nose on your face that with the Paris agreement and the sustainable development goals, low-carbon products and services are the future, and that future is worth trillions to this country.

I have to say that the industrial strategy offered by the Government was virtually mute on climate change. We need to establish a clear and consistent commitment to policies that create long-term demand for low-carbon transport and energy efficiency, thus giving investors the confidence they need. And boy, do they need confidence, because thus far this Government have done their best to undermine investor confidence by changing the goalposts. They have taken away from wind and solar subsidies that everyone would agree were necessary to remain in the long term but which, done at a stroke, undermined all business plans—let alone the removal of the £1 billion carbon capture and storage manifesto pledge.

The Government need to strengthen their support for clean innovation and encourage the creation of clean financial products to bring consumer capital into these clean industries. As I am at seven minutes, I will simply thank my noble friend Lord Teverson and the committee for the vital work that they have done. I reiterate, however, that although reconstituting must be mandatory, it is but the minimum needed to drive both our economy and a clean planet forward.

4.33 pm

Lord Grantham (Lab): My Lords, I am grateful to the noble Lord, Lord Teverson, and his committee for producing such a timely and authoritative report. It made the point clearly that the threads of EU environmental policy are woven through many aspects of the UK's relationship with the EU. Not only did environmental policy play little part in the referendum campaign; I would hazard that no one made the environmental case for leaving the EU. However, I am glad that the noble Earl, Lord Caithness, stressed that we must have the confidence to press ahead.

The report is not a very comfortable read. In every aspect of withdrawal from the EU that the committee considered, the challenges and pitfalls remain as daunting as initially feared. Since Britain was branded as the dirty man of Europe, participation in the EU has produced a comprehensive framework that Britain has embraced and improved upon to bring about favourable environmental impacts across our daily lives. Leaving the EU will affect nearly every aspect of the UK's environmental policy. That interdependence was highlighted by my noble friend Lord Judd, who asked several questions about what practical arrangements will come forward.

What is clear is that two years to resolve these daunting challenges is not very long if we are to provide answers on future policy direction and resources. It is also clear that Defra has had nearly nine months since the referendum and has not really laid out its thinking and approach to the task—other than to promise the great repeal Bill and underline certain fundamental basics, such as that the UK's climate goals have not changed. The Secretary of State has explained that her department has eight different workstreams in its EU exit programme and is carrying out detailed analysis, ranging from market access and labour to trade and agricultural land use policy. She has also promised two Green Papers, on the future of food and farming and on the environment.

Perhaps the Minister can move forward from this position tonight and clarify at the outset the progress of this mapping exercise, when it will be finalised and whether it will be published. Has Defra been given the resources to deliver this and follow it through, with all its legislative implications, given that its budget was slashed by 30% by the previous Chancellor and it has been tasked with finding further savings of 15% by 2020? Has the Minister made any further request to the Treasury, beyond the meagre recruitment of 30 new posts?

If I have any criticism of the report, it is that it has been light on two important points: agriculture and climate change. However, I recognise that the noble Lord, Lord Teverson, said that agriculture will be the subject of a separate report, while the noble Baroness, Lady Byford, also referred to the interrelationship between farming and the environment. Paragraph 24 of the report mentions agriculture and fisheries in relation to the substantial environmental elements and significant cash-flow expenditure, signified in one bullet point in box 2 at paragraph 18. I draw attention to the significant role farming plays in managing the environment. After all, it has to look after its land resource for future generations. I declare my interest in a dairy enterprise in Cheshire which is in receipt of EU funds.

Agriculture is best placed to cherish the landscape and implement national priorities. The noble Baroness, Lady McIntosh, raised the importance of countryside stewardship in this regard. To do this, however, agriculture must be profitable. The Department for Business, Energy and Industrial Strategy has come forward with its industrial strategy, which was recently debated in your Lordships' House. Yet in that strategy document, there is no mention of agriculture. Can the Minister underline tonight the Government's commitment, beyond the statement that there is rural-proofing across all government departments?

I would also mention the importance of better regulation—not to be confused with deregulation—which will need to be constantly under consideration. My noble friend Lord Hunt spoke about all the organisations that need to co-ordinate and maintain standards through better regulation, while the noble Baroness, Lady Featherstone, also spoke strongly on regulation, especially in regard to energy considerations.

I mentioned that agriculture must be profitable, and I need not remind the Minister that much of agriculture would become uneconomic without subsidy. The Government must not yet commit to future proposals for funding agriculture post-exit, around 2019, a point underlined by the right reverend Prelate the Bishop of Leeds. This will be fundamental to food policy, the food chain and the food industry, which accounts for 6.8% of GVA and is the UK's fourth-largest exporting sector. Funding and food prices are intrinsically
linked. Volatility in finance and extreme weather patterns were the subject of an interesting Global Food Security report on the resilience of the global food system and environmental tipping points. I was interested in the remarks of the noble Lord, Lord Krebs, given his perspective as chair of the adaptation sub-committee of the Committee on Climate Change. At the heart of the EU’s environmental policy is the precautionary principle. When this is repatriated into UK law, the Government will face the challenge of whether it is to remain hazard-based or become risk-based. On this will depend the outcome of the great royal debate about whether the genetic modification of organisms will be permitted. This will have a significant impact on the environment regarding what sprays will be permitted and whether they can be incorporated into seed to save the environment altogether.

I underline the critical importance of climate change and its impact. Although it is mentioned in chapter 6 of the report, it is only really examined in paragraphs 134 and 135 with regard to the EU ETS. While the report is correct to underline that climate change is a global issue that transcends the EU and that the UK is a party to international agreements, the noble Lord, Lord Teverson, will appreciate that there are doubts about whether the UK is on track to meet the sixth carbon budget and the EU renewables energy directive, which requires the UK to reach an overall target that includes transport and heat as well as electricity. The noble Lord, Lord Krebs, and the noble Baroness, Lady Featherstone, also spoke eloquently on the challenges. The noble Lord, Lord Teverson, and the noble Baroness, Lady Featherstone, will remember that it proved extremely difficult to get the Government to set a decarbonisation target for 2030.

The debate this afternoon has highlighted the many concerns raised in the report. The Minister will know that there is widespread concern about the process of consolidation into the great repeal Bill. The House of Commons Library has identified 922 agriculture, 1,122 fisheries and 527 environmental instruments, regulations and laws which will need to be consolidated. Two questions arise. First, how will the Government define what is practical and appropriate and will this test be applied separately to each regulation? Several speakers have drawn attention to this in the debate. Secondly, as Labour has continually emphasised, the great repeal Bill is not a substitute for proper accountability and scrutiny, so will the Government commit to provide draft versions of the Bill as negotiations progress, so that we can be assured that current levels of environmental protection are at least being maintained?

The determination to pin the Government down on this issue sadly arises because they have not always lived up to their rhetoric on environmental issues. Their mantra is that they will leave the environment in better shape than they found it, but on issues such as air quality, they have failed to act, despite two court judgments. As a result, people being forced to breathe dirty air has led to an estimated 40,000 early deaths. The UK is still expected to have illegally high nitrogen dioxide levels in many areas in 2020. The Government still have some convincing to do regarding their real commitment to environmental improvements. Leaving the EU could give Ministers leeway to set more lenient targets.

Our second area of concern is the weakening of enforcement mechanisms in UK law. Currently, as the report identifies, the EU Commission enforces the environmental legislation through its many functions, including by monitoring progress, providing guidance and interpreting legislation. A whole range of accountability mechanisms are potentially at risk as we leave the EU. Historically, both the Commission and the Court of Justice of the European Union have had a strong impact in ensuring the UK’s compliance with EU legislation that affects environmental protection. Earlier this week, the Environment Agency brought a successful prosecution through Aylesbury Crown Court against Thames Water, resulting in a record fine of £20 million for six pollution incidents. Can the Minister say whether this sets any precedents for dealing with more general environmental issues? More importantly, will the Government, who are sometimes at fault rather than a company, face a similar course of action if they fail to meet their responsibilities? Does the Minister accept that the Government will need additional enforcement mechanisms to fill the gap left by the Commission? Does he accept that a clear framework has to be set while negotiations are ongoing to ensure that the UK’s environmental standards are maintained?

The effectiveness of the EU regulatory regime is due in no small part to the deterrent effect of the power of the EU institutions to hold member states to account and to levy fines for non-compliance. In addition, every year, Defra faces challenges of disallowance and even infraction should it not implement the policies correctly. An effective and independent domestic mechanism will be necessary to ensure compliance by government, public authorities and farmers in undertaking their environmental obligations. The noble Baroness, Lady Sheehan, underlined these concerns in her remarks, which were echoed by the noble Lord, Lord Trees.

Our third concern is the future funding of environmental and climate change initiatives and institutions. Although the Government have committed to continuing research funding until 2020, this is a short-term commitment in research planning terms, and so far there has been less of a guarantee of continued funding beyond 2019 for other crucial projects. There is a real danger that bids for government funding post Brexit will be competing for a shrinking pot and that the environment will not be deemed to be a priority. There is a real concern that Defra will not have a seat at the top table when some of these difficult choices are being made. I hope the Minister can confirm that Defra will establish clear objectives for future environmental protection in the UK and will be determined and committed to delivering the level of resources necessary to deliver this. The noble Lord, Lord Rees, made a powerful speech on the Copernicus programme and the UK’s continuing participation in it.

Fourthly, the report identifies the complexities of managing future environmental planning in the context of the devolved Administrations within the UK. Currently, there are differences in environmental and climate change policies between them: for example the
Administrations have either legislated their own climate change targets or created their own Act. This difference is likely to increase once we have officially left the EU, and the requirement to act in conformity with EU law is lifted. It is therefore vital that the devolved Administrations and the Government should achieve an appropriate level of policy co-ordination, while still allowing for some distinction to reflect local or regional circumstances. Can the Minister reassure us of the department’s intentions to meet with the devolved bodies frequently during the Brexit negotiations to ensure that the demands of each devolved Administration are properly reflected?

Finally—your Lordships will be glad I have said that word at this late time, and I am sorry I have taken so long—it is crucial that we have a coherent plan to combat climate change once we leave the EU. Up till now, the UK’s contribution to the global debate has predominantly been as an EU member, and historically the EU has provided leadership in shaping the mechanisms that it has introduced to meet collective targets. The report rightly recognised that we will lose our place in the EU negotiating team, and we run the risk of being sidelined unless we can ally with a new bloc.

Several questions arise as the UK will no longer be required to meet all the EU’s targets for renewable energy. Once outside the EU, the UK will not be compelled to report to it on its annual emissions or to submit plans to the EU for corrective action if the UK misses the 2020 targets for reducing emissions. The withdrawal process will need to establish the UK’s obligations under international law, separate from the EU. Can the Minister outline what the Government’s intentions are in this respect?

The election of President Trump has raised the stakes on this issue. The noble Lord, Lord Rees, has argued that the UK needs to find a way to play a continuing role of influence. While the US Administration have yet to provide clear policies on climate change, the President has threatened to remove the US from all international climate treaties. This puts a renewed onus on the UK to set out clear policies and be a leader in combating climate change. I would be most grateful if the Minister could outline how the Government intend to respond to this challenge.

This has been a very well-informed debate. It has highlighted the importance of certainty and consistency for institutions, businesses and investors. It is clear that there is a great deal of interest in the progress of discussions both inside and outside this House. Parliament will want to continue to play its part in shaping the outcome. I hope the Minister is able to confirm that all sides of the House will have a full and meaningful role as negotiations commence. I look forward to hearing how he thinks this will best be achieved.

4.51 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I thank the noble Lord, Lord Teverson, and the sub-committee for holding this inquiry, and for the opportunity for this thought-provoking debate today. Although this has predominantly been an environment and climate change debate, I should declare my farming interests as set out in the register.

There have been a number of questions that I would like to reflect upon and, given the hour, write a more detailed reply to. Any questions that I am not in a position to attend to, I shall of course respond to in writing to your Lordships.

The committee highlights the scale and complexity of repatriating environmental policy as we exit the EU. This is not something that the Government underestimate—and the noble Lord, Lord Teverson, elaborated on the range of issues at large. As the committee’s report indicates, it is of vital importance that policy stability is provided as we leave the EU and that no legislative gaps or uncertainties are created. To provide this stability, as noble Lords know, the Government have set out our plans for a repeal Bill that will convert current EU law into domestic law. We will ensure that the environment is properly protected in law and that—I emphasise this—the whole body of existing EU environmental law continues to be given effect in the law of our country, either as it stands or in a manner that ensures that it works as a UK regime.

The department is continuing its work on the operability assessment of EU legislation following exit. This is a matter of process—and I understand the issue, which has arisen before, about one-third and two-thirds. I emphasise that this work is to ensure that the whole body of EU environmental law continues to be given effect in the law of the UK. As I say, it is about ensuring the manner in which it works as a UK regime.

This is also in conjunction with our manifesto pledge to leave the natural environment of this country in a better state than we found it. We want to design an effective approach to driving environmental improvement, tailored to the needs of our country. We will continue to explore the scope for new approaches to regulation which deliver better environmental outcomes, in the context of our commitment to developing a 25-year plan for the environment.

The noble Lord, Lord Teverson—and perhaps the majority of your Lordships—found this more a challenge than an opportunity, but I do think that there are opportunities that we should grasp. We should be positive about our joint determination to improve the environment of this country. That is a great opportunity for us all to work on.

The committee considered the role played by EU institutions in ensuring effective enforcement of environmental protection and standards—I listened very carefully to what the noble Baroness, Lady Sheehan, said—but the UK has always had a strong legal framework for environmental protection which predates our membership of the EU and the oversight provided by its institutions. I was going to refer to the Clean Air Act 1956 as a first example, but my noble friend Lord Caithness took us as far back as the 19th century, when we gave a lead.

I say to the noble Lord, Lord Grantham, in particular, that we were the first country in the world to introduce legally binding emission reduction targets through the Climate Change Act 2008. Our commitment to the environment can be seen through our action in extending the blue belt: 23 new areas were designated as marine conservation zones only last year. The blue
[LORD GARDINER OF KIMBLE]

belt now covers more than 20% of English waters, and our record for waters around our overseas territories is also impressive.

In considering the future enforcement mechanism for environmental law, we should recognise the fundamental roles of Parliament, the UK courts and, indeed, the electorate. Parliament is the UK’s supreme law-making body. As we have seen, particularly in this Chamber, it holds Governments to account by questioning and challenging the laws they seek to make and amend. Parliament in turn is accountable to the electorate. Our system of judicial review and its body of public law enables any interested party to challenge the decisions and actions of the Government through the UK courts.

I very much regret the lack of confidence of the noble Baroness, Lady Featherstone, in what I believe are our exceptional UK institutions. The noble Lord, Lord Grantchester, referred to the Thames Water case and the fine of £20 million. I listened very carefully to the commentary of the Environment Agency spokesperson. It shows exactly that such environmental issues are taken with extreme seriousness and rigour in our domestic courts.

Countries that are not EU members are well capable of driving environmental improvements in their countries. Many countries around the world with strong environmental records would think it extraordinary if we were to say to them, “By the way, you need a supranational body and court to ensure that you behave yourself”. They would feel extremely insulted. I will give way, but time is short.

Baroness Featherstone: My view was that I prefer the supranational authority to our Government here; I was not referring to other countries. Sadly, my confidence is lacking in this Government.

Lord Gardiner of Kimble: I am sorry that the noble Baroness does not have confidence in our institutions, our Parliament and our courts, because that is in effect what she is saying. She is saying that other countries around the world are well able to look after their own environment. In fact, in many cases, as I have described, we are already leading and are recognised as a leader of the world.

The committee is also anxious—rightly—for the Government to make clear what a free trade agreement with the EU will entail, arguing that this will have implications for future environmental policy. We will negotiate for an ambitious free trade agreement that allows the freest possible trade in goods and services with the EU. Trade and environmental considerations are closely related.

We want to ensure economic growth. Development and environmental protection go hand in hand. More trade does not have to come at the expense of the environment, and a healthy environment is in everyone’s interests. We will explore all options in the design of future bilateral trade and investment agreements, including environmental provisions within them.

In respect of the committee’s specific recommendations to review and evaluate the common agricultural policy and the common fisheries policy, I can assure your Lordships that we are assessing all the opportunities for agriculture and fisheries outside the EU. A number of noble Lords raised this, including my noble friend Lady Byford, who particularly raised the importance of a successful agricultural sector, and my noble friend Lady McIntosh of Pickering and the right reverend Prelate the Bishop of Leeds. It is absolutely clear that a successful agricultural sector in this country is compatible and has traditionally, in so many parts of our country, been compatible with a good environment.

The noble Lord, Lord Judd, has always been not only an outstanding champion of Cumbria but also of the national parks, for which it is my great privilege to be responsible at the moment. Farming, landscape, environment, and the agricultural system of the Lake District are absolutely hand in hand and entwined. It has been created by generations of farmers, and it is that agricultural system that has enabled the very designation that we granted to that wonderful part of our countryside.

There is much on which the Government will be working. I would say to the right reverend Prelate the Bishop of Leeds that it is my privilege to sit on the ministerial taskforce on broadband and we are absolutely clear about the need for increasing the rate of superfast broadband in rural areas. We have deliberately trialled the free childcare of 30 hours in rural areas, specifically because we think it is important that everyone in this country has those advantages. We are absolutely clear that, as I say, a great and improved environment and a strong agricultural sector are compatible with each other.

The committee points out a shared interest in maintaining cross-border trade with the EU. The Government agree with that. It highlights the need to co-operate with the EU on environmental pollution—of course, due to its transboundary nature. It is our neighbour and our friend and we should do this.

The committee also expressed some concern that withdrawal from the EU may impact on achieving climate change targets. I can assure noble Lords that we will continue to work closely with EU member states and international partners to tackle environmental issues which demand multilateral co-ordinated action. We will continue to co-operate with the EU on those policy areas where it is important for us to do so, including those issues which have effects across borders.

In relation to achieving carbon targets, I would say to the noble Lord, Lord Grantham, that the Government remain committed to tackling climate change and to low-carbon, secure and affordable energy and clean growth. While we cannot know at this stage what our precise future participation in EU climate measures may be post-exit, the EU will remain an important partner and we are considering how best to continue to work together.

The committee also urged the Government to engage fully in negotiating and influencing EU environmental proposals for the full term of its membership. It expressed concern about the UK’s influence post-exit at both EU and international level. It also stressed the importance of ensuring that the UK adheres to its international commitments. As long as we remain a member of the EU we will continue to play a full part in its activities...
and to represent the interests of the British people. My ministerial colleagues and officials continue to play an active role in the EU institutions.

I want to emphasise, particularly because it has been emphasised by three noble Lords—the noble Baroness, Lady Featherstone, the noble Lord, Lord Rees of Ludlow, and the noble Lord, Lord Hunt of Chesterton—that, after our exit, the UK will continue to honour its international commitments. We are party to multilateral environmental and climate change agreements and are bound by their obligations.

We are signatories, for instance, to: the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris agreement, which set binding emissions targets; the Convention on International Trade in Endangered Species; the Montreal protocol, with its ban on most ozone-depleting substances and requirements to reduce hydrofluorocarbons—I was particularly grateful to my noble friend Lord Caithness for reminding your Lordships of the London conference, and the advances and all that followed on from that conference; the Convention on Biological Diversity; the Berne convention; the OSPAR Convention on the Protection of the Marine Environment of the North-East Atlantic; and the Basel, Rotterdam and Stockholm conventions, with their restrictions on the movement of hazardous waste and commitments relating to chemicals.

More than just honouring our international commitments, the UK will remain an active country at a global level. The UK has always played a significant role at the international level, whether this be in combating acid rain, or the role that we played last year in extending the Montreal protocol. We have led Europe on issues of environmental protection, let us remember.

The Wildlife and Countryside Act 1981 provided protection in UK law for vulnerable species more than a decade before the EU introduced the habitats directive. The committee—I particularly draw the attention of the noble Lord, Lord Granthchester, to this—acknowledged, I believe rightly, the UK’s position as a global leader on climate change. The UK’s acknowledged skills and expertise have been a major factor in developing our influence in international climate and environmental policies. These skills and expertise will stand us in good stead for continuing to influence environmental policies. We will not step back from the international leadership that we have given on climate change.

My noble friend Lord Deben, the noble Lord, Lord Krebs, and the noble Baroness, Lady Brown of Cambridge, are all Members of your Lordships’ House who have been keen leaders in ensuring that, through all our efforts, we are better with our mitigation and our adaptation. I thank the noble Lord, Lord Krebs, who has recently handed over to his very worthy successor, the noble Baroness, Lady Brown of Cambridge, the chair of the Adaptation Sub-Committee.

The noble Lord, Lord Krebs, mentioned the UN Framework Convention on Climate Change, and we will continue to remain a very strong partner in that. We are now considering how best to take forward that continued engagement. The UK remains committed to international efforts to tackle climate change, and working with the EU will remain as important as ever. We will also continue to strengthen our relationship with other partner countries and work through multilateral groupings such as the G7, G20 and the Commonwealth.

The noble Lord, Lord Rees of Ludlow, referred to the Copernicus project; I think that this country has had a proud history of leading and supporting cutting-edge research, and the noble Lord knows more about that than almost anyone. As we exit the EU, Her Majesty’s Government welcome agreement to continue to collaborate with our European partners on major science research and technology, so this is very much on the radar as we move into the negotiations.

A number of your Lordships, including the noble Lords, Lord Granthchester and Lord Teverson, and my noble friend Lady McIntosh of Pickering, asked about resources, particularly for my department. The committee identified the resource pressures associated with maintaining environmental legislation. The Government are absolutely aware of the implications of EU exit for, in particular, my own department’s work programmes. I can assure your Lordships that Defra’s work programmes and recruitment plans are kept continually under review to ensure that we are staffed to deal with the tasks at hand. We have set up an EU exit programme to help co-ordinate, plan and assist several key work streams and are identifying and filling vacancies on a rolling basis—it has been my privilege to work with many of the officials; their commitment has been 110%, they are working extremely hard and effectively, and I congratulate and thank them.

The committee also raised concerns about the potential risk of divergent approaches to environmental regulation across the United Kingdom. I assure the noble Lord, Lord Granthchester, and all your Lordships that it is absolutely clear that Defra must work closely with the devolved Administrations, as it is doing. We will work in partnership with the devolved Administrations as we form our negotiating strategy for exiting the EU. It will be important to ensure that no new barriers to living and doing business within our union are created. That means maintaining the necessary common standards and frameworks for our own domestic market, empowering the UK as an open, trading nation to strike the best trade deals around the world and protecting the common resources of our islands.

A number of questions were raised. Time is pressing but I wish to respond to my noble friend Lady McIntosh of Pickering, who mentioned the EIB. The Government are in the process of assessing the contribution that the EIB makes. However, we are clear that the future relations between the UK and the EIB will be a matter for the Article 50 negotiations. Again, this is very much on the radar. The actual form of a dispute resolution in future relationships with the EU will also be a matter for the negotiations as they proceed.

A number of other points were raised and I will need to reflect on a considerable number of them and get back to your Lordships. I look forward to the debate on agriculture when your Lordships’ committee brings that forward. However, we have made sure that the current levels of funding for farmers are assured until 2020. Existing environmental stewardship and countryside stewardship agreements are fully funded for their duration. Clearly, we will have a
major task in bringing forward our proposals for ensuring that our farmers have a vibrant future in an enhanced environment.

I hope that this has not been an unnecessarily pessimistic debate and wish to emphasise some of the significant gains that this country has achieved in improving its environment. The water environment is in its healthiest state for 25 years, with otter, salmon, sea trout and other wildlife returned to many rivers for the first time since the Industrial Revolution. We have had successful reintroductions of species such as the large blue butterfly, the red kite and the short-haired bumble-bee. We have seen many declining species such as cirl bunting, stone curlew, chough and bittern start to recover, although clearly there is very much more to do. We have an opportunity to develop an environmental policy that is bespoke to our country. We must grasp that opportunity, whatever our opinion of what happened last June. We can unleash the full potential of this country and develop innovative and efficient policies that will enable us to continue working globally on environmental protection.

I again commend the noble Lord, Lord Teverson, and his committee on producing this report. It will continue to be of great value as we proceed in securing our objective to enhance the natural environment of our country and leave it in a better state than the one in which we found it. Working together—I emphasise “together”—let us ensure that there is a better environment for all. We should address with clear purpose the adaptation and mitigation of climate change—causes on which we can all unite.

Baroness Sheehan: I wish to comment on the remarks about enforcement. This is a very important area. The Minister mentioned the Clean Air Act 1956. I remind the House that that was enacted on the back of the great smog—the catastrophic pollution event in London. Going back to the 19th century, in 1858, London had the great stink, when Parliament had to be evacuated as the sewage that had been dumped in the Thames stank so much. That event led to the London sewerage system being built. My point is that we must be mindful that we have to interfere in a timely manner and we cannot, judging by the events here, wait far too long before it is necessary to act.

5.14 pm

Lord Teverson: My Lords, I thank noble Lords for their contributions. I will be as brief as I can. I will not be long. The right reverend Prelate referred to this as an onion. The more the committee looked at this, the bigger and more complex the challenge was. I say to the Minister: the report is not meant to be pessimistic. It is supposed to help find a way through to the other side, and to show what a challenge that is. We are very concerned that the Government have the resources to do it. The Minister’s reassurances tell us that they do.

I thank the noble Earl, Lord Caithness, for adding an element of opposition to the debate. Yes, we are leaders and that is one of the things we say. As the Minister said, Britain has been a leader on climate change. In fact, our concern is that the rest of Europe might backslide without us being there, to our prejudice. I thank the noble Lord, Lord Krebs, for time-sharing with me in looking after the climate change side.

I will just say something about the institutional side. The point here is that Lords committees get evidence from as wide a range of people as possible, who are not nutters and do not have a single agenda. The biggest message that came through was about how the ECJ and the Commission do not have a role at the moment. We may not like that but that is the message that was given to the committee. Just as the noble Lord, Lord Trees, said, however good the wish of the present Government—I believe completely in their environment side—that is not necessarily true of future Governments. It would be great if somehow we could solve this institutional thing with the present Government to make sure that future Governments also have to pursue that agenda properly.

I thank everybody for their contributions. I particularly thank Celia Stenderup-Petersen, our clerk; Jennifer Mills, our policy analyst; and David Baldock, our special adviser. We have had an hors d’oeuvre for the agricultural debate that we will have in due course. We look forward to that. Yes, agriculture is integrated but so are energy and transport in terms of the environment; I am sorry we could not do the whole thing.

Motion agreed.

Intellectual Property (Unjustified Threats) Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to.

House adjourned at 5.18 pm.
House of Lords

Monday 27 March 2017

2.30 pm

Prayers—read by the Lord Bishop of Winchester.

Shipping: Safety

Question

2.37 pm

Asked by Lord Berkeley

To ask Her Majesty's Government what assessment they have made of the effectiveness of the international safety regulations and procedures laid down in the International Convention for the Safety of Life at Sea to ensure the safe evacuation of ships carrying more than 5,000 passengers and crew.

Lord Ahmad of Wimbledon (Con): My Lords, assessments of the safety regime for shipping are undertaken by the International Maritime Organization's Maritime Safety Committee. The particular issue of large passenger ship evacuation was the subject of significant additional work following the loss of the “Costa Concordia”, and regulations relating to passenger safety drills were subsequently adopted internationally.

Lord Berkeley (Lab): I am grateful to the Minister for that reply, but if something happens to a cruise ship of, say, 10,000 people—passengers and crew—in the middle of the Atlantic, Antarctic or the Arctic, where ships go more these days, and there is a need for an evacuation even if the ship remains upright, and people are able to get into life rafts without panicking, what happens then? He did not answer the Question about whether there had been any full-scale trials of such a scenario. Will he urge the IMO to get on and do a trial such as this to see what happens? My fear is that there will be wholesale panic.

Lord Ahmad of Wimbledon: The noble Lord raises an important point. I partly addressed it in my previous answer, but he is of course right. When we look across modes of travel, we see that in aviation, for example, all evacuation and emergency procedures on a flight heading for a particular destination in a particular country are explained in a particular language. I suggest that there is a bigger challenge for cruise ships, which often stop at different destinations—but language and crew training related to it are nevertheless important.

Lord Cormack (Con): What is the attraction of taking a cruise with 4,999 of your closest friends?

Lord Ahmad of Wimbledon: Unlike the noble Lord, I cannot claim to have 4,999 close friends. There are many noble friends in your Lordships' House, but, even if we went on a cruise together, I am not sure that we would quite reach that standard.

Lord Rosser (Lab): My Lords, can I clarify the Government's position on this question? Bearing in mind the increasing number of British citizens who go on cruises, can the Minister—I do not think that he has done it so far—give an assurance that the Government are satisfied that the existing safety of life at sea regulations on evacuation in an emergency and the associated crew training and practice drill procedures reflect the reality of today of much larger cruise liners than before carrying many thousands of passengers and crew?

Lord Ahmad of Wimbledon: I can give that assurance. We are working on several streams; first, looking at adapting existing fleets in accordance with the challenges and the way in which the industry operates; secondly, looking at crew training; and, thirdly, ensuring that emergency and evacuation procedures reflect the language of those travelling on those ships. So, yes, we are satisfied, but one can never be overly prepared for such emergencies. When such incidents happen, the real test will be of the stability of the ship, the operation of the safety regulations and how well crew members are versed in them, and how well educated and informed are the travelling public. Work is going on to improve that. I suggest to the noble Lord that it should be an
ever-evolving exercise, so we look to embrace the latest technologies and address the concerns which noble Lords are right to raise.

Lord Boyce (CB): My Lords, I declare an interest as a past chairman of the RNLI. The International Maritime Rescue Federation has been looking at the vexed subject of how one retrieves hundreds if not thousands of people from a ship which has been evacuated on to the sea. Has it made any sensible progress and is it still working well with the IMO?

Lord Ahmad of Wimbledon: The noble and gallant Lord is right to raise this issue. My understanding is that work has been done to ensure the survivability of ships for a longer time and that, if an evacuation is necessary, it can be conducted. In the case of the “Costa Concordia”, the ship was stable for up to an hour. Had the crew and captain been equipped in an appropriate manner, perhaps more lives could have been saved. Another area that we are looking at is the stability of ships, to allow them to return to port safely without the need for evacuation. The noble and gallant Lord asked how the two organisations were working together. I shall write to him on that.

Lord Geddes (Con): My Lords, has consideration been given to a minimum thickness of hull for these vast cruise ships, particularly those going to Antarctica?

Lord Ahmad of Wimbledon: Again, given the technical nature of that question, I will write to my noble friend. I assure him that on all types of ships, including the roll-on, roll-off ferries widely used by the travelling public, the issue of safety is extremely important. It is important to consider the nature, building and construction of ships—but, as we have said, we must also inform the travelling public on safety procedures and ensure that the crew, too, is well informed.

Lord West of Spithead (Lab): My Lords, the training of officers and men is crucially important and British seamen are probably the best in the world. However, we have a huge shortage. In the Falklands, 73 merchant ships were called up, all using British crew. Have the Government ascertained the minimum number of merchant seamen this nation requires for crisis and emergency?

Lord Ahmad of Wimbledon: On a maritime Question, I knew I was missing something—and now I know what that was. I will write to the noble Lord in that respect.

GovCoin Question

2.45 pm

Asked by Lord Holmes of Richmond

To ask Her Majesty’s Government what assessment they have made of the GovCoin trial, and what plans the Department for Work and Pensions has in place for its large-scale rollout later this year.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, the initial independent assessment of the small-scale trial has been positive. The Department for Work and Pensions continues to work with industry to explore new and innovative products such as this that have the potential to support people with their personal budgeting and reduce the overall costs of welfare administration.

Lord Holmes of Richmond (Con): My Lords, would my noble friend agree that initial findings offer real potential in this area, not least in greatly empowering the relationship between benefit recipient and the Government while at the same time realising significant savings for the taxpayer? To this end, will he urge colleagues in the department to push ahead with a full-scale trial to see whether we can deploy this technology—not only in the DWP but potentially across government?

Lord Henley: My Lords, I would not want to speak for the rest of government, although obviously I answer on behalf of Her Majesty’s Government on this occasion. Certainly, we want to look carefully at this particular trial. It was a very small trial, involving only some 20 to 30 people. It was more what I think is termed a proof of concept rather than a trial, but it produced encouraging results and we want to look at those in due course.

Baroness Lister of Burtersett (Lab): My Lords, concerns have been raised, including as I understand it by members of the Government Digital Service, that this technology could be used in future to monitor or even control how social security claimants spend their benefits. Could the Minister give a categorical assurance that this will not happen, in the interests of claimants’ privacy and freedom of choice?

Lord Henley: My Lords, I give the noble Baroness that categorical assurance. The Department for Work and Pensions has absolutely no access to any such claimant information and will have no access to it in any further trials we look at. We want to keep it like that. Obviously, information will be able to Disc—which is GovCon, referred to in the Question—but that will be protected by data protection principles. I reiterate what I said to the noble Baroness: the department and the Government will have no access to that information.

Baroness Tyler of Enfield (LD): My Lords, does the Minister agree with me that this initiative, however welcome, is but one small step in tackling the much larger problem of financial exclusion? Could he give an assurance that the Government will carefully consider the recommendations of the Select Committee on Financial Exclusion, the report of which was published on Saturday? I had the privilege of chairing that committee. Particularly, there is the recommendation that fewer people are unbanked in the first place and so would not need this technology.

Lord Henley: My Lords, I wondered whether the noble Baroness would want to get in to highlight the fact that she produced the report that came out on
Saturday. I think the report was embargoed until midnight on Friday and I have not yet had the opportunity to read it. I glanced at it but assure the noble Baroness that the Government will give it due consideration.

Baroness Sherlock (Lab): My Lords, I am tempted to invite the Minister to explain how bitcoin and blockchain technology work, but I will take pithy on him. For people like me, it is much simpler. I understand that volunteers were given an app through which, essentially, electronic, digital money was paid to them and they could spend it only in certain ways which were tracked and recovered. Obviously, that raises significant issues about privacy and data. My understanding is that the Government’s own report on what is called distributed ledger technology said that it clearly needs a regulatory, ethical and data framework. In the absence of that, when the DWP started this, how did its Ministers assure themselves that benefit claimants were genuinely giving free, informed consent to be able to use this? If it is now to be a much larger-scale project, what kind of parliamentary oversight and scrutiny will there be?

Lord Henley: My Lords, as I said, we have not yet decided to move on to a fuller and larger trial, but if we did, no doubt that would have the appropriate checks and balances and be examined by the noble Baroness and others in due course. This is a simple, small-scale trial involving some 20 or 30 people. I am assured that they all gave full and proper consent to it and that some of them found it very useful indeed. I am grateful to the noble Baroness for not asking me to explain the more technical matters, which are probably beyond her—and me. As she knows, it is a very simple app designed in the form of jam jars into which one can put one’s money and then take it out for specific tasks. As I said earlier—and the assurance I gave on this would apply to any further trials—the department and the Government will have no access to that information; that is, what has come out of the jam jars and gone into housing or whatever.

Lord Campbell-Savours (Lab): Will traders who sign up to and agree to trade under this scheme be able to offer discounts to benefit recipients? By the way, I thought the next trial was for 1,000 people.

Lord Henley: My Lords, there is no next trial planned at this stage. We are considering that. It is not a question of discounts but of the fact that those who have to deal purely in cash can find life very much more expensive than those who are able to pay by other, more advanced means. That is the point behind it.

Viscount Ridley (Con): Does my noble friend agree that blockchain technology in general has applications far beyond this trial—indeed, all the way across government and society? Are the Government studying the phenomenon to check where it might be useful?

Lord Henley: My noble friend is absolutely right that very interesting ideas can come from blockchain and other things. I do not want to expand further on that in this Question. We are dealing with just a small-scale trial here, designed to make life easier for certain benefit claimants and to make it easier for them to manage their money.

Lord Harris of Haringey (Lab): My Lords, my noble friend talked about the need for an ethical framework underpinning the use of this sort of technology. Obviously, the Government have decided to go ahead with this trial in the absence of such a framework, but does the Minister agree that one is needed, not only for further developments in this area but for developments in the sorts of areas that have just been referred to by his noble friend?

Lord Henley: My Lords, that might or might not be the case, but what we are talking about here is this particular trial. The important thing is that we achieved the proper consent of those taking part and we gave the proper assurances, as I have repeated, that there would be no release of information about how those individuals spent their money to the department or the Government more widely.

Digital Technology: Skilled Workforce

Question

2.52 pm

Asked by Lord Cromwell

To ask Her Majesty’s Government what action they are taking to boost and sustain the pool of skilled workers from the United Kingdom in the digital technology sector.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, as set out in the UK Digital Strategy 2017, we are taking steps to develop the digital skills needed for our world-leading digital economy. We have revised the computing science curriculum and are undertaking work to increase advanced digital skills in areas such as cybersecurity and data. We have introduced digital degree apprenticeships and are reforming technical education, including creating a specialist digital route with a clear pathway to employment.

Lord Cromwell (CB): I thank the Minister for his reply and celebrate the £6.7 billion invested in tech businesses in this country last year, making us the leading European country in this sector, with a tech sector growing at twice the speed of any other in the economy. Nevertheless, I refer him to the government agency Tech City’s own report, which states that the tech sector employs proportionally more non-UK nationals than any other industry, and the report by the Coalition for the Digital Economy, which predicts an 800,000-person shortfall in skilled employees over the next three years in this area, an issue which is made far worse by the delay and difficulty in obtaining visas. I ask the Minister to meet me and others from the sector to discuss how best to plug this current gap in skills and enable the UK to sustain its present advantage in what the Prime Minister has called a key sector in our post-Brexit economy.
Lord Ashton of Hyde: The noble Lord is right to focus on the success of the digital sector. We are listening very carefully to the views and concerns of the tech sector. We already frequently meet representatives at senior civil servant level and ministerial level and have had a number of round tables to consider that. In the 12 months to December 2016, more than 30,000 people were sponsored as skilled workers in the information and communications sector.

Lord Razzall (LD): Is the Minister aware of a very specific problem that will arise in this area caused by the so-called hard Brexit? Although British universities now teach only digital electronic engineering, many manufacturing companies still need analogue electrical engineers. Is the Minister aware that most of those people now come from the Czech Republic, Slovakia, Romania and Bulgaria? Will he confirm that they will continue to be allowed to come and work here?

Lord Ashton of Hyde: As many Ministers have said before in this House, we are very concerned that people who have the requisite skills continue to be able to come to work in this country during the negotiation process and after it. We are doing our best to make sure that those skills are analysed and that we come to a satisfactory negotiated settlement with the EU.

Lord Broers (CB): My Lords, I am sure the Minister is aware that there is a very simple way to solve this problem, which is to correct the gender balance. Only 1% or 2% of people in this sector are women. What special programmes do the Government have to correct this problem?

Lord Ashton of Hyde: The noble Lord is right. Actually 17% of people who work in the tech sector and 9.5% of students taking computer science A-levels are female, yet women make up almost half the workforce. We are taking forward plans. There are a number of programmes already in place to do that: CyberFirst Girls Competition, the TechFuture Girls programme, Code First: Girls, techmums, Mums in Technology, Microsoft’s DigiGirlz events and a number of others. It is absolutely on the radar screen.

Lord Flight (Con): My Lords, is the Minister aware of the importance of the enterprise investment scheme in stimulating equity investment in a lot of these new digital companies? It is one of the reasons why so many have got off the ground.

Lord Ashton of Hyde: I am aware of the enterprise investment scheme. It is one of the ways that we can promote start-up companies. It is more risky, but there are advantages to it, so I take my noble friend’s point.

Baroness Jowell (Lab): My Lords, will the Minister pay particular attention to the unrealised potential and contribution to our digital economy of thousands of young people from disadvantaged backgrounds? The highest barrier to entry and to the realisation of their ambitions to set up their own business is having somewhere from where they can operate—business premises. Will the Minister undertake to convene a meeting of Ministers in other departments—the Department of Health, DCLG and so forth—that are overseeing an increasing number of empty buildings that could provide office space for these young people to realise their ambitions and potential?

Lord Ashton of Hyde: The noble Baroness is right to address those issues. One of the things we are doing as part of the digital strategy is to convene the digital skills partnership, and my department will be leading. That will bring other parts of government together in addition to businesses, national and local charities and local authorities to make sure that we address digital skills in a more collaborative way and that digital skills are better co-ordinated and targeted more effectively.

Lord Aberdare (CB): My Lords, since digital skills are becoming as important for our future competitiveness as literacy and numeracy skills, can the Minister give us an assurance that all new standards for apprenticeships and the new T-levels will be required to include a digital skills element?

Lord Ashton of Hyde: One of the things we are introducing is the Institute for Apprenticeships, which will be operating from next month, to make sure that employers and young people taking apprenticeships are able to input to make sure that the courses that are provided are up to the requisite standard and provide things that employers want.

Lord Stevenson of Balmacara (Lab): My Lords, the Government have said they recognise the need to work with the creative industries, which have a global reputation for training, on how to increase apprenticeship levels but without destroying the four voluntary levies currently run by Creative Skillset. What progress have the Government made on this issue and, in particular, will they be able to protect the skills investment fund?

Lord Ashton of Hyde: I will have to write to the noble Lord on this. We are working, as I mentioned, with the Institute for Apprenticeships and are reforming apprenticeships. We have also established the National College for Digital Skills, which opened in 2016 and will train 5,000 students. In addition to our work with schools, technical education, higher education and, very importantly, lifelong learning, there is a lot going on in this sector.

Gene Editing: Agriculture and Medicine

Question

3 pm

Asked by Viscount Ridley

To ask Her Majesty’s Government whether they have plans to encourage gene editing in agriculture and medicine.

The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, the UK is a world leader in the understanding of genetics, which is already leading to significant advances in medicine and agriculture. Gene editing has the potential to accelerate progress in both areas, saving lives and
improving quality of life. The Government continue to support the assessment, refinement and use of genetic editing techniques.

**Viscount Ridley (Con):** I thank my noble friend for that reply. Is he aware of widespread concern that, although we are pioneering and leading this essential work using CRISPR and TALEN to edit genes so as to help in both agriculture and medicine, we are falling behind in the race to apply this technology because the use of gene editing in cell therapy for cancer and in producing better crop plants requires and could be encouraged by better regulation? I declare my interests as listed in the register.

**Lord O'Shaughnessy:** My noble friend is a leading advocate of this technology and it is correct that getting the regulation right is absolutely important. It is currently regulated at the EU level, and there is debate on and an inquiry by the European Court of Justice into current exemptions for gene editing. We support the current exemptions, although others have challenged them. But it is also important to recognise that any discussion about gene editing, whether in agriculture or especially in a human health setting, involves big ethical questions and it is only right that we tread carefully as we move ahead.

**Baroness Walmsley (LD):** My Lords, given the potential of gene editing of non-reproductive cells for treating HIV, sickle cell, haemophilia and, as the noble Viscount said, cancer, what plans do the Government have to ensure continued research in this important and valuable area after Brexit?

**Lord O'Shaughnessy:** The noble Baroness is quite right to talk about the important therapeutic benefits that can come. I do not think this has anything to do with Brexit, other than the fact that the UK has been and continues to be a leader in the world of genomic sequencing, which of course enables us to identify the genetic issues that lead to some of the diseases and illnesses she has described. Within our regulatory framework, it is possible to use gene editing for therapeutic reasons but in ways that do not impact on inheritability, which is of course ethically an incredibly difficult question.

**Lord Winston (Lab):** My Lords, can the Minister confirm that the Government have no plans to extend gene editing to germ cells, as was suggested in the *Times* only three weeks ago, with the idea that we could wipe out genetic disease using gene editing? This seems an extremely dangerous idea, given that there are epigenetic and other issues with gene editing, which may not be quite as precise and effective as is sometimes claimed.

**Lord O'Shaughnessy:** The noble Lord is quite right to make that point. So-called germline gene editing, which creates the opportunity to pass on changes to later generations, is highly controversial. It is illegal in this country and there are no plans to change that position.

**Lord Patel (CB):** My Lords, I would like to take the discussion about regulation further. The question that the noble Lord, Lord Winston, just asked emphasises that we need a regulation in place now that is balanced, so that we can allow the researchers to progress further, including if necessary to demonstrate why germline gene editing may be necessary but should not be allowed. We lead the world in immune gene editing, as shown in the example of Layla, a one year-old girl who was treated for acute megaloblastic leukaemia, which was the first such case in the world. Does the Minister think it right to ask the appropriate departments in those agencies to produce something now on the regulation of gene editing that would be appropriate for Parliament to discuss?

**Lord O'Shaughnessy:** My noble friend is right to highlight the potential of gene editing by referring to that life-saving treatment of a girl with leukaemia. We have a world-leading regulatory climate and there are strict rules governing research in this area: for example, research involving the use of embryos is allowed up until 14 days but not beyond. We should certainly carry on with that research—indeed, we have a more permissive regulatory environment than in much of the world. As my noble friend rightly points out, we need to do that with the purpose of respecting life and of course reducing harm, driven by the desire to do so.

**Baroness Wheeler (Lab):** My Lords, HIV has been mentioned. The Minister will know that the results from the gene-editing clinical trial for people who are HIV positive have shown promise, particularly regarding the use of zinc fingers, which can find specific sites in DNA that can then be edited. Research is in its very early stages but has shown the potential to increase resistance to the virus, with the ultimate goal of weaning people off antiretroviral drugs. What are the Government doing to support and take forward this important research?

**Lord O'Shaughnessy:** As we have discussed, there is huge potential regarding illnesses such as HIV. Clinical trials of gene therapies involving gene editing are still at an early stage, and are receiving support from the National Institute for Health Research and the National Institute for Health Care Products Regulatory Agency regarding safety and clinical potential. So the right system exists, investment is taking place at the early stage of research and before anything is done to any scale, it must be subject to the proper discussion and scrutiny.

**Baroness Hayman (CB):** My Lords, as the Minister said, we have an enormously strong agriculture and genetic technology science base in this country. While this is not a magic bullet for food production, it could be a very important weapon in our armoury for meeting the world population's future food needs. Given that, will he undertake that centres like the John Innes Centre in Norwich will continue to receive government support to develop genetic technology in agriculture, within a strong and ethical regulatory framework?
The proposed new clause was devised after debate in Committee and would enable families eligible for child benefit to receive it for children aged under 20 who are undertaking apprenticeships. It is slightly disappointing that it is necessary to debate the matter again on Report. The noble Baroness, Lady Buscombe, offered to set up a meeting with Ministers from both the Department for Education and the Department for Work and Pensions, but I regret that no such meeting has materialised, so here we are. We have altered our approach in the amendment to call for the Secretary of State to use regulations to make provision to ensure that apprentices are regarded as being involved in approved education or training.

We are now just five days away from the creation of the Institute for Apprenticeships, the introduction of the apprenticeship levy and a changed landscape of technical education as the Government attempt to address the skills gap inherent in the economy. To achieve success in that, they have set the ambitious target of 3 million apprenticeships starts by 2020. I am certainly not critical of that target—it is better to aim high—but if it is to be reached, it cannot be in anyone’s interest for doors to be closed to young people keen to embark on an apprenticeship, but that is what is happening, at least for those from families reliant on some form of social security. In some circumstances, parents may prevent young people taking up apprenticeships because the economic consequences for the family of loss of benefit payments in various forms could be considerable.

This concerns a relatively small number of young people—primarily those from the most disadvantaged backgrounds—but it touches on a broader issue: that of apprentices being treated like second-class citizens in comparison with their peers who choose to pursue courses at further education colleges or universities. Apprentices are denied thousands of pounds in financial support available to college or university students, and are excluded from other means of support available to their counterparts in further education institutions. This is on the basis that they are employed and thus in receipt of wages.

It might be instructive for noble Lords who are unaware of it to learn that next week, the national minimum wage for apprentices aged under 19 increases to £3.50 an hour—considerably less than for other workers of the same age. Even then, as reported by the Low Pay Commission in January this year, 18% of apprentices said that they were being paid less than the minimum wage for apprentices aged under 19 increases to £3.50 an hour. The proposed amendment is intended to achieve parity of esteem of all post-school young people who are setting out on a route of learning designed to equip them with the skills for a productive working life.

Lord Watson of Invergowrie (Lab): My Lords, in the absence of noble Lords who have business other than the Technical and Further Education Bill to consider this afternoon, I shall move Amendment 1 and speak to other amendments in the group.

The successful candidate was Lord Colgrain.

Criminal Finances Bill
Order of Consideration Motion
3.08 pm

Moved by Baroness Williams of Trafford

That it be an instruction to the Committee of the Whole House to which the Criminal Finances Bill has been committed that they consider the bill in the following order:
Clauses 1 to 16, Schedule 1, Clauses 17 to 33, Schedule 2, Clauses 34 to 37, Schedule 3, Clause 38, Schedule 4, Clauses 39 to 50, Schedule 5, Clauses 51 to 56, Title.

Motion agreed.

Technical and Further Education Bill
Report
3.08 pm

Amendment 1

Moved by Lord Watson of Invergowrie

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

“Financial support for students undertaking apprenticeships

(1) The Secretary of State must by regulations made by statutory instrument make provision for—

(a) making a person undertaking a statutory apprenticeship, as defined under section A11 of the Apprenticeships, Skills, Children and Learning Act 2009, a qualifying young person for the purposes of child benefit; and

(b) extending the Higher Education Bursary provided for by section 23C(5A) of the Children Act 1989 to a person who is a former relevant child undertaking a statutory apprenticeship, as defined under section A11 of the Apprenticeships, Skills, Children and Learning Act 2009.

(2) Statutory instruments under subsection (1) are subject to the affirmative resolution procedure.”

Lord Watson of Invergowrie (Lab): My Lords, in the absence of noble Lords who have business other than the Technical and Further Education Bill to consider this afternoon, I shall move Amendment 1 and speak to other amendments in the group.
However, in addition to being ineligible for Care to Learn childcare grants, unlike further education students, some apprentices also missed out on travel discounts, council tax exemptions and student bank account packages. The reason is that apprenticeships are not classed as approved education or training by the Department for Work and Pensions, but apprentices must spend at least 20% of their contracted work hours off the job—or at least, they will after 1 April—which means at a college or with a training provider. What is an apprentice supposedly doing in such situations if he or she is not receiving approved education or training?

In the case of apprentices who live with their parents, the families could lose out by more than £1,000 a year in child benefit. Families receiving universal credit could lose more than £3,000. Why should families suffer as we seek to train young people desperately needed to fill the skills gaps that I mentioned earlier? University students receive assistance from a range of sources. Apprentices currently do not receive many of these benefits and are continually excluded from definitions of approved learners. How can an apprenticeship not be regarded as an approved form of learning? The Bill is aimed at unifying apprenticeships with technical education, yet obstacles have been placed in a way that will prevent the aim being fully achieved. The system must be changed so that apprentices and students are treated equally, and there is genuine parity of esteem between all educational and apprenticeship routes.

3.15 pm

We support the noble Lord, Lord Storey, on his Amendment 14, on the need for a contingency fund to be established in the event of an insolvent. It may seem inconsistent that we also support Amendment 16. A contingency fund would be one way to deal with the issue of looking after students but, on further reflection, we reached the conclusion that the net needs to be cast wider, to include any provider of technical education becoming insolvent, and not just a college.

On Amendment 16, noble Lords involved in the Bill received a letter last week from Paul Williams, the deputy director for student funding policy at the Department for Education, on the subject of advanced learner loans. It provided little comfort for a student left high and dry with what Mr Williams called “recent provider failure”, saying merely that she or he will have the repayment deferred. There was not even a mention of how long the deferment might last or what would eventually trigger the repayment. That was widely regarded as a quite unsatisfactory response and, of course, did not deal at all with the issue in our amendment.

Requiring providers to provide a guarantee to students from a financial institution may, on the face of it, seem quite a surprising development. The solution is complex, but its complexity falls on the provider and the private, for-profit financial institution, such as a bank or insurance company. It is not complex for the Government or the student. Specifically, the annual cost is low because any credit-worthy provider could meet the potentially large costs of default by pledging its other assets to the financial institution, as has happened in other cases in other countries. That solution is frequently adopted by the commercial world for long-term contracts, such as construction contracts, and we believe it appropriate in these circumstances to provide the protection that students deserve.

Finally, on Amendment 20, to some extent it may seem surprising that we seek to ensure all the apprenticeship levy money is spent in the year in which it is gathered. There will be some costs—inevitably, there are some administrative charges—but that is not particularly our concern. There was a suggestion that all the funds available for training apprentices may not be disbursed in a particular year. In light of recent events, that is now less likely: there does not seem a great likelihood that the levy will be underspent, given the furore that has arisen over the last few days over the register of apprenticeship training providers, and the announcement that many colleges have been left off that register despite having, in several cases, outstanding Ofsted ratings for the apprenticeship courses that they provide.

I do not want to go into that detail at the moment, but it demonstrates the extent of the concern about how and how well employers will have access to sufficient providers. At the moment, the colleges that have not been given access to the register have been told that they can reapply, with a deadline of the end of next week. For some, that will be all well and good, because they will admitted, albeit late—but too late to access the tranche of funding for the coming year, in many cases. It is also not clear how access will be made available to non-levied funding for those colleges that did not make it on the first occasion.

The amendment is important in itself to ensure that all the money raised is spent on the purpose for which it is intended and that employers do not simply regard themselves as having been levied—and then want to draw the money down as quickly as possible to make sure that, in effect, they get what they regard as their own money back. It is much more important than that. Those colleges that are willing and able and have a track record of having provided that training in most cases should be allowed to do so.

There was a fairly broad sweep within that, but the main thrust of what I wanted to say was in respect of apprentices being denied the rights of their peers—that is, students of further education at universities. On that basis, I beg to move.

Baroness Cohen of Pimlico (Lab): My Lords, I support the amendment. The Bill has cross-party support; it is potentially the greatest engine of social change that can be imagined and rights the injustice of the many years when technical education has been regarded as much less important than formal academic education. The effect of cancelling benefit for 16 to 18 year-olds embarked on apprenticeships will be to deter a small but important group of these young people from taking them up. Since the apprenticeship is not just education but a route into a job, this would be entirely wrong. In families with very low incomes, budgets are extremely delicate. Allowing one child to do an apprenticeship when they are not fully funded could damage the rest of the family and is therefore not likely to happen. I therefore hope that the Government will think again on this.
I will also speak to Amendments 14 and 16, which provide slightly different versions of guarantees if trainers go bust. I remind the House that I am chancellor of BPP University, with 2,000 degree-level apprenticeships, and my sister company has 2,000 16 to 19 year-old apprenticeships. It is not very difficult for long, well-established training operations to contribute to a contingency fund, if that is what is wanted, or to get a bank guarantee. I am thinking of new people who may want to come into this field, whom I believe the Government want to encourage. I suspect that having to contribute to a contingency fund, which is difficult and requires special provision, is possibly a barrier to entry, whereas producing a bank guarantee is—as my noble friend Lord Watson said—a well-understood route and I believe a lot of banks know how to do this. I would, therefore, much prefer any measure to require providers to produce a bank guarantee rather than a contribution to a contingency fund, or their own private contingency fund.

Baroness Wolf of Dulwich (CB): My Lords, I also support the amendment and share its concern for the small but important group of young people who may be denied an apprenticeship. I will also speak to Amendment 16 tabled in my name and lend strong support to the general argument that we must provide financial guarantees and security to young people in the training field. I declare an interest that, as a member of the Sainsbury review, I was part of the panel which lies behind other parts of the Bill. I also strongly welcome the provisions to ensure that, should an FE college fail, special arrangements will be in place to make sure that students are looked after; that clearly set out procedures will swing into place; and that they will not just go to the bottom of the list after creditors, in the hands of administrators whose responsibilities and skills are essentially commercial. It is absolutely right that the Government have recognised this as their duty. It is their duty because, by funding young people and adults, encouraging them to enter training—and, in very many cases, to take out loans—the Government have implicitly promised that an institution to which they are lending money will give a good-quality education and will endure to see students through. The introduction of loans is a mammoth change and lies under much of the Government’s conviction that they need to change the HE regime. We must recognise that the Government’s ambition for huge increases in adult learner loans changes the environment in which young people and adults are studying and training.

Many noble Lords will know that failures are not unheard of—one wishes that they were. In the United States, huge companies have gone under, leaving many thousands of people with loans. These are not all at degree level; they are often at associate-degree level, which comprises two-year courses. On the one hand, therefore, it is very welcome that we have these provisions for FE colleges, but, on the other, I find myself completely unable to understand why equivalent protections should not be introduced for people training and studying in institutions which are not FE colleges and which also offer—and are being funded to offer—technical education. Many of these people have loans, and many of them are not mobile. The loans represent large sums of money for them, and they have made big changes in their lives to undertake this form of training. Again, it is tremendously welcome that the Government are putting so much effort and money into technical education. However, we have to ensure that the promise, encouragement and—sometimes—pressure to enter technical education is matched by a guarantee that the Government will deliver on their implicit promise.

Against this background, the repeated failures—that is what it has felt like—in recent weeks of a number of private training providers should make us aware that this is not a hypothetical situation. Like the noble Lord, Lord Watson, I was not very convinced by the letters from the department and the SFA. My noble friend Lady Watkins will speak in a moment. She and I had a very productive meeting with the Bill team. We appreciated their willingness to listen to our arguments. However, the letters that we received seemed to amount to a combination of the statements, “We are muddling through” and “There aren’t very many of them anyway”. That is not adequate at a time when we are embarking on a major rethink—and, I hope, a major expansion—of technical education.

In Committee, the Minister noted that you cannot treat private businesses as though they were public organisations. That is indeed true. Although many private training providers are small charities, many others are commercial organisations, as the noble Baroness, Lady Cohen, said. Many of them survive entirely on government contracts and are very small. That is why I have proposed a mechanism which I think would be entirely appropriate for this situation. We have heard about it already, and I thank the noble Baroness, Lady O’Neill, for first bringing it to my attention. It is well established, costs the Government nothing and would not cost providers anything that would begin to wipe out their margins. It is well and frequently adopted in other sectors and I cannot see why it should not apply here.

That brings me to my final point—the idea that we do not need to worry about this matter because only a few people are involved and the risks of failure are quite small. Even if the figure is less than 1%, that is hundreds of people a year on current levels of loans. If we have the expansion that we hope for, thousands of people a year will be affected. To give a medical analogy, if 1% of life-changing operations were cancelled and eventually lost because people got older and were never able to have their operations and had to go back to the bottom of the waiting list, I do not think that anybody would find that acceptable. Therefore, I strongly hope that the Minister will assure us that at Third Reading he will be able to bring concrete proposals to this Chamber and that we will see the same acceptance of the importance of looking after students in the entire technical education sector that we so happily see in further education colleges.

Lord Storey (LD): My Lords, I will speak to Amendment 14 and to Amendment 16, which is linked to that, and will say a few words in support of Amendment 1.
It is interesting that a large part of the Bill is about insolvency—what happens if a college becomes insolvent. Yet it does not say very much about what happens if a poor student, through no fault of their own, becomes insolvent because of debt problems arising from the fact that their college no longer exists. We also encourage private providers—I say right at the outset that there are many good private providers, who have an exemplary record and are very worth while. Sadly, however, some providers have caused immeasurable harm to young people, and we need to ensure that there is a proper safety net for those young people.

3.30 pm

It is interesting that just in the last few months, three private providers have gone into liquidation. Millions of pounds have been lost, and of course thousands of students have been put into a very difficult situation. I will highlight just one of those examples. John Frank Training was a London-based provider with a satellite office in Preston. This private provider went into liquidation on 30 November, leaving no assets, despite recording a profit of £1.3 million in the first half of last year. The Skills Funding Agency is currently refusing to write off the students’ debts, even though they will not get training from John Frank Training. Some £6.4 million was paid to 2,200 learners to complete their training with the provider. As one unlucky student said:

“I’ve emailed the SFA three times and got no response and the loan company haven’t been helpful … They finally emailed me on December 22 to say transfer your loan to a new provider. I’ve tried to do this but you can’t transfer if you have already started a programme”.

Therefore a number of issues need examining. I pay tribute to the Minister and his staff, because they have been anxious to help and have been supportive on this. I hope that between now and Third Reading we can come to some satisfactory outcome on this issue. We are talking about young people whom we have encouraged to do further courses and training.

My amendment seeks to put in place a contingency fund to ensure that where a further education body closes down, there is financial support available for students to ensure that they are reimbursed the fee they have paid for the remainder of the course, which they will be missing out on. The cost of embarking on a further education course when over the age of 18 is not insubstantial. For example, Leeds City College charges fees up to £1,100, plus exam fees and any course extras. The introduction of such a contingency scheme would, I hope, help to address issues such as the one highlighted by James Kewin, the deputy chief executive of the Sixth Form Colleges Association. He said:

“We are concerned about the potential knock on effect of an insolvency regime on bank support. Existing loans and overdrafts may have to be renegotiated with potentially serious increases in cost of support. Therefore, that is a disincentive to carry on an apprenticeship. There is evidence to show that because of this disincentive, quite a number of students have not taken that opportunity. This amendment will help to ensure that we protect the very people we want to encourage to take up apprenticeships.

Baroness Watkins of Tavistock (CB): My Lords, I support Amendment 16, to which I have added my name. It is very clear that many young people who take out government-backed loans believe that they give a quality indication to the provider, to which they then enrol to study. It seems extremely unfair that, in the event of such a provider becoming unable to continue, they would go to the back of the queue for the repayment of their loan.

When meeting the Bill team, who have been extremely helpful, we heard evidence that everybody tries to find an alternative provider so that the student can complete their programme, and that is clearly the most desirable outcome. The most undesirable outcome is if a student is unable to complete the programme and is left with debt, even if that debt does not have to be repaid immediately. Our amendment is intended to protect students in such circumstances so that their loan is repaid by a provider if they cannot find an alternative provider with which to complete their course.

We want to encourage people to undertake this kind of technical education, and I commend the Government on their Bill because it will encourage young people to do far more local-based technical education and should get both young and more mature people into work, which, after all, is the overall aim of the Bill. Therefore, I hope that the Minister will be in a position to take this matter away and to come back with something at Third Reading that will protect students in the future.

Lord Aberdare (CB): My Lords, I too will speak mainly on Amendment 16, spoken to by my noble friend Lady Wolf, although I regret that I am not able to support it, so I hope that that is not the end of a beautiful noble friendship.

I am concerned that Amendment 16 would make it harder for independent training providers, which provide a significant proportion of the technical education we desperately need, to compete on fair terms with FE colleges. I should perhaps declare an interest as having been an independent training provider in the distant past.

The effect of the amendment as worded would be to increase the price of such courses offered by commercial and charitable contract-funded providers in order to cover the cost of underwriting the loans made to students with an external financial institution. This would mean that the cost incurred by the vast majority of loan recipients, who will not suffer curtailment of their studies due to insolvency, would increase, even if only by a relatively small percentage. It might also discourage high-quality independent providers from offering loan-funded courses, not just because of the
[Lord Aberdare]

extra cost but because of the extra administration and bureaucracy involved, thereby limiting the range of options available to learners and, as the noble Baroness, Lady Cohen, said, providing a barrier to entry for potential new providers.

The amendment would not apply to FE colleges and other bodies covered by the insolvency regime being created by the Bill, so learners at FE colleges, which might be at least as likely to fail, would be protected by a special insolvency regime without any extra cost.

FE college loan-funded courses already have the additional benefit of being exempt from VAT, so most independent providers are already likely to face a 20% cost disadvantage. Apart from that, the cost and complexity of setting up the sorts of schemes proposed in Amendments 14 and 16 seem likely to considerably outweigh their effectiveness or value. If some special provision for independent training providers were needed, it would surely be better to take a similar approach to that proposed for colleges based on government underwriting, as I believe has happened in practice in the past. Of course, in some cases, independent training providers may even be partly owned by further education colleges, as was the case with the provider First4Skills, which was 60% owned by the City of Liverpool College and had to call in the administrators. I am not clear how the amendment would address a situation such as that.

Finally, I know that many independent training providers would be happy to help put a clear mechanism in place so that learners could easily transfer to another provider if their existing provider failed. For all those reasons, I believe that the amendment is not the right way forward.

Baroness Pidding (Con): My Lords, noble Lords may remember that I spoke some weeks ago on this Bill at Second Reading and described the challenges that the UK labour market will face in the coming years and decades. Such times need flexible legislation, so as not to tie the hands of government, the UK labour market and private providers. I believe that it would be a mistake to complicate and overlegislate, and then expect any improvement on the current system.

I agree with the sentiment of Amendments 14 to 16. It ought to be our duty to make sure that students are not left stranded after provider failure, through no fault of their own. However, it is my fear that these amendments may do the very opposite of their well-meant intention. I am particularly concerned by Amendment 14, explicitly subsection (3). I want to stress that however well intentioned it is to demand that private providers set contingency funds that can be used only for the purposes outlined in subsection (2), it risks placing additional financial commitments and burdens on providers unnecessarily. It would also, inevitably, deter excellent private providers from offering loan-funded courses, given these extra commitments.

Given that the Government have made a commitment to helping students affected by provider failure by providing them with alternative providers, it is my belief that this well-intentioned legislative burden is not necessary. It will simply overcomplicate the system and deter private providers from offering excellent qualifications and training.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I am very pleased to be able today to speak about this legislation, which will help lay the foundations for transforming technical and further education, ensuring that all our young people have the same opportunities to travel as far as their talents may take them, move to a lifetime of sustained employment and provide the skills that British business needs. I am grateful for the remarks made by the noble Baroness, Lady Cohen. I share her sentiment: this Bill is the greatest engine of social change that can be imagined, or at least we hope that it will be. I also express my thanks to noble Lords for their continuous engagement in the Bill, which, as the noble Baroness said, has all-party support.

In Committee, we had some very interesting discussions on some of the broader aspects of the Bill, and on the operation and delivery that will turn this legislation into reality. My ministerial colleague Robert Halfon and I have found this scrutiny extremely helpful in refining our thinking for this next stage of the legislation—the transition. Minister Halfon was looking forward to being able to join today’s discussion, as he has done previously, but unfortunately has been called away as he needs to participate in the public sector apprenticeships debate.

I turn now to the first group of amendments, tabled by the noble Lords, Lord Watson and Lord Hunt. I welcome the sentiment behind this amendment: that young people who choose to take up an apprenticeship should not be financially disadvantaged and that, in particular, young people who leave care should be encouraged to enter apprenticeships. I believe, however, that we have already established sufficient safeguards and support to deliver these aims. Following a 3% increase in October last year, the national minimum wage for apprentices is now set to rise again to £3.50 an hour from April this year. Most employers pay more than this minimum. The most recent Apprenticeship Pay Survey, in 2016, estimated that the average gross hourly pay received by level 2 and 3 apprentices in England is £6.70 an hour. Moreover, apprentices receive training which, together with their paid employment, sets them up for increased earnings in the future.

Lord Watson of Invergowrie: I wonder whether the Minister is going to respond to the point I made about apprenticeship pay. At the beginning of the year, the Low Pay Commission reported that 18% of apprentices were not getting even the national minimum wage.

3.45 pm

Lord Nash: The noble Lord has raised that before. As we discussed at that time, it is illegal to pay below the minimum wage. We and HMRC are focused on ensuring that it does not happen. We all share the noble Lord’s concern about this. I assure him that we will do everything we can to stamp out such practices.

One of the core principles of our reforms is that an apprenticeship is a genuine job. As such, apprentices are treated accordingly in the benefits system. Child benefit
is intended to provide financial support to parents to help with the extra costs of raising a dependent child. It is payable to parents until the end of the academic year in which their child turns 16. After that, payment can be claimed for children up to the age of 20 if they are in approved education or training. From April this year, undertaking an apprenticeship at minimum wage will pay more than five times the maximum child benefit rate. Therefore, an apprentice's parents are not eligible for child benefit for supporting that employed young person. These rules have been a long-standing feature of the welfare system.

Moving to paragraph (b), on extending the higher education bursary to statutory apprentices, while I understand the intentions behind the proposal, it is not correct to equate being on an apprenticeship to being in higher education, where a student is making a substantial investment in their education and has appropriate access to student finance. Apprenticeships, by contrast, are real jobs and those undertaking them are employees who earn a wage, unlike participants in HE who are students and treated as such by the benefits system. Although apprentices generally spend a fifth of their time in training, it is part of the minimum wage regulations that they are paid while undertaking that training, so I cannot share the suggestion of the noble Lord, Lord Watson, that the training equates to being in HE. They are still being paid.

Consequently, our focus continues to be on ensuring that there are incentives for employers to recruit care leavers as apprentices. An additional £1,000 is paid to employers who take on a care leaver as an apprentice, as well as their training providers. Furthermore, the funding system ensures that, for all care leavers aged under 25, the full training costs related to undertaking an apprenticeship are met by the Government in recognition of their particular vulnerabilities.

I hope that I have provided sufficient reassurance that reflects that apprenticeships are real jobs, pay a wage that is more than sufficient to offset any household income reductions through the loss of child benefit, and are funded to ensure accessibility for care leavers.

Amendments 14, 15A to 15C and 16 concern the protection of students at independent training providers in the event of their closure. I am sympathetic to the intention behind these amendments that the interests of learners must be at the heart of the system.

Turning to the detail of Amendment 14, I think that it will be helpful also to consider Amendment 15, which would amend it. As currently drafted, Amendment 14 would apply only to further education bodies, which the Bill defines as further education corporations and specialist designated institutions in England and Wales, and sixth form colleges in England. Private providers would not fall under the scope of this amendment, although we need to consider that Amendments 15A to 15C would make this change so that private providers are within scope of the amendment.

As noble Lords will be aware, the main purpose of this part of the Bill is the introduction of a special administration regime which will prioritise the needs of learners. It places an overriding obligation on the education administrator to take the action that best avoids or minimises disruption to the studies of existing learners. This will apply to all students—fee paying as well as non-fee paying. The special objective focuses, rightly, on giving learners the opportunity to continue and complete their studies having set out on their journey to gain new skills or qualifications. That is what individuals will be most concerned to achieve rather than the repayment of any money for which they have not received provision.

Of course, fee-paying students typically pay for their courses in stages, as they do via advanced learner loans, and quite often in arrears, so it is likely that the student will not be significantly—if at all—out of pocket. But, through the special objective, the education administrator will be working to identify opportunities for learners to complete their studies, whether by rescuing the college or transferring the individual to another provider, meaning that the learner can continue on their study path.

We know that noble Lords are interested in the idea of a fund or guarantee to support students in the event of private provider failure, especially where they have paid money in advance. Following recent cases highlighted in the press, I will now say a little about what we are doing to provide support for those affected. Our priority is to support learners whose providers have ceased trading. I want to make it clear that we will take every step we can to ensure that learners are given the opportunity to complete their studies, be that with their current provider if possible or with another provider. In the rare cases where providers fail, the Skills Funding Agency and the Student Loans Company work together to identify solutions for any individuals affected. They make direct contact with learners to inform them of the help they will get. I am happy to say that this is already current practice and is an integral part of the contractual arrangements between the funding agency and the provider. There are many cases where those learners who are affected are successfully transferred to alternative providers.

Students’ new providers may receive funding to deal with necessary administrative costs relating to transferred learners to ensure that they are not out of pocket. We have taken further action to protect learners due to recent cases of private providers going into liquidation. For those who have not completed their course, and while we work to make transfers happen, they will not be required to start repaying their loans during the 2017-18 tax year.

I shall now look at the detail of Amendment 16. I believe, as a number of noble Lords have said, that we should approach the regulation of independent private training providers with caution. These are mostly private profit companies and, unlike the further education bodies which are the subject of this part of the Bill, they are not part of the statutory FE sector and are created by their promoters and owners with no hand from government. They are not subject to the same intervention arrangements as the statutory sector. Furthermore, while they may receive state funding, that funding does not have the same breadth of purpose as the funding for the statutory sector and is paid on a different basis. In particular, the funding is contractual and normally paid in instalments linked to attendance, which limits the financial risk which this amendment is seeking to address.
[LORD NASH]

There are around 400 private providers, of which the vast majority are financially sustainable. I am delighted to join with the noble Lord, Lord Storey, in his comment that many of them provide very good quality education.

Providers must be listed on the SFA's register of training organisations to receive advanced learner loans funding, while successful approval includes due diligence to assess providers' capacity to deliver contracts to the required standard and to determine whether they are financially robust. Providers delivering only loan-funded provision must have a financial health assessment rated as good or outstanding. Once on the register, the SFA closely monitors providers' financial health and achievement rates, with providers having to comply with robust funding and performance rules.

However, I accept that there could be rare cases where a private provider fails and students suffer as a result. Although learners choose their private provider as consumers, “buyer beware” may be thought an unduly harsh response to that predicament. That is the concern which noble Lords are seeking to address through this amendment. I understand the concern, but at the moment I am not convinced that the imposition of significant new regulation on a fully private part of the sector is either a necessary or proportionate response to it.

As far as I am aware, a banking or insurance market for the guarantees referred to in the amendment does not exist and would have to be developed. We do not know whether and how fast this might happen, or at what cost. However, much more significantly, the nature of this sort of financial protection is that it puts a burden on the vast majority of healthy providers, where it is not needed, as well as on those few where it is. In aggregate terms, it would mean substantial sums of money, much of it originally public money, moving from the education sector to the insurance and financial sector, which is not necessarily what the taxpayer would want for the sake of a safety net in very rare cases of failure. Moreover, as the noble Lord, Lord Aberdare, said, it would lead inevitably to an increase in the cost of these courses.

Private providers and their representatives will also have views on this of course, and there has not been the opportunity to seek them or reflect on these matters since the amendment was laid, so we are by no means ready to accept that legislation is an appropriate response to the risk that noble Lords have helpfully highlighted. However, I would be delighted to discuss this matter further with the noble Lord, Lord Storey. We are looking into this carefully, but we need to take proper time to consider our policy response, which may not require legislation.

I will now discuss Amendment 20. I am grateful to the noble Lords, Lord Watson and Lord Hunt, for this amendment. I understand their concerns, but I hope that I can reassure them that this amendment is not necessary. The Government are doubling investment in apprenticeships because we know that they provide employers with the skills they need to grow their businesses and benefit the economy. Through the funds raised by the apprenticeship levy, we will be able to invest twice what was spent in 2010-11 in apprenticeships by 2019-20.

The institute’s responsibilities include ensuring that the quality of apprenticeships available to employers reflects employer needs and the Government’s priority for apprenticeships to be a high-quality programme. It will need to work closely with the Department for Education, employers and other stakeholders to make that happen. Its responsibilities also include advising on the pricing of apprenticeship standards to ensure that government funding supports the delivery of high-quality training. The institute will work with employers and providers to understand the cost and value of apprenticeships to inform their advice. The institute does not have responsibility for the apprenticeship budget or how much of it is spent. This resides with the Secretary of State for Education and her department’s agencies.

The Government are fully committed to comprehensive investment in apprenticeships. The apprenticeships budget is set at the spending review. That provides certainty on the forward spending profile for the duration of the Parliament, as well as ensuring affordability of the programme and that the taxpayer receives value for money.

Tying a commitment on spending explicitly to the levy receipts could mean adverse funding consequences for the programme as a whole. The 2016 Autumn Statement revised down the projections for income from the apprenticeship levy over the next five years, but this does not impact on the agreed budget that the department already has as part of the spending review settlement. For example, the provisional budget for spending on apprenticeships in 2019-20 for England and the devolved Administrations totals in excess of £2.9 billion, versus the projected levy income of £2.8 billion. Having certainty over the funding for apprenticeship training is preferable to directly linking the funding on a year-by-year basis to the wider performance of the economy. As described earlier, levels of spending will be determined by the choices that employers make.

I hope that noble Lords feel reassured enough by my responses to these amendments not to press them.

Lord Watson of Invergowrie: My Lords, I thank the Minister for his response and all noble Lords who have participated in this debate. On the three amendments that carry my name—our amendments to Amendment 14, in the name of the noble Lord, Lord Storey—the Minister said that we will have an opportunity to consider that further. That is to be welcomed.

On Amendment 20, I feel the Minister rather overegged the pudding. I said that I do not think the levy will be undersubscribed or short of applications. He seemed to be saying that this would depend on monetary fluctuations. The fluctuation that would concern me would be, if not enough applications for the fund came forward, what would then happen to any so-called surplus that would remain? I am not unhappy with his response. I am optimistic that the levy will be fully taken up.

I am not so optimistic about the Minister’s comments on Amendment 1 and apprentices being described as approved learners, as I think they should be. He mentioned apprentices as being employed and receiving—or at least being entitled to receive—the national minimum
wage of £3.50, but that is the figure that will apply next month. For any other worker aged up to 18 the rate will be £4.05; for those aged between 18 and 20 it will be £4.50. Despite that very low level, apprentices are paid less than their peers who, for whatever reason, are not in apprenticeships but are working. I do not think that argument carries a great deal of weight.

The Minister also said that he is not willing to support extending the higher education bursary of £2,000 for apprentices to those leaving care. Surely any barriers to young people taking up apprenticeships should be removed or at the very least mitigated. On those two issues, the Minister did not show any willingness to do so. He said there were sufficient safeguards to ensure that apprentices and their families do not lose out by dint of the young person taking up an apprenticeship. That is palpably not the case. Further education colleges have already drawn to the attention of the Association of Colleges a number of cases of would-be apprentices being dissuaded from applying for—or, having applied for, then taking up—an apprenticeship when the financial consequences become clear. That is through pressures within their families. Whatever the rates in place, there are not sufficient safeguards. That deters some young people from taking up apprenticeships. That they are not regarded as approved learners is surely a glaring loophole which the Government must at some stage move to close.

I regret that the Minister has demonstrated no willingness even to acknowledge that there is an issue, far less a willingness to find a means of resolving it. We regard that as unsatisfactory. For that reason, I wish to test the opinion of the House on Amendment 1.

4 pm

Division on Amendment 1

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Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jordan, L.
Jowell, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kidron, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkwood of Kirkhope, L.
Kramer, B.
Laird, L.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Lennie, L.
Lester of Herne Hill, L.
Liddell of Coatyke, B.
Likey, L.
Lister of Burtersett, B.
Livermore, L.
Low of Dulston, L.
Ludford, B.
McAvoy, L. [Teller]
McDonagh, B.
Macdonald of Tradeston, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Maclemman of Rogart, L.
McNally, L.
Maddock, B.
Massey of Ilton, B.
Massey of Darwen, B.
Mendelsohn, L.
Mitchell, L.
Monks, L.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Newby, L.
Oates, L.
O'Neill of Bengarve, B.
O'Neill of Clackmannan, L.
Ouseley, L.
Paddick, L.
Palmers of Childs Hill, L.
Parmiter, B.
Patel, L.
Paul, L.
Pinnock, B.
Pike, L.
Praisby, L.
Preshar, B.
Prescott, L.
Primarolo, B.
Prosser, B.
Purvis of Tweed, L.
Quin, B.
Ramsay of Cartvale, B.
Ramsbotham, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Rosser, L.
Rowlands, L.
Roya1 of Blaisdon, B.
Russell of Liverpool, L.
Sawyer, L.
Scot of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shutt of Greenthard, L.
Simon, V.
Singh of Wimbledon, L.
Smith of Basildon, B.
Smith of Clifton, L.
Smith of Newnham, B.
After Clause 1, insert the following new Clause—

(2) The Institute for Apprenticeships and Technical Education must report on an annual basis to the Secretary of State on quality outcomes of completed apprenticeships and

(3) The Secretary of State must lay a copy of any report under subsection (1) before each House of Parliament.

Moved by Lord Watson of Invergowrie

2. After Clause 1, insert the following new Clause—

“Report on quality outcomes of completed apprenticeships

(1) The Institute for Apprenticeships and Technical Education must report on an annual basis to the Secretary of State on quality outcomes of completed apprenticeships.

(2) A report under subsection (1) must include information on—

(a) job outcomes of persons who have completed an apprenticeship;

(b) average annualised earnings of persons one year after completing an apprenticeship;

(c) numbers of persons who have completed an apprenticeship who progress to higher stages of education;

(d) satisfaction rates of employers which hire persons who have completed an apprenticeship; and

(e) satisfaction rates of employers which hire persons who have completed an apprenticeship with the quality of that apprenticeship.

(3) The Secretary of State must lay a copy of any report under subsection (1) before each House of Parliament.”
Lord Watson of Invergowrie: My Lords, again, this is an issue that we considered in Committee. Indeed, it was also discussed in another place. But the fact that we continue to seek a greater level of reporting surely makes it clear to the Minister that we do not accept the responses given by him and his honourable friend the Skills Minister, Mr Halfon. We do not resubmit amendments without believing that they would enhance the Bill. I stress that there is no political point-scoring involved in amendments such as this. The Minister will know that when his arguments convince us—as, indeed, from time to time they do—we do not return to matters that have been taken as far as they usefully can be. But we do not believe that to be the case here.

The amendment is largely self-explanatory so I shall not rehearse the arguments that I used previously, but quality of outcomes will be absolutely key to the extent to which the skills gaps in the economy are able to be filled by UK workers trained for these jobs—initially in the decade ahead but also far beyond that point. The duties that would be placed on the institute by Amendment 2 are hardly onerous. The Minister stated in Committee that they are unnecessary as the Enterprise Act 2016 will require the institute to report on its activities annually. Of course that is the case—but not to the level of detail that we seek here.

The institute is about to come into being and will need some time to find its feet. But the Department for Education’s own website states that, according to the Bill, the institute will ensure, inter alia, “high quality standards and assessment plans, which will lead to high quality apprenticeships”.

The extent to which the institute is successful will depend on assessing the job outcomes of those completing apprenticeships and the earnings that will result from those or from moving on to higher education. The rationale for the amendment is to go further than the basic reporting required by the Enterprise Act and to make public the extent to which both apprentices and employers believe that training and levels of employability are being strengthened and deepened as a result of the new landscape.

Surely the Secretary of State would expect nothing less than an annual report from the institute on the quality of outcomes from completed apprenticeships. So we ask, why not have that in the Bill? It follows, particularly when the Government are in pursuit of their target of 3 million starts by 2020, that Parliament should have the opportunity to receive and debate the report. If the Government want quality rather than quantity to be the driver, as they say they do, they should welcome the maximum amount of transparency in that regard. The fact that the amendment will require the institute to collect information from the department should be a positive and should be welcomed by the Government as a sign that it is meeting expectations. That is what Amendment 2 is designed to achieve.

Amendment 3 also requires reporting by the institute. I hope that the Minister will not again tell noble Lords that it is not necessary. Noble Lords will note that we are not asking the institute to do anything more than request from the department information which the department already holds. The purpose of doing so is to ensure that the institute is achieving success in turning round the situation identified by the Government’s Social Mobility and Child Poverty Commission, as it was then known, a year ago. It warned that the Government’s drive on apprenticeships was failing to deliver for young people and pointed out that almost all the recent increase in apprenticeship starts related to people over the age of 24, with the number of young people starting apprenticeships showing little change since 2010.

It also noted that, unlike academic courses, youth apprenticeships typically do not represent a step up. Most A-level-age apprentices do GCSE-level apprenticeships and almost all—97%—university-age apprentices do apprenticeships at A-level equivalent or lower. The commission also highlighted that most youth apprenticeships are in sectors such as health and social care, business administration, and hospitality and catering, which are characterised by low pay and, often, poor progression.

The Commission on Social Mobility also welcomed the Government’s efforts to improve the quality as well as the number of apprenticeships but said that there needed to be a real focus on improving the quality of apprenticeships for young people. It called on the Government to increase the number of young people doing higher apprenticeships to 30,000 by 2020 compared to the present 4,200 19 to 24 year-olds. It also called for a UCAS-style apprenticeship gateway that would give young people much better information on what apprenticeships are available—and, crucially, where they might lead.

Some advantages will be identified as a result of the establishment of the institute, but throughout the passage of the Bill here and in another place we have heard many fears expressed that the drive to 3 million apprenticeship starts risks double or even triple-counting some apprentices. There is a need for improved data transparency so that it is clear how many apprenticeships the starts data relate to. That is what the amendment seeks to achieve and why it makes the connection with those in receipt of the pupil premium, so as to be able to monitor the effect that completed apprenticeships have on young people’s lives in comparison with their more advantaged counterparts.

The Government consistently say that they are committed to social mobility. On that basis, I would say to them that they should embrace this opportunity to demonstrate the success of that aim. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I will speak to Amendment 21 in this group, which is in my name and those of my noble friend Lord Storey and the noble Lord, Lord Lucas, and add my support to Amendments 2 and 3 to which the noble Lord, Lord Watson, has just spoken. Our amendment came out of discussions with the CBI, which has a great deal of interest and expertise in the future of apprenticeships—indeed, its engagement is vital to the success of this scheme. It expressed the concerns of its members that the new institute will need monitoring and overview, particularly in its early days.

The amendment aims to ensure that there is regular reporting back to the Secretary of State on the quality of apprenticeships and technical education, calling for, “a response … containing any actions to be taken as a result”.

Those “any actions” are particularly important because having action plans in response will surely make the difference. There needs to be ongoing communication. This is a weight of responsibility on the institute and empowerment of people to ask the right questions, both for members of their own family and in general, was the availability of data. I hear good-quality conversations now from parents, teachers and young people about education, and that is because they have the information to ask the questions and have the debate.

However, I do not think it is there with apprenticeships and technical education. We do not have it yet, and we have a responsibility, if this system is to work, to build up the data and language so that the public can have a proper conversation and monitor what is going on with apprenticeships. Certainly in the medium term, this amendment would help deliver that. It would put information in the public domain every year, and in time, if not immediately, that would lead to discussion and debate. That has to be good for raising the profile of this area of education as well as holding the institute to account for what it is delivering.

I accept that entirely, but also want to emphasise a different point. Has the Minister wondered whether this does not in some way reflect the annual HMCI report, which is laid before Parliament and on which there is always a public debate? It gets on the “Today” programme, bits of information get into the newspapers and the media, and it becomes part of the national conversation that we have about schools. So having this information in the public domain is the right thing to do for accountability. But it would also help with the cultural change that we have to bring about to have a public debate about this area of education. This is not unreasonable. I can see that in years to come—say, in five years’ time—we might want to review the minutiae and the details. I do not think we ought to be committed to this for ever and a day, but I cannot see that the value of starting the practice of having an annual report, monitoring progress and building up confidence and awareness, would be outweighed by any bureaucratic burden that it might place on organisations.

**Lord Lucas (Con):** My Lords, I entirely agree with what the noble Baroness, Lady Morris of Yardley, has just said. As the House knows, I run the Good Schools Guide. We do what we can to spread information about apprenticeships, but that is extremely difficult because the amount of information available is not good. For universities, by comparison, there is one single source of information. Now, I do not wish the Government to hire UCAS to do apprenticeships, because UCAS is an extremely difficult organisation to deal with and does not let data out to anyone, but something like it which was a single point of information would really help schoolkids and schools because ordinary teachers, let alone career teachers, do not have time to learn their way around 150 different university apprenticeships, let alone all the others. They need a coherent source of information. There is a habit among employers of letting information out only in the two weeks when they want to hire apprentices, rather than all around the year when potential apprentices want to be looking. They are not adjusted to that kind of marketing yet; they are recruiting in penny numbers rather than the tens of thousands, as universities are. There are all sorts of reasons why we need more information and support.

If you want to know where children have gone on to from school, schools will give you—at least English schools will: Scottish schools are more tiresome—a long list of university courses that their students have got on to. Nowhere can you find those data for apprenticeships. You can get data from the Higher Education Statistics Agency so you can publish information from there if you want, but there is no equivalent available for apprenticeships. That makes the whole business of upping the status of apprenticeships, and of technical education generally, much harder than it needs to be. So while I hold no brief for the exact drafting of the two Labour amendments, I am very much with the spirit of them.

On the amendment that followed from the noble Baroness, Lady Garden, there is scope for upping the prestige of the Institute for Apprenticeships in this way. It gives it that much more visibility in public, that much more right to comment and that much more right to be heard. At a time when there is going to be a lot of change, a lot of difficult decisions taken and a lot of need for what is going on to be in the public eye so that things that are not quite right get caught early and commented on early rather than being relegated to the pages of a few specialist magazines, an increase in prestige, as suggested in this amendment, is an excellent idea.

**Lord Baker of Dorking (Con):** My Lords, we have not had very much information about what the annual statement from the Institute for Apprenticeships will be. As the institute is a quango, it will certainly produce an annual report—there is no question about that—and it is the usual practice of such reports to be debated in one way or another in the House. So we should accept that as a given, as it were.
As to the content of the report, I am encouraged by the fact that the quality of the directors will mean that it is not going to be a soft quango at all; it will be a very tough and well-informed one because they will be very aware of the fact that it is a great new departure in the education system to concentrate on apprentices, and they will want to ensure that the apprentice system that the country develops will be effective for both employers and students. So I expect the Institute for Apprenticeships to take an interest in nearly all the points mentioned in paragraph 1.

Whether that is needed in the Bill, I very much doubt. The best way to do it would probably be for the Secretary of State to formally write a letter to the chief executive of the institute when one is appointed, which I hope will be soon, indicating the range of information that the report should contain. That might be the best way out of it because the nature of the information will change over the years and you do not necessarily want to keep amending this part of the Bill. There are all sorts of other interesting things that the report should contain. I think the time has come for the Minister to make clearer what he thinks will be in the report. If he cannot do so today, perhaps he might be able to before Third Reading.

4.30 pm

Lord Nash: My Lords, I am grateful to the noble Lords and the noble Baroness for the amendments on reporting issues for the institute. I start by discussing Amendment 2, tabled by the noble Lords, Lord Watson and Lord Hunt. Being able to assess how well the apprenticeship reform programme is achieving outcomes is of course essential. We need to know whether those undertaking apprenticeships or technical education qualifications are receiving the benefits that we would expect them to receive. To be able to do that, we obviously need the right information to help us make such an assessment. How the institute reports on its work is a topic that we discussed in Committee, but I remain convinced that the provisions already in the Bill are the right ones and that they are sufficient. I am sorry to disappoint the noble Lord, Lord Watson, but I therefore still do not believe that an amendment to the Bill is necessary to achieve that objective.

As I have said, the amendment was discussed in Committee and on Report in the other place, and in Committee in this place, and both the Minister of State for Apprenticeships and Skills and I have given sound justification for why it is not necessary. The institute will be required to report on its activities annually under the Enterprise Act 2016, and the report must be placed before Parliament. This will include information on how the institute has responded to the statutory guidance. In addition, the Enterprise Act includes provisions enabling the Secretary of State to request information from the institute on any topic.

The information set out in the amendment is already collected and published by the Secretary of State on the performance of the FE sector, which includes apprenticeships. In order to inform its activities, we would expect the institute to make good use of these data in its annual report when it assesses its performance and impact each year. Indeed, the shadow institute has explained in its draft operational plan that it, “will make more use of learner, employer and wider economy outcome data when reviewing the success of standards”.

The institute’s core role is to oversee and quality-assure the development of standards and assessment plans for use in delivering apprenticeships and, we expect, from April next year, college-based technical education. Much of the information that the amendment proposes that the institute provide goes well beyond what is in scope of its remit. It would therefore be inappropriate for the institute to be asked to provide this type of information, and an unnecessary duplication of effort, given that this information is already collected and published by the Secretary of State. It is right that the Government collect and monitor that information, but where it falls outside the remit of the institute, it cannot reasonably be expected to provide it.

I turn to Amendment 3. Improving social mobility is integral to our apprenticeship reforms. The Institute for Apprenticeships is supporting this by helping to create a ladder of opportunity based on quality apprenticeships for people across the country. This ladder will ensure that, no matter where you are born or who your parents are, if you work hard and apply yourself, you can get ahead, succeed and shape your own destiny.

To support this aim it is of course critical that reporting measures are in place to enable us to assess how well the programme is achieving positive outcomes for a range of groups, including young people. I agree therefore with the spirit of the amendment, which proposes that such information is monitored, measured and reviewed regularly. However, I believe this amendment is unnecessary to achieve that.

We want an education system that works for everyone and drives social mobility by breaking the link between a person’s background and where they get to in life. Our defining challenge is to level up opportunity.

On 18 January, the Secretary of State for Education set out her three priorities: tackling geographic disadvantage; investing in long-term capacity in the system; and making sure that our education system as a whole really prepares young people and adults for career success. That is why the Government are delivering more good school places, making school funding fairer, strengthening the teaching profession, investing in improving careers education, transforming technical education and apprenticeships and opening up access to our world-class higher education system.

The Department for Education already publishes a range of data on apprenticeships through a number of reports broken down by starts, achievements, sector subject area, framework and standard, geography, gender, age, ethnicity and other diversity and disadvantage markers. These data are published as national statistics by the department and intended to provide transparency.

It would be more appropriate for the head of profession in the department to consider how and where breakdowns of disadvantage for apprenticeships data are published, in accordance with the code of practice for statistics set by the National Statistician. Additionally, the department is considering publishing new data and measures required to support the Secretary of State’s three priorities. The department is committed to publishing disadvantage measures such as the pupil premium, but
needs to be free to find the most appropriate for each age group, programme and purpose.

Data are already helping our work to improve social mobility. For example, we know that 10.5% of those starting an apprenticeship in 2015-16 were from a black and minority background, and we have set an ambitious target to increase the apprenticeships started by people from BAME backgrounds by 20% by 2010. In addition, the department publishes 16-to-18 performance tables that cover classroom-based provision within schools and colleges. The 2016 performance tables were reformed to report five headline measures for students taking A-levels and vocational qualifications at a similar level. Further reforms are planned for 2017 performance tables. This includes extending the performance tables to include outcomes for students still studying at GCSE level and reporting outcomes for disadvantaged students, the definition of which is those who were in receipt of pupil premium funding in year 11. This will have the effect of linking key stage 4 pupil premium information with 16-to-19 outcomes. In 2018-19, we will include only GCSE-level equivalent qualifications that are on the technical certificates list.

The institute has been given a clearly defined role, in which it will be responsible for setting quality criteria for the development of apprenticeship standards and assessment plans—reviewing, approving or rejecting them; advising on the maximum level of government funding available for standards; and quality assuring some end-point assessments. While we expect data to be at the heart of the institute’s operations, the collection and publication of the data in this amendment goes beyond that remit and would create an undue burden on the institute, preventing it from carrying out the range of its other duties effectively.

I am grateful to the noble Baroness, Lady Garden, and the noble Lords, Lord Storey and Lord Lucas, for tabling Amendment 21. I completely agree with the spirit of the amendment, but there are already measures within the Bill that require the institute to monitor, measure, review and report on performance on a regular basis. I hope that after I have explained this further, the noble Lords and the noble Baroness will feel able not to press the amendment.

The institute will be a sustainable and long-term governance body that will support employers, individuals and others and will, among other things, uphold the quality of standards. I am grateful to my noble friend Lord Baker for his comments on the strength of the board and its governance. Although the institute will have wide-ranging autonomy across its operational brief, and will be able to carry out its functions in relation to apprenticeships independently, the Secretary of State will retain strategic oversight of the reformed technical education system and will be able to give directions and statutory guidance where appropriate. Of particular relevance to this amendment, the Secretary of State may direct the institute to prepare and send to the Secretary of State, as soon as reasonably practicable, a report on any matter relating to its functions. It may be in that context that the idea to which my noble friend Lord Baker referred, of a letter, would be most appropriate.

The institute will be required to report on its activities annually under amendments made under the Enterprise Act 2016, and that report must be placed before Parliament. This will include information on how the institute has responded to the strategic guidance provided to it by the Secretary of State. While the institute will collect and report on relevant data and information, the Secretary of State will also continue to collect and publish a range of data on the performance of the FE sector, including apprenticeships. We would expect that, to inform its activities, the institute would make good use of those data when it assesses its performance and impact each year, and compiles its annual report. The Enterprise Act has made amendments that also include provisions enabling the Secretary of State to request information from the institute on any other topic that she deems appropriate in relation to their functions in relation to apprenticeships. Through this Bill, those provisions extend to technical education.

Therefore, although ultimately the Secretary of State will retain sufficient powers to ensure that government retains overall control in relation to technical education and will provide strategic guidance in respect of both apprenticeships and technical education, we would expect that, in the exercise of its functions, the institute would assess its performance and take action to address any issues identified. I am confident that, with the governance that it has managed to line up, that should happen.

I hope that noble Lords and the noble Baroness will feel reassured enough on the basis that I have explained not to press their amendments.

**Lord Watson of Invergowrie**: I thank the Minister for his comprehensive reply—almost half the debate on this group of amendments was from his lips—which in some ways was not unencouraging. I welcome the contributions of two former Secretaries of State for Education, which are always informative. Although my noble friend Lady Morris was very supportive, the noble Lord, Lord Baker, was supportive only up to a point. He said that he did not believe this needed to be on the face of the Bill, but welcomed what Amendment 2 seeks to achieve. I noted that the Minister said it was likely that the request by the noble Lord, Lord Baker, for a letter from the Secretary of State would be taken up, and that is to be welcomed.

I also welcome the supportive contributions of the noble Baroness, Lady Garden, and the noble Lord, Lord Lucas. We are trying to make the point—expressed strongly by my noble friend Lady Morris—that the institute is just being established and needs to build its reputation. One way it will do that is by being open and transparent as possible. The Minister said that collecting the information mentioned in Amendments 2 and 3 would be an undue burden. However, Amendment 3 provides only for the institute to ask the department for information which it already holds, which is not particularly burdensome.

The transparency mentioned in Amendment 2 is important because it will build confidence, as my noble friend Lady Morris said. Many employers and training providers—all further education colleges—as well as putative apprentices, are looking to the institute to raise the quality of apprenticeships. Why not demonstrate
that as effectively as possible by both assembling and publishing the information mentioned in Amendment 2? The Minister said that the activities of the institute will be monitored, measured and reviewed but not reported on in the detail we have asked for. The Department for Education will have the information but apparently it does not want to give it to the institute to publish in its reports, which seems slightly odd.

Nevertheless, the Minister said quite a lot. I need to read his words in Hansard but he seemed to be mentioning quite a lot of benefit which will be seized on by those in the sector who have a genuine desire to make the Institute for Apprenticeships successful—to get it off to a good start and then build from there. There was certainly some positive input from the Minister, which I welcome. On that basis, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Amendment 4

Moved by Lord Young of Norwood Green

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

“Establishment of an apprenticeship helpline

(1) Within six months of the coming into force of this Act, the Secretary of State must bring forward proposals for the establishment of a dedicated apprenticeship helpline to be overseen by the Institute.

(2) The apprenticeship helpline in subsection (1) is to provide advice to persons who are undertaking, and persons who are interested in undertaking, an apprenticeship, on—

(a) the technical routes operated by the Institute;
(b) the courses available within these technical routes;
(c) how to apply for the courses accredited by the Institute;
(d) how to apply for any relevant financial support; and
(e) how to complain about the quality of teaching or training.”

Lord Young of Norwood Green (Lab): My Lords, in moving Amendment 4, I shall also speak to Amendments 7 and 19 in my name. Amendments 4 and 19 have the same intention and objectives. I support what the Government are trying to do and thank the Minister and his team for the meetings we have had and the information they have conveyed to us. I come at this from the point of view of constructive criticism and suggestions. Getting towards the target of 3 million apprenticeships in the lifetime of this Parliament is a formidable challenge and I welcome the Government setting it. We have said on many occasions, and the Minister has agreed, that although the target is there, the first priority has to be the quality of the apprenticeships. We must ensure that, in the minds of the public at large, potential apprentices, their parents and employers, this is a quality product and a worthwhile career path which would, in many cases, be an alternative to university. That emphasises the importance of maintaining the status and standing of apprenticeships.

I asked the Minister and the Bill team what would happen if a young apprentice felt that their apprenticeship was inadequate in terms of the way they were being treated or the training provided. The answer was understandable in some ways—namely, that in the first instance the young person concerned could raise his or her concerns with their employer, and if that did not work, they could go back to the training provider. I cannot remember what the third option was. However, a young person in their first job may feel somewhat diffident about making a complaint to their employer. In some ways, I would want them to raise their concerns with their employer—I will return to that issue when I discuss my Amendment 19—as I would want both the employer and the employee to understand their rights and responsibilities under the apprenticeship. In ideal circumstances, they should be able to do that. However, we have been told that the quality of apprenticeships will be assessed in the main by Ofsted, and that a risk-based approach will be adopted. I understand that. There is no problem with well-established apprenticeships—I use the term “Rolls-Royce” in both a literal and metaphorical sense—as they have very competent and well-appointed HR departments. A young person joining such an established company is unlikely to have any problems. If he or she encountered problems, I am pretty sure that they would feel confident about raising them with their employer. But what about much smaller enterprises? If we are to increase the number of apprentices significantly, we have to focus on SMEs. Small enterprises, single-person enterprises or microbusinesses do not necessarily have well-established HR departments. In fact, it is highly unlikely that they do. Therefore, there is potential for things to go wrong in these enterprises. I remind the House that not many years ago a young lad on an apprenticeship went out to work and never came home when a fatal accident occurred. That is a rarity but it has happened. I do not seek to build on that, but we should understand the importance of ensuring that the work environment is safe and that the employer is carrying out the responsibilities he has agreed to carry out.

I would not have thought the Minister would have much of a problem with a single source of information that enables apprentices to find out about the technical routes I have outlined, the available courses, how to apply for them and other issues. The Government probably address these issues in any event through the National Apprenticeship Service. However, I consider that proposed new paragraph (e) in my Amendment 4, which addresses the ability to, “complain about the quality of teaching or training”, is a vital part of apprenticeship provision. The Government have already established an employee rights helpline for employees who are not apprentices. I seek to build on that principle. To maintain the status and working effectiveness of apprenticeships, it is even more important that young apprentices should feel confident that if their employer is not responding to a genuine complaint they can take it somewhere else and it will be acted on. Therefore I see this as a vital part of the Government’s intention to substantially increase not only the sheer number of apprenticeships but the
number of participating employers. I remind the House that at the moment only something like one in five employers takes on apprentices, so we have a long way to go.

Amendment 19 states:

“For the purposes of ensuring the quality and status of apprenticeships, the Institute must ensure that apprenticeship agreements … include the rights and responsibilities of the person or employer providing the apprenticeship; … include the rights and responsibilities of the apprentice; and … are signed by the person or employer providing the apprenticeship and the apprentice; and … where appropriate”—if they are under 18—“by the parents”. Apprentices get or used to get a certificate on becoming an apprentice—I think it came from the Department for Education or BIS—but that is not good enough in the current situation. If we are serious about enhancing the status of apprenticeships, there should be a formal occasion when both sides recognise that this is a big step in the life of a young person, and they both recognise their rights and responsibilities. I do not see this as one side of the equation. An employer has the right to expect a young person taking part in an apprenticeship to do the basic things: to turn up on time every day of the week—as I have said to some young people, not looking like you have just fallen out of the laundry basket—and to display enthusiasm when you get to the place of employment. This may seem like stating the obvious, but employers will tell you that some young people seem to be deficient in some of what are wrongly described as “soft skills” but which are really essential skills: the ability to recognise that they are part of a team, and how to interact with customers. There is a real practical purpose in what I am seeking to achieve, and it is not a one-sided thing—I am asking exactly the same thing of apprentices. A formal signing ceremony would enhance the status of apprenticeships. Where the apprentice was under 18, the parents would see the significance of this situation. If the Government are genuinely seeking—as I am sure they are—to enhance the status of apprenticeships, I hope that they will take a positive approach to Amendment 19.

On Amendment 7, I remind the Government—not that I necessarily think they need reminding—about what I have already mentioned. If we are to succeed, it is important that we encourage small and medium-sized businesses to employ apprentices. I want the institute to look at the performance of local enterprise partnerships, local authorities and training providers with regard to both the quality and quantity of apprenticeships they provide. If you look at the evidence available around the country, the performance is what I could only describe as rich and varied, and in some cases not rich enough. However, there are some very good examples of what is happening out there. Surely, if we are seized of the importance of involving a greater number of employers than the one in five we have at the moment, there is value in identifying the best practice in making that information readily available. I suggested an annual report because Parliament needs to see on an annual basis the progress we have made, and if we do not make progress in this area, the Government will fail to achieve the objectives that they have set out.

That is the basis for the amendments. I argue that in a way they are complementary and I think that they build on the debate that we had in Committee. I trust that the Minister will receive them sympathetically and I look forward to his response.

Lord Watson of Invergowrie: My Lords, I thank my noble friend Lord Young of Norwood Green for submitting these amendments. I have added my name to Amendment 4. I do not think there is a great deal to add to what he has said, but some of this impacts on the arguments that I advanced on the previous group of amendments. It is about accessibility of information and careers advice on apprenticeships. It is also about the institute being seen as an open and accessible organisation. I think we all agree that we want it to meet its aims and to do so as successfully and quickly as possible. Asking it to provide information and to report to Parliament is not radical; it is about building the sort of confidence that I referred to on the previous group of amendments.

Monitoring how many small and medium-sized enterprises employ apprentices is also important because those employers will be key to the Government reaching their target of 3 million starts by 2020. Quite possibly this will be included in the list of categories mentioned by the Minister in his response to me on the last group of amendments, and perhaps he could say something about that in his reply. To some extent, SMEs have been the elephant in the room; they have not been referred to in our consideration of the Bill to anything like the extent they should have. They will play a very important part in apprenticeships—in small numbers, inevitably, and company by company—but overall they will make an important contribution.

I agree it is important that not just the number of apprenticeships starts but, as my noble friend Lord Young said, the number of employers taking on apprentices are listed. If those figures are not collected, how can the network being established by the institute be measured? The kind of information that I refer to will surely be collected, so I ask the Minister: why would the institute not make it publicly available and do so willingly?

I would like to add to what my noble friend Lord Young said by mentioning the apprentice contract and, to some extent, its status. He talked about complaints and the need for a helpline when apprentices need to pass on their concern about the quality of the apprenticeship being offered. There is no regulator in this sector and I ask the Minister whether the apprenticeship contract will be subject to the Consumer Rights Act 2015. The contract will be fully entered into by both parties, and that Act will play a part in the higher education sector as a result of the Bill before your Lordships’ House. A preliminary investigation led to universities being required for the first time to produce information on the cost of courses and so on, and that would be helpful. If the Minister cannot reply immediately, I shall be quite happy to receive a letter on the status of the apprentice contract and whether it will be subject to the Consumer Rights Act 2015.

Lord Lucas: My Lords, I would certainly like an apprentice who is having a hard time getting what they
want or a proper education, particularly in an SME, to be able to communicate that, and unless there is an established route for them to do so, as described in the amendment of the noble Lord, Lord Young of Norwood Green, it will be very difficult to ask someone to invent one. There needs to be someone the apprentice can talk to first; otherwise, it will be just too difficult and we will never get to know the quality of the apprenticeship. Anything that became a regular reporting mechanism might well take up a lot of time but not produce any good. However, something should be in place so that, when things are really going wrong, the person at the wrong end of that can have a voice. It seems to me that that is worth including.

5 pm

Baroness Vere of Norbiton (Con): My Lords, I am grateful to the noble Lords, Lord Young and Lord Watson, for tabling this group of amendments. I thank the noble Lord, Lord Young, in particular for his kind words relating to the intent of the Bill.

I turn first to consider Amendment 4. Ensuring that apprentices get the support they need to make the most of their apprenticeship and to progress into an engaging and rewarding career is essential. This amendment provides that the Secretary of State should bring forward proposals for the establishment of an apprenticeship helpline, managed by the Institute for Apprenticeships. Such an amendment is unnecessary as such a helpline already exists.

The National Apprenticeship Service operates a helpline that does two things: it provides advice to employers who wish to offer apprenticeships on all aspects of the scheme, including information on training providers, funding and recruitment; it also provides support to individuals who would like to apply for an apprenticeship and signposts them to vacancies on the GOV.UK site “Find an apprenticeship”. The helpline also provides help and support for apprentices and employers who have concerns or complaints. Teams within the National Apprenticeship Service investigate these where appropriate. If an apprentice raises concerns about employment law, the helpline refers them to ACAS if necessary. Advice on technical routes is currently offered by the National Careers Service. However, with the expansion of the remit of the Institute for Apprenticeships from April 2018, we will consider whether one service should be expanded to provide a one-stop shop for apprenticeships and technical routes.

I would now like to speak to Amendment 7. I welcome the sentiment behind the amendment: that small and medium-sized enterprises are encouraged and supported to employ apprentices and that these apprenticeships are of high quality. The noble Lord, Lord Young, is absolutely right that small and medium-sized employers are crucial to the success of our apprenticeship reform programme. After all, only 1.3% of employers will be paying the apprenticeship levy. To that end, the Department for Education is ensuring that smaller employers understand the benefits of apprenticeship training for their business, and that they take advantage of the support available, including the substantial contribution of 90% of the training and assessment costs for an apprenticeship.

To raise awareness and support smaller levy payers and non-levy payers, every local enterprise partnership has been given £5,000 to work on employer readiness for the levy and to support campaigns to raise the profile of apprenticeships. We are undertaking a wide range of communications and engagement activity to ensure that employers of all sizes are aware of how they can make the most of the opportunities presented by apprenticeships. The Get In Go Far campaign, for example, has focused specifically on helping small employers understand the benefits of apprenticeships.

However, on the noble Lord’s request that the institute has a specific role to monitor this, I believe that we have already established a remit for the institute which will ensure that apprenticeship standards and assessment plans are of high quality for apprentices employed in organisations of all sizes. The institute has been given a clearly defined role in which it will be responsible for: setting quality criteria for the development of apprenticeship standards and assessment plans; reviewing, approving or rejecting them; advising on the maximum level of government funding available for standards; and quality assuring some end-point assessments. While we expect the institute to engage with organisations such as local enterprise partnerships and local authorities, formally to monitor their performance would create an undue burden on the institute, preventing it from carrying out the range of its other duties effectively.

I hope I have provided sufficient reassurance that the Government recognise the importance of small and medium-sized employers and that the institute is already ensuring the quality of all apprenticeship standards and plans, regardless of the size of employer.

I turn finally to Amendment 19 in this group. There is evidence that, in the past, some apprentices have not been clear on what their apprenticeship entitles them to and employers do not always understand their responsibilities towards their apprentices. Ensuring that all parties involved in an apprenticeship have a clear understanding of their roles and responsibilities is essential for it to be a success.

However, an amendment is not necessary to ensure this outcome. Section A5 of the Apprenticeships, Skills, Children and Learning Act 2009, which was inserted by the Deregulation Act 2015, provides that an apprenticeship agreement is an employment contract. It follows that all the safeguards which apply to employment contracts also apply to apprenticeship agreements. In addition, since the introduction of apprenticeship standards, we have required that apprenticeship commitment statements be signed by the apprentice, the employer and the provider at the outset of the apprenticeship. If the apprentice is under 18, it should be signed by a parent or guardian. This is required through the Skills Funding Agency funding rules.

The apprenticeship commitment statement sets out details of the apprenticeship and covers three areas: the name of the standard the apprentice is following and the start and end dates; the training that will be undertaken by the apprentice and who will deliver it; and the roles and responsibilities of the parties involved. For example, for the apprentice this might include a clear articulation of when they should attend work and when they should attend training, as well as appropriate behaviours in the workplace—although I
Am not sure that it will mention the laundry basket. For the employer, it might include how they will ensure successful delivery of the apprentice and preparation of the apprentice for their end-point assessment, and for the provider it might include clearly setting out the advice and support they can offer both the employer and the apprentice. The statement should also include details of how the parties will work together and how issues will be resolved. This is in addition to the employment law requirements on employers to set out the particulars of employment. Turning to the point—

Lord Young of Norwood Green: I welcome a lot of what the Minister has been saying, but is that formal signing process taking place now in all cases, or is the noble Baroness advising us that it will be a requirement from whenever? Can she clarify that?

Baroness Vere of Norbiton: Unfortunately, I am unable to clarify that at the moment, but I will write to the noble Lord. I will also unfortunately have to write to the noble Lord, Lord Watson, on his point about the Consumer Rights Act.

As a requirement of the Skills Funding Agency funding rules, the training provider must ensure that a commitment statement and the apprenticeship agreement are in place before funding is released, which implies that these things are happening—otherwise, funding would not be released—but I will confirm that. This is monitored by the SFA, and duplication by the institute is therefore not necessary. I hope that noble Lords will feel reassured enough on the basis of my explanation not to press these amendments.

Lord Lucas: Can my noble friend say whether the apprenticeship documents that an apprentice receives include the telephone number of the helpline?

Baroness Vere of Norbiton: Again, I am unable to confirm that, but I will write to my noble friend. If not, I think perhaps it should.

Lord Young of Norwood Green: My Lords, I thank the Minister for her comments. A number of them seem extremely helpful. I am appreciative of the fact that she will consider the one-stop-shop approach. I may be wrong and only time will tell, and I do not accuse the Minister of complacency because I do not believe that that is the case, but I think that the Government are erring on the side of optimism in relation to small and medium-sized employers. The feedback I am getting—and I am sure I am not the only one—suggests that, while employers welcome the training costs being met, along with some other contributions, it may be that they have underestimated the position of employers who are saying, “I have a business to run and I am having enough trouble keeping it going. Now you are asking me to take on the responsibility of an apprentice”. In many cases, small employers do not have any experience of dealing with the administrative side. They may exaggerate its complexity, but nevertheless they see it as a burden and a disincentive. They say, “I still have the wage costs, which are not insignificant, and for at least the first six months and up to a year I do not necessarily have a fully productive employee”. In these dialogues I always say, “The point you are making is interesting, but when a business takes on an apprentice and the arrangement is working well, I am told that the young person is making a positive contribution”. A fresh pair of young eyes is able to suggest to the business how to make a significant number of improvements, not least in areas like IT where the young person is often more knowledgeable than the employer.

I would urge the Minister to look at the situation again. There is still uncertainty about how the levy is going to operate and how it will filter through to small and medium-sized employers. On its own, I do not think that meeting 90% of the training costs is going to achieve what is needed. The Government should not take my word for it. They should talk to chambers of commerce and the Federation of Small Businesses. I think that they will be given the kind of feedback that I have set out today.

Obviously, I welcome what has been said about the contract of employment. While there are a couple of points on which the Minister will come back to us, overall it is good. I do not know whether the response has covered the point I was trying to convey—perhaps I did not set it out well enough. I referred to trying to ensure that the formal signing of the apprenticeship contract is marked as an occasion, because it should be. I look forward to the day when I can go into a secondary school and see on the wall not only the names of those who have gone on to Oxford, Cambridge and other institutions of higher learning, but also a board showing the young people who have achieved apprenticeships. Surely that is just as important and, in my view, as life changing a proposition for young people as going to university.

Overall, I welcome some of the information we have been given because it is positive and useful. I have indicated the areas that I think the Government should revisit and I thank my noble friends who have contributed to the debate. My noble friend Lord Watson made a point about consumer rights and I welcome the support of the noble Lord, Lord Lucas. Obviously, I anxiously await the replies to the issues we have raised, but at this point I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

5.15 pm

Amendment 5

Moved by Lord Young of Norwood Green

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

“Transition from existing qualifications to the new technical routes

Within six months of the day on which this Act comes into force, the Secretary of State must publish detailed proposals for the transition from existing technical and further education qualifications, to the awarding of new qualifications approved by the Institute.”

Lord Young of Norwood Green: This is another area about which we have had a significant amount of dialogue with the Government during the interregnum between the Committee and Report stages, and we have had some correspondence from the Minister. At first sight the Bill seems to be a modest little measure,
until you look into its implications. If there is one area with significant implications, it is around the transition to a new system of technical qualifications. One of the documents that we have received from the noble Lord, Lord Nash, says:

“The current system involves around 3,500 vocational qualifications, which can be hard to distinguish between—our intention is to streamline these options. The current landscape is confusing; for parents, students, careers advisers and employers. That is exactly why we are trying to reform and simplify it”.

It goes on to say:

“The Sainsbury Panel recommended that there should be a single exclusive licence for delivery of each new technical education qualification. The Institute will work with employers and other stakeholders to develop high-quality technical education qualifications, based on the knowledge, skills and behaviours that employers have identified as being a requirement for particular occupations”.

Again, that is a very ambitious objective. I agree that there is a bewildering number of technical qualifications out there. I would also agree that some of them are not of the highest standard, but that is not true of all those qualifications by any means. Some of them are well established and have a very good reputation, whether City & Guilds, HNC or HND. These have taken a long time to establish. We know—when I say “we” I mean the royal we—that is, the previous Labour Government know from when we tried to introduce

When we asked what exactly would be the transition from the 3,500 to a number, depending on the 15 routes, that could possibly be just a single qualification, the response we had from the Bill team was that this is a work in progress. That is not intended to be a derogatory comment on my part because the Government are trying to achieve a complicated process. We have said to the Government to be careful—I was going to say be careful not to throw out some of these babies with the bathwater, but they are not exactly babies; these are very mature, adult qualifications that have been around for a long time and have a high reputation—about getting rid of those qualifications and to understand the difficulty of establishing new ones.

While we have been considering this legislation, a new description for the qualification has appeared: T-levels. I quite like it. I do not know who thought it up, but I thought that since we have A-levels, T-levels potentially sounded good. I and many others who have been looking at this problem are worried for a number of reasons. I am sure that the noble Baroness, Lady Garden, and others will come in and expand on this. I do not know why this amendment has been taken as a separate group. The start of this, apart from all the other issues about intellectual property rights and other things that have been raised in the course of this debate, will be to get that transition process right. That will be a key part of establishing new technical qualifications. We do not want to be in a situation where suddenly we are introducing a huge level of doubt and uncertainty, where once again we are trying to create confidence in the apprenticeship brand and in technical education.

I understand that this is a work in progress, but I make a plea to the Minister and his team to recognise first the size of the task, which I think they do, and secondly the sensitivity of what they are dealing with and the need to get it right to ensure that there is adequate consultation, not only with employers but with all the other stakeholders, including the current awarding bodies and educational providers such as FE colleges. That is the basis of the amendment. Once again, I look forward to the ministerial response. I beg to move.

Baroness Garden of Frognal: The noble Lord, Lord Young, has tempted me, because I, too, bear the scars of the diploma, GNVQ and various other misguided projects of different Governments. He is quite right that my Amendment 28, which is in the next group, will be relevant here, too. I urge the Minister to consider just how sizeable this task is. We should not demolish existing vocational qualifications—as we were calling them—because many of them have great reputations and have served people well. If we are to build a new bright tomorrow for such qualifications, we need to use all the tools that we already have, which are serving the country well, and expand them into the next range of T-level qualifications.

Lord Watson of Invergowrie: My Lords, I thank my noble friend Lord Young for moving this amendment, which I am happy to support. In broad terms, we believe that the recommendations of the Sainsbury review should be fully implemented and funded. In the short term, there are three clear funding needs from the skills plan: fair funding for colleges; costs associated with finding and managing work placements, because they involve an individualised service to young people and employers rather than education to a group; and the cost of the transition year. A two-year full-time course would be the standard model under the plan, but with the expectation that some school leavers would need to take an additional transition year. This implies a full-time three-year programme. The current 16-to-18 funding system assumes a full two years and then administers a 17.5% cut in the third year. A sensible step, therefore, would be to maintain the full rate for three years for those students taking the transition year.

In his letter to noble Lords dated 22 February, the noble Lord, Lord Nash, stated that there are currently around 3,500 vocational qualifications. Most professionals in the sector have cited a figure of more than three times that amount, but more important is how the transition to the new regime is managed and funded. The Minister also said in his letter that the reforms would be phased in progressively, with the first routes available for delivery from September 2019. That apart, the transition was not set out and the amendment in the name of my noble friend Lord Young would enable that to happen. It would be a positive move and we believe that it is incumbent on the Minister to commit to it by accepting this modest amendment.

Lord Nash: My Lords, I am grateful to the noble Lords, Lord Watson and Lord Young, for tabling this amendment. I fully understand their concerns and
Amendment 5 withdrawn.

Baroness Garden of Frognal: My Lords, Amendment 6 is in my name and that of my noble friend Lord Storey. I will also speak to Amendment 28, which is in my name and supported by the noble Lords, Lord Lucas and Lord Watson of Invergowrie, and my noble friend Lord Storey.

I make no apology for bringing back Amendment 6. It is very simple. As we discussed in Committee, it would cost no money but would make a great difference. Craft and creative skills, personal services such as care or hairdressing, and professional skills such as business or accounting are not automatically seen as primarily technical. I accept that there has been a move away from the long-standing term “vocational” to cover non-academic qualifications and that the decision seems to have been taken that “technical” is the word of the moment, particularly now as we seem out of the blue to have T-levels—as the noble Lord, Lord Young explained. It would be interesting to know what consultation went on before the arrival on the scene of T-levels from the Chancellor of the Exchequer. In order not to narrow the Bill to purely mechanical technical subjects, an explanatory clause would be a helpful addition and ensure that this legislation is seen to be inclusive of all work-based qualifications and across the range of courses offered in further education.

Arts subjects should be held in the same esteem as other courses. It is of great concern to hear that creativity and the arts are being squeezed out in schools. Between 2003 and 2013, there was a 50% drop in GCSE entries for design and technology, 23% for drama and 25% for other craft-related subjects. It stands to reason that this will have a knock-on effect on the take-up of further education courses in creative subjects. We would like to ensure through this amendment that there is no doubt that the attempts to improve technical education, as outlined in the Bill, apply equally across all courses.

Amendment 28 is for clarification. As we discussed in Committee and as the noble Lord, Lord Young, set out, we would like to clarify the transition process between these schemes. There is already a comprehensive list of approved technical education qualifications in the Ofqual regulated qualifications framework. We seek to clarify the relationship between that framework and the list in the Bill. It would certainly introduce complexity and confusion to have multiple qualification lists. Can the Minister clarify that the institute’s list will be a transfer from rather than in addition to the Ofqual list? If so, what systems will be set up to ensure that the transition and transfers are as straightforward as possible? Does the Minister envisage any major differences between these two lists? I look forward to his reply and beg to move.

Lord Lucas: My Lords, I add my support to the amendments in the name of the noble Baroness, Lady Garden. If I remember rightly, in Committee the noble Baroness, Lady Cohen of Pimlico, asked whether the word “professional” might be added to “technical” in the Bill to provide a broader and more prestigious view of what was covered. I think “professional” has a lot of attractions to it in bridging the divide between academic and vocational qualifications. “Technical” gets some of the way but not all the way. I thought it
was a good suggestion. The Minister said that he would take it away and think about it. I am sorry if I have missed the results of those deliberations in the letters that have been sent out. But if I have not missed them and we have not had them, could we have them now, please?

5.30 pm

Baroness Wolf of Dulwich: My Lords, I rarely disagree with the noble Baroness, Lady Garden, on technical education, where I highly respect her expertise and experience, but I confess to a certain unease about the idea that there should be only one list and that it should overtly include everything. One of the key things that we are trying to do here is to create a highly respected and distinctive technical education course which sits alongside the academic one, and therefore by definition it cannot include everything that has passed a basic set of requirements for being an acceptable qualification.

I remind noble Lords that I have an interest in this, having been on the Sainsbury panel, but also looking back to my experience when I was doing the 14 to 18 vocational education review. I completely agree that one could go round for ever on vocational to technical to professional. But there is a really important distinction here between a limited set of qualifications that have been identified as having a very clear purpose and the possibility—and, I would say, high desirability—of allowing a very large number of qualifications to arise and be offered and meet a minimum threshold in the vocational and technical area. It may be that the wording of the noble Baroness’s amendment will not get in the way of that, but these distinctions are important.

When I made the 14 to 18 recommendations, I said explicitly that there should be a distinction between there being strong requirements before something could be offered in mainstream 14 to 16 education and a very different set of requirements which said that they could be out there and schools could offer them if they wished but they could not count in the league tables as being equivalent to GCSEs or A-levels. The same thing applies here with the task set for the new institute to identify qualifications which really meet the requirements of that distinctive high-status route. That is not the same as being on the Ofqual register.

This is not about whether it is craft or creative or technical, where I entirely agree with the noble Baroness, but about creating this “lost” route that we used to have without at the same time throwing overboard a large number of qualifications—some of them tiny, some of them big—which may serve quite different purposes. It is really important to recognise that one of the purposes of the institute is to create that alternative route and that part of that is about having a set of qualifications—probably not thousands long—that meet these criteria. Getting there is going to be difficult but if you do not have this end in view, it is hard to see how we will ever get out of what is at the moment a hugely confused and confusing mass of qualifications.

Again, to talk from personal experience, when I did the 14 to 18 review, I did not recommend anything like as much restriction at 16 to 18. What was recommended and adopted was this idea of a programme of study for each individual student between 16 and 18, which has worked quite well. I thought at the time that as a result of that we would move to a situation where a smaller number of good qualifications became clearly apparent as market leaders, and strongly established. I was convinced by Nick Boles, the Minister at the time the Sainsbury panel was set up, that this was just not happening; we needed to be more active and the programme of study was not enough.

It seems to me that a fundamental part of what the institute is about is creating a set of qualifications which meet the requirements for that alternative, high-status route from 16 on into adult life. Without talking to lawyers or drafting clerks, I do not know whether the amendment would have any negative impact on that but it is important to understand that one of the purposes of the institute, for which I think there is cross-party consensus, is to recreate that route. In my view, that means that you cannot just say that everything that is not an A-level can be on the institute’s list, because we need a list that is clearly part of this route without wiping out all the other many qualifications which may serve other and different purposes. That is what I wanted to say and I hope the noble Baroness and I do not really disagree.

Baroness Vere of Norbiton: My Lords, I welcome the opportunity to debate the amendments in this group. I thank all noble Lords for their contributions.

I fully understand why the noble Baroness and the noble Lord have tabled Amendment 6, which seeks to define technical education qualifications as, “the full range of work-based qualifications”.

I reassure them that all relevant and appropriate occupations in the economy will be covered within the technical education routes. What is important is that there is good provision for everyone and that the reformed technical education system focuses on occupations for which skilled technical training is a requirement.

The Sainsbury panel report has already provided a clear definition:

“Technical education must require the acquisition of both a substantial body of technical knowledge and a set of practical skills valued by industry”.

Trying to define these qualifications in this manner could restrict the scope of technical education qualifications, both now and in the future. In practice, technical education qualifications will be defined by the coverage of the 15 technical education routes. Each route will provide a framework for grouping together occupations where there are shared training requirements. An occupational map will identify all the occupations within the scope of each route.

When defining the coverage of the 15 technical education routes, it is important to highlight that not all occupations will be included. The Sainsbury panel was clear that unskilled and low-skilled occupations that do not have sufficient knowledge requirements would not warrant a technical education route. Rather, these occupations can be learned entirely on the job, often within a matter of weeks. For these occupations, it would not be appropriate to offer technical education qualifications.
Baroness Vere of Norbiton: I reassure the noble Baroness and the noble Lord that within the technical education routes there will be comprehensive coverage of the skilled occupations that are vital to the success—

Lord Young of Norwood Green: I would like some clarification. The Minister said that the Sainsbury panel identified low-skilled or unskilled occupations that could be learned in a matter of weeks. We are talking about apprenticeships. The Government have already said that the minimum period for an apprenticeship is one year. That covers a very wide range of occupations. I would not necessarily call them unskilled or even low-skilled. Whether it is retail or anything else that is sometimes referred to in this manner, I do not think that is fair, especially if we are talking about an apprenticeship. We have said. I believe, that 20% of an apprenticeship should be off-the-job training. Which are the groups that do not require any technical qualifications whatever?

Baroness Vere of Norbiton: I thank the noble Lord for his intervention. I think it is unhelpful to try to put things into the brackets of “low-skilled”, “high-skilled” and “medium-skilled”, particularly based on what we experienced when we were much younger, and to try to connect them with apprenticeships. We are talking about technical education qualifications specifically, which may not be related to an apprenticeship. Occupations at the higher skill level will have technical education qualifications. Other occupations, while equally valid, will not.

Within the technical education routes there will be comprehensive coverage of skilled occupations. However, it is important to be clear that as well as meeting the technical education requirements set out in the Sainsbury panel, there must be labour market evidence to demonstrate employer need and a genuine skills gap. We will review this regularly and will continue to listen to any evidence from employers.

I am grateful to the noble Baroness and noble Lords for tabling Amendment 28 and for providing an opportunity to debate this issue. I hope that my explanation will put their minds at rest. The Ofqual register of regulated qualifications is a public-facing database listing the many qualifications that Ofqual regulates, including A-levels, GCSEs and functional skills. It is used as an indexing tool and includes information that helps employers, students and others understand the relative size and challenge of qualifications.

As noble Lords will be aware, new Section A2HA proposes that the institute will maintain a list of approved high-quality technical education qualifications based on the knowledge, skills and behaviours that employers have identified as requirements for particular occupations. When approving qualifications, the institute will need to ensure that the qualifications are at a level appropriate for the associated occupation or group of occupations. Qualifications will need to contain stretch and challenge that is commensurate with their ascribed level. They will need to be of an agreed size that reflects the amount of time involved in teaching and assessing them. This information will be clearly indicated in the list of qualifications maintained and published by the institute.

Once the institute has approved a new qualification, we will consider future funding for current similar qualifications on a case-by-case basis. We will not withdraw funding for students who are part-way through their course. Ofqual’s register of regulated qualifications and the institute’s register are both important parts of the system, but they have different purposes. If the institute’s register were to replace the Ofqual register, this would remove public information and a frame of reference for thousands of qualifications that would be outside the remit of the institute and which would have already been taken by students, including GCSEs and A-levels.

My noble friend Lord Lucas made a point about the suggestion from the noble Baroness, Lady Cohen, about “professional”. We have given this some consideration, and at the moment there is no consensus on an alternative to “technical education”. We have had a conversation today about technical education versus the entire gamut of qualifications or tests that you might take to work, which was mentioned by the noble Baroness, Lady Wolf. It is important that technical education retains a certain status within the minds of learner and employer.

There is a public need to maintain both registers. I hope that my explanation has reassured the noble Baroness to the extent that she is prepared to withdraw the amendment.

Baroness Garden of Frognal: I thank the Minister for her reply. I thank the noble Lord, Lord Lucas, for raising the matter of “professional”. I thought it had gained a certain accord in Committee, but it has obviously not found favour. I am sorry that the noble Baroness, Lady Cohen, disagrees with me on things or that she has sought to clarify. The short answer to my amendment is that there will not be only one list; there will be several lists. As the Minister explained, the Ofqual list is much broader. Presumably the institute’s list will be bits of what is on the Ofqual list. It will include some of the things on the Ofqual list which are relevant to higher technical qualifications, but if the Ofqual list is supposed to be a comprehensive list of all available qualifications, it will need to include those which the institute approves—perhaps I have misunderstood that.

I am also interested that it appears that we now have an A-list and a B-list, which I do not think was made particularly clear before. We have an A-list of qualifications which the institute approves, but in order to encompass all the other qualifications—the lower-level ones, for instance—there will be another list of qualifications which somehow will not come under the institute. This is confusing because the institute is now not only the Institute for Apprenticeships but the institute of further education, and further education, by definition, covers lower-level qualifications as well as higher-level qualifications.

5.45 pm

We would welcome a meeting between now and Third Reading because I am finding this debate quite confusing. It has introduced new ideas about two sets of old vocational qualifications, some of which are on the A-list because they are really good qualifications.
and will lead to technical and apprenticeship qualifications. We cannot do away with all the other very valuable qualifications at lower levels which are essential for getting people on the first step of the ladder towards progression into higher levels and which perhaps refer to some of the essential services which are lower level but which employers need and which are skills for which people need to have recognition. I would welcome a meeting with the Minister before Third Reading to establish what these various lists of qualifications will cover. We seem to have a duplicate set of lists, which I do not think we were considering before, unless I have misunderstood.

Lord Baker of Dorking: I warmly support what the noble Baroness is saying. It is not only lower-level qualifications; there are existing upper-level qualifications, for example, at level 4, which are very well regarded by industry and which are progression courses from level 3 to level 5 and a degree. We do not want them to disappear. They are a very important part of the technical education system of our country.

Baroness Garden of Frognal: I thank the noble Lord, Lord Baker, for his comments. I am pleased that I am not the only one who is finding this amendment rather more confusing than I thought it was going to be. I thought it was going to be very straightforward, but it has brought in other aspects of the Bill. I hope it will be possible to have a meeting before Third Reading so that we can clarify what these two lists of qualifications will be and whether the B-list will be funded and recognised, or whether only the preferred A-list will lead on to apprenticeships and get the blessing of government. On the basis that further dialogue would be very welcome, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Amendment 7 not moved.

Clause 2: Information about technical education: access to English schools

Amendment 8

Moved by Lord Lucas

Lord Lucas: My Lords, I shall speak also to Amendment 9. These amendments are very simple. They pick up on my noble friend Lord Baker’s excellent amendment, which was accepted in Committee, to point out that it is not just the local FE college or other major provider that wants to get into schools. There are a lot of excellent organisations which need to get into schools. Women in Construction is one. In needs to get the message through that there are a lot of very good jobs for women in construction. There are similar efforts going on about women in engineering and women in computing. They are not education providers. They have been funded by education providers and employers to produce a flow of students to education providers in general. Those organisations need to get into schools just as much as individual providers, if
that the quality of careers education and advice in both schools and colleges has hitherto ranged on a spectrum from patchy to poor. Surely one reason for that is the lack of any real incentive for schools and colleges to up their game and improve their offer. It seems to me that one of the most effective incentives that could be put in place is for schools and colleges to know that the quality of their careers education will be a significant factor in determining what sort of rating they get when they are inspected by Ofsted.

As we have heard, some good things are happening: the National Careers Service is developing its offer and in particular I am very impressed by what I have seen of the Careers & Enterprise Company and its effort to put a network of schools co-ordinators in place. None the less, we still hear constantly that, although schools are good at reporting their academic progressions and the number of people who have gone on to university or further academic education, they are not nearly so good at talking about students who have gone on to apprenticeships or further levels of technical and professional education. I rather like that term "technical and professional", and thought the Minister in the other place was also rather keen on it, but that does not appear to be necessarily the case.

I very much support the amendment, particularly as it would go no further than requiring Ofsted to take account of the provision of careers advice in carrying out inspections, so it would not appear to be a huge burden on either Ofsted or the schools. It just sends a signal, as we always used to like doing. I support the amendment.

Lord Baker of Dorking: My noble friend Lord Lucas’s amendments are an addition to the clause that I introduced in Committee, but quite a useful one. The purpose of the clause is to ensure that schools have a duty to accept—and cannot reject—various people going in and talking to students at the ages of 13, 16, and 18 about the various types of training and education they provide, which is the most effective way to improve careers advice. I have sat through several Governments who have tried to create careers advice by legislation, and it just does not work. You cannot expect many teachers to know a great deal about life outside because they leave school, go to a teacher training college and then go back to school. You have to have real, live people going into schools and talking about what life is like in a factory or a business complex and offering the opportunities—and we will now have this.

In September this year, for the first time, not only the heads of university technical colleges but those of studio schools, career colleges and FE colleges, as well as apprenticeship providers, will have a right to go and speak to 13, 16 and 18 year-olds and explain to them the opportunities that are available to them other than just getting three A-levels and going to university. That is a major change. I strongly support the amendments in the name of my noble friend Lord Lucas. Groups such as Women in Engineering spend a lot time trying to persuade more women to go into engineering, and we have courses in the UTC movement to persuade more girls to go into engineering, and the numbers are going up all the time: we sometimes get over 20% or 30% girls.

We like that because when a girl decides to be an engineer, she is usually very determined and confident, and in many cases the brightest member of the team. This will help in all of that, so I support it. Careers advice in FE colleges is largely an unknown area, frankly, and they should certainly improve their advice. But they have the advantage of being able to go in and talk to schools from September of this year.

Lord Watson of Invergowrie: My Lords, with Amendment 17, I am in the slightly alarming position of being the meat in a Liberal Democrat sandwich as far as the Marshalled List is concerned. This of course is a follow-on from the very valuable amendment to which the noble Lord, Lord Baker, just referred, which now forms Clause 2 of the Bill. We have just further benefited from his wisdom with his remarks on this amendment. I wholly concur with his view that there is a need not so much to improve as to establish careers advice in further education colleges. I very much agree also with the comments of the noble Lord, Lord Storey, in introducing this group of amendments about this being about preparation for careers rather than just giving information.

The quality of what colleges are able to provide is key to so many young people, but much will depend on the ability of Ofsted to carry out inspections of FE colleges to make this amendment effective. It rather surprised me in the debate that followed the announcement of which providers had been successful in gaining access to the register of apprentice training providers last week that before the register came into force, there were 793 apprenticeship providers. The register has nearly doubled that, with 1,473 organisations now in the frame for inspection when the register goes live in May. But that is not the extent of the burden being placed on Ofsted and its responsibility to inspect, because the process for applying to the register is due to take place four times every year, and it is expected that the number will soon rise perhaps to well over 2,000. It was quite instructive that when asked about the implications of this, Ofsted’s new chief inspector, Amanda Spielman, responded:

“it is a huge challenge”. I think she was being politic because she must have real concerns. Unless the Government plan to increase Ofsted’s resources to enable it to inspect the new environment effectively, there will be very real gaps, which will be a huge shame.

I hope the amendment will be taken seriously by Ministers. It is important that the very least they do is recognise that there has to be a proper system of careers advice being offered by colleges to ensure that young people get the start in life that they deserve.

6 pm

Baroness Morris of Yardley: My Lords, I would like to ask a question that has just come to mind, mainly because I tabled a similar amendment in Committee. Amendment 17 is far better because it allows a flexibility that we did not have before, and having it in the Bill would help to raise the profile of careers education during Ofsted inspections, so I am happy to support it. No doubt the Minister will let us know what the framework already says, but I think the intent is fine.
I support 100% the point that the noble Lord, Lord Baker, has been making about young people's access to careers education. I have no problem with the way in which Amendments 8 and 9 were described, and in fact I have supported such amendments on previous occasions. However, it has struck me that although it is the right of the student to have access to the information, it is not the right of the person to go into the school. I know that sounds like a fine difference, but I wonder whether the Minister might reflect on that and give some assurance that, although a head would not have the right to deny the information and access to the school from someone who was giving that information, they would retain their right as head of the school to choose who talked to their students.

The quality of a speaker is very important. If I were a head teacher, I would not want someone who I knew was a bad speaker and did not engage the children successfully or in a professional manner to have access to my school, even if they might be talking about something whose content was very important. Indeed, one of the reasons for not doing that would be because they would put the information over badly. My years of teaching experience might be from a long time ago, but I remember some horror stories of outside visitors coming into schools who just did not have the skills to engage and talk to children and young people. I am not opposed at all to the amendments, but I do not think we have discussed the right of the head to retain control over who is speaking to his or her students. I would like that to be considered, without taking away from the intent of the amendments we have discussed.

The Earl of Kinnoull (CB): My Lords, I had not intended to speak on Amendment 17, but I was on the Social Mobility Select Committee along with the noble Baroness, Lady Morris, and the issue of careers guidance came up very strongly throughout our year of investigations and featured strongly in recommendation 2. Our report came out in April last year and the government response was published in July. I would like to read part of that response and then refer to a piece of evidence that we received from Sir Michael Wilshaw. The response, and I am cutting away a lot of it, says that, “we will make the Gatsby benchmarks the focus of the statutory guidance that supports schools and colleges to implement the careers duty. This is in direct response to calls from schools to make it clear what government is expecting from them in terms of careers education”.

The tone of the response is pretty clear: the Government are saying, more or less, “Yes, we will do more”. It makes no sense, then, not to measure it, and I agree wholly with what the noble Lord, Lord Aberdare, said. I distinctly remember that Sir Michael Wilshaw made it very clear in his excellent evidence that Ofsted is already carrying out the assessment work on careers guidance, so not to include it in the marking scheme seems not to be using the fullness of the evidence and the data that are being gathered. Accordingly, I completely agree with the noble Lord, Lord Storey, and the whole of Amendment 17.

Lord Young of Norwood Green: My Lords, if you want to change attitudes in schools and colleges, one of the most powerful influences you can have is to send in their peer groups to talk to them. I met a young woman today who had taken a degree in mechanical engineering. It was interesting talking to her about what her influences had been in taking that decision. More importantly for me, when I asked her whether she was going back into schools and colleges to talk to young people about what a successful career they could establish in engineering, the answer was a very clear affirmative.

When Ofsted is carrying out an inspection, I hope it will take into account the general approach of the school. It is not just about formal careers advice, as has already been stated, but about whether they have an open mind. I take my noble friend Lady Morris’s point about the quality of speakers; obviously you want someone who can engage in a positive way. But I hope that when Ofsted looks at schools and colleges it is taking into account the links with business, business people and people who have successfully completed their apprenticeships coming into schools, and the role of women in subjects like engineering, STEM and construction in changing attitudes and making young people, and especially young women, aware that there is a wide variety of careers open to them with lots of well-rewarded career paths. That is an essential part of any careers advice.

Lord Nash: My Lords, I thank noble Lords for tabling the amendments, which relate to careers. I have to say I am still struggling with the concept of the noble Lord, Lord Watson, being the meat in anyone’s sandwich. He is a pretty tough piece of meat, based on my experience of sitting opposite him at the Dispatch Box. That is meant as a compliment, actually.

On Amendment 8, tabled by my noble friend Lord Lucas, Clause 2 requires schools to ensure that there is an opportunity for a range of education and training providers to talk directly to pupils about the technical education qualifications and apprenticeships that they offer. The amendment is intended to ensure that such access is extended to people who represent groups of providers, such as women in construction or manufacturing. I remember attending an event held for women in manufacturing in your Lordships’ House a few years ago. I agree that we need a degree of flexibility so that pupils hear from the person best placed to inform them about the opportunities on offer. I recognise that in some cases that may not be the provider itself but perhaps it could be an ambassador, an employer or a member of a trade association or representative body, speaking on behalf of a number of small providers.

We will publish statutory guidance that will set out more detail and make it clear that we do not wish to impose unnecessary constraints. We are placing the onus on the school to develop their own arrangements for provider access, including agreeing with providers who will attend to talk to pupils. Clause 2, both as drafted and as we intend to clarify in underpinning statutory guidance, already provides for persons acting on behalf of a number of providers to access pupils. To get really technical and legal for a moment, I queried this in terms of statutory interpretation. The legal authority for our decision to resist the amendments is found on page 1019 of Bennion on Statutory Interpretation:
Finally, in judging outcomes, inspectors consider related learning, including external work experience. They consider how learners benefit from purposeful work—personal development, behaviour and welfare—for work. Thirdly, in judging students’ employability skills, including appropriate attitudes and acquisition of the qualifications, skills and knowledge that will help them to progress.

Ofsted also evaluates the education and training provision offered by the college, including 16 to 19 study programmes, apprenticeships and traineeships. In making these judgments, inspectors consider the extent to which each type of provision offers tailored careers advice and work experience opportunities to students and develops their employability skills. Noble Lords made some good points about Ofsted’s approach to that, and I will certainly discuss that further with Ofsted shortly. However, I hope that what I have said about its obligation framework reassures my noble friend that colleges are held to account properly for the quality of their careers provision and that he will be able to withdraw the amendment.

Lord Lucas: My Lords, I am very grateful to my noble friend for his short CPD session, which I hope I shall manage to remember and will rehearse later in Hansard. Given that, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

Clause 24: General functions of education administrator

Amendment 10

Moved by Lord Stevenson of Balmacara

10: Clause 24, page 12, line 19, leave out “(if possible)”

Lord Stevenson of Balmacara (Lab): I can be very brief. I am delighted to be able to say that, because the procedures followed on the amendments have been so exemplary that I recommend them to the House and hope that they may be adopted by others in a similar situation. I raised an issue in Committee. It received a fair and interesting hearing from Ministers. I asked for and received a meeting with the Bill team at which the noble Baroness, Lady Vere, was present. We went through the issues together. There was a good dialogue and debate. We narrowed it down to two specific points, which are the subject of the amendments. On the first, Amendment 10, I think I am allowed to say that there may be some good news when the Minister comes to respond, so I shall be moving it in the hope that it will be accepted by the House.

I shall not be moving Amendments 11, 12 and 13, because in the letter that I received subsequently from the noble Baroness, Lady Vere, there is an exact response to what I was looking for—which is not, as part of the letter seems to suggest, about the impact that the current framing would have on the operation of the special education measures. The point I was trying to get at, which comes up at the end of the letter, was that in a normal insolvency arrangement, there are rules for how creditors are dealt with. I was concerned that the drafting as it stood might interfere with that. That is a narrow point and I will not rehearse it here but, at the end of the letter, the noble Baroness writes:

“I hope that I have been able to reassure you”—she had not until then—“that the drafting of Clause 24(4) and (5) is not intended”.

[END OF TEXT]
I should be grateful if, when the noble Baroness or the noble Lord responds, they repeat that so that we have it on record that it is intended that the normal rules established for ordinary insolvency will be followed and that the drafting does not intervene on that. I beg to move.

6.15 pm

Lord Nash: My Lords, I am grateful for these amendments. I have made it clear that our priority in introducing the special administration regime is to ensure that the interests of students are safeguarded as far as possible. That is the purpose of the special objective, which places an overriding obligation on the education administrator to take the action that best avoids or minimises disruption to the studies of existing students. I am pleased that noble Lords recognise, and share, that objective.

I understand the noble Lord’s concern about the drafting of subsection (2), that the inclusion of the words “if possible” may be considered to cast doubt on the special objective. As he indicated, I can assure noble Lords that is not our intention. I have reflected on the noble Lord’s amendment. The regime that we are introducing is one which places students at the heart of further education, but does not demand that the education administrator achieves the impossible; nor does it disregard the interests of creditors. The words “if possible” in Clause 24(2) were intended to clarify this position, but I understand the noble Lord’s concerns that they might have the opposite effect. Let me be clear that our position remains unchanged and I am satisfied, on the advice of my lawyers, that their deletion would have no substantive effect on the application of the regime. I am therefore delighted to accept the amendment.

As for the noble Lord’s kind offer not to move Amendments 11, 12 and 13, I am delighted that he has been reassured by the letter from my noble friend Lady Vere. I assure him that the normal insolvency procedures would be followed and that there is no intention to disrupt those, apart from the overriding special objective.

Amendment 10 agreed.

Amendments 11 to 13 not moved.

Amendment 15, as an amendment to Amendment 14, had been withdrawn from the Marshalled List.

Amendments 15A to 15C, in substitution for Amendment 15, as amendments to Amendment 14, not moved.

Amendment 14 not moved.

Amendment 16

Tabled by Baroness Wolf of Dulwich

16: After Clause 35, insert the following new Clause—
“Providers of technical education: guarantee to students

(1) Any providers of technical education who are not covered by the insolvency regime created by this Act must provide a guarantee from a reputable financial institution to each Government supported student that, if the provider is made insolvent, the financial institution will cover the cost of operating that student’s course until a suitable end point.

(2) In subsection (1), a “suitable end point” means the completion of the course or the successful transfer of the student to an alternative institution.

(3) In subsection (1), a “Government supported student” means any student whose education is funded directly by the Government through grants to the providers or student loans.

(4) The cost of providing the guarantee under subsection (1) must be met by the relevant provider under subsection (1).”

Baroness Wolf of Dulwich: I note that the Minister did not reply to my amendment in his response, and I hope we can have further discussions before Third Reading.

Amendment 16 not moved.

Amendment 17

Moved by Lord Storey

17: After Clause 40, insert the following new Clause—
“Further education colleges: careers advice

(1) In carrying out inspections of further education colleges, and giving a rating to colleges, Ofsted has a duty to take into account the careers advice made available to students by colleges.

(2) For the purpose of subsection (1), “careers advice” means a combination of face-to-face careers advice and careers advice that is provided remotely.”

Lord Storey: I listened carefully to the Minister’s reply, for which I am grateful, but I do not think he went far enough and, given the importance of careers education, I wish to test to opinion of the House.

6.21 pm

Division on Amendment 17

Contents 223; Not-Contents 185.

Amendment 17 agreed.

Division No. 2

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[27 MARCH 2017]
My Lords, I welcome the opportunity to continue our discussion in Committee, about the importance of good governance in FE colleges, to which the noble Lord, Lord Hunt, has referred. As I said in our earlier discussion, I fully recognise the important role played by clerks as expert advisers to governing bodies of FE institutions. As the Minister responsible for governance in schools, I have made it a priority to improve this vital area, including the important role of clerks. However, we believe that it is essentially a matter of improving practice, not legislative change, for reasons that I will outline.

We are supporting the role of clerks through development programmes run by the Education and Training Foundation. The noble Lord will also have received a copy of a letter from the Association of Colleges setting out some of the steps it is taking to strengthen governance. Hard copies of that letter are available for noble Lords today, should they wish to see it. I note from the letter that the AoC is currently undertaking a review of the existing code of practice on governance, to which many colleges adhere. I will be meeting it shortly to hear what further action it intends to take. There is clearly a strong and shared aspiration across this House for strengthening governance. The sector is keen to engage and it is only right for others, including government, to take up that invitation, and to offer the right combination of challenge and support. While legislation might appear attractive, it should not be something that is reached for without good evidence as to the nature of any problems, and full consideration of the most appropriate solutions. In an area as complex as governance, simple legislative approaches are unlikely to be effective in delivering real improvement.

The effect of the noble Lord’s amendment would be to reinstate one element of model articles for colleges that applied prior to the Education Act 2011. That would deliberately limit the freedom that colleges currently have in respect of the contents of their instrument and articles, by requiring them to retain provision in those articles regarding the role of the clerk. I have significant doubts about the efficacy of such an approach. A recent sample of the contents of the instrument and articles of 10 colleges, carried out by my officials, found that in every case the relevant documents already contained a provision similar or identical to that proposed in the amendment. If that sample is representative of the sector as a whole then it would suggest that the amendment will have no substantive effect—certainly not in terms of delivering the improvement to standards of governance which I believe is the noble Lord’s intention—particularly as all 10 colleges in the sample had been subject to intervention by the Further Education Commissioner. In many cases, the commissioner found significant failures of governance. Although I will not read out the relevant sections from the commissioner’s reports, which are published on GOV.UK, there is more than one instance of unsatisfactory clerking arrangements being a significant contributory factor. Those failures occurred despite the role of the clerk being set out in the instrument and articles.

This evidence strengthens the argument that setting out the role of the clerk in the instrument and articles, as would be required by the amendment, is by no means a guarantee of good governance in practice. Nor, unfortunately, is it an effective protection against poor governance. Our focus has to be on good practice in governance, and what more we can do to share good practice, not introducing additional box-ticking measures.
In conclusion, I stress that strengthening governance clearly remains a priority for the sector and for the Government and we will continue to drive this. In the small number of cases where there are significant failures in governance, we will continue to intervene swiftly and effectively to ensure that governing bodies are held to account, and that lessons are learned. We must continue to drive up the performance of all governing bodies. This approach strikes the right balance in helping to ensure a robust and well-governed sector that is in the best position to deliver its important mission for learners, employers, and the community. For these reasons, I believe that greater statutory prescription, as set out in the amendment, is unfortunately unlikely to be effective in achieving those goals. I therefore urge the noble Lord to withdraw the amendment.

**Lord Hunt of Kings Heath:** My Lords, as the Minister mentioned the ETF, I remind the House of my declaration that my wife is a consultant to it. I am grateful to the Minister, particularly because he is going to meet the AoC to discuss the outcome of its review. I accept that good practice is probably the best way forward. However, I hope the Government will keep up the pressure on the AoC and colleges to ensure that they employ good people who can provide robust advice. Having said that, I beg leave to withdraw the amendment.

**Amendment 18 withdrawn.**

**Schedule 1: The Institute for Apprenticeships and Technical Education**

Amendments 19 to 21 not moved.

**Amendment 22**

Moved by Lord Lucas

22: Schedule 1, page 26, line 4, at end insert—

“( ) The group of persons that prepared a standard must have considered, including within the standard, a qualification widely recognised by employers for that occupation or for an aspect of it.”

**Lord Lucas:** There has been a problem with apprenticeships, at least historically, where people have wanted to include qualifications within them. I would be very grateful if my noble friend would make it clear that this has now passed and that the idea of including qualifications within apprenticeship qualifications, or indeed within qualifications at FE colleges, is now fully accepted. Generally, this is to the advantage of the learner. If I am doing a qualification within one of the 15 proposed Sainsbury routes, and that apprenticeship involves getting to know cybersecurity, I do not want to have a haberdasher’s qualification in cybersecurity. I want to have something which will be recognised in every single industry which might require that skill.

The same applies to accountancy, marketing and other skills which are common across the routes, where these are things that you might wish an apprentice to learn in the course of their apprenticeship, or have experience of. It also applies particularly to technical qualifications in IT, where you would expect an apprentice to follow one or more international qualifications produced by the likes of Microsoft because that is what the industry as a whole demands and that is what produces a young person who can move from job to job because they have the qualifications that are recognised in their next job and not just those which are appropriate for the particular patch where they did their apprenticeship.

It is also important in this context that the specifications for apprenticeship should recognise that there are alternative qualifications in some circumstances. You may want your young person to be familiar with computer networking but there are two, maybe three, top-quality international qualifications in computer networking. Which one do you want to use? It will be the one that works with your business. However, the people in charge of the apprenticeship will recognise that these are equivalent and that either one can count and fit in place. I think this has been accepted now. There seems to be some residual difficulty reported to me. However, I would be very grateful for my noble friend’s assurance that the concept of embedding qualifications in apprenticeships or in further education courses is now fully accepted. I beg to move.

**Lord Baker of Dorking:** I support my noble friend’s amendment. I suspect that individual apprentices will work on the basis that he mentioned as certain qualifications in certain industries are not in the regular run of FE colleges, or universities for that matter, but have been accepted by the industry as the accepted standard. My noble friend mentioned Microsoft. Cisco does this as well. It is particularly the case in the whole area of computing, where various companies have established qualifications which have become the standard. In fact, the Cisco qualification for schools is more demanding than GCSE computing, and many people work towards that. We have to make sure that these qualifications do not disappear when the Institute for Apprenticeships clears out a lot of valueless qualifications. These are not valueless, particularly the international ones. Given that the digital revolution is happening so suddenly, a huge variety of examinations and qualifications in artificial intelligence may come our way. Each area will want to protect its own interest. I would hope that the Institute for Apprenticeships would take this message on board. I do not know whether a statutory measure is required.

6.45 pm

**Lord Nash:** My Lords, I am grateful to my noble friend Lord Lucas for this amendment, the effect of which would be to require each group of persons who develop a standard to consider whether an existing qualification ought to be included within it. Occupational standards will form the basis of both apprenticeships and technical education qualifications, and need to be suitable for each of them. The standard should include the knowledge, skills and behaviours needed to form the basis of either an apprenticeship or a technical education qualification. Including existing qualifications in addition to the knowledge, skills and behaviours would cause complications when technical education qualifications are being developed using the standard.

One of the core principles of the apprenticeship reforms is to move away from qualifications. Under the framework model, apprentices collect a number of small, often low-quality, qualifications throughout their
apprenticeship which often do not give employers much reassurance about apprentices’ ability to do the job. By moving to a single end-point assessment, the apprentice will be tested on the knowledge, skills and behaviours set out in the standard and their occupational competence to do the whole job, not just a small section of it.

This amendment does not require the inclusion of qualifications in standards but it is moving the approach back towards the system that we are moving away from. Although it is no doubt something that the awarding bodies would welcome, it could actively encourage employer groups to include qualifications where they may otherwise not have done so. That is likely to be contrary to the Government’s strategic guidance for the institute. However, I can reassure my noble friend and the House that in occupations where there is a qualification that is needed for an apprenticeship—for example, to achieve a professional status—they will not need to be prompted by this Bill to consider its inclusion in the standard, which is permissible as long as they meet set criteria for an exception. This is in line with the employer-led nature of the reforms. We therefore believe that this kind of direction is not needed in such a system. I hope that my noble friend will feel reassured enough on the basis of my explanation to withdraw this amendment.

Lord Lucas: My Lords, I am mostly comforted by my noble friend’s reference to employer-led matters. If that indicates that if employers want a qualification and fight hard enough they will get it, that seems to me satisfactory. Therefore, I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendment 23

Moved by Baroness Garden of Frognal

23: Schedule 1, page 27, line 14, at end insert “using an appropriate form of continuous assessment.”

Baroness Garden of Frognal: My Lords, I beg to move Amendment 23 in my name and that of my noble friend Lord Storey. The Government have introduced a raft of reforms to the apprenticeship system which they hope will contribute to the quality as well as the quantity of apprenticeships. One of the biggest departures, and among the most contentious, is the move to end-point assessment—EPA—as the sole formally recognised method of assessing an apprentice’s competence to do the job they have trained for. I am grateful to SEMTA and to Professor Lorna Unwin and Professor Alison Fuller from the Institute of Education for their work in this area and pay tribute to their expertise.

If we take the example of engineering, employers have looked to continuous assessment over three or more years, with formal qualifications used as the mechanism through which they can both assess and ensure that the full range of skills and knowledge has been learned, and that apprentices’ attainment has met national standards and earned national recognition. In overseas countries where EPA is used, it tends to be used in conjunction with other assessment and formal accreditation practices, with the assessment of skills taking place over the whole lifetime of the apprenticeship as well as in a summative form at the end of the programme and through formal qualifications. It is important that the assessment methodology is appropriate and is encouraging to the apprentice. Young people need to gain confidence as they learn that their skills are being recognised. The best way to do this is through continuous assessment. I hope that the Minister will be able to confirm that EPA will not be the only assessment used and that learners will be assessed continuously to ensure that they reach their potential and help to plug the yawning skills gap in the country. I beg to move.

Lord Nash: My Lords, I welcome the opportunity to discuss Amendment 23, tabled by the noble Baroness, Lady Garden, and the noble Lord, Lord Storey, which would require all apprenticeship assessment plans to include continuous assessment.

Reviewing the role of continuous assessment in apprenticeships has been a very important part of the apprenticeship reforms following the 2012 Richard review of apprenticeships. It concluded that continuous assessment throughout an apprenticeship tested only incremental progress, not whether the apprentice is fully competent at the time of completing their apprenticeship. This approach also undermines our principle of ensuring amendment.

An important feature of approved English apprenticeship standards and plans is therefore the move away from this reliance on a series of small and pre-existing qualifications making up an apprenticeship, and the move instead towards a single, independent end-point assessment, which tests the apprentice in a holistic and robust way. This test at the end of the apprenticeship proves genuine employability by demonstrating that the apprentice has acquired the knowledge, skills and behaviours needed to be fully competent in their occupation. The requirements for the end-point assessment of each standard are developed by employer groups and approved by the institute to ensure that it meets the needs for that specific occupation. In view of this, I hope the noble Baroness feels reassured enough to withdraw her amendment.

Baroness Garden of Frognal: My Lords, I thank the Minister for his reply. He said that the same people will be testing and assessing but the likelihood is that that will be the employer, who will know the standards they wish the apprentice to reach. There is a place for end-point assessment, but it should not be the only way of assessing these skills. They are learned continuously and should be assessed continuously. However, I hear what the noble Lord says, and we need to keep this under review to make sure that we are not putting off a lot of people with practical skills, who find the end-point assessment a real barrier to learning and accreditation. Meanwhile, however, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.
We propose that institute-owned copyright is more appropriately applied at the level of national standards, allowing awarding organisations to retain their copyright in their own materials. The power of the institute is so uncertain that it makes it impossible to ascertain the value of investing in developing qualifications going forward. Further, it should be noted that there is no mention in the Sainsbury report, which was the progenitor of the skills plan, or in the skills plan, of the handing over of copyright to the institute in documents related to qualifications.

As to single awarding organisations, what evidence is there that the current awarding arrangement has led to distortions of the vocational market? As we pointed out in Committee, there is a certain inconsistency in government policy, which is going all out for more competition in universities—raising considerable concerns in this House—with a move to a monopolistic model for vocational awarding. The current mixed-market model may not be perfect but it supports and encourages investment and innovation, as well as giving choice and safeguarding learner interests in the event of any awarding organisation failure. A similar model was proposed for GCSE and English baccalaureate subjects, and was abandoned following robust evidence from the Education Select Committee and Ofqual. Why should these qualifications be treated differently? If a single-supplier franchising approach was deemed too high-risk for the general qualifications market, why should it be deemed suitable for technical qualifications?

I wonder whether these restrictions might be connected with the fact that those in government—whether in Westminster or Whitehall—will predominantly have achieved their own success through academic routes. How many people in the DfE have followed an apprenticeship or a work-based route and understand first-hand just how relevant and rigorous those programmes are? The Civil Service used to have graduate and direct-entry routes, both of which could lead to the highest levels. These days, most will be graduates. It is therefore all the more important that those in government listen to the practitioners and heed their advice. I hope the Minister will be open to these important amendments, and I beg to move.

Lord Lucas: My Lords, I completely support the amendment in the name of the noble Baroness, Lady Garden. I do not think that any Peer who has been involved in the Bill wishes it anything other than complete success. We are all behind the objectives and the methodology which is set out in the Sainsbury report and what has been built upon that. We want to ensure in the passage of the Bill that what we are producing will work well.

In the process of putting the Bill together, certain ideas have been developed which will not weather exposure to practice. When it comes to sitting down with industries, awarding bodies and others, the ideas that are being touted as the way things will be under the Bill will not be the things that work out. I want to make sure that the Bill has sufficient flexibility built into it so that, if things need to take a different turn to make this project succeed, they will be able to, and we will not find ourselves hobbled by primary legislation.
I have one separate amendment in this group that is aimed at the question of multiple qualifications within one particular sub-route—I do not yet know what they will be called; in the picture supplied to us they look like the fingers of a hand, although I do not think they will be called fingers. To restrict yourself to one single awarding organisation creates a monopoly in the short term, and in the long term it reinforces it. If you take one particular skill set within the universe covered by the Bill, and you say, “Only this awarding organisation can create qualifications for this for the next seven years”, what other awarding organisation will maintain the ability to compete? None of them will. Why should they? There is no business for seven years and they cannot afford to do it. It is all based on a collection of people, and anyway it is not something that stays still; it continuously evolves. There is no way that they will remain in a position to compete, so when you come up to the renewal of this single licence, there will be only one competitor.

7 pm

This is not like the situation with schools. For school qualifications, you can imagine gathering together some teachers and putting an English qualification together. That is feasible, but who would you get to do it for plumbing? There are no schools of plumbing outside the awarding organisations with the same coherence and singleness of curriculum. As the noble Baroness, Lady Garden, said, if you are going to compete for the renewal of a franchise, you will have to build up all that expertise, creating it from nothing. Why should anyone do that if all they can do at the end of it is to challenge an incumbent? It is an inherently unstable, unrewarding way of dealing with things, as anyone who, like me, uses Southern Rail, knows only too well. It is not really something that we want to replicate; it is not a successful model elsewhere in the public sector. When we had the chance to adopt it in education—noble Lords will remember how hard the debate was at the time—the DfE settled firmly for multiple awarding bodies, and for very good reasons: that model gives you constant competition, it means that the organisations in question are always trying to improve, it means that if one is failing you have two alternatives, and everything becomes much easier.

However, the Bill is all right in that area because I am told—I hope that my noble friend will repeat it—that in fact nothing in the Bill will prevent multiple awarding organisations being chosen if that is what employers want. If my noble friend can confirm that, that will be fine but, because it is so unstable and full of dangers, the fact that the Government have been going down this route has led them to think that they have to own the whole of the intellectual property of the awarding organisation that has won the franchise.

Some of these awarding organisations have been going for a decent length of time. Over 100 years or so, they have built up expertise in assessment and qualification, but they are being asked to hand it to the Government for free in return for a seven-year franchise. What kind of business proposition is that? I have spoken to the chief executives of all the major awarding organisations. Not one of them will contemplate that sort of deal, and I do not suppose that any noble Lord who is in business would contemplate that sort of deal for their own business either.

Where people have built something up, either you pay for it or you buy the awarding organisation and it is then nationalised—this being a Conservative Government, nationalisation is all the rage, but that is effectively what they are doing. They are not paying for it; they are demanding that the Government get it for free in return for a seven-year lease-back. If you go down that route, you will not have awarding organisations as we know them. You will not have City & Guilds; you will have Capita, because Capita’s business is the sort of turn-the-handle government contract where, if it loses at the end of the day, it does not matter because it has no great investment in the intellectual property. In the Institute for Apprenticeships you will need not 110 people but 10 or 20 times that number to do all the work that awarding organisations do now in maintaining the intellectual property.

We have had a comforting exchange or two with the Government since Committee and they say that they want to maintain the awarding organisations. That is great, but it cannot be done with the way in which IP is written into the Bill at the moment—or at least the way that it appears to be written in on the surface. Either the Bill has some hidden flexibilities and the relationship proposed in the amendments could be achieved—how that could be eludes me, but I am always happy to be educated—or we need something to loosen the bonds a bit so that, when the Bill leaves this House, we can be confident that it allows for a real commercial, practical arrangement with awarding organisations that will leave them strong, long-term guardians of quality and builders of high-quality assessment and qualification systems. These have a great reputation around the world, as do other parts of our education system, and we should not chuck them in the bin just because we have generated a set of fears which are, to my mind, needless.

Lord Watson of Invergowrie: My Lords, I wish to say a few words about this group. My name appears on seven of the nine amendments before your Lordships, but I want to speak only on the question of copyright. The noble Baroness, Lady Garden, spoke to this group most effectively and I will not attempt to repeat any of her remarks because that is not necessary, but intellectual property is an important issue and we believe it must be protected.

I am aware that the Government have quoted the OECD as stating that the area of course development is not suitable for the market. It is perhaps counterintuitive for a socialist such as myself to criticise the Government for turning their back on the market in favour of introducing a monopoly. However, on this occasion I have to say—perhaps somewhat grudgingly—that I believe the Government are wrong, as there appears to be no convincing answer to the question raised by noble Lords in Committee as to what would happen if an awarding organisation failed and ultimately collapsed. The Government appear to have no plan B for such a situation, which is a very real matter for concern, not just for noble Lords but for awarding organisations.
Equally, the universally respected City & Guilds has highlighted significant concerns about its future. I think it is fair to say that at various stages in our deliberations on the Bill noble Lords have commented on the need to have qualifications and awarding organisations with some immediate recognition among the population in general. If you went out on to the street and did a vox pop asking people what City & Guilds were, you would get a pretty high proportion giving a reasonably accurate assessment of it. Therefore, I do not think that we should enter lightly into a situation where City & Guilds could be compromised. The organisation has written to noble Lords—as indeed the Minister may have seen—setting out a worst-case scenario, which could mean the end of City & Guilds as an awarding organisation in England and could signal the end of it as an awarding organisation in the devolved nations and internationally. It has also pointed out the potential negative impact on it as an apprenticeship awarding organisation due to a diminished role in the technical education route.

We believe that that should not be allowed to happen. The Bill could be amended but still achieve the aims of the Government’s skills plan through the Institute for Apprenticeships retaining copyright of the occupational standards and common qualification design criteria but allowing licensed qualification providers to retain copyright of the individual qualifications, as mentioned by the noble Baroness, Lady Garden, and the associated assessment materials.

The amendments in this group would provide some safeguards. I hope that the Minister will appreciate the spirit in which they are presented by noble Lords from across the three main political parties and take them on board, undertaking at least to come back at Third Reading with some proposals to mitigate those concerns.

Baroness Vere of Norbiton: My Lords, I am grateful to the noble Baroness and the noble Lords for tabling these amendments. I understand their concerns and hope that I might be able to provide an explanation that will put their mind at rest.

All these amendments relate to the copyright measures in Schedule 1. I know that how we implement the copyright measures is a cause for concern for awarding organisations, but it is important to understand that we would not be proposing these measures were they not vital for the success of the technical education reforms. I reassure noble Lords, on the record, that the legislation as set out in the Bill ensures that there is already a substantial amount of flexibility in how to implement the new system.

I should also say that it is not our intention to introduce legislation that disadvantages awarding organisations. They make a huge contribution and play a vital role in our technical education system, and we will continue to work with them to implement the reforms in the most appropriate and sensible manner. That work is ongoing and we are working with stakeholders to develop a commercial strategy that sets out in more detail how we will ensure a competitive and well-managed market for technical education qualifications. The Bill as drafted already allows us to do this.

I will take each amendment in turn. Amendment 24 would mean that the Institute for Apprenticeships could approve a technical qualification only when it had identified documents relating to, “standards and common qualification criteria”, and that these documents should be subject to the copyright transfer. As drafted, the legislation requires that copyright should apply to “relevant course documents”, by which we mean documents relating to the teaching and assessment of the qualifications. The Bill allows the institute the flexibility to define what is meant by “relevant course documents”. This will form part of the ongoing work to determine exactly how the measures will be implemented.

If the institute does not own the copyright for relevant course documents that are central to the delivery and assessment of a qualification, the reforms to technical education will be substantially undermined. There are a number of reasons for this. First, the new qualifications will be based on occupational standards and outline qualification content that have been developed by employers as convened by the institute. The institute will own the copyright for these. Documents relating to the teaching and assessment of qualifications that are developed by the awarding organisations will be extensions of these original documents.

Furthermore, the licensing model will succeed only if there is continuity in the system. Our intention is that, at the end of a licence period—and indeed if an organisation happens to fall into financial difficulties—there will be a new organisation, and the incoming organisation should not have to develop a completely new set of qualification documents, when the existing documents are likely to continue to be relevant or require only minor updating. In addition, it would simply not be a good use of taxpayers’ money to be paying for the development of a full suite of new materials every few years. Indeed, this defeats one of the aims of these reforms. The institute will make sure that the terms of the licence reflect the costs of developing and delivering a qualification. We have a duty to make sure that our skills system works in the interests of students and employers, and we have a responsibility to do so in the most cost-effective manner.

Amendment 25 would require the institute to make appropriate inquiries into the persons entitled to a right or interest in any copyright that could transfer. While I appreciate the intention behind the proposed changes, I hope to persuade noble Lords that it is unnecessary. New Section A2DA allows the institute, if it considers it appropriate, to approve a technical education qualification. As the legislation is currently drafted, the copyright of relevant course documents would transfer to the institute.

We recognise that there might be multiple contributors to the development of a technical education qualification, and that they are likely to want a say in matters that relate to their particular part. It would clearly be impractical for the institute to obtain the individual consent of multiple contributors—it may not know the identity of many and they may have been subcontractors. We therefore expect that the organisation granted a licence to deliver a qualification would ensure that the authors of documents have given their consent.
The provisions as drafted already allow for the intention behind the amendment to be achieved. It requires that the institute is satisfied that each person who it thinks is entitled to a right or interest in the copyright agrees to that right or interest being transferred to the institute. We expect this to be part of the licensing arrangements too. We do not think the institute could not be satisfied that persons have agreed to the transfer unless it has received the information, which may necessitate an inquiry. Therefore, the amendment does not add anything.

Amendment 26 would replace “transferred” with “assigned”. Taken in isolation, we accept that this is unlikely to have any material effect on the proposed measures relating to copyright. However, the measure makes a similar provision to the transfer of copyright for relevant course documents as we have already done for the transfer of standards and apprenticeship assessment plans. The use of the term “transferred” in both measures is therefore designed to assure the reader that these provisions are consistent with each other.

We anticipate that the institute will hold an open competition inviting organisations to submit outline proposals to develop a qualification against pre-set criteria. Once the qualification is developed in line with the institute’s requirements, full approval would be granted with certain terms and conditions attached, including in relation to copyright of the documents defined as “relevant course documents”. The contract is likely to be a concession agreement, whereby the successful organisation enters into an agreement with the institute to have the exclusive right to offer the qualification for the duration of the contract period. At the end of the approval period, the institute would run another open competition, giving both the incumbent and other organisations the opportunity to put forward a bid.

Amendment 29 seeks to change the documents for which copyright would transfer to the institute upon approval of a technical qualification. As I have already said, there are very good reasons why copyright for qualification documents should reside with the institute. It is also important to be clear that copyright is likely to apply to only a few key documents, and certainly not to awarding organisations’ systems or processes. The institute will need to own the IP of documents that relate directly to the teaching and assessment of the qualification; for example, the qualification specification and assessment materials. We do not envisage that it will have any interest in other materials, such as those designed to support teachers or back-office systems.

In developing the licensing arrangements, the institute will need to ensure that the qualification fee paid by colleges to the awarding organisation reflects both the up-front costs of developing materials and the ongoing delivery costs. We want awarding organisations to be able to see a return on their investment.

In previous debates we have explained that the institute is expressly allowed in new Section A21A to grant a licence or an assignment back to the awarding organisation or to other persons for use of the materials that are the subject of copyright. This would enable that organisation to use those materials for other purposes. For example, we know that some awarding organisations sell their qualifications overseas. We understand awarding organisations’ interests in that area. Nothing in the Bill prevents awarding organisations continuing to sell their qualifications abroad, and we have no plans to stop them doing so.

I turn finally to Amendments 30, 31 and 32, which were tabled during Committee, and indeed in the House of Commons. The first amendment would see the institute given an express power to grant a licence for use of the copyright to more than one person. The second would see the institute able to assign a right or interest in the copyright to more than one person. I would make the same point we made in Committee: the legislation already allows for this. To be as clear as possible, if the institute decides that it is appropriate to transfer copyright to multiple awarding organisations or consortia, the Bill as drafted already enables them to do that. Amendment 33, on copyright, is very similar to others in that it seeks to change the scope of the documents that would be subject to copyright by the institute.

I hope that I have explained that the reforms to the skills system will succeed only if the institute retains copyright of relevant course documents. In making such significant changes to technical education, it is incumbent on us all to make sure that we prioritise the needs of employers and of students. There is, however, a great deal of flexibility within the Bill for the institute to make arrangements as it sees fit, and I firmly believe that we should trust it to make decisions that
Baroness Vere of Norbiton: are for the good of the skills system. I therefore hope that my noble friend Lord Lucas and the noble Baroness, Lady Garden, will be sufficiently reassured not to press their amendments.

Lord Lucas: I am grateful for what my noble friend said on my amendments, but to turn to the main group, where she has adumbrated some new ideas in very few words, might we have a meeting between Report and Third Reading so that we can better understand the details of what is proposed?

Baroness Garden of Frognal: My Lords, I, too, thank the Minister for her full reply on all this, but I am left as confused as at the start. There is this curious thing that the institute can grant a licence back to the awarding body that actually created the materials in the first place or can give them to multiple awarding organisations. I find that a curious concept given that awarding organisations have to have a commercial structure and to make ends meet, and the materials with which they trade are very often their assessment materials. The Minister has made great play of the fact that there is flexibility in the Bill. But the trouble is that, by the time the Bill goes through with these measures enshrined that copyright is transferred to the institute, there is not much flexibility there if copyright is once lost to the institute.

There were a number of other things that I will read in detail in the Minister’s reply. I will not go through the different points that I have scribbled down because they merit a lot of thought. I also pick up the request made by the noble Lord, Lord Lucas, that we will need some serious conversations about this because it will come back at Third Reading for a vote unless we can get some clearer reassurance.

Lord Hunt of Kings Heath: Can we be clear that this can be brought back at Third Reading and that we can have a debate on principles? That would be very important in bringing this to a conclusion tonight. It is essential that we know that we can bring this back at Third Reading.

Baroness Garden of Frognal: Yes. It will definitely come back at Third Reading.

Lord Hunt of Kings Heath: There is no guarantee at all because the clerks are tight about what they will allow. The Government have to agree that they will allow us to bring it back. That is why I made the point.

Lord Nash: I should make it clear that if the noble Baroness and the noble Lord wish to test the temperature of the House, they should do so now.

Baroness Garden of Frognal: We were hoping that we could have a dialogue about this because these matters are key to the success of apprenticeships. But if that is the Minister’s approach, I beg leave to test the opinion of the House.
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Amendments 25 to 33 not moved.

7.35 pm
Consideration on Report adjourned until not before 8.35 pm.

Local Audit (Public Access to Documents) Bill
First Reading
7.36 pm
The Bill was brought from the Commons, read a first time and ordered to be printed.

Merchant Shipping (Homosexual Conduct) Bill
First Reading
7.36 pm
The Bill was brought from the Commons, read a first time and ordered to be printed.

Guardianship (Missing Persons) Bill
First Reading
7.36 pm
The Bill was brought from the Commons, read a first time and ordered to be printed.

Farriers (Registration) Bill
First Reading
7.36 pm
The Bill was brought from the Commons, read a first time and ordered to be printed.
Social Security (Personal Independence Payment) (Amendment) Regulations 2017

Motion to Annul

7.37 pm

Moved by Baroness Bakewell of Hardington Mandeville

That a humble Address be presented to Her Majesty praying that the Social Security (Personal Independence Payment) (Amendment) Regulations 2017, laid before the House on 23 February, be annulled (SI 2017/194).

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee

Baroness Bakewell of Hardington Mandeville (LD):

My Lords, I begin by drawing the attention of noble Lords to my interest as the patron of South Somerset Mind. I am grateful to Mind, the Disability Benefits Consortium, Sense, Citizens Advice, Scope and Rethink Mental Illness for their briefings, which I am sure others will also have received.

Like most of your Lordships, I take my mobile phone into the Chamber set on silent to receive messages from the Whips' Office. On the afternoon of 23 February, during the Report stage of the Neighbourhood Planning Bill, my phone buzzed. Most unusually for me, I left the Chamber to answer the call. It was the Minister ringing from Copeland to tell me that, following the two High Court judgments, the Government were, that afternoon, going to alter the criteria for qualifying for PIPs. I and my colleagues searched around and eventually found the changed criteria relating to emotional and psychological conditions. What a perfect day to release bad news. While the Minister and his colleagues were knocking up voters in the fresh air of the Lake District, government officials were bringing forward regulations that would penalise people who, because of their very complex conditions, are not able to go out freely into the countryside or towns, and in many cases would now be confined within the four walls of their homes.

The essence of the changes proposed is to limit the higher mobility element of the previous disability living allowance for those people who find it difficult to leave the house because of anxiety, panic attacks and other mental health problems. These claimants are as restricted in their independence as many people with physical mobility problems. They face higher transport costs because they are unable to use public transport or drive, as well as the costs associated with hiring a support worker. The Government's changes to PIP will affect more than 160,000 people with mental health problems, both in and out of work, who face extra costs related to their disability. These changes mean that people who need help to make journeys because of psychological distress will not receive the same level of support as other disabled people. This is discrimination.

In 2012 the Government made a clear commitment that people who experience psychological distress would be eligible, but they are now changing the criteria. The Government further said that a person with a cognitive impairment alone would still be eligible for the highest mobility rate. Cognitive impairments are not the same as mental health problems. Specifically excluding psychological distress undermines the stated purpose of PIP as a benefit which treats disabled people as individuals rather than labelling them by their condition. The proposed changes create a legal distinction between mental health problems and other kinds of impairment when it comes to benefit assessments, again demonstrating discrimination.

This change is out of step with previous government statements. On 7 February 2012 the former Minister for Disabled People, Maria Miller, stated:

"The Government have made clear that they want personal independence payment ... to take fairer account of the impact of mental, intellectual, cognitive and development impairments than DLA does currently... For example, when considering entitlement to both rates of the mobility component we will take into account ability to plan and follow a journey, in addition to physical ability to get around. Importantly, PIP is designed to assess barriers individuals face, not make a judgment based on their impairment type."

Esther McVey, also a former Minister for Disabled People, stated on 26 November 2012:

"The personal independence payment assessment will look at disabled people as individuals, rather than labelling them by their health condition or impairment."

As a result of the ruling by the Upper Tribunal, the Government have introduced legislation which would mean that psychological distress can be relevant only when considering two specific criteria for planning and following journeys. This would mean that people who experience psychological distress would be eligible for only the lower element. These changes undermine rather than restore the original intent of the legislation. The Government say they are committed to giving mental health the same priority they give physical health, but I am afraid that is not borne out by the changes to these criteria.

The PIP criteria are already too strict and have led to almost 50% of disabled people and those with long-term conditions losing access to some or all of their support when being reassessed for DLA. This is of particular concern in the context of the mobility component, where more than 750 people a week are returning their Motability vehicles because they are no longer eligible for support. The original descriptor does not go far enough in acknowledging the significant psychological impact that many people with long-term physical conditions also experience, for example, as a result of cognitive and associated mental health symptoms or their ability to follow a journey. This is substantially different from the impact of a person's physical ability to walk, which is assessed under the “moving around” descriptor.

The high successful appeal rate demonstrates in far too many cases that disabled people are relying on tribunals to assess their condition accurately and then to interpret and apply the descriptors appropriately to capture the impact of their symptoms. For many disabled people, such tribunal judgments have improved a system that is too often ineffective as a test of their needs. The original intention behind the PIP assessment was to take a holistic view of the impact of disability, fairly taking into account the full range of impairments. The Upper Tribunal judgments do not undermine this approach: rather they ensure that functional impact is assessed accurately regardless of the symptoms of the condition causing it. The Secondary Legislation Scrutiny Committee has looked at this change in criteria and
warns that the regulations could have unintended consequences. It has called on the Government to review the PIP assessment criteria prior to the changes being implemented.

I shall give two examples of what we are talking about in practice. Mrs D suffers from severe depression with psychotic features, including auditory hallucinations. She is under the care of a psychiatrist, has irrational fears for her safety when outside and has not been out of her house unaccompanied since 2011. She needs assistance from another person to plan the route of a journey to get to either a familiar or unfamiliar location. When she goes out of doors her husband has to accompany her. She was assessed as not being entitled to any mobility support. Mrs D appealed on the basis that she cannot navigate any journey on her own and, because of her poor memory and concentration, she would become confused very easily. The tribunal thought that her complex mental health had been underestimated and awarded the enhanced mobility rate. This is one of the two tribunal decisions that led to the Government amending these regulations.

7.45 pm

My second example is P, a man in his early 40s who suffers from severe anxiety, depression and borderline personality disorder. He lives independently with substantial support from his mother, who assists with his medication and personal hygiene. He is a self-employed handyman, which allows him to work when his mental health allows. Some days his anxiety is so high that he is unable to leave the house. His journeys are made with support from others. He is unable to travel by bus as this increases his anxiety. Last January, he made an unsuccessful claim for PIP, being awarded no points for either DLA or mobility. With the support of Rethink, this decision was successfully appealed in November. In the appeal, P was judged to have a severely limited ability to carry out activities of daily living. This entitled him to the DLA component of PIP at the enhanced rate. He was also judged to have a limited ability to carry out mobility activities. Both components were awarded to January 2019. Back pay of around £8,000 was awarded. 
P used PIP to buy a van, resulting in him being more reliably in work as his anxiety around travelling is reduced. He is able to attend and complete jobs, making journeys independently.

I do not believe the Government have fully considered the impact of these changes. People severely affected by mental illness will miss out on the vital financial support that they need. This is unacceptable. The Government should think again. I beg to move.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I inform the House that if this Motion is agreed to, I cannot call the Motion in the name of the noble Baroness, Lady Sherlock, due to pre-emption.

Baroness Sherlock (Lab): My Lords, I rise to speak to the Motion in my name on the Order Paper. Widespread concern has been expressed about these regulations. I am grateful for briefings from a wide range of organisations pointing out their implications. The noble Baroness, Lady Bakewell, explained how we came to be here. In December the Upper Tribunal ruled on two cases that determined what could be taken into account when making assessments for PIP. Ministers’ response was to declare that if those judgments were allowed to stand they would cost £3.7 billion over five years. Therefore, they had no option but to rush to legislate without consultation. They did not pause to allow the Social Security Advisory Committee to scrutinise the regulations in advance of their being laid, as would be usual.

The cases were slightly different. The case of LB was about payment for mobility in daily living. The tribunal decided that LB, who suffers from severe post-traumatic stress disorder, is severely limited by her physical or mental condition. Yet when PIP was introduced in legislation, Ministers claimed it would be very different from disability living allowance, which preceded it, because it would not judge someone simply on the basis of their condition, but on what an individual could or could not do. Yet now the regulations seek to exclude a key dimension of that very judgment.

Ministers claim that they are restoring the original aim of PIP, but we were told that the higher rate of the mobility component of PIP would apply where mobility is, “severely limited by the person’s physical or mental condition”. Yet many people with mental health problems will be affected by these changes, including people with schizophrenia or bipolar or post-traumatic stress disorders. Will the Minister please tell the House how this fits at all with the Prime Minister’s promise to tackle the stigma of mental health problems and the Government’s commitment to parity of esteem between physical and mental health? It does not.

Ministers have been out there insisting that this is not a cut. However, 164,000 people with mental health conditions could miss out on mobility payments that they would have received under the Upper Tribunal judgment. As the Secondary Legislation Scrutiny Committee warned, “while this change may not result in an immediate ‘cut’ for people currently receiving PIP, they may lose out in future (despite no change to their condition), if they are reassessed under the new criteria”.

That committee called on the Government to make clear to the House the long-term impact of these changes. That is what I am trying to push them to do today. It also called on them to review all the descriptors for PIP, as did the Social Security Advisory Committee. Can the Minister assure the House that his department intends to act on the recommendations of both the SSAC and the scrutiny committee and report back to this House when it has done so?

Finally, the SSAC pointed out that it was not at all clear how tribunals or those making decisions would respond to changes in descriptors to exclude psychological
Baroness Sherlock

distress altogether, particularly where that is a symptom of a condition; for example, an intellectual or cognitive impairment which would generally result in a higher level of need. It said that, “where multiple factors made it impossible for someone to follow a journey without help, it would be difficult in practice to strip out the element of psychological distress from the other factors when making a decision. As a result it may well be that it is not consistently treated in these circumstances”.

The Disability Benefits Consortium highlights that by looking at the example of Parkinson’s. It is a highly complex condition with more than 40 physical and non-physical symptoms. Depression and anxiety can be a symptom of Parkinson’s as a result of chemical changes in the brain. At any point, up to 40% of people with Parkinson’s will have depression and a similar proportion will experience anxiety. Likewise, many people with MS experience significant cognitive difficulties and are more likely to have co-morbid mental health conditions. The Upper Tribunal recognised that someone who needs to be accompanied on journeys to avoid overwhelming psychological distress has needs which meet a higher descriptor, but these regulations will prevent that being recognised and that claimant getting an appropriate level of descriptor. How are decision-makers supposed to strip out the element of psychological distress from other factors when making a decision, when it is quite clear to anyone who has looked at it that it will not be an easy task?

Even before the regulations, there was growing concern about the way PIP is working. The Disability Benefits Consortium points out that almost half of people lose access to some of or all their support when assessed to move from DLA to PIP. Sixty per cent of those who appeal succeed. We know already that more than 750 people a week are returning their Motability cars because they no longer qualify for the money that they previously used to pay for them.

The tribunal decisions highlighted some important failures in the way that the PIP assessment process is working for people with mental health problems. Instead of stopping to reflect and consult, Ministers have rushed out new regulations to overturn the effect of the judgments and to assure us that everything will work smoothly in future. It will not. The ambiguities remain. The flaws in the way the PIP process assesses people with mental health needs will not disappear. Their needs will now simply be officially ignored. If only the Government had accepted the amendment put forward during the passage of the Bill by the noble Baroness, Lady Grey-Thompson, which we backed and which would have introduced a trial period for PIP, these issues might have surfaced, but sadly she could not get support from around the House.

As a result, some people who need additional support to overcome barriers to mobility will not get it. Others will lose it when they come up for reassessment. That means that thousands of people could be trapped and isolated in their own homes because they cannot travel alone without help. That could make their depression or anxiety worse.

The context for this change is that this Government and the previous Government have repeatedly cut benefits for sick and disabled people. They cut £30 a week from the ESA for the WRAG group. They introduced the bedroom tax—two-thirds of households affected by that contain a disabled person. Now we have another move which will hit vulnerable people.

The Government should withdraw the regulations to enable proper scrutiny and consultation. If they will not, the Minister should commit here and now to conducting a review of the impact of the regulations on those with mental health conditions, as my Motion demands.

Before I finish, I should say a word about the other Motion on the Order Paper. If the noble Baroness, Lady Bakewell, decides to push her fatal Motion to a vote, she will be well aware that we on these Benches cannot support her and neither will most of the House. There is a reason that the Lords has voted down secondary legislation only five times since 1945. It is because, unlike with primary legislation, if we vote against secondary legislation, it is dead, irrespective of the will of the elected House. The Cunningham convention sets out quite clearly the exceptional circumstances in which the House may do that and we are not in that territory. Even if the fatal Motion somehow passed, I presume that the Government would simply bring back something in a Finance Bill or in other financially privileged legislation on which we could have no impact. I regret that having on the table a Motion such as that must inevitably raise expectations that this House can do something that it could or would never have done.

However, we should not let the Government off tonight without making it clear to them that the House does not approve of what they are doing. We should make it clear that we are deeply concerned about the impact of the regulations on sick and disabled people and that we do not approve of a move that devalues mental health compared with physical health. I urge the Government to think again. If they will not, I urge the House to demand that they at least account for the impact of what they are doing.

Baroness Browning (Con): My Lords—

Lord Young of Cookham (Con): I think that the House would like to hear from the noble Baroness, Lady Campbell.

Baroness Campbell of Surbiton (CB): My Lords, I support the Motion in the name of the noble Baroness, Lady Bakewell, to annul the Social Security (Personal Independence Payment) (Amendment) Regulations 2017. I understand that such a Motion should be used only in exceptional circumstances. I will explain why I think that this is an exceptional circumstance.

People in my position, with a highly visible, severe impairment, tend to find it a lot easier to demonstrate and receive the support we need to get from A to B than those experiencing mental health challenges. To be honest, I probably find it a lot easier to get around than many in your Lordships’ House today. I think that you will all have witnessed those on the mobile Bench whizzing around the Palace estate with ease and speed.

But let us be in no doubt: the impact of panic attacks and anxiety, not to mention schizophrenia, dementia and autism, on being able to, “plan and follow a journey”, }
are equally fraught, if not more so, with profound obstacles than the effects of visual or physical impairments. As Jenna reminded me recently,

“Suddenly, for no reason at all, as I step out of my front door, the prickles in my chest get sharper and my head gets foggier. My heart pounds faster as it tries to defend itself from impending danger. My breathing becomes shallow as I desperately try to get air into my body and brain ... I try to grasp on to something, anything, to keep me tethered and whole.”

“Anxiety” may sound manageable to many, but unexpectedly and unpredictably collapsing in agony in public places can overwhelmingly restrict people’s mobility.

Speaking to a young woman with ADHD and Tourette’s syndrome who lives down my street, I heard about her terrible journey on a train where she suffered a severe anxiety attack. The train had to be stopped and the emergency services called. This expensive scenario could have been avoided if her PIP had not been reduced from the high to standard rate award a couple of months ago, allowing her to continue paying for a travel companion or use taxis. Her life has now been severely restricted.

It is a fundamental tenet of the Equality Act that there shall be no hierarchy of disability: we define a disabled person as someone with a “mental or physical impairment”. We in this House have welcomed the Prime Minister’s commitment to parity of esteem between mental and physical health. The amended regulations, sadly, completely depart from these vital principles. They state, in effect, that disabled people may be equal but, just like in Orwell’s Animal Farm, some disabled people have become more equal than others.

8 pm

Regulations that deny the highest level of PIP where the reason for difficulty is overwhelming psychological distress rather than, say, a visual impairment entrench the discriminatory view that mental health problems are not “real” disabilities and compound the very stigma that the Government say they are committed to eradicating, as demonstrated by a member of that Government in the other place recently. My question to the Minister is simple: do the Government stand by their commitment to parity of esteem between mental and physical health. The amended regulations, sadly, completely depart from these vital principles. They state, in effect, that disabled people may be equal but, just like in Orwell’s Animal Farm, some disabled people have become more equal than others.

Surely we need to step back, consult and get this right. We cannot wait for a review in two years’ time, as suggested by the Motion of the noble Baroness, Lady Sherlock—although I support that because I have the feeling that we will not win if the noble Baroness, Lady Bakewell, divides on the first Motion.

The UK was rightly viewed as a world leader in the field of disability rights and equality. However, we know that in recent years the cumulative effect of cuts in social care support, independent living entitlements and welfare benefits has taken its toll on disabled people. It is becoming increasingly tougher for them to participate in society as active citizens, working, learning and taking responsibility for supporting others— for goodness’ sake, living not surviving. These changed regulations represent another departure and fly in the face of the Prime Minister’s ambition to create, “a society that works for everyone”.

This Motion could pause the regulatory change until the Government properly consult disabled people and their organisations: Scope, Mind, Disability Rights UK and the Disability Benefits Consortium—in fact the majority of disability charities in this country, which are absolutely appalled at this regulatory change. They support the prayer of annulment, thinking this change a step too far for people with mental health disabilities. Yes, such a Motion is an exceptional circumstance, and I do not care that they have been debated and voted on only five times within a hundred years or whatever. I will gladly support it now.

Baroness Browning: My Lords, it a great privilege to follow the noble Baroness, Lady Campbell of Surbiton. We heard from previous speakers why we are tonight discussing and debating the proposed changes to PIP. I refer to my interests in the register particularly relating to autism. It is about autism that I will speak in the context of PIP. I support particularly the regret Motion tabled by the noble Baroness, Lady Sherlock.

Of course, autism is not a mental illness; it is a lifelong communication disorder. People with autism are born with it and die with it. It is also a spectrum, ranging from people who need 24-hour care for most of their life right through to a group of people capable of university degree-standard education and holding down demanding jobs. It is worth saying that only 15% of people on the autistic spectrum obtain paid employment. Perhaps that gives a clue as to why I want to raise their needs in the context of this debate.

An interesting but sad figure is that of people on the autistic spectrum in their 20s; some 7% are identified as committing suicide. The reason is not that autism is of itself a mental illness. Rather, as people with autism, particularly at the higher-functioning end, struggle to make sense of life, communicate with people and take their part in society as the rest of us do, they try and try but there is that glass wall that without help and support they never get through. That is what causes the mental illness to develop on top of the autism.

I was in this Chamber when the House debated the Welfare Reform Act 2012. As with others, I remember the assurances given in both Houses at that time. I particularly remember the assurances given to the late Lord Newton of Braintree who, colleagues will remember, rose from his hospital bed night after night, sometimes
need oxygen to support him. He made the case particularly for this group of people. When they walk into a room, it is not obvious that they have a serious disability, but they certainly have needs. That assurance that PIP would assess barriers that individuals face and not make judgments based on their impairment type was something we all clung to in the hope that that promise would be kept.

As far as the autistic community is concerned, another Act is very important to this Chamber: the Autism Act 2009. In both Chambers and across the House, Members agreed and put on to the statute book an Autism Act because it was recognised that people on the autistic spectrum fall through the gap. That gap is often about very simple, straightforward things that benefits such as PIP provide for them. It is about taking their place again in society. Anxiety and psychological distress are among the most common effects of being diagnosed with autism. People with autism experience levels of distress about things that the rest of us really never worry about. To them, they become huge problems.

I will share with the House a case study that came to my attention about somebody recently denied PIP. This is from a mum, Amanda, who has a 16-year-old son on the autistic spectrum. She says:

“My son recently failed his PIP assessment which we are now appealing. He has autism and dyspraxia which means he is highly anxious and has such poor spatial awareness that he can’t judge speed and distance for road safety”

He can probably plan a journey but is actually quite at risk when he is out there on the journey. She continues:

“Currently he is unable to leave the house alone. He cannot attempt a journey as he is so anxious and scared of change and people that using public transport is out of the question. He is unable to speak to strangers and can’t even order a drink when out or sit alone when his carer goes to the loo. At the moment he’s very isolated because he can’t go out alone and can’t socialise with new people. Even for extracurricular activities at school he needs a parent to go and support him. For example on a field trip to Anglesey for three days he was not allowed to travel with the other pupils as he can be a danger to himself and others.”

It turns out that his dad was DBS-checked so he could take time off work to accompany his son so he could go on that field trip.

Educationally, that young man is potentially a university graduate, yet he has been denied PIP. This is why the Autism Act was brought in, because a lot of these people have huge potential, but if that potential is denied, your Lordships do not need me to spell out the consequences. I am very disappointed that we are being denied, your Lordships do not need me to spell out these people have huge potential, but if that potential is denied, your Lordships do not need me to spell out the consequences.

Our understanding is that the introduction of PIP was intended to create parity of treatment for people with mental and physical health problems by basing the assessment on a person’s ability to carry out certain tasks, irrespective of the nature of their disability. This is a fundamental principle that we strongly support, which has helped counter a long-standing bias within the benefits system against people who suffer from severe mental health problems, such as schizophrenia, anxiety disorders and autism. Explicitly limiting access to the enhanced rate of the mobility component for those who experience psychological distress undermines this fundamental aim by reintroducing an unhelpful distinction between people with physical and mental health conditions.

Crucially for this debate, this change appears to be inconsistent with the primary legislation, which makes it clear, as the Explanatory Notes underline, that people should be entitled to the higher rate of mobility component if “a person’s ability is severely limited by their physical or mental condition”.

Furthermore, it appears to be inconsistent with Ministers’ public statements at the time. People who find it difficult to leave the house because of anxiety, panic attacks and other mental health problems can be as restricted in their independence as people with physical mobility problems. They face the same additional barriers and costs as other disabled people, and should be scored accordingly against the same criteria. The amended regulations, however, would mean that people with these conditions would be assessed against only two of the six criteria for “planning and following journeys”, even though they may be unable to make familiar or unfamiliar journeys without the support of another person.

I am aware of the issues through the work of local mental health charities in my own diocese of Winchester. I understand from Jane Harvey, the head of home support at Solent Mind, which supports people with mental health problems in Southampton and across Hampshire, that she is in no doubt about the social isolation of many of her clients. Getting out of the house can be an extremely stressful experience for someone who suffers from paranoia, lacks confidence in social situations or feels unsafe in noisy, crowded environments, such as public transport. But these daily interactions are also vital to their mental and physical well-being, preventing them becoming even more isolated and enabling them to eat properly, pay their bills and attend important appointments. That is why it is so important that we seek to remove as many barriers to their mobility as possible through financial and other forms of support, and that we do not differentiate in a
way that seems to be against people with mental health problems, whose condition can be just as debilitating as a physical disability.

I realise that, in practice, many people with mental health problems have until recently missed out on the mobility component of PIP. But we believe that the clarification provided by the Upper Tribunal ruling is more in keeping with the original intent of the legislation than the amendment tabled by the Government, opening up additional support to around 160,000 people with severe mental health problems.

From these Benches we would not want to be seen to be resisting the aims of the original legislation, but we need persuading that the amendments to PIP are not undermining the intended aims of the benefit. I shall be supporting the noble Baroness, Lady Sherlock.

8.15 pm

Baroness Thomas of Winchester (LD): My Lords, Winchester is well represented this evening. PIP’s broad design flows from the Welfare Reform Act 2012. From the beginning it was intended not just to reset the DLA thresholds to determine who gets what but to decrease the overall expenditure on benefits by attempting to target them more effectively than DLA, and specifically to give more weight to mental health problems.

The department said that of those with mental health conditions receiving the mobility component of DLA, only 9% had been entitled to the higher rate, whereas 27% of PIP claimants receive the enhanced mobility rate—or 28%, according to the Minister’s letter this morning. The Government’s own consultee, the SSAC, asked the pertinent question: so what impairments do these 27% have? Are they a combination of physical and mental impairments? The department evaded the question, saying that perhaps 27% was “somewhat imprecise”. We do not know what is going to happen to claimants who may be reassessed quite soon, but we do know that the new regulations undermine the welcome support PIP can give to those with mental health problems, and I urge the Government to withdraw them for further consideration.

That is not the only reason I think the regulations should not be proceeded with. I hope other Members of the House will be as uneasy as I am at the Government immediately reaching for the statute book in order to negate a very careful decision of the Upper Tribunal. Ministers say they are restoring the original intention of the relevant descriptor regarding planning and following a journey, and insist that the legislation is clear, but they gloss over the fact that the Secretary of State said in the case of HL in December 2015 that, “overwhelming psychological distress could depending on its nature, frequency, duration and severity make a person unable to navigate and so to fulfil the terms of descriptors 1d and 1f”.

Descriptor 1f gives the higher rate. We are now told that the Secretary of State made a mistake and had to explain to the court that a concession had erroneously been made. This is all very unsatisfactory and leaves a particularly bad taste in the mouth. Whose hand is round the Secretary of State’s throat? What he said sounds to me to be exactly what the original policy intention was. Why do the Government not come clean and say that they are changing the policy for enhanced rate mobility by not allowing psychological distress to be taken into consideration?

Why the indecent haste in changing the law? As the Secretary of State is appealing the Upper Tribunal’s decision, he could have used other powers he has to prevent the decision of the Upper Tribunal having immediate legal effect by giving directions to decision-makers and courts about how the descriptors should be interpreted. Why not wait for that outcome? The timescale is curious. If he was going to wait three months from the judgment, why not use that time to consult properly? The impact assessment estimates that 71,500 claimants in the current caseload will go from standard rate PIP to nil, the same number from enhanced rate to nil and 21,000 from enhanced rate to standard, so 143,000 claimants with an enduring health condition are estimated to lose the benefit altogether. The disorders likely to be affected, according to the DWP, range from schizophrenia and autism to bipolar affective disorder and cognitive disorder. So much for parity of esteem between physical and mental health.

There is another aspect which must be considered. The Secretary of State is keen to say that no one already getting an award under the old regulations will lose it, presumably meaning that no one will have the money clawed back, but some awards are only for a year before another assessment is demanded. Thousands of claimants are in this position. The new assessment will presumably be under the new rules, meaning that many existing beneficiaries of standard or enhanced rate mobility will lose all entitlement.

I accept that the reason the Secretary of State is making this change is not to make even more savings than have already been announced, but is it fair to tear up the carefully constructed mobility descriptors and the Upper Tribunal’s carefully explained judgment with such haste and without proper consultation? Is it not yet another tightening of the screw around the whole independent living project, which is assailed on every side? These regulations should be set aside to await proper consultation.

I shall end with a word about voting on SIs. I am particularly addressing my friends and colleagues on the Labour Benches. I shall quote from the 2005 Cunningham report Conventions of the UK Parliament, which the noble Baroness, Lady Sherlock, dismissed:

“The Government appear to consider that any defeat of an SI by the Lords is a breach of convention. We disagree. It is not incompatible with the role of a revising chamber to reject an SI, since (a) the Lords (rightly or wrongly) cannot exercise its revising role by amending the SI or in any other way, (b) the Government can bring the SI forward again immediately, with or without substantive amendment”.

We should have the courage of our convictions and vote to annul these regulations.

Lord Low of Dalston: My Lords, I declare my interest as a recipient of disability living allowance, the precursor to the personal independence payment. I therefore have an interest in this type of benefit. Two simple and basic points make the case against these regulations, open and shut.
I believe these regulations are trying to move the goalposts by excluding people who experience psychological distress from eligibility for the higher number of points necessary for the higher rate of mobility component. In doing so, they effectively discriminate against people with mental health problems. This is clearly against the original intention of PIP and runs counter to the commitment the Government made to people with mental health problems—that they would be assessed in the same way as other disabled people. I support the Motions before us this evening to oppose these regulations and if the noble Baroness, Lady Bakewell, moves for a vote, I will support hers.

Baroness Grey-Thompson (CB): My Lords, as ever, I have had a huge number of emails on this debate tonight. I had several hundred after the last debate tabled by the noble Baroness, Lady Thomas of Winchester, on the 20/50 rule, so I am expecting many more tonight.

I understand that many charities have written to the Prime Minister on this issue, and I am concerned about the way the question of who is eligible has been misunderstood. It has been suggested that this is not a big change, but like other noble Lords tonight, I have many concerns. To add to something that my noble friend Lady Campbell of Surbiton said about visible and invisible impairments, with something as simple as the use of a blue badge, there is huge misunderstanding about who can qualify for one—who should have one and who should not—and how people are treated if they are perceived as not disabled enough to need one. That is relatively simple compared to some of the intricacies of the PIP assessment forms.

I have issues with the name “personal independent payment”, because it is not terribly accurate. It is a contribution towards independent living but does not cover all the costs of someone with a disability living independently. I declare an interest in that I am a recipient of PIP, and was a recipient of disability living allowance. I went through the transfer process last year, which was interesting and arduous. Just the forms to tell you that you have to transfer are complicated enough, but when I made the phone call to register, I was left on hold for over 25 minutes. With each passing minute, you are worried that the phone call is going to drop out. Then I was asked a number of questions which could be construed as confusing. I have some understanding in this area, and they were really difficult questions for me to answer. I was asked the same questions repeatedly, back and forth. I was asked the name of the medical personnel who could best describe my impairment, which is really difficult because I am disabled, not ill—I cannot even remember the last time I went to the doctor. It got to the point where I was even doubting my own answers, and I am not exactly lacking in confidence when it comes to being able to understand and explain the challenges that I face with being mobile.

I have said it before and I will keep saying it: it is essential that we have a better decision-making process. The cost of mandatory reconsiderations and tribunals is simply too high. Scope has said that 89% of applicants who have gone to a tribunal for a mandatory...
reconsideration or appeal in the last quarter have received a new decision. Could the Minister say how much the mandatory reconsiderations and appeals are costing? If decision-making were better, how much money could be saved to plough back into the system?

8.30 pm

I have so many examples of people who have been through appalling treatment in this process. One person has been writing to me for the last 18 months, and I am very happy to pass on their details to the department. Pretty much everything that could have gone wrong in the process has, including lost files and cancelled dates. That has a huge effect on someone's mental health and well-being. Just how is this helping?

The system is not working as well as it could and it is time to re-evaluate it. I would like the Minister to reassure me that the chaos around the system will not be used as an excuse to potentially stop supporting disabled people through the personal independence payment. That is one worry that I really have: that it is seen as so confusing and such a disaster that some people might think it easier to stop it. That would be appalling. The personal independence payment is really important to help many disabled people to lead independent lives, and it is time it worked properly.

Lord Shinkwin (Con): My Lords, I declare an interest as a recipient of the higher-rate mobility component of disability living allowance, which, as noble Lords will know, is being replaced by PIP. As someone with a severe, permanent and constant disability, I depend on DLA for my mobility because it enables me to lease a car through Motability. Indeed, it gives me great pleasure to put on record my profound personal thanks to Motability, and particularly its founder, my noble friend Lord Sterling of Plaistow, for the phenomenal difference that that organisation has made to disabled people's lives in its first 40 years. Long may it continue.

And long may targeted support continue for those whose need is greatest for help with meeting the extra costs of living with a disability, when we all want, to live independently and work. Until we join those dots, I cannot in all honesty justify expecting taxpayers to be even more generous in helping to meet the extra costs of living with a disability, when the state itself imposes such indefensible extra costs on disabled people. Despite my sincere and profound respect for the noble Baronesses, Lady Campbell of Surbiton and Lady Thomas of Winchester, I therefore cannot support the Motions.

Baroness Stroud (Con): My Lords, I have been listening to the debate and am concerned that the nature of our discussion may not reflect the actions that the Government are taking. I understand that the Government are laying these regulations in response to a court case which has broadened the eligibility criteria of the PIP assessment beyond the original intent that this House voted for, at a potential increase in cost of £3.7 billion.

I want to be clear that I am pleased to be part of this House—a House that has done so much to ensure that the rights and needs of those with disabilities are upheld. That is why I have spoken on the importance of halving the disability employment gap, and why I have supported my noble friend Lord Shinkwin's Private Member's Bill.

Like all of us in this Chamber, I believe that a decent society should always recognise and support those who are most vulnerable. However, I have read carefully what the Minister said in the other Place, and I do not think that this is what is at stake here. Despite the wording of this fatal Motion and Motion to Regret, it is worth reflecting on the fact that we in this country rightly spend more on supporting people who are sick and disabled than the OECD average. We rightly spend around £50 billion a year to support people with disabilities and health conditions. However, if you listened to the speeches in the Chamber this evening, you would think that these regulations were about to reverse this level of support and the protections that are in place. Will my noble friend the Minister confirm that this is not the case and that the level of support that this House legislated for will be protected?
The wording of the regret Motion tonight suggests that the regulations discriminate against people with mental health problems and could put vulnerable claimants at risk. But, again, it is my understanding that the Government have laid these regulations to address the impact of the court case which broadened the eligibility of PIP beyond the original intent voted for by this House. Will the Minister confirm that this is indeed the case and that there are no further savings beyond those that were legislated for here in this House that are being sought?

Both Houses of Parliament voted for the changes from DLA to PIP, and one key reason for this was a recognition that PIP focuses support precisely on those experiencing the greatest barriers to living independently. At the core of PIP's design is the principle that awards of the benefit should be made according to a claimant's overall level of need, regardless of whether claimants suffer from physical or non-physical conditions, and it has been good to see that 28% of PIP recipients with a mental health condition get the enhanced-rate mobility component, compared to 10% receiving the higher-rate DLA component, and that 66% of PIP recipients with a mental health condition get the enhanced-rate daily living component, compared to 22% receiving highest-rate DLA care. It is precisely because PIP improves support to those with mental health problems, addressing a discrimination inherent in DLA, that this House supported the legislation in the first place. Will the Minister confirm that this remains not only the intent of PIP but the reality, and that the regulations restore the original intention of PIP, which was to make sure there is a sustainable benefit to provide continued support to those who face the greatest barrier, whether physical or mental, to living independent lives?

Lord McKenzie of Luton (Lab): My Lords, I shall forgo the right to speak as extensively as I otherwise would, but I shall do three things. First, I very much support the Motion of my noble friend Lady Sherlock, and the manner in which it was spoken to. Then I wanted to ask the Minister a question about the original policy intent. As said by my right honourable friend, the Secretary of State, in his Statement in the other place, which I responded, there will be no further welfare savings in this Parliament beyond those already legislated for. It is important at this stage that I emphasise what the changes are not. They are not a policy change. They are not, as the right reverend Prelate the Bishop of Winchester and the noble Lord, Lord Low, seemed to imply, inconsistent with the primary legislation. They are not, as the right reverend Prelate the Bishop of Winchester and the noble Lord, Lord Low, seemed to imply, inconsistent with the primary legislation.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, I get the impression that the House would like me to move this debate towards a close, so I shall deal with some of the points that have been made during what has been a wide-ranging and, at times, an obviously impassioned debate all across the House. I recognise the concerns that have been raised and welcome the opportunity to respond on behalf of the Government. I hope to make matters clear and provide reassurances on a number of points.

8.45 pm

We are committed to ensuring that our welfare system provides a very strong safety net for those who need it. That is what all our reforms over the last few years have been about. That is why, as my noble friend Lady Stroud said, we spend over £50 billion a year just on benefits which support disabled people and those with health conditions. Spending on the main disability benefits went up by more than £3 billion over the course of the last Parliament—under a coalition Government, I remind the noble Baroness, Lady Bakewell—and is set to be at a record high of nearly £23 billion this year. Personal independence payment is part of that support and provides help towards the additional costs that disabled people face, providing them with greater opportunities to lead full, active and independent lives. We all agree that this is the point behind PIP.

At the core of PIP's design is the principle that awards should be made according to a claimant's level of need, and not to whether their condition is physical or non-physical in nature. I will say more about parity of treatment in due course. This approach, by design, ensures that the focus of support is on those who have a higher level of need, greater limitations on their ability to participate in society and higher costs associated with their condition. However, the recent legal judgments, to which noble Lords have referred, have interpreted the assessment criteria for PIP in ways that are different from what was originally intended by the coalition Government, which the party of the noble Baroness, Lady Bakewell, was part of. We have therefore, as the tribunal has asked, made amendments to clarify the criteria used to decide how much benefit claimants receive. That both restores the original aim of the policy previously agreed by Parliament—that followed extensive consultation—and adds essential clarity to it.

It is important at this stage that I emphasise what the changes are not. They are not a policy change. They are not, as the right reverend Prelate the Bishop of Winchester and the noble Lord, Lord Low, seemed to imply, inconsistent with the primary legislation. They are bringing clarity to that legislation and to the regulations which we put forward, as the tribunal asked. In answer to the question from the noble Baroness, Lady Sherlock, they will not result in any claimants seeing a reduction in the amount of PIP previously awarded by the Department for Work and Pensions. As said by my right honourable friend, the Secretary of State, in his Statement in the other place, which I repeated to this House, and to which the noble Baroness responded, there will be no further welfare savings in this Parliament beyond those already legislated for. It is inaccurate to describe this as a cut: it is merely the reassertion of the original policy intention.

It is entirely appropriate for the Government to act to restore clarity to the law, particularly as that need for clarity was sought by the tribunals. Governments, including ones supported by the noble Baroness, have
done so before and will no doubt continue to do so in the future. It is the duty of the Government to issue these orders and to make policy: it is for the courts to interpret it. Where there is a need to bring clarity it is for us to do that. It is appropriate that we try to restore a policy aim where that aim has been forgotten. Let us not forget that PIP, and the regulations under it, were developed and approved under a coalition Government—I have made this clear to the noble Baroness and do so again—which I believe she supported. I am also grateful to my noble friend Lord Shinkwin for reminding the House of the words of the Deputy Prime Minister at the time, Mr Clegg, about how decisions have to be made and how important it is to maintain the trust of those who have to pay for the benefit system as well as those who benefit from it.

I repeat that the Government are not making any changes whatever to the original policy intent. That intent was the subject of considerable debate on the part of noble Lords on all sides of the House when the original Bill passed through both Houses. Noble Lords and noble Baronesses will remember that. However, I am mindful that many of those who have spoken today wish to see a review. That is what the Motion of the noble Baroness, Lady Sherlock, seeks—a review of these policies. We want to ensure that our policies are working and are being delivered effectively. Within the department we will continue to regularly review our policies, including PIP. I also wish to remind the House that this Government have already introduced two formal statutory reviews of PIP, and that we remain committed to publishing Paul Gray’s independent review by April 2017—that is, by the end of this month—as set out in legislation.

The Government are looking forward to considering the latest findings from this independent review. We will provide a full response to that independent review conducted by Paul Gray later this year. I will not speculate about what our response to that review will be before I have seen it. However, I can give an assurance that the House will consider the latest findings very carefully once the report is published, and that a full response to those recommendations will be provided some time later this year. Despite the report not yet having been published, we remain committed to continuous improvement. For example, we are making improvements to the PIP assessment and to our decision-making, and improving the advice we provide to claimants to guide them through the process.

Noble Lords expressed concerns about mental health and the assessments thereof. Supporting people with mental illness will continue to be a priority of this Government despite what the noble Baroness, Lady Bakewell, said. That is why we are spending more on mental health provision than ever before. Taking all things together, I think it is now estimated to be something of the order of £11.4 billion this year.

We are working with the health service to join up the health system, the welfare system and society more widely so that we focus on the strengths of people with disabilities or health conditions and what they can do. It is for that reason that in the summer of 2015 the Work and Health Green Paper was developed and consulting on the assessment criteria, the department was clear that psychological distress should be relevant only to descriptors b or e. I am getting technical here but that noble Lords and noble Baronesses who understand these things will understand that. Those would score four or 10 points respectively. Psychological distress fluctuates and may be amenable to treatment. Where the impairment is severe and enduring, with conditions such as a learning disability, it is less likely to fluctuate. Someone with psychological distress may need reassurance and prompting, while conditions such as a severe learning disability can lead to the need for supervision, physical intervention and support above and beyond simply reassurance. However, I make it clear that someone with a mental health condition can score the highest points on mobility activity alone and receive the enhanced rate of PIP.

I do not know whether the House would like it, but if it would, I could give examples at this stage. However, perhaps at this stage I will confine myself to just one, which relates to the points raised by my noble friend Lady Browning, on the problems of those with autism. I can give an assurance that as regards someone with a development disorder such as autistic spectrum disorder, which affects their ability to work out where they go, follow directions or deal with unexpected changes in a journey, if their disorder results in them having difficulty assessing and responding to risks, or impulsivity, they could also score 12 points under descriptor f on the basis that they need to be accompanied for their own safety.

Let me be clear. Our approach in developing PIP and the amendments we have made is not about the Government attaching a higher value to one condition over another—again, I go back to that parity of treatment—nor is it, as the noble Baroness’s Motion suggests and as some noble Lords have suggested today, discriminatory or in conflict with our support. I therefore wish to see a review. That is what the Motion of the right reverend Prelate the Bishop of Winchester and all others have asked for that parity of treatment. It achieves that by looking at the overall needs of an individual, not just what conditions they have. The whole point—if I can put it this way—of the PIP assessment is to distinguish between those differing levels of need. There is no discrimination in that. This approach means that there are more people with mental health conditions receiving the higher rates of both PIP components than the DLA equivalents. I again give figures: 28% of PIP recipients with a mental health condition get the enhanced rate mobility component compared with 10% receiving the higher rate DLA mobility component.

Throughout each draft and in the final version of the assessment criteria, the department was clear that what is referred to as mobility activity I was designed to assess the impact of mental, intellectual, cognitive and sensory impairments on the ability to plan and follow a journey. The Government’s intention when developing and consulting on the assessment criteria was that psychological distress should be relevant only to descriptors b or e. I am getting technical here but that noble Lords and noble Baronesses who understand these things will understand that. Those would score four or 10 points respectively. Psychological distress fluctuates and may be amenable to treatment. Where the impairment is severe and enduring, with conditions such as a learning disability, it is less likely to fluctuate. Someone with psychological distress may need reassurance and prompting, while conditions such as a severe learning disability can lead to the need for supervision, physical intervention and support above and beyond simply reassurance. However, I make it clear that someone with a mental health condition can score the highest points on mobility activity alone and receive the enhanced rate of PIP.

Let me be clear. Our approach in developing PIP and the amendments we have made is not about the Government attaching a higher value to one condition over another—again, I go back to that parity of treatment—nor is it, as the noble Baroness’s Motion suggests and as some noble Lords have suggested today, discriminatory or in conflict with our support for people with mental health conditions over those with physical conditions. PIP will continue to ensure parity between mental and physical conditions by...
Baroness Bakewell of Hardington Mandeville: My Lords, I thank the Minister for his response and I thank all those who have taken part in this critical debate, as well as those who were not able to speak because of the time limitations. Time prevents me from commenting in detail on all the contributions, although I would have wished to do so.

Naturally, I am disappointed that the Government are reluctant to move their position so as to support people whose lives are blighted by psychological and anxiety disorders. That was not the original intention of the coalition Government’s move from disability living allowance to the personal independence payment, and I do not believe that the changes bring either clarity or parity. The role of PIP as a successor to the DLA is to support disabled people to meet some of the additional costs of disability. Unlike other aspects of the welfare system, PIP is not an income replacer or booster; it is to help tackle the financial penalty of disability.

I regret that these regulations do not engender trust, and a great many people in the community and those charitable organisations that support people with mental health and psychological disorders will be bitterly disappointed by the Government’s response.

I understand the position of the Labour Benches and commend the noble Baroness, Lady Sherlock, for her, as always, formidable approach to this matter. However, this is an extremely important matter that affects a whole range of people in society, including those suffering from post-traumatic stress disorder, panic attacks and psychotic disorders. The Minister may have spoken to charities but clearly he did not convince them, as Scope, the Disability Benefits Consortium, Sense, Citizens Advice, Rethink Mental Illness and Mind have all said the same—that this decision should be reversed. I therefore want to test the opinion of the House.

9.02 pm

Division on Baroness Bakewell of Hardington Mandeville’s Motion

Contents 75: Not-Contents 164.

Motion disagreed.

Division No. 4

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Benjamin, B.
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Bowles of Berkhamsted, B.
Brinton, B.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
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Chidgey, L.
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Cotter, L.
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Foster of Bath, L.
Garden of Frognal, B.
German, L.
Goddard of Stockport, L.
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Janke, B.
Kirkwood of Kirkhope, L.
Kramer, B.
Layard, L.
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Lester of Herne Hill, L.
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Social Security (Personal Independence Payment) (Amendment) Regulations 2017

Motion to Regret

9.13 pm

Moved by Baroness Sherlock

That this House regrets that Her Majesty’s Government is implementing the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 without formal referral to the Social Security Advisory Committee; and that the Regulations discriminate against people with mental health problems, and could put vulnerable claimants at risk; and calls on Her Majesty’s Government to allow proper scrutiny of these proposals, including a review of the changes that the Regulations make and their specific impact on those with mental health conditions, within two years of their coming into force.

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee

Baroness Sherlock (Lab): I am grateful for the support from different Benches, particularly from the noble Baroness, Lady Browning, the right reverend Prelate the Bishop of Winchester and my noble friend Lord Jopling. I thank the Minister for his answers. I only wish they had been answers to the questions that I asked, or indeed any of those asked by the Social Security Advisory Committee or the Secondary Legislation Scrutiny Committee.

We have had a long debate tonight. Concern has been expressed on every single Bench that these regulations will damage people with mental health problems and
they go right against parity of esteem. The Minister’s response was not acceptable and I wish to test the opinion of the House.

9.14 pm

Division on Baroness Sherlock’s Motion

Contents 162; Not-Contents 154.

Motion agreed.

Division No. 5

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Bradley, L.
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Young of Norwood Green, L.
9.25 pm

Baroness Garden of Frognal (LD): My Lords, I fear that this may be something of an anti-climax after the previous excitement. Nevertheles, I wish to move Amendment 34 and speak also to Amendment 35. They have the support of the noble Lords, Lord Lucas and Lord Watson, and of my noble friend Lord Storey.

As we set out in Committee, there are quite a few questions to be asked about the institute’s power to issue technical education certificates. We understand that this will not be done by the institute but be delegated to the Skills Funding Agency. Either way, public time and money will be used to duplicate a function which is already well covered under existing systems.

This proposal was not set out in the skills plan. It potentially removes any continuing link between the awarding body and the qualification that it has produced. We are here attempting to clarify the relationship between the issuing of the proposed certificates and the qualification certificates issued by awarding organisations. Are the Government proposing to issue these “technical education certificates” alongside the awarding organisation’s certificate?

We heard earlier from the Minister that employers would pay for the certificate. It would be helpful to hear more about who makes the application. Does it come from the employer, from the training provider or from the awarding body? Is it automatically triggered by attainment of a qualification?

I do not think that we have had an assessment of the resources required by the institute, or the SFA, to authenticate, print and send out the 3 million apprenticeship certificates to meet the government target. Will the institute require the addresses of all the candidates or will they be sent to the employer or training provider to distribute?

There is a very simple solution. Government issuing of certificates is not common procedure at qualification level in any other area of the education and training system and would appear to bestow unnecessary cost, duplication and complexity on to whichever body is tasked with carrying it out. Would it not be simpler if the certificate issued by the awarding organisation also carried the logo of the institute or of the Department for Education? This has been common practice in the past, including with national vocational qualifications, and would have the benefit of adding government backing and status to a certificate already being validated, processed and issued.

I assure your Lordships that awarding bodies can produce some immensely impressive certificates to meet immensely impressive achievements. I hope that the amendment will be seen as positive and helpful. I beg to move.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I am grateful to the noble Baroness, Lady Garden, and the noble Lord, Lord Lucas, for tabling these amendments.

A fundamental reason for introducing the technical education reforms is to tackle the weakness in the current 16 to 19 education system caused by fragmentation and variation in the quality and value of the qualification certificates currently provided by many individual awarding organisations.

To address this, it is important that the technical education certificates are issued consistently by one entity under consistent branding so that they are recognised and understood by employers regardless of the qualification or where it was undertaken. The Bill makes provision for the Secretary of State to issue a technical education certificate to any person who has completed a technical education qualification and any other steps determined under new Section A2DB.

Those completing either an apprenticeship or a technical education course will receive a nationally awarded certificate from the Secretary of State. This will confirm that they obtained as many of the key skills and behaviours as the institute deems appropriate for a particular occupation. The technical education certificate will also recognise the other essential elements such as attainment in English and maths, completion of work placements and other route-specific qualifications. The certificate will demonstrate to employers that individuals obtained the knowledge, skills and behaviours necessary to undertake their chosen occupation. It will provide clarity for employers and support the portability and progression value of the qualifications.

As currently drafted, these amendments will allow the Secretary of State to use the DfE logo and standard wording on technical education certificates—which of

Technical and Further Education Bill
Report (Continued)
course she may already do. It is also right that only the
certificate should bear the department’s logo and standard
wording. This will also ensure that certificates for
technical education align as closely as possible with
certificates for apprenticeships. However, this will not
affect any arrangements that the institute entered into
with an organisational consortium that is approved to
deliver a technical education qualification. These
arrangements are likely to include the use of their own
logo or branding on any certificate that they issue in
respect of that qualification.

We expect costs to be incurred in issuing the certificates.
It is therefore right that the Secretary of State should
be able to determine whether to charge for the first
technical education certificate and a copy of it, and if
so how much. This is consistent with the procedure
already followed for charging for the issuing of
apprenticeship certificates or supplying copies of them.
Our reforms will ensure we operate a system for the
future, providing a national offer that is recognised
and understood by employers regardless of the
qualification or where it is undertaken.

I hope that clarifies the situation for the noble
Baroness. She made a point about how the institute
will be aware of the addresses of recipients. That
information will come via the awarding organisation
to the institute. Students must apply to the Secretary
of State for their certificate. If I have not answered all
the points that the noble Baroness is concerned about,
I am happy to discuss this with her further and to
provide more information. In that spirit, I hope she
will feel reassured to withdraw her amendment.

Baroness Garden of Frognal: I thank the Minister
for his reply. I am slightly bemused because employers
seem to understand very well the previous certificates
that went out, with NVQ and awarding-body logos.
There was not a particular confusion about the standards
there. As I say, given that the awarding organisations
already issue certificates, it would seem a much neater
operation if it was combined into one certificate instead
of having the confusion of two. I thank the noble
Lord for his offer to have further discussion on this
and meanwhile beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendment 35 not moved.

Schedule 2: Education administration: transfer
schemes

Amendment 36 not moved.

House adjourned at 9.32 pm.
House of Lords

Tuesday 28 March 2017

2.30 pm
Prayers—read by the Lord Bishop of Winchester.

Oaths and Affirmations

2.35 pm

Lord Colgrain took the oath, following the by-election under Standing Order 10, and signed an undertaking to abide by the Code of Conduct.

2.36 pm

Recycling: Plastic Bottles

Question

As asked by Baroness Jones of Whitchurch

To ask Her Majesty’s Government whether they have any plans to introduce a deposit return scheme to reduce plastic bottle waste and increase recycling.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble): My Lords, we are determined to reduce litter on our streets, roads and beaches as part of the Government’s litter strategy, which we will launch shortly. The strategy will focus on education and awareness, better enforcement and improving cleaning and litter infrastructure. We recognise that there is more to do and will continue to work with business, WRAP, local authorities and campaign groups to increase rates of recycling across the board.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply, but why is the department not prepared to show more leadership on this issue? After all, we know the scale of the problem. In the UK, we are using 35 million plastic bottles a day, 16 million of which end up being dumped on our streets, in our rivers, in the sea and in landfill. We know the scale of the problem, and we also know that there are solutions. Other European countries have already introduced bottle deposit schemes with great success. We know that, when we introduced the 5p plastic bag levy, it cut the number of single-use plastic bags considerably. Such measures can work. Is this not just a question of leadership? Why does the department not take a stronger line on this issue?

Lord Gardiner of Kimble: My Lords, I certainly intend to take a very strong line and am looking forward to the launch of the litter strategy. The reason that these matters are so important is that they affect everyone in this country, whether it is litter or the importance of recycling resources. That is why the Chancellor said in the Budget that by 2020 targets for overall packaging recycling would increase to 75.4% and for recovery to 82%. This Government are very ambitious in their desire to improve our environment.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that the scheme that operates in Denmark works very successfully? It is not government led; my understanding is that it is led by industry and that the work is done by the supermarkets, which pay to put the facilities in. Is this not the type of leadership that we should look to—that is, leadership from the industry, where it saves money in the process as well?

Lord Gardiner of Kimble: My Lords, I want to express my thanks to business across the piece for being involved in the litter strategy. One thing to come across strongly is the importance for its reputation that business sees in assisting us with recycling and with avoiding litter. I want to endorse what my noble friend has said: business is key to the success of this.

Baroness Parminter (LD): My Lords, the Minister mentioned the welcome but ambitious packaging recycling targets set in the recent Budget. Given that household waste recycling targets are going backwards, how do the Government expect to meet them?

Lord Gardiner of Kimble: My Lords, the noble Baroness is right that there was a slight drop, and that is why we absolutely need to do more. That is why I think the work of WRAP will be very important. But let me give some examples of where recycling is working tremendously well: South Oxfordshire District Council has achieved 66.6% household waste recycling; East Riding has achieved 66.1%; and Rochford District Council has achieved 66%. We want to raise the bar where local authorities are doing very well. That is what we want across the country.

Lord Dubs (Lab): My Lords, I hope the Minister will not think I am being discourteous, but his first Answer could have come straight out of “Yes Minister”. His subsequent answers were similar to those the Government gave when we talked about putting a tax or some penalty on the excessive use of plastic bags. We are getting nowhere in this. Surely we must do something—it is an environmental scandal. Could we not have some action instead of these platitudes from civil servants?

Lord Gardiner of Kimble: My Lords, I have never taken the noble Lord to be anything other than courteous, and I do not take what he said in any untoward sense. On what he said about the plastic bag charge, there are 6 billion fewer plastic bags in circulation and the 5p charge has raised £29 million for good causes. These are good examples. I am sure that when the litter strategy is launched, as I hope it will be soon, the noble Lord will agree that we are trying to be—and will be—ambitious.

Baroness Jenkin of Kennington (Con): My Lords, I declare an interest as a member of the WRAP board. My noble friend will be aware of WRAP’s consistency framework, which should help drive up recycling rates of not just plastic but other commonly collected waste streams. Although the framework was launched only in September, can my noble friend update the House on how it is going with local authorities?
Lord Gardiner of Kimble: My Lords, my noble friend is right. WRAP is currently working on seven local authority partnerships across 49 local authorities. This is to review the impact of greater consistency for household recycling, and I am sure that savings efficiencies and increased recycling will be had from that. It is early days, but I think the local authorities I mentioned show success. We want to raise the bar so that local authorities can see there is business sense in working together to improve recycling.

Baroness Jones of Moulsecoomb (GP): My Lords, could the Minister give us a list of the worst-performing councils?

Lord Gardiner of Kimble: My Lords, I had better put that in the Library. Of course I wanted only the positive news, but I am afraid that, absolutely, there are local authorities that we want to encourage and need to do better. It is also in their business interests to ensure that they are recycling well and are litter-free places to work in and do business. The whole purpose of the consistency framework is to raise the level of those authorities that are not doing as well as they should.

Baroness O’Cathain (Con): My Lords, is there consistency in the new litter strategy? Certain council areas encourage you to put the bottles in a certain box and others do not. I have lived in the same house for nearly 30 years and we have had six different types of instructions about litter. If there was consistency throughout the country, I am sure it would benefit everybody.

Lord Gardiner of Kimble: My Lords, what my noble friend said is precisely part of the work of this consistency framework, to make it easier for people to recycle and to make better understood what can be recycled. I very much hope that, as we proceed, ever more can be recycled from products.

Lord Lexden (Con): Does my noble friend have any plans to set forth from his office with a plastic bag in his hand and a camera crew in tow to pick up litter in and around Westminster, and set a fine example to the nation?

Lord Gardiner of Kimble: My Lords, if my noble friend had been with me in Ipswich for the national spring clean, he would have been with the honourable Member for Ipswich and the Labour leader of the borough council. We picked up an enormous amount of litter from around Ipswich. I should say—my officials will not like this—that we visited a fast-food store not too far away with a bag of litter and presented it to the very agreeable manager, who realised that more needed to be done.

East Jerusalem: Access to Emergency Care

Question

2.44 pm

Asked by Baroness Sheehan

To ask Her Majesty’s Government what assessment they have made of the impact of back to back transfers between ambulances at checkpoints on the health of Palestinians seeking to access emergency care in East Jerusalem hospitals.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Palestine Red Crescent Society reported in 2015 that 84% of transfers from West Bank to East Jerusalem hospitals underwent back-to-back transfers. The UK has consistently called on the Israeli Government to ease restrictions that reduce access to medical care for Palestinians.

Baroness Sheehan (LD): I thank the Minister for his reply. A number of noble Lords have asked me about back-to-back ambulance transfers. Basically, when somebody in the West Bank is critically ill—it is an emergency case—there are no tertiary hospitals in the West Bank and the referral is made to one in East Jerusalem, which is on the other side of the barrier. So the person will get into an ambulance in the West Bank but then be made to get out at the checkpoint and either be wheeled or have to walk through, regardless of whether he is having a heart attack or she is in a difficult labour. They will then have, on average, a 27-minute wait at the checkpoint, before transferring to an ambulance on the Israeli side to be taken, finally, to the hospital. This is an enormous barrier to the coexistence funding programme that DfID has announced to ensure better outcomes for Palestinians needing emergency care. Will the Minister confirm that he will make the strongest possible representations to his counterparts?

Lord Bates: We will certainly continue to make our representations. More importantly, we fund the UN Access Coordination Unit, which helps in this area. We agree that the waiting times are unacceptable. Of course, the long-term solution lies in the resumption of peace talks.

Lord Polak (Con): My Lords, does my noble friend agree that the first responsibility of a Government is to protect their citizens? Sadly, ambulances have been used by terrorists a number of times in the region. As we understand only too well, difficult decisions have to be made. Is my noble friend also aware that in 2015 more than 190,000 Palestinians entered Israel from the West Bank to receive medical treatment in Israeli hospitals?

Lord Bates: That latter point is well worth underscoring, but it does not take away from the distress that is caused to people who have to transfer from ambulance to ambulance at the border, with these three distinct medical areas: the West Bank, Gaza and East Jerusalem. We think there is a way forward. If the same spirit that has been shown in the offer of medical services by the State of Israel could be addressed to this issue, I am sure that a way could be found.

Baroness Deech (CB): Does the Minister agree with me that Israel deserves praise for organising a system of volunteers who help the injured people in the ambulances get to Israeli hospitals? Moreover, those hospitals are treating thousands of injured Syrians. They deserve praise for ensuring that there is a safe haven at least somewhere in the Middle East for wounded Syrians.
Lord Bates: A tremendous amount of work is going on with Syrians, not least that which DfID is supporting through its work with the UNRWA. We support 22 clinics which are providing essential medical treatment. This situation, in any circumstance, cannot be justified, but it needs to be resolved in a peaceful, constructive way which recognises the legitimate security concerns of the State of Israel.

Lord Anderson of Swansea (Lab): Of course it is distressing and the people of the West Bank and Gaza deserve the very best medical treatment, but will the Minister confirm the point that has already been made—that on many occasions in the recent past, ambulances have been used to convey terrorists and explosives for use in Israel?

Lord Bates: We recognise that and of course we acknowledge the absolute right of the State of Israel to defend itself against terrorist attacks. We believe that with good will on both sides, it will be possible to come to a situation where innocent patients are not ending up as the victims of terrorist activities being perpetrated in Gaza or elsewhere.

The Lord Bishop of Winchester: My Lords, we have heard how the people of the Occupied Territories continue to face challenges accessing emergency care. The diocese of Jerusalem provides hospitals and health centres across this area, but many of the vital facilities and services are not fully operational because the equipment cannot be calibrated and staff lack accreditation. What conversations have Her Majesty’s Government had with the Israeli Government to facilitate the necessary inspections to ensure that these and similar facilities become operational and therefore reduce the reliance of Palestinian people on reaching hospitals in East Jerusalem?

Lord Bates: We tend to raise these issues whenever we meet officials. My colleague Rory Stewart was in the Occupied Territories last weekend. It is a constant issue that we raise with them. We think there are legitimate concerns about the use of some materials, but we believe that there is a way forward on this to make sure that innocent people do not suffer.

Lord Collins of Highbury (Lab): My Lords, DfID provides substantial budget support to the Palestinian Authority. Picking up the point made by the right reverend Prelate, when giving that budget support, how much pressure does DfID put on the Palestinian Authority to ensure that money is spent properly on medical care and hospitals?

Lord Bates: The noble Lord makes a valid point. The Secretary of State has taken a leading role in this by changing the way in which we do that. The £25 million that we provide to the Palestinian Authority now needs to go to vetted individuals for specific programmes that have been announced. We work with our EU partners through the PEGASE arrangement to ensure that it ends up in the right hands, but more could be done, and I am happy to undertake to make those representations to ensure that it happens.

Lord Wallace of Saltaire (LD): In situations like this Palestinian, Israeli and international non-governmental organisations play a very important role. Is DfID satisfied that the Israeli Government make life sufficiently easy for non-governmental organisations to play a role in assisting Palestinian healthcare and other areas like that?

Lord Bates: We would like to see more. We do not think that the NGO Bill which is currently before the Knesset goes down that route. We think we need to do more.

Housing: Letting and Managing Agents

Question

2.52 pm

Asked by Baroness Hayter of Kentish Town

To ask Her Majesty’s Government whether they will make membership of a client money protection scheme mandatory for letting and managing agents.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank the noble Baroness and the noble Lord, Lord Palmer of Childs Hill, for their time and commitment to the client money protection review. I am pleased to announce that the Government intend to make client money protection mandatory in line with the recommendation of the review chaired by the noble Baroness and the noble Lord, Lord Palmer of Childs Hill. This will ensure that every agent is offering the same level of protection, giving tenants and landlords the financial protection that they deserve. The Government will consult on how mandatory client money protection should be implemented and enforced.

Baroness Hayter of Kentish Town (Lab): Well, that has taken the wind out of my sails. Will the Minister accept my thanks? The House will recall that we put into the Housing and Planning Act the reserve power to do this but at that point the Government were not quite convinced. However, as the Minister said, along with the noble Lord, Lord Palmer, we did the report, and the recommendation was published only yesterday. Today’s news is really good for tenants and landlords. It means that if any letting agent goes bust or makes off, the client’s money is safe. I hope the Minister will accept my thanks.

Lord Bourne of Aberystwyth: My Lords, I certainly will. That was a typically gracious response from the noble Baroness. It was a very well-reasoned report. Many people had been called to give evidence, so it was very strongly evidence-based. As I say, we will be consulting on implementation and enforcement. I am sure that we can talk about it in the meantime.

Lord Palmer of Childs Hill (LD): My Lords, I have had a little more time to get some wind in my sails. I thank everybody who took part in this review: my
Lord Palmer of Childs Hill: co-chair, the noble Baroness, Lady Hayter, the ministry and the civil servants, who were incredibly helpful. However, the review raises ongoing questions for the Government to tackle. For instance, enforcement is a key to success. Will the Minister tell us what he intends to do about the recommendation in the report that the Government consider, “authorising a prime authority for enforcement, recognising CMP schemes and providing up to date information”? Without that, the mandatory scheme will not have teeth.

Lord Bourne of Aberystwyth: My Lords, once again I thank the noble Lord for the part he has played in this. He asked specifically about one aspect of the consultation. As I say, we will be consulting on enforcement and implementation. He rightly draws attention to the fact that on occasion there has been a prime authority in this sort of area supervising the enforcement—Powys was an example used in the review, although in this instance, because it is England only, it cannot be Powys. A strong case has been made out, but of course we will be consulting on it.

Baroness Gardner of Parkes (Con): My Lords, it not essential in producing this final scheme that it should be as fair and as protected as the deposit protection schemes which exist for tenants’ deposits at present? In particular, there needs to be some kind of recognition that estate agents have to receive money in order to get the security checks, references and other things they need. They have to be carefully considered as well. It has to be fair to all parties.

Lord Bourne of Aberystwyth: My Lords, it certainly does need to be fair to all parties. The evidence from the consultation was that about 85%, if I am not mistaken, backed the need for enforcement in this area, so that obviously was a key factor. I agree with my noble friend that the consultation will need to ensure that it is fair and equitable across a wide variety of people.

Lord Best (CB): My Lords, I declare my interest as the chair of the council of the Property Ombudsman, which deals with complaints about managing and letting agents. I congratulate the noble Baroness, Lady Hayter, on her persistence in pursuing this matter and congratulate the Government on not only doing the right thing but of course we will be consulting on it.

Baroness Gardner of Parkes: My Lords, is it not essential in producing this final scheme that it should be as fair and as protected as the deposit protection schemes which exist for tenants’ deposits at present? In particular, there needs to be some kind of recognition that estate agents have to receive money in order to get the security checks, references and other things they need. They have to be carefully considered as well. It has to be fair to all parties.

Lord Bourne of Aberystwyth: My Lords, it certainly does need to be fair to all parties. The evidence from the consultation was that about 85%, if I am not mistaken, backed the need for enforcement in this area, so that obviously was a key factor. I agree with my noble friend that the consultation will need to ensure that it is fair and equitable across a wide variety of people.

Aviation: Large Electronic Device Ban

Question

2.57 pm

 Asked by Baroness Randerson

To ask Her Majesty’s Government what were the reasons for their decision to ban large electronic devices from aircraft cabins on flights from certain countries.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the safety and security of the travelling public will always be our primary concern, and this Government will not hesitate in putting in place any measures that we believe are necessary, effective and proportionate. The whole House will recognise that we face a constantly evolving threat from terrorism and we must respond accordingly to ensure the protection of the public against those who would do us harm.

Baroness Randerson (LD): My Lords, I agree wholeheartedly with the Minister that the security and safety of our people must be our priority, so I am concerned about the shortcomings of this decision. As we discovered so tragically here last week, terrorism can emerge from the most unlikely places, so why have only six countries been selected for this ban and how can it work if it does not apply to all flights, wherever their origin? I believe Germany, Spain, Switzerland, Australia and New Zealand have already decided not to implement a ban. How can it work across the world if not every country is co-operating?

Lord Ahmad of Wimbledon: My Lords, first, the events of last week were a stark reminder to us all of the nature of the challenge we face. Indeed, there was a Question on this very subject scheduled for that day, which we could not take. On the specifics of the noble Baroness’s question, how our European partners act is very much a matter for their respective Governments. We have acted in accordance with what we believe is the best interests of the United Kingdom, and Her Majesty’s Government will continue to act in that manner.

Viscount Ridley (Con): Can my noble friend explain why a laptop in the cabin is dangerous if a laptop in the hold is not?

Lord Ahmad of Wimbledon: My Lords, my noble friend asks a specific question on the new measures which have been implemented. I am sure that he will respect the fact that I cannot go into the specific detail behind the reasons why we have taken these measures. However, we keep all aviation security measures under constant review and have acted in accordance with that review. On the matter of laptops now being pressed into the hold, the CAA is also issuing specific advice to carriers dealing with that.

Baroness Corston (Lab): My Lords, the Minister must know that the success of this policy decision depends on airports in other countries. How confident is he about that?
Lord Ahmad of Wimbledon: I assure the noble Baroness—indeed, the whole House—that the Government have acted from the very top. There has been engagement at ministerial level. I have engaged with several host countries, as has the Secretary of State and other Ministers, including the Secretary of State for Foreign Affairs and the Minister for Foreign Affairs responsible for some of those countries. We have also dealt directly with the airlines from some of those host countries as well as British carriers, and I can assure all Members of your Lordships’ House that all are co-operating fully.

Lord Pannick (CB): Can the Minister explain what is the point of this decision if, as will be the case, these devices can be flown to Brussels or Paris and then flown to London?

Lord Ahmad of Wimbledon: It will apply to transiting passengers as well, if the flight is scheduled for London. As I said in response to a previous question, if those flights are going to other European capitals from the countries that we have listed, that is very much a matter for those European Governments.

Lord Paddick (LD): My Lords, a recent change in airline policy means that on many occasions, if there is a stopover flight, you cannot check your hold luggage through to your final destination. What is to stop someone concealing a laptop bomb in their hold luggage in one of the six countries affected by the ban and then, when they collect their bags at the stopover airport, taking that laptop bomb and putting it in their hand luggage in a country where the laptop ban does not apply?

Lord Ahmad of Wimbledon: If a person is coming through on transfer, the same rules will apply to them. Let me be absolutely clear that this is a measure that we have taken for six countries, as I am sure the noble Lord is aware. Anyone transferring through to any UK airport will be subject to the same restrictions.

Lord Skelmersdale (Con): My Lords, using an iPhone, you can turn on your central heating from some distance. Surely the same could be done with a bomb. Why are not iPhones included in the ban?

Lord Ahmad of Wimbledon: If that is the point of this decision if, as will be the case, these devices can be flown to Brussels or Paris and then flown to London?

Lord Pannick (CB): Can the Minister explain what is the point of this decision if, as will be the case, these devices can be flown to Brussels or Paris and then flown to London?

Lord Ahmad of Wimbledon: First, on the noble Lord’s specific questions about providing assurances, our intelligence agencies, which are some of the best among the world, provide the advice on the evolving security threat that we monitor. As for giving a personal assurance as the Aviation Minister responsible, of course we look to our security and intelligence agencies. This is an evolving threat and we continue to monitor it and, based on that, we have put in additional security measures. On the second question, of course I can also give the noble Lord the assurance that on the additional security measures, as I have said, we are working specifically with the carriers, British and foreign. I have spoken to them directly myself. Officials are working with them and, equally and most importantly, we are working with those countries and airports that have been identified and continue to receive full co-operation to ensure that those embarking on a visit to those countries, and indeed returning from those countries, are safe and secure.

Lord Dykes (CB): My Lords—

Lord Marlesford (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Cross Benches.

Lord Dykes: Does not the Minister realise that the implication of all the previous questions—including the Question asked by the noble Baroness, Lady Randerson—is that this policy will not work unless it becomes universal, because the public internationally have to be reassured that flying is going to be safe in future? These devices are getting more and more sophisticated and a universal ban will be necessary in the end, so that people can resume using their smartphones and tablets when they land but not while planes are in the air.

Lord Ahmad of Wimbledon: Let me again assure the noble Lord and the whole House that Her Majesty’s Government act in the best interests of our citizens. We do not take these issues lightly, as all previous Governments have not, and we have acted in exactly the same manner. We will continue to put the interests of the UK travelling public first. As to a universal ban, as I have said already this is a matter for individual Governments, but of course we talk to our European partners. This is very much a matter for each sovereign Government to make in accordance with how they see fit.

Lord Marlesford: In view of what my noble friend has been saying about being satisfied with airport security in some of these countries, and given that Egypt has been put on that list, will he now accelerate the resumption of flights to Sharm el-Sheikh in Egypt by British carriers—German carriers are allowing it? It is wrecking the Egyptian tourist industry, which is
Lord Ahmad of Wimbledon: My noble friend raises the specific issue of Sharm el-Sheikh. As he will be aware, Her Majesty’s Government—indeed, officials from my department—work specifically with the Egyptians on the ground. Yes, indeed, measures have been improved in Sharm el-Sheikh, but I remind him and your Lordships’ House that even though the tragic events on the Metrojet flight were well over a year and a half ago, in October 2015, we have not yet seen the final report from either the Egyptians or the Russians relating to that incident.

Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill
Order of Commitment Discharged

3.07 pm
Moved by Baroness Gale

That the order of commitment be discharged.

Baroness Gale (Lab): My Lords, I understand that no amendments have been tabled to the Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Northern Ireland: Political Developments

Statement

3.08 pm

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, with permission I shall repeat a Statement made by my right honourable friend the Secretary of State for Northern Ireland in the other place. The Statement is as follows:

“Since the Northern Ireland Assembly election on 2 March, I have been engaged in intensive talks with the political parties and the Irish Government, in line with the well-established three-stranded approach. There has been one clear purpose: to re-establish an inclusive, devolved Administration at Stormont in accordance with the 1998 Belfast agreement and its successors.

Progress has been made on a number of issues. These include on a budget, a programme for government and ways of improving transparency and accountability.

We have seen further steps forward on agreeing a way to implement the Stormont House agreement legacy bodies to help provide better outcomes for victims and survivors of the Troubles. In addition, progress was made around how the parties might come together to represent Northern Ireland in our negotiations to leave the EU, which is so important in the context of Article 50 being triggered tomorrow. That said, it is also clear that significant gaps remain between the parties, particularly over issues surrounding culture and identity.

Throughout this process, the Government have been active in making positive proposals to try to bridge those gaps and help the parties to move things forward. In law, the period allowed to form an Executive from the date of the first sitting of the Assembly after an election is 14 days. That 14-day period expired at 4 pm yesterday with no agreement and therefore no Executive. This is a source of deep disappointment and regret to me and I know there is widespread dismay across the country. From all my extensive engagement across Northern Ireland, with business, civil society and members of the public, I am in no doubt that inclusive, devolved government is what the overwhelming majority of the people want to see: working for them, delivering on their priorities and continuing the positive progress we have seen in Northern Ireland over recent years, with devolved institutions up and running and serving the whole community.

Yet following the passing of yesterday’s legal deadline, Northern Ireland has no devolved Administration. This also means that other elements of the Belfast agreement, including the north/south bodies, cannot operate properly. The consequences of all of this are potentially extremely serious. The most immediate is the fact that we are rapidly approaching the point at which Northern Ireland will not have an agreed budget. From tomorrow, a civil servant—the Department of Finance Permanent Secretary—will exercise powers to allocate cash to Northern Ireland departments. This is an interim measure designed to ensure that services are maintained until such time as a budget is agreed. We are keeping in close contact with the head of the Northern Ireland Civil Service on these matters and I understand that the Department of Finance will be setting out more details today. But let me be very clear: this situation is not sustainable and beyond a short period of time will have an impact on public services. What we are talking about here is the health service, schools, voluntary groups and services for the most vulnerable in society. This is not what people voted for on 2 March.

During the course of the past 24 hours I have spoken to the leaders of the five main Northern Ireland parties and the Irish Government. I am encouraged that there remains a strong willingness to continue engaging in dialogue with a view to resolving outstanding issues and forming an Executive, but the window of opportunity is short. It is essential therefore that the intensity of discussions is stepped up with renewed intent and focus. To that end I will continue over coming days to work closely with the Northern Ireland parties and the Irish Government as appropriate. I will need to keep the situation under review, but if these talks are successful it would be my intention quickly to bring forward legislation after the Easter Recess to allow an Executive to be formed, avoiding a second Assembly election, for which I detect little public appetite.

Lord Marlesford: doing huge damage to the Egyptian economy, when Egypt is one of the countries that is very much on our side and is trying to inject an element of real stability and prosperity into the Middle East.
I am also determined to take forward the legacy bodies in the Stormont House agreement in accordance with our manifesto commitments. I will be involving a range of interested parties, including the victims’ commissioner. However, in the absence of devolved government, it is ultimately for the United Kingdom Government to provide for political stability and good governance. We do not want to see a return to direct rule. As our manifesto at the last election stated, ‘local policies and local services should be determined by locally elected politicians through locally accountable institutions’.

But should the talks fail in their objectives, the Government will have to consider all options. I therefore want to give the House notice that, following the Easter Recess, as a minimum, it would be my intention to bring forward legislation to set a regional rate to enable local councils to carry out their functions and to provide further assurance around the budget for Northern Ireland.

It is vital that devolved government, and all the institutions under successive agreements, is returned to Northern Ireland as soon as possible, and the Government’s unrelenting focus is on achieving that objective. Northern Ireland needs strong devolved government to deliver for teachers, doctors and nurses, businesses, industry and the wider community; to ensure that it plays a full role in the affairs of our United Kingdom while retaining its strong relationship with Ireland; and to continue the work of the past two decades to build a stronger, peaceful and prosperous future for all. That needs to be the focus of everyone as we approach the crucial next few days and weeks. I commend this Statement to the House”.

3.15 pm

Lord McAvoy (Lab): My Lords, I thank the Minister for repeating the Statement. In keeping with past tradition and practice of a consensus between all the parties regarding Northern Ireland, he and I have a strong relationship which is invaluable in this situation. Bearing in mind that close relationship, I know it will be a great disappointment to him that he must stand before this House again today to inform us that the talks to re-establish an inclusive, devolved Administration at Stormont have not been successful.

On 2 March, the people of Northern Ireland turned out to vote for their representation and for a devolved Assembly that will serve the needs of the whole community. If anyone has any doubt about the expectations, hopes and aspirations of the whole of the people of Northern Ireland, they may find it useful to speak to my noble friend Lady Blood, who is well tuned into opinion. A number of noble Lords throughout this House, especially those from Northern Ireland, will be able to testify to that need of the whole community. We need all the political parties in Northern Ireland collectively to live up to those expectations.

Communities and public services in Northern Ireland are suffering the day-to-day realities of this impasse. The Minister made mention of the health service—a service which is struggling with waiting lists while waiting for political leadership to be back in place. We thank the Minister for notice of the interim measures in place to allocate resources to Northern Ireland departments. We agree with his own statement that this is not sustainable.

I would like to ask the Minister about the talks moving forward. What fresh initiatives will be employed to ensure that the next round of talks are dynamic and make progress? We must ask: what will be different about these talks? Can we encourage, in the strongest possible terms, the importance of prime ministerial involvement in this process? History shows us how important this can be. I am aware of the answer the Secretary of State gave to my honourable friend the Member of Parliament for Blaydon in the other place, that the Prime Minister is involved and is conducting business through the Secretary of State. This is absolutely no reflection on the hard-working attitude of the Secretary of State, but does the Minister agree that we need greater leadership to be shown in the weeks ahead? Is he able to tell us what plans the Government have to ensure that the Prime Minister is even more actively engaged in the process?

We must also ensure high-level, direct engagement from the Irish Government in their role as a guarantor of the Good Friday agreement. Can the Minister update the House on the continuing intervention that the Irish Government have had, and will have, in the process? What options have the Government looked at in dealing with the specific issue of the renewable heat incentive scheme? Has the Secretary of State looked at the financial burden that the scheme placed on the people of Northern Ireland, and are there any options for how this may be more appropriately dealt with?

We in this House are under no illusion that this is easy. But this does not stop us—or, more importantly, the people of Northern Ireland—having high expectations of what must be achieved. We need all engaged parties, including the UK Government and the Irish Government, to ask not “What do we want?” but “What can we give to this process moving forward?”.

Baroness Suttie (LD): My Lords, I, too, will start by thanking the Minister for repeating the Statement to your Lordships’ House this afternoon. I will also say that it is with a very deep sense of regret—despite the very genuine efforts by some—that we have reached this impasse.

Let us be clear: the consequences for Northern Ireland of the failure of the political parties to reach agreement to establish an Executive are very serious. We are days away from the end of the financial year, and yet—as has been said—there is no budget. There has been no vote to set next year’s regional rates. There is no programme of government. This will lead to increased uncertainty for key public services in Northern Ireland such as health and education, and in the voluntary and community sectors.

It is particularly to be regretted that the ordinary people of Northern Ireland find themselves without a voice through an Executive at Stormont at such a critical time. With the triggering of Article 50 tomorrow, this is the very time when the particular needs of Northern Ireland deserve to be clearly heard. There are very real and as yet unresolved concerns for Northern Ireland, not least about how to maintain the open border in the context of the UK leaving the customs union. Can the Minister say what mechanisms the Government intend to put in place to ensure that the views of all political parties in Northern Ireland are
heard during the Brexit negotiations? Does he agree that the joint ministerial committee will have a greater role to play in the context of Brexit, and that a more balanced representation of MLAs is needed to reflect the views of Northern Ireland?

Does the Minister further agree that, in the event of the current impasse continuing, a mechanism needs to be found to keep Assembly Members in place and to engage them and their party leaders in discussions on Brexit and other issues? Will he confirm that any such mechanism would require primary legislation?

Given that the RHI scandal was one of the immediate causes of the current crisis, will the Minister confirm that it is his understanding that the inquiry chaired by Judge Coghlin could take as long as six months to complete? Is he confident that Judge Coghlin has the necessary resources to enable a rapid conclusion to the inquiry? However, it is clear that there are deeper problems than the specific issues surrounding RHI. It will therefore be necessary to do things differently in order to secure a deal and to move forwards.

We on these Benches believe that there is no alternative to devolution, but that to achieve agreement will require a renewed commitment on the part of all participants to the talks. We believe that all parties now need to take stock of their position and come back to the negotiating table in a frame of mind to reach an agreement. Does the Minister agree that it is necessary to have a renewed sense of momentum, with clear leadership and full engagement by all political parties? What concrete action are the Government taking to provide the necessary leadership at the highest level at this time?

As former President Bill Clinton said last week, making peace work is an “endless process”. It requires compromise, a cool head, leadership and a desire to put the best interests of all the people of Northern Ireland ahead of narrow political advantage. We sincerely hope that such an attitude will be forthcoming in the next few weeks.

Lord Dunlop: First, I thank the noble Lord and the noble Baroness for their comments. I agree with many of the sentiments they expressed. I think that the whole House will agree that the people we should have in the forefront of our mind today are the people of Northern Ireland. In the recent Assembly elections they voted overwhelmingly for strong, stable and inclusive devolved government, and it will be a matter of great disappointment to them—as it is to the Government—that the parties have been unable to reach agreement within the statutory period to enable an Executive to be formed.

This has real and practical implications. From tomorrow, a civil servant rather than elected representatives will be allocating cash for public services. This is not sustainable beyond the short term. Northern Ireland wants and needs effective, devolved government delivering on an agreed set of priorities and providing strong public services for all the people of Northern Ireland.

Turning in particular to the process going forward and who is involved in it, I say clearly that the UK Government take their responsibilities very seriously. However, it is important to say that the Northern Ireland parties also need to take their responsibilities seriously, to provide leadership and solutions to the current issues. My right honourable friend the Northern Ireland Secretary has been actively involved in supporting and facilitating the discussions between the parties over the last few weeks, and making proposals to bridge the gaps. As he said in the House of Commons, the Prime Minister has been fully engaged. She has held a number of conversations with the Taoiseach and will remain fully engaged as we go forward. However, it is worth noting that high-level interventions have not always worked in the past, as the early 2000s showed, and the circumstances today are very different, with 10 years of unbroken devolved government behind us. But of course we accept that this is a window of opportunity, and the discussions need to be intensified and inclusive. The Secretary of State will be discussing in the coming hours and days with the parties and the Irish Government the process for taking matters forward.

We are working closely with the Irish Government and Irish Foreign Minister Charlie Flanagan in accordance with the three-stranded approach.

On some of the other issues, clearly Brexit is a hugely important matter, and it is absolutely vital that the interests and priorities of Northern Ireland are reflected as we prepare for the negotiations to come. That is of course why we need to get a fully functioning Executive up and running as quickly as we can. Of course, the UK Government and the Northern Ireland Office will continue to engage with stakeholders right across Northern Ireland and to represent those interests. However, it would be much more effective if the Executive were in place. There has been progress with the parties in the discussions we have just had in establishing how they can come together to represent the interests of Northern Ireland going forward.

On the RHI inquiry, I think everybody wants to see a rapid reporting of that. Clearly, the procedures are a matter for the inquiry itself, but we want the facts on this issue as quickly as we can.

3.27 pm

Lord Kilclooney (CB): My Lords, as one of those involved in the Belfast agreement, I am delighted at the Statement and the Government’s determination to try to help get devolution restored to Northern Ireland. However, the Statement says:

“but should the talks fail in their objectives, the Government will have to consider all options”.

Is direct rule an option, and is joint rule of Northern Ireland not an option?

Lord Dunlop: Our focus is on this period ahead—the window of opportunity the Secretary of State talked about—and I do not want to speculate about alternatives. Clearly, if we do not get agreement within this limited period, we need to consider all the options. However, it is fair to say that nobody wants to see a return to direct rule, which is why we need to intensify the discussions over the coming days and weeks.

Baroness Blood (Lab): My Lords, in reading the Statement, a couple of things worried me. First, we are told in the Statement that we are rapidly approaching a point where there is no real budget. The civil servants...
will be able to allocate funds for a very short period, but that is not sustainable. I worry about that, because that is the realm of life I live in. While I agree that the Irish language legacy issues are very important, they are not what makes the world go round, but the talks have figured mostly on those things. That worries me greatly, because I see work all around me coming to a halt because of the budget. Can the Minister say whether all the parties have been at a round table, and if not, why not? Are some elected representatives more important than others? With regard to the future of Northern Ireland, I do not consider that to be the case. The Minister talked about going on to future talks. What will be different about the next set of talks?

Lord Dunlop: There has been progress in the talks over the last period. Progress has been made on setting a budget, implementing a programme for government and improving transparency and accountability, and these have been part of the round-table talks that have been convened. But clearly, as we go forward, we need to step up the intensity and inclusivity of the discussions, and that is what the Secretary of State will be working towards over the coming days and hours.

Lord Lexden (Con): My Lords, my noble friend Lord Kilclooney asked the Minister about joint rule but he did not comment on it in his reply. Will he now rule that out firmly?

Lord Dunlop: I have been asked that question in this House before and I will give the same reply that I gave then. We are committed to the Belfast agreement and the principle of consent. Northern Ireland remains a full part of the UK and joint authority would be incompatible with that principle of consent.

Lord Rogan (UUP): My Lords, the Minister mentioned in the Statement public services, the community and the voluntary sector. What is his assessment of the uncertainty that the present situation places on those vital services, which are often accessed by the most vulnerable in our Northern Irish society?

Lord Dunlop: The funding of these voluntary bodies and the public services is absolutely at the heart of why we need to make quick progress and why this process cannot go on indefinitely. Measures are in place that allow the Permanent Secretary of the Department of Finance to allocate cash, but political choices need to be made and that is why we require a fully functioning Executive to be in place.

Lord Hain (Lab): My Lords, I support the Secretary of State in avoiding—almost at all costs—direct rule, because it would be a massive and possibly irreversible setback. Equally, I support there being no second election, because everybody agrees that that would solve absolutely nothing. In common with my noble friend Lord Murphy of Torfaen, who is unable to be here this afternoon, I remain puzzled as to why there has been no direct prime ministerial involvement—a point raised by my noble friend Lord McAvo. The Minister hinted that the times are very different. They may be in one sense but in another they are not. The truth is that at times in the past the Prime Minister’s direct involvement, calling a summit at Hillsborough Castle or wherever it may be together with the Taoiseach, has been crucial in breaking the gridlock and bringing parties together, enabling them to find a solution they were not able to find on their own. I put that again to the Minister. The Prime Minister may be busy on other things such as Brexit but I suggest that there is nothing more important on her agenda than keeping the peace process in Northern Ireland moving forward. If it stalled and in any sense went into reverse, that could be very dangerous.

Lord Dunlop: First, I agree with the noble Lord about the importance of maintaining the forward momentum of the peace process. As the Statement says, and as the Secretary of State said in the House of Commons, we do not detect any appetite for a second election—the issues would remain to be resolved and it would merely prolong a period of uncertainty and disruption. On the involvement of the Prime Minister, as I have already said, she is actively involved and engaged, dealing directly with the Taoiseach. She and the Taoiseach have mandated my right honourable friend the Northern Ireland Secretary and the Irish Foreign Minister to take forward supporting and facilitating the discussions with the parties. That will happen over the coming hours and days as we seek a resolution to these issues.

Lord Alderdice (LD): My Lords, I want to emphasise the importance of both the Prime Minister and the Taoiseach being seen to be working together with the parties. The symbolism of that, as well as the practicality, is extremely important. I put to the Minister again the question that my noble friend Lady Suttie put. In the preparations for whatever outcome there is post-Easter, will the noble Lord and his colleagues at the Northern Ireland Office consider the possibility of the Assembly continuing even if the Executive Ministers are not in place? In that way there would be an elected body with which Northern Ireland Office Ministers and other Ministers could consult, with Members duly elected and their leaders, particularly about the question of Brexit as well as that of general devolution.

Lord Dunlop: As the Statement sets out, the focus and priority are seeking to get the Executive up and running. Of course, should that not succeed, we will look carefully at all the options as we go forward.

Lord Trimble (Con): My Lords, I welcome the announcement by the Minister that he will be bringing forward legislation after Easter. I suggest that that legislation should be fairly comprehensive in providing for a number of scenarios. It might also be a good idea to do something unusual or a little different—the suggestion mentioned by the noble Lord, Lord Alderdice, is worth considering. The Minister might like to consider that the joint ministerial council is not a creature of statute and that it could operate with a slightly different membership than it has done hitherto.

Lord Dunlop: I will certainly reflect on what my noble friend has said. As is clear from the Statement, our focus is on getting the parties round the table to
agree the outstanding issues so that we can form an Executive at the end of this window of opportunity. That must be the focus of our efforts at present.

Lord Bew (CB): My Lords, one of the few positive elements that the Minister was able to give us this afternoon was his reference to progress on accountability and transparency in government, the absence of which played a role in the generation of the scandal that has been so damaging to the institutions. Will he say a little more about what the parties have agreed, or may be in the process of agreeing, to enhance the accountability and transparency of the work of the Executive should they return, as we all hope that they will?

Lord Dunlop: As the discussions are ongoing I do not want to talk about what must necessarily be confidential discussions. However, I know of the noble Lord’s long-standing interest in this subject and would merely reiterate that there has been progress on these issues in the immediate preceding period.

Lord Howell of Guildford (Con): My Lords, the Statement spoke about the parties coming together to deal with the Brexit situation. Is it, as a matter of fact, the position that the people of Northern Ireland still have the statutory right to organise a referendum on their constitutional position, unlike Scotland which does not have that right unless it is granted? Is that now the legal position? I declare an interest as a Minister who took the original Northern Ireland referendum Bill through the House of Commons in 1972.

Lord Dunlop: Under the Belfast agreement, arrangements are set out for the circumstances in which a border poll could be held. However, the Secretary of State has made it clear that the conditions for such a poll are not currently satisfied.

Lord Dubs (Lab): My Lords, will the Minister remind us how long the Secretary of State has to go on negotiating, as is highly desirable? Is there a point at which he is obliged to bring that to a halt and go for one of the other options?

Lord Dunlop: The Secretary of State has made it clear that there is a period between now and Easter—when obviously the House of Commons will be in recess. What determines the timescale is the very clear statement that, if we can get agreement, when the House returns legislation can then be introduced, as set out in the Statement.

Lord Empey (UUP): The Statement was most regrettable and unfortunate but not surprising. It may be useful for the House to know that at no point during the three-week period of negotiations were all parties invited to the table at the same time—not a single meeting of all the parties took place. As far as agreements are concerned, there are no agreements because nothing is agreed until everything is agreed. There has certainly been some progress, but not enough. Will the Minister keep an open mind when it comes to the steps that may have to be taken at the end of this period, whatever that period is—probably the end of April? The Government must use their imagination to ensure that the institutions survive with the north-south and east-west bodies that are attached to them, which is particularly significant in terms of the implications for Brexit and our relationship with the Irish Republic at this difficult time. Will the Government keep an open mind and look at examples of things that could be opened up to make sure that our number one priority is the maintenance of the institutions?

Lord Dunlop: I say to my noble friend that, as the Statement said, should the talks fail in their objectives, the Government will have to consider all options. It would be right to keep an open mind at this point on those.

Lord Rooker (Lab): Who is taking the day-to-day decisions that would have been taken by Ministers? They are not all long term; many of them are day to day. It must self-evidently be civil servants, who are not elected and not accountable. They cannot be accountable to the Assembly and that is a mistake. That is not in the interests of the people of Northern Ireland. My experience is limited to one year and that was 10 years ago, but direct rule is not a threat to some people in Northern Ireland. I drew the distinct impression at the time I was there, just for a year with my noble friend, that many people were quite happy with direct rule because it locked Northern Ireland into the UK in a very solid way. If we were to go back to direct rule, the chances are, as my noble friend said, we would never get out of it. It should not be contemplated and some other innovative way should be found. The fact is that someone is taking decisions over people’s lives at the moment, whether they are on planning, benefits or whatever, that Ministers would take on a day-to-day basis. Who is doing that?

Lord Dunlop: I agree with the noble Lord. I have the highest regard for the Civil Service, but I am sure that we would all agree that elected politicians should be taking decisions about public services and public spending. With regard to direct rule, our experience in the past has been that, when the institutions are suspended and we move into a period of direct rule, we have not come out of that period quickly. We have seen huge progress made in Northern Ireland with 10 years of unbroken devolved government, and that is why the people of Northern Ireland voted so overwhelmingly in the last election to see those strong and inclusive devolved institutions continue.

Baroness O’Loan (CB): My Lords, there seems to be no appetite for direct rule. There is no appetite for an Assembly under the current terms, and there is no appetite for the parties to get together around a table. So in those circumstances, is two weeks long enough or do we need to go well beyond Easter in terms of negotiations before we move to direct rule? I must contradict the noble Lord, from the Cross Benches—that is not a good idea.

Lord Dunlop: We have been able to create this window of opportunity, but it is only a window. This cannot drag on indefinitely, for the reasons that I have said. Decisions need to be taken about the budget and
the allocation of the budget. As the Statement says, there is a need to set a regional rate and that binds the time period in which we are operating.

Lord Cormack (Con): My Lords, while I accept up to a point what my noble friend has said, having seen it at first hand, can I stress that a prime ministerial presence in Belfast can be of enormous importance in bringing the parties together? I was shocked by what the noble Lord, Lord Empey, said about the parties not having been brought together. Could not the Prime Minister be urged to invite all the relevant parties to Hillsborough? If we do not get this right, it could be a disaster for the union.

Lord Dunlop: I understand what the noble Lord, Lord Empey, said. It is a matter of fact that there have been round-table discussions on issues like the Programme for Government and budget setting which were chaired by the head of the Northern Ireland Civil Service. As regards the process going forward, that is something which my right honourable friend the Secretary of State is actively exploring with the parties and no doubt he will make further statements on that.

Lord Elystan-Morgan (CB): My Lords, can the noble Lord confirm that if no acceptable compromise is reached over the next few weeks and if the situation seems to be such that we are spiralling towards direct rule, would Her Majesty’s Government, in conjunction with the other interested parties, consider inviting a statesman of international renown such as Senator George Mitchell or indeed former President Bill Clinton to intercede in the hope that this perilous impasse can be avoided?

Lord Dunlop: I do not want to speculate on what might happen afterwards. Our focus is on the talks that we want to hold in the hours and days ahead.

Lord Hay of Ballyore (DUP): My Lords, I welcome the Statement but I have to say that it is extremely disappointing that an Executive in Northern Ireland has not been formed so that eventually we could have a strong and stable government. We see former Secretaries of State here in this House. These are complex issues and they have been challenging parties in Northern Ireland for about 20 years. Sometimes there is a belief among Peers that these issues have been around for only the past five or 10 years. That is not the case, they go back 20 years. However, there is an opportunity for the Prime Minister to get involved. I know that she has been actively involved behind the scenes, but I think that her presence in Northern Ireland at this time would help the process. The Prime Minister had agreed to visit the other regions of the United Kingdom before she triggers Article 50, so I would ask the noble Lord whether the Prime Minister still intends to come to Northern Ireland before doing so. I think that such a visit could help the process. Her presence in Northern Ireland would do that.

Lord Dunlop: I do not want to repeat what I have said already about the Prime Minister’s involvement and I am afraid that I am not privy to her forward diary, so I cannot answer the noble Lord’s question directly.

Criminal Finances Bill
Committee (1st Day)

3.47 pm

Relevant documents: 22nd Report from the Delegated Powers Committee

Clause 1: Unexplained wealth orders: England and Wales and Northern Ireland

Amendment 1

Moved by Lord Hodgson of Astley Abbotts

1: Clause 1, page 1, line 13, after “satisfied” insert “beyond reasonable doubt”

Lord Hodgson of Astley Abbotts (Con): My Lords, this is a modest amendment that is grouped with around 58 other amendments which deal with unexplained wealth orders, a new form of legislation in this country. Those 58 other amendments have been proposed by a bevy of talent, including several by my noble friend on the Front Bench, so after a few introductory remarks I propose to focus on the narrow issue which is the subject of my particular amendment. Before doing so, I should remind the Committee of my interests as declared in the register. I understand that it is now no longer approved procedure just to make a general reference and that we are supposed to be more specific. I should also remind the Committee that, while I am no longer an authorised person under financial services legislation, I remain the chairman of two companies that provide services to the financial industry.

At Second Reading I said that I strongly support the direction of travel of this Bill. I am well aware of the impact and the deleterious effect of the worm of corruption on society as a whole. However, I pointed out then and I point out now, as we begin Committee, that new regulation is by no means always the answer. Better use of existing regulation may well be equally effective, as encouraging and rewarding better behaviour to create the right climate may be. We need sticks but we also need carrots. The most important carrot is that people believe that what they are being asked to do is proportionate, fair and worthwhile, and that the information they are being asked to provide will be used and used effectively.

That should not be taken as my being in any way lukewarm about what we are discussing in the Bill and its purpose, but I shall want to be reassured now and as we go through Committee on three things: that the new powers being sought are required and required in the form it is proposed they should take; that those powers will be used, will be used effectively and will not sit on the shelf; and that they are likely to have a proper impact on the reduction of financial criminal activity.

With those introductory remarks, I turn to my amendment. As I said, this first part of the Bill is concerned with the introduction of an entirely new power for the authorities to obtain a court order to investigate what is called in the Bill “unexplained wealth”. I am no lawyer, but that seems a fairly broadly
[Lord Hodgson of Astley Abbotts] drafted phrase capable of quite a varying range of interpretations. I accept, however, that such broad phrasing may be necessary to cover the many forms that criminal financial activity may take, but equally, when I read that the provision will involve a reversal of the burden of proof—that is, under an unexplained wealth order I will have to explain why I should have this wealth, rather than the authorities explain why I should not—I wonder whether the right balance has been struck in the drafting.

In particular, in the group of amendments that we shall discuss, government Amendment 8 in the name of my noble friend on the Front Bench proposes to reduce the amount above which an unexplained wealth order may be sought from £100,000 to £50,000. If the Committee was minded to accept this amendment, quite small sums and probably quite legally unsophisticated individuals may be swept up in the new regime. It could be argued that such people need and deserve a higher level of judicial protection. With my amendment I seek to redress and improve the balance by imposing an additional duty on the court in the case of unexplained wealth orders. Clause 1 requires the court, under new Section 362A(1) merely to be, “satisfied that each of the requirements for the making of the order is fulfilled”.

My amendment would raise the evidential bar a little by requiring the court not merely to be “satisfied”, but to be satisfied “beyond reasonable doubt” by inserting those three words in line 13 of page 1.

In summary, I argue that, if the authorities want the burden of proof reversed, the citizen is entitled to a high degree of protection from the court against possibly vexatious activities by regulators. My noble friend on the Front Bench may argue that government Amendment 6 would achieve the same purpose. Again, I am no lawyer, but the Government’s phrase, “there is reasonable cause to believe”, seems a good deal weaker than my phrase in Amendment 1, “beyond reasonable doubt”. I will await reaction from other Members of the Committee who have more legal experience than me as to whether my fears are justified or groundless. My noble friend may also argue that I should have tabled a similar amendment to deal with Scottish unexplained wealth orders under Clause 4. She would be absolutely right but my response is that, for today at least, this is a probing amendment to enable a broad discussion on the point to take place.

Other noble Lords will no doubt wish to discuss the practicalities of how the UWOs will work and whether the target category of politically exposed persons will be able to be dealt with effectively because of personal and functional immunity—we have had quite a lot of briefing on these matters. My amendment is about trying to achieve the right balance.

Before I sit down, I want to ask my noble friend one last question. It is about legal privilege and client confidentiality under the new unexplained wealth order legislation. As I understand it—again, I say that I am no lawyer—legal privilege does not exclude a legal adviser from the provisions of the suspicious activity, or SAR, regime. If a legal adviser becomes aware as a result of discussions or communications with his or her client that activities that would be capable of being caught by the SAR regime are occurring, they are obliged to report them and to do so without informing their client—indeed, informing their client would be an offence. Can my noble friend in due course make clear what the position is on a legal adviser whose client becomes the subject of a UWO? Is the construction of legal privilege changed in any way? I do not think that unexplained wealth orders or the suspicious activity regime will necessarily walk hand in hand. I beg to move.

Lord Davies of Stamford (Lab): My Lords, the noble Lord has said that his amendment is merely probing. Clearly, the purpose of a probing amendment is above all directed at trying to influence the Government, but the other purpose is to see whether anyone else in the Committee rather agrees with the line of it, which may also be useful information for Ministers when they are taking final decisions on what the shape of the Bill should be.

The noble Lord made a very good case. We all know that legislation of this kind is essentially a matter of balance. On the one hand, we are imposing on people constraints and breaches of privacy and liberty. We are also imposing on them costs, because it is likely that to be able to respond to orders such as these they will have to pay accountants to do work. As the noble Lord said, we may be talking about amounts of wealth that are a substantial portion of the portfolio of the individual citizen being investigated. To respond to the investigation, the individual may need to spend significant amounts of money on accountancy or other professional advice. We should be very careful and aware of the costs of doing such things. We should also be aware that there is always a temptation for an authority, if it has a power, to use it and say, “There’s no downside. Let’s just put in a request to the High Court to have one of these investigations”. The noble Lord is therefore right to emphasise the need to protect the citizen to make it absolutely clear that an authority before making such a request, or a court before acceding to it, must be really convinced that there is a case for doing something quite exceptional—the state asking an individual to declare his or her private affairs. I therefore agree with the sense of the noble Lord’s amendment and I hope the Government take it seriously.

Lord Blair of Boughton (CB): My Lords—

Lord Faulks (Con): My Lords, my name is on a number of amendments. I wonder whether the noble Lord will allow me to expand on them a little.

My noble friend Lord Hodgson suggests in his amendment that the High Court should be satisfied beyond reasonable doubt in relation to the requirements before making an unexplained wealth order. For reasons that I will come to, I do not support the amendment, but I think my noble friend seeks to provoke, understandably, a debate about the scope of UWOs and to understand how the Government intend to use them and what sort of evidence the agencies will obtain before seeking one.
The Government are absolutely right to bring forward these provisions in relation to unexplained wealth. Indeed, it is an exciting and significant new development. There is a precedent, provided principally by Ireland and Australia. I had the opportunity to read an extremely lengthy worldwide overview of the use of these orders, The Comparative Evaluation of UWOs by Booz Allen Hamilton, and a useful selection of essays from the White Collar Crime Centre dated January 2017 and edited by Jonathan Fisher QC of Bright Line Law Services Ltd. The main questions appear to be: who can UWOs be appropriately aimed at; how effective will they be; and, are there adequate safeguards? The other way of putting the last question is: do they have the potential to be unfair?

4 pm

It is important to stress that UWOs survived extensive judicial scrutiny in both Australia and Ireland. Furthermore, they are a much more modest response to the problem than what is sometimes proposed in this context, namely an actual criminal offence of illicit enrichment. Of course, a UWO is not a criminal offence and thus there is no risk of subverting what is often referred to as the golden thread—that is, the burden of proof resting upon the prosecution. The burden of proof here on the respondent is contrary to the normal burden in criminal cases but it is important to note that even the European Court of Human Rights has been very slow to criticise reverse burdens in a civil context.

The provisions in the Bill allow recovery without conviction of assets subject to various conditions. One is the incorporation in the Bill of the privilege against self-incrimination, referred to by my noble friend. This can be found in new Section 362F. With the inclusion of those provisions, Transparency International was happy with the burden shifting. It is also significant that a High Court judge will be involved in the process. I understand that the Government intend to publish a statutory code of practice and I hope this will be available before Report.

My concern is not in relation to the lack of safeguards but rather to ensure that this potentially important weapon is as effective as it reasonably can be. That is the basis of a number of amendments that I and others have put forward in this group. My view is that UWOs have the potential to deter the sort of activity that we are all concerned about. There is of course a risk that effective use of UWOs may tend to divert respondents rather than deter them but they need to be used.

As to the specifics of the amendment of my noble friend Lord Hodgson, the use of the words “is satisfied” normally mean on the balance of probabilities. No doubt the Minister will clarify the Government’s intention in this area but the words “is satisfied” are also used in new Section 362B under the requirements for making the UWO. It seems that what is provided there and in new Section 362A is a balance of probabilities approach, albeit that there are clearly opportunities for a respondent who does not consider the order fair to have it varied or discharged, or even—as per the recent proposed amendment from the Government—to be compensated.

It is significant that the application for a UWO can be made without notice and that it can be accompanied by an interim freezing order. This is critical to prevent the door of the stable being locked after the horse has bolted. The Minister said in summing up the Second Reading debate that the use of these UWOs will be ultimately a matter for the agencies, which are operationally independent. However, if we are to approve the provisions in this Bill, I at least would like to be confident that not only will there be sufficient resources—on which my noble friend provided some reassurance at Second Reading—but also that there is the will, capacity and understanding of UWOs to make them as effective as they should be.

My amendments in this group are Amendments 2, 5, 7, 16 and 18. I degrouped Amendment 11 because it concerns specifically the London property market. A number of the amendments concern the use of the word “holds” and what that meant. Whether it was in response to those amendments or otherwise, a substantial amendment dealing with the point has been tabled by the Government, so I do not propose to expand on that now. Certainly, “holds” in the context of Section 84 of the Proceeds of Crime Act requires the respondent to have an interest in the relevant property.

New Section 362C provides that if there is no reasonable excuse for the failure to respond to a UWO in respect of any property, it is presumed to be “recoverable property”; that is, civil proceedings may then follow. At Second Reading I asked my noble friend the Minister to say a little more about what was meant by “purported compliance”—the words that are used in the Bill. She said that if there was, “compliance or purported compliance, the rebuttable presumption that the property is recoverable does not arise”, but that law enforcement would still have “valuable information” and could pursue an investigation. She also pointed out: “If the purported compliance is false or misleading, it will be an offence”—[Official Report, 9/3/17; col. 1517.]

I have to say that I was not greatly reassured by those comments. We must surely face the reality that UWO respondents who have invested the proceeds of tax evasion or bribery in specific property would be unlikely to choose to be frank about their conduct; nor would they be keen to hand over evidence to the authorities which would result in enforcement proceedings. This therefore begs the question: what sort of information would constitute purported compliance with a UWO? What if the answer is something of a stonewall?

As I said at Second Reading, we should not underestimate the role that lawyers may play in these proceedings. My understanding of the provisions relating to self-incrimination in new Section 362F is that they do not constitute an excuse for not complying with a UWO; rather, they simply restrict the circumstances in which statements provided in compliance or even in purported compliance can be used in criminal proceedings against the respondent. I find it difficult to envisage what would be purported compliance. Surely a respondent either complies with a UWO or he does not. I ask my noble friend the Minister: what is a “reasonable excuse”, as provided for in the Bill, for a failure to comply with the requirements of a UWO?
I fear that it will be too easy to brush these UWOs aside by relying on a rather limited response, cleverly lawyered, and giving little by way of valuable information. For these orders to be effective, they need teeth. Hence my Amendment 5, which suggests that among the powers that should be given or incorporated in the order is a requirement that the respondent answers questions on oath. I look forward to hearing the Minister’s reasons for not including such a provision. After all, not dissimilar provisions are available in investigating companies, and if someone refuses to answer questions on oath, it may be appropriate to draw adverse inferences from that refusal. This should help in the process of recovering money.

The legislative opportunities are going to be rather few in the next few years because of the predominance of Brexit-related legislation. We have an opportunity here to deal with the cancer of fraud that threatens the stability and reputation of our country. Let us ensure that we do not miss it.

I see that the noble Baroness, Lady Hamwee, has responded to the Government’s proposal to reduce the value of property from £100,000 to £50,000 by raising the figure to £500,000. No doubt she will explain her reasoning, but at present I do not support that. If there is, for example, a drug dealer who happens to have three or four cars and no obvious means of support would simply be impossible to get a UWO. At the moment, I think the Government’s proposals are correct.

There are a number of issues to discuss, and I look forward to hearing what other noble Lords have to say about them.

Baroness Hamwee (LD): My Lords, I was instinctively drawn to the amendment tabled by the noble Lord, Lord Hodgson of Astley Abbots. However, for many of the reasons that the noble Lord, Lord Faulks, gave, and because this is a preventive provision, after thinking about it for a little while on Sunday, and rather to my surprise, I put a tick next to the Government’s amendment which states, “that there is reasonable cause to believe”—even though, like the noble Lord, I read that as reducing the threshold.

Our amendment to raise the threshold to £500,000 was tabled not in response to the proposal to lower it to £50,000 but because I wanted to explore whether £100,000 or £50,000 was the right amount. In this context, £50,000 is a pretty small amount, so I hope the Minister will share with the Committee the evidence behind the proposal to reduce the figure from £100,000 to £50,000. In evidence to the Public Bill Committee, the gloriously entitled prosperity director of the NCA, when asked about the amount, said that that was a reasonable value. The officer from the counterterrorism unit of the Met said that it was reasonable, “when we are dealing with a higher end”—[Official Report, Commons, Criminal Finances Bill Committee 15/11/16; col. 8.]

UWOs are not included in Part 2, where smaller amounts would be more relevant. In the debate concerning the amount, the Minister said that the Government, “will be going for people worth £20 million, £30 million or £40 million and all the way down”—[Official Report, Commons, Criminal Finances Bill Committee 17/11/16; col. 87.]

That was in response to an amendment to reduce the amount to £50,000. He said that £100,000 would catch serious criminals. The amendment in question arose from the value of property in Scotland, but the comments are still relevant.

Our concern is quite simply that if the amount is low the agencies might be tempted to go for the low-hanging fruit and fail to pursue those who commit grand corruption. It is a matter of human nature to do that. Although there is no direct read-over, the application of POCA has not been an entirely successful experience. I know that having a lower limit will not restrict going for the higher amounts, but practice and theory may not be the same thing.

We will come later to registers of beneficial ownership, both domestic and for the overseas territories, but I wonder whether UWOs can be administered effectively without a register of beneficial ownership.

We have other amendments in this group, some of which simply repeat the first amendment at different points in the Bill. Amendment 26 is the same as Amendment 54. It would change “must” to “may”—it is usually the other way round in this House, is it not? This is intended to probe why we would be restricted to the same proceedings in the paragraph that I would amend. In this context, does “same proceedings” mean the same case but allow for separate hearings? That would be sensible so that there can be a later application for a freezing order without starting new proceedings.

4.15 pm

Amendment 27 suggests extending the exception for “reasonable living expenses” to the reasonable living expenses of the person’s dependants, for reasons which I think must be entirely obvious. The Minister of course will introduce Amendment 28 shortly, which deals with compensation and will require there to have been a “serious default” on the part of the enforcement authority. In Amendment 29, I suggest changing “serious” to “significant”. What is significant to an applicant may not be serious in an objective sense, and I would like to understand precisely what is intended there.

We probably have other amendments in this group, but I think that I have dealt with them. However, I should just mention government Amendment 14, which deals with connected persons. Is there a definition of “connected”? It seems a very wide phrase. It is in a clause where the term “close associate” is used, and to be connected is much wider than being simply a close associate.
Lord Brown of Eaton-under-Heywood (CB): My Lords, in common with the noble Lord, Lord Faulks, I too oppose Amendment 1. These unexplained wealth orders, in my submission, are to be welcomed and we must do nothing to dampen them at their outset. However, to put the criminal burden of proof into the very first provision would, I suggest, do just that. This provision surely should be based on the balance of probabilities.

Government Amendment 6 will introduce into new Section 362B(2) being inserted by the Bill, as the test of satisfaction, “that there is reasonable cause to believe”. Your Lordships will notice that new subsection (3) sets out a different test, that of being, “satisfied that there are reasonable grounds for suspecting that the known sources of the … lawfully obtained income would have been insufficient”, while new subsection 4(b) says there should be, “reasonable grounds for suspecting that … the respondent is, or has been, involved in serious crime”, and so forth. To “suspect” something is merely to suspect that it may be the case; to “believe” something is to believe that it is the case. These tests therefore differ. I do not know, but perhaps the one under new subsection (3) could be tightened. Rather than trying to introduce the criminal burden in the first provision, those who would like to make these orders more difficult might at least want to consider whether “reasonable grounds for suspecting” should be uplifted to the requirement the Government are introducing in amended new subsection (2): that there is “reasonable cause to believe”. For my part, I would introduce as the first provision a balance of probability test and leave the others essentially where they stand.

My only further thought is that if the House—to my mind, unwisely—were to raise the threshold remotely as high as the amendment in the name of the noble Baroness, Lady Hamwee, suggests, you would want the lowest test to be enshrined in the Bill; whereas with a lower sum in question, you might want a correspondingly higher test. Those are thoughts, because this, after all, is at an early stage and these are essentially probing amendments.

Lord Blair of Boughton: I am glad that I did not interrupt the noble Lord, Lord Faulks, because he and the noble and learned Lord, Lord Brown, approach this matter from long knowledge of the law. I would like to consider the amendment of the noble Lord, Lord Hodgson, in relation to the investigative process. UWOs are effectively a search warrant. That is the test, and that is not beyond reasonable doubt. You have a search warrant because you think something might be happening. When you have executed the search warrant, you know whether it has happened or not and at that point, you might charge someone with a criminal offence, for which the test would be “beyond reasonable doubt”. From an investigative point of view, that amendment would put at the front of the operation a test which is almost impossible to pass unless you issue the order and effectively use a search warrant on the individual’s bank balances.

Lord Phillips of Worth Matravers (CB): My Lords, I speak in harmony with the previous two speakers. I have some experience of this area, having wrestled in a judicial capacity with more than one appeal in relation to the Proceeds of Crime Act, and I have also recently taken the chair of the board which supervises more draconian legislation than the Bill for the confiscation of unexplained wealth in Mauritius. These unexplained wealth orders are designed to deal with the very real difficulty of proving facts which are likely to be in the exclusive knowledge of the holder of wealth. It would be simply contrary to the policy to impose the criminal rather than the civil burden of proof in respect of matters such as the value of property in which a person has an interest or the very question of whether he has an interest in that property at all.

Lord Sharkey (LD): My Lords, I will speak to Amendments 10, 13, 20 and 22 to 25 in this group, all of which are probing amendments. Amendment 10 modifies subsection (4) of the newly inserted Section 362B of the Proceeds of Crime Act 2002. The subsection sets out one of the three conditions that must be satisfied before an unexplained wealth order may be made:

“The High Court must be satisfied that … the respondent is a politically exposed person, or … there are reasonable grounds for suspecting that … the respondent is, or has been (whether in a part of the United Kingdom or elsewhere), or … a person connected with the respondent is, or has been, so involved”.

As I read it, it means that simply being a politically exposed person satisfies the condition. That is enough for the High Court: it does not need, “the reasonable grounds for suspecting involvement in serious crime”, to be satisfied as well. That seems unnecessarily and dangerously broad.

It is probably unnecessary to remind the Committee that we are all PEPs. So are our families and our close associates. As the Government have made clear, and as the FCA is about to say in guidelines, most Back-Benchers, their families and associates should not require additional due diligence. Given that, we or our equivalents abroad should not be exposed to a harsher, more extensive and more intrusive regime. By replacing “or” with “and”, and by qualifying the definition of PEPs by inserting, “who merits additional due diligence according to Financial Conduct Authority guidelines”, my amendment removes this harsh, special treatment of non-EEA PEPs. For the condition to be fulfilled, the amendment requires that the PEPs are not ordinary PEPs but merit this additional due diligence and that there should be reasonable grounds for suspecting involvement in serious crime.

Amendment 13 removes the exemption of UK and EEA PEPs from the conditions in subsection (4) of new Section 362B, in order to give the Minister the opportunity to explain why UK and EEA PEPs should not be treated exactly as all other PEPs.

Amendment 20 gives the Minister an opportunity to clear up an apparent anomaly. On page 5, subsection (2)(b) of the newly inserted Section 362E sets out the penalty for failure to respond properly to an unexplained wealth order. For summary conviction in England and Wales—and later, we see, in Scotland too—the penalty is imprisonment for a term not exceeding 12 months, or a fine, or both. However, on the very next page, in subsection (2)(c), the penalty on summary
**Lord Sharkey**

conviction in Northern Ireland for exactly the same offence is set at imprisonment for a term not exceeding six months, or a fine, or both. So in England and Wales and Scotland, you can go to prison for up to 12 months, but in Northern Ireland it is up to six months. Why? I would be grateful if the Minister could explain.

**Lord Faulks**

Before the noble Lord goes on to the next amendments, could he help the Committee with one point? He points to the position of PEPs and describes the potential vulnerability that quite ordinary people might have to these orders, but does he not think that subsection (3) of new Section 362B is a sufficient protection? It provides that the High Court, “must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property”.

That provides a hurdle that has to be surmounted, as well as establishing that someone is a PEP.

**Lord Sharkey**

If it were absolutely clear that you cannot obtain an unexplained wealth order without satisfying that condition, I would be happy, but I am not entirely sure that it is, and I would welcome the Minister’s confirmation that the noble Lord is correct.

Amendments 22 to 25 will allow the Minister to point out—if other noble Lords do not do so beforehand—where I have entirely missed the point. They refer to page 7 and subsections (2), (3) and (4) of new Section 362H. These subsections allow rules of court to provide for the practice and procedure to be followed relating to unexplained wealth orders before the High Court in Northern Ireland. There are similar but not identical subsections later in the Bill dealing with the same matter in Scotland. However, the Bill seems to be silent on how these matters are to be dealt with in the English and Welsh courts. I am sure I have missed something obvious here and would be grateful for enlightenment from the Minister.

There is another apparent anomaly in the sections dealing with the variation or discharge of an unexplained wealth order. I notice that the provision in Scotland is significantly different from that in Northern Ireland. On page 18, line 43, to line 1 on page 19, the Bill allows applications for variation or discharge to be made by “Scottish Ministers” or by, “any person affected by the order”.

That is not the case for Northern Ireland, where application can be made only by the enforcement authorities or the respondent. Why is there this difference between Scotland and Northern Ireland? My Amendment 24 makes the process in Northern Ireland the same as in Scotland but, again, what about England and Wales? I look to the Minister to put me right on all this.

**Lord Leigh of Hurley**

My Lords, I welcome the legislation on UW Os. I have a number of declarations of interest, and I own residential and commercial property in the UK. I do not think that I have any unexplained wealth, but I have some experience—admittedly, some 30 years ago—of working as a tax adviser. It was quite common in those days for the Inland Revenue, as it was then, to demand explanations of what it thought was unexplained wealth from various taxpayers. That was quite common practice, so the concept of the state seeking an explanation of wealth is not new in practice.

We have a situation where, certainly in central London, a shocking number of multimillion pound properties lie dormant and are owned by overseas parties. To the extent that this goes some way to change that situation, it must be very welcome. It would also be quite welcome if the Government were to take a more holistic approach, perhaps using this Bill to address that problem as well as considering other solutions, outwith this legislation, including penal rates for dormant properties owned by overseas people. None the less, the UW Os are likely to make a significant change in helping our law enforcement agencies to investigate money laundering in the London property market and, in particular, recovering proceeds of crime.

4.30 pm

We also need to ensure that lawyers, estate agents and other professionals are complying with their obligations under the Money Laundering Regulations. The HMT consultation on new regulations is a good opportunity to highlight the importance of this work, and I welcome the Treasury’s proposals for a new supervisory body which will improve the regulation offered by the non-statutory regulators.

On the amendments before us, I particularly welcome the attempt to capture property owned by trusts—I declare an interest as a non-beneficial trustee of property trusts—and I can see that the intention to reduce the level down to £50,000 must make sense where there would otherwise be aggregation. It is tempting to restrict this to real estate, but “property” could mean all sorts of other things, such as jewellery, diamonds, gold and so forth, where individual units of £50,000 can quickly accumulate to a much higher amount.

As a PEP, I was keen to support Amendment 10, in the name of the noble Lord, Lord Sharkey. I also had a chap from the Royal Bank of Scotland come round to see me and ask me what my first salary was in 1982—bizarrely, I remember that it was £4,900—and he spent a lot of time going through records that I had long forgotten about. I am not convinced that there is the protection that the noble Lord, Lord Faulks, specified earlier. One particular concern is that the provision talks about income, not capital. In any event, I am not sure why it should not be absolutely clear-cut that the Government’s intention is not to attack PEPs in this House or in the other place.

**Lord Kennedy of Southwark**

My Lords, the Bill was welcomed by all sides of the House at Second Reading. Unexplained wealth orders are a device to give law enforcement agencies powers to require a person suspected of involvement in or association with serious criminality to explain the origin or source of assets which appear disproportionate to their income.

Amendment 1, in the name of the noble Lord, Lord Hodgson of Astley Abbotts, seeks to insert the words, “beyond reasonable doubt” after the word “satisfied”, when requiring a person to comply with an order.
This raises an important point, but I am not convinced that introducing this higher test is needed here. It would make it more difficult for law enforcement agencies to get permission to seek the source of the wealth which has led them to suspect that the person’s lawfully obtained income would be insufficient for the purposes of obtaining their assets. I agree with the remarks made about this amendment by the noble Lord, Lord Faulks, who said that the higher evidential test would not be welcome in this regard. I also agree with the comments made by the noble and learned Lords, Lord Brown of Eaton-under-Heywood and Lord Phillips. I also agree with the comments by the noble Lord, Lord Blair of Boughton, on the investigatory role—the test and procedure would be difficult there as well.

Amendments 2 and 7, in the name of the noble Lord, Lord Faulks, give a better definition in relation to a person’s connection to a property, and the Government should reflect carefully on this during the passage of the Bill and possibly bring an amendment forward on Report.

Amendment 5, also in the name of the noble Lord, Lord Faulks, would provide an additional power to require a person to answer questions under oath. Again, that seems a reasonable additional power to take, which could be used at the discretion of the court. I very much take the point that the noble Lord made about the William Hill defence in terms of how one acquires assets and wealth. We need to look at that important point.

On Amendments 8 and 9, I thought that the £100,000 value in respect of a property was about right, that the £50,000 figure proposed by the noble Baroness, Lady Williams of Trafford, was too low, and that the figure proposed by the noble Baroness, Lady Hamwee, was far too high. However, having sought advice from law enforcement agencies, I understand the motivation behind the amendment of the noble Baroness, Lady Williams of Trafford, and I am content that the figure she proposes may well be right.

There is a whole series of government amendments in this group which I am content with, as they seek to prevent a person subject to one of these orders seeking to circumvent it through complicated financial means and transactions.

This has been a very useful debate, with some well-informed contributions that posed a number of questions for the noble Baroness. I am sure that she will reflect on those as we may want to come back to some of those points on Report.

The noble Lord, Lord Leigh of Hurley, made important points about property and the problems associated with it. I think that we shall debate an amendment in the name of the noble Lord, Lord Faulks, in the next group which concerns property.

As noble Lords will know, the measures in this Bill are largely focused on serious and organised crime, but it also provides important new powers to tackle terrorist financing. Last week’s horrific attack reminds us all of the very real nature of this threat. I would like to take a moment to pause and think about the families of those who have been killed and those who still lie injured in hospital. I again pay tribute to the men and women of the police and other law enforcement and intelligence agencies who are so committed to keeping us safe—to PC Keith Palmer, but also to his many colleagues who work in Parliament and across the country. We must ensure that they have the powers they need to investigate and disrupt terrorists and terrorist groups. The powers in Part 2 of the Bill, which we will come to later, will do just that.

I return to the amendments in this group on unexplained wealth orders—or UWOs. The UK is a world leader in the fight against global corruption and the UWO is a substantial new power that will assist UK law enforcement agencies to do so. I welcome the continued cross-party support for these measures. I remind noble Lords that a UWO is a court order that requires a person to provide information which shows that they obtained identified property legitimately. If the person provides information in response to a UWO, the enforcement authority can then decide whether to investigate further, take recovery action under POCA or, if they are satisfied, take no further action. If the person does not comply with a UWO, either by not responding or not responding fully to the terms of the order, the property identified in the order is presumed to be recoverable under any subsequent civil recovery proceedings.

There are a number of government amendments in this group and I turn to them first. These are, by and large, technical changes to the provisions to help them function most effectively, but I will highlight a few for the benefit of noble Lords. As regards trusts, we have tabled government Amendments 3, 4, 6, 12, 14, 15, 17, 19, 21, 30 to 32, 36, 38 to 40, 52, 53, 174 and 175. Perhaps the biggest addition to the provisions made by the government amendments are the measures to ensure that a UWO can be served in situations where property of interest is held in trust or involves corporate structures. This, I believe, picks up some of the concerns raised by my noble friend Lord Faulks. The amendments will also allow subsequent UWOs to be obtained on additional individuals such as trustees in complex cases where this is necessary. The amendments are not a silver bullet in cases where trusts and corporate entities are involved. However, they are a significant improvement and will close a potential gap.

UWO thresholds are addressed by government Amendments 8 and 33, which would reduce the threshold for a UWO to be obtained from £100,000 to £50,000. Noble Lords rightly questioned how we settled on the balance. It followed representations from authorities in Scotland—including from the SNP during Commons consideration of the Bill—and Northern Ireland. It reflects the fact that the higher threshold could disadvantage law enforcement agencies in certain parts of the country where financial returns may not be as high or may be spread more evenly across criminal groups, and where property, in particular, has a lower value.
The threshold, however, is still an important safeguard, together with the other qualifying criteria that must be met before a UWO can be made by the court. It remains our view that the orders should be used in the most complex cases, where obtaining evidence has proved difficult, and this will be reflected in the supporting guidance.

The noble Baroness, Lady Hamwee, tabled a related amendment to push the threshold up rather than down. She helped us to reflect on the balance that must be struck in circumscribing the new power. However, based on our consultation with law enforcement agencies, I suggest that her proposed threshold of £500,000 would be prohibitive. It would stop the agencies using this power in significant cases involving serious and organised crime, and noble Lords have been clear that they want to see the most effective use of UWOs. I hope that the noble Baroness will be satisfied that our approach strikes the appropriate balance.

Baroness Hamwee: I could repeat my question about the temptation to get at the low-hanging fruit and not use the orders to deal with grand corruption, as I understand it.

Baroness Williams of Trafford: The noble Baroness is right that both ends of the scale should be tackled, so I hope that law enforcement agencies will use the orders in a proportionate way to tackle criminal activity at both ends of the scale. I hope that that will satisfy the noble Baroness. She looks satisfied.

Lord Faulks: When questions were raised at Second Reading about the scope of the orders and how many might be issued, I referred to an assessment that was provided—with some difficulty—by the Government that only about 20 might be sought during the year. The Minister understandably said that that was only an estimate, based on general experience of civil recovery. However, does it not indicate that, rather than grasping low-hanging fruit, if anything this will be considerably resource-heavy and will probably be directed only at cases where the amount of wealth is significant enough to make the expenditure of time and money worthwhile?

Baroness Williams of Trafford: My noble friend and the noble Baroness have made the case for both ends of the threshold. My noble friend talked about resources generally. One thing that came from the law enforcement agencies was that the issue was not resources but the tools to be able to tackle criminals. Also, law enforcement agencies do benefit from a proportion of the money recovered, so they are incentivised at both ends of the scale—and it will be up to legislators in this House and the other place to decide on the right balance to strike. But that was our rationale for the lower amount—and I know that the Government originally suggested £100,000.

The point about compensation is covered in government Amendments 28 and 56, and Amendments 29 and 57, in the name of the noble Baroness, Lady Hamwee. Amendments 28 and 56 introduce a compensation scheme in relation to the interim freezing orders that can support a UWO. Other powers to freeze property in POCA have connected compensation provisions. It is absolutely right that a person who has genuinely suffered a loss should have the ability to seek compensation where there has been serious default on the part of the enforcement agency. The “serious default” test is already used in POCA and is applicable here too. I hope that on that basis, the noble Baroness will agree that her amendments probably are superfluous in this instance.

Baroness Williams of Trafford: Is the noble Lord talking about the high point with regard to the UWO triggering point? The Government have considered all options; they have suggested £100,000. The point was made that £50,000 was more appropriate, particularly in some of the devolved Administration areas, where property prices are generally lower, and the noble Baroness, Lady Hamwee, has made an argument for setting the bar higher. However, my noble friend also made the point that by setting the bar lower we might end up having more success, reaching not only the low-hanging fruit but the high-hanging fruit as well. I therefore hope that the noble Lord accepts that explanation. It is an objective consideration, but there are obviously many views about where the threshold should be set.

On Amendments 2, 5, 7, 16 and 18, tabled by my noble friend Lord Faulks, Amendments 2 and 7 seek to replace the term “holds” with “has a financial interest in” as the test for the High Court to consider. It is only fair that in serving a UWO the respondent must have some direct connection with the property that is of interest. “Holds” is a well-established concept in civil law, including in the Proceeds of Crime Act 2002, and we believe that requiring a person to “hold” property is a proportionate approach. It is also our view that “holding” property includes holding an interest in that property. I hope that noble Lords are reassured by that assessment.

Lord Faulks: I am sorry to interrupt the Minister. I thought that the answer to this point was provided by the Government’s Amendment 21, therefore there is no need to refer to the provisions of POCA, because there is an internal reference to what “holding” means.

Baroness Williams of Trafford: That is correct, but I thought I might go through it. I am just being thorough. Amendment 5 seeks to add the ability to interview a person “under oath” as a possible requirement of a UWO. It would already be a criminal offence for the respondent to knowingly or recklessly provide false or misleading information. We must also remember that
this is only an investigative power; if the case leads to criminal proceedings, it would be subject to the usual rules of giving evidence and allow for interviews “under caution”.

Amendments 16 and 18 address the issue of “purported compliance”. If a person does not comply with a UWO, their property is presumed to be recoverable under civil recovery proceedings. Given the severe consequences of not complying, it is right that this rebuttable presumption should not apply to a person who purports to provide a response. This avoids any legal ambiguity as to when the presumption will apply. However, where that individual provides responses that do not satisfy the enforcement agency, he or she then runs the risk that the poor quality of the responses will encourage the agency to take further action, and in those circumstances the burden of proof switches back to law enforcement, as is normal.

Purported compliance applies to a scenario where all the requirements of a UWO have been met but where the response is less than satisfactory. The agency is able to tailor the request for information very specifically, so will have some control over this. We do not want to get into arguments before the courts as to whether the presumption should apply and whether the individual has complied.

Finally, the UWO provisions will allow the enforcement authority to make very specific requests for information, reducing the risk of a low-value response being provided. I hope that my noble friend will feel that this addresses the point he has so expertly raised. He also raised a point about gambling. With regard to the Ladbrokes test or the William Hill defence, we would expect a high level of evidence to prove that, and we would expect it to meet the requirements of the UWO. The UWO will have achieved its purpose by flushing out information.

My noble friend also asked whether we would publish the code of practice before Report. The answer is yes. I undertook to discuss publication of the update to the relevant code of practice with my officials and ministerial colleagues, and it is my intention that the draft code will be available to noble Lords prior to Report.

I now turn to Amendment 1, moved by my noble friend Lord Hodgson of Astley Abbots. This would require the High Court to be satisfied “beyond reasonable doubt” with regard to each of the requirements before issuing a UWO. This is an investigative power, as the noble Lord, Lord Blair, said, so the test of “reasonable suspicion” is quite normal and consistent with existing law, including Part 8 of POCA. The balance of probabilities applies here, as the noble Lord, Lord Blair, and my noble friend Lord Faulks said, and I hope that my noble friend will agree that it would not be appropriate to impose a criminal law standard in such cases.

My noble friend Lord Hodgson asked about the reversal of the burden of proof. We accept that there is a reversal of the burden of proof but it is in very specific and narrow circumstances. There has to be a link to a PEP or a serious criminal. This is a proportionate use of operational need. As an investigation power, there is the opportunity to address this issue in any subsequent proceedings. As my noble friend said, Transparency International has approved this approach.

My noble friend also asked about the use of legal advisers if a client is subject to a UWO, but we do not consider that an amendment is required to the laws on legal privilege. The lawyer role is unchanged, and the lawyer has the same responsibility to file a SAR if he has a relevant suspicion. It will be a question of the facts in each case.

I now turn to Amendments 10, 13, 20, 22, 23, 24, 25, 35 and 37, tabled by the noble Lord, Lord Sharkey. I think that these broadly separate out into two topics: first, the application of UWOs to PEPs, and, secondly, the court process in Northern Ireland. UWOs can be made either where there is suspicion of involvement in serious crime or in relation to non-EEA politically exposed persons. In that sense, I want to make it clear that politicians and senior officials in the UK and the EEA are covered by the first element of this power where they are suspected of being involved in serious criminality.

The reason for the second limb is to plug a gap experienced by law enforcement agencies when they investigate politically exposed persons. The issue arises in cases where critical evidence is available only in the PEP’s home country, which lacks the capabilities necessary to gather it itself. Conversely, in relation to UK PEPs and those across the European Economic Area, if the evidence exists it will be obtainable, so the same issues do not arise. There is no gap in these cases. That means it should be possible to evidence suspicion of involvement in serious crime.

On the noble Lord’s point about the FCA guidelines, these relate to the regulatory obligations of banks and other institutions. UWOs are not to do with the regulatory burden and responsibilities of the financial industry, so reference to the FCA is not strictly relevant here.

On increasing the sentence on summary conviction in Northern Ireland to 12 months, the current provisions reflect the approach taken to sentencing for other “either way” offences in the Bill, and which also correspond to offences in POCA already. The 12-month point for England and Wales arises from an amendment to the approach to sentencing in the magistrates’ courts which derives from Sections 281 and 282 of the Criminal Justice Act 2003. Those amendments did not extend to Northern Ireland. In relation to the ability to make rules of court and other procedures in the High Court, including the variation or discharge of a UWO, specific provisions are not required in the Bill for England and Wales. However, express provision is required for the High Court in Northern Ireland to put them on the same footing.

The noble Lord also asked about Scotland. There is a constitutional division of powers between Scottish Ministers and the Lord Advocate, which is obviously specific to Scotland. We need to be certain that there is an ability of the Scottish Minister to disclose information onwards. The provisions presume that if a response is made to a UWO, this information could be disclosed onwards for consideration of a criminal investigation and/or prosecution. Therefore, in the Scottish context, Scottish Ministers apply for UWOs so that they will receive any information in response to such. If they consider that this information suggests that a criminal investigation and proceeding may be appropriate, they would need
to refer the material to the Lord Advocate. The amendments provide that Scottish Ministers can disclose the information to the Lord Advocate for this very purpose. They also make certain that there is no suggestion that Scottish Ministers are tasking the Lord Advocate, merely that the material can be referred for independent consideration by the Lord Advocate. That is important due to the constitutional structure in Scotland.

Amendment 24 provides for any person affected by a UWO to apply for its variation or discharge, and not just the applicant and respondent. As a specifically focused investigation order, only the applicant and respondent are directly affected by the UWO. This is because the UWO requires the respondent to provide information, but does not itself affect any other interests in the property.

Finally, we reach the other amendments from the noble Baroness, Lady Hamwee. Amendments 26 and 54 would provide that the application to freeze property need not be made at the same time as the application for a UWO. It is right that all matters relating to the person and property should be dealt with in one hearing. This also gives certainty to the respondent. Should the enforcement agency wish to freeze the property at any other time, it will be able to do so under the main freezing order provisions in POCA, provided that the relevant test can be met.

With reference to UWOs, the noble Baroness asked about the need for the ownership register. Open source material that already exists can be of assistance; for example, the Land Registry, public accounts and records at Companies House. Other countries may already have public registers of ownership and income. In these circumstances, our law enforcement agencies would have access to them. We should also note that the UK has public registers of beneficial ownership.

I turn finally to the point raised by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. He talked about altering the threshold but still having the safeguards. On the threshold, it must be remembered that the High Court has to be satisfied that there is still a link to serious crime or that someone is a PEP. That is a significant test. It focuses the use of the power in relation to the amount, and that is dropped by our amendments. The court has to show not only the value of the property but that the respondent does not have any obvious legitimate income.

5 pm

I also make a clarification. In my response to Amendment 1 from my noble friend Lord Hodgson, I suggested that the comparable test in respect of POCA was on the balance of probabilities. I did of course mean reasonable suspicion, but my noble friend swayed me to thinking that he must be right. I wanted to clarify that.

On Amendments 27 and 55, property that is frozen can be made subject to exclusions to allow the release of funds for reasonable expenses. That is in line with other existing powers in POCA and I understand that the position of dependants is already included in the consideration for the release of funds for the person subjected to other freezing powers in POCA, such as a restraint order obtained during a criminal investigation. I have detained the Committee for quite some time, but I hope that I have provided a reasonable explanation and I ask my noble friend to withdraw his amendment.

Amendment 24 provides for any person affected by a UWO to apply for its variation or discharge, and not just the applicant and respondent. As a specifically focused investigation order, only the applicant and respondent are directly affected by the UWO. This is because the UWO requires the respondent to provide information, but does not itself affect any other interests in the property.

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I turn finally to the point raised by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. He talked about altering the threshold but still having the safeguards. On the threshold, it must be remembered that the High Court has to be satisfied that there is still a link to serious crime or that someone is a PEP. That is a significant test. It focuses the use of the power in relation to the amount, and that is dropped by our amendments. The court has to show not only the value of the property but that the respondent does not have any obvious legitimate income.

5 pm

I also make a clarification. In my response to Amendment 1 from my noble friend Lord Hodgson, I suggested that the comparable test in respect of POCA was on the balance of probabilities. I did of course mean reasonable suspicion, but my noble friend swayed me to thinking that he must be right. I wanted to clarify that.

On Amendments 27 and 55, property that is frozen can be made subject to exclusions to allow the release of funds for reasonable expenses. That is in line with other existing powers in POCA and I understand that the position of dependants is already included in the consideration for the release of funds for the person subjected to other freezing powers in POCA, such as a restraint order obtained during a criminal investigation. I have detained the Committee for quite some time, but I hope that I have provided a reasonable explanation and I ask my noble friend to withdraw his amendment.

Baroness Hamwee: My Lords, on that last point, I was not clear whether the Minister was saying that defendants’ living expenses were covered or not. I would be happy to discuss that with her after today. I raised it because I was aware that they are specifically referred to in other legislation.

Baroness Williams of Trafford: The noble Baroness is right: they are provided for because they are in line with existing powers in POCA.

Baroness Hamwee: The Minister said that it would be right to have everything dealt with in the same hearing. I questioned whether “proceedings” meant “hearing” because to me they are not the same thing. Did the Minister say “hearing”? That might require a tweak.

Baroness Williams of Trafford: I did say “hearing”.

Lord Hodgson of Astley Abbotts: My Lords, we began with my modest amendment an hour and 40 minutes ago, and we have obviously ranged pretty widely. That is not surprising with nearly 60 amendments in this group. I asked in my opening remarks for reassurance that the government amendment, “that there is reasonable cause to believe”, provided adequate protection and we did not need “beyond reasonable doubt”. I asked for more experienced legal expertise than I have to provide me with that reassurance. I got not one but two noble and learned Lords to provide that in the shape of the noble and learned Lords, Lord Brown of Eaton-under-Heywood and Lord Phillips of Worth Matravers, for which I am very grateful.

I was slightly surprised that the noble Lord, Lord Blair, was dismissive of what I put in my amendment but will, I imagine, accept government Amendment 6, which provides a slightly lower level of inhibition to police activity, but that is as it may be. I was grateful to my noble friend on the Front Bench for her reassurance that there was no change to the issue of legal privilege. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendments 3 and 4

Moved by Baroness Williams of Trafford

3: Clause 1, page 2, line 10, at end insert—

“(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.”

4: Clause 1, page 2, line 18, leave out “to provide information, or”

Amendments 3 and 4 agreed.

Amendment 5 not moved.
Amendment 6

Moved by Baroness Williams of Trafford

6: Clause 1, page 2, line 35, after “satisfied” insert “that there is reasonable cause to believe”

Amendment 6 agreed.

Amendment 7 not moved.

Amendment 8

Moved by Baroness Williams of Trafford

8: Clause 1, page 2, line 37, leave out “£100,000” and insert “£50,000”

Amendment 8 agreed.

Amendments 9 and 10 not moved.

Amendment 11

Moved by Lord Faulks

11: Clause 1, page 3, line 5, at end insert—

“(c) the respondent has a financial interest in land or property in England and Wales which is registered in the name of an overseas company.”

Lord Faulks: My Lords, a walk around the centre of London after dark reveals that large parts of the city are wholly unilluminated. Why are the lights off? Is it that most Londoners are getting an early night? I think not. The fact is that many high-end properties are unoccupied and are used as investment vehicles by those who regard London as a safe haven for their money, often unlawfully acquired. In September 2016 the Mayor of London, Sadiq Khan, launched an inquiry into the impact of foreign investment flooding into London’s housing market. Lest my submission be considered too London-centric—I declare an interest as a resident of central London—such investment has also been going on in Manchester, Liverpool and Birmingham, among other cities. Mayor Khan said on launching the inquiry that we all need to be reassured that dirty money is not flooding into the property market.

Property that is the subject of a UWO does not have to be real property, but real property has the advantage of being less easy to dispose of informally and quickly. Your Lordships have already heard me and others discuss the importance of tightening up the provisions in relation to compliance with UWOs to deal with the potential for evading the orders. In this context, I am particularly concerned about property owned by overseas companies. On 17 March 2016, the Land Registry published the fact that it had registered 100,000 freehold and leasehold properties in the name of overseas companies. I should make it clear that the list excludes private individuals, UK companies, UK companies with an overseas address and charities. Noble Lords may be aware that unlike in most countries, there are absolutely no restrictions on foreign ownership of residential property in the United Kingdom.

Do we really think that all this property is being acquired with clean money? Are solicitors and agents complying with anti-money laundering provisions? I know that tightening up those provisions is the subject of later amendments. I read last week in the Times that only five people have been convicted of money laundering in the 10 years since the legislation was apparently tightened. The Law Society is on record as saying:

“Compliance with money laundering obligations is one of the greatest challenges for solicitors in the UK today”.

What about the obligations of estate agents? Of these properties owned by overseas companies, how many are polluted by dirty money? I mentioned at Second Reading the envelope tax. This was a reference to the super-rich being prepared to pay something like £218,000 a year in tax rather than identify who owns property. I asked the Minister whether the Government were happy with this state of affairs. Her answer was that UWOs will,

“make it easier for our law enforcement agencies to investigate money laundering in the London property market and recover the proceeds of crime”.

She also mentioned the importance of ensuring that lawyers, estate agents and other professionals comply with their money laundering obligations. Apparently the Treasury will in due course publish its findings in relation to the supervisory regime.

The noble Lord, Lord Rooker, referred to his kleptocracy tour in his speech at Second Reading, while the noble Baroness, Lady Kramer, cited the report of the All-Party Parliamentary Group on Anti-Corruption, which takes the view that more than £4 billion-worth of properties have been bought with suspicious wealth. My noble friend Lord Patten endorsed all the comments that were made at Second Reading about the devastating effect of dirty money on the occupancy of London properties. The Minister said that,

“the Government intend to publish a call for evidence, seeking views on a new register of overseas companies that own property in the UK”.

She said that the Government,

“hope to do so shortly and will then introduce the relevant legislation when parliamentary time allows”.

As I have explained in relation to other amendments, I do not think that parliamentary time is likely to be available in the foreseeable future, so we must seize the legislative opportunity as it now presents itself.

London is in danger of becoming a safe haven for dirty money. This is partly because of our reputation for maintaining the rule of law and because we are generally regarded as a good home for foreign investment. I certainly would not want to deter investment, particularly in the uncertain economic times that lie ahead, but I deprecate this assault on the London property market, the effect it is having on Londoners and how it is adding to the pressure that exists in the London property market, which falls particularly harshly on those seeking to acquire their first properties. We should do everything we can to make these provisions effective.
The legislation currently provides that the court must be satisfied that a respondent is a PEP, has been involved in serious crime, or that there is at least a reasonable suspicion of involvement. The amendment in my name and that of the noble Lord, Lord Anderson of Swansea, who unfortunately is unwell, would add to that, “the respondent has a financial interest in land or property in England and Wales … registered in the name of an overseas company”.

This would make it easier for the agencies to obtain a UWO in circumstances where they do not have much evidence of involvement in serious crime or the respondent is not a PEP, but they have suspicions about the source of money used in the acquisition of property. My noble friend Lord Leigh referred to his familiarity with questions being posed by the Revenue. The High Court would still have to be satisfied that there are reasonable grounds for suspecting that the respondent’s lawfully obtained income would have been insufficient, but this should not be too high a bar to surmount.

Would this create any unfairness? I do not see why. If the property has been acquired with honest money, an explanation could be provided that would comply with the order. I ask the Minister: how, if at all, will UWOs be used to get at the problem that has been identified by me and a number of other noble Lords? Will she explain why she objects, if she does, to this amendment, or at the very least explain what improvements will be made to deal with this very real problem? Her answer may be partially to rely on the lawfully obtained income would have been insufficient, which one has had an account that has been reasonable for 60 years because it has to meet the perfectly understandable anti-money laundering arrangements.

The issue I want to raise is that the money comes into this country from somewhere. Basically, it must come through the banks. At Second Reading I made the point: “As far as I know, no bank has ever been prosecuted in the UK for laundering corrupt wealth from another country”. —[Official Report, 9/3/17; col. 1487.]

The Minister responded by saying: “The noble Lord, Lord Rooker, talked about fines on banks in the UK. He raised the issue of banks in the UK not being penalised for laundering funds from overseas. I have a huge list of fines, which I will not read out today, because it would take up valuable time in responding. I will send it to him … and place a copy in the Library.” —[Official Report, 9/3/17; cols. 1520-21.]

When the noble Baroness wrote to Members who had participated at Second Reading, she neglected to mention anything about that exchange, so I contacted her office just to remind them. I was sent a letter, which I presume others would have had, dated 21 March. Attached to it were details of some of the most significant fines imposed in recent years on financial institutions with a presence in the UK. They related to tax fraud, money laundering and financial crimes. The vast pile of papers that the Minister said she had at Second Reading amounts to four sheets, but only three banks in the UK are mentioned: Barclays, Deutsche Bank and Sonali. Not one of them has been prosecuted for money laundering. They have had fines levied on them by the Financial Conduct Authority, but not one has been found guilty of money laundering.

5.15 pm

My question is simple and goes back to the one which I asked originally: given that this money is coming into the country in huge amounts, why has no bank in the UK been prosecuted for laundering corrupt money here? The Minister implied at Second Reading that they had. It turns out that they have not—or are there other papers that we have not seen? Those are questions that need to be answered. The noble Lord spoke of the number of properties that the Land Registry had registered. Others have looked at the square footage. Millions of square feet of London homes are owned by these secret companies—owned by money from abroad. That must have come through the banks. The estate agent doing the selling has a duty to look only at one party in terms of the money; it does not have a duty to look at the others. The solicitors and the banks are all involved. How come no bank appears to have ever been prosecuted and why has the Minister obviously been given duff advice in answering questions?

Lord Deben (Con): My Lords, I support the amendment because I have been for many years concerned about housing. This issue is a matter not just of corrupt investment but of investment in housing for purposes which are other than housing. This is a very serious social issue in London and other cities. If the Government do not take it seriously, they will reap the whirlwind.

The number of such houses and flats—real estate—in London in particular, causes considerable resentment among those unable to buy their own home. It is no good any party any longer ignoring it. All parties have to admit that they have not solved this problem. This is not a party-political comment, but it is an increasingly serious matter because it is creating divisions in our society which are greater than they have ever been. I ask Members of your Lordships’ House to remember when it was possible for them as young people to buy a house or a flat in London, now to think about their children or grandchildren unable to do so and to recognise the divisive effect of that. It is against that background that this amendment should be considered.

The second issue is simply that most of us are fed up with the intrusive questions asked by people with whom we have banked for most of our lives, including being asked to send one’s utility bills to a bank with which one has had an account that has been in reasonable order for 60 years because it has to meet the perfectly understandable anti-money laundering arrangements. The second resentment is that normal, ordinary British people have to go through this amazing series of hoops to bank money or get money out if they wish to do anything which is slightly out of the ordinary, yet they know perfectly well that the banks must have been involved in the transmission of money in situations which are, at the very best, dodgy.
I, too, sought some figures about who has been prosecuted for this. It actually beggars any kind of belief that no bank of any kind has ever helped anybody to buy, with improperly gained foreign money, property in London. I am sorry but that does not stand up. So the second disillusion that comes is that decent people in this country go through this kind of unbelievable series of hoops knowing both that they must accept them because of the security that we properly wish to impose and that others avoid this to the tune of millions and millions of pounds.

The third reason this amendment is so important is that there is a real concern in this country, with the atmosphere of Brexit, about attitudes to foreigners. I am an absolute and continuous remainer and will not be pushed off that by anybody’s arguments, so I am biased. However, I do not like the society we are building in circumstances of antagonism to foreigners of all kinds. That makes it even more important that where dishonourable activities take place and money earned dishonourably elsewhere is invested in this country that is dealt with clearly and transparently, so that the kind of accusations that are and have been made against people who invested here honourably are totally distinct from that which has been unacceptable.

My fourth reason—and last, as the House will be pleased to note—is that we recently, honourably, passed the Modern Slavery Act. We are beginning to be serious about the way in which people are exploited and the benefits of that exploitation coming to people in this country. People are serious about this, the Government have been serious about it and it has all-party support. If we are serious about the Modern Slavery Act, we must also be serious about the proceeds of crime and often of exploitation being brought into this country and used in the real-estate world. That is why I beg my noble friend to take this amendment very seriously. It addresses some deep disillusion in our society and also some deep injustice in the society of the world. That is why I beg my noble friend to take this amendment very seriously. It addresses some deep disillusion in our society and also some deep injustice in the society of the world. This is not just a passing amendment to tease out the Government’s position here and there but a fundamental amendment that challenges the whole of our society to behave in a way that we can be proud of, rather than one that facilitates activities we should condemn.

**Lord Brown of Eaton-under-Heywood:** My Lords, I start with a very pedantic point. If this amendment is to go ahead, it needs to begin with an “or”. As the noble and very clever though not technically learned Lord points out, this is a further alternative to the two already listed in new Section 362B(4). The next point is that of course the property here envisaged, registered in the name of an overseas company in which the respondent has an interest, is not—I repeat, not—the same property as referred to in subsection (1), in respect of which one seeks to have an unexplained wealth order made. It is a different property altogether.

I have great sympathy with the amendment and the policy underlying it. Like the noble Lord, Lord Deben, I deplore the extent to which London properties are in foreign ownership nowadays. But I respectfully wonder how far the amendment would go—if any distance—in actually dealing with that problem and with money laundering. Surely with regard to most of the people who buy and own these London properties—if they are not already PEPs, or politically exposed persons, and we know that a lot of them probably are—nobody questions how much money they have. But would it not then be rather difficult to satisfy the earlier requirement—which, again, has to be satisfied to make one of these orders—in new subsection (3)? Each of the various requirements set out in proposed new subsections (2), (3) and (4) has to be satisfied. First you have to show that they hold property of the relevant value; then, in new subsection (3) you have to be satisfied that, “there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property”.

The property there being referred to is not property in London registered in the name of an overseas company, it is the property in respect of which you are seeking a UWO.

Those points need to be borne in mind before one goes down this particular road. It is not going to be the panacea that some who have contributed to the debate thus far seem to think it is likely to be.

**Baroness Kramer (LD):** My Lords, I do not pretend for a moment to have the drafting skills of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, but I associate myself with all the other comments that have been made on the amendment. Rather than repeat the issues that have been so well described, I want to pick up the point that the noble Lord, Lord Faulks, made—that this Bill is a real and rare opportunity to tackle this problem, which, as he will have heard, exercises Members on all sides of the Committee and is essentially a non-partisan series of concerns.

When I had the privilege of sitting where the Minister is sitting, I brought a Bill through this House which was fondly and informally known as the “Dump it in here” Bill. It is perfectly possible, even at this stage, for the Government to come forward with some well-drafted language that would achieve the goals that have been described by various noble Lords today and by others who have been concerned about this issue. The Government have been looking at it for a long time. Given the fact that it will be difficult to get new legislation through in the next couple of years, I urge the Government to look at drafting that language—they have the capacity to do it and would be in a position to do it—that would bring into the Bill the kinds of remedies that would require the public register of beneficial interest for property ownership that presently we do not have in the UK. I met representatives of the British Virgin Islands the other day. The British Virgin Islands actually has such a register and would be delighted to provide mechanisms and recommendations to the British Government if they felt they needed advice in this area.

**Lord Leigh of Hurley:** My Lords, I have touched on this subject already. As president of Westminster North Conservative Association, I have spent many long evenings tramping along the streets of Westminster North, knocking on doors of properties that are clearly unoccupied and turn out to have no registered voters so are probably owned by offshore companies. While I am not convinced that the amendment, placed where
it is. Achieves the effect that the noble Lord, Lord Faulks, wants. I echo the remarks of the noble Baroness, Lady Kramer, that this might be an opportunity to seek to make progress.

The point made by the noble Lord, Lord Deben, about not wanting to be xenophobic is well taken, not least because of the concerns that some people have that the actual beneficial owner of these overseas companies is in fact a person in the UK who might well effectively be the tenant. The fact that it is an overseas company does not mean that it has an overseas owner. Noble Lords ask whether their children will be able to afford to live in the house that they live in. Invariably, the answer is no.

5.30 pm

**Lord Hodgson of Astley Abbotts:** My Lords, I support this amendment and the sentiments that have been expressed. Like other noble Lords, I am not sure whether it will do anything other than send a signal that this is something we are very serious about. An important aspect of not allowing it to become too London-centric—the darkened squares that my noble friend referred to in his opening remarks—is the ripple effect. What happens in central London ripples out through the country. I think the Lloyds Bank review says that Oxford is now the most unaffordable town in the country in terms of local wages to local house prices. If we can stop the ripple, or at least inhibit the ripple, there is an effect much wider than merely the darkened squares to which my noble friend referred.

As my noble friend Lord Deben said, if we take this further out, there are implications for social cohesion, as some of our less well-off and less well-resourced fellow citizens are finding themselves squeezed out by gentrification in an increasingly wide range of towns and cities across the country.

**Lord Kennedy of Southwark:** My Lords, Amendment 11 is tabled in the names of the noble Lord, Lord Faulks, and my noble friend Lord Anderson of Swansea. My noble friend was taken ill yesterday, and I am sure we all wish him a speedy recovery. This amendment would add a new paragraph to subsection (4) which clearly specifies that where,

>"the respondent has a financial interest in land or property ... which is registered in the name of an overseas company",

which could be being used as part of a complicated financial arrangement to hide from the authorities their unexplained wealth, the court can make an unexplained wealth order. I support the aims of this amendment. It highlights another way that a person can seek to avoid having to explain their wealth. This amendment seeks to address that in a very clear way. My noble friend Lord Rooker raised some important points, and I am sure the Minister will respond to them in her remarks.

Like the noble Lord, Lord Deben, I have had a bank account for 38 years. I have only ever had one—I opened it when I was 16. I went into the bank at Camberwell Green and have kept it in pretty reasonable order for those 38 years. All the things you have to do—saying who you are and having to give your mother’s maiden name—are very irritating, but there are clearly issues with funds travelling backwards and forwards that must have gone through a bank somewhere. If they are ever to be brought to account for things, that is something we must address in these debates.

A lot has been said about the London housing market. Any suggestion that it could be a safe haven for corrupt money should be of concern to us all. What a terrible thing that we even have to contemplate that. It contributes to the housing crisis in London. I referred to the Transparency International report in my contribution at Second Reading. It did some work in 14 developments and found that 1,616 companies and individuals bought properties and that only 450 were registered to people who were living in the UK. Forty per cent of purchases in London, totalling £1.6 billion, were bought by investors from countries with a high risk of corruption. We do not want any suggestion of our capital city being seen as a safe haven for corrupt money, as that must concern us all. The noble Lord, Lord Faulks, made the point that whole parts of central London are in darkness. Ten per cent of Westminster is owned by faceless companies. Properties with an abnormally low use of electricity suggests that they are not lived in on a regular basis. Transparency International also found that 140 properties with a value of £4.2 billion have been bought by investors who represent a high money-laundering risk. My friend the Mayor of London, Sadiq Khan, has launched an inquiry into the impact of foreign investment flooding into London’s housing market. The noble Lord, Lord Faulks, referred to this.

The other problem is the trickle-down effect. It causes property prices to be abnormally raised and is putting whole sections of the capital out of the reach of ordinary law-abiding citizens. That must worry us all, and very regrettable it is. About a year ago, I was standing at this Dispatch Box discussing with the Minister the Housing and Planning Bill—the cost of rents, how we get people living in safe, warm, dry properties, how people can afford to buy property and whether starter homes are the right answer. The way money has come in has made it more difficult for families, which must be of regret to us all. That is something we need to address in this Bill. The noble Lord, Lord Faulks, made the point that there may well be very little legislative time in the next Session, so we should take the opportunity that this Bill gives us.

The noble Lord, Lord Deben, talked about housing. I am happy to accept that all parties have failed in the past. There is no question about that—we all need to do very much more about it. I live in Lewisham. The noble Lord was the Member of Parliament for Lewisham at one time; I am a councillor in his old constituency. It is a great area to live in, not the most expensive part of London, but I could not afford to buy the house that I live in. I have lived there for 13 years and the rent the people in the house next to me pay is more than my mortgage. It is ridiculous. If corrupt money has led to that, it is a bad situation.

This amendment raises important issues, and the Minister should reflect on them very carefully. If we can find some way forward before the Bill becomes law, we should do that.
Baroness Williams of Trafford: I thank all noble Lords who have taken part in this short debate. I am grateful for their contributions. As we have already covered, the court may issue a UWO in cases where either there is a link to serious criminality or the respondent is a politically exposed person from outside the European Economic Area. Amendment 11 seeks to add a third limb to those covered by UWOs. This amendment would mean that a UWO could also be served on a person who has a financial interest in land or property which is registered in the name of an overseas company. This would be quite a significant step, and I encourage noble Lords to consider it carefully. The UWO has been specifically designed as a reaction to the real operational difficulties that law enforcement agencies have had in individual cases.

First, there are those who are known to have a link to serious criminality, such as there being known links to organised criminal groups. The senior criminal, if I can call them that, is often able to keep themselves distant from any actual individual instance of criminality. The UWO will force them to explain their wealth. Secondly, there are non-EEA PEPs. PEPs are targeted in this way because they are widely acknowledged to be a high corruption risk. The ability to get evidence from certain countries—

Lord Lea of Crondall (Lab): I hesitate to intervene, but this is a point of general relevance to the Bill. The Minister referred to us being a member of the European Economic Area. I take it that nothing will happen to this Bill when it goes on to the statute book, but this question is germane and substantive. The Bill refers to the European Economic Area, of which we are a member. Would we require legislation to stop being a member? Does that bear on the substantive issues in the Bill?

Baroness Williams of Trafford: I do not entirely understand what the noble Lord said.

Lord Lea of Crondall: Will the Minister make sure that this question is looked at? Otherwise, we will have on the statute book something that depends upon us being a member of the European Economic Area.

Baroness Williams of Trafford: I am much clearer about this. Obviously negotiations will be conducted as the Brexit negotiations go on. I did a debate the other week about the co-operation around law enforcement; we are absolutely committed to continue that co-operation—if that gives comfort to the noble Lord—in fighting crime, corruption, fraud, slavery, people trafficking and all that sort of thing. We are a world leader at this point in time.

I did not initially get where the noble Lord was coming from, so I apologise. I was talking about the non-EEA PEPs—those outside the European Economic Area at the moment—who are targeted in this way because they are widely acknowledged to be a high corruption risk. The inability to get evidence from certain countries has rendered action against those persons almost impossible in some cases, even though they have obvious unexplained wealth and there are other suspicions relating to them. In both cases, there are clear reasons to justify the use of this novel investigative power. Based on clear evidence, we judge it to be proportionate in these cases to reverse the burden of proof, which is a major departure from the normal operation of our law, and to put their property at risk of recovery purely on the basis that they do not respond to a UWO.

I fully recognise that those in the third grouping proposed by noble Lords—those with a financial interest in property owned by an overseas company—have given rise to concerns relating to corruption. However, very importantly, it must be remembered that the vast majority of people with a financial interest in an overseas company are law-abiding. Many of them are British citizens, for whom there will, if relevant, be other avenues to progress an investigation. I am not satisfied that the situation relating to this third suggested group of persons is so stark, or that a real operational need has been identified. As I said earlier, there is nothing inherently suspicious about having a financial interest in an overseas company.

Despite that, I take on board the points that noble Lords have made. My noble friend Lord Faulks—I thought he was noble and learned, and it has quite shattered my illusions to learn that he is not—talked about the "envelope tax", which he also brought up at Second Reading. I undertake to discuss it with colleagues at the Treasury and come back with a response, either on Report or by letter to him. He also talked about UWOs and the London property market, and what they will do to help with empty properties—which I see every night on my way back to my small flat in north London. In terms of how a UWO will be used against property held by foreign companies, it must be noted that the UWO provisions can be used against legal persons—companies—whenever they are located, subject to international law on service. In addition, it will be possible to focus on the individual if he holds an interest. Our new amendments will mean that foreign-owned property is not excluded from the UWO provisions.

My noble friend also talked about the supervisory regime and the obligations of regulated bodies with respect to the London property market. The Government consulted on reforms to the anti-money laundering supervisory regime in the autumn and have considered the responses. The Treasury published the outcome of that review on 22 March and is currently conducting further consultation on the creation of a new office for professional body anti-money laundering supervision, which will be overseen by the FCA and is expected to be fully operational by the start of 2018.

The noble Lord, Lord Rooker, asked about the latest available data on prosecutions, convictions and sentencing, broken down by offence from 2015. In 2015,
we have had and to ask the Government whether they amendment was intended to provoke the sort of debate not a panacea, but it was not designed to be. The points—particularly that I am not learned. He was learned Lord, Lord Brown, made a number of important that corrupt money has entered it. The noble and market in particular and the degree to which it is clear a widespread concern about the London property Lords who took part in the debate and for the general to withdra w his amendment. I hope he will feel content gap in existing powers that would justify extending that, today, I know of no prosecutions of banks. But h ould be undertaken. Investigations and prosecutions a matter for law enforcement agencies and prosecutors. I take the point that he is making, but this is open to are a matter for law enforcement agencies and prosecutors. I take the point that he is making, but this is open to law enforcement. Last month, a £163 million fine was issued to Deutsche Bank, and I would suggest that hitting them where it hurts probably involves hitting them in their pockets. It is open to law enforcement to prosecute banks, but I take the noble Lord’s point in that, today, I know of no prosecutions of banks. But the fines regime is in place.

I am very grateful for the amendment but hope that my noble friend has been assured that there is not a gap in existing powers that would justify extending UWOs in the way proposed. I hope he will feel content to withdraw his amendment.

Baroness Williams of Trafford: I hope the noble Lord does not think that I have ever tried to mislead the House. I talked about fines, but where a bank was found to have committed a criminal offence, a prosecution could be undertaken. Investigations and prosecutions are a matter for law enforcement agencies and prosecutors. I take the point that he is making, but this is open to law enforcement. Last month, a £163 million fine was issued to Deutsche Bank, and I would suggest that hitting them where it hurts probably involves hitting them in their pockets. It is open to law enforcement to prosecute banks, but I take the noble Lord’s point in that, today, I know of no prosecutions of banks. But the fines regime is in place.

I am very grateful for the amendment but hope that my noble friend has been assured that there is not a gap in existing powers that would justify extending UWOs in the way proposed. I hope he will feel content to withdraw his amendment.

Lord Rooker: The Minister is missing the point, although I am sure she is not doing so deliberately. No bank has been prosecuted. That is the background to the question I asked. I did not ask about cosy deals with the Financial Conduct Authority—like those reported today with Tesco and the one with Rolls-Royce, which I referred to at Second Reading—to have deferred prosecutions, so that they pay but do not get prosecuted. I asked about banks being prosecuted. The one way to stop or curtail this, as the noble Lord, Lord Deben, said, is to get them where it hurts, not with cosy deals. These fines are not the result of prosecutions. If she is implying that, she is wrong, and is close to misleading the Committee. I am not asking about deals; I am asking about prosecutions which take place in court, not through cosy deals and a fine from the Financial Conduct Authority.

Lord Rooker: Perhaps through the noble Lord, as the Minister talks to her officials, I can invite her to watch two films: “From Russia with Cash” and “From Ukraine with Cash”. They are on the same CD. If she does not have access to them, I will provide her with a copy. They spell out that there is a serious problem.

Lord Faulks: I am very grateful for that intervention, which supports the point that these effective owners may not be PEPs within the definition and it may be difficult to pinpoint serious criminality. We must do something about this. I look to the Minister to provide a better solution than exists at the moment. If not, we will be letting the country down and letting Londoners down, particularly young, aspirant Londoners. However, at this stage, I beg leave to withdraw the amendment.

Amendment 12 agreed.

Amendment 13 not moved.
Amendments 14 and 15

**Moved by Baroness Williams of Trafford**

14: Clause 1, page 3, line 30, at end insert—
“(d) otherwise connected with a person within that paragraph.”

15: Clause 1, page 3, line 39, leave out “subsection (4)(b)” and insert “this section”

Amendments 14 and 15 agreed.

Amendment 16 not moved.

Amendment 17

**Moved by Baroness Williams of Trafford**

17: Clause 1, page 4, line 29, at end insert—
“(5A) Subsections (5B) and (5C) apply in determining the respondent’s interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—
(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 362B), or
(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(5B) In a case within subsection (5A)(a), the respondent’s interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(5C) In a case within subsection (5A)(b), the respondent’s interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 362B.”

Amendment 17 agreed.

Amendment 18 not moved.

Amendment 19

**Moved by Baroness Williams of Trafford**

19: Clause 1, page 5, line 35, leave out “other provisions of”

Amendment 19 agreed.

Amendment 20 not moved.

Amendment 21

**Moved by Baroness Williams of Trafford**

21: Clause 1, page 7, line 1, at end insert—
“362GA Holding of property: trusts arrangements etc
(1) This section applies for the purposes of sections 362A and 362B.
(2) The cases in which a person (P) is to be taken to “hold” property include those where—
(a) P has effective control over the property;
(b) P is the trustee of a settlement in which the property is comprised;
(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.
(3) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person—
(a) exercises,
(b) is able to exercise, or
(c) is entitled to acquire, direct or indirect control over the property.
(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.
(5) For further provision about how to construe references to the holding of property, see section 414.”

Amendment 21 agreed.

Amendments 22 to 25 not moved.

Clause 1, as amended, agreed.

**Clause 2: Interim freezing orders**

Amendments 26 and 27 not moved.

Amendment 28

**Moved by Baroness Williams of Trafford**

28: Clause 2, page 12, line 34, at end insert—
“362PA Compensation
(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.
(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.
(3) The court may order compensation to be paid to the applicant only if satisfied that—
(a) the applicant has suffered loss as a result of the making of the interim freezing order,
(b) there has been a serious default on the part of the enforcement authority that applied for the order, and
(c) the order would not have been made had the default not occurred.
(4) Where the court orders the payment of compensation—
(a) the compensation is payable by the enforcement authority that applied for the interim freezing order, and
(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.”

Amendment 28 agreed.

Amendment 29 (to Amendment 28) not moved.

Amendment 29A (to Amendment 28) agreed.

Amendment 29B agreed.

Clause 3 agreed.

**Clause 4: Unexplained wealth orders: Scotland**

Amendments 30 to 33

**Moved by Baroness Williams of Trafford**

30: Clause 4, page 14, line 15, at end insert—
“(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
Amendment 36

Moved by Baroness Williams of Trafford

36: Clause 4, page 16, line 20, at end insert—

“( ) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.”

Amendment 36 agreed.

Amendment 37 not moved.

Amendments 38 to 53

Moved by Baroness Williams of Trafford

38: Clause 4, page 15, line 27, at end insert—

“(d) otherwise connected with a person within that paragraph.”

39: Clause 4, page 15, line 36, leave out “subsection (4)(b)” and insert “this section”

40: Clause 4, page 16, line 29, at end insert—

“(5A) Subsections (5B) and (5C) apply in determining the respondent’s interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—

(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 396B), or

(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(5B) In a case within subsection (5A)(a), the respondent’s interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(5C) In a case within subsection (5A)(b), the respondent’s interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 396B.”

41: Clause 4, page 16, line 41, leave out from “must” to “in” in line 42 and insert “—

(a) consider whether the Lord Advocate should be given an opportunity to determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property, and

(b) determine whether they consider that any proceedings under Part 5 (civil recovery of the proceeds of unlawful conduct) or this Chapter ought to be taken by them”

42: Clause 4, page 16, line 43, at end insert—

“(2A) If the Scottish Ministers consider that the Lord Advocate should be given an opportunity to make a determination as mentioned in subsection (2)(a), the Lord Advocate must determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.”

43: Clause 4, page 16, line 44, leave out “(2)” and insert “(2)(b) or (2A)”

44: Clause 4, page 16, line 46, leave out “determination under subsection (2) is” and insert “determinations under subsections (2)(b) and (2A) are”

45: Clause 4, page 16, line 46, after “that” insert “no further proceedings under Part 5 or this Chapter and”

46: Clause 4, page 17, line 1, leave out “that fact” and insert “the nature of the determinations”

47: Clause 4, page 17, line 5, leave out from “determine” to “in” in line 7 and insert “whether they consider that any proceedings under Part 5 or this Chapter ought to be taken by them”

48: Clause 4, page 17, line 7, at end insert “,” and

(b) the Lord Advocate may (at any time) determine what, if any, enforcement or investigatory proceedings the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.”

49: Clause 4, page 17, line 8, after “take” insert “no further proceedings under Part 5 or this Chapter or”

50: Clause 4, page 17, line 9, at end insert “any”

51: Clause 4, page 17, leave out line 30

52: Clause 4, page 17, line 31, leave out “other provisions of”

53: Clause 4, page 18, line 37, at end insert—

“396GA Holding of property: trusts arrangements etc

(1) This section applies for the purposes of sections 396A and 396B.

(2) The cases in which a person (P) is to be taken to “hold” property include those where—

(a) P has effective control over the property;

(b) P is the trustee of a settlement in which the property is comprised;

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) For further provision about how to construe references to the holding of property, see section 414.”

Amendments 38 to 53 agreed.

Clause 4, as amended, agreed.

Clause 5: Interim freezing orders

Amendments 54 and 55 not moved.
Amendment 56

Moved by Baroness Williams of Trafford

56: Clause 5, page 24, line 32, at end insert—
“396QA Compensation

(1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.

(2) The application must be made within the period of three months beginning with the recall of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the Scottish Ministers in applying for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the Scottish Ministers, and

(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.”

Amendment 57 (to Amendment 56) not moved.

Amendment 56 agreed.

Clause 5, as amended, agreed.

Clauses 6 to 8 agreed.

Clause 9: Power to extend moratorium period

Amendment 58

Moved by Baroness Hamwee

58: Clause 9, page 29, leave out lines 10 to 13

Baroness Hamwee: My Lords, Amendments 58 and 59 deal with the same provision in the Bill. We have now come to the chapter on money laundering.

Under new Section 336B(6), the Bill provides that the court must direct the exclusion from the hearing of an application of

“the interested person to whom that application relates”,

and “anyone representing that person”. The second of my amendments would make that discretionary for the court, but the principal amendment would remove the provision, because it would be appropriate for the Committee to hear the Minister’s justification for excluding from the hearing without alternative arrangements on their behalf the suspected person and his representatives.

I acknowledge that I missed a similar provision earlier in the Bill, but the point remains.

I appreciate that there is concern not to tell that person what evidence the police have when they seek to extend the moratorium period, but it is serious to restrict arguments and representation when the person is likely to be subjected to an extension of the moratorium. It is part of the whole landscape of innocence until guilt is proved. As far as I understand it, that person will have no opportunity to object to the extension—or perhaps will have an opportunity but no real target to aim at because neither he nor his representatives will have heard the arguments.

6 pm

Amendment 60 would amend Clause 10. This is less significant but still significant. In dealing with a disclosure request, on the information requested the words are “ought to be disclosed”. That seemed to me unusual terminology in a Bill, as “ought” has an element of judgment in it. There are conditions to be applied, and I am not sure whether “ought” refers to those conditions; the criteria for this provision should be made clear.

Amendment 61 takes us to our old friend, breaches of obligations of confidence and the common-law duty of confidentiality and, in particular, legal professional privilege. The Bill overrides the common-law duty of confidentiality and, as far as I can see, legal professional privilege is not dealt with, although in this complex forest—I think that is the noun—of legislation, it may well be somewhere else and I have not seen it. I raise the point partly because intrinsically it is important but also to ask whether the professional organisations have commented on this issue. There is an equivalent provision elsewhere in the provisions about terrorist property; why not in Part 1 of the Bill? I hope the Minister can help me on that matter; I am sure she can. I beg to move.

The Deputy Chairman of Committees (Viscount Ullswater) (Con): I must advise the Committee that if this amendment is agreed to, I shall not be able to call Amendment 59.

Lord Rosser: My Lords, I have Amendment 72 in this group. The Bill provides for extensions to the suspicious activity reports regime under which private sector companies report suspected money laundering—or, at least, they are meant to. The extensions or enhancements enable the moratorium period during which the relevant law enforcement agencies can gather evidence to be extended and provide a power enabling the UK Financial Intelligence Unit in the National Crime Agency to obtain further information from suspicious activity reporters. The enhancements also create a legal basis for sharing information between companies in order that they can build up a clearer picture of suspected money laundering.

Amendment 72 would provide for a procedure, through the National Crime Agency, for prioritising the most serious suspicious activity reports to target effectively the use of scarce law enforcement resources. Private sector companies and professionals, such as accountants, are required by law to make a suspicious activity report every time they become aware that a person might be in possession of the proceeds of crime, and that applies equally even if the amounts involved are small or if the information is far from conclusive or far from being considered fully reliable. The same duty to report applies whether the suspicion relates to a theft of a few pounds from petty cash or to what could be serious organised crime.
[**Lord Rosser**]

At present there appears to be no means by which information may be quickly screened or sifted to determine which are likely to prove the most significant or important reports requiring full investigation. There were just over 380,000 individual suspicious activity reports in 2015, and considerable time must be spent processing essentially very minor crime reports, which can only be at the expense, resource-wise, of the investigation and detection of crimes at the serious end of the scale. This amendment seeks to address that situation by providing for priority levels based on the intelligence value of each report, or a similar kind of categorisation, which would give an appropriate risk-based approach to determining which economic crimes should be tackled as a matter of urgency.

At Second Reading, the Government said that the issue raised in this amendment on suspicious activity report reform was lacking in the Bill, even though reform of the SARs regime was a crucial part of the Government’s own action plan for anti-money laundering and counterterrorist finance. The Government went on to say that they had established a programme to reform the SARs regime, and were seeking improvements in the short, medium and long term. They then went on to say that, during the review of the SARs regime that the Home Office ran in 2015, a number of regulated-sector companies suggested that suspicious activity reports should be prioritised, which is what this amendment is about. Despite this, they went on to say at Second Reading:

“We will consider this as part of the SARs reform programme”. —[Official Report, 9/3/17; col. 1518.]

However, the review was two years ago, in 2015, and a number of companies affected raised the issue addressed in this amendment in response to the review. Why, two years after the review, cannot the Government make a decision to do something to address this matter of prioritising reports rather than continue to put off making a decision? Surely, in all the discussions that would have taken place on this Bill before it was brought to Parliament and during the debates on the Bill so far in Parliament, prioritising SARs reports, which had after all been raised in the 2015 review, could and should have been considered, since it is directly relevant to the content of the Bill?

I hope that the Government will recognise this reality, and give a positive response to this amendment and, if that is not possible—and I would like to know why, if that is the case—accept that Report is now likely to be another four weeks away, with Third Reading being five weeks away, and agree to bring back a government amendment on Report or at Third Reading to address the issue raised in the amendment.

**Lord Brown of Eaton-under-Heywood:** I want to address only Amendments 58 and 59, both of which I oppose, to new Section 336B on page 28 of the Bill. That section deals with an application under the previous section to extend the moratorium period, which has to be dealt with as soon as is practicable. New subsection (3) says that the court,

“may exclude from any part of the hearing ... an interested person”;

or “anyone representing that person”. We see that formulation again in new subsections (4) and (6). They are the people whose presence or otherwise at the hearing is in question.

New subsection (4) allows for a particular application, that certain specified information may be withheld from the interested person or representative, but that order can be made only under new subsection (5), if the court is,

satisfied that there are reasonable grounds to believe that if the specified information were disclosed,

something bad would happen—that either,

“evidence of an offence would be interfered with or ... the gathering of information ... would be interfered with”,

or somebody would be injured, or,

“the recovery of property ... would be hindered, or ... national security would be put at risk”.

In that situation, new subsection (6) comes into play. Unlike new subsection (3), which we looked at earlier, where the court “may exclude”, in this instance—because it relates to an application under new subsection (4)—the court inevitably “must” direct that the interested person or his representative be excluded. With the best will in the world, I cannot see how we could sensibly leave out new subsection (6), which puts a requirement on the court which is not to be found in new subsection (3), which deals with the general position. Nor would it make any sense whatever to substitute “may” for “must”.

You have already got “may” in new subsection (3), but for this situation, “must” is the appropriate direction to the court for the order to be made. I respectfully oppose those amendments.

**Lord Hodgson of Astley Abbotts:** My Lords, I support Amendment 72, in the name of the noble Lord, Lord Rosser. It has been common ground in our discussions this evening that the volume of SARs is rising all the time. There are now over 1,500 a working day and it slightly defies belief that those are all getting anything like the attention that they should. Those of us who have had experience of this find that the National Crime Agency is extremely reluctant to allow any inhibition on its ability to call for SARs at every level. It should be possible to have discussions about automatically asking for a time limit—not that the information could not be asked for subsequently—of 25 or 50 years. One of my most recent PEP inquiries involved events 53 years ago. I simply cannot believe that collecting that sort of information is a good use of my time or the bank’s. There would be a great deal of virtue in my noble friend trying to persuade the NCA that some focus was a good idea. Getting the focus that is badly needed, and things like time and a de minimis figure, would make the whole system much more effective. The amendment tabled by the noble Lord, Lord Rosser, is a first step towards that and is worthy of serious consideration.

**Baroness Williams of Trafford:** My Lords, these amendments cover measures in Chapter 2 of Part 1 of the Bill. I thank noble Lords who have taken part in the debate. As the Action Plan for Anti-money Laundering and Counter-terrorist Finance set out, the Government see public/private partnership as central to tackling money laundering and terrorist financing. A major
part of this approach is to provide support for the effective exchange of information, both within the private sector, and between the public and private sectors, to increase our collective knowledge of threats and vulnerabilities; to help the regulated sector to protect itself, and to improve the quality of the UK’s financial intelligence. The provisions in Chapter 2 assist this approach, and our amendments will enhance their ability to do so.

I hope noble Lords will agree that the government amendments in this group are technical and uncontroversial. Clause 11 permits the UK Financial Intelligence Unit—or UKFIU—hosted in the National Crime Agency, to request further information in relation to a suspicious activity report, or following a request from a foreign authority, from any member of the regulated sector. Clause 35 allows the police to do the same in relation to terrorist finance. At present, the clause will allow the NCA and police to direct that further information is provided through issuing a further information notice. If the information is not provided in accordance with the direction, the NCA will be able to apply to a court for a further information order to require the person to provide the information requested. However, following further consultations with operational partners, we have concluded that a further information notice is not required, as the NCA can already request information to be provided voluntarily under existing powers. Government Amendments 64 to 69, 130 to 137 and 173 will therefore remove further information notices. If the regulated sector entity declines to provide information on a voluntary basis, the NCA or police can still apply to a magistrates’ court for a further information order.

Amendments 62, 63, 128 and 129 relate to the information-sharing provisions at Clauses 10 and 34. As the Bill is currently drafted, if the requesting party does not notify the NCA or police correctly of their intention to share information, the requested entity would not receive the legal protections intended. This introduces a degree of uncertainty, which may deter companies from exchanging vital information. These amendments will provide the legal certainty that firms need if they are to make best use of these provisions.

Amendments 58 and 59, tabled by the noble Baroness, Lady Hamwee, seek to amend the provisions relating to the extension to the moratorium period for suspicious activity reports. They seek to remove the provision, or amend it to make it discretionary. These amendments would allow a court to include the owner of the property or their representatives in the hearing of an application. I hope that noble Lords will see that it is essential that the court must exclude the owner of the property from a hearing to determine whether information should be withheld from that person. It would fatally undermine the mechanism for withholding information from that person if they were able to attend the application where the reasons given for withholding this information are heard.

Amendment 60 proposes that the information-sharing request from one regulated-sector entity to another should be determined on the basis of whether the request meets the conditions set out in the clause to permit the sharing of data. Where a regulated-sector entity is asked to provide information it should, of course, meet the conditions set out in the Bill for doing so. The Bill already provides for that. However, we also want to be clear that the entity should determine for itself that the information ought to be disclosed. It is not just the case that the conditions are met, but that the entity is satisfied that the information should be provided. This is a common-sense approach that allows the owner of the information to make an informed assessment.

Amendment 61 proposes that the provision removing liability for regulated-sector entities for the sharing of information in good faith should be removed. As I said at the outset, we want to encourage the sharing of information between regulated-sector entities, to tackle money laundering and the financing of terrorism. In doing so, we do not want those entities to be held liable for any breaches of confidence where, in good faith, they share information. We therefore believe that this provision is essential to allow regulated-sector entities to share information and that, if it were not included, those entities might not feel able to do so.

Finally, Amendment 72, tabled by the noble Lord, Lord Rosser, proposes that the National Crime Agency should be required to designate a qualifying report as a high-priority investigation. This was, of course, an issue that the noble Lord raised at Second Reading. A suspicious activity report, or SAR, is not in itself an investigation, but can help to inform a decision on whether to initiate such an investigation, when taken with other sources of intelligence. In 2015, the Home Office reviewed the SARs regime. One of the issues raised in that review, and mentioned by the noble Lord, was whether the regime could be focused more effectively, including through the prioritisation of SARs. A number of regulated sector entities made this suggestion, and we have been considering it carefully, as part of the ongoing SARs reform programme. This programme has been set up to improve the regime as a whole, and it will actively consider this issue. As the noble Lord knows, the SARs regime is complex and changes to it would affect a significant number of sectors. It is therefore right that we consider the changes very carefully.

**Lord Rosser:** Is the noble Baroness satisfied that this matter has been dealt with as expeditiously as possible in mind that the review was in 2015 and we now have a Bill in front of us to which the SARs regime is directly relevant? However, when we put forward proposals to try to make the regime more effective by prioritising matters, we were told that the Government were still considering the situation. The difficulties in finding space for legislation over the next couple of years have already been raised, so could the noble Baroness address that point and reflect further that we are four weeks away from Report? If the Government really put their mind to it, surely they could come forward with an amendment of their own on this issue.

**Baroness Williams of Trafford:** My Lords, I recognise that the issue was considered in 2015. It is now 2017. I totally take on board what the noble Lord says. This issue is complex but I will go back to the department
Clause 9 agreed.

Amendment 59 not moved.

Amendment 58 withdrawn.

Amendment 59 not moved.

Clause 9 agreed.

Clause 10: Sharing of information within the regulated sector

Amendments 60 and 61 not moved.

Amendments 62 and 63

Moved by Baroness Williams of Trafford

62: Clause 10, page 36, line 4, at end insert—
“(3A) Subsection (1) applies whether or not the conditions in section 339ZB were met in respect of the disclosure if the person making the disclosure did so in the reasonable belief that the conditions were met.”

63: Clause 10, page 36, line 6, leave out “under” and insert “in compliance, or intended compliance, with”

Amendments 62 and 63 agreed.

Clause 10, as amended, agreed.

Clause 11: Further information notices and orders

Amendments 64 to 69

Moved by Baroness Williams of Trafford

64: Clause 11, page 37, line 4, leave out from beginning to end of line 35 on page 39 and insert—
“Further information orders

339ZH Further information orders

(1) A magistrates’ court or (in Scotland) the sheriff may, on an application made by a relevant person, make a further information order if satisfied that either condition 1 or condition 2 is met.

(2) The application must—
(a) specify or describe the information sought under the order, and
(b) specify the person from whom the information is sought (“the respondent”).

(3) A further information order is an order requiring the respondent to provide—
(a) the information specified or described in the application for the order, or
(b) such other information as the court or sheriff making the order thinks appropriate, so far as the information is in the possession, or under the control, of the respondent.

(4) Condition 1 for the making of a further information order is met if—
(a) the information required to be given under the order would relate to a matter arising from a disclosure made under this Part,
(b) the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,
(c) the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and
(d) it is reasonable in all the circumstances for the information to be provided.

(5) Condition 2 for the making of a further information order is met if—
(a) the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,
(b) an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,
(c) the respondent is carrying on a business in the regulated sector,
(d) the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and
(e) it is reasonable in all the circumstances for the information to be provided.

(6) For the purposes of subsection (5), “external request” means a request made by an authority of a foreign country which has responsibility in that country for carrying out investigations into whether a corresponding money laundering offence has been committed.

(7) A further information order must specify—
(a) how the information required under the order is to be provided, and
(b) the date by which it is to be provided.”
Clause 11, as amended, agreed.

Amendment 70

Moved by Baroness Hamwee

70: After Clause 11, insert the following new Clause—

“Anti-money laundering supervision

The Secretary of State must by regulations made by statutory instrument amend the Money Laundering Regulations 2007 to require the supervisory authorities to—

(a) publish annually their enforcement statistics;

(b) publish annually details of individual cases of enforcement; and

(c) report to HM Treasury such information as it requests, including information regarding failures of compliance and a lack of understanding of compliance requirements.”

Baroness Hamwee: My Lords, this amendment would provide a new clause on anti-money laundering supervision, requiring supervisory authorities to publish certain information. When the Bill started its passage through this House, briefings to noble Lords from a number of organisations made similar points about supervision, including that there are too many supervisors, there is inconsistency, and there are conflicts of interest since enforcement does not lie very comfortably with promotional activity. The term “a dysfunctional system” also was used. There was also quite a lot of comment about lack of transparency and accountability in the supervisory system, a matter which formed part of the Treasury’s work and had considered the responses. TI also quotes the Macrory report:

“Transparency is something that the regulator must provide to external stakeholders, including both industry and the public, so they have an opportunity to be informed of their rights and responsibilities and of enforcement activity. However, it is also important for the regulator itself, to help ensure they use their sanctioning powers in a proportionate and risk based way”.

My Amendment 70 is based directly on Transparency International’s report in the light of the recent government announcements.

The supervisors do not necessarily seem comfortable with the system. The Solicitors Regulation Authority comments that the draft regulations—the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017—fall short of requiring the supervisors of anti-money laundering to be fully independent of any representative body. The authority is keen to see where the weaknesses in the system can be addressed ahead of the Financial Action Task Force review next year. It asks us to raise in the context of the Bill the issue that the underlying legal position is in need of clarification to ensure explicit recognition that supervisory bodies should be fully independent from representative ones. I dare say that the Minister, or at any rate her officials, will have seen that briefing. Having focused on transparency and accountability, I beg to move.

Lord Rosser: We have Amendment 73 in this group, which is on not dissimilar lines to the amendment moved by the noble Baroness, Lady Hamwee. Amendment 73 would require the Secretary of State to, “lay before each House of Parliament an annual statement on the money laundering supervision regime and any plans the Government has to amend it”.

At Second Reading, we raised questions about the effectiveness or otherwise of our anti-money laundering system in the light of the billions of pounds in corrupt money that comes into this country each year. Reference has already been made to that point in our earlier debate on the London property market. According to the National Crime Agency, the figure could be as high as £90 billion. The Government’s impact assessment says that this country is unusually exposed to the risks of international money laundering, which is made even more serious by the reality that money laundering is also a key enabler of serious and organised crime, including terrorist financing. The social and economic costs of this are estimated in the Government’s impact assessment at some £24 billion per year. However, despite this far from satisfactory state of affairs, there are, as I understand it, some 27 supervisory bodies in the relevant sectors, which must surely lead to a fragmented approach in the identification and mitigation of risks, and in the approach to enforcement.

6.30 pm

There are also concerns about whether some of the 27 or so supervisory bodies have conflicts of interest, because 15 or so are also lobby groups for the sectors they supervise. The Bill does not seem to address the issue of the effectiveness or otherwise of our anti-money laundering system—hence the amendment.

At Second Reading the Government said that they had consulted on reforms to the anti-money laundering supervisory regime and had considered the responses.
They went on to say that the Treasury intended to publish the outcome of the review in the coming weeks in order to ensure the most effective possible supervision of the regulated sector. I do not know whether the Government were referring at Second Reading to the Treasury document on the response to the consultation on the anti-money laundering supervisory regime dated this month, or whether they were referring to a future Treasury document, since the March 2017 document includes a call for further information, with a return date for comments of 26 April 2017. The fact that a consultation has taken place suggests that the Government have some doubts about the current arrangements. However, as with the suspicious activity reports, the Government’s answer at Second Reading was again that they had undertaken a review and were considering their position in the light of the responses. So I have to ask again: why, in all the discussions on the Bill that took place before it was even brought to Parliament, let alone in the discussions in Parliament, was the issue of the effectiveness or otherwise of the present anti-money laundering regime not resolved and determined, when it is surely a crucial aspect of the issues that the Bill seeks to address?

Saying that a key issue such as this is still being considered by the Government suggests that Parliament will not have the same level of scrutiny and debate, or the same ability to amend any changes to the current system, that it would have if those changes were incorporated in the Bill. The closing date for comments of 26 April indicates that the Government are set against Parliament considering any changes as part of the consideration of the Bill. However, the Government’s UK National Risk Assessment of Money Laundering and Terrorist Financing, published in October 2015—so not recently—found that the effectiveness of the supervisory regime in this country was inconsistent and that there was room for improvement across the board, with the number of professional body supervisors in some sectors risking inconsistencies of approach. One would have thought that, by now, bearing in mind that the risk assessment was published in October 2015, the Government might have got round to making some decisions that could have been included in the Bill and debated properly by Parliament. However, unfortunately that will not be the case.

I am sure that a number of noble Lords will have received a communication from the Solicitors Regulation Authority—I think that the noble Baroness, Lady Hamwee, referred to this document—which states that anti-money laundering supervisors should be fully independent of interference or control by any representative body because of the obvious conflict of interest.

There is clearly a feeling that the current anti-money laundering supervisory regime needs changing, albeit that the Government do not intend to involve Parliament in the process and decision-making through the Bill—hence the amendment requiring the annual statement to Parliament from the Secretary of State.

I hope that the Government will accept the amendment—or, if not, will put down one of their own with a similar objective. Parliament needs to be involved and, unfortunately, by accident or design, this will not be achieved through the legislation we are discussing today—and concerns have already been expressed today about the difficulty of finding time for legislation in the next two years. I hope that the Government will give a positive response and that we may receive some assurances on this—albeit that, with the closing date for comments of 26 April, I am probably being unrealistic in expressing the hope that the Government may come back on this matter by Report or Third Reading.

Lord Sharkey: My Lords, Amendment 108 seeks to help the FCA to ensure meaningful compliance and right behaviour in the banking sector, which has not been entirely a stranger to money laundering. Work done by the New City Agenda think tank, of which I am a director, has shown some progress in changing the culture within banks—but has also shown that there is still a need for much more change.

Last week’s report by the Banking Standards Board also had interesting things to say about banks acting in an honest and ethical way. For example, its very comprehensive survey found that 12% of employees had seen instances where unethical behaviour had been rewarded; 13% saw it as difficult to get ahead in their careers without flexing ethical standards; and 18% had seen people in their organisation turning a blind eye to inappropriate behaviour.

Since the FCA under its previous chief executive abandoned its promised inquiry into the culture within banks, it has relied heavily on financial penalties to punish misbehaviour and as a control mechanism. Since 2013, the FCA has levied an absolutely staggering £3 billion in penalties on firms. The latest, which the Minister mentioned, was a settlement in January with Deutsche Bank. The proposed penalty was £230 million, which was discounted to £163 million. This was a settlement. In fact, almost all the penalties imposed have been settlements. Typically, the FCA proposes a financial penalty and then agrees a discount if the firm settles—as almost all do. The discount is normally 30%. Since 2013, that amounts to a total of £1.2 billion awarded in discounts.

My amendment proposes to put this gigantic discount mechanism to better use. It would enable the FCA to have direct sight of the improvements in process and behaviour agreed in any settlement. It would enable it to see that appropriate disciplinary action had been taken against those responsible for the transgressions. It would give the settling firms a powerful incentive to fulfil any settlement conditions. It would do this by making part of any discount withholdable until the settling firm had satisfied the FCA that all appropriate disciplinary actions had been taken. Only then would the full discount be realised.

This is a simple proposal. It would give the FCA more power, more say and more insight into how transgressors had modified their behaviour and addressed individual and structural culpability. It would give the firms involved a powerful incentive to take proper remedial action—which, unfortunately, still seems to be needed.

Lord Hodgson of Astley Abbotts: My Lords, I have Amendments 126 and 127 in this group. They impose duties on the National Crime Agency regarding the
performance of its duties and the way it supervises the bodies that report to it. I tabled the amendments to address my concern that the country’s anti-money laundering regulations, which were and remain a critical part of the fight against financial crime, are not as effective as they should or could be.

There are three related issues. The first is that the regulations lack focus. Far too much unnecessary information is collected, which serves to distract rather than to illuminate the task of the regulator. We have heard tonight from my noble friends Lord Deben and Lord Leigh, and every Member of your Lordships’ House could produce evidence of the collection of superfluous information. They also lack effectiveness and follow-through. I was astonished to read in the debate on Second Reading in the House of Commons that Sir Edward Garnier, experienced lawyer that he is, said that many certification orders, having been granted, are never enforced. I therefore put down a Parliamentary Question—which is due for answer the day after tomorrow, sadly, but I am sure that my noble friend can chase up her officials—in which I asked,

“in each of the last three years for which figures are available, how many confiscation orders were ... authorised by the courts ... put into effect; and how much money was recovered”.

I hope that my noble friend will be able to give us those figures when she winds up.

However, it is not just about confiscation orders. My noble friend Lord Faulks talked about the report in the Times last week, according to which between 2007—when we introduced the last set of money-laundering regulations—and 2012, there were no convictions at all:

“There have been four convictions since and five more proceedings, according to a freedom of information request by the London law firm Howard Kennedy”.

Of course, as I said at Second Reading, the asset recovery by the NCA can only be described as trivial: £26.9 million for an agency that costs some half a billion pounds to run, and which tells us that billions of pounds of illegal money passes through London every year.

Lastly, and most importantly, the regulations do not enjoy general public confidence. Too many members of the public regard them as a paper-pushing exercise. As a result, they do not feel committed to their success or to ensuring that they work well. In my experience, having from time to time chaired risk and compliance committees, attempts to get the regulators to explain how valuable their work is are not greeted with great approval; they tend to say, “This is our business—you mind yours”. That is very different from the approach of the security services, which they work well. It affects not just organisations but individuals as well. Thirty years ago I worked in the City with a Pakistani who has a British passport and who is as Anglophile as you would like him to be. He worked in Hong Kong, and now lives in Lahore. He has just been told that all his bank accounts have been closed. Is there anything wrong with the accounts? There is nothing wrong with them—it has just been done. It is clear that the pressure on the banks to close down these accounts is coming from the regulators.

6.45 pm

Do we really want to demonise charities which work in the war-torn corners of the world, or people who live in countries said to be “risky” but who are nevertheless great friends and supporters of the United Kingdom? In case Members of your Lordships’ House think they may be immune from this, PEPs—politically exposed persons, which every Member of your Lordships’ House is—could well be a category due for de-risking. I do not think it will happen, because too big a row would ensue, but it could and will happen to people who do not have the ability to fight back that Members of your Lordships’ House possess.

My Amendment 126 is designed to do something to redress this imbalance. It imposes a duty on the National Crime Agency to follow best regulatory practice and says that,

“regulatory activities should be proportionate, accountable, consistent, transparent and”...
[Lord Hodgson of Astley Abbotts]
last but not least—
"targeted only at cases in which action is needed".
Because the NCA is only half the story, as it has to
carry out its work through regulated firms, Amendment 127 imposes a further duty on it "to
ensure enforcement": that,
"persons or bodies that are required to exercise due diligence ... are doing so responsibly and effectively".

I conclude as I began. I wholeheartedly support attempts to root out and punish financial crime. However, we need to strip this system down and re-engineer and refocus it to ensure that it is properly effective. The present approach, which piles yet more regulatory responsibilities on a flawed system, is not working well enough.

Baroness Williams of Trafford: My Lords, the amendments in this group have raised some important points around regulation and supervision of the regulated sector. I am also pleased to able to update noble Lords on some of the recent developments in this area.

Amendment 108, in the name of the noble Lord, Lord Sharkey, would require the FCA to withhold a proportion of any discount to a penalty applied to a financial firm until that firm has completed any internal disciplinary actions agreed in the settlement. We agree with the principle that such firms should be held accountable for their actions, or lack of them. The Government already have in place, through the FCA, powers to increase a penalty that it would otherwise impose on a firm in light of a range of potentially aggravating factors, including,
"disciplinary action against staff involved".
A firm that had, by the time the FCA imposed its relevant penalty, failed to take such appropriate action, could therefore already have that penalty increased as a result.

The Financial Services and Markets Act 2000 allows the FCA to impose requirements on such firms. If the FCA considers that a firm needs to take disciplinary action—if appropriate and following all due employment process—after a penalty is imposed, the FCA can require that the firm properly and fully considers doing so. If the firm then fails to do so, that would become misconduct in respect of which the FCA could, subject to all other relevant factors, impose an additional penalty. Therefore, we believe that we already have in place powers to take action in the way the proposed amendment suggests.

Lord Sharkey: Does the Minister accept that there is a big difference between having the powers to do something in addition and having an automatic system of withholding, which makes it directly in the interests of the firms to take the action that they are supposed to take, rather than have the FCA make an assessment later and come back to discuss whether it ought to impose an additional penalty? One is automatic, giving an immediate incentive for the firms to do something, while the other requires additional supervision.

Baroness Williams of Trafford: I take the noble Lord’s point that one is perhaps much simpler, but of course each case is different. One firm might be a lot more compliant and it might not take much effort; another might take a lot more effort. However, I take his point.

I move on to Amendments 126 and 127 in the name of my noble friend Lord Hodgson of Astley Abbotts. These relate to the role of the NCA. The NCA leads, co-ordinates and supports the national law enforcement response to money laundering. The prosperity command of the NCA houses the UK Financial Intelligence Unit, or UKFIU, and receives suspicious activity reports, or SARs, from the regulated sector. The intelligence gathered from these is used to support investigations into both money laundering and the predicate offences.

The amendments seek to require the NCA to act in a regulatory manner by ensuring that the provisions of the Money Laundering Regulations, such as customer due diligence and monitoring of transactions, are implemented effectively, and to ensure that the NCA acts with regard to the principles of regulatory best practice. The NCA can and will act where there is criminal activity relating to money laundering. However, it does not have a regulatory remit, and to require it to have one would deflect it from its purpose of tackling serious and organised crime.

My noble friend also asked me for some figures on the money recovered. I can tell him that in 2015-16 £255 million was recovered under the Proceeds of Crime Act, of which £208 million was in confiscation. However, I will write to him with further details on that.

Finally, I turn to Amendment 70, moved by the noble Baroness, Lady Hamwee, and Amendment 73, tabled by the noble Lord, Lord Rosser.

Lord Hodgson of Astley Abbotts: I thought I heard the Minister say that the NCA is not a regulator, but I do not understand why it cannot abide by regulatory principles in executing its duty as an enforcer on money laundering regulations. I do not understand why the two are mutually exclusive. If I heard my noble friend aright, she appeared to say that it could not abide by regulatory principles because it is an enforcer.

Baroness Williams of Trafford: That is correct.

I now turn to Amendment 70, moved by the noble Baroness, Lady Hamwee, and Amendment 73 in the name of the noble Lord, Lord Rosser. I can update the Committee on the significant action that the Government are taking to improve the effectiveness of anti-money laundering regulation by strengthening the obligations on all supervisors through the new Money Laundering Regulations 2017. The Treasury published a consultation on these regulations shortly after Second Reading and it is open until 12 April.

The Government set out in a Treasury publication earlier this month their proposals for the new office for professional body anti-money laundering supervision. However, it would not be right for the Government simply to legislate without proper public consultation on the detail of this proposal, and I hope the noble Lord will recognise that that is the appropriate way forward.
We have also recognised the need for more co-ordination between regulators and supervisors of the regulated sector in relation to tackling money laundering. The new office for professional body anti-money laundering supervision will therefore work with professional bodies to help, and ensure, compliance with the regulations. The office will be hosted by the FCA and will liaise with other bodies across the regime to discuss and share best practice to help ensure consistent high standards across supervisors—especially where statutory and professional body anti-money laundering supervisors monitor the same sectors—and to strengthen collaboration between professional body anti-money laundering supervisors, statutory supervisors and law enforcement agencies.

The Government will consult on the draft regulations that will underpin the office over the summer, and they will be finalised and laid before Parliament in the autumn. The Government expect the office to be fully operational by the start of 2018.

The new arrangements will also support the enforcement capability of the supervisors. The supervisors can take a range of actions in relation to failings identified in the areas they supervise. Professional bodies have sanctions specific to their supervisory population—for example, the ability to expel firms from membership. The removal of professional accreditation in this way can incentivise compliance.

HMRC and the FCA have powers under the regulations to require information, enter and inspect premises, and administer monetary civil penalties to their supervised population. The UK is leading the way in improving transparency and accountability in anti-money laundering supervision by publishing an annual report on money laundering supervision on GOV.UK.

The Treasury’s annual report, which is now in its fifth year, sets out how the UK’s supervisors are contributing to the fight against money laundering and terrorist financing. The most recent report shows that supervisors are increasingly focusing on educating businesses on how to meet their anti-money laundering obligations, and ensuring that systems and controls are effective and proportionate to the risks. The actions that supervisors are reporting help to ensure that the UK’s financial system is a hostile environment for illicit finance.

The report shows the positive collaboration between the Treasury and the supervisory authorities, which include the FCA, HMRC, the Gambling Commission and the professional bodies. As set out in the Government’s response to the review of the supervisory regime, the annual report will be strengthened with a new requirement for supervisors to provide relevant information to inform the annual report. This will be expanded to include two new questions on enforcement activity.

I hope that noble Lords will recognise and commend the considerable government activity in relation to the anti-money laundering regime. On that basis, I hope that the noble Baroness will withdraw her amendment.

**Lord Rosser:** For clarification, the Minister referred to the Government’s intention to create a new office for professional body AML supervision, hosted by the FCA. If my memory serves me right, she said that it would be in existence in early 2018. That of course is still out for consultation, is it not? That is the document where responses were called for by 26 April. It may be that all the responses about the proposed body were negative, in which case presumably the Government may wish to think again. Does that mean that setting up this new office will not require any legislation and that there will not be a need for legislation, for example, to define its powers and responsibilities?

**Baroness Williams of Trafford:** It may be helpful to the noble Lord if I reiterate the point that I made. The Treasury published the outcome of the review on 22 March and is now conducting further consultation on the creation of the new body, which will be overseen by the FCA and will be up and running by the start of 2018.

On his question of whether legislation—secondary or otherwise—will be required, perhaps I may write to him. I think that it will be secondary legislation but I cannot be certain.

**Lord Rosser:** Is the Minister saying that setting up a new body that will have powers over other bodies can be done through secondary legislation—by a statutory instrument?

**Baroness Williams of Trafford:** I do not know, which is why I will write to the noble Lord, if he is happy with that.

**Baroness Hamwee:** That will be helpful. As I understood it, the proposal was for regulations, and the further consultation has a limited number of questions to flesh out the earlier work. The Minister obviously has some more information.

**Baroness Williams of Trafford:** I have just had an answer from the Box. It will in fact be secondary legislation that is laid before Parliament.

**Baroness Hamwee:** My Lords, perhaps I should accept that it will be up to us to ensure that transparency and accountability are included in those regulations. I will set myself some more homework. I am grateful for the Minister’s responses. The story is obviously not ending here but I beg leave to withdraw the amendment.

*Amendment 70 withdrawn.*

7 pm

**Amendment 71**

*Moved by Baroness Kramer*

71: After Clause 11, insert the following new Clause—

“Whistleblowing

(1) The Secretary of State must by regulations made by statutory instrument establish an Office of the Whistleblower.

(2) The functions of the Office shall be the administration of arrangements to facilitate whistleblowing in respect of corrupt or suspected corrupt practices in systematically important financial institutions including in particular with regard to fraud, tax evasion, money laundering or miss-selling.
Baroness Kramer: My Lords, this amendment is designed to strengthen the protection for whistleblowers but also to provide for mandatory compensation for them following the example of the United States in this area, most recently under Dodd-Frank. It also proposes an office of the whistleblower, both to enshrine the importance of whistleblowing and to provide the necessary oversight of the broader regime. It is a probing amendment and I hope that the Minister will not waste her time in discussing drafting issues, when the core issue of whistleblowing and how we support it is so critical to making the financial system clean and fair and to rebuilding public trust.

Being realistic, so much money swirls though the financial system that the potential for ill-gotten gains from misbehaviour is huge. My amendment mentions fraud, tax evasion, money laundering and mis-selling, but ingratitude in this area is boundless, as evidenced by the fixing of the LIBOR benchmark rate, which involved many banks over several years distorting billions of dollars of transactions, for which very few have paid the price, and those who have are primarily junior staff. With money on this scale, no regulator or enforcement agency can begin to tackle these issues without inside information. That means a positive culture of whistleblowing, which in itself then becomes a deterrent.

We do this notoriously badly. The recent RBS GRG scandal is an example. I have spoken to only two of the whistleblowers but they have both been treated atrociously by RBS and the regulators and face an end to their careers and personal disaster. This is despite endless warm words from the banking industry, individual banks, the regulators and the Government on how important the whistleblower is and promises of protection. It is why I am calling on the Government in subsection (4) of the proposed new clause to act much more directly to stop retaliatory action.

I was a member of the Parliamentary Commission on Banking Standards. Among our work, we looked at the whistleblowing regime and recommended some enhancements. To be fair, those have, for the most part, been adopted, but they were modest changes: for deposit takers, PRA-designated firms and insurers a non-executive director or senior manager is required to be named as responsible for whistleblowing under the senior managers regime; a system to protect employees is required to be in place in each institution; the rules are to be disseminated; and employment tribunals are meant to provide protection. The banking industry is very satisfied with this approach. Indeed, it has always been satisfied with its approach and, in the evidence and testament we took, it was very satisfied with the prior approach, even though rarely was whistleblowing taking place even under the most egregious circumstances, and whistleblowers were receiving little, if any, protection. It is clear the industry was shocked that, with all of its whistleblowing measures in place, no one came forward to tell the authorities about money laundering, LIBOR or mis-selling.

The revised system appears to be fraught with problems. In an email from the charity WhistleblowersUK, I heard that a few days ago a staff member called to speak to the whistleblowing champion at a major bank only to be told that they did not exist. When the caller persisted by providing the name from a letter, the bank told them that that person did not exist. Whistleblowers themselves complain that the regulators provide them with advice and then renege, and that they have no comeback against the regulators, whom no one can compel to respond to FOIs or subject data access requests.

In March this year the Financial Conduct Authority confirmed that the number of whistleblowing reports has fallen for the second year in a row, down to 866, of which just over 100 were of “significant value”. That is not a successful system. In the United States, by contrast, whistleblowers are far more appreciated. They are a core tool for exposing wrongdoing, whereas in the UK they are merely incidental. The key difference is reflected in compensation, which underscores the complete cultural difference in the attitude towards whistleblowers. In my amendment I have essentially lifted the simple principles of compensation available under Dodd-Frank and drafted them into UK law. Compensation is mandatory for those providing original information leading to a sanction, and the compensation is a hefty 10% to 30% of the sanction paid. This is a recognition that for most people whistleblowing puts a career, lifestyle and family at risk.

Let me quote the evidence of Erika Kelton, a US lawyer dealing with whistleblowing cases, describing the impact of US whistleblowing incentives schemes to the Parliamentary Commission on Banking Standards. She said:

"Tens of billions of dollars otherwise lost to illegal practices that cheat the public fisc have been recovered as a direct result of whistleblower information. But the impact and importance of whistleblower matters goes far beyond the large dollar amounts recovered for US taxpayers. Whistleblowers have exposed grave wrongdoing, leading to changes that promote integrity and transparency in financial markets. Whistleblowers have helped stop massive mortgage frauds, gross mischarging practices, commodity price manipulation, and sophisticated money laundering schemes, among other misdeeds".

She argued that, "meaningful, non-discretionary financial incentives are critical to establishing robust and successful whistleblower programs".
In the UK, the objection of the regulator to such incentives is one of "moral hazard"—that whistleblowing is simply somebody doing his or her job and deserves no special reward. I simply look at the lack of whistleblowing and the situation for whistleblowers in the UK and disagree. The Parliamentary Commission on Banking Standards directly called on the FCA to research the impact of financial incentives in the US in encouraging whistleblowing. I have yet to hear any substantive report on that issue; perhaps somehow I have missed it and the Minister has seen it.

I fully accept that issues around whistleblowing extend beyond financial services and impact many other business sectors and areas of our lives. But we could start here with financial services. We need action that is game-changing, not tinkering around the edges. It is vital that we use every reasonable tool to increase our chances of keeping the financial sector clean, protect the public and restore trust in an industry that is key to the functioning of our economy. I beg to move.

**Lord Phillips of Worth Matravers:** My Lords, I support this amendment. I suggest that whistleblowers need to be both protected and rewarded in order to encourage them. The Mauritian legislation of which I spoke earlier makes provision for rewards to be paid to whistleblowers whose information leads to the confiscation of unexplained wealth. Indeed, the board that I chair has the function of making such awards. In my view this is a salutary provision as one of the weapons in the fight against crime and corruption.

Therefore, I support in principle this amendment, but as a starting point because I suggest that it is a principle that should be applied much more widely in the case of action taken that leads to the recovery of the proceeds of crime.

**Lord Faulks:** My Lords, I am sure the whole House shares the concern that the noble Baroness has expressed about whistleblowing and its importance generally. However, I respectfully submit that this amendment is a pretty substantial response to that. It seeks to set up a whole department—the office of the whistleblower. I accept that this is something of a probing amendment and therefore bears the standard for what the noble Baroness may hope to come, but it is little short of a job-creation scheme. The proposed functions of the office of the whistleblower are extensive and it would have powers. Of course, if an office is created, those who are given that office will appoint others to work for them and powers will be exercised. If they are not exercised it would be suggested that they were not doing their job. Before we know where we are, we will have a substantial bureaucracy that runs the risk of having the same problems that exist in other areas of bureaucratic supervision of financial institutions.

The question of incentives is interesting. I accept that they have had some success in the United States and, as we heard from the noble and learned Lord, in Mauritius too. But as to the question of "retaliatory action against whistleblowers", a whistleblower has remedies in civil law in any event. When she comes to respond to the Minister, will the noble Baroness give us some idea what is meant by the provision with regard to "retaliatory action against whistleblowers"?

The criminal law exists and civil remedies exist for employees and I wonder whether that is not inviting something rather too much. Of course, she rightly acknowledges that whistleblowers are not entirely based in the financial institutions; they exist in the NHS and have recently been considered by Sir Robert Francis and in all other government departments.

The real question is whether the establishment of this no doubt expensive bureaucracy will deter and whether it will result in the detection of what would otherwise not have been detected. While I applaud the general thrust of the amendment, I wonder whether it is something of an overreaction.

**Lord Kennedy of Southwark:** My Lords, the noble Baroness, Lady Kramer, raised the issue of whistleblowing in her contribution at Second Reading and now proposes this new clause today with the noble Baroness, Lady Hamwee. As we have heard, it would establish an office of the whistleblower. The purpose would be to offer much-needed protection to whistleblowers who expose criminality, corruption, fraud and other illegal activity. The price that whistleblowers often pay for alerting the authorities to illegal and criminal activity is to lose their jobs and have their careers ruined and destroyed.

The noble Baroness is right to highlight that we need to do more to offer protection and compensation to people who come forward and alert the authorities to the illegal activity. The noble and learned Lord, Lord Phillips, supported action and I agree. However, I agree with the noble Lord, Lord Faulks, that setting up an office may not be the right way to go about that. What is definitely needed is further protection in statute and regulation. It may not need an office to be established. I will be interested to hear the response from the noble Baroness, Lady Williams of Trafford, to this amendment. I entirely accept that it is a probing amendment and I think that we should take the opportunity that this Bill affords us to do something to address the issue of whistleblowers and the precarious position that they can find themselves in, which the noble Baroness, Lady Kramer, has highlighted to the House today. I accept that whistleblowing goes across a variety of sectors, but we are dealing with the financial services sector and this would be a good place to start.

**Baroness Williams of Trafford:** My Lords, I am grateful to the noble Baroness for allowing us to debate this important issue. Whistleblowers play a valuable role in society by bringing wrongdoing to light that could otherwise go unchallenged. Individuals should be able to report malpractice in the workplace without fear of reprisal; and employers should be prepared to work with staff to resolve concerns, particularly by means of effective internal procedures.

The Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 and subsequently, provides employment protection for workers in all sectors who have blown the whistle. It enables them to seek redress if they are dismissed or suffer detriment at the hands of the employer because they have made a "protected disclosure" about wrongdoing that they have witnessed at work. To qualify for the protections, a worker must generally make their disclosure either...
The noble Baroness also talked about the UK’s response on compensation being a moral hazard and that people are just doing their jobs. The Government appreciate the risks that people take when they choose to make disclosures in the public interest. That is why they have legal protection against dismissal or detriment at the hands of their employer with the possibility of unlimited compensation, whether or not the information provided to the regulator actually results in enforcement action. Under the UK system, compensation is linked to the loss actually suffered by the whistleblower.

I hope that noble Lords and the noble Baroness are reassured that the Government are taking action to address barriers to people coming forward to whistleblow, and she will feel able to withdraw her amendment.

**Lord Kennedy of Southwark:** I agree with the Minister that the office is not the right way forward, but is she saying that everything is fine?

**Baroness Williams of Trafford:** I am saying that the Government looked at this in 2014, certainly in terms of the financial incentives, and there are various mechanisms in the different sectors for whistleblowers to come forward. The ultimate sanction for employers is unlimited compensation, depending on the type of wrongs that that employer engages in.

**Lord Kennedy of Southwark:** I am sorry to come back on this, but I take it that the Government do not think that anything further needs to be done on this at the moment.

**Baroness Williams of Trafford:** The Government are never complacent in any area of law they introduce; I would never say that everything is perfect.

**Baroness Kramer:** My Lords, obviously I am going to withdraw the amendment, but I want first to make a couple of points. I am not going to give up on this issue. Let me point out that a moment ago the Minister talked about an office for money laundering to be set up within the FCA. As far as I am concerned, that is an ideal pattern to follow. The notion that this proposal would create an extraordinary and hefty bureaucracy is not credible because, frankly, the entire bureaucracy would probably be paid for by one whistleblower revealing one scandal on the scale that we have seen in recent years. I reject the idea that this is onerous. There are plenty of templates to follow that would allow us to do this sensibly.

On the financial incentive, I do not believe for a moment that whistleblowers do it for the money. The money is a recognition that they have destroyed their future. There may be some protection within the company they work for which ensures that they are not dismissed, but neither I nor anyone else can be persuaded that people do not look at whistleblowers and decide that they are not quite right for this promotion, that project or opportunity. If they try to change companies they go with what is almost a black spot on their hand, marking them out as someone it is perhaps better not to take a risk on. That is a reality which the Government have never faced up to.
When dealing with detriment, I would recommend the Minister and others who are interested to connect with the charity Whistleblower.co.uk, which would be delighted to provide them with a great deal of detail. I hesitate to mention individuals without their specific permission, but all the protections have turned out to be completely useless for them. People’s lives have been wrecked. Frankly, even the regulator would agree that despite all the systems that are in place, people’s lives have been wrecked, and there has only been some tinkering at the edges. Nothing has happened to bring about fundamental change. All this comes together in the poor statistics that I set out when moving the amendment. Very few people are coming forward and blowing the whistle on substantive issues that can affect our absolutely massive financial services sector. This allows the industry to be rather complacent, and that is exceedingly dangerous.

I hope that the Minister will recognise that while I will withdraw the amendment, we are nowhere near coming to the end of this issue.

Amendment 71 withdrawn.

Amendments 72 and 73 not moved.

Clause 12: Unlawful conduct: gross human rights abuses or violations

Amendments 74 to 79 not moved.

Clause 12 agreed.

Clause 13: Forfeiture of cash

Amendment 80

Moved by Baroness Vere of Norbiton

Clause 13, page 43, line 42, at end insert—
“(h) betting receipts,”.

Baroness Vere of Norbiton (Con): My Lords, I now come to two proposed changes that the Government are seeking to make to the seizure and forfeiture powers set out in Chapter 3 of Part 1 of the Bill. In the House of Commons we introduced amendments to allow law enforcement agencies to seize casino chips and gaming vouchers where they had the suspicion that they were either the proceeds of crime or would be used to commit further offences. The Government were also asked to consider whether similar provisions could be introduced to allow the seizure of betting slips. Government Amendments 80, 82, 83 and 138 to 140 make such provision. If law enforcement agencies suspect that the funds used to place a bet are the proceeds of crime, they will be able to seize the betting slip. These provisions will be subject to the same safeguards as for cash seizure and we will be working with bookmakers and their trade associations to ensure that they are used effectively.

At present, Clause 14 allows for the seizure and forfeiture of moveable stores of value but makes no allowance for deductions for legal expenses on the part of the person the item was seized from. Government Amendments 88, 90 to 101 and 142 to 155 will therefore allow for a deduction to meet legal expenses from recovered sums following the forfeiture of the item. Where appropriate, the court will determine whether legal expenses should be paid and will provide for that as part of the forfeiture order. These amendments make similar provisions in Schedule 3 in relation to items seized where there is a suspicion of terrorist financing. I beg to move.

Lord Kennedy of Southwark: I am happy to support these amendments, which are both sensible and proportionate. Ensuring that betting slips can be seized is a sensible move, as indeed is the whole series of amendments.

Lord Stevens of Kirkwhelpington (CB): My Lords, I also support this group of amendments. I declare an interest as my son is the head of the financial recovery unit of the Metropolitan Police. This is one area of the Bill that had an immense weakness. To ensure that the provisions work properly as far as officers working on the front line are concerned, these amendments must be inserted into the legislation.

Amendment 80 agreed.

House resumed. Committee to begin again not before 8.27 pm.

Medical Research

Question for Short Debate

7.27 pm

Asked by Lord Sharkey

To ask Her Majesty’s Government what plans they have to help maintain the United Kingdom’s position in medical research.

Lord Sharkey (LD): My Lords, I declare an interest as chair of the Association of Medical Research Charities, whose members spend more than £1.4 billion a year on medical research. The UK is a world leader in medical research. We have discovered and developed 25 of the top 100 prescription medicines globally. We produce around 20% of the world’s most cited academic publications in the life sciences. The UK life sciences industry generates for the UK a combined estimated annual turnover of £61 billion. This is a timely debate. Tomorrow, the Prime Minister will trigger Article 50. There are significant implications for UK medical research in exiting the European Union, and I will speak to these. I will also speak to the implications of the recently announced changes to the funding of NICE-approved drugs and technologies and to the funding of medical research by government.

Let me start with the changes to the drug approval process announced on 15 March by NICE. In simple terms, up until now, once NICE had approved a drug, the NHS was obliged to supply it within three months. The new regime means that from 1 April the NHS may need to supply some newly approved drugs for up to three years. This has very serious and worrying implications. Some recent technologies that have been approved by NICE would breach the new budget impact threshold and could be delayed for three years. For example, abiraterone, a breakthrough treatment for the advanced stages of prostate cancer, might not have been available to patients if the new regime had been in force.
Many medical research organisations including Prostate Cancer UK, Cancer Research UK, Breast Cancer Now, Alzheimer’s Research UK and the MS Society are deeply concerned about the consequences of the NICE changes both for research and patients.

There are three principal areas of concern. The first is the potential harm to patients. For those with life-threatening and other serious conditions, waiting three years to receive a life-enhancing or transforming treatment is not acceptable. For instance, ocrelizumab, the first treatment for the primary progressive form of MS, is soon to undergo an appraisal. As it stands to be the first disease-modifying licensed treatment for this type of MS, it is unlikely to come cheap and its introduction may well be delayed under the new arrangements.

Secondly, innovative research and scientific breakthroughs matter only if patients are able to reap the benefits. This new regime makes it difficult to forecast and could make investment in research in the UK less attractive. Delaying patient access by three years could make England a less attractive place to do clinical trials.

Thirdly, medical research is a complex ecosystem bringing together charities, a variety of industries, academia and public bodies. This decision sends the wrong signal to the life sciences sector at a time when we are preparing to negotiate Brexit, and is contrary to the thrust of the industrial strategy. The Association of the British Pharmaceutical Industry has warned that these new plans will prevent patients receiving NICE-approved, cost-effective medicines. The BioIndustry Association has called it a “lose/lose/lose” situation for rare disease NHS patients, the UK life science sector and the union, given the different regime that obtains in Scotland.

Clearly the NHS is under significant financial pressure, but this new regime is not an appropriate solution to the affordability of medicines issue. Instead, an improved dialogue and early negotiations with industry are needed. That is what the accelerated access review recommended and that is what we should do, rather than taking this arbitrary approach that puts at risk people with serious health conditions and our research infrastructure.

The new regime will come into effect from 1 April—in less than a week’s time. The potential impact on patients must be given immediate consideration. I urge the Minister to persuade her colleagues to think again. If they do not, they risk patients’ lives and our attractiveness as a location for medical research.

I now turn to Brexit. The UK’s decision to leave the EU has the potential to impact greatly on medical research. The priorities for science are shared across the medical research community. They include continued participation in Horizon 2020 and future funding programmes. Not only is the UK the second biggest beneficiary of Horizon 2020, but the collaborations that arise from these programmes are significant and highly valued by the UK medical sector. However, there is already anecdotal evidence that recruiting and retaining researchers from the EEA is becoming more difficult. Right now we need the Government to clarify the situation and give certainty to EEA nationals working in the UK. In the longer term we will need an immigration system that reflects the intrinsically collaborative and international nature of science and research.

The Minister will know that there are a number of EU regulations for dealing with medical research, including the clinical trials directive, which is soon to be replaced by the clinical trials regulation. Shared regulatory frameworks enable cross-border collaboration, which is critical for medical research, particularly research into rare disease. The larger EU population makes research on rare conditions possible and the European Medicines Agency’s single approval process for medicines for rare conditions makes it cost effective for manufacturers to bring new treatments to patients. We do not want to be outside this process. We need to remain part of the larger research test bed. To uphold our position as a leader in medical research, I urge the Government to seek ongoing regulatory co-operation with the EU. The UK must remain part of the scientific processes at an EU level.

I shall now touch briefly on UKRI and the role it will play in maintaining the UK’s position as a global leader in medical research. I very much welcome the appointment of Sir Mark Walport as UKRI’s CEO. UKRI will, I hope, provide strong leadership for the medical research and broader research sector throughout the Brexit negotiations, but I want to register my disappointment that the quality-related research funding for universities will remain flat in 2017-18. This funding is critical to maintaining and growing medical research in our university sector. I urge UKRI, with its future funding role, to examine the support provided to researchers and universities.

In particular, I highlight the charity research support element of QR funding, known as the charity research support fund. The CRSF supports the indirect costs of research. The Minister will know that there are a number of charities that are critical for medical research, particularly research on rare conditions. Charities are an important part of the UK’s unique collaborative and international nature of science and immigration system that reflects the intrinsically collaborative and international nature of science and immigration system that reflects.
Lord Patel (CB): My Lords, I shall speak about regulation relating to data privacy in medical research. The UK should have a vision to make an internationally competitive legal framework to support the use of personal data in health research—fully connected law and governance that is easy to navigate, pragmatic and risk proportionate, and regulation that ensures public confidence and trust in the use of personal data in research.

I have five recommendations to achieve this vision. The first is to ensure that movement of research-relevant data between the UK and the EU is not restricted. The UK is a world leader in genomics and research using longitudinal cohorts, medical informatics and data linkage. Research relies on international collaboration and sharing of data across borders. To maintain this position it is important that UK law allows free exchange and sharing of data across borders. To maintain this linkage. Research relies on international collaboration and longitudinal cohorts, medical informatics and data linkage. Research relies on international collaboration and sharing of data across borders. To maintain this position it is important that UK law allows free exchange and sharing of data across borders. To maintain this linkage. Research relies on international collaboration and longitudinal cohorts, medical informatics and data linkage. 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My second recommendation is to simplify and clarify the UK’s legal framework. The UK’s legal framework for the use of personal data in health research strikes a good balance between permitting research and protecting individuals, but it is highly complex and confusing. The legal framework should be simplified by providing a clear public interest legal basis for research by private and public organisations, and by bringing standards of consent and safeguards for health research in data protection law and the common law duty of confidentiality closer together. Following Brexit and the great repeal Bill, the Government should use the flexibility to review and revise data protection law to ensure it is clear and simple.

My third recommendation is to maintain the UK’s proportionate and pragmatic approach to regulation and governance. The Information Commissioner’s Office takes a pragmatic and risk-proportionate approach to regulation. This is a strength that must be maintained for the UK to be competitive. In particular, the ICO takes a proportionate and context-dependent approach to what is considered personal data.

My fourth recommendation is to ensure that the right governance is in place to manage data flows across the system. The Department of Health should implement the proposal for a national data guardian for health and social care.

My fifth recommendation is to develop an innovative framework for the regulation of data-driven technology. The UK has an opportunity to be a world leader in such regulation. This should allow access to the volume and quality of data required for machine learning to be effective, while ensuring public confidence and accountability. This requires regulating both the release of data and the novelty of a product that self-updates. I hope the Minister can assure us that the Government are looking at this and will work with research organisations and regulators to make sure that our regulation of data privacy in research is a world leader.

The Earl of Dundee (Con): My Lords, I thank the noble Lord, Lord Sharkey, for enabling this debate. Very briefly, I will mention three aspects: first, the aim for health strategies and their deliveries to become much better co-ordinated internationally than at present; secondly, the current role and future prospects of product development partnerships; and thirdly, the priority of medical research into neurological diseases.

Pneumonia is the principal cause of death in children worldwide. It kills an estimated 1.1 million children under the age of five every year—more than AIDS, malaria and tuberculosis combined. For the same age group of children, diarrhoea is the second biggest killer, each year accounting for 760,000 deaths. Globally, there are nearly 1.7 billion instances every year of diarrhoeal disease, which is also chiefly responsible for malnutrition.

Arising from viruses, bacteria or fungi, pneumonia can be mainly prevented by vaccines and enough food, yet only 30% of children with pneumonia receive antibiotics. Equally, while diarrhoea can be controlled through safe drinking water and adequate sanitation and hygiene, largely due to poor co-ordination among different healthcare deliveries, these simple measures are still far too neglected.

I recently chaired the Council of Europe’s health committee, and our emphasis was upon the urgent need for an integrated approach and for this to become the standard for the international healthcare policies of the affiliation’s 47 states. For his contributions to that consensus, I pay tribute in particular to the achievements and memory of Jim Dobbins, who was a professional microbiologist and in another place the Member of Parliament for Heywood and Middleton from 1997 until his death in 2014. Does my noble friend the Minister agree that integrated healthcare solutions should feature prominently within the current sustainable development goals framework and that the Government should seek to persuade other UN member states accordingly?

If competent deliveries should thus provide vaccines and hygiene together, rather than just the one without the other, product development partnerships have already assisted improved outcomes overseas in low and middle-income countries. Advancing R&D to serve those countries, PDPs are non-profit organisations and partnerships between academia, industry, the public sector and multilateral agencies. They have facilitated effective and affordable technologies and products, also encouraging the pharmaceutical industry to work on the diseases of poverty. Can the Minister say in what ways DFID and our Government will support the further work and diversification of bodies such as PDPs?

Research into neurological afflictions—to which the noble Lord, Lord Sharkey, has already referred—including Alzheimer’s and Parkinson’s, lags behind that into cancer, heart disease and infectious diseases. What plans, therefore, do the Government have to redress this imbalance and to persuade our international partners to do the same?
In summary, timely adjustments, as necessary, in medical research also reflect those required in poorer countries, such as of integrated medical delivery. Not least will the maintenance of the United Kingdom’s reputation and position depend on its ability to lead in these useful directions.

7.43 pm

Baroness Morgan of Drefelin (CB): My Lords, I thank the noble Lord, Lord Sharkey, for securing this debate and congratulate him on his thoughtful opening remarks. I declare an interest as chief executive of Breast Cancer Now and chair of the National Cancer Research Institute.

We will surely maintain the UK’s position at the forefront of global medical research through a focus on securing the best talent, intelligent regulation and strong investment. We must continue to attract, secure and keep the best scientific talent in the UK, including those EU nationals who populate our excellent research centres around the UK. Those people need to know that their position in this country is secure.

Alongside this, we need a regulatory framework, aligned with the new EU clinical trials regulation that will enable us to collaborate. Collaboration is at the heart of successful research, so we need to be able to collaborate with partners across borders for the benefit of UK patients and the UK life sciences sector.

Underpinning this is the need for investment and the support that charities give. Government and industry investment secures patients’ access to the most cost-effective modern treatments while allowing our economy to thrive. On the one hand, we have heard much about the Government’s commitment to research funding, not least in the Autumn Statement and the recent industrial strategy, but on the other, the reality of what is happening on the ground can feel very different.

As the noble Lord has explained, despite it being extremely difficult for drugs to be approved under the NICE cost-effectiveness appraisal process, NICE and NHS England are about to introduce a cap that could restrict access to treatments that cost more than £20 million for up to three years. In some cases, that could be even longer. Millions of patients could face major delays in accessing the life-saving and life-extending treatments they need which have already been deemed by our system to be clinically and cost effective by NICE. If this test comes into effect, as we are advised it could do shortly, it could cost the lives of patients, particularly those with incurable conditions. Not only could the proposals have devastating implications for patients but they run counter to the Government’s own ambitions for the UK as a global hub for research and innovation. As we have heard, such drugs need to be accessed by patients through the NHS for us to see our life sciences industry joined up with the NHS and thriving.

One in five new treatments would be likely to be affected by the new cap, so can the Minister explain the legal basis for it, as I understand that NICE is established in statute? I, too, urge the Minister to do what she can to encourage NICE and NHS England to think again.

7.47 pm

Lord Willis of Knaresborough (LD): My Lords, the noble Lord, Lord Sharkey, has already demonstrated how important it is to continue government investment in UK medical research and in so doing recognise significant contributions from the charity and industrial research sectors.

The £7.2 billion annual investment in UK research has delivered spectacular results: beta blockers, cardiac pacemakers, CAT and MRI scans, DNA sequencing, and monoclonal antibodies, with a few having long-term human and commercial impact.

While the MRC leads much of this work, the increasing importance of NIHR in delivering research near to bedside is also impressive. Thanks to the foresight of Sir David Cooksey in 2006 and the continued support of successive Governments, NIHR is building a research capability within the NHS which is truly impressive. Part of that success is due to the outstanding work of the 13 CLAHRCs, which are responsible for building clinical/academic research capacity across the country and which tackle issues affecting today’s patients. I declare an interest as the chair of the Yorkshire and Humber CLAHRC. We have in two years levered £13 million in matched funding from commercial, charity, NHS and academic organisations, doubling our resource to £26 million. This in turn has helped us to deliver on 164 projects, produce 49 peer-reviewed publications and train 56 PhD students. Crucially, we have been able to effect real improvement in health outcomes.

Our “towards smoke-free mental health services” survey has informed NICE guidance on smoking cessation in secondary care for mental health patients previously denied access to smoking cessation programmes, while an electronic frailty index, using existing electronic record data to enable GPs to identify the frailest people in their practice, is now used by 90% of GPs in the country.

As in most parts of the UK, the cost and effectiveness of emergency and urgent care pose real challenges. Here, we have developed the largest regional dataset of emergency and urgent care patient episodes in the country, linking data from the very first call to discharge. With the support of the Health Research Authority, this database provides a unique resource to help deliver more appropriate care and reduce avoidable attendances and admissions to hospital.

CLAHRCs provide an environment for exploring novel technologies where commissioners, providers and local authorities require rapid evaluations to inform decision-making and service planning. They pioneer new models of evidence-based practice for the delivery of health and social care. They work in tandem with the Clinical Research Network, academic health science networks and nationally with the other 12 CLAHRCs. In the new, post-Brexit world, what plans are there to continue CLAHRCs beyond their current period?

7.50 pm

Baroness Masham of Ilton (CB): My Lords, there needs to be safe regulation of medical trials. The Government must ensure that they have appropriate...
scientists and others around the United Kingdom to
This means that an adult’s cancer drug could also
on adults. In particular, children miss out on treatments
cOMPANIES to ignore children by trialling drugs only
33 new cancer drugs being evaluated in children.
shows that the loophole prevented no fewer than
European Medicines Agency over the past five years
benefit patients. In fact, an analysis of data from the
cancer medicine for children by denying them access
to the latest drugs. Pharmaceutical companies use a
loophole in the EU legislation to avoid trialling cancer
drugs in children, despite evidence that they could
encourage the people we need to come here. They
should feel welcome and barriers should not be put in
their way. Without research, there cannot be progress.

7.52 pm

Lord Ryder of Wensum (Con): My Lords, I, too,
thank the noble Lord for initiating this debate with his
opening speech. We listened to that with great attention
and I congratulate him on it.

I used to be chairman of the Institute of Cancer
Research but the views expressed today are my own. I
make one point only: there is a pressing need to reform
the 2007 European paediatric regulation which hampers
research and development more highly cited
research publications than the USA. The European
Research Council is a major supporter of scientific
research in the UK and the UK needs to safeguard its
lead in the growth areas of science and technology
through a bilateral science collaboration treaty with
Brussels, similar to those currently operated by non-EU
countries.

The recent reduction in federal funding for US
scientific research will further reduce external sources
of collaborative research funding for UK research
centres. To maintain Britain’s leading role in translational
outcome-driven research, HMG must act swiftly and
strategically to create and underwrite a new collaborative
research environment. How will the Government ensure
that the best research talents—those with enthusiasm,
intelligence, interest and drive—and the most innovative
organisations stay in the UK after we leave the European
Union? We will be competing globally so we must
courage the people we need to come here. They
should feel welcome and barriers should not be put in
their way. Without research, there cannot be progress.

7.55 pm

Lord Kakkar (CB): My Lords, I join others in
thanking the noble Lord, Lord Sharkey, for securing
and introducing this important debate so effectively.
I declare my own interests as chairman of University
College London Partners, professor of surgery at
University College London, director of the Thrombosis
Research Institute and UK business ambassador for
healthcare and life sciences.

As the noble Lord indicated, medical research is a
great national success story. Its application has been
responsible for improving human health over recent
decades, advancing clinical outcomes and ensuring
that the workforce is healthier and therefore more
productive. The life sciences sector, after financial services,
represents one of the most important in our country.
As we heard, this is because, over decades, our nation
has built a unique ecosystem of our fine National
Health Service, four of the top 10 biomedical universities
in the world, two major pharmaceutical companies
based here in the United Kingdom, more than 3,500
small and medium-sized enterprises in the life science
and med-tech sectors, and countless very effective
medical research charities. There is also the capacity
for our nation to collaborate internationally in medical
research and seek funding to support those efforts,
and the ability to attract international talent to come
and contribute to our national medical research outputs.

In the current context there is some concern because
there is much change on the horizon. We already
heard about the potential impact of Brexit on a national
medical research strategy. There is the creation of UK
Research and Innovation. This new and important
structure will result in differences in the way that dual
support for medical research is applied in future. Of
course, cost pressures in the NHS will have an impact
on potential NHS contributions to medical research in
future.

Going forward, how will this delicate but finely
structured ecosystem be co-ordinated with all these
new challenges? Will these issues be addressed as part
of the life sciences section of the industrial strategy?
For more than a decade we have had the Office for
Strategic Coordination of Health Research. Will it
continue, and will it be responsible for ensuring that
the funding available in UKRI for medical research is
appropriately co-ordinated with the substantial funding
now available in the National Health Service through
the National Institute for Health Research? That type
of strategic co-ordination was an important objective
of the Office for Strategic Coordination of Health
Research and should be maintained in future once
UKRI is established.

Finally, what assessment is being made of the delivery
of the obligation set on the Secretary of State for
Health and all other elements of the NHS to promote
research in the National Health Service? This is a vital element of the Health and Social Care Act 2012. What assessment has been made of the ability of the NHS to deliver on that particular objective and obligation, and how will that be monitored and protected in future?

7.59 pm

Lord Crisp (CB): My Lords, I congratulate the noble Lord, Lord Sharkey, on securing this debate and raising such important questions. I will touch briefly on three areas.

First, as other noble Lords have said, the UK is a world leader in medical research and the international recruitment of researchers is of paramount importance to maintaining that position. I will reiterate that point by using the bold words of the Science and Technology Select Committee in its recent report that, “it is not enough to allow talented scientists from around the world to work in the UK: we must attract them vigorously”. Are the Government going to do this—vigorously?

Secondly, as my noble friend Lord Kakkar has just said, there is a vital symbiotic relationship between medical research and the NHS. The NHS, as the largest integrated health system in the world, is an essential platform for medical research and the biomedical and life sciences that spring from it. At the same time, medical research contributes to the constant improvement of the NHS in everything from drug discovery and the development of therapies to health informatics and patient engagement. This in turn contributes to a healthier, better-educated population, which can improve productivity and bring economic as well as social benefits. We know that this vital two-way relationship does not work perfectly at the moment and the recent decision by NICE that the noble Lord, Lord Sharkey, referred to makes this matter even worse. What, therefore, are the Government doing to strengthen the NHS as a platform for science and technology and to ensure that the products of science and technology benefit the NHS and its patients?

Thirdly, and taking medical research as a proxy for wider health-related research, I want to speak about research on the impact of nursing. The All-Party Parliamentary Group on Global Health recently published a report on nursing globally. Here I pay tribute to the noble Lord, Lord Willis, who was part of that group and has done so much personally to strengthen nursing here in the UK but nevertheless there is a strong feeling that nurses feel they are systematically undervalued and underutilised. It is less of a problem revealed that nurses feel they are systematically feeling that nurses could do more, were they enabled to do so. The noble Lord, Lord Sharkey, has outlined his proposals to increase the role of nurses in the UK but there is very little quality research on the impact of nursing and the sorts of questions Ministers and planners might ask, such as: when is it appropriate to have specialist nurses? Where is it effective to replace doctors on on-call rotas? How can we measure the impact of trained nurses on different diseases? What more could nurses do?

We need decent evidence on these questions. At the moment we simply do not have it. This is relevant to the UK’s role both at home and in development abroad. Therefore, I ask the Minister: do the Government recognise the importance of research on the impact of nursing? If so, what are they doing to promote it?

8.02 pm

Baroness Walmsley (LD): My Lords, I congratulate my noble friend Lord Sharkey on introducing this debate, which has actually been quite worrying for those of us who believe that unless we maintain the UK’s position in medical research, UK patients will continue to lose out. Only this morning we heard in the news about how our performance in diagnosing and treating cancer is well behind that of our neighbours in Europe, so this is no time to be imposing further restrictions on the availability of new oncology medicines for UK patients.

My noble friend Lord Sharkey has outlined his concerns, which I share, about NICE’s new affordability cap. As the noble Baroness, Lady Morgan, said, 20% of all medicines would fall within the £20 million cap—these are proven, effective drugs—which makes me think that the cap is far too low. Have the Government assessed the impact of this on patients who have already waited too long for medicines that could benefit them? I am very concerned about patients dying while they wait for NICE to decide to allow them the medicines they need. The current 90-day accessibility obligation is reasonable but is to be increased to three years and, given all the delays in the application process and 12 weeks for consultation, it could easily turn out to be four years.

It is the most innovative medicines that would have reached the new price threshold if it had been in place in the past, and it is those same cutting-edge medicines that will be affected by it in the future. If companies inventing and developing these medicines cannot find a market in this country of a size to make it worth licensing them here, they will just go to other markets and UK patients will lose out.

This is yet another example of rationing in the NHS, and we are getting to the point where patients’ rights under the NHS constitution are being breached. But instead of being honest about it and having a national debate about what should be funded, the Government are hiding behind NICE and restricting its freedoms. Only this morning we heard about banning prescriptions for gluten-free foods and other medicines, which will affect the poor and vulnerable, who normally get free prescriptions. This is arbitrary rationing.

The UK currently gets a disproportionate amount of the EU’s R&D and clinical trials, and Brexit threatens that. I agree with every word my noble friend Lord Sharkey said but, since I have said the same words myself in your Lordships’ House at least five times since last June, I will not bore your Lordships by repeating it. He expressed it much better than I could, anyway. But is this really the time to be putting in place further deterrents to companies making cutting-edge medicines available here? The industrial strategy said a lot of the right things about the Government’s intention to promote scientific research, yet their actions do not match their words.
So I ask the Minister: how soon does the DoH plan to assess the impact of the new NICE cap? I have heard that the Government plan to leave it for three years, which is far too long. I suggest that an impact assessment should be carried out on the first five medicines affected to ensure that the impact on patients is no greater than the Government predict. Will the Minister agree to do that?

8.06 pm

Lord Hunt of Kings Heath (Lab): My Lords, first, I declare an interest as a trustee of the Royal College of Ophthalmologists, which of course has a keen interest in medical research. The noble Lord, Lord Sharkey, has made a very powerful case for the importance of medical research in the UK. This is very much under threat at the moment. No doubt the Minister will be tempted to read out a list of initiatives being undertaken by the Government to support research in the life sciences sector. Welcome though those initiatives are, I hope that she will focus her response on what seems to me to be the core issue, which is the imperfect relationship between the scale and quality of medical research in this country and the uptake and outcomes of that medical research.

The evidence is that the record of the NHS is very poor in actually adopting proven new medicines, treatments and devices. Of course, it is NHS patients who lose out. As noble Lords have already said, this is now being exacerbated by the unprecedented level of rationing that is taking place, both locally and nationally, in our National Health Service. A fairly recent report by the leading charities Breast Cancer Now and Prostate Cancer UK showed that NHS cancer patients are missing out on innovative treatments that are available in any comparative country in the world.

We then come to NICE. When the previous Labour Government set up NICE, it was actually designed to speed up the introduction of innovative new treatments. We are now seeing the Government develop NICE as, in essence, a rationer of treatments. I ponder whether the restrictions being brought in really are true to the legal position of NICE as established, and certainly to its moral position. We have already heard about the impact of the new £20 million cap. That will have a devastating impact on patients. At the heart of the problem of medical research is this: we rely hugely on the pharmaceutical sector for investment in R&D. How long can we expect that investment to continue with the incredibly poor take-up of the results of that investment by our National Health Service? That is the core question that the Minister has to answer. I believe that our medical research and life sciences sector is at risk. The Brexit issue has been well documented, but at the heart of this is that unless the National Health Service changes gear and is consistently seen to welcome and embrace the uptake of new medicines, the Government can talk about medical research and the life sciences sector, but all will come to naught unless they sort out the National Health Service and the incredibly debilitating rationing that we are now seeing take place.

8.10 pm

Baroness Buscombe (Con): My Lords, noble Lords will appreciate that in the past however many minutes I have been asked a lot of questions. I may not be able to answer them all, in which case, I hope noble Lords will accept a letter. I will write in detail in reply. I thank all noble Lords, particularly the noble Lord, Lord Sharkey, for their valuable contributions to this important debate.

“The Government is committed to building on the UK’s world-leading science base—including more Nobel Laureates than any country outside the United States—and making the UK the go-to nation for scientists, innovators and investors in technology”—[Official Report, 23/3/17; col. 310.]

That was quoted by my noble friend Lord Prior last Thursday in a debate on EU withdrawal and science. Our focus this evening is on the importance and value of medical research to this country as part of our science.

I am sure all those present would agree that the UK research base is world-class. With just 0.9% of the global population and 4.1% of researchers, the UK accounts for 11.6% of citations and 15.9% of the most highly cited articles. Times Higher Education ranks three UK universities in the top 10, and 12 in the top 100, with the University of Oxford in first place overall.

We have an envious track record in medical research, and we want to keep it that way. How will we do that? We have to do it by continuing to strive to improve our knowledge in this area. That is why this Government have been, and will continue to be, so dedicated in supporting research, both research in general and specifically medical research. Our support for research overall can be seen in the 2015 spending review announcement, where we protected the science resource budget in real terms for the rest of the Parliament at its 2015-16 level of £4.7 billion. In the 2016 Autumn Statement we went even further and committed to substantial real-terms increases in government investment in R&D, rising to an extra £2 billion a year by 2020-21 to help put Britain at the cutting edge of science and technology. This is an increase of around 20% of total government R&D spending and more than any increase in any Parliament since 1979.

What funding has been provided for medical research in particular? Noble Lords have referred to some of the numbers this evening. In 2015-16, the MRC’s gross research expenditure, funded through the budgetary allocation of the Department for Business, Innovation and Skills and contributions from other bodies, was £927.8 million, providing support for world-class medical research to improve human health and enhance the economic competitiveness of the UK. Through the Department of Health, the Government are investing more than £1 billion a year in health and care research through the National Institute for Health Research. Funded by the Department of Health, NIHR benefits the future of health by: funding high-quality research to improve health; training and supporting health researchers; involving patients and the public in health research; providing facilities for research funded by other organisations; and working with the life sciences industry to benefit patients.

Through the NIHR, we have this year announced record funding to support our leading NHS and university partnerships. This includes the largest ever investment in health research infrastructure: £816 million over the next five years for 20 new NIHR biomedical research centres in our leading NHS and university partnerships.
across England. Each of these 20 biomedical research centres will translate lab-based discoveries into new cutting-edge treatments, technologies, diagnostics and other interventions in clinical settings for patients in a wide range of diseases, such as cancer and dementia. Through the NIHR, the Government are also investing £112 million over the next five years in 23 clinical research facilities for experimental medicine to help speed up the translation of scientific advances for the benefit of patients through dedicated and purpose-built facilities in the NHS with specialist clinical research and support staff. The NIHR has created a national clinical research network which co-ordinates and supports the delivery of industry, charity and other publicly funded research across the NHS in England. Annual recruitment to clinical trials and studies by the NIHR clinical research network has reached more than 600,000 people. To make it simpler for researchers to apply for funding, while retaining our commitment to research excellence, the NIHR will be rolling out a streamlined and faster application process from May. We are very encouraged by what the noble Lord, Lord Willis, said about improving outputs, but the important thing is talking about issues, such as linking data to discharge.

The contribution of charities is hugely important to this and it would be inappropriate to neglect that contribution to medical research. Noble Lords referred to this evening. REF 2014 demonstrated the outstanding contribution to clinical medicine and to the world-leading position of the UK in biomedical science and clinical/translational research, and it highlighted that much of this work was underpinned by the vast charitable investment made in clinical medicine in the UK, with more than a third of the income over the period derived from UK-based charities. Members of the Association of Medical Research Charities have together invested more than £1 billion into UK medical research in each of the past seven years. We of course want to encourage this investment to continue, which is why the research councils and NIHR work closely with charities on many large projects. For example, noble Lords will know of the Francis Crick Institute, which is a partnership between the Medical Research Council, Cancer Research UK, the Wellcome Trust, UCL, Imperial College London and King’s College London. In addition to funding the cost of building the institute, the founders will provide ongoing research support. The Wellcome Trust will fund interdisciplinary research spanning biology, chemistry and bioengineering. The world’s largest health imaging study—UK Biobank—is jointly funded by the MRC, the Wellcome Trust and the British Heart Foundation. It will create the biggest collection of scans of internal organs and transform the way scientists study a wide range of diseases, including dementia, arthritis, cancer, heart attacks and strokes.

Many charities are greatly appreciative of the Charity Research Support Fund, part of the quality-related research funding administered by the Higher Education Funding Council for England. HEFCE determines how much to provide for this fund from within its overall allocation from BEIS, and has maintained it at £198 million per annum through to 2016-17. Once UKRI is established, decisions on the priorities for funding and how much to allocate for this will be a matter for Research England.

My noble friend Lord Dundee asked questions regarding product development partnerships, but they are more within the scope of DIIF, so I will write to reply on that point. He also asked about neurological research for Alzheimer’s. As part of the Government’s 2020 dementia challenge, they are increasing research funding for dementia. This includes the Dementia Research Institute—which is being co-funded by the MRC, the Alzheimer’s Society and Alzheimer’s Research UK—the new Dementias Platform UK and the NIHR Dementia Translational Research Collaboration, which has been set up to catalyse dementia research across world-leading NIHR biomedical research centres.

Our position post the EU referendum was of concern to all noble Lords taking part in this debate, quite rightly. Leaving the EU allows us to make fresh choices about how we shape our economy and presents an opportunity to deliver a bold, long-term industrial strategy that builds on our strengths and prepares us for the years ahead. The Green Paper we launched in January marks the beginning of a dialogue to develop this strategy and to make sure the UK remains one of the very best places in the world to innovate, carry out research and do business. We are putting the UK’s strengths in science, research and innovation at the heart of our industrial strategy. We have highlighted the life sciences industry as a key area of future success for the UK. We are delighted that Professor Sir John Bell has agreed to lead the development of a new strategy for the long-term success of UK life sciences, and we hope this can lead to an early sector deal.

Funding is hugely critical, as the noble Lord, Lord Sharkey, mentioned in his opening speech. The Government have made a series of announcements to provide assurance and certainty to stakeholders in the research community since the referendum. The Treasury has made it clear that it will consider all successful bids for Horizon 2020 funding that are approved by the Commission, even when specific projects continue beyond our departure from the EU. This gives British participants and their EU partners the assurance and certainty needed to plan ahead for projects that can run over many years. It is too early to speculate on the UK’s future relationship with Horizon 2020 and successor programmes, but noble Lords can be assured that the UK Government are committed to ensuring that the UK retains a world leader in international research and innovation.

Another important issue was referenced by the noble Baronesses, Lady Morgan and Lady Masham. As noble Lords have said, attracting talent is absolutely key. We are in a strong position but it is important that we attract the best talent, and stakeholders have made clear that funding on its own is not sufficient. A lot has been said, some of it perhaps in a hurry, post the EU referendum, and I appreciate that there has been a misconception that the UK is no longer welcoming to overseas researchers. This is simply not true. As David Davis has said:

“We will always welcome those with the skills, the drive and the expertise to make our nation better still”.

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In the Budget, we announced that over £100 million will be invested in global research talent over the next four years to attract the brightest minds to the UK and help maintain the UK’s position as a world leader in R&D. This includes £50 million of NPIF funding ring-fenced for fellowship programmes to attract global talent in areas that align with the industrial strategy, and over £50 million of existing international funds to support fellowships that attract researchers to the UK from emerging research powerhouses such as India, China, Brazil and Mexico. We have also provided assurance about postgraduate support through the Research Council studentships, which will remain open to EU students starting courses in the 2017-18 academic year. The funding support will cover the duration of their course, even if the course concludes after the UK has left the EU.

As the Government have made clear previously, there has been no change to the rights and status of EU nationals in the UK or of British citizens in the EU as a result of the referendum. The Prime Minister has been clear that during negotiations she wants to protect the status of EU nationals already living here. The only circumstances in which that would not be possible is if British citizens’ rights in European member states were not protected in return.

I know I am running short of time but I want to speak briefly about collaboration and very quickly refer to some of the questions. We have taken no final decisions on our future relationship with the EU on research. The White Paper made it clear that during negotiations she wants to protect the status of EU nationals already living here. The only circumstances in which that would not be possible is if British citizens’ rights in European member states were not protected in return.

We are thinking through how UK researchers can best be able to continue to work with the best of their international counterparts, both European and more widely. As long as we continue to be a research powerhouse, other nations will continue to collaborate with us. As I have set out, the Government are working hard to ensure that we continue to build on our reputation.

The noble Lord, Lord Patel, talked about regulation and data privacy.

Lord Hunt of Kings Heath: Then perhaps the Minister will answer the point.

Baroness Buscombe: I am trying to get to the point, if I may, but perhaps it would be better if I write to the noble Lord in detail specifically on the new proposals for NICE and the cap. I think that would be better in the circumstances.

The noble Lord, Lord Patel, talked about regulation, data privacy and data transfer post Brexit. We will take seriously his wise recommendation to work with researchers and regulators to ensure that our data privacy is a world leader, proportionate and pragmatic. My noble friend Lord Ryder talked of the pressing need to reform the 2007 paediatric regulations, whereby there is an avoidance of trialling cancer drugs for children. I will certainly take that back to the department.

There was reference to NHS England’s research plan. It will be published in the next few weeks. Publication of the plan and monitoring of progress on its delivery is one of the deliverables on research in the Government’s mandate to NHS England for 2017-18, published on 20 March. The research plan will be followed by development of a comprehensive research strategy. NHS England will engage with its stakeholders during the spring and summer to support development and plan delivery of the strategy. The implementation of the AAR and the industrial strategy includes talking to industry about the changes. Positive features include a fast-track process and a threshold weighted by gain.

There were a number of other questions that I wish I could answer quickly. The noble Lord, Lord Willis, asked about CLAHRCs. Collaborations for leadership in applied health research and care are funded by NIHR with £120 million. There are more than 13 of them around England. The Department of Health is currently examining options for future funding after the current contract. This includes asking current CLAHRCs about what is working and what could be done better to support applied health research.

To conclude, it is clear from what we have heard this evening that the UK’s medical research is world-class and something that we should be proud of. Retaining and building on our science and research base remains a top priority for this Government. We will continue to work with stakeholders and parliamentarians to achieve it. I again thank the noble Lord, Lord Sharkey, and all noble Lords who have taken part in the debate this evening.
Baroness Hamwee (LD): Amendment 81 extends the debate we had immediately before the break with regard to the assets that may be liable to forfeiture. I understand the extension in Clause 13, which we have discussed, but I wonder why there should be any limits on what falls within the forfeiture provisions, because life changes. Items that come into common use change. Who had heard of bitcoins 10 years ago? That is the thinking behind my Amendment 81, which would extend cash, and Amendment 84, which would extend listed assets. The Minister in the Public Bill Committee in the Commons said of what is now Clause 14 that the Government did not want to use the power in new Section 303B(2) “indiscriminately”. I am puzzled what that term means. I can see that they would want to be careful about that use, but I do not see the relevance of discrimination.

In her letter of 17 March to noble Lords following Second Reading, the Minister referred to a balanced approach and said that allowing seizure of any type of property would not be proportionate. Again, that term puzzles me. Balance and proportion are relevant to the circumstances in which property can be forfeited—the conditions which have to be met, and so on—but are they relevant to the type of asset? We are in danger of allowing the owner of an asset to apply criminal ingenuity to remain a step ahead, finding new categories of property in which the proceeds of crime can be held. At Second Reading, the Minister said:

“As criminals adapt, so must we”.—[Official Report, 9/3/17; col. 1476.]

We should—but it would be even better if we were to anticipate and be a step ahead, not a step behind, because it is very hard to be in step precisely.

8.30 pm

Those are the most significant comments that I want to make on the group of amendments, but I have quite a number of others. I have expressed quite a hard line but, swinging the pendulum back a little, I want to probe the criteria for sizable assets and to ask what the legislation intends by including in three places that property would not be proportionate. Again, that term puzzles me. Balance and proportion are relevant to the circumstances in which property can be forfeited—the conditions which have to be met, and so on—but are they relevant to the type of asset? We are in danger of allowing the owner of an asset to apply criminal ingenuity to remain a step ahead, finding new categories of property in which the proceeds of crime can be held. At Second Reading, the Minister said:

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Those are the most significant comments that I want to make on the group of amendments, but I have quite a number of others. I have expressed quite a hard line but, swinging the pendulum back a little, I want to probe the criteria for sizable assets and to ask what the legislation intends by including in three places that there should be “reasonable grounds" for suspecting that property is intended for unlawful use, not simply that it is intended for unlawful use, and also to probe how property intended for unlawful use or use in unlawful conduct is assessed. Is it something less than a firm plan? Does it mean that the intention must be proved, or is it in the eye of the beholder? That is why “reasonable grounds” for suspicion are within my amendments.

Amendment 86 takes us to codes of practice. New Section 303G refers to the Secretary of State proposing, “to issue a code of practice”, but the code is not optional, so why does the Bill say:

“Where the Secretary of State proposes to issue a code of practice”?

Does where mean when, or—I am not trying to be clever about this—are there other codes of practice that may be applied?

Amendment 87 is about the retention and storage of property while proceedings take their course. The Bill requires property seized to be “safely stored”, but I am looking for an assurance that the conditions of storage will be appropriate. Artistic works, stamps and I dare say other assets may require a certain temperature or humidity if they are not to deteriorate. So my probe is as to whether safe storage just means that they go into a cardboard box on a shelf, or whether it means something more sophisticated than that.

Amendment 102 probes why it is necessary for someone who applies to have property released to him to demonstrate that he was deprived of it by unlawful conduct. What if it was the subject of a loan, or if there was an error?

Amendment 103 is about compensation, which under the Bill will be payable only if the circumstances are exceptional. Can the Minister explain why—and is that fair? It must mean that generally, when property is seized but has to be returned, there is no compensation for loss. I stress that compensation would be payable, leaving aside the exceptional circumstances, only for loss—it is not compensation, period. So why is it only in exceptional circumstances?

The Secretary of State can amend the regulations about the source of compensation. Amendment 104 would provide that the Secretary of State cannot amend the actual payment. I think that that is what the clause means, but I would be glad of assurance. Amendment 105 goes back to a point I raised on an earlier provision: exclusion from freezing for living expenses should, in my view, extend to the living expenses of dependants. I beg to move.

Lord Stevens of Kirkwhelpington (CB): My Lords, I support Amendments 81, 82 and 83. I pay tribute to the Minister and her team, who have listened to the officers who are actually on the front line as well as to others. In general terms—and I know these are probing amendments—if there are direct links between money assets and anything that may be used as currency, can consideration be given to those links being widened? Pursuing that would be of great help to the agencies which are enforcing these laws. I stress my tribute to the Minister and her team for listening to those who have to enforce these laws.

Lord Kennedy of Southwark (Lab): My Lords, the amendment proposed by the noble Baroness, Lady Hamwee, has merit and widens the Bill so that assets which can be used as currency can be included for the purposes of the forfeiture of cash. In some parts of the world, mobile phone credits are traded as cash and it would not be impossible to see situations where large quantities of these credits could be traded, hold the proceeds of crime and be used as currency. There will be other items that will be used in similar circumstances in the future.

However, I am not persuaded by Amendment 84 in the name of the noble Baroness, Lady Hamwee. I understand the arguments about what is included in this broad definition but believe that what is shown in the Bill as “listed assets” is better. However, I would want the regulations which may amend subsection (1) to use the affirmative procedure because it is important that we have a discussion about it at that time.

Amendments 85, 89, and 106 add the words “reasonable grounds for suspecting”. Those are proportionate clarifications which the Minister should
adopt. I am not convinced that Amendment 87 is necessary. I see the point which the noble Baroness, Lady Hamwee, is seeking to address but hope that the Government will confirm that the words “safely stored” will cover this point and that valuable goods will be stored appropriately.

I am not persuaded of the merits of Amendment 102, although I do support Amendments 103 and 104 in the name of the noble Baroness. If the court is satisfied that the person has suffered a loss then they should be compensated for that loss and it is important that regulations made under this section are not used to restrict the payment of compensation. Amendment 105 is also a sensible addition, unless the Minister says very clearly today that a person’s reasonable living expenses include them providing for their dependants. Amendment 106, bringing in the term “reasonable grounds”, in respect of forfeiture is also a welcome provision.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank noble Lords for their contributions, and particularly the noble Lord, Lord Stevens, for his kind words. The noble Baroness, Lady Hamwee, has—as always—scrutinised the provisions in some detail and I am grateful to her for the points she raised. Her Amendments 81 and 84 seek to broaden the scope of the seizure and forfeiture powers at Clauses 13 and 14 so that they can essentially be used to seize any items deemed to be the proceeds of crime. However, these will create a number of issues. The test that the property “may be used as currency” is legally ambiguous and untested, and it could complicate the use of these powers. The effect of Amendment 81 would also be to include a wide range of property in the cash forfeiture procedure which is not easily severable, as would be required for these provisions.

The noble Baroness referred to bitcoin at the beginning of her speech. There are difficulties in defining what we would seize. While we would not include this in the Bill, we are continuing to work with law enforcement agencies to determine how we should approach this issue more generally, and specifically to determine whether there is a gap in law enforcement capability that requires legislative change.

In respect of the noble Baroness’s Amendment 84, I am sure she would agree that we must take a proportionate approach to ensure that there is clarity regarding what can and cannot be seized. The items listed in the Bill are there based on clear justification that they may be used to move or hide the proceeds of crime, and we drew on the advice of law enforcement practitioners in developing this list. Her amendments would move away from the principle of clarity, eroding the careful circumscription that the Bill provides for these provisions. We can add to the list when the need arises, subject to parliamentary approval. As we have demonstrated through our amendments during the Bill’s passage, we will do so where a clear case arises. This gives us and the police the flexibility and balance we need while ensuring that this is not a sweeping seizure power. I am very grateful to the noble Baroness for allowing me to emphasise how seriously the Government take these issues, particularly the need for stringent safeguards on the use of such powers. I trust that she will feel inclined not to press these amendments.

I turn to the other amendments tabled by the noble Baroness. Amendment 85 seeks to insert the principle of “reasonable grounds for suspicion” into the definition of a listed asset. However, this appears to insert this test in the wrong place in the Bill. We consider that the inclusion of the “reasonable grounds to suspect” test in the sections relating to the operation of the seizure powers is more appropriate, and this approach mirrors the existing provisions for the recovery of cash.

Amendment 86 seeks to require the Secretary of State to take the actions relating to the issuing of the code of practice for searches for listed items before it is issued. The provision in the Bill is consistent with existing wording in the Proceeds of Crime Act relating to codes of conduct. I assure the noble Baroness that all the relevant actions will be taken before a code is issued.

Amendment 87 seeks to require that items seized under these provisions should be stored in appropriate conditions. The agency seizing such property is liable for its storage, and would be liable for damage to such property if due care were not taken. Therefore, we believe that the agency responsible would take such action in any case.

Amendment 102 seeks to remove the provision allowing the release of the listed item if the victim was deprived of it through unlawful conduct. The provision is one of three principles that the court must consider when the victim applies to the court for the item to be returned. The removal of this provision would remove the requirement on the victim to show that they had lost the property through unlawful means. This is an important test that the court must satisfy itself on, and which already applies to the well-established system for the forfeiture of cash, and we believe that it should be retained.

Amendment 104 seeks to prevent the Secretary of State restricting the payment of compensation through regulation. The intention behind the provision in the Bill is to ensure that the appropriate agency can be held responsible for any compensation that may be paid. It allows the Secretary of State to add to the list of those who are liable for paying compensation where appropriate. The provision already exists for cash forfeiture, and I see no reason not to replicate it here. It should be noted that the circumstances in which compensation would be payable are set out elsewhere in new Section 303W, and that the Secretary of State’s power does not extend to amending these provisions.

The noble Baroness asked why exceptional circumstances are required. This is modelled on the cash provisions. The seizure power applies to a limited number of assets. It is not anticipated that, in normal circumstances, seizure would result in loss being sustained. The items are not likely to change in value during the timeframe for seizure.

I turn to provisions relating to Clause 15. Amendment 105 seeks to extend the exclusions to an account-freezing order to include the living expenses of a person’s dependants. The provision for exclusions relates to the actions on the account and the owner’s ability to use the contents of the account to meet reasonable living expenses. I fully appreciate that there may be dependants of the account owner who would be adversely affected
Baroness Williams of Trafford: if no provision were made for the account to be used to meet their living expenses. That is why we have included this provision. The living expenses will be determined by a court and, if there are dependants, the court will take them into consideration.

Amendment 106 would include a provision that, where forfeiture is sought on the grounds that it will be used for unlawful conduct, the officer must have reasonable grounds for suspicion that this is the case. The existing provisions already require the officer to be satisfied that the property may be recoverable or may be used for unlawful conduct, and we do not want to lower that threshold.

I thank noble Lords for their patience. I hope that I have addressed the issues that the noble Baroness raised and that she will be happy to withdraw her amendment.

8.45 pm

Lord Kennedy of Southwark: When I spoke about listed assets, on page 44 of the Bill, I said I preferred what was in the Bill to the amendment of the noble Baroness, Lady Hamwee. I mentioned regulations being made by the affirmative procedure. Of course, it does not say that here, so I am assuming that they are not—that they will be made by the negative procedure or in some other way. Perhaps the Minister could write to me on this.

Baroness Williams of Trafford: I am looking for a yes or a no, but I do not think that I will get it, so I will write to the noble Lord.

Baroness Hamwee: My Lords, I am grateful to the noble Lords, Lord Stevens and Lord Kennedy. Mobile phone credits for cash? I have led a very sheltered life.

The Minister said that the problem was in the phrase “may be used as currency”. But it seems to me that one can know that only through experience. That is why betting receipts, gaming vouchers and so on have now been included. I am really not sure that I follow the argument, although I will think about it after this evening.

I mentioned bitcoins not because I was suggesting that they should be included but simply as an example of how some time ago we did not know what was in the Bill to the amendment of the noble Baroness. She is nodding. It is not quite within the normal meaning of the words, but I will accept that, and I am glad that it has been confirmed.

I do not think that I adequately followed the argument about the term “exceptional circumstances”. The Minister said quite a lot about the rest of the clause and of course I shall look at that after this evening. For now, I beg leave to withdraw the amendment.

Baroness Williams of Trafford: Perhaps I may intervene to say that the regulations will be affirmative.

Lord Kennedy of Southwark: I thank the Minister very much, but it does not say that in the Bill—it just refers to the regulations—and I think it needs to say that.

Amendment 81 withdrawn.

Amendments 82 and 83

Moved by Baroness Williams of Trafford

82: Clause 13, page 43, line 46, leave out from “machine” to second “that” in line 1 on page 44

83: Clause 13, page 44, line 4, at end insert—

“( ) “betting receipt” means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

( ) In subsection (7A)—

(a) in relation to England and Wales and Scotland, has the same meaning as in section 9(1) of the Gambling Act 2005;

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)) (see Article 2 of that Order);

“betting licence”—

(a) in relation to England and Wales and Scotland, means a general betting operating licence issued under Part 5 of the Gambling Act 2005;

(b) in relation to Northern Ireland, means a bookmaker’s licence as defined in Article 2 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985;

“gaming machine”—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Gambling Act 2005 (see section 235 of that Act);

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (see Article 2 of that Order).

( ) In the application of subsection (7A) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).”

Amendments 82 and 83 agreed.

Clause 13, as amended, agreed.

Clause 14: Forfeiture of certain personal (or moveable) property

Amendments 84 to 87 not moved.

Amendment 88

Moved by Baroness Williams of Trafford

88: Clause 14, page 54, line 12, at end insert—

“(3A) An order under subsection (3) made by a magistrates’ court may provide for payment under section 303U of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

( ) In the application of subsection (7A) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).”
Amendment 88 agreed.

Amendment 89 not moved.

### Amendments 90 to 101

**Moved by Baroness Williams of Trafford**

90: Clause 14, page 55, line 43, at end insert—

“(SA) An order under subsection (1) made by a magistrates’ court may provide for payment under subsection (9) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or
(b) any related proceedings under this Chapter.

(5B) A sum in respect of a relevant item of expenditure is not payable under section 303U in pursuance of provision under subsection (3A) unless—

(a) the person who applied for the order under subsection (3) agrees to its payment, or
(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(3C) For the purposes of subsection (3B)—

(a) a “relevant item of expenditure” is an item of expenditure to which regulations under section 286B would apply if the order under subsection (3) had instead been a recovery order;
(b) an amount is “allowed” in respect of a relevant item of expenditure if it would have been allowed by those regulations;
(c) if the person who applied for the order under subsection (3) was a constable, an SFO officer or an accredited financial investigator, that person may not agree to the payment of a sum unless the person is a senior officer or is authorised to do so by a senior officer.

(3D) “Senior officer” has the same meaning in subsection (3C)(c) as it has in section 303E.”

Amendments 90 to 101 agreed.

Amendments 102 to 104 not moved.

Clause 14, as amended, agreed.

### Clause 15: Forfeiture of money held in bank and building society accounts

Amendments 105 and 106 not moved.

Clauses 15 and 16 agreed.

### Schedule 1: Powers of members of staff of Serious Fraud Office

**Amendment 107**

**Moved by Baroness Hamwee**

107: Schedule 1, page 120, line 12, at end insert “of such minimum level of seniority as may be designated by the Secretary of State”

**Baroness Hamwee:** My Lords, we have had groupings which have covered half a dozen big issues; Amendment 107 would amend the definition of SFOs—serious fraud officers—in Schedule 1, where we are told that an SFO officer is, “a member of staff of the Serious Fraud Office.”
Baroness Hamwee: My Lords, I understand the need to broaden the scope but I cannot help but think that we have been told that there are a lot of organisations that could give responsibilities to their janitors. The point is that decisions on who is given responsibility to do what can be made by senior officers of the day in an inconsistent fashion. In most organisations that would be entirely reasonable but we are talking about very serious powers, so my amendment and my comments are not intended to be frivolous.

Of course, I shall not pursue this matter tonight, and indeed after two or three mentions of thanks for my careful scrutiny and, reading between the lines, thoughts of “I wish the noble Baroness would shut up”, I think that I probably will for tonight. As I said, it is not a frivolous point but I beg leave to withdraw the amendment.

Amendment 107 withdrawn.

Schedule 1 agreed.

Clauses 17 and 18 agreed.

Clause 19: Financial Conduct Authority

Amendment 108 not moved.

Clause 19 agreed.

Clause 20 agreed.

Amendment 109

Moved by Lord Rosser

109: After Clause 20, insert the following new Clause—

“Report to Parliament on impact on enforcement authorities

(1) The Secretary of State must, within 18 months of the day on which this Act is passed, lay before both Houses of Parliament a report on the implementation of this Act and the impact on enforcement authorities.

(2) The report must include an assessment of—

(a) what, if any, additional resources are required by enforcement authorities in order to carry out their functions and powers under this Act;

(b) what, if any, additional resources have been provided to enforcement authorities to support them in carrying out their functions and powers under this Act;

(c) what additional training has been provided by enforcement authorities to staff members in order to allow them to effectively carry out their functions and powers under this Act;

(d) to what extent enforcement authorities have used the powers provided under this Act.

(3) In this section “enforcement authorities” means—

(a) the National Crime Agency;

(b) Her Majesty’s Revenue and Customs;

(c) the Financial Conduct Authority;

(d) the Serious Fraud Office; and

(e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland).”
Lord Rosser (Lab): This amendment requires the Secretary of State, within 18 months of the day on which this Bill is passed, to lay before both Houses of Parliament a report on the implementation of the Act and its impact on enforcement authorities.

At Second Reading, it was pointed out that, if the measures provided for in the Bill are to be made to bite, the necessary resources will need to be provided. New offences and powers are created in the Bill, together with extensions of existing powers, which will require further resources, both financial and staff.

In response at Second Reading, the Government referred to the sums of money that have been invested in law enforcement agencies since 2006 and under the asset recovery incentivisation scheme over the past three years. I am not sure that that response really addressed the potential concern that had been expressed about the future and the implications for resources if the changes in the Bill in respect of new offences, powers and enhanced powers were to be effectively introduced and applied.

One’s concerns were not helped by the response from the Government to the question asked at Second Reading about the few unexplained wealth orders that were predicted—20 per year. The response was to the effect that it was a conservative estimate—presumably in more senses than one—as opposed to being a definitive indication of how often the unexplained wealth orders would be used. Has that been the basis on which other new and enhanced powers in the Bill have been assessed by the Government, and has it been done in this way to try to dampen down calls for additional resources in the quest to save money?

The Government said at Second Reading that they were already engaging with law enforcement authorities and prosecutors to encourage the use of all the new powers being introduced by the Bill. However, they went on to say that ultimately it would be for the enforcement authorities, which are operationally independent, to decide when and how often to use the new powers in the Bill. That may be true but the extent to, and thoroughness with which, enforcement authorities use the new and enhanced powers in the Bill must ultimately be determined by the level of resources they are given to carry out their new and enhanced role and responsibilities. The issue of the resources that are going to be made available to implement the provisions in the Bill, and about which we have heard very little, is a matter for government.

9 pm

In their impact assessment, the Government said that the 2013 serious and organised crime strategy and the 2015 strategic defence and security review set a clear goal of making the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption. Delivering that will not come cheaply, particularly as the Government have already said that this country is unusually exposed to the risks of international money laundering and will, presumably, want the new powers in the Bill to be fully deployed by the enforcement agencies.

The Government said at Second Reading that they would carefully monitor and review the use of unexplained wealth orders once they are introduced. Is it not the Government’s intention to do that in respect of all the new and enhanced offences and powers in the Bill, not least in relation to the resources available? Is it not the Government’s intention to do it in a way that ensures Parliament is directly involved? That is the purpose of this amendment, which requires a one-off report from the Secretary of State to Parliament on the implementation of the Act covering the issues of additional resources provided and required, based on experience of seeking to implement the provisions of the Act—rather than, as now, on conjecture—the training of staff and the extent to which the enforcement authorities have used the powers provided in the Bill. I beg to move the amendment and await the Government’s response.

Lord Hodgson of Astley Abbotts (Con): My Lords, the noble Lord, Lord Rosser, is talking about post-legislative scrutiny but think that the amendment has some serious weaknesses. Essentially, it is a list of requests, in the sense that proposed new subsection (2)(a), (b) and (c) asks for additional resources and training. When you tie that in with the list of enforcement authorities overleaf in proposed new subsection (3)(a) to (e), there are some extremely serious and bulky authorities there that could come up with a pretty large list of what they might want. While I entirely support what is said in proposed new subsection (2)(d)—“to what extent enforcement authorities have used the powers provided”, which is an extremely good point to inquire about—nowhere does the report require any assessment of what has been achieved. It seems to me that the critical aspect of the Bill is what is achieved. I worry that what we have here is a shopping list for more resources but without any need to justify the money that has been spent or to what extent it has proved effective in various ways; for example, by inhibiting crime or by seizing drugs or other forms of assets.

Finally, 18 months would be a very short time in which to make this sort of assessment. By the time this begins to build as an organisation, it will be longer than that. We are in danger of taking a snapshot in which we get only half the picture—that is the asking half and not the delivery half—and of looking at it before it is fully fledged and developed. I hope that my noble friend will resist this amendment, in this form at least.

Baroness Williams of Trafford: My Lords, I thank the noble Lord, Lord Rosser, and my noble friend Lord Hodgson of Astley Abbotts for speaking to the amendment. As with all powers introduced in legislation, it is crucial that the necessary resources are available to law enforcement and prosecution agencies so that they are used effectively. As he mentioned, ARIS is essential to this work. Under this scheme, half of all assets recovered go back to the law enforcement and prosecution agencies involved. Put simply, the more they recover, the more they get back. I am pleased to say that £764 million has been raised since 2006, and over £257 million in the last three years has been invested in law enforcement agencies under this scheme. The new powers will ensure that there are even more efficient ways of recovering assets and that they will be
cheaper. Indeed, senior law enforcement officers gave evidence to the Commons Public Bill Committee that the powers will help agencies achieve more with the resources that they have. We have not downplayed the estimates in the impact assessment. These are provided subject to all the standard guidance based on input from law enforcement, the banks and others.

In addition, the Home Office share of ARIS is invested in front-line capabilities, including the regional organised crime units, which have received over £100 million in direct funding from the Home Office since 2013-14. Further to this, £5 million has been set aside from ARIS every year until the end of this Parliament to fund key national asset recovery capabilities, and we are fulfilling a manifesto commitment to return a greater percentage of recovered assets back to policing by investing all the Home Office share of the scheme’s money—above a certain baseline—in the multiagency regional asset recovery teams.

All the agencies listed in this amendment already report on their resources and results through departmental annual accounts and reports. As my noble friend said, this is about what they have achieved. They are subject to examination by the National Audit Office and Public Accounts Committee. The Criminal Finances Board, which is co-chaired by the Security Minister and the Economic Secretary to the Treasury, closely monitors resourcing, performance and support mechanisms such as training, to ensure that agencies are achieving results with the powers that Parliament imparts to them.

Finally, the Government have protected the NCA’s budget. In addition, new capital investment of over £200 million will be available over the period 2016 to 2020, to transform the NCA into a world-leading law enforcement agency, with new digital and investigative capabilities to tackle cybercrime, child exploitation and the distribution of criminal finances. The noble Lord, Lord Rosser, asked how many UWOs would be used and why so few were predicted. I said before—and the noble Lord said—that it was a conservative estimate, but we will encourage their use from day one. We are already actively engaging with law enforcement and prosecutors to encourage the use of all the new powers being introduced by the Bill. I hope with those words that the noble Lord is satisfied with my response. I know that we will keep an eye on this in the future but, for now, I hope that he will feel happy to withdraw his amendment.

Lord Rosser: I thank the Minister for her response and the noble Lord, Lord Hodgson of Astley Abbotts, for his contribution. The noble Lord’s main criticism of the amendment—not the only one—was that it did not provide for the authorities mentioned to say what they had achieved. I would have thought it was for the Government to say what they expected the agencies concerned to achieve in the light of the provisions of the Bill and the new offences and enhanced powers that they were giving the agencies. As yet, however, I have not heard anything from the Government about what they expect the agencies to achieve as a result of the Bill. There is some difficulty in requiring the agencies to report when the Government have not set them any targets that they are meant to attain. I do not know whether it is the Government’s intention to tell noble Lords at some stage what they think the agencies should be able to achieve in respect, for example, of a reduction in money laundering or the number of people who are arrested as a result of carrying it out. What do they expect the agencies to achieve in relation to the additional powers in the Bill? I do not know if this is something on which the Minister is prepared to write and tell me. What are the goals that the Government think these additional powers, and the resources that they say they are going to put in, will be achieved by the agencies? That is what is missing.

We have been having debates about the new powers and the noble Baroness has reminded us of the amount of money that has been provided so far, but what we are not getting is what the Government think the Bill will achieve to improve the situation. Is the Minister, either now or at some stage in the future, able to give me any idea of what the Government are expecting as a result of the new and enhanced powers in the Bill?

Baroness Williams of Trafford: My Lords, as the noble Lord will know, the Government have not been fixated on targets, but we most certainly will have expectations of what can be achieved and they will be laid out in due course.

Lord Rosser: How will they be laid out? Are they to be set out in regulations or will the Government be making a Statement?

Baroness Williams of Trafford: I would guess that they will be laid out in regulations and they will be revealed in due course.

Lord Rosser: We await the regulations with interest.

Baroness Williams of Trafford: Perhaps I may intervene once more. I will confirm in writing to the noble Lord that they will be laid out in regulations. I do not want to make misleading statements at the Dispatch Box, but I can let him know in due course.

Lord Rosser: I would be happy for the noble Baroness to write to me, but whether the letter will set out what she has just said remains to be seen. However, I am happy for her to write to me on this issue; it would be very helpful. With that, I beg leave to withdraw the amendment.

Amendment 109 withdrawn.

Clauses 21 to 23 agreed.

Clause 24: Obstruction offence in relation to immigration officers

Amendment 110

Moved by Baroness Vere of Norbiton

110: Clause 24, page 78, line 43, leave out “6 months” and insert “1 month”
Baroness Vere of Norbiton (Con): My Lords, this set of amendments makes a number of minor changes to the Proceeds of Crime Act 2002 so that the powers in the Bill work as they were intended. As noble Lords will be aware, POCA is a complex piece of legislation and inevitably, as we have consulted further with key partners and parliamentary counsel, additional issues have arisen that require attention. Given their technical nature, I will not detain your Lordships for long, but I will highlight a few key points about these amendments.

They are primarily about ensuring consistency across the Bill. First, we are ensuring that penalties and fines mirror those already in POCA and elsewhere in statute. We will also provide that cash already being detained under terrorist forfeiture powers is not also liable for confiscation; this avoids double counting. These amendments will also extend existing powers for the courts in Scotland and Northern Ireland to order the payment of a criminal’s cash to settle an outstanding confiscation order. The Bill already provides for this in the English magistrates’ courts. We will provide that confiscation orders that have been discharged can be revisited if the criminal is found to have further assets. Finally, we are amending the Civil Jurisdiction and Judgments Act 1982 to allow for civil orders issued in one part of the UK to be recognised and enforced in another. I beg to move.

Amendment 110 agreed.

Clause 24, as amended, agreed.

9.15 pm

Clause 25: Seized money: England and Wales

Amendments 111 and 112

Moved by Baroness Williams of Trafford

111: Clause 25, page 79, line 36, leave out ”, subject to subsection (9).”

112: Clause 25, page 80, leave out lines 2 to 4

Amendments 111 and 112 agreed.

Clause 25, as amended, agreed.

Clause 26: Seized money: Northern Ireland

Amendments 113 to 115

Moved by Baroness Williams of Trafford

113: Clause 26, page 80, line 24, at end insert—

( ) In subsection (5)(a) as it has effect before and after its amendment by section 36 of the Serious Crime Act 2015, for “bank or building society” substitute “appropriate person”.

( ) In subsection (5A), at the beginning insert “Where this section applies to money which is held in an account maintained with a bank or building society.”

( ) In subsection (7A), after “applies” insert “by virtue of subsection (1)”.

Amendments 113 to 115 agreed.

Clause 26, as amended, agreed.

Clause 27: Seized money

Amendments 116 to 118

Moved by Baroness Williams of Trafford

116: Clause 27, page 81, line 12, leave out from “seized” to end of line 23 and insert “under a relevant seizure power by a constable or another person lawfully exercising the power, and

(b) is being detained in connection with a criminal investigation or prosecution or with an investigation of a kind mentioned in section 341.”

(3) But this section applies to money only so far as the money is free property.

117: Clause 27, page 81, line 37, after “applies” insert “by virtue of subsection (1)”

118: Clause 27, page 82, line 9, leave out from “person” to end of line 18 and insert “means—

(a) in a case where the money is held in an account maintained with a bank or building society, the bank or building society;

(b) in any other case, the person on whose authority the money is detained;”

Amendments 116 to 118 agreed.

Clause 27, as amended, agreed.

Clauses 28 to 30 agreed.
Amendment 119

Moved by Baroness Williams of Trafford

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

“Reconsideration of discharged orders

(1) The Proceeds of Crime Act 2002 is amended as follows.

(2) In section 24 (inadequacy of available amount: discharge of order made under Part 2), after subsection (5) insert—

“(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked.”

(3) In section 25 (small amount outstanding: discharge of order made under Part 2), after subsection (3) insert—

“(4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 21(1)(d) or 22(1)(c).

(5) Where on such an application the court determines that the order should be varied under section 21(7) or (as the case may be) 22(4), the court may provide that its discharge under this section is revoked.”

(4) In section 109 (inadequacy of available amount: discharge of order made under Part 3), after subsection (5) insert—

“(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 106(1)(d) or 107(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 106(6) or (as the case may be) 107(3), the court may provide that its discharge under this section is revoked.”

(5) In section 174 (inadequacy of available amount: discharge of order made under Part 4), after subsection (5) insert—

“(6) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 171(1)(d) or 172(1)(c).

(7) Where on such an application the court determines that the order should be varied under section 171(7) or (as the case may be) 172(4), the court may provide that its discharge under this section is revoked.”

(6) In section 175 (small amount outstanding: discharge of order made under Part 4), after subsection (3) insert—

“(4) The discharge of a confiscation order under this section does not prevent the making of an application in respect of the order under section 171(1)(d) or 172(1)(c).

(5) Where on such an application the court determines that the order should be varied under section 171(7) or (as the case may be) 172(4), the court may provide that its discharge under this section is revoked.”

(7) The amendments made by this section apply in relation to a confiscation order whether made before or after the day on which this section comes into force but do so only where the discharge of the order occurs after that day.”

Amendment 119 agreed.

Clause 31 agreed.
Amendments 128 and 129

Moved by Baroness Williams of Trafford

128: Clause 34, page 90, line 44, at end insert—
“( ) Subsection (1) applies whether or not the conditions in section 21CA were met in respect of
the disclosure if the person making the disclosure did so in the reasonable belief that the conditions
were met.”

129: Clause 34, page 91, line 1, leave out “by virtue of” and insert “in compliance, or intended compliance, with”

Amendments 128 and 129 agreed.

Clause 34, as amended, agreed.

Clause 35: Further information notices and orders

Amendments 130 to 137

Moved by Baroness Williams of Trafford

130: Clause 35, page 92, line 3, leave out from beginning to end of line 42 on page 94 and insert—
“Further information orders

22B Further information orders

(1) A magistrates’ court or (in Scotland) the sheriff
may, on an application made by a law enforcement
officer, make a further information order if satisfied
that either condition 1 or condition 2 is met.

(2) The application must—
(a) specify or describe the information sought under
the order, and
(b) specify the person from whom the information is
sought (“the respondent”).

(3) A further information order is an order requiring
the respondent to provide—
(a) the information specified or described in the
application for the order, or
(b) such other information as the court or sheriff
making the order thinks appropriate,
so far as the information is in the possession, or under
the control, of the respondent.

(4) Condition 1 for the making of a further
information order is met if—
(a) the information required to be given under the
order would relate to a matter arising from a
disclosure made under section 21A,
(b) the respondent is the person who made the
disclosure or is otherwise carrying on a business in
the regulated sector,
(c) the information is likely to be of substantial value to
the authority that made the external request in
determining any matter in connection with the
disclosure, and
(d) it is reasonable in all the circumstances for the
information to be provided.

(5) Condition 2 for the making of a further
information order is met if—
(a) the information required to be given under the
order would relate to a matter arising from a
disclosure made under a corresponding disclosure
requirement,
(b) an external request has been made to the National
Crime Agency for the provision of information in
connection with that disclosure,
(c) the respondent is carrying on a business in the
regulated sector,
(d) the information is likely to be of substantial value to
the authority that made the external request in
determining any matter in connection with the
disclosure, and
(e) it is reasonable in all the circumstances for the
information to be provided.

(6) For the purposes of subsection (5), “external
request” means a request made by an authority of a
foreign country which has responsibility in that
country for carrying out investigations into whether
a corresponding terrorist financing offence has
been committed.

(7) A further information order must specify—
(a) how the information required under the order is to
be provided, and
(b) the date by which it is to be provided.”

131: Clause 35, page 95, line 7, leave out from “who” to “may”
in line 8 and insert “is a constable, a National Crime Agency
officer or a counter-terrorism financial investigator”

132: Clause 35, page 95, line 10, at end insert—
“( ) Schedule 3A has effect for the purposes of this
section in determining what is a business in the
regulated sector.”

133: Clause 35, page 95, line 11, at end insert—
““corresponding disclosure requirement” means a
requirement imposed by virtue of this Part;
“corresponding terrorist financing offence” means an
offence under the law of the foreign country concerned
that would, if done in the United Kingdom, constitute
an offence upon any of sections 15 to 18;
“foreign country” means a country or territory outside
the United Kingdom;”

134: Clause 35, page 95, line 12, leave out from “officer” to
end and insert “means—
(a) a constable,
(b) a National Crime Agency officer authorised for the
purposes of this section by the Director General of
that Agency,
(c) a counter-terrorism financial investigator, or
(d) a procurator fiscal;”

135: Clause 35, page 95, leave out lines 19 to 27
136: Clause 35, page 95, line 29, leave out “a further information
notice, or”

137: Clause 35, page 96, line 27, leave out “a further information
notice, or”

Amendments 130 to 137 agreed.

Clause 35, as amended, agreed.

Clause 36: Forfeiture of terrorist cash

Amendments 138 to 140

Moved by Baroness Williams of Trafford

138: Clause 36, page 96, line 42, at end insert—
“( ) betting receipts;”
Clause 36, page 97, line 4, leave out from “machine” to end of line 5.

Clause 36, page 97, line 9, at end insert—

“( ) “betting receipt” means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

( ) In sub-paragraph (5)—

“bet”—

(a) in relation to England and Wales and Scotland, has the same meaning as in section 9(1) of the Gambling Act 2005;

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)) (see Article 2 of that Order);

“gaming machine”—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Gambling Act 2005 (see section 235 of that Act);

(b) in relation to Northern Ireland, has the same meaning as in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (see Article 2 of that Order).

( ) In the application of sub-paragraph (5) to Northern Ireland references to a right to be paid an amount are to be read as references to the right that would exist but for Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (gaming and wagering contracts void).”

Amendments 138 to 140 agreed.

Clause 36, as amended, agreed.

Clause 37 agreed.

Schedule 3: Forfeiture of certain personal (or moveable) property

Amendments 141 to 155

Moved by Baroness Williams of Trafford

Clause 36, page 132, line 3, at end insert—

“(2A) An order under sub-paragraph (2) made by a magistrates’ court may provide for payment under paragraph 10N of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Part of this Schedule.

(2B) A sum in respect of a relevant item of expenditure is not payable under paragraph 10N in pursuance of provision under sub-paragraph (2A) unless—

(a) the person who applied for the order under sub-paragraph (2) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(2C) For the purposes of sub-paragraph (2B)—

(a) a “relevant item of expenditure” is an item of expenditure to which regulations under section 286B of the Proceeds of Crime Act 2002 would apply if the order under sub-paragraph (2) had instead been a recovery order made under section 266 of that Act;

(b) an amount is “allowed” in respect of a relevant item of expenditure if it would have been allowed by those regulations;

(c) if the person who applied for the order under sub-paragraph (2) was an authorised officer, that person may not agree to the payment of a sum unless the person is a senior officer or is authorised to do so by a senior officer.”

(6) For the purposes of sub-paragraph (2C)(c), a “senior officer” means—

(a) in relation to an application made by a constable or a counter-terrorism financial investigator, a senior police officer;

(b) in relation to an application made by an officer of Revenue and Customs, such an officer of a rank designated by the Commissioners for Her Majesty’s Revenue and Customs as equivalent to that of a senior police officer;

(c) in relation to an application made by an immigration officer, such an officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer.

(7) In sub-paragraph (6), a “senior police officer” means a police officer of at least the rank of superintendent.”

Schedule 3, page 134, line 3, at end insert—

“(5A) An order under sub-paragraph (1) made by a magistrates’ court may provide for payment under sub-paragraph (8) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

(a) the proceedings in which the order is made, or

(b) any related proceedings under this Part of this Schedule.

(5B) A sum in respect of a relevant item of expenditure is not payable under sub-paragraph (8) in pursuance of provision under sub-paragraph (5A) unless—

(a) the person who applied for the order under sub-paragraph (1) agrees to its payment, or

(b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(5C) For the purposes of sub-paragraph (5B)—

(a) a “relevant item of expenditure” is an item of expenditure to which regulations under section 286B of the Proceeds of Crime Act 2002 would apply if the order under sub-paragraph (1) had instead been a recovery order made under section 266 of that Act;

(b) an amount is “allowed” in respect of a relevant item of expenditure if it would have been allowed by those regulations.”

Clause 36, page 134, line 13, leave out from first “of” to end of line 14 and insert “any provision of this paragraph only if the person is a senior officer or is authorised to do so by a senior officer.

“Senior officer” has the same meaning in this sub-paragraph as it has in paragraph 10G(2C)(c).”

Schedule 3, page 134, line 16, at end insert—
Clause 38 agreed.

Schedule 3, as amended, agreed.

Amendments 141 to 155 agreed.

Schedule 3, as amended, agreed.

Clause 38 agreed.

**Amendment 156**

Moved by Lord Empey

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

"(za) first, it must be applied in making any payment of legal expenses which, after giving effect to sub-paragraph (5B), are payable under this sub-paragraph in pursuance of provision under sub-paragraph (5A);"

146: Schedule 3, page 134, line 17, leave out “first” and insert “second”

147: Schedule 3, page 134, line 21, leave out “second” and insert “third”

148: Schedule 3, page 134, leave out lines 26 to 39

149: Schedule 3, page 135, line 15, at end insert—

"(3A) An order under sub-paragraph (3) made by the High Court may include provision of the type that may be included in an order under paragraph 10G(2) made by a magistrates’ court by virtue of paragraph 10G(2A)."

(3B) If provision is included in an order of the High Court by virtue of sub-paragraph (3A) of this paragraph, paragraph 10G(2B) and (2C) apply with the necessary modifications.

150: Schedule 3, page 136, line 32, at end insert—

"( ) Where an order under paragraph 101 is made by a magistrates’ court, any party to the proceedings for the order (including any party to the proceedings under paragraph 10G that preceded the making of the order) may appeal against a decision to include, or not to include, provision in the order under sub-paragraph (5A) of paragraph 10L.”

151: Schedule 3, page 136, line 33, leave out “sub-paragraph (1)” and insert “this paragraph”

152: Schedule 3, page 136, line 37, leave out “sub-paragraph (1)” and insert “this paragraph”

153: Schedule 3, page 137, line 42, at end insert—

"(aa) second, they must be applied in making any payment of legal expenses which, after giving effect to paragraph 10G(2B)(including as applied by paragraph 10J(3B)), are payable under this sub-paragraph in pursuance of provision under paragraph 10G(2A) or, as the case may be, 10J(3A);"

154: Schedule 3, page 137, line 43, leave out “second” and insert “third”

155: Schedule 3, page 138, line 1, leave out “third” and insert “fourth”

Amendments 141 to 155 agreed.

Schedule 3, as amended, agreed.

Clause 38 agreed.

**Lord Empey (UUP):** My Lords, Members may be familiar with this theme, to which I have returned on a number of occasions, including via a Private Member’s Bill. It follows the principle that persons who have been engaged in criminal activity, persons who have been engaged in activities contrary to human rights and persons who have been involved in terrorism and who have attacked this country consistently over a long period should not have access to their assets without the opportunity for victims of the activities of those individuals, organisations or, in this case, the state to have those assets forfeited to the extent of the injuries inflicted.

The position is very simple: for many years, the state of Libya supplied terrorists with material, primarily in the form of Semtex. It provided training and logistical support. It provided boatloads—literally—of weapons. It provided the arms, training and logistics for a terrorist organisation. Many persons in the United Kingdom were injured and suffered great loss as a direct result of that activity. If we are contemplating a Bill which has a section in it dealing with terrorism, that seems the perfect opportunity for Her Majesty’s Government to deal with this matter.

I know that the Minister will say, “Oh, but there’s a United Nations resolution, and there are resolutions of the European Union”—I am sure I could read out her reply blindfold. However, the United Kingdom is a permanent member of the Security Council. We are a member of the European Union. At this point in time, after years and years, we have not even asked our European partners or the United Nations for any variation whatever on the asset-freezing resolutions to take account of the humanitarian needs of our own citizens. Other countries—the United States, France, Germany and Italy—have all had compensation paid to their citizens as a result of terrorist activity. We are the glaring exception, despite the fact that more people have suffered in this country than in any other—there is no argument about that.
I have been writing to government since 2002. My first letter was to Tony Blair; it was replied to by Mike O’Brien, at that time in the Home Office. I have had letters from Prime Minister Cameron. We had letters from the noble Baroness, Lady Warsi, when she was at the Foreign Office, the noble Lord, Lord Howell of Guildford, and other Ministers in Administrations of all parties. The Minister may be aware that a group of us from all parties is pursuing this issue in both places. Even today, I know that efforts have been made by an all-party group of Back-Benchers in the other place to go to the Backbench Business Committee to see whether they can get support for a debate. I know that the honourable Member for Poplar and Limehouse, Jim Fitzpatrick, whose patch includes the site of the London Docklands bomb, is active in this and introduced a debate in Westminster Hall early last year.

There is a broad swathe of support for the measure in your Lordships’ House because it passed my Private Member’s Bill, the Asset Freezing (Compensation) Bill, last year. That has unfortunately been stalled for three solid months in a row using the procedural device of objecting in the other place. It is now scheduled to come up on 12 May but I have no doubt that it will be blocked again. The reason is that last summer we went to see Treasury and Foreign Office officials and we challenged them. I also went to the Northern Ireland Affairs Select Committee to hear evidence from former Foreign Secretary Jack Straw. That was very revealing. His reaction was, “These people were compensated”. That is technically true but they were compensated by the British taxpayer, not the people who perpetrated the acts or provided the material to attack them. That was a perverse position. It seems that there has been the most bizarre attitude over the last 15 to 20 years. Where would you get a situation in this day and age where another country would conduct a proxy war against you, injure your citizens, and you ignore it?

We happen to know that there are £9.5 billion of assets attributed to the Libyan regime headquartered in London. We should ask our colleagues in the United Nations and the European Union to see if we can even bother to lift a finger for nearly 20 years. I find that unacceptable. The Bill provides a vehicle whereby we can seriously address and right a great wrong. I beg to move.

Baroness Williams of Trafford: My Lords, I am grateful to the noble Lord for highlighting this issue. I pay tribute to his many years of work on counterterrorism matters. I am very pleased to be able to respond.

As we heard, Amendment 156 would impose a duty on the Treasury to prevent the release of assets of an individual that have been frozen under various legislative regimes by using “all action necessary”, including considering the use of a designation under the Terrorist Asset-Freezing etc. Act 2010. The Terrorism Act 2000, or TACT, already includes a number of criminal offences under Sections 15 to 18 for terrorist financing, including the use, possession or funding of assets in support of terrorist activity. Specifically, Section 23 of TACT provides for the forfeiture of money and/or property following a conviction for these and other terrorism offences. This means that assets can be frozen by way of a restraint order during the investigation and prosecution of such offences, and subsequently forfeited upon a successful conviction, ensuring that they are not available to terrorist organisations.

The element of the noble Lord’s amendment relating to compensation is also covered by paragraph 4A of Schedule 4 to TACT, which allows for the proceeds of the forfeiture of property to be paid as compensation to the victims of terrorism.

9.30 pm

Finally, the Bill is amending the Anti-terrorism, Crime and Security Act 2001 to allow for the freezing and subsequent forfeiture of funds held in bank accounts that are terrorist cash or property. A court may forfeit the funds in a frozen account if it is satisfied that this is or represents terrorist cash or property. There are therefore already a considerable number of powers available to the police in these situations.

The Government are also concerned that, as drafted, the amendment raises human rights implications. In particular, it does not make sufficient provision for due process for individuals to challenge the action taken by the Treasury, and the threshold for the Treasury taking such action may not be sufficiently robust when compared with the standard applied under the provisions of ATCSA and TAFA.

On this basis, I hope the noble Lord will see that his proposed approach is not the right one in this situation. I will take back his point about the European Union and what could be done to that end, and I will get back to him on that. I hope he will feel able to withdraw his amendment.

Lord Empey: I thank the Minister for her reply. She referred to a number of powers in the Bill. I am all for those but they do not deal with the specific issues that I am trying to get at, where a state, or a representative of a state, has assets in this city, on a massive scale, that are frozen because of the United Nations resolution, which was followed by a European Union agreement, which, incidentally, was revised substantially in January.
last year. We have not addressed those issues. I am grateful that the Minister is going to take that back but dare I use the phrase, “I haven’t gone away, you know”? In the event that the Minister is unable to satisfy me on this matter, I reserve the right to bring it back on Report. With that, I beg leave to withdraw the amendment.

Amendment 156 withdrawn.

Schedule 4 agreed.

Clause 39 agreed.

Clause 40: Offences in relation to counter-terrorism financial investigators

Amendment 157

Moved by Baroness Williams of Trafford

157: Clause 40, page 104, line 45, after “fine” insert “not exceeding level 3 on the standard scale”

Amendment 157 agreed.

Amendment 158

Moved by Baroness Vere of Norbiton

158: Clause 40, page 105, line 5, at end insert “or Part 1 of Schedule 5A (terrorist financing investigations in England and Wales and Northern Ireland: disclosure orders)”

Baroness Vere of Norbiton: My Lords, today’s final group of amendments also concerns Part 2 of the Bill on the financing of terrorist-related activity.

Government Amendment 158 will extend the existing assault and obstruction offences in respect of counterterrorism financial investigators—CTFIs—to include assault or obstructing CTFIs who are exercising powers in relation to the disclosure order power introduced in Clause 33. This power is comparable to ones in Schedule 5 to the Terrorism Act 2000.

Amendment 160 would insert provision into the Terrorism Act so that court orders made in one part of the UK for the purposes of or in connection with the investigation of terrorist financing can be enforced in another. This power is comparable to powers in Schedule 5 to the Terrorism Act 2000.

Amendment 160 inserts provisions into the Terrorism Act so that court orders made in one part of the UK for the purposes of, or in connection with, the investigation of terrorist financing can be enforced in another. This power is being provided to ensure that the new powers in this Bill—for example, disclosure orders and further information orders—can be enforced more effectively. We are also taking the opportunity to ensure that existing provisions in the Terrorism Act—for example, production orders—can be enforced in the same way. The power to enforce orders across UK borders is already available for equivalent orders made under the Proceeds of Crime Act. I beg to move.

Amendment 158 agreed.
(6) A statutory instrument containing an Order under this section is subject to annulment in pursuance of a resolution of either House of Parliament."

Amendment 160 agreed.

Clause 41 agreed.

House resumed.
House of Lords

Wednesday 29 March 2017

3 pm

Prayers—read by the Lord Bishop of Winchester.

Lord Speaker’s Statement

3.06 pm

The Lord Speaker (Lord Fowler): My Lords, I would like to make a short Statement about Parliament’s response to the tragic events of last Wednesday.

As would be normal after such events, we are seeking to make sure that any lessons are learned. We will do this through two reviews. First, Mr Speaker and I are commissioning an external independent review of how the perimeter of the Parliamentary Estate, including outbuildings, is secured and protected. We plan to produce a preliminary report by the end of April.

Secondly, at the same time, the Clerks of both Houses are commissioning an externally led review of the lessons learned from the operation inside Parliament of the incident management framework. This is to report by the end of June. All Members will shortly receive an invitation to contribute their views and their experiences of that day to aid these reviews.

Members will be aware that today marks exactly a week on from the shocking events of 22 March. Once again, we send our condolences and sympathies to all those affected. Our thoughts will be, in particular, with the Metropolitan Police as they mourn their colleague, PC Keith Palmer.

Elections and Referendums: Spending Rules

3.07 pm

As asked by Lord Rennard

To ask Her Majesty’s Government what assessment they have made of the case for reviewing legislation concerning spending rules in elections and referendums.

Lord Young of Cookham (Con): My Lords, we are considering carefully the conclusions and recommendations of a number of relevant reports on election and referendum spending, including the Electoral Commission’s reports on elections held in 2015 and 2016, and on the EU referendum. While investigations by the police and the Electoral Commission are ongoing, it would not be appropriate for the Government to come to any conclusions.

Lord Rennard (LD): My Lords, reports by the investigative journalist Michael Crick and by the Daily Mirror and others suggest that it was possible at the last general election for political parties to spend several hundred thousand pounds within individual constituencies in order to change the outcome of the election within those seats and avoid previously enforced legislation which prevented the purchasing of particular seats. The defence against this charge is that the law is ambiguous about what is local and what is national spending. If so, should not the law be changed to prevent abuse of the democratic process in this way?

Lord Young of Cookham: I am grateful to the noble Lord for the way he put that question. He will understand that I cannot respond to the particular instances that have now been referred to the police and prosecution authorities. The legislation—the Political Parties, Elections and Referendums Act—sought to make a distinction between national spending on the one hand and constituency spending on the other. As I said a few moments ago, I think it makes sense to wait until the investigations by the Electoral Commission and the police are completed. Then, of course, we should stand back and look at the legislation to see whether we need greater clarity for all political parties in interpreting how that distinction should be made.

Lord Hayward (Con): I welcome what my noble friend just said on this particular convoluted collection of legislation. The process of conducting elections has moved on dramatically over the last 20 years. In reality, the law in all its guises has been in need of reform throughout that period. May I also make a quick reference to the third Question on the Order Paper, and say that that may include treating?

Lord Young of Cookham: I am grateful to my noble friend. He is right to say that there are a number of reports—the report from Sir Eric Pickles on fraud in local elections, the report from my noble friend Lord Hodgson on third-party campaigning, and the interim report of the Law Commission—which have an impact on the legislation on elections. As I said a few moments ago, it makes sense to stand back, look at all the recommendations and, in consultation with the Electoral Commission and all the political parties, see how best to take this forward in order to restore public confidence in the democratic system.

Lord Kennedy of Southwark (Lab): Recently, during the consideration of the Bill of the noble Lord, Lord Tyler, the Minister told the House about the willingness of the Government to look at areas where agreement can be reached and incremental changes agreed. Can the Minister update us further in this regard, and will he look at involving those Members of the House who can bring valuable experience to those discussions?

Lord Young of Cookham: Again, I am grateful to the noble Lord, who took part in that debate on 10 March on the Private Member’s Bill of the noble Lord, Lord Tyler. At the end of that debate, I indicated that the Government were anxious to see if there was a consensus on some of the measures that might be brought forward. I indicated that the Minister for the Constitution, Chris Skidmore, was anxious to meet noble Lords who took part in that debate to see whether we can take incremental reforms forward on a cross-party basis.
Lord Tyler (LD): My Lords, again I thank the Minister for taking this initiative to make sure that these discussions do take place and then fulfil, of course, the promise in the 2015 Conservative manifesto. I remind him that during that debate on 10 March I made specific reference to some of the discrepancies in referendum election expenses, to which he referred just now, because of course those are not subject to the difficulties that might occur with those matters that are possibly going to go before the courts. He will have seen the report from the Electoral Commission yesterday, which has some very good recommendations for looking at some of these issues. Will he confirm that that could be part of the discussion that is due to take place shortly?

Lord Young of Cookham: The noble Lord is quite right to refer to the recent report on the referendum by the Electoral Commission, which recommended that some of the provisions made for the recent referendum should be incorporated into PPERA—the Political Parties, Elections and Referendums Act—and would cover all referendums. The report came out only yesterday. He will understand that consideration is at an early stage. But it is perfectly possible to take those recommendations forward on a separate track.

Lord Tebbit (Con): Will it be possible at some time in one or other of these inquiries to look at the scale of the spending of public money by the BBC and the gross bias which has been evident to anybody who has listened to its programmes?

Lord Young of Cookham: I take this opportunity to wish my noble friend many happy returns of the day. The issue he raised falls outside my remit. I think we are debating the BBC later today and it may be that with this advance notice, my noble friend Lord Ashton may be able to provide more details on the specific question that has been raised.

Lord Lexden (Con): Does my noble friend feel that enough is being done in schools to familiarise our young people with the full range of electoral issues, particularly in the light of the Institute for Digital Democracy’s recent recommendation that political education might become compulsory?

Lord Young of Cookham: It is important that those of us in public life, whether Members of this House or the other House, take the initiative in visiting schools, colleges and universities in order to encourage people to take an interest in public life and joining our democratic system, and explaining some of the parameters. I know that down the other end Mr Speaker has taken a number of initiatives to bring more schoolchildren in to the Palace of Westminster to expose them to the political process. I think everyone in this and the other House has a role to play in encouraging the next generation to take part in the democratic process.

The Earl of Sandwich (CB): My Lords, while we are on referendums, does the Minister agree that a large number of the public were surprised that a decision of such constitutional importance was taken by a simple majority? Is there no precedent in Parliament for it to be altered through legislation?

Lord Young of Cookham: The noble Earl may remember that during the passage of the relevant legislation amendments were tabled to secure certain thresholds in turnout and majorities, and I think those amendments were defeated after a debate.

### Channel 4 Question

3.15 pm

Asked by Baroness Bonham-Carter of Yarnbury

To ask Her Majesty’s Government when the Department for Culture, Media and Sport will announce its conclusions on the future status of Channel 4.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, moving seamlessly from the BBC to Channel 4, I congratulate the noble Baroness on the timing of her Question. The Government want Channel 4 to have a strong and secure future. As a result, the Secretary of State has announced this afternoon that Channel 4 will remain in public ownership and that the Government will launch a consultation to look at how the channel can increase its impact in the regions outside London. This consultation will seek the broadest range of views so that we can open a new chapter of success for Channel 4 as a publicly owned public service broadcaster making a greater contribution to the country as a whole.

Baroness Bonham-Carter of Yarnbury (LD): I thank the Minister and the Secretary of State for responding to my Question. I congratulate the Government on rejecting privatisation. As the Minister said, the Government are now launching a consultation on how Channel 4 can increase its regional impact, which we also welcome. In looking at the suggestion that the channel’s headquarters should be moved outside London, does the Minister not agree that Channel 4 is a publisher, not a programme maker, that what is important is that production takes place outside London by companies from outside London and that the expense of moving those who commission programmes would potentially take money away from what is most important: namely, the making of programmes in the regions by the regions?

Lord Ashton of Hyde: My Lords, I do not accept that. We are having a consultation to look at exactly these questions. At the moment, Channel 4 is required to commission 35% of new programmes on its main channel from outside London. It spends about twice as much on programmes made in London as on those made in the rest of the UK combined—so there is something well worth consulting on there.

Lord Stevenson of Balmacara (Lab): My Lords, we welcome very much the announcement that Channel 4 is not to be privatised. Can the Minister confirm that this matter is now resolved beyond peradventure?
However, the decision to carry out a further review of Channel 4’s regional focus and, I gather, its funding models casts a long shadow. How precisely does this second review—carried out by Ministers, I understand—square with the statutory independence of the Channel 4 board, guaranteed by an Act of Parliament originally passed by a Conservative Government?

Lord Ashton of Hyde: My Lords, the statutory requirements do not mention where, for example, the headquarters is. We want to make sure that Channel 4, as a public service broadcaster with the taxpayer as lender of last resort, is able to contribute around the country. At the moment, we think that there is a case to answer there. Of course, having a consultation means that we will be able to take all views, and no doubt the noble Lord will be able to contribute to it.

Viscount Colville of Culross (CB): My Lords, I declare an interest, having just made two Channel 4 programmes. I welcome the announcement that Channel 4 will not be privatised. Are the Government looking at other options, such as the sale of a minority stake in Channel 4 to a strategic partner?

Lord Ashton of Hyde: No. At the moment the Government are not looking at that. They have made their decision clear; the current ownership will stay the same. There is a prospect of looking at a potential increase in the share of any independent production company that Channel 4 can own. It is currently limited to 25%.

Lord Hamilton of Epsom (Con): My Lords, would not the independence of Channel 4 have been much more guaranteed if it had been privatised?

Lord Ashton of Hyde: My Lords, I do not agree with that.

The Lord Bishop of Southwark: Does the Minister agree that the United Kingdom has benefited enormously from publicly owned broadcasting and that this benefit is too little acknowledged in public discourse?

Lord Ashton of Hyde: My Lords, I agree that public service broadcasting has benefited this country. When we see that Channel 4’s remit states that it is required to produce:

“High-quality and distinctive programming … innovation, experimentation and creativity”,

and provide,

“alternative views and new perspectives”.

in order to:

“Appeal to the tastes and interests of a culturally diverse society”,

we can see why that is the case.

Baroness McIntosh of Hudnall (Lab): My Lords, taking the Minister back to the question asked by the noble Baroness, Lady Bonham-Carter, does he not take the point that Channel 4’s headquarters is a publishing house—it does the commissioning, not the producing—and that to move that particular unit out of town would be very expensive and have no particular benefit to the region to which it went? The important thing, if there is gain to be made, is to concentrate on the production facilities being spread more evenly around the country and programmes being produced there.

Lord Ashton of Hyde: I absolutely take that point. In terms of expense, of course, having a big headquarters in London has a value all of its own—although that is not the point. That is why we are consulting on exactly these issues.

Baroness Brinton (LD): My Lords, the Minister has already talked about the public sector broadcasting role of Channel 4, with its high-quality and distinctive output. He also mentioned diversity. Last year, in its year of the disabled, in addition to the Paralympics and “The Last Leg”, Channel 4 doubled the number of disabled people appearing on screen and ring-fenced more than 50% of its apprenticeships for young disabled people. Can the Minister assure the House that any future steps to move or relocate any of the business will not get in the way of its very important role in highlighting the role of disabled people and in ensuring that they get access to work in the media?

Lord Ashton of Hyde: Of course, I completely agree with the importance of that—and when we have the consultation, it will be one of the things that can be taken into account. Channel 4, along with other public service broadcasters, has a responsibility to look at diversity and take it very seriously.

Lord Holmes of Richmond (Con): My Lords, will my noble friend agree that, in essence, the mission of Channel 4 is pretty clear: optimisation of revenue to deliver on a very clear remit? To this end, anything which seeks to maximise that should be considered; anything which would detract from it should not be considered. Perhaps the best example of the channel doing something which probably no other channel in the United Kingdom could do was the 2012 and 2016 Paralympic Games coverage. In asking this question, I declare my interests as set out in the register.

Lord Ashton of Hyde: My Lords, I do not completely agree that its object is to maximise revenue. As a public service broadcaster that is commercially funded, mainly at the moment by advertising, of course it has to stand on its own two feet, with the Government as the lender of last resort. However, I absolutely endorse my noble friend’s words on its excellent job as far as the Paralympic Games are concerned.

Electoral Fraud

Question

3.23 pm

Tabled by Lord Greaves

To ask Her Majesty’s Government what steps they are taking to prevent electoral fraud in the local elections on 4 May.
Baroness Pinnock (LD): My Lords, on behalf of my noble friend Lord Greaves, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

Lord Young of Cookham (Con): My Lords, the Government will continue to provide support to returning officers, who have responsibility for ensuring the integrity of 2017 polls, with a view to preventing electoral fraud. This support has previously included providing funding to the 17 authorities most at risk of fraud allegations to develop best practice that can be applied at subsequent elections. We will work closely with our partners to support the successful conduct of 2017 polls, to ensure a secure democracy.

Baroness Pinnock: I thank the Minister for his response. Would he agree that postal-vote harvesting and fraud are the most serious threats to the integrity of the ballot? What steps are the Government intending to take to ensure that postal votes are completed by the individual in whose name they are acquired and not organised and collected by families and political activists?

Lord Young of Cookham: I am grateful to the noble Baroness for her question. On her final point, there is already guidance stating that postal votes should not be harvested by campaigners or activists. We are considering whether we should introduce a ban on handling of postal votes by specified people or groups, which would tackle the inappropriate conduct that she referred to.

The Pickles review considered postal voting and came up with a number of recommendations, one of which is that the offence prescribed for when people vote in person—namely, that it should be in secret and there should be no undue influence—should also be applied to people who vote by post, which it does not at the moment. We are considering how that might best be done. There were other recommendations about postal voting, one of which was that it should not last for ever: it should be renewed every three years. We understand the concern and a number of measures are in train to address it.

Lord Kennedy of Southwark (Lab): My Lords, what discussions have taken place between the parties, the Electoral Commission and the police in the 18 areas identified by the review carried out by Sir Eric Pickles with regard to the measures that should be in place for the local elections where those specified areas have local elections this May, prior to the ID pilot scheme coming into force in May 2018?

Lord Young of Cookham: I am grateful to the noble Lord for that question. The Electoral Commission is concentrating resources on those local authorities where there is seen to be an undue risk of fraud. It is in touch with the single point of contact, which is a police contact in that area, to ensure that it has all the necessary information and, where appropriate, it holds additional training courses. Resources are being applied to the 18 areas identified as at risk by the Electoral Commission to minimise the risk of fraud.

Baroness Chisholm of Owlpen (Con): My Lords, when I was standing where my noble friend is now standing—he is doing such a fantastic job—I remember talking about pilot schemes that we planned, which I feel would help us decide the way to go. Can he reassure me that they will still take place?

Lord Young of Cookham: My noble friend is much missed at the Dispatch Box when questions are asked about electoral matters. We plan to go ahead in 2018 with a number of pilots to test voter identification. This is a recommendation made several times by the Electoral Commission: that when you vote, there should be some evidence that you are you say you are. We plan to pilot that next year and hope that some of the local authorities which have been identified as being at risk will apply to be part of that pilot.

Baroness Lane-Fox of Soho (CB): My Lords, is the Minister aware of the work that Estonia has done with the two-step verification process, which it has used with electronic and online voting, dramatically reducing fraud? Someone has to show that they have voted but can also check that the vote is their vote—it is an unusual system. With a population of just 3 million, it seems to me that this would be an effective pilot system, similar to use in a local election?

Lord Young of Cookham: I am grateful to the noble Baroness. I am not familiar with the electoral system in Estonia. When we pilot a number of projects next year, we will be looking at various means by which the voter can identify themselves at the polling station. This might be a bus pass, a bank card or an NUS card, but in order not to exclude those who do not have those forms of identification, we are also looking at non-photographic identification. I will see that the helpful information that the noble Baroness has given us about proceedings in Estonia is fed into the options.

Lord Blunkett (Lab): I wonder whether the excellent Minister will reflect on a practice which involves freepost by a political party, encouraging those who have signed a postal vote to send it back to the party’s local headquarters. Does he feel that that is totally inappropriate, as I believe it was in the 2015 general election, practised on behalf of the former Deputy Prime Minister?

Lord Young of Cookham: Without getting involved in Sheffield politics, it is certainly inappropriate for postal votes to be handled in that way. As I said in response to an earlier question, that practice is already discouraged in guidance from the Electoral Commission. There have been recommendations that it should be banned for precisely the reason that the noble Lord explained, and the Government are deciding how best to take that forward when legislative opportunities present themselves.

Lord Wallace of Saltaire (LD): My Lords, could the Government ensure that the police take sufficiently seriously examples of electoral malpractice during elections, both local and the 2015 general election? In Bradford, there were a number of allegations during
the last campaign across the parties about gatherings of young men outside polling stations and about party workers going into polling stations. The police did not follow these up as fully as perhaps they should have done. Can the Government make sure that the police are aware, for local as well as general elections, that these are serious offences?

**Lord Young of Cookham:** The noble Lord is quite right. This was one of the problems identified by Sir Eric Pickles in his review; he recommended that there should be a sort of cordon sanitaire around polling stations to prevent the intimidation to which the noble Lord refers. My understanding is that the Electoral Commission has taken that recommendation forward in guidance to stop intimidation in polling stations to prevent the intimidation to which the noble Lord has given.

**Lord Campbell-Savours (Lab):** My Lords—

**Lord Pearson of Rannoch (UKIP):** My Lords—

**The Minister of State, Ministry of Defence (Earl Howe) (Con):** My Lords, it is the turn of the noble Lord, Lord Pearson.

**Lord Pearson of Rannoch:** My Lords, does the Minister agree that our first past the post system in local and national elections ensures that their results are democratically fraudulent?

**Lord Young of Cookham:** We do not have first past the post in many local elections. If the noble Lord is familiar with the election of the Mayor of London, for example, he will recognise that there are alternative systems—and likewise for some of the other elections. As for moving away from first past the post, it has been discussed several times, certainly down the other end. Indeed, I think that we had a referendum on the matter, and the country decided that it wanted to remain with first past the post.

**Divorce Legislation**

**Question**

3.31 pm

_Tabled by Lord Marks of Henley-on-Thames_

To ask Her Majesty’s Government what plans they have to review divorce legislation.

**Baroness Burt of Solihull (LD):** My Lords, on behalf of my noble friend Lord Marks of Henley-on-Thames, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

**Baroness Buscombe (Con):** My Lords, the Government are considering what further reform may be needed to the family justice system so that it better meets the needs of separating couples and families and can achieve the best possible outcomes for them. Options for reviewing divorce law are part of that broader consideration. We will publish a Green Paper with our proposals on family justice in due course.

**Baroness Burt of Solihull:** I am very grateful to the Minister for that Answer. She will have seen reports over the weekend of a woman being denied a divorce despite there being no prospect of or desire for reconciliation. The judge had no choice in this matter because the law does not allow for no-fault divorce. Is it not high time to change this outdated law, which can trap men and women in unhappy marriages against their will?

**Baroness Buscombe:** My Lords, I do not wish to discuss individual cases. Suffice it to say that the case of Owens, to which I think the noble Baroness refers, is just one of 2% of divorces in which one spouse opposes the divorce petition of the other. It is a high-profile case in the Court of Appeal and not representative of the 98% of divorces decided in the family court every day without the need for any hearing involving the parties. Indeed, in the vast majority of divorce petitions, the evidence put forward by the petitioner will be accepted by the court as sufficient to demonstrate the irretrievable breakdown of the marriage. The debate about removing fault from divorce is long standing, and the Government acknowledge the calls for reform and will consider them alongside other potential family justice reforms.

**Lord Beecham (Lab):** My Lords, in House judgment in the Court of Appeal case, Sir James Munby, the President of the Family Division, said that, “the law which the judges have to apply and the procedures which they have to follow are based on hypocrisy and lack of intellectual honesty”.

That is a damning criticism of the present system. Would the Minister confirm that it really is time to recognise that five years of separation is too long a period to be made a minimum before a no-fault decree can be pronounced? Will the Government consider a shorter period—perhaps two years, although there may obviously be different choices—and, when there are children under age, the possibility of a slightly longer period and a requirement for mediation?

**Baroness Buscombe:** My Lords, it is fair to say that the timing that the noble Lord has referred to is just part of a review of the overall justice system that has been undertaken by my colleague Sir Oliver Heald QC MP in another place. Any proposal for legislative change to remove fault from divorce would have to be considered as part of this wider review. We feel strongly that it would not make sense to take forward one aspect of law reform in isolation without consideration of its fit within the family justice system. Divorce can be a life-changing event for many people and has consequences for people’s financial arrangements and for any children that they have, as the noble Lord referred to. It is important that the Government consider any proposals in the context of how the family justice system supports people to reduce conflict, resolve their disputes and reach agreement.

**Lord Harries of Pentregarth (CB):** My Lords, when the noble and learned Lord, Lord Mackay of Clashfern, was Lord Chancellor, he brought forward a divorce law that had no-fault as its basis and would certainly
[Lord Harrles of Pentregarth] have met the needs of the present couple. For some reason, a subsequent Government did not enact that. Would the Government look again at the legislation they previously brought forward, which was supported by both Houses of Parliament?

Baroness Buscombe: I thank the noble and right reverend Lord for his reference to the proposal that was brought forward by my noble and learned friend Lord Mackay of Clashfern. As he said, that change in the law did not come to fruition. The Government are considering potential reforms to divorce law and at this stage have not reached any conclusions. We acknowledge, however, that some people will not wish to divorce without being able to cite a fault, particularly if their faith requires them to do so. The Government are committed to improving the family justice system and to making the courts more efficient. Current divorce law has been in operation for over 40 years and past attempts at reform have not been without difficulty. Indeed, in the recent case, the case of Dodds v Dodds was cited—I think it was one of the first cases I had to consider as a law student—which dated from 1906 and talked about the law being full of anomalies, injustices, inequalities and some absurdities. The truth is, we need to consider all these aspects with care.

Lord Kirkhope of Harrogate (Con): My Lords, I refer to my entry in the register as a lawyer. I was a little surprised today and looked twice at this topical Question; I thought it might even have been answered by my noble friend Lord Bridges of Headley but, luckily, it is on another theme—an important theme in terms of divorce. I have often said that, even with the best intentions, divorces very rarely end in an amicable manner. Can the Minister confirm that, in any reforms and any review that takes place, there will be a full understanding of the complexity of relationships; an intention to make sure that as much flexibility as possible remains in our court system in settling matters between parties in divorce cases; and, in particular, the interests of children will always be looked to as a priority?

Baroness Buscombe: I thank my noble friend for his question. He is absolutely right: children should be at the heart of any reforms. Clarity and predictability must be balanced with the need for flexibility—with the possibility that flexibility in these circumstances, when reconsidering the whole issue of the family justice system, can sometimes bring fairness that certainly precludes.

Brexit: Triggering Article 50
Statement

3.38 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

“Mr Speaker, today the Government act on the democratic will of the British people and act, too, on the clear and convincing position of this House. A few minutes ago in Brussels, the United Kingdom’s Permanent Representative to the EU handed a letter to the President of the European Council on my behalf, confirming the Government’s decision to invoke Article 50 of the Treaty on European Union.

The Article 50 process is now under way and, in accordance with the wishes of the British people, the United Kingdom is leaving the European Union. This is an historic moment from which there can be no turning back. Britain is leaving the European Union. We are going to make our own decisions and our own laws. We are going to take control of the things that matter most to us. And we are going to take this opportunity to build a stronger, fairer Britain—a country that our children and grandchildren are proud to call home. That is our ambition and our opportunity. That is what this Government are determined to do.

At moments like these—great turning points in our national story—the choices we make define the character of our nation. We can choose to say the task ahead is too great. We can choose to turn our face to the past and believe that it cannot be done, or we can look forward with optimism and hope and to believe in the enduring power of the British spirit. I choose to believe in Britain and that our best days lie ahead, and I do so because I am confident that we have the vision and the plan to use this moment to build a better Britain, for leaving the European Union presents us with a unique opportunity. It is this generation’s chance to shape a brighter future for our country, a chance to step back and ask ourselves what kind of country we want to be. My answer is clear: I want this United Kingdom to emerge from this period of change stronger, fairer, more united and more outward looking than ever before.

I want us to be a secure, prosperous, tolerant country, a magnet for international talent and a home to the pioneers and innovators who will shape the world ahead. I want us to be a truly global Britain, the best friend and neighbour to our European partners but a country that reaches beyond the borders of Europe too, a country that goes out into the world to build relationships with old friends and new allies alike. That is why I have set out a clear and ambitious plan for the negotiations ahead. It is a plan for a new deep and special relationship between Britain and the European Union: a partnership of values, a partnership of interests, a partnership based on co-operation in areas such as security and economic affairs and a partnership that works in the best interests of the United Kingdom, the European Union and the wider world. But perhaps now more than ever, the world needs the liberal, democratic values of Europe, values that this United Kingdom shares. And that is why, while we are leaving the institutions of the European Union, we are not leaving Europe. We will remain a close friend and ally. We will be a committed partner. We will play our part to ensure that Europe is able to project its values and defend itself from security threats, and we will do all that we can to help the European Union prosper and succeed.
So in the letter that has been delivered to President Tusk today, copies of which I have placed in the Library of the House, I have been clear that the deep and special partnership we seek is in the best interests of the United Kingdom and of the European Union too. I have been clear that we will work constructively and in a spirit of sincere co-operation to bring this partnership into being, and I have been clear that we should seek to agree the terms of this future partnership alongside those of our withdrawal within the next two years. I am ambitious for Britain and the objectives I have set out for these negotiations remain. We will deliver certainty wherever possible so that business, the public sector and everyone else has as much clarity as we can provide as we move through the process. It is why, tomorrow, we will publish a White Paper confirming our plans to convert the acquis into British law, so that everyone will know where they stand, and it is why I have been clear that the Government will put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament before it comes into force.

We will take control of our own laws and bring an end to the jurisdiction of the European Court of Justice in Britain. Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast, and those laws will be interpreted by judges not in Luxembourg but in courts across this country. We will strengthen the union of the four nations that comprise our United Kingdom. We will negotiate as one United Kingdom, taking account of the specific interests of every nation and region of the UK.

When it comes to the powers that we will take back from Europe, we will consult fully on which powers should reside in Westminster and which should be passed on to the devolved Administrations. But no decisions currently taken by the devolved Administrations will be removed from them. It is the expectation of the Government that the devolved Administrations in Scotland, Wales and Northern Ireland will see a significant increase in their decision-making power as a result of this process.

We want to maintain the common travel area with the Republic of Ireland. There should be no return to the borders of the past. We will control immigration so that we continue to attract the brightest and best to work or study in Britain, but manage the process properly so that our immigration system serves the national interest. We will seek to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states as early as we can. This is set out very clearly in the letter as a priority for the talks ahead.

We will ensure that workers’ rights are fully protected and maintained. Indeed, under my leadership, not only will the Government protect the rights of workers but we will build on them. We will pursue a bold and ambitious free trade agreement with the European Union that allows for the freest possible trade in goods and services between Britain and the EU’s member states; that gives British companies the maximum freedom to trade with and operate within European markets; and that lets European business do the same in Britain. European leaders have said many times that we cannot cherry pick and remain members of the single market without accepting the four freedoms that are indivisible. We respect that position, and as accepting those freedoms is incompatible with the democratically expressed will of the British people, we will no longer be members of the single market.

We are going to make sure that we can strike trade agreements with countries from outside the European Union too. Because important though our trade with the EU is and will remain, it is clear that the UK needs to increase significantly its trade with the fastest-growing export markets in the world. We hope to continue to collaborate with our European partners in the areas of science, education, research and technology, so that the UK is one of the best places for science and innovation. We seek continued co-operation with our European partners in important areas such as crime, terrorism and foreign affairs. It is our aim to deliver a smooth and orderly Brexit, reaching an agreement about our future partnership by the time the two-year Article 50 process has concluded, then moving into a phased process of implementation in which Britain, the EU institutions and member states prepare for the new arrangements that will exist between us.

We understand that there will be consequences for the UK of leaving the EU. We know that we will lose influence over the rules that affect the European economy. We know that UK companies that trade with the EU will have to align with rules agreed by institutions of which we are no longer a part, just as we do in other overseas markets. We accept that. However, we approach these talks constructively, respectfully, and in a spirit of sincere co-operation. For it is in the interests of both the United Kingdom and the European Union that we should use this process to deliver our objectives in a fair and orderly manner. It is in the interests of both the United Kingdom and the European Union that there should be as little disruption as possible. And it is in the interests of both the United Kingdom and the European Union that Europe should remain strong, prosperous and capable of projecting its values in the world.

At a time when the growth of global trade is slowing and there are signs that protectionist instincts are on the rise in many parts of the world, Europe has a responsibility to stand up for free trade in the interests of all our citizens. With Europe’s security more fragile today than at any time since the end of the Cold War, weakening our co-operation and failing to stand up for European values would be a costly mistake. Our vote to leave the EU was no rejection of the values that we share as fellow Europeans. As a European country, we will continue to play our part in promoting and supporting these values, during the negotiations and once they are done.

We will continue to be reliable partners, willing allies and close friends. We want to continue to buy goods and services from members of the EU, and sell them ours. We want to trade with them as freely as possible, and work with one another to make sure we are all safer, more secure and more prosperous through continued friendship. Indeed, in an increasingly unstable world, we must continue to forge the closest possible
Baroness Evans of Bowes Park: Security co-operation to keep our people safe. We face the same global threats from terrorism and extremism—that message was only reinforced by the abhorrent attack on Westminster Bridge and this place last week—so there should be no reason why we should not agree a new deep and special partnership between the UK and the EU that works for all of us.

I know that this is a day of celebration for some and disappointment for others. The referendum last June was divisive at times. Not everyone shared the same point of view or voted in the same way. The arguments on both sides were passionate. But when I sit around the negotiating table in the months ahead, I will represent every person in the whole United Kingdom: young and old, rich and poor, city, town, country and all the villages and hamlets in between—and, yes, those EU nationals who have made this country their home. It is my fierce determination to get the right deal for every single person in this country.

For, as we face the opportunities ahead of us on this momentous journey, our shared values, interests and ambitions can, and must, bring us together. We all want to see a Britain that is stronger than it is today. We all want a country that is fairer than it is today. We all want a nation that is safe and secure for our children and grandchildren. We all want to live in a truly global Britain that gets out and builds relationships with old friends and new allies around the world. These are the ambitions of this Government’s plan for Britain—ambitions that unite us so that we are no longer defined by the vote we cast but by our determination to make a success of the result.

We are one great union of people and nations with a proud history and a bright future, and now that the decision to leave has been made and the process is under way, it is time to come together. For this great national moment requires a great national effort—an effort to shape a brighter future for Britain. So let us do so together. Let us come together and work together, and let us together choose to believe in Britain with optimism and hope. For if we do, we can together make the most of the opportunities ahead. We can together make a success of this moment, and we can together build a stronger, fairer, better Britain—a Britain our children and grandchildren are proud to call home. I commend this Statement to the House”.

3.52 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Statement. It is now over nine months since the result of the referendum was announced and the Prime Minister has sent the letter that starts the process of our withdrawal from the European Union after a relationship of over 40 years. Just like any other divorce, there will be some who rejoice and look forward to new opportunities, but others will despair over the shared past and lost love. A few will fondly recall the marriage, divorces and remarriage of Richard Burton and Elizabeth Taylor with some hope, but, through it all, the only people to get rich were those trying to unravel those 40-plus years of relative harmony—the lawyers.

Through it all there will be one common emotion—uncertainty about the future, because the Prime Minister herself has to concede that no one can yet know what the final deal or arrangements will look like. So we now have to focus on what comes next, and what comes next is complex. While some fear for the worst, we will all work for the best. As I have said previously, the debates and negotiations cannot be left to those who have no doubt. We have to engage the talent, experience and wisdom of our whole nation together in the national interest.

Today’s letter specifies our negotiating position with the European Union. The Labour Party has set out six tests by which the Government will be judged on the final deal. They include migration, national security and crime, employment and social rights, and the need to support all regions and nations in the UK as we develop our future relationship with the remaining 27 countries in the EU. The sixth test is the Government’s own, as set out by David Davis to the House of Commons on 24 January: that on trade, the Government’s aim is to deliver,

“a comprehensive free trade agreement and a comprehensive customs agreement that will deliver the exact same benefits as we have”.—[Official Report, Commons, 24/1/17; col. 169.]

That is a pretty high bar, but it is a bar set by the Government and one that the Government will be held accountable to.

Today, I set one further test for the Government. It is not controversial and I hope that it will be willingly accepted by the Government and the noble Baroness the Leader of the House. The seventh test is the one that will set the tone for the debate, the negotiations and the mood of the nation in accepting and understanding the outcome. This test is the test of complete honesty. As the Prime Minister and her team enter into the negotiations, there will be good days and there will be difficult days; there will be days when everything seems possible and days when nothing goes right. The Prime Minister has, on many occasions, been clear about her confidence that she can and will negotiate a good deal in the interests of the UK. But there are others who are confident that any deal, or even no deal, is better than where we are now. We totally reject that. This process must not be so ideologically driven that the Government accept anything and claim it is a good deal. That is where honesty comes in. If the Prime Minister is disappointed or dissatisfied with the negotiations or the outcome of agreements, she must in the national interest be prepared to say so. If there is to be a truly meaningful vote at the end of this process, it has to be undertaken with the certainty that Parliament has the information needed to make an informed decision in the best interests of this country.

I want to raise some specifics on the Statement and the letter. On the devolved Administrations, despite the Prime Minister’s warm words that she intends to strengthen the four nations of the UK, I have to say that that is not how it feels at the moment. I have three questions on the significant increase in the decision-making powers of the devolved Administrations. What discussions have there been so far? Can the noble Baroness give an assurance on the ongoing consultation, particularly
given the concerns already raised by the First Minister of Wales? Will any of these powers require primary legislation?

I am pleased that in her letter to President Tusk the Prime Minister specifically mentions Northern Ireland and the Northern Ireland border. It is right that she sets this as a priority, and I believe that the issue, if not yet the solution, is also understood by the remaining 27 European countries. However, the Prime Minister refers in the letter to it being the only land border with the UK. While that is technically correct, I remind her that we have a land border between the British Overseas Territory of Gibraltar and Spain. I appreciate that a trigger letter could never include all of our negotiating issues, but I was extremely disappointed at the omission of any reference to the people of Gibraltar and their concerns in either the Statement or the letter. The Prime Minister says that she will take into account the specific interests of every nation and region. Can the noble Baroness the Leader give this House an assurance that we will not abandon Gibraltar and that its interests will also be represented?

The commitment to seek an early agreement to guarantee the rights of EU nationals in the UK and our nationals in the remaining 27 countries is welcome. The noble Baroness will be aware of the disappointment of your Lordships' House that our amendment to include a guarantee in legislation was rejected by the Government and the other place. The Prime Minister confirms in her letter that making this part of the negotiations is complex. I hope, therefore, that given the support of your Lordships' House, the Government will accept the Motion in the name of my noble friend Lady Hayter, to be debated next week, that the Government should report back to Parliament before the end of this Session on progress.

I also welcome the assurance in the Statement of what the Government call the "phased process" of implementation of the new arrangements and agreements. I know that the Government do not like talking about transition and call it instead an implementation phase. I am equally happy with either. What is important here is that change is practical, workable and pragmatic and not ideologically driven towards the cliff-edge scenario. I welcome that and thank the noble Baroness and the Prime Minister for their assurances on that point.

On Euratom, I understand from the letter that the Government consider that we must come out as part of our EU exit, but given the importance of this issue, I would have liked to have seen a commitment to seeking early agreement for a new practical partnership.

I want to register concerns about the misleading language where the Prime Minister appears to connect trade and national security in her letter to President Tusk. On page 3 of the letter, she makes reference to, "a deep and special partnership between the UK and the EU, taking in both economic and security cooperation."

I wholeheartedly endorse that. She then rightly points out that:

"If, however, we leave the European Union without an agreement the default position is that we would have to trade on World Trade Organisation terms."

So far, that is clear. But the very next sentence states:

"In security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened."

Because it is unclear which agreement she is referring to, the letter to President Tusk appears to state that if we cannot reach an agreement on trade, this will have an impact on security agreements. I am grateful for the reassurance and clarity from Downing Street that that was not the intention, but given the complexity and sensitivities of the negotiations that we are about to start, it is essential that there is no misunderstanding at all or lack of clarity. I suggest that, for the avoidance of doubt, in future issues such as trade and security are never linked. They are both essential in their own right and a responsible agreement on one is not dependent on the other.

Tomorrow, we wait with some anticipation the White Paper on repealing the 1972 legislation and enshrining EU legislation, in which we played our part, into UK law. However, noble Lords will have seen the comments from some on the Government Benches about this being an opportunity for deregulation or cutting so-called red tape—in other words, doing away with protections and rights for UK citizens. I seek an assurance from the noble Baroness that this is not the part of the so-called great repeal Bill and that the Government will resist any attempts to bring in such changes by the back door, thus seeking to avoid proper parliamentary scrutiny. In that she will have our support.

Finally, I welcome both the tone of the Prime Minister's Statement and the emphasis that she has placed throughout on partnership. Only the most ideologically driven have ever suggested that this process will be easy or problem free. It will not; it will be difficult and complex. The tone of the Prime Minister's remarks about our place in Europe may help to ease that path, but it will be important that the Government commit to being open and transparent with Parliament and the country. As we move forward, transparency, openness, engagement and honesty will be expected and will be essential.

Next week, the other Motion that we will debate, in my name, seeks to establish a Joint Committee of both Houses to work together to establish the best way to ensure that Parliament has the best information possible and the best processes to have a meaningful vote on the final agreement. I urge the Government to support this because, as the Prime Minister makes clear, we must all work together in the national interest.

Lord Newby (LD): My Lords, today is for me and my colleagues an extremely sad day. It marks the point at which the UK seeks to distance itself from its nearest neighbours at a time when, in every area of public policy, logic suggests that we should be working more closely together rather than less.

But sadness is a passive emotion, and it is not the only thing that we feel. We feel a sense of anger that the Government are pursuing a brutal Brexit, which will rip us out of the single market and many other European networks from which we benefit so much. We believe that the country will be poorer, less secure and less influential as a result, and we feel that at every point, whether it be the calling of the referendum itself.
or the choices made on how to put its result into effect, the principal motivation in the minds of Ministers has been not what is best for the long-term interests of the country, but what is best for the short-term interests of the Conservative Party.

We do not believe that the Government have the faintest clue about how they are going to achieve the goals that they set out in their White Paper last month or the Prime Minister’s Statement today, and we have no confidence in their willingness to give Parliament a proper say either as the negotiations proceed or at their conclusion. We therefore believe that, at the end of the process, only the people should have the final say on whether any deal negotiated by the Government—or no deal—is preferable to ongoing EU membership. We will strain every sinew to ensure that outcome.

In her Statement today, the Prime Minister makes a number of rather extraordinary claims. She says that she is going to build on existing workers’ rights rather than diminish them. Can the Leader of the House give any knowledge of liberal democratic values, but can the Leader explain how far be it from me to claim any knowledge of liberal rather extraordinary claims. She says that she wants to be a committed partner of the single market membership, and that all subsequent polling shows overwhelming support for our continued membership, on what basis is she making that assertion?

She says that membership of the single market will be jettisoned because it would be incompatible with the expression of will of the British people. Given that this proposition was not on the ballot paper, that it is the opposite of what was said in the Conservative Party manifesto, that many leading Brexit supporters left open or actually supported the continuation of our single market membership, and that all subsequent polling shows overwhelming support for our continued membership, on what basis is she making that assertion?

She says that Europe has a responsibility to stand up for free trade. Does she not think that the EU will find that a bit rich, coming from this country at the point when we are leaving the single market and customs union?

She says that she wants to be a committed partner of the EU, but when we are walking away from the EU because of the belief that membership of it is damaging to the country’s interests, what can commitment mean other than a shrunken and grudging relationship?

Moreover, does the Leader of the House accept that when the Prime Minister says that when she sits round the negotiating table, she will represent every person in the UK, she is mistaken? She has chosen to promote an extreme version of Brexit and one which is completely at odds with her own views of less than a year ago. In doing so, she has chosen not to speak for the many millions who voted to remain in the EU and the single market, and she certainly does not represent them or me or my colleagues on these Benches.

The Prime Minister claims that Brexit will make us stronger, fairer and better, but it will not. The Government’s approach will make us poorer, less generous and diminished as a nation. It is perfectly legitimate for the country to go down such a route, but it did not do so on 23 June last year, and the people should have the final say on whether this is the fate they really want.

Baroness Evans of Bowes Park: I thank the noble Baroness and the noble Lord for their comments. On the noble Baroness’s first point, although the letter makes it clear that if we leave the EU without an agreement the default position would be that we have to trade on WTO terms, it also makes it clear that that is not an outcome that either side should seek. We want to work very hard to avoid that, and that is exactly what we will be doing.

I also reassure the noble Baroness that we will be working closely with all the devolved Administrations to deliver a Brexit that works for all parts of the UK. Part of that will mean working very carefully to ensure that as powers are repatriated from Brussels to the UK, the right powers are returned to Westminster and the right powers passed to the devolved Administrations. We will continue to work closely with our devolved colleagues.

On the noble Baroness’s points on Gibraltar, I understand that the reason why Gibraltar was not mentioned in the letter is that it is not part of the UK for the purposes of EU law. However, we are very clear that Gibraltar will of course be covered in our exit negotiations and will be fully involved. We have set up a new joint ministerial committee with the Gibraltar Government to ensure their full involvement. In fact, my noble friend Lady Goldie met the Chief Minister and had a very constructive, positive discussion. The Gibraltarians are very positive about their engagement with the UK Government so far. We will continue to ensure that we work closely with them.

The noble Baroness also mentioned the status of EU nationals, which we have discussed at length in this House. I repeat: securing an agreement to guarantee the status of EU nationals here and UK nationals in the EU is one of our top priorities. Indeed, it is set out explicitly in those terms in the letter. As Michel Barnier has said, this is also a priority for the Commission, so we will be doing all we can to ensure that we can provide the clarity that noble Lords have been asking for.

On security, I can absolutely confirm and reassure noble Lords that we are committed to ensuring that we continue working closely with our European partners on security, defence and foreign policy, as I said. We want a partnership where we can continue contributing to the security of Europe using our range of defence and security capabilities as well as our global standing, networks and influence, input into policy developments and information sharing. That remains of key importance to us.
The noble Lord and the noble Baroness referred to parliamentary scrutiny and involvement. Once again I reiterate that we have said there will be a Motion on the final agreement to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final agreement. We intend that Parliament’s vote will cover not only the withdrawal arrangements but the future relationship with the EU.

The noble Lord talked about leaving the single market. I will read from the letter:

“Since I became Prime Minister of the United Kingdom I have listened carefully to you, to my fellow EU Heads of Government and the Presidents of the European Commission and Parliament. That is why the United Kingdom does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no 'cherry-picking'.

We have also been very clear that we will protect workers’ rights. For instance, I point to the introduction of the national living wage, which has ensured an increase in income for some of our poorest paid.

4.13 pm

Baroness Quin (Lab): My Lords, the point has often been made in this House that people did not vote in the referendum to make themselves poorer. I believe that they also did not vote to break up the United Kingdom, threaten the peace process in Northern Ireland, or worsen the relations between Northern Ireland and the Republic of Ireland. If at the end of these negotiations it seems that there will be a choice between staying in the EU or breaking up the UK, will the Government think again and allow the people to think again?

Baroness Evans of Bowes Park: As the letter and the Statement make clear, from the start and throughout the discussions we will negotiate as one United Kingdom. Importantly, it is our expectation that the outcome of this process will significantly increase the decision-making power of each devolved Administration. We believe we will get the best deal for all parts of the UK and all parts of the UK will be involved in the negotiations.

The Lord Bishop of Winchester: My Lords, from these Benches we welcome the Prime Minister’s Statement, especially the intention of both sides to work together as a priority to solve the complex issues of EU and EEA nationals, not least the many students and academics in our universities. Indications from Michel Barnier earlier this week implied that the EU will negotiate in our universities. Indications from Michel Barnier, not least the many students and academics as a priority to solve the complex issues of EU and especially the intention of both sides to work together these Benches we welcome the Prime Minister’s Statement, and of the letter to President Tusk, in particular the reference to the very first principle of negotiation: that we should engage with one another constructively and respectfully in a spirit of sincere co-operation? In the same vein, and having regard to the fact that the triggering of Article 50 is unprecedented within the membership of the European Union, will Her Majesty’s Government undertake to sit down with the scrutiny committees in both Houses and with other representative parliamentarians and representative bodies to try to hammer out some middle-way approach to scrutiny which avoids, on the one hand, micromanagement or interference in the negotiating process, which I agree is inappropriate, but on the other hand does not simply leave us to comment semi-helplessly long after events have been set more or less in stone?

Baroness Evans of Bowes Park: I thank the noble Lord and once again pay tribute to the work of the Select Committees of this House, which have done an invaluable job already in investigating a number of very important issues and providing some very useful information. As the noble Lord will know, tomorrow we will produce the White Paper on the great repeal Bill, which will be the beginning of the discussion on the scrutiny of legislation going forward. I reiterate that key changes to policy will be brought forward in primary legislation, so this House will have the opportunity to be involved, but I know that my noble friend Lord Bridges and the Chief Whip have already been in touch with a number of committee chairs and will continue to have that discussion, as we will through the usual channels. I hope this House will accept that we have tried to be open; I know it has not always satisfied noble Lords, but we will do our best.

Lord Waldegrave of North Hill (Con): My Lords, may I join the noble Lord, Lord Boswell, in supporting the tone of the Prime Minister’s Statement? I draw my noble friend’s attention to the admirable article by my noble friend Lord Finkelstein in the Times today, which describes a successful negotiation as one in which both sides regard themselves as the winners. Does my noble friend agree that, in order to achieve such a negotiation, sometimes it will be necessary to ignore the advice of those who think that any element of disagreement means the end of the world, and of those who believe that any element of compromise or agreement will represent betrayal?

Baroness Evans of Bowes Park: My noble friend is right: these are going to be extremely complex negotiations, but we will approach them with the full intention of securing a deal that delivers the best possible outcome for the UK. Of course, as we enter negotiations, we will hear people saying—we have heard it already—’That is not workable; it is not achievable’. But we are confident that we can secure a good deal, and we will go in optimistically. As noble Lords have previously said, the European Council has stressed that it wishes to work constructively for us, so I think we are starting off on the right foot.
Lord Davies of Stamford (Lab): My Lords—

Lord Liddle (Lab): My Lords—

Baroness Ludford (LD): My Lords—

Lord Taylor of Holbeach (Con): I am sorry, my Lords, but we do have a custom of going round the House, and it is the turn of the Liberal Democrats.

Baroness Ludford: My Lords, the Statement repeats the mantra that we are going to “take back control”, but the Brexit Secretary, Mr Davis, expects the Government to use this control to continue with a large volume of EU migration. The Statement admits that the consequence of breaking the manifesto pledge to stay in the single market will mean UK companies having to abide by rules over which we have no influence. If we lose the right to the single market, including free movement for British citizens, at the price of less control and a series of betrayals, how is that a gain?

Baroness Evans of Bowes Park: I am afraid that I completely disagree with the noble Baroness, who I know approaches this subject with a pessimistic view. We have an optimistic view and I believe that we will prevail.

Lord Liddle: I welcome the tone of the Prime Minister’s letter to the President of the European Council. However, there are still key confusions on key issues in the Government’s position. David Davis, Secretary of State for Exiting the European Union, told us that this deep trade agreement or partnership would achieve exactly the same benefits as the single market. This morning, the Prime Minister talked about the best possible deal with the EU and access to the single market. Those things are very different indeed. Which is the policy? While I welcome the statement in the letter that we should work very hard to avoid no deal, the Foreign Secretary last week claimed that that would all be okay. What is the Government’s policy? Is it okay if we have a hard Brexit, or are the Government committed to avoiding that at all possible cost?

Baroness Evans of Bowes Park: We have been clear that we want the best possible deal with the EU and free and frictionless trade, and that we want a comprehensive and ambitious free trade agreement. The letter, of which I read out the relevant section, stated that if we did not come to an agreement, we would go to WTO terms on default, but it is not an outcome that either side should seek. We must therefore work hard to avoid it.

Lord Kerr of Kinlochard (CB): My Lords, while I admire the noble Baroness’s optimism, I do not entirely share it. I admire the conciliatory tone of the letter, but the country will judge the outcome of the negotiations by the words of those on the Government Front Bench. Before the referendum, Mr Davis told us that there would be no change at the Irish border. This year, Mr Brokenshire has told us that there will be a “frictionless” border, even though that will be the border of the EU’s customs union and it will be for the EU to decide the regime on it. Does the noble Baroness understand that, as this negotiation proceeds, the country will not forget what it was told, and Ministers will be judged by their own words?

Baroness Evans of Bowes Park: As I have said on many occasions, we are seeking an ambitious and comprehensive free trade agreement with the EU, which includes free-flowing trade in goods and services as part of a new, deep special relationship. We want Britain to have the greatest possible tariff-free and barrier-free trade with its European neighbours and to be able to negotiate its own trade agreements. There is a strong commitment between the UK Government, the Irish Government and the Northern Ireland Executive to make sure that we do not return to the borders of the past. I think that they are quite clear statements.

Lord Cormack (Con): My Lords, does my noble friend accept that while everyone who cares about the future of our country must wish the Prime Minister success, those of us for whom this is a sad day are concerned particularly about the future of the union of the United Kingdom? I urge my noble friend to speak to the Prime Minister and to draw her attention to what was said in this Chamber only yesterday: that she should give a degree of priority to the very delicate, fragile situation in Northern Ireland, because if the union begins to crumble there we could all live to regret it.

Baroness Evans of Bowes Park: First, we are absolutely committed to protecting and strengthening our union. I assure my noble friend that this Government take extremely seriously the issues in Northern Ireland and we are working with all parties concerned to try to ensure that we can come to a swift resolution. None of us wants to see that fantastic country go backwards. It has moved so far forwards over so many years.
the beef regime so important to Welsh agriculture that the Welsh Agricultural Minister can be part of the UK team in the same way as he and she have been in the past—on behalf of the UK but speaking as Welsh Ministers?

Baroness Evans of Bowes Park: I can reassure the noble Lord that we are working closely with the devolved Administrations. We have already taken forward technical discussions with both the Scottish and Welsh Governments on their proposals, in the White Papers they produced, to more fully understand and analyse their plans so as to get the best deal for Wales, Scotland, Northern Ireland and England. We will continue to do that and we will work closely with them because we are absolutely committed to achieving the best deal for all parts of the UK.

Lord Morris of Aberavon: My Lords—

Lord Maclellan of Rogart (LD): My Lords—

Lord Taylor of Holbeach: My Lords, it is the turn of the Lib Dems.

Lord Maclellan of Rogart: The European Union has brought an unprecedented 71 years of peace to western Europe. Have the Government given any thought to this historical reality?

Baroness Evans of Bowes Park: We certainly have. Indeed, when the noble Lord reads the letter sent to President Tusk he will see that that is explicitly recognised.

Lord Morris of Aberavon: My Lords, if the present Brussels responsibility for subjects such as agriculture is repatriated to it, will there be full financial recompense to Cardiff, Edinburgh and Belfast?

Baroness Evans of Bowes Park: My Lords, we are at the beginning of these negotiations. We said that we will devolve and expect further powers to be devolved. I cannot go into the outcomes of the negotiations but, as I said, we will look for the best deal for all parts of the UK. We will work closely with the devolved Administrations. I believe that we will come to a deal that works for all parts of the United Kingdom.

Lord Low of Dalston (CB): My Lords, the Statement makes much of the Government’s desire to represent the whole nation in their negotiating strategy. However, would the noble Baroness the Leader of the House not agree that although many things could be said about the Government’s Brexit strategy, the one thing that cannot be said is that it reflects the concerns of the whole nation? It certainly does not reflect the concerns of the 48%. It does not even reflect the concerns of the 52% now that the Secretary of State for Exiting the European Union has conceded that immigration cannot be expected to reduce consistently once we exit the EU.

Baroness Evans of Bowes Park: The Statement acknowledged the fact that for some people this is a day they have waited for but for many it is a day of great disappointment. The Statement also said that we need to bring the country together now and work for the best deal. We need to have an optimistic outlook for Britain because we are a great country and we can make a great success of our future.

Lord Davies of Stamford: My Lords—

Baroness Wheatcroft (Con): My Lords—

Lord Taylor of Holbeach: I apologise to the noble Lord but it is in fact the turn of the Conservative Benches so I think we will hear from my noble friend Lady Wheatcroft.

Baroness Wheatcroft: My Lords, the Prime Minister has made much of her intention to agree trade agreements around the world. Will my noble friend assure the House that Parliament will be able to scrutinise these deals before they are signed? After all, a bad deal may be worse than no deal.

Baroness Evans of Bowes Park: We have been very clear that we will be as transparent as we can, but we will not give away our negotiating hand.

Lord Davies of Stamford: The Statement mentions opportunities on several occasions but does not say what opportunities the Government have in mind. It just provides a string of vacuous adjectives and, in true PR style, mentions the word “together” about 15 times. Will the Leader concede that actually a very large number of opportunities are being destroyed—the opportunity to live and work in 27 other countries, the opportunity to travel in those countries while having the benefit of the local healthcare system, the opportunity for educational exchanges, the opportunity for leading scientific research programmes funded by the EU, the opportunities presented by 35 free trade agreements between the EU and other parts of the world, and the opportunities of the single market itself? Do the Government hope that the public will just forget about these important opportunities that are now being wantonly abandoned?

Baroness Evans of Bowes Park: As I have said, we are looking for a new, deep and special relationship with the EU and we believe it will be a very fruitful relationship. In terms of other opportunities, we are looking for excellent trade agreements with countries across the world. We have fantastic bilateral agreements with countries across the world. We are looking to be a global nation.

Lord Hannay of Chiswick (CB): My Lords—

Lord Campbell of Pittenweem (LD): My Lords—

Lord Framlingham (Con): My Lords—
Lord Taylor of Holbeach: We did say that we would try to do this in order. It is the Lib Dems’ turn, and then perhaps we will hear from the Cross Benches.

Lord Campbell of Pittenweem: My Lords, it is axiomatic that Britain’s withdrawal from the European Union will weaken it. Is it not all the more curious, therefore, for the Prime Minister to be extolling the virtues of European values at the same time as undermining the very institution that embodies them?

Baroness Evans of Bowes Park: Not at all. We have made it very clear that we share the same values and we want to see them remain strong. That is one of the things that we have in common and one of the things that will ensure that we continue to have a strong relationship with our European counterparts.

Lord Hannay of Chiswick: My Lords, I am one of those who think that today is a pretty sad day but I also do not think it is a day to carp or criticise. The Prime Minister and the Government are setting off down a road which can best be described as a magical mystery tour, the destination of which they have no clue—any more than the rest of us do. But I wish them well in this thing, and I would like to put two questions. First, while I very much welcome the very strong emphasis the Government have put on the mutual benefit of maintaining and, indeed, strengthening the co-operation against all forms of international crime, can the Leader say by what process of adjudication any disputes on those matters will be resolved? Secondly, yesterday the Prime Minister urged us to, “get out into the world”. Can the Leader give us one example of circumstances where we are prevented from doing that by our present membership of the European Union?

Baroness Evans of Bowes Park: On the latter point, obviously we will be looking to negotiate new free trade agreements with countries across the world. On the noble Lord’s first point, that will be a matter for trade agreements with countries across the world. On the latter point, obviously we will be looking to negotiate new free trade agreements with countries across the world. On the noble Lord’s first point, that will be a matter for trade agreements with countries across the world.

Digital Economy Bill
Report (3rd Day)

4.34 pm

Relevant documents: 11th, 13th, 16th, 18th, 21st and 24th Reports from the Delegated Powers Committee

Amendment 32A
Moved by Lord Best

32A: After Clause 81, insert the following new Clause—

“BBC Licence Fee Commission

(1) The Secretary of State must, by regulations made by statutory instrument, set up an independent body (“the BBC Licence Fee Commission”).

(2) It is to be the duty of the BBC Licence Fee Commission to make a recommendation to the Secretary of State regarding the level of licence fee required to fund the BBC for the purposes set out in the Royal Charter and Agreement in respect of the settlement from 1 April 2022, and for each successive settlement thereafter.”

Lord Best (CB): My Lords, I shall speak also to Amendments 32B and 32C, which are also in the names of the noble Lords, Lord Inglewood and Lord Stevenson of Balmacara, and the noble Baroness, Lady Bonham-Carter of Yarnbury.

In Committee we discussed several amendments from different parts of the House which all aimed to secure an improved process for setting the BBC licence fee. Those amendments were a response to the universal condemnation of the way the licence fee was settled in 2010 and 2015. The problem has not been simply about the so-called “raids” on the BBC’s revenue to pay for other government priorities such as broadband rollout or free licences for the over-75s. Nor has the problem even been about the decisions reached, such as the seven-year freeze on the licence fee, which is now, thankfully, coming to an end. The problem is more fundamental. It is about the process itself.

This process has been variously described as “clandestine”, “behind locked doors”, “frantic”, “purely political” and “fixed over a weekend”. It gives the Secretary of State the power to impose a funding settlement on the BBC following secret talks and without any external checks and balances. No one believes that this is the best way to come to a considered, evidence-based, sensible decision on the vital question of a licence fee that millions of citizens will pay.

As the Culture, Media and Sport Committee in the other place, then chaired by John Whittingdale, MP, said:

“The 2010 settlement demonstrated that the BBC’s independence can be compromised by negotiations with the government of the day that lack transparency and public consultation”.

Your Lordships’ Select Committee on Communications, which I have the honour to chair, condemned the process in its well-received report for the BBC’s charter review, Reith not Revolution. Our report drew on the earlier work of the CMS Committee in the other place, which had concluded:

“No future licence fee negotiation must be conducted in the way of the 2010 settlement”.

However, the process remained unchanged and we noted, in respect of the 2015 settlement, that Rona Fairhead, the well-regarded chair of the BBC Trust, found it equally unsatisfactory. Indeed, I note that Ms Fairhead spoke in support of the amendments before us today in her speech at the Oxford Media Convention earlier this month.

So what form should a more transparent and informed process take? Amendments 32A, 32B and 32C bring together the earlier versions and provide the package of measures to achieve this. On a technical note, when the Minister responds, will he kindly indicate that he accepts that the amendments are in a linked group? That is, if the first goes to a vote, then, irrespective of the outcome of the vote, the next two amendments will be treated as consequential and will not be subject to further Divisions but will be accepted “in the voices”, as we say.

Amendment 32B proposes proper public consultation and debate by both Houses of Parliament. This sounds pretty uncontroversial. However, we are told that, because the licence fee is regarded as a hypothecated tax, it cannot be subject to consultation: levels of tax, it is
said, must be left to the Chancellor, who in this case delegates to the Secretary of State for Culture, Media and Sport. I note in passing that Chancellors can run into problems in setting taxes without prior consultation with interested parties—but, recent events aside, it is surely the case that when the licence fee is reset in 2020, the Secretary of State would be much helped by getting feedback from the wider public, as was the case with the helpful White Paper consultation on the charter itself. Certainly the organisation, Voice of the Listener and Viewer, which works in the interest of the public at large, favours this amendment. Whether a licence fee is a hypothecated tax or not, it seems sensible, when deciding on the tricky question of the licence fee, to know what those who will actually pay the fee think about it.

The other two amendments here, Amendments 32A and 32C, address the question of providing the Secretary of State with some clear, impartial and expert guidance. My committee proposed earlier that Ofcom should be given the responsibility to draw up a clear recommendation on the licence fee. The Secretary of State could reject it, but, if so, would be required to publish the reasons. In our *Reith not Revolution* report, the Communications Committee suggested that Ofcom should then reconsider the position and, if necessary, offer a second recommendation. After that, the Secretary of State’s decision would be final.

Several Members of your Lordships’ House, including the Minister, pointed to the weakness of asking Ofcom to take on this role. This excellent organisation already has a huge workload and will now be extending its regulatory duties in relation to the BBC. Moreover, the Minister pointed out that it is unusual—although, I would say, not unknown—for a regulator to express an opinion on the price to be paid by the consumer for the service being regulated. In response to these comments, the amendments before us do not impose another duty on Ofcom, but instead adopt the approach first mooted by the Opposition Benches for a new, independent body: a BBC licence fee commission.

This body would not decide on the licence fee—that task would remain squarely with the Secretary of State—but the Secretary of State would have to look carefully at a recommendation from the new commission and give clear reasons for rejecting it, if that was what the Secretary of State decided to do. The licence fee commission would be able to draw upon a comprehensive range of financial and professional expertise to provide the basis for sound judgment. It would consider carefully the costs involved for public service broadcasters in fulfilling their obligations—and, most particularly, for the BBC in fulfilling its own very special public service role. Drawing on this input would surely help the Government avoid accusations either of undermining the BBC by setting the licence fee too low or of failing to control wasteful spending by setting it too high.

Importantly, bringing these matters into the open, creating a proper, transparent process, would moderate the unfettered life-or-death authority of the Secretary of State over the BBC’s funding and therefore over its future. In doing so, the new process would reduce the chilling effect on the freedom of the BBC to act independently of government, which otherwise remains while the Secretary of State holds this sword of Damocles over the BBC’s board and management. The only argument I can see against the establishment of an independent new body with this single task is that it will cost more than if the Secretary of State simply relied on the Government’s own judgment. But the cost of a commission is surely insignificant when it is set against the several billions of pounds that the licence fee will raise over the years that follow this decision.

Indeed, I was heartened in our Committee debate by the Minister drawing attention to the commitment in the Government’s BBC White Paper last year to, “consider taking independent advice at the next settlement”—[Official Report, 8/2/17; col. 1757.]

The aim of these amendments is to put some flesh on the bones of that commitment. I hope therefore that the Minister will respond positively to the constructive proposals in these amendments, which are supported by a range of organisations, from the Voice of the Listener and Viewer to the National Union of Journalists, and clearly commend themselves to all sides of the House. I beg to move.

4.45 pm

Lord Lester of Herne Hill (LD): My Lords, I regret that my ill health prevented me from being present on Monday 20 March, when the noble Lord, Lord Inglewood, moved the amendment on the BBC’s independence and funding late that evening. I am grateful to him for doing so, and I have read the speech by the noble Lord, Lord Wood of Anfield, and the Minister’s reply. I agree with the critique of the noble Lord, Lord Best, but I will confine myself to Amendment 32E, included in this group. It is supported by the noble Lords, Lord Inglewood, Lord Pannick and Lord Alli, to whom I am grateful.

The noble Lord, Lord Ashton, accepted in his reply on 20 March that there are instances where it is desirable and appropriate for a charter to be underpinned by statute, but he said that the Government’s view is that that does not apply to the BBC. He also said, intriguingly, that in practical terms there is little difference between the effect of the BBC’s charter and accompanying framework agreement and an Act of Parliament because both are binding on the BBC and Ministers.

The modest purpose of Amendment 32E is to create a link between the BBC’s charter and the Bill. It requires the Secretary of State to ensure, in accordance with the BBC’s mission and purposes under the charter, that the BBC is funded so as to be able to function independently and effectively as a public service broadcaster. Unlike the amendment moved on 20 March by the noble Lord, Lord Inglewood, supported by the noble Lords, Lord Stevenson of Balmacara and Lord Pannick, and by me, Amendment 32E does not refer specifically to the licence fee. That is in the hope that being less prescriptive will be more acceptable to the Government. I see the Minister smile wanly, as he knows that I am an optimist.

Do the Government accept that they have the duty to ensure, in accordance with the BBC’s mission and purposes under the charter, that the Secretary of State must ensure that the BBC is funded so as to be able to function independently and effectively as a public service broadcaster? If not—if the answer is no—what
[Lord Lester of Herne Hill] do they accept as their duty in this respect? Remembering that on 20 March the Minister said that in practical terms there is not much difference between a charter and legislation, I ask this question irrespective of whether there is a charter or legislation. I repeat: do the Government accept that the Secretary of State has that obligation, whether under the charter or otherwise?

The amendments made to the Bill in this House will need to be considered by the House of Commons after it leaves here. I hope that at that stage, if not now—I would prefer now—the Government will respond positively with an amendment on the lines of Amendment 32E. I have in mind that by that time we will be coming near to the end of the Session, the Government will want the Bill to go through and that this will at the least be something that needs to be considered then, if not now.

I am grateful to the noble Lord, Lord Ashton, for having met me informally and suggesting that I might usefully meet the Culture Secretary. I would welcome that opportunity and would be grateful if the Minister could say whether that would be acceptable.

Lord Inglewood (Con): I refer briefly to our previous debate when the House was considering the Bill, when I raised my concern about the independence of the BBC and its relationship with the Government of the day, because there must be a relationship and it is important that it is both transparent and rules-based. That is why I have added my name to a number of the amendments; I do not want to elaborate further than that to explain clearly why I have done so.

I also owe an apology to my noble friend, because on that occasion I referred to the Government as behaving like Dick Turpin in respect of the licence fee. He picked me up on that point and said he thought that it was very wrong because a lot of money was being given back, so I apologise for suggesting that; instead, I should have said Robin Hood.

Baroness Bonham-Carter of Yarnbury (LD): I support the amendments. As I mentioned in Committee, I am a Member of the House of Lords Communications Committee, so ably chaired by the noble Lord, Lord Best, and I stand by our report, *Reith not Revolution*, although I accept the slight change in who should oversee the setting of the licence fee, as the noble Lord, Lord Best, mentioned.

The Minister referred more than once in Committee to the licence fee as a tax. As the noble Lord, Lord Best, said, it is a hypothecated tax, paid by the public to fund the BBC. As such, it is surely correct that in that there is clarity and public scrutiny and no more midnight raids, and that the licence fee is used to fund the BBC’s functions and public services, not those of the Government. These proposals would, rightly, leave an elected Government with the final say in determining the BBC’s revenue but would introduce an important element of accountability in the process, which is surely appropriate.

Lord Pannick (CB): I have added my name to Amendment 32E from the noble Lord, Lord Lester, and I agree with all the speeches that have been made in this debate. The process for setting the licence fee is manifestly inadequate; it lacks transparency, fails to identify—far less promote—any coherent principle, and allows and indeed encourages a last-minute political fix. Does the Minister really think that this is a satisfactory means of promoting the independence and efficacy of the BBC?

Baroness Kidron (CB): I am also a member of the Communications Committee. My noble friend Lord Best set out our position so well that I shall not repeat it, but I wanted to add one thing. I could not possibly exaggerate the feeling of those who came before us giving evidence that the BBC must not only be independent from the Government of the day but must be seen to be independent. That is really what these amendments are struggling to insist on—that it is truly seen by all parties as independent.

On a secondary point, while we did our review I was struck by the huge number of duties that the BBC was given, many of which were very right-minded, about regions and nations and the types of programming that it must do, as well as about training. Those are all things with a cost, and a subset of the amendments is the suggestion that somebody independent gets to look at the duties of the BBC and set them against the cost of doing those duties. Perhaps we will have more reasonable conversations about what those duties ultimately are when we understand what they cost.

Lord Maxton (Lab): Can I just be marginally controversial? I accept the first amendment, which would establish a BBC licence fee commission, but the time has come when we have to look at the licence fee itself. We should remember that the licence fee was established way back in the days of Lord Reith—an awful man, but that is beside the point—based on the fact that you had one broadcasting unit in your house. The licence fee is for the house, not the individual, yet I stand here today with at least three devices in my pockets which allow me to view or listen to broadcasts by the BBC or, in fact, by any other organisation that cares to broadcast.

The time has really come when we must look at whether or not we have one licence fee for one household, which could include the very poorest single woman or man living alone in their house with one television or one radio to listen to. They pay exactly the same sum of money as another household with five people in it, all of whom have different devices. There are now four of us living in my household and each room has a television in it and a radio, we have radio in the cars, television on iPads and phones, radio on this, television on that—we have too many, maybe. But the same licence fee covers everything. It is the same licence fee for everybody, whatever—and I am not even talking about hotels or boarding houses or whatever else we can include with them. It is interesting to note that the Government themselves, when they looked at the licence fee, changed it to a live or nearly live licence fee. It is nearly live of course because if you watch television on your iPad, it is about 30 seconds behind, so it is not directly live. So this is the first thing that has to be said: it is time that this commission looked at the whole of the licence fee, not just the level of it.
Secondly, and lastly, this is a tax imposed upon everybody and we are entitled to know exactly how that money is spent by the BBC. I notice that an ex-director of the BBC is hoping to get into this debate—we know what his salary is and we know the salaries of every member of staff on the managerial side, but we do not know how much is paid to Mr John Humphrys, for instance, or to anybody else on the news side of it. I think that the BBC ought to be completely covered by the Freedom of Information Act, which is something that the commission could look at.

Lord Birt (CB): My Lords, it is hard to improve on the excellent summary by the noble Lord, Lord Best, of the glaring inadequacies of the last two licence fee settlements—the infamous midnight raids. I would add only one thing: it is important to recognise that in neither instance was the motive of the Government to do down the BBC, rather it was simply unscrupulous pragmatism, switching responsibility to the BBC for paying for services that had previously been funded by government. In both instances, the Government did this because they did not want to take the political hit of taking something away—the ill-considered gift of a previous Government of free licences for the over-75s, might I say—nor did they want to take the financial hit of continuing to fund the services for which they were switching responsibility.

In both instances, the Government were completely oblivious to the consequences for the funding of the BBC and the knock-on consequences for every kind of service. This is government at its worst, frankly. We all understand how it happened, but it was ill considered and Britain deserves better. There needs to be a proper, considered process to set the licence fee which takes, as others have said, every kind of circumstance into account before the licence fee is set. I strongly support this amendment.

5 pm

Viscount Colville of Culross (CB): My Lords, my media interests can be found in the register. As many other noble Lords have said, it seems to me that the run-up to the next licence fee deal must be the time to take politics out of the corporation’s funding arrangements. This amendment is very welcome in creating a body that will do just that. The criticism of similar sorts of bodies is that they have been ignored by successive Ministers. However, the noble Lord, Lord Best, has dealt with this by recommending that the proposed commission should be considered by the Secretary of State, who should then explain his reasons if he is going to ignore it. That would provide a gold standard against which the public and politicians can measure any discussions and subsequent spin on the BBC’s funding settlement. I ask the Minister to consider the idea very favourably.

As regards Amendment 32E, I add my admiration for the tenacity of the noble Lord, Lord Lester, in trying to put the BBC on a more independent footing. In Committee, I spoke in favour of statutory underpinning for the BBC. As the noble Lord said, this amendment is a watered-down version of that discussion. I understand that it will not be put to a vote but I hope that it will stir the Government to start a debate to free the corporation from ministerial diktat. That debate must involve all the stakeholders. I hope that the result will guarantee the corporation’s future. Its position as one of the most effective public service broadcasters in the world has never been more important at a time when “fake news” threatens to suffocate the truth.

Lord Berkeley of Knighton (CB): My Lords, in supporting my noble friend Lord Best, I point out that the reprehensible situation in which we found ourselves the last time that the licence fee was discussed discredited not only the Government but managed to discredit the BBC as it put the director-general in a very difficult position for which he received a great deal of criticism. Nobody came out of that process very well. We must be able to find a better system that is more transparent and gives the BBC the possibility to plan ahead, but it has to be one that is fair to all parties.

Viscount Waverley (CB): My Lords, I observe only that if you wish to access the BBC on iPlayer, for example, when you live outside the United Kingdom, you are asked whether you have a television licence. If you do not, you cannot access it. That seems an opportunity for revenue for the BBC to consider in the future.

Lord Wood of Anfield (Lab): My Lords, I express the support of these Benches for the amendments of the noble Lord, Lord Best. I also support the intention behind the amendment of the noble Lord, Lord Lester.

It sounds obvious that the process of negotiating a charter and the process of setting a licence fee should be separated so that the licence fee is set at a level to ensure the BBC has the resources to do what the charter asks of it. However, those of us who have had some involvement in the process in the past know that this is not quite how it works. The connection between the two processes is indirect and shrouded in political pressures. As a result, the process of setting the licence fee is far too little about matching the funding of the BBC to its functions in the charter, and far too much about balancing a range of other considerations: the politics around the licence fee rate, interests of other broadcasters, and the temptation to smuggle government policy on to the BBC’s books—midnight raids et cetera.

Governments of all varieties—Labour, Conservative, whatever—like to play the game of pumping up the tasks that go into the charter and clamping down on the licence fee needed to fund it. The result of all this is bad not just for the BBC but for all parties concerned. It is a bad deal for the BBC because it faces increasingly intolerable pressures to deliver what is expected of it, and threats to its operational autonomy and independence. It is bad for the Government because of a growing suspicion of unwarranted political interference in the BBC, and it is bad for licence fee payers because the process of allocating funds to charter functions is surrounded in opaqueness and devoid of transparency.

Therefore, we support the amendments of the noble Lord, Lord Best. We think they are based on sound principles—the independence of the process, consultation with the public, transparency of the contents of the deal and requiring the Secretary of State to be accountable for turning his back on or challenging the express will
The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, we return to an issue that I know interests a great many noble Lords: the funding of the BBC. I take this opportunity to remind noble Lords of what the Government have already committed to do to increase the transparency of the process whereby the funding of the BBC is decided. The BBC’s new charter regularises, for the first time, the timing of the BBC’s next financial settlement, which will be in five years’ time. The BBC has certainty over its funding for the next five years, having agreed a settlement with the Government whereby the licence fee will rise with inflation each and every year for the next five years.

On the amendment in the name of the noble Lord, Lord Best—in answer to his question, I accept that Amendments 32B and 32C are, if not consequential, linked—I make clear to the House how grateful the Government are for the contribution of the noble Lord and of your Lordships’ Communications Committee, which he chairs, throughout the charter review. Indeed, the Government accepted most of the committee’s recommendations for the new charter, such as making the next charter for a period of 11 years and the scope of the mid-term review.

The charter states that, in determining the funding settlement, the Secretary of State must assess the level of funding required for the effective fulfilment of the BBC’s mission and promotion of its public purposes, consider an assessment of the BBC’s commercial income and activities, and consult the BBC. For its part, the BBC is required to provide information and assistance to the Secretary of State ahead of the next licence fee settlement to inform the Secretary of State’s determination of that settlement. It is therefore explicit that the BBC will be able to make its case and the Government of the day will have to consider that case.

However, the Government also stated in their White Paper, published last May, that they would consider taking independent advice at the next settlement should it be appropriate. While that will be a matter for the Government of the day, the sentiment behind it is right and sensible. In answer to the noble Lord, Lord Maxton, the licence fee itself may well be a question of restoring the functionality and transparency of the licence fee setting process, and ensuring that the BBC can be funded to do what we all expect the foremost public service broadcaster to do.

Lord Maxton: Can the Minister tell the House what other form of taxation—I accept his definition that the licence fee is a tax—is not covered by the Freedom of Information Act?

Lord Ashton of Hyde: I do not quite know what the noble Lord means by taxes being covered by the Freedom of Information Act, but the BBC, as a public authority, is covered by that Act.

Lord Maxton: With all respect to the Minister, the BBC is not covered entirely by the Freedom of Information Act. The managerial side of it is covered by the Act but the part that concerns putting out programmes is not.

Lord Ashton of Hyde: I take the noble Lord’s word for that because he knows more about it than I do.

Lord Inglewood: The Minister said that the Government did not consult on taxes in the way that has been suggested. I put it to my noble friend that there is not another hypothecated tax like this, so there is no precedent one way or another for this set of circumstances.

Lord Ashton of Hyde: The point that I made was that, when setting taxes, the Government have to take account of the overall revenue raising, and this is just one element of revenue raising. I agree that whether it is a hypothecated tax is another question, but the point is that it is a tax and the Government do not consult on taxes.

Perhaps I may continue. I was talking about public consultation. The BBC’s funding needs are complicated and technical, as we have seen with every licence fee settlement, and agreeing the overall package is a finely

sought to give Ofcom a similar power, and I appreciate the thought he and other noble Lords have given this. However, at the risk of repeating myself, the licence fee is a tax, and the Government do not seek advice in this way for any other type of taxation. On the question of the licence fee being a tax, I know that not all noble Lords like this designation. However, we rely on the definition provided by the European System of Accounts, which is the system of national accounts used by the European Union. I will spare your Lordships more detail on this, which I could give. I reiterate that taxation is a matter for the elected Government. Only the Government have oversight of the balance of taxes from different sources; rates of tax are set, taking into consideration a range of factors, including wider economic considerations and spending decisions. It would therefore not be possible for an independent body to have oversight of the interaction between this tax rate and other tax burdens that the same group face.

Next, on public consultation on the appropriate level of funding for the BBC, I have already made my reservations clear on this aspect of the noble Lord’s amendments in Committee. Funding a public service is not a straightforward topic for public consultation. The BBC’s funding needs are a complicated and technical issue, as we have seen at every licence fee settlement—
balanced act. The requirement to ask the BBC for information and seek external advice is a sensible way of ensuring that Ministers’ decisions are well informed.

Despite what the noble Lord, Lord Best, said about consultations, the recent charter review found that, although almost 75% of the public consider the BBC’s programming to be high-quality, just 20% said that they would like to see the licence fee rise even in line with inflation, thereby helping the BBC to maintain those high standards. At the same time, the BBC also needs to become more efficient from reducing layers of management and property costs.

Public consultation needs to be approached with due sensitivity. It is right that decisions that balance the funding needs of the BBC and pressures on family budgets are taken by Ministers, who are accountable for those decisions, and that they are not decisions strongly influenced by an unelected new body. In answer to the noble Lord, Lord Pannick, the Government’s view is that it should therefore remain for the elected Government of the day to decide how to approach reaching an appropriate level of BBC funding in a detailed and extensive negotiation with the BBC. Despite the difficulties associated with the last licence fee settlement, as I have said, it resulted in what the noble Lord, Lord Hall, has said is a strong deal for the BBC, giving it financial stability, and we can see that the licence fee will rise for the next five years.

The noble Lord, Lord Lester, has tabled an amendment to put a duty on the Secretary of State to ensure that the BBC is funded to function effectively and independently as a public service broadcaster. I am pleased to see the noble Lord in the Chamber today—it was unfortunate that he was not able to participate in last week’s debate on his previous amendment. Without repeating myself unduly, I remind noble Lords that the Government remain of the view that the BBC is best governed through a royal charter. A statutory underpinning, however limited initially, would leave the BBC under a constant threat of change from what parliamentarians of the day might see as the “national interest”. Where a change might be genuinely required, the uncertain legislative timetable, party-political debate and pressure could all militate against resolving the issue at hand in an efficient manner.

**Lord Lester of Herne Hill:** The Minister has not answered my question, which was, quite simply, whether this Government—not one in five years’ time—accept that the Secretary of State has a duty, whether under the charter or otherwise, to ensure that the BBC is so funded as to function independently and effectively as a public service broadcaster.

**Lord Ashton of Hyde:** I was aware of the noble Lord’s question and was just about to come to it. The BBC charter already provides that the Secretary of State, in determining the funding settlement, must assess the level of funding required for the effective fulfilment of the mission and public purposes.

5.15 pm

**Lord Lester of Herne Hill:** What does that answer mean? The charter does not say what I have just asked the Minister. Is he saying that, in looking at the charter, the Government accept this obligation and that it is embodied in the charter? If so, I welcome that. However, I am not clear whether the Government accept this duty or not. My final question, which no doubt he will come to, is this: please can I come and see the Culture Secretary with him?

**Lord Ashton of Hyde:** I think I can answer that to the noble Lord’s satisfaction. Yes, I will certainly talk to the Secretary of State and ask that the noble Lord can come and see him—with or without me, depending on his choice.

I do not want to dwell on this too much, but when we talk about sufficient funding and what the Secretary of State has a duty to do, of course the Secretary of State has a duty to abide by the royal charter in the same way that the BBC, the new unitary board and Ofcom do. I said:

“The Secretary of State, in determining a funding settlement, must … assess the level of funding required for effective fulfilment of the Mission and promotion of the Public Purposes” — which is what the charter says. I agree that the Secretary of State must do what the charter says. I hope that answers the noble Lord’s question.

I will go further. The noble Lord’s amendment talks about the independence of the BBC, but Article 3 of the BBC’s charter already states:

“The BBC must be independent in all matters concerning the fulfilment of its Mission and the promotion of the Public Purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs”.

The question of enshrining parts of the BBC’s royal charter in statute should be a matter for the Government of the day to decide ahead of the next charter review. Given noble Lords’ ongoing interest and informed views, I am confident that the Government of the day will be minded to consider this carefully.

In summary, the Government have already increased the transparency of the way in which the BBC’s funding settlements are agreed. We have given the BBC stability by regularising the settlement period, which is now removed from the election cycle. The BBC will be required to provide information to the Secretary of State on its funding needs, and the Government of the day will consider taking independent advice. The licence fee is a tax and the Government do not consult on taxes. The amendments could have unintentional consequences in constraining the ability of the Government—

**Lord Pannick:** I am puzzled by what the Minister has said, because he is saying two incompatible things. He is telling the House that the Government are going to take advice, but on the other hand he is telling the House that, because this is a tax, it is not possible for the Government to take advice.

**Lord Ashton of Hyde:** With respect, I did not say that. I said that the Government would not consult on taxes. Of course the Government can take advice. The Government take advice on taxes every day, whether they have asked for it or not.

**Lord Birt:** The Minister said a moment ago that the Minister—in this case, the Secretary of State—must do as the charter says. I remind him that the charter
before last said explicitly that the licence fee may not be used to fund the World Service. After the famous "night raid", where the BBC was required to fund the World Service from the licence fee, the Secretary of State simply went to the Privy Council and changed the charter. He manifestly did not do what the charter required.

Lord Ashton of Hyde: I do not completely follow the noble Lord. If the charter was changed, presumably the Secretary of State did follow the charter.

Lord Birt: I am sorry if was not clear. The charter clearly said that the licence fee may not be used to fund the World Service. The Government then required that it should—and retrospectively changed the charter in the Privy Council.

Lord Ashton of Hyde: I agree that a retrospective change in legislation of the charter is never a happy process—but, in a purely technical sense, if the charter was changed then it was being followed. But I take the noble Lord's point about that—and we will move on.

I have summarised the way that the funding deal has been changed to increase stability for the BBC. In light of all my remarks, I hope that noble Lords will allow the BBC to get on with its job under the agreed royal charter and therefore that the noble Lord will withdraw his amendment.

Lord Best: My Lords, I am grateful to the 10 noble Lords who spoke in support of my amendment. The only moderating voice was from the noble Lord, Lord Maxton—but even that, I think, was with approval as well. I will not reiterate the arguments that everybody brought forward. I thank the Minister for his response and accept that most of the recommendations from your Lordships' Select Committee on Communications were adopted by the Government, which we were pleased about, including the 11-year period for the charter. But there is only a five-year period for the funding of the BBC, and, although there is certainty for five years, this is not entirely new. We had certainty over the freeze in the BBC licence fee for seven years prior to that.

The Minister stressed that the Government will “consider taking advice” and “may consult experts” on the various aspects of this. I had hoped that the Minister might pull the rabbit out of the hat and that we might have something more to show for the debate tonight than we have. I understand that the Government do not consult on taxes—although, as the noble Lord, Lord Inglewood, said, this is a particularly obscure kind of tax. It is 100% hypothecated and we do not have many of those. The Minister mentioned that it was a complicated issue. That is why an expert commission could be so useful. Public consultation might well produce an answer that there would be reluctance to increase the licence fee, but there would be better understanding if these matters were all out in the open and transparent before the public came to that view.

Although I am grateful to the Minister for explaining the position as is, it is not the position that these amendments would establish in the Bill and I would like to test the opinion of the House.

5.22 pm Division on Amendment 32A

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Amendment 32A agreed.

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Amendment 33 had been withdrawn from the Marshalled List.

5.38 pm

Amendments 32B and 32C agreed to.

Amendment 32D had been withdrawn from the Marshalled List.

Amendment 32E not moved.

Amendment 33 had been withdrawn from the Marshalled List.

### Amendment 33ZZA

**Moved by Baroness Benjamin**

33ZZA: After Clause 82, insert the following new Clause—

"Provision of children’s programmes"

289A Provision of children’s programmes

(1) OFCOM may, if they think fit, publish criteria to be applied in accordance with this section to the provision of children’s programmes.

(2) Where criteria are published by OFCOM, the regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provision of children’s programmes meets the criteria.

(3) Any condition imposed by virtue of this section—

(a) must relate only to the provision of children’s programmes on the licensed public service channel concerned;

(b) must take into account OFCOM’s assessment of the provision of children’s programmes on all related services.

(4) “Related services” in relation to a Channel 3 service means—

(a) that service,

(b) all other Channel 3 services, and

(c) all services within subsection (6) that appear to OFCOM to have a sufficient connection with that Channel 3 service.

(5) “Related services” in relation to any other licensed public service channel means—

(a) that channel, and

(b) all services within subsection (6) that appear to OFCOM to have a sufficient connection with that channel.

(6) A service is within this subsection if—

(a) it is available for reception in the United Kingdom, and

(b) it is provided without any consideration being required for its reception, disregarding any requirement to pay sums in accordance with regulations under section 365.

(7) For the purposes of an assessment under subsection (3)(b) no account is to be taken of whether a programme is provided on a licensed public service channel or on another service.

(8) Any condition imposed by virtue of this section must be the same for all regional Channel 3 services.

(9) Any criteria published under this section must be published by OFCOM in a statement setting out the criteria and how they propose to apply them.

(10) OFCOM may from time to time review and revise or withdraw the criteria by publishing a further statement.

(11) Where OFCOM revise or withdraw criteria, they must take any steps they consider necessary in consequence in relation to conditions imposed by virtue of this section.

(12) OFCOM must—

(a) carry out a public consultation for the purposes of any review under subsection (10);

(b) where there are no published criteria for the time being, carry out a public consultation before publishing criteria under this section.

(13) In this section “children’s programme” means a programme made—

(a) for a television programme service or for an on-demand programme service, and

(b) for viewing primarily by persons under the age of sixteen.

"
our children and our grandchildren. This amendment has the potential to revitalise the production sector and increase the amount of children’s content which can be exported globally, which Britain has been known for over the years.

As I have said in this House many times, children’s programming is in serious decline. Yes, some new platforms are coming to the marketplace and investing, but spending on the production of new British children’s programming has declined by almost half since 2003, with spending by the commercial public service broadcasters falling by a staggering 93%. Quite shockingly, less than 1% of television hours available for our children are new, first-run British programmes; the rest are imports and repeats. It is our responsibility to make sure that this does not continue. Our children and our grandchildren are entitled to the provision of quality programming that was there for us. In many ways, that is even more crucial for children today, as television has the power to educate and inspire them for the future. As I always say, childhood lasts a lifetime. Instead of driving children towards watching unsuitable and inappropriate adult content, we need to ensure that appropriate content is available for them to identify with and to help shape their development and their imaginations.

Ofcom has recognised that there is a problem. In its last review of PSBs, it was clear that there is a “substantive risk” that PSB requirements for children’s programming in this area will not be met. Despite this risk, Ofcom has repeatedly reported that it does not have the legislative tools to make changes.

We must recognise that nothing other than legislative change will lead public service broadcasters to commission more new British children’s content. Therefore, we need to give Ofcom the tools to require new children’s content to be commissioned and produced by public service broadcasters.

However, I have always understood and recognised throughout this process that PSBs may well have concerns about a legislative change. Through my many discussions, I also became aware that broadcasters had some reservations about the amendment that I tabled in Committee. I have also always been clear that my intention is not to place a huge additional burden on broadcasters. I know that there are pressures on PSBs for a variety of reasons and I understand that it is only by collaboration between all parts of the industry that we will achieve the change necessary to ensure that the level of new British children’s content does not reduce further and indeed increases.

It is in the spirit of collaboration that my amendment today has been arrived at. It will give Ofcom the power to issue criteria addressing the provision of children’s programming by broadcasters. It also allows Ofcom to take into account content broadcast on a main channel, a subsidiary channel or online. It gives flexibility; I do not want to dictate how, where or what programming children should watch. All I want passionately is to ensure that there is a range of quality British content available on all platforms that reflects our country’s diversity and the diversity of our children so that they grow up happy and contented, knowing they belong to a great nation.

This amendment also builds in a safeguard requiring Ofcom to conduct a public consultation before imposing any criteria on broadcasters. This is crucial. However, the amendment is just the start. The spirit of collaboration and flexibility built into the amendment means that it is essential that both Ofcom and the Government continue to stay focused on this issue. Given the state of play for new children’s programming, Ofcom would need to urgently use the powers in this amendment to halt and steadily reverse the decline we have seen since 2003. It is vital that this amendment is implemented in the spirit in which it was drafted. We must keep a close eye on its delivery.

I ask the Minister for clarification on how and when the Government would anticipate Ofcom using the new powers in this amendment. In particular, is it the Minister’s understanding that any criteria issued by Ofcom would be able to require a certain level of new British children’s programming? We cannot have a situation where these criteria are satisfied by importing cheap programming from abroad. We have enough of this type of content already.

Subject to receiving some clarification from the Minister, I am extremely relieved that the Government recognise that this matter needs urgently to be addressed. I am grateful to the broadcasters for working with me on this as it gives them the opportunity to make a difference. I know that if all parts of the industry work together and if we get this right, we can lift the lid on a huge well of untapped potential existing in our creative industries and once again create the world-renowned programming—and even more of it—that our children and grandchildren deserve. It is my mission in life to make children’s lives happy. It is with that commitment in mind that I beg to move.

Baroness Howe of Idlicote (CB): My Lords, briefly, I very much support this amendment and above all salute the work of the noble Baroness, Lady Benjamin, for all she has done over many years in making the case for the production of more and very much better-quality television programmes for children, whether by the BBC or other programme-makers. It is very good to see the name of the Minister on this amendment and I hope I am not wrong that as a result the Government fully support it. I hope we shall hear that soon.

Baroness Jones of Whitchurch (Lab): My Lords, I congratulate the noble Baroness, Lady Benjamin, on her continuous hard work on this issue. We also added a name to the amendment in Committee and here today. I very much share in her delight and happiness that progress has finally been made. As the noble Baroness said, this is effectively an enabling amendment for Ofcom. I hope that it will not just sit on the statute book; we look now for action to follow it through. As the noble Baroness said, there is already sufficient evidence, which Ofcom has, of the huge decline and reduction in children’s TV. There is no need for a pause while Ofcom finds evidence as to whether it needs to act. The evidence is already there. I hope that when Ofcom comes to consider the new powers we are
Baroness Jones of Whitchurch: Providing it will feel able to act straightaway. I hope that the Minister can reassure us that she will encourage Ofcom to do just that, and that this will not just sit there as an enabling power but is something the Government will encourage Ofcom to act upon. Again, I look forward to the Minister’s response.

Baroness Buscombe (Con): My Lords, Amendments 33ZZA and 35A concern the important issue of children’s television, which I know this House, rightly, feels strongly about. I thank the noble Baroness, Lady Benjamin, in particular for her passion and enthusiasm—and a great deal of energy—on this subject. I also thank the noble Baroness, Lady Howe of Idlicote, who is always so strong on these issues and has been for many years.

The provision of a range of high-quality children’s programming must be a priority for the UK’s public service broadcasting system. The BBC remains a particularly strong provider of UK-originated children’s content. The new BBC charter requires the BBC to support learning for children, and the framework agreement makes it clear that Ofcom must have particular regard to setting requirements for key public service genres such as children’s programming.

However, the commercial public service broadcasters—ITV, Channel 4 and Channel 5—have collectively been doing less and less since the Labour Government’s removal of children’s quotas in the Communications Act 2003. By 2014 the BBC accounted for 97% of total spending by PSB channels on children’s programmes. Clearly, this does not suggest a healthy market.

The Government share the view that this problem should be tackled, and we are committed to supporting the provision and plurality of children’s content to meet young audiences’ needs. To do this, the Government have extended the tax relief for animation and high-end TV programmes to UK children’s programmes. We have also consulted on a pilot contestable fund for underserved public service content, with children’s content as a potential area of focus. The consultation closed in February and we will publish our response in due course.

The Government hope that with this government support, the problem that the noble Baroness has identified over the past weeks and months will be resolved. Furthermore, we support the proposal to give Ofcom the power to look at this issue and, as a backstop, to introduce quotas on the commercial PSBs if it deems it necessary. The noble Baroness’s Amendment 33ZZA gives Ofcom the power to look at the provision of children’s content and impose quotas only if it believes there is inadequate provision. But, crucially, it does this in a way that works with PSBs’ commercial realities and younger audiences’ needs.

As many parents will know, children now consume content on an increasing range of platforms, not just on the traditional PSB channels. Indeed, Ofcom has found that children watch a quarter less broadcast TV than they did five years ago, and that more than a quarter of children watch free on-demand services in a typical week. As a result, in giving Ofcom the power to consider imposing children’s quotas on the main PSB channels via their broadcasting licences, the amendment requires Ofcom to consider the provision of content across a PSB’s free-to-view UK portfolio, not just on its main channel. This means that Ofcom should consider children’s programming on a PSB’s main channel and its other UK free-to-view channels equally when assessing whether a quota may be necessary. Ofcom will also be able to take into account content on PSBs’ on-demand players.

Indeed, while the BBC is rightly considered to be the market leader in children’s TV content, its output is shown on its dedicated children’s channels: CBBC and CBeebies. Therefore, while the amendment does not apply to the BBC, we think it is right that any assessment of children’s TV provision by the commercial public service broadcasters is likewise able to take into account the provision on not only the main channels but their wider services, reflecting the changing nature of TV consumption for our young people and changing TV market dynamics.

Crucially, Ofcom will also be able to consider whichever criteria it deems appropriate in coming to a view on the provision of children’s content. Those criteria will be drawn up, where Ofcom deems them necessary, following public consultation. For example, Ofcom may choose to set as one of its criteria that an appropriate level of new UK children’s programming is available across the PSBs and their related services. This would help drive UK investment and ensure that younger audiences see themselves reflected in the programming that they watch.

It is the policy intention that Amendment 33ZZA will also work with Section 3 of the Broadcasting Act 1990. Under that section, Ofcom must allow a PSB, “a reasonable opportunity of making representations”, about a proposed variation of its broadcasting licence. It is also the policy intention that the amendment requires Ofcom to set the same licence condition in each of the Channel 3 regional licences to ensure that the regime does not impose disproportionate burdens on ITV.

We will gladly support amendments that protect and enhance the UK’s public service broadcasting system. That commitment from the Government will echo through this evening’s debate, with support for the BBC and commitments on listed events and children’s television. Again, I thank the noble Baroness for her vital contributions on this subject. The Government will support her amendments.

The noble Baroness asked about timings and content. It is very important that we leave the timings up to Ofcom. The content criteria are also a matter for Ofcom, subject to consultation, as I think I have already made clear. I agree with the noble Baroness, Lady Jones, that we hope that this will not just sit on the statute book. We hope that Ofcom has heard the message loud and clear but the onus is on Ofcom to take this further.

I should also say that Amendment 35A provides for commencement so that the Government cannot block Ofcom from acting. On that basis, we are pleased to accept Amendment 33ZZA.

Baroness Benjamin: My Lords, it is moments such as this that demonstrate the importance of this House, with everyone working together for the good of the nation, in this case especially our children. I thank the
Minister for her support for the amendment, and all noble Lords who have taken part in this debate—especially the noble Baroness, Lady Howe, who I greatly admire—and previous debates. In particular, I am extremely grateful to my noble friend Lady Bonham-Carter and the noble Lord, Lord Collins, for putting their names to the amendment. I also thank the noble Baroness, Lady Jones of Whititchurch, for her support both in Committee and today, and the noble Lord, Lord Stevenson of Balmacara, for his support to date.

As I mentioned in my opening speech, this is a crucial moment for the future of British children’s television. If used properly, the amendment has the potential to halt and steadily reverse the decline of the children’s production sector. It has been a long journey of persuasion, perseverance and determination so I am thrilled that we have reached a consensus that it is vital for Ofcom to urgently use the powers that the amendment will give it to deliver real change and to focus on the production of imaginative and creative new British programming for our children and grandchildren. I and others will be keeping a very close eye on the use of these powers to make sure that real change is achieved. I thank the Minister for her assurance on this point.

I feel optimistic about the future of our children’s programming industry, which I am so passionate about, and I look forward to seeing this industry deliver even more of the world-renowned programming it is capable of. I believe that if there are good programmes on PSBs, children will watch loyally and will not be driven away to other places. Content matters for children and they will stay with a channel and watch it. I hope that all the broadcasters will take ownership of this gift to our children and embrace this new legislation graciously and wholeheartedly. So it is with a joyful heart and a huge smile that I beg to move.

Amendment 33ZZA agreed.

6 pm

Clause 85: On-demand programme services: accessibility for people with disabilities

Amendment 33ZA

Moved by Lord Clement-Jones

33ZA: Clause 85, page 89, line 4, after “impose” insert “proportionate”

Lord Clement-Jones (LD): My Lords, I apologise on behalf of the noble Lord, Lord Gordon of Strathblane, and my noble friend Lord Foster of Bath. Neither noble Lord can make today’s proceedings, so I have been asked, as their inadequate first reserve, to move this amendment and to speak to the other amendments in this group.

The Minister will no doubt remember that in Committee the noble Lord, Lord Gordon, and I raised certain issues surrounding the amendment moved by the noble Lord, Lord Borwick, which is now incorporated in the Bill as Clause 85. We supported it, and that broadly is the position of the broadcasters. However, they have certain issues surrounding the wording of the clause. I am delighted to see that the Government have taken on board the Delegated Powers and Regulatory Reform Committee’s points and that the government amendments incorporate a number of changes to the clause to reflect what the DPRRC had to say.

The broadcasters wish certain other aspects to be aired today. It is a question of the difference between delivering access services on on-demand services and delivering them on linear. Virtually all programmes are now subtitled on the main linear channels. Our public service broadcasters more than exceed the targets set for access services by Ofcom. Linear broadcasting is a mature market with standardised technologies, and it is relatively straightforward and economic to provide access services, but there is a big contrast with delivering services on demand. On-demand is much more challenging and fragmented, and there is a huge array of different online platforms. Each platform has its own technological underpinning, and there is no common standard for delivering access services.

Accordingly, if this clause is interpreted too broadly there is a danger that a one-size-fits-all approach which takes no account of the revenue, size, usage or length of establishment of a service or online platform would result in fewer online services for everyone because of the disproportionate cost of requiring access services to be rolled out across every platform, regardless of how practical or economic that is.

With the current wording, it is possible for the Government to put in place somewhat disproportionate and onerous regulations that could inhibit the development of services for everyone. The broadcasters are calling for an amendment to the wording to reflect the need for proportionate and progressive measures that take account of factors such as revenue, size, usage and length of establishment in setting obligations on content services or online platforms. I hope that the Minister will agree, whether at this stage or at a subsequent stage, to review the wording so that a degree of proportionality is introduced into this clause. I beg to move.

Lord Borwick (Con): My Lords, I thank the noble Lord, Lord Clement-Jones, for his comments on the amendment I moved in Committee. The trouble with his amendment is in the meaning of “proportionate”. There will be quite a lot of consultation between all the parties about what will be required before the regulations are finally drafted, and adding “proportionate” would effectively add an extra layer of consultation in which people argue with each other about exactly what “proportionate” means in these circumstances. It would be much better if the clause was left as it is to make certain that, whatever the rules are, they are clear, having been discussed in the consultation. I must express my thanks to the originator of this clause as it came from a Labour Party proposal in another place, but we all support the right idea here, and I am sure it will help deaf people and blind people understand what is on television. This amendment, although no doubt worthy, is not necessary and will in practice get in the way of getting this change into law.

Lord Wood of Anfield: My Lords, I shall focus briefly on the principles shared by the amendments proposed by noble Lords and those suggested by the Government. They take a long-standing commitment to ensure accessibility and update the relevant rules
[LORD WOOD OF ANFIELD]

for an age in which on-demand services are becoming more essential to viewers. It is an approach we can all endorse, and I am sure the Government will be keen to take these principles forward when it comes to other issues, such as ensuring PSB prominence in on-demand services, which is in the next group.

I turn to another element of this group, which is the Government’s concession on listed events, Amendments 33ZH and 36. This is another example of taking a long-standing commitment to ensuring access and taking steps to update regulations to respond to changing viewing habits. We are delighted that the Government have responded to the concerns we and other noble Lords raised in Committee. Lowering the threshold for qualification for screening listed events below the current standard is crucial if we are to prevent the development of the extraordinary situation forecast by all PSB broadcasters of not one channel qualifying services, which is in the next group.

Without being churlish, I hope the Government will bear two considerations in mind as they think further about how to develop the new criteria for the existing regime. First, we need to bear in mind that the threshold must be lowered enough to enable channels to continue to qualify, but not so much as to threaten the idea that events that bring the country together should be available to as wide an audience as possible. Secondly, I hope the Government remain open to the idea discussed extensively in Committee that alternative measures of reach and access may be appropriate in an age in which increasing numbers of viewers access programmes online. Having an open mind about regulatory flexibility in this area, as in other areas, is crucial to achieve the purpose of the listed events rules, which are supported by us all.

Lord Addington (LD): I shall be very brief. I thank the Government about listed events. They are important for sporting culture and sharing sport. Taking that on board and making sure that we maintain the link in a manageable way is important, not only because it builds a sense of community but because it is an important link with the casual observer of sport, which helps in encouraging people to take part, mass participation and all those things. It is an important link in that chain, and if we lose it, we will damage part of our sporting culture.

Lord Borwick: My Lords, I apologise to the House: I should have declared my interest as a long-standing trustee of the Ewing Foundation for deaf children, which is relevant to my speech earlier.

Baroness Buscombe: My Lords, I thank all noble Lords who have taken part in the debate. Government Amendments 33ZD and 33ZF relate to the Delegated Powers and Regulatory Reform Committee recommendations on the accessibility of on-demand programme services for people with disabilities. I once again thank the DPRRC for its recommendations. We have accepted the recommendation that the affirmative resolution procedure should be used instead of the negative procedure for regulations made under the clause, and Amendment 33ZF actions this.

With regard to the second recommendation, we have shared with the DPRRC the rationale for not identifying the appropriate regulatory authority in the Bill. We hope it is reassured by the explanation I have provided that we are following the existing drafting in Part 4A of the Communications Act 2003, which uses the phrase “appropriate regulatory authority”, and defines that as Ofcom unless it has appointed another body as regulator. Ofcom has not currently appointed any such body and accordingly is the regulator of on-demand programme services in the UK. I am happy to clarify that to the House.

On the third recommendation, that the Government consult with on-demand programme services providers and other stakeholders, Amendment 33ZD places a duty on the appropriate regulatory authority—Ofcom—to undertake this consultation and then report to the Secretary of State on the outcome, along with any other matters it thinks the Secretary of State should take into account in drafting the regulations.

At both Second Reading and in Committee we heard concerns from a number of noble Lords that the listed events regime is under threat. I am pleased that noble Lords have welcomed government Amendment 33ZH, which will confer a power on the Secretary of State to amend the qualifying conditions for television programme services to which rights to broadcast listed events are made available. In the UK, the listed events regime operates to protect free-to-view access to the coverage of sports events with a national significance. Sport is a key element in our national identity, part of the glue that holds us together as a society, and we want to ensure that as far as possible everyone across the country is able to watch live broadcasts of the sporting events that matter most to society.

To be clear, the listed events regime is not under any immediate threat. However, modern viewing trends mean that the requirement for a television service to be received by at least 95% of the population may, depending on how this is interpreted in the future, become increasingly hard to meet—the noble Lord, Lord Wood, just alluded to this in his comments. With everyone’s changing viewing habits this has to remain under review and as flexible as possible. As more people, especially the young—and the noble Lord, Lord Maxton, of course—watch television content on phones and other streaming services, this could put the regime at risk in the future.

We want to safeguard against this and ensure the ongoing viability of the listed events regime. This clause will confer a power on the Secretary of State to ensure that, as media consumption habits change, the Government’s policy objective to ensure that listed events are widely available on free-to-view services continues to be met. The clause confers a power on the Secretary of State to amend the percentage of the population by which a channel must be received in order to qualify. I hope that answers the questions of a number of noble Lords on this. It will enable the
Secretary of State to lower the relevant percentage to ensure that there continues to be a list of channels which meet the qualifying conditions. It also provides that any amendment to the percentage does not affect the validity of any existing contract to broadcast a listed event. Any amendment is not intended to invalidate existing agreements to broadcast listed events, which can last for a number of years. There is no intention at this stage to review or revise the list of events itself.

I thank the noble Lord, Lord Gordon of Strathblane, in his absence, for his amendments on the proportionality of accessibility requirements for on-demand programme services. I am sympathetic to their aims. I also assure noble Lords that the Secretary of State will already be considering the proportionality of the requirements that will be placed on such providers. The consultation that Ofcom is required to complete will provide the opportunity to ascertain the proportionality of the provision of accessible services and then report this back to the Secretary of State, so it can be considered when imposing requirements on providers. Furthermore, the SI will contain a review clause on the burdens on business, which will allow a post-implementation analysis of the burdens imposed, to assess whether they are proportionate.

The Government recognise that a balance must be struck between the interests of on-demand services and the interests of those with disabilities that affect hearing and sight being able to enjoy as much content on demand as possible. Achieving this balance will be at the heart of Ofcom’s consultation. Service providers will be able to set out what they consider proportionate. I thank my noble friend Lord Borwick for his contribution to the effect that we should leave this part of the Bill alone. I also reassure the House that Ofcom has a good deal of experience now in the area of accessibility of services. It already publishes a code of practice for such services on linear channels and has a good record in ensuring requirements are ambitious yet not unduly burdensome.

I hope with that explanation that the noble Lord, Lord Clement-Jones, on behalf of the noble Lord, Lord Gordon, will kindly withdraw his amendment. I will move government Amendments 33ZD, 33ZF and 33ZH when the time comes.

6.15 pm

**Lord Clement-Jones**: My Lords, I thank the Minister, first, for the introduction to her very welcome amendments. I join the noble Lord, Lord Wood, and my noble friend Lord Addington in welcoming in particular the new ability to adjust the listing requirements, because that builds in, as the noble Lord, Lord Wood, said, the flexibility for the future that is very much needed, and may be needed rather more quickly than many of us anticipate.

I particularly thank the Minister for her very careful reply to the amendments in the name of the noble Lord, Lord Gordon, on proportionality. She gave a very full answer to the amendments, particularly on how Ofcom will consult and in saying that balance will be at the heart of its consultation and that the SI will contain a review clause on burdens on business. I do not think one can say fairer than that and, in the circumstances, I beg leave to withdraw the amendment.

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<tr>
<th>Amendment 33ZA withdrawn.</th>
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<tr>
<td>Amendments 33ZB and 33ZC not moved.</td>
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<tr>
<td><strong>Amendment 33ZD</strong></td>
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<td><strong>Moved by Lord Ashton of Hyde</strong></td>
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<tr>
<td>33ZD: Clause 85, page 89, leave out lines 15 to 19 and insert—</td>
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<tr>
<td>“(3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.</td>
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<td>(4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—</td>
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<td>(a) providers of on-demand programme services, and</td>
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<td>(b) representatives of people with disabilities affecting their sight or hearing or both.</td>
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<td>(5) The appropriate regulatory authority must inform the Secretary of State of—</td>
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<td>(a) the outcome of the consultation, and</td>
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<td>(b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.</td>
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<td>(6) Where Ofcom are not the appropriate regulatory authority, the Secretary of State must consult Ofcom.</td>
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<td>(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”</td>
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<th>Amendment 33ZD agreed.</th>
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<td><strong>Amendment 33ZF</strong></td>
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<td><strong>Moved by Lord Ashton of Hyde</strong></td>
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<tr>
<td>33ZF: Clause 85, page 90, line 42, at end insert—</td>
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<tr>
<td>“( ) In section 402Z(a) (procedure for statutory instruments) after “411” insert “or regulations under section 368BC.””</td>
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<th>Amendment 33ZF agreed.</th>
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<td><strong>Amendment 33ZG</strong></td>
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<td><strong>Moved by Lord Wood of Anfield</strong></td>
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<td>33ZG: After Clause 86, insert the following new Clause—</td>
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<td>“Public sector broadcasting prominence</td>
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<tr>
<td>(1) The Communications Act 2003 is amended as follows.</td>
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<td>(2) In the title of section 232, at end insert “and “electronic programme guide””.</td>
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<td>(3) After section 232(5) insert—</td>
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<td>“(5A) In this section “electronic programme guide” means a service which consists of a—</td>
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<td>(a) linear electronic programme guide; or</td>
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<td>(b) qualifying connected electronic programme guide.”</td>
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<td>(4) In section 232(6) before “electronic” insert “linear”.</td>
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<tr>
<td>(5) In section 232(6)(b) after “for” insert “finding, selecting or”.</td>
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<tr>
<td>(6) After section 232(6) insert—</td>
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“(7) In this section “qualifying connected electronic programme guide” means a “connected electronic programming guide” which is used by a significant number of its intended audiences as a means of receiving television programmes or TV-like content.

(8) In this section “connected electronic programming guide” means a service which consists of—

(a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services provided of which are or include persons other than the provider of the guide; and

(b) the listing or promotion, or both the listing and the promotion, of—

(i) some or all of the programmes included in any one or more on-demand programme services, or

(ii) some or all of the on-demand programme services, the providers of which are or include persons other than the provider of the guide; and

(c) the facility for finding, selecting or obtaining access, in whole or in part, to the programme service or services and the on-demand programme service or services listed or promoted in the guide.

(9) The Secretary of State may by order amend the definition of an electronic programme guide in this section.

(10) Before making an order under subsection 9 the Secretary of State must consult OFCOM.”

(7) In section 310(1) for “from time to time” substitute “on 1 December 2017 and at intervals of no more than three years thereafter”.

(8) In section 310(2) omit “such degree of” and “as OFCOM consider appropriate”.

(9) In section 310(4)(a) after “BBC” insert “, including on-demand programme services,”.

(10) After section 310(4)(h) insert—

“(i) any on-demand programme service provided by a public service broadcaster.

(4A) A service is an on-demand programme service provided by a public service broadcaster for the purposes of subsection (4)(i) if it —

(a) is provided by any of the following—

(i) any on-demand programme service provided by a public service broadcaster;

(ii) the Channel 4 Corporation;

(iii) the Welsh Authority; and

(b) provides access to programmes broadcast on a licensed public service channel.”

(11) In section 310(5)(a) after first “service” insert “, including on-demand programme services,”.

(12) After section 310(5) insert—

“(5A) In making any order under subsection (5) the Secretary of State must have regard to the desirability of investment in original productions.

(5B) In this section “original productions” means programmes commissioned by or for the provider of a service for the purposes of subsection (5) with a view to their first showing on television in the United Kingdom on that service.”

(13) After section 310(7)(a) insert—

“(b) if the service is a public service channel dedicated to children, persons under the age of 16;”.

(14) For section 310(8) substitute—

“(8) In this section “electronic programme guide” means a service which consists of the programme service or services listed or promoted in the guide.”

(15) In section 311(2) for “310” substitute “232(5A)”.

Lord Wood of Anfield: My Lords, Amendment 33ZG has a simple purpose: to ensure that high-quality public service broadcasting content, paid for by licence fee payers, continues to be accessible and prominent to viewers as viewing habits change. PSB programming is not only a staple of cultural life in our country but one of the jewels of our world-leading creative industries. A crucial component of the regime surrounding PSB is the regulations to ensure that these programmes are widely available and easy to find. The current rules, established over a decade ago in a code of practice, ensure this by requiring that the main PSB channels—BBC1, BBC2, ITV1, Channel 4 and Channel 5—appear at the top of channel listings or electronic programme guides, EPGs, on all TV platforms. The code works well for traditional TV viewing, where it is watched in real time, but we live in a world in which viewing habits are rapidly changing and the platforms for providing programmes to viewers are multiplying and diversifying.

In the past decade, digital channels have proliferated, and viewing habits have moved on towards on-demand and online viewing. Three-quarters of adults now watch programmes through catch-up services, and about 16% of all programme watching is now time shifted rather than in real time. The problem is that in the face of this behavioural and technological change, it is becoming much harder to find the PSB content that viewers both like and pay for. On-demand players such as BBC iPlayer and All 4 are outside the scope of the prominence rules. New means for accessing these programmes apart from traditional channel listings, such as menus for catch-up and on-demand TV, are also not covered by the rules. In newer TV platforms, the prominence of PSB channels is being marginalised by new graphics and menus. On the new Sky box, Sky Q, you are greeted, when you turn your telly on, by a large box advertising top picks chosen by Sky, more than three-quarters of which is content broadcast by Sky channels.

What is the result of this failure of regulation surrounding PSB prominence to keep up with changing technological developments and viewer behaviour? It means that programmes such as Welsh and Gaelic language programmes are hidden in the digital weeds, often requiring many more than 10 clicks and a sophisticated knowledge of online platforms to reach. It means that the world-leading BBC children’s channels, CBeebies and CBBC, are now below 12 US channels in the channel listing of the leading pay-TV platform, Sky. It means that viewers are increasingly being led to programmes whose prominence is paid for by commercial competitors to PSB channels rather than to PSB content.

Yet viewers’ preference for PSB remains incredibly strong. Ten times more viewers want the TV guide at the top of their screen, in which PSB has preferred prominence, rather than the recommendations of the platform operator. More and more, viewers are not getting what they want.
There is widespread recognition that the rules need updating. In its 2015 PSB review, Ofcom concluded unambiguously:

“The current rules on schedule prominence for the PSBs were designed for an analogue broadcasting era. They need to be reformed to match changes in technology and ensure that public service content remains available and easy to find, in whatever way it is viewed”.

This House’s Communications Committee suggested extending the prominence rules to on-demand services and online menus. The TV licensing laws have already been updated to cover BBC on-demand services; the amendment simply demands that the same work be done for PSB prominence rules.

The amendment responds to the holes in the code in four ways: first, by adding PSB on-demand services to the list of services entitled to prominence; secondly, by extending the definition of an EPG beyond traditional channel listings to include connected and on-demand menus used by a significant number of consumers to access TV content. Note that the concept of “a significant number” is a robust one already in use under the 2003 Act, serving as a threshold test applying to Ofcom’s powers under the must-carry regime, so it has precedent, it is workable and means that it would apply to a few major platforms and not serve as an impediment to emerging innovators in the TV platform market.

Thirdly, it strengthens the requirement for prominence of PSB children’s channels specifically, so that parents and children can find the content they like and trust the most more easily, however they watch television. Fourthly, rather than seeking a legislative definition of prominence, it enables Ofcom to set prominence principles which the platforms would adapt as appropriate to their EPGs.

Some have argued that this proposal is unnecessary because the programmes on-demand platforms that carry them prominently, such as BBC iPlayer, are thriving. This would be complacency of a high order, as well as ignoring the evidence of changes over time. Usage of iPlayer is indeed growing, but iPlayer’s market share is reducing: Netflix and YouTube are now the market leaders. Pressure on iPlayer and All 4 will increase in line with the amount that US companies are increasingly prepared to pay to support prominence for their commercial product on UK TV platforms. Similarly, children’s PSB programmes are indeed trusted and popular, but we know that platforms that display them prominently generate greater audiences than those, such as Sky, that do so less, so ensuring that the prominence rules cover those platforms is crucial to their sustainability.

What is at stake with the amendment is not an optional add-on to the regulatory regime around PSB, it is an updating of the prominence rules that is indispensable to the long-term sustainability of PSB in the face of changing technology. It is not just what consumers want, it is doing justice to the millions spent by licence fee payers on quality programming, to ensure that these programmes are not just made but watched.

Public service broadcasting cannot fulfil a public service if it is impossible to find or if it is crowded out by the sponsored content of wealthy and powerful commercial rivals. The amendment extends a principle that enjoys universal support for traditional TV viewing of the 2003 era, when the most recent Communications Act was written, to the more exciting, varied and complex world of TV viewing of 2017 and the years ahead. If we want PSB to flourish and remain at the centre of our national cultural life, rather than withering on the vine, we should support the amendment. I beg to move.

Baroness Bonham-Carter of Yarnbury: I support this important amendment. In Committee, the Minister rejected the need for change. He said, “we have not seen compelling evidence of harm to PSBs to date”.—[Official Report, 8/2/17; col. 1783.]

“To date”: key words. What is needed is for them to be made up to date, to ensure that public service content will continue to be available and easy to find in whatever way it is viewed in a future-proofed way. The current rules on the prominence of PSBs have not kept pace with technological and market development. I shall be very brief because, as usual, the noble Lord, Lord Wood, has said all that I was going to say, and I do not want to be a parrot. The impact of PSB depends not just on producing high-quality, distinctive UK content but on providing easy access for people to consume it. It is still the case, as mentioned by the noble Viscount, Lord Colville, that the main and most trusted source of news is on TV. Given the rise of fake news, PSB content—impartial, well regulated, fact based—is more important than ever.

Prominence is one of the few sources of regulatory benefit to PSB providers, and we believe that in an increasingly complicated and fragmented digital world, its importance increases. As viewing habits change, reform is critical to preserve PSB in a digital age and sustain the creative powerhouse and global success that is UK broadcasting.

Viscount Colville of Culross: My Lords, I have added my name to the amendment because it is important to future-proof the prominence on the EPG of our public service broadcasters at a time, as the noble Lord, Lord Wood, said, of extraordinary change in the media.

In Committee, the Minister said that anybody could find the PSB digitally connected channels if they wanted to: the channels’ very success showed that they did not need any boost to their prominence. However, one of the aims of the amendment is to push back on BSkyB’s unique position in our media environment of being both a content provider and, via its satellite and broadcast services, a distributor. This means that it is in its interest to ensure that its content is more easily accessible than other companies’ content. As the noble Lord, Lord Wood, said, on many of the new Sky boxes, its content is made as prominent as possible, while making the PSB channels—in particular the BBC’s children’s channels—more difficult to find. After the great success of the amendment of the noble Baroness, Lady Benjamin, we should do everything we can to encourage access to PSB children’s channels.

The Minister said that children can easily find their way around the channel controller—we all know how adept children are with technology—but I hope that...
[Viscount Colville of Culross] he is not suggesting that children are given free rein with the channel controller to access anything they want. It needs to be carefully controlled and, I thought, given top prominence.

It is also clear from research by BARB, the audience research company, that prominence—or lack of it—affects consumption of programs. A like-for-like comparison shows that CBeebies secures a lower target audience share on Sky, at 28%, where it is more difficult to find, than on Virgin, at 33%, where it is listed in the top three children’s channels.

I also understand that some noble Lords believe that an unintended consequence of the amendment will be to stop the prominence of the existing linear PSB channels: BBC1, BBC2, ITV and Channel 4. I assure noble Lords that this will not be the case. In subsection (3), the amendment confirms Ofcom’s power to review the main linear channels and extends it to the new connected, or internet, channels. In subsection (8), it further strengthens Ofcom’s power of review by omitting “such degree of” appropriate prominence. It simplifies and strengthens the duty on Ofcom to secure prominence, which will apply to both the main PSB channels on EPGs and the new PSB internet channels. It therefore gives Ofcom more rather than less scope to require prominence for all PSB services within the EPG.

Surely your Lordships’ House will want to ensure a balanced broadcasting environment with a wide range of content on offer. I ask the Minister why he would not want to allow Ofcom, our world-class media regulator, to review this issue.

6.30 pm

Baroness Young of Old Scone (Lab): My Lords, I declare an interest as a past deputy chairman of the BBC. Public service broadcasting has been vital to our national broadcasting ecosystem in terms of raising quality and sustaining the mixed economy that has made our public service broadcasting admired across the world and indeed a player across the world. The amendment is important in particular for children’s programmes, which sometimes lurk in the weeds, as I think my noble friend said. I do not think that some of these programmes lurk in the weeds at all; you have to scroll through vast quantities of channels that want to flog you jewellery or soft porn before you can get to some of them, on some of the platforms. It is interesting to see that both the BBC and the commercial public service broadcasters are of the same mind, as is Ofcom, and we owe it to them and to the public investment that the licence fee represents that they are given prominence on all platforms. I hope that the Government will seriously consider the amendment.

Lord Ashton of Hyde: My Lords, some time in the mid-1990s, I drove to west London to Sky’s warehouse-style offices to be given the first privileged sighting to an outsider of the then embryonic Sky guide and set-top box. I was enormously impressed. In simpler times, it was very innovative and very helpful to the television viewer. Some decades later, not only Sky’s but other guides appear frankly antiquated, and the whole EPG needs modernising very fundamentally. It is not of the digital age; it is hard to navigate and is miserably slow to search. You cannot personalise it, and the Channel 4 and ITV channels are not bundled together conveniently. I have tried very hard to remember where BBC1 HD is, but I have completely failed; I search for it endlessly and spend many wasteful minutes before I find it.

In an ideal world, we would have competing EPGs, and we would have contemporary innovation if we did. We need a much faster user interface than the clunky one that we have now. Plainly, it is no longer right to have EPG providers also being the main channel and service providers themselves. There is a conflict of interest; others have spoken of this. It is not right and at some point it should be ended. I favour a much more fundamental review of EPGs than is being discussed now—but, in this less than ideal world, we simply must protect the PSBs, and I support the amendment.

Lord Wigley (PC): I shall not repeat the comments that I made in Committee on this matter. I thank the noble Lord, Lord Wood, for introducing the amendment, which I certainly support. Two areas have been touched on already. The first is very close to my heart—the position of S4C in Wales and the Gaelic channel in Scotland. It is enough of a fight to try to ensure that there is language promotion and continuation without the struggles of going through reams of channels before reaching them. I accept entirely that some channels, such as Virgin, give the viewer an option to create their own priorities, but many viewers will either not have the drive or sometimes even the ability to use that facility in the way that it should be used. It may interest noble Lords to know that more people watch the Welsh language news on S4C than watch “Newsnight” in Wales. The language is thriving, but it needs to be equally accessible to the prime channels that are available on a UK basis.

My second point is on children. As a grandfather with five young grandchildren, I was amazed at the speed with which they could navigate their way to where the channels they wanted were located. But in doing so, they went through a whole plethora of other channels, which I was very glad that they skipped over quickly. We need to be able to help parents who need to safeguard their children from matters that they are too young to watch. For both those reasons, I very much support the amendment.

Lord Birt: My Lords, some time in the mid-1990s, I drove to west London to Sky’s warehouse-style offices to be given the first privileged sighting to an outsider of the then embryonic Sky guide and set-top box. I was enormously impressed. In simpler times, it was very innovative and very helpful to the television viewer. Some decades later, not only Sky’s but other guides appear frankly antiquated, and the whole EPG needs modernising very fundamentally. It is not of the
Our clear policy of supporting PSBs is why the Government gave considerable thought to the issue of the EPG prominence regime during the balance of payments consultation, the response to which was published last year, before this Bill reached this House. Our conclusion was that we had not seen compelling evidence of harm to PSBs to date and we decided not to extend the EPG prominence regime for PSBs to their on-demand services. This absolutely remains our view, and is supported by evidence, such as the success and continued growth in the popularity of the BBC iPlayer, which has no prominence at all and saw a record 304.2 million requests for TV programmes in January 2017—double the rate of five years ago. After the iPlayer, what are the most watched on-demand services in the UK? The answer is the ITV Hub and All 4, neither of which are currently subject to prominence requirements.

Additionally, PSB on-demand players already occupy the most prominent positions in the on-demand sections of major TV platforms such as Sky and Virgin. Why is that? Platforms make them prominent because they need to react to viewers’ preferences. It takes, for example, a mere four clicks to get to the iPlayer from Sky Q’s home page. As I stated during the last debate, when PSBs make excellent content, audiences will find it, whether it be catch-up or live content. A good example is children’s PSB channels, of which many noble Lords have spoken. CBeebies and CBBC are the most watched children’s channels by a considerable distance—which shows that there are no problems for audiences in finding these channels. The content is easily accessible on demand within the iPlayer itself.

Micromanagement of how audiences need to be guided through menus and sub-menus cannot be the answer when the technological landscape is shifting quickly. The fact is that platform operators respond to consumer feedback and needs in developing their products; therefore future developments in the EPG will be customer driven, not driven through legislative change. Further, it has been suggested by technology companies that, if this requirement was enforced, it would create a need for bespoke products in the UK. For example, smart TV manufacturers’ user interfaces are developed with a global market in mind, but a separate product would need to be developed for the UK market.

Rather perversely, the amendment goes far beyond the prominence which Parliament has afforded to linear PSB channels, because it would give prominence to the PSBs’ on-demand programme services, which include not only PSB content from commercial PSBs but also content originating from their non-PSB portfolio channels. We do not think that that is justifiable.

I confirm to noble Lords and to viewers who have found the BBC Parliament channel—the noble Viscount, Lord Colville, mentioned this, too—that, if this amendment is not agreed, the existing PSB regime will remain as it is today. People will still be able to switch on their ordinary TVs and find BBC1 and BBC2 at the top. But, if it is agreed by the House, it will remove Ofcom’s discretion to require the prominence it considers appropriate for the linear regime; it will micromanage Ofcom’s guidance; it will extend PSB privileges to non-PSB content; and it will affect worldwide manufacturers, many of whom operate in the UK, putting up prices for UK consumers—all against a background where iPlayer, ITV Hub and All 4 are already the most watched on-demand services. I therefore hope that the noble Lord will withdraw his amendment.

**Lord Wood of Anfield:** I thank all noble Lords for an excellent short debate; I will respond very briefly. I thank the Minister for his response but I am afraid that it has made me even more determined to push this amendment through, because his response seemed to be based on the premise that supporting prominence for traditional linear TV watching is a principle that the Government support more strongly than ever, but that somehow the principle falls into abeyance when viewing habits and technology change; and that, in the new future, there will be no need for further prominence rules because the choice of consumers will somehow magically replace the need for the current PSB protections in the prominence rules for linear TV.

I do not understand why the emphasis on prominence, which has been a cross-party principle for a long time, is suddenly thrown out of the window when on-demand and more sophisticated technologies develop. So I am afraid that I do not find the Minister’s response at all satisfactory—and nor do I think that the threat of losing Ofcom’s existing powers has any empirical basis whatever, by the way. So I would like to test the opinion of the House.

### 6.41 pm

**Division on Amendment 33ZG**

**Amendment 33ZG agreed.**

**Division No. 2**

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[29 March 2017]
Amendment 33ZH

Moved by Lord Ashton of Hyde

33ZH: After Clause 87, insert the following new Clause—

"Television events of national interest

Television events of national interest: power to amend qualifying conditions

In section 98 of the Broadcasting Act 1996 (categories of service), after subsection (5) insert—

“(5A) The Secretary of State may, by regulations made by statutory instrument, amend the percentage figure specified for the time being in subsection (2)(b)." (5B) An amendment made by regulations under this section does not affect—

(a) the validity of any contract entered into before the regulations came into force, or

(b) the exercise of any rights acquired under such a contract.

(5C) Regulations under subsection (5A) may make transitional, transitory or saving provision.

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

Amendment 33ZH agreed.

Amendment 33ZJ

Moved by Lord Ashton of Hyde

33ZJ: Before Clause 88, insert the following new Clause—

"Strategic priorities and provision of information

(1) After section 2 of the Communications Act 2003 insert—

"(2) The statement is a statement prepared by the Secretary of State that sets out strategic priorities of Her Majesty's Government in the United Kingdom relating to—

(a) telecommunications,

(b) the management of the radio spectrum, and

(c) postal services.

(3) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities.

(4) This section does not restrict the Secretary of State's powers under any other provision of this Act or any other enactment.

(5) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.

(6) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 2B and 2C apply in relation to any such subsequent statement as in relation to the original statement.

(7) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of 5 years beginning with the day on which a statement was most recently designated under subsection (1).

(8) An earlier amendment may be made under subsection (6) if—

(a) since that day—

(i) a Parliamentary general election has taken place, or

(ii) there has been a significant change in the policy of Her Majesty's government affecting any matter mentioned in subsection (2)(a), (b) or (c), or

(b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3).

2B Duties of OFCOM in relation to strategic priorities

(1) This section applies where a statement has been designated under section 2A(1).

(2) OFCOM must have regard to the statement when carrying out—

(a) their functions relating to telecommunications,

(b) their functions relating to the enactments relating to the management of the radio spectrum, and

(c) their functions relating to postal services.

(3) OFCOM must within the period of 40 days beginning with the day on which the statement is designated, or such longer period as the Secretary of State may allow—

(a) explain in writing what they propose to do in consequence of the statement, and

(b) publish a copy of that explanation in such manner as OFCOM consider appropriate.

(4) OFCOM must, as soon as practicable after the end of—

(a) the period of 12 months beginning with the day on which the first statement is designated under section 2A(1), and

(b) every subsequent period of 12 months, publish a review of what they have done during the period in question in consequence of the statement.

2C Consultation and parliamentary procedure

(1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it under section 2A.

(2) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.

(3) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 2B and 2C apply in relation to any such subsequent statement as in relation to the original statement.

(4) Except as provided by subsection (5), no amendment may be made under subsection (3) within the period of 5 years beginning with the day on which a statement was most recently designated under subsection (1).

(5) An earlier amendment may be made under subsection (3) if—

(a) since that day—

(i) a Parliamentary general election has taken place, or

(ii) there has been a significant change in the policy of Her Majesty's government affecting any matter mentioned in subsection (2)(a), (b) or (c), or

(b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3).""
(2) The Secretary of State must consult the following on a draft of the statement—
(a) OFCOM, and
(b) such other persons as the Secretary of State considers appropriate.
(3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).
(4) After that period has ended the Secretary of State—
(a) must make any changes to the draft that appear to OFCOM to be necessary in view of responses to the consultation, and
(b) must then lay the draft before Parliament.
(5) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it.
(6) “The 40-day period” is the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).
(7) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
(2) After section 24 of that Act insert—
“24A Provision of information before publication
(1) OFCOM must provide the Secretary of State, at least 24 hours before publication, with any information that they propose to publish.
(2) If exceptional circumstances make it impracticable to provide the information to the Secretary of State 24 hours before publication it must instead be provided to the Secretary of State as long before publication as is practicable.
(3) Subsections (1) and (2) have effect in any particular case subject to any agreement made between the Secretary of State and OFCOM in that case.
(4) The Secretary of State may by regulations specify descriptions of information in relation to which the duty under subsection (1) does not apply.
(5) Before making regulations under subsection (4), the Secretary of State must consult OFCOM.
(6) Information provided to the Secretary of State under this section may not be disclosed by the Secretary of State during the protected period, except to another Minister of the Crown.
(7) A Minister of the Crown to whom the information is disclosed under subsection (6) may not disclose the information during the protected period to any other person.
(8) A Minister of the Crown may not make any representations to OFCOM during the protected period that specify or describe changes that the Minister considers should be made to information that has been provided under this section when it is published.
(9) In this section—
“the protected period”, in relation to information provided to the Secretary of State under this section, means the period beginning with the provision of the information and ending when either of the following occurs—
(a) OFCOM publish the information;
(b) OFCOM inform the Secretary of State that they consent to the disclosure of the information;
“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.
24B Provision of information to assist in formulation of policy
(1) OFCOM may provide the Secretary of State with any information that they consider may assist the Secretary of State in the formulation of policy.
(2) Information with respect to a particular business that has been obtained in the exercise of a power conferred by—
(a) this Act,
(b) the 1990 Act,
(c) the 1996 Act,
(d) the Wireless Telegraphy Act 2006, or
(e) Part 3 of the Postal Services Act 2011, is not, so long as the business continues to be carried on, to be provided to the Secretary of State under this section without the consent of the person for the time being carrying on that business.”
(3) The duty under subsection (1) of section 24A of that Act does not have effect until the day on which regulations made under subsection (4) of that section first come into force.
(4) In section 393(6) of that Act (general restrictions on disclosure of information), after paragraph (a) insert—
“(za) prevents the disclosure of information under section 24A or 24B;”.
(5) In section 111(7) of the Wireless Telegraphy Act 2006 (general restrictions on disclosure of information), after paragraph (a) insert—
“(aa) prevents the disclosure of information under section 24A or 24B;”.
(6) In section 56 of the Postal Services Act 2011 (general restrictions on disclosure of information), after subsection (6) insert—
“(6A) Nothing in this section prevents the disclosure of information under section 24A or 24B of the Communications Act 2003.”

Lord Ashton of Hyde: My Lords, during the passage of this Bill there has been debate on the state of the UK’s fibre networks, the ability to switch communication provider, the quality of business connectivity and other matters vital to our economic future such as the new broadband universal service obligation. These issues rely on the Government’s ability to formulate and implement policies effectively.

Amendment 33ZJ creates a new power for the Secretary of State to set a strategy and policy statement relating to telecommunications, the management of radio spectrum and postal services to which Ofcom, as the regulator, will have regard when carrying out its statutory duties. Ofcom’s media and broadcasting functions are not included in this power, which recognises the importance of media independence from government. This measure will allow the Government to establish a clear policy direction to ensure greater coherence in an increasingly complex and interlinked environment. These changes also strengthen the already strong existing partnership between Ofcom and the Government. Introducing a strategy and policy statement for Ofcom’s sectors brings it in line with the other regulators, Ofwat and Ofgem, and fulfils the Government’s commitments to better establish the policy framework for regulators, as laid out in the Principles for Economic Regulation 2011.
This new clause also provides for Ofcom to disclose information to the Secretary of State at least 24 hours in advance of publication where appropriate, and improves Ofcom’s general information-sharing powers. The new clause provides restrictions on disclosure to other persons, and representations cannot be made to Ofcom specifying changes to be made to any information provided.

The Government’s ability to create and deliver effective policies is supported by Ofcom’s expertise and research. In the past, even when it would have been beneficial for Ofcom to provide information, and it wanted to, it has been restricted by its existing statutory framework. This new clause supports the partnership between government and regulator by enabling early access to certain publications where that would be appropriate, and improving Ofcom’s ability to share information where it deems it to be supportive of policy development.

This amendment therefore improves the policy-making process while also introducing greater transparency in the working relationship between government and Ofcom by giving clarity to the respective roles and responsibilities. This will ensure that policy decisions are taken by government—accountable to Parliament—and Ofcom, independently of government, undertakes the detailed application of regulation.

Should this amendment be agreed, existing Clause 9, which provides for a statement of strategic priorities relating exclusively to the management of spectrum, will no longer be necessary and the Government will table an amendment at Third Reading to remove it. I beg to move.

Lord Fox (LD): My Lords, as someone who has proposed amendments that go some way in this direction, I welcome this move, which in some part meets what we propose elsewhere. I have one question around the wording:

“OFCOM must have regard to the statement when carrying out”,

its related functions. What exactly does that mean? Is that language replicated exactly for Ofwat and Ofgem? How should that regard be manifested by Ofcom?

Lord Stevenson of Balmacara (Lab): My Lords, rather like the last speaker, I welcome this measure but am a bit nervous about it. The idea that the Government of the day should be able to set out their forward thinking in a way which is helpful to the regulatory functions is a good one. However, as other external viewers have sought to point out, it raises worries about whether the regulator is truly independent of government in that mode, and whether the Government might be accused of setting an agenda which would then be imposed through a well-respected regulator which everyone thinks is doing a good job in a way that might not have been the case had the process of primary legislation followed by regulations been the approach taken. I hope that when the Minister responds he will confirm that there is no intention for this measure to circumvent the clearly established arm’s-length relationships between the regulator and government. It would be helpful if he could do so.

In another Bill—I sometimes get confused, so I hope that I am discussing the right one—we talked about how the Secretary of State for Education has responsibilities in relation to the new body that is to be set up in higher education, the Office for Students. However, we think that it should be called the Office for Higher Education. In that Bill, the words “have regard to” the instructions given by the Minister are very much part of the way in which that system operates. However, that situation is different in the sense that the measure replaces an existing arrangement for a body which was not a regulator—HEFCE—and for which the only mechanism whereby higher education policy could be created was by letters of instruction. That usually takes the form of an annual letter to HEFCE which sets out the Government’s wishes for the future year, sometimes for several years ahead. I make that point simply because it would be helpful if the Minister could make it very clear that the model here is one of improving an arrangement which will be for the benefit of the exercise of the powers that already exist, and does not add new layers of bureaucracy or new powers, and that the intention is not to set an agenda or to curtail the independence of Ofcom, as I think the system would not work without it. Otherwise, I welcome what is proposed.

7 pm

Lord Ashton of Hyde: My Lords, I thank both noble Lords for their qualified support; I hope that by the time I have finished, it will be unambiguous. I anticipate that from the noble Lord, Lord Fox, in particular, because of course these were the principles for economic regulation introduced by Vince Cable when he was Secretary of State. I can confirm to both noble Lords that there is nothing sinister here. Of course, when we talk about the fact that Ofcom must have regard to a strategic policy statement when carrying out its duties, it absolutely does not override any of Ofcom’s existing general duties. It will continue to take decisions independently of government.

To allay any fears, there are further safeguards in this. A prior consultation must be run on the content of the SPS, which must include Ofcom and then be subject to parliamentary oversight. The implementation of a strategic policy statement does not change Ofcom’s statutory duties at all—it is just one of a number of things that Ofcom has already taken into account when exercising its duties. I therefore hope that the safeguards and my assurance give some comfort to noble Lords.

Amendment 33ZJ agreed.

Amendment 33ZK had been withdrawn from the Marshalled List.

Amendment 33ZL

Moved by Lord Ashton of Hyde

33ZL: After Clause 91, insert the following new Clause—

“Offence of breaching limits on ticket sales

Power to create offence of breaching limits on internet and other ticket sales

(1) The Secretary of State may make regulations providing that it is an offence for a person in circumstances within subsection (2) to do an act within subsection (3).
Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord, Lord Stevenson, for adding his name to this government amendment.

For many years this House has rightly been concerned about the operation of the secondary ticketing market. In 2015, as well as placing new rules in the Consumer Rights Act, noble Lords acknowledged the complexity of online ticketing by requiring a review of consumer protection measures relating to online secondary ticketing. Professor Michael Waterson conducted that review, which was published last year, and two weeks ago the Government published their response, accepting his recommendations in full. The report was warmly welcomed by both Houses, by industry and by consumer representatives, so we should not rush to lightly dismiss the specific recommendations it makes.

Since the review was published, the Competition and Markets Authority has launched an enforcement investigation into suspected breaches of consumer protection law in the online secondary ticket market. The Government have also encouraged the event ticketing industry to set up a project group to take forward the review’s recommendations, and have facilitated the sector’s participation in the joint industry-government Cyber-security Information Sharing Partnership. In addition, we will ensure that resources are made available to National Trading Standards and Trading Standards Scotland to support the upcoming enforcement work on secondary ticketing. We are also working with industry to raise consumer understanding of the ticketing market.

Government Amendment 33ZL forms a key element of our response to the Waterson review, and is intended to address an issue within the ticketing market about which there is widespread support for further action, including from Professor Waterson. The amendment will provide the power for government to introduce a criminal offence to address the use of bots to purchase tickets for a recreational, sporting or cultural event in excess of the maximum specified. The intended offence will apply only to tickets for events in the UK, although it will cover activity to obtain tickets that occurs outside the UK. We believe that the amendment is needed to clarify the law and put beyond doubt the illegality of this practice and the need to report it.

Further, with the new offence on the statute book, the Government will work with industry to enforce it. An offence is only worth having if criminal acts are reported. We have industry groups in place that are now willing and able to take action in partnership with our law enforcement agencies. I hope that this amendment will find favour with the House, and I beg to move.

Lord Moynihan (Con): My Lords, I will speak to Amendments 33ZLZA, 33ZLZB, and 33ZLZC, which stand in my name.

I immediately thank the Minister for responding to a long-running campaign on the question of bots. I will say nothing further on that except that I am looking forward to the secondary legislation. His and the Government’s decision to bring forward action against bots is important and necessary. These are the modern-day ticket touts which sweep the market by using software when the likes of noble Lords and their families are trying to obtain tickets to go to an event. That is unethical and should be illegal, and I welcome the Government’s action on that. We need to make sure that we have good secondary legislation, and we look forward to it coming before the House.

On Amendment 33ZLZC, I will simply say that the reason I tabled this amendment is that it is important to respond to what the Minister said about the lack of enforcement. One way of dealing with the lack of enforcement in this area is to give event organisers the right to enforce the Act through civil action in the courts. This has the benefit of reducing the resources call on the police and/or trading standards, and it should be welcomed. It has certainly been called for by governing bodies of sport and promoters so that they can take action—because it is not in their interest, either, for people to be turned away because they have bought through the secondary market tickets that are counterfeit or illegal. I am unlikely to press that amendment to a vote, but I will be interested to see what the Minister says in response, because it seems to be a helpful suggestion by the governing bodies of sport to respond to this heinous issue.
The most important amendment that I am speaking to is Amendment 33ZLZA, which is fairly straightforward and common sense. Ed Sheeran’s manager appeared before the DCMS Select Committee last week, in the absence of one of the four major secondary market platforms, viagogo, which just did not show. He made the clear and important point that neither Ed Sheeran nor any of the top artists, nor any of the major sports events, all of which are heavily in demand, want to see their tickets counterfeited and people turned away at the door.

We did work on the Consumer Rights Bill to make sure that you got a ticket number, a row number, and a seat number, and to make sure that there were clear terms of reference on the face of the ticket. That should have been achieved and should be deliverable. We fought for but failed to get the ticket number—at the time we got the seat number, the row number and the block. The tickets for Ed Sheeran at the front do not have a block, a seat number or a row, because they are for the standing areas at the front of the concert. But if you have come down a long way and have brought your family down for this one event, you may be turned away at the door because you have no way of checking as a consumer that a ticket is valid.

The only way you can do it is to make sure that there is a unique reference number, which was originally printed on the ticket but has to be on the secondary market platform. It is not an unreasonable request—it does not say that the Horsham Dramatic Society has to put a unique reference number on the ticket. It simply says that where there originally was one, and where Ed Sheeran’s management team wanted one to protect loyal fans of Ed Sheeran who turn up, they should have the ability either to go online or to phone up and say, “Does this reference number accurately relate to a proper ticket and not a counterfeit ticket?”.

A number of these mass, modern-day touts sweep the market and say, as they do online for Ed Sheeran, “Your seat number is between 1 and 20”, and therefore they think that they have answered the question about the seat number. But the one thing they do not want is the honest supporter of a sporting event or a music fan having the ability to check whether their ticket is valid. This is the one amendment that would achieve that—and there would be no cost or difficulty. As far as the promoter of a sporting or music event is concerned, they are putting the seat number, the row number, the date and the event on the ticket. If there is an original, unique reference number, why not put that on as well to allow the true fan to check that it is not a counterfeit ticket before he spends a lot of money travelling to London with his family, for the sake of argument, to go to the O2?

The Minister said that he was concerned about this because it states: “Whether it would be in accordance with the EU Consumer Rights Directive for both primary and secondary market ticket sellers to have to provide a unique reference number on the tickets so that event organisers could track sales of ‘tickets’.”

The response was: “Providing a unique reference number on the tickets is not regulated under the Consumer Rights Directive; therefore the Directive does not prevent this practice. National legislation could be relevant to this regard.”

Therefore, on all three grounds, I believe that common sense should prevail. We should look after the interests of the many people who are being ripped off by modern-day ticket touts and enable those individuals to have the right to enjoy a concert because they love either the music they want to listen to or the sporting event that they want to go to.

Lord Clement-Jones: My Lords, as the noble Lord, Lord Moynihan, has spoken extremely eloquently in support of his amendments, I wish to add very little to what he had to say.

On these Benches we strongly welcome government Amendment 33ZL banning the bulk purchase of tickets, but we believe that it will not solve the problems entirely by itself. There are certain questions about enforcement, which the noble Lord, Lord Moynihan, raised. The Minister used the expression “partnership with law enforcement agencies”. Perhaps when he responds, he could say in a little more detail how that will work. As the Computer Misuse Act has not been effectively enforced by the police to date, the question is: who will enforce it and what budget will they have to enforce it with?

We strongly support Amendment 33ZLZA, proposed by the noble Lord, Lord Moynihan. We believe it is very important to include the booking reference where one exists. It is important as many tickets do not have a seat or row number because they are standing tickets or for unreserved seating. Some venues have 100% standing or unreserved places, while others sometimes have a significant number of standing areas. Other events, such as major golf, horseracing and motor sports
events, as well as festivals, may also have unseated areas, and that has consequences. If there is no seat number, that enables secondary ticket websites to declare, “The full seat information is not available” or is “not applicable”, so sellers may be able to avoid identification and undermine the existing provisions, which were pretty hard fought for under Section 90 of the Consumer Rights Act 2015.

The second part of the amendment is also very important. It requires the ticketing website to provide information if there is a resale restriction. This is key information for a potential buyer so that they do not purchase a ticket which is in fact invalid. That was noted by the Competition and Markets Authority when it launched its investigation last December into breaches of consumer law. Even at this late stage, I very much hope that the Minister will accept that amendment.

7.15 pm

Lord Pendry (Lab): My Lords, many of us have been around this block many times before, and here we are again discussing the negative impact that secondary ticketing has on the sport and entertainment sectors. I therefore willingly support the amendments standing in the name of the noble Lord, Lord Moynihan, who, as we have all heard, has so ably spelled out his reasons for tabling them.

It is a particular pleasure for me that these amendments carry his name because many years ago we were old sparring partners in the days when he was Minister for Sport and—if noble Lords can believe it—I was his shadow. I could not keep up with all the Ministers for Sport whom I shadowed but certain names spring to mind: Atkins, Tracey, Key, Sproat and Spring. I wrestled with them all but, a priori, the best by far was Colin Moynihan MP, who now carries a different hat in tabling this amendment. However, because his tenure in office was a short one before he moved onwards and upwards to become a Minister in the Department of Energy, I did not receive his wise words on the vexed question of ticket touting at that time. I did, however, receive volumes of advice from other Ministers, telling me that it was not the time to enact legislation to curb the touters. Even as early as 28 September 1992, the then Prime Minister, John Major, wrote to me:

“Although committed to give effect to the recommendations of Lord Justice Taylor ... because of the lack of parliamentary time”,

it was not the time to proceed with legislation on ticketing.

So progress has been slow. With the exception of legislation on football, not much has been achieved in the field of eliminating ticket touting. However, progress now seems to be at hand, thanks to the noble Lord and his colleagues, who I am sure will be the first to recognise the work of the late and lamented Lady Heyhoe Flint, who worked alongside them and did so much to give us the opportunity to debate the issue this evening. They are giving the Government the opportunity to embrace the need to protect consumers’ rights and to call for a thorough study into secondary ticketing. These are important measures.

I am sure that, by now, noble Lords will have recognised why I am adamant that these amendments should be passed. As shadow Minister for Sport from 1992 to 1997, I worked on a blueprint for sport for the Labour Party which was brought together for the 1997 general election. That manifesto, Labour’s Sporting Nation, was endorsed by the then Prime Minister-elect, Tony Blair. Of course it was an important time for me personally, as the one who wrote that document, as I believed that we were in sight of ensuring a breakthrough in this ticket touting problem. In particular, the passage on touting concluded with these words:

“A New Labour Government will make touting at all major sporting events illegal and therefore eliminate it”.

I do not want noble Lords to bring out their handkerchiefs and tissues in sympathy for me at this moment but, as the House knows, as the author of that dictum I was not given the opportunity to bring that commitment into legislative form. But seriously, the then intention was to introduce explicit legislation that directly dealt with the problem of ticket touting. But the world has moved on, as we all recognise, and we are in a different age. One has to recognise that the world of 1997 is not the world of 2017. A lot has happened since, which has been acknowledged by the noble Lord, Lord Moynihan, and his colleagues who submitted these amendments. We must also acknowledge the way that they have gone about that in the months preceding this debate.

By supporting these measures we will be giving further power to protecting consumers and ensuring that effective enforcement takes place. This will give greater choice and information to sports fans and help in the fight against those who commit fraud and seek to exploit the pockets of hard-working families. Like others, I have received correspondence from a number of bodies which usually support what we are doing this evening. The UK stages some of the world’s greatest sporting events. If we want them to flourish and for the country to continue to be open for business, we must protect those events from the profiteering of those committing fraud.

Organisations involved in rugby—both rugby league and rugby union—tennis, and cricket in England and Wales already do good work. We need to empower them to do more. The amendments before us give us that opportunity. They would give them the right to take civil action in a court if they so wished. The Minister will no doubt tell us when he replies about the importance of enforcement. I would like him, ideally, to accept the amendment before us. By accepting that progress has been slow, we have arrived at an important time when this House can endorse the amendment before us and people such as Lord Justice Taylor, Professor Waterson and those who have done so much in the past will, I am sure, benefit from what we do today.

Lord Stevenson of Balmacara: My Lords, I have been following the progress of this arrangement between all sides because the noble Lord, Lord Moynihan, and Lady Heyhoe Flint—who is terribly missed—the noble Lord, Lord Clement-Jones, and I have been doing this for about four years now. We are reaching the next stage. I do not think we are at the end of the track
yet—there are still things that we would like to do—but we have reached an important stage and I should like to support what we are doing.

The issue is all about the rights of the promoters to organise the events that they want to and have control of them, and the rights of consumers who sign up to see these events to do so with the security and certainty that they will be able to see what they have paid for at reasonable prices. The Minister has said that what he has done with the bots amendment is to try to modernise the modern-day ticket touts. I absolutely agree with that. That is why I have signed up to his amendment. There were real difficulties getting this through, which I know because I have talked with the Bill team and the Minister about this. It is really good to see the amendment here today. We will support it and wish it well on its way.

However, the other amendments in this group, which we also support, should not be lost sight of and I hope very much that we will get some movement today. They stem from recommendations 4 and 5 of the Waterson report. They are in keeping with those and try to establish further what the Minister articulated when he introduced the original amendment: as well as having a good partnership with primary ticket sellers and the secondary market, it is really important that the law has a good relationship with consumers and event promoters. Only by providing additional transparency, which was requested in Amendment 33ZLZA—and possibly in the good suggestion that governing bodies get more power in Amendment 33ZLZC—will we begin to take the steps that will clean up this act.

We know from the police reports, from those who are active in this area and from talking to promoters that there is huge criminality and money laundering. There are issues that we really have to investigate. But at the heart of it stand consumers who cannot rely on the market providing them with the right choice and a fair one. This must stop. If the noble Lord wishes to take his amendment to a vote we will support him in the Lobby.

Lord Ashton of Hyde: My Lords, I am grateful to all noble Lords and I will try to be quick because I want to move on to the dinner break business. I pay tribute to my noble friend Lord Moynihan for his persistent campaigning on the subject. His work has influenced today’s government amendment, as has the work of other parliamentarians and particularly Nigel Adams MP and Sharon Hodgson MP.

Amendment 33ZLZA would amend the Consumer Rights Act 2015, by inserting a duty to provide the ticket reference or booking number when reselling tickets. This was specifically considered by Professor Waterson in his report. So I start by reminding noble Lords of the reasons that Professor Waterson gave for rejecting the same proposal that we now have before us in Amendment 33ZLZA. I refer to page 170 of his 226-page report. The first was cost. The amendment would require a system for the potential buyer to check a reference number, and in a manner that could be done quickly enough to facilitate internet sales. That requires infrastructure changes in both the primary and secondary market. The primary market would be asked to pay for changes to allow customers to authenticate tickets on the secondary market, for which they receive no additional income. Ultimately, the cost will be added to ticket prices.

Secondly, there is practicality. The secondary ticketing industry would need to establish a standard interface to enable cross-checking. There is strong competition between the platforms and no appropriate industry body to help bring such a system about. In such circumstances, it may be easier and possibly more productive for the secondary platforms simply to chase more exclusive authorised resale deals. Further, there is little evidence of there being the trust between the primary and secondary markets necessary to enable such verification.

Thirdly, my noble friend has mentioned the legal reasons. The EU consumer rights directive, which is the basis of the secondary ticketing information requirements in the Consumer Rights Act, prohibits member states going further in national law than the directive requires. My noble friend referred to a telephone conversation with the European Commission. There are differences of opinion on the legal interpretation and clearly, at the very least, there may be litigation ahead if we go down this road.

The Government agree with Professor Waterson. We cannot see how Amendment 33ZLZA would actually benefit anyone. Even if those problems were overcome and the primary sellers would offer a consumer confirmation that a reference number was real, how do we know that the real ticket is available for sale? Might it have already been resold? Consumers who buy tickets online, only to be disappointed, will be even angrier having gone to the effort to “verify” yet still being left in the lurch.

Professor Waterson preaches caution in further legislating with good reason. Amendment 33ZLZA is untested and offers false hope. While ticket reference numbers do not offer a solution, we agree with the proposal to require consumers to be informed of the terms of resale. Indeed, we have already legislated to do just that in Section 90(3)(b) of the Consumer Rights Act. Rather than amending the Consumer Rights Act, we believe that the existing law should be tested.

The need for better enforcement was also the overwhelming view of those who gave evidence to the Culture, Media and Sport Select Committee last week, and the Competition and Markets Authority’s enforcement investigation is ongoing. In addition, National Trading Standards and Trading Standards Scotland have been tasked with investigating potential enforcement cases against sellers on secondary ticketing websites that do not comply with the legislation.

I turn to Amendment 33ZLZC. While injunctions are already possible, the amendment would introduce a new element into consumer law by seeking to shift the responsibility for enforcement to the primary ticket seller. This could risk creating an undue burden on event organisers regardless of their capacity to act because public enforcement bodies could use it as grounds to prioritise other areas for enforcement action. The amendment also requires us to trust primary sellers to self-regulate and self-enforce, yet to date the sector has often been too unwilling or unable to take action. There have been notable exceptions, but the strides
LORD ASHTON OF HYDE

that we are making, as I set out at the start of the debate, have been achieved by bringing together the parties, including law enforcement agencies, and we need to build on that.

Although Amendment 33ZLZB is similar to the one the Government have tabled on the use of bots, it goes further by attempting to ban the resale of tickets purchased by bots. I acknowledge my noble friend’s kind remarks along with those of the noble Lord, Lord Stevenson, so to save time I will not comment in detail as I understand that my noble friend is content with the government amendment.

In conclusion, the Government recognise that it is hugely frustrating for fans who miss out on tickets sold on the primary market only to see them appear on the secondary ticketing market at increased prices. The Government are acting—working with industry and law enforcement agencies. We need to let these developments grow and allow time to harvest the results of the legislation that we agreed in this House only two years ago. I would respectfully ask my noble friend to withdraw his amendments and noble Lords to support government Amendment 33ZL in their place.

Amendment 33ZL agreed.

Amendment 33ZLZA

Moved by Lord Moynihan

33ZLZA: After Clause 91, insert the following new Clause—

“Duty to provide information about tickets

In section 90 of the Consumer Rights Act 2015 (duty to provide information about tickets), after subsection (4)(d) insert—

“(e) the ticket reference or booking number;

(f) any specific condition attached to the resale of the ticket.”

Lord Moynihan: My Lords, I am grateful to the Minister and all noble Lords who have participated in this debate. I should say to my noble friend that I did not telephone Brussels, which has put it in black and white that the directive does not prevent this practice, so they would be suing themselves, which would be fairly unwise.

I should also mention to the Minister that, in his report, Professor Waterson does not support further significant changes to the legislation, but makes it clear on page 22 that he is talking about a ban on the secondary ticketing market, which we are not in favour of. We do not want to ban the market, although noble Lords did so for the Olympic Games in London 2012. Similarly, this is not about a cap on resale prices. It is perfectly within the conclusions, and the Government’s response to the Waterson report, to move ahead with this simple but effective remedy. It is not costly; it is about the cost of a phone call to the RFU to say, “Your original ticket had a unique reference number on it—do you want to check that the one I have bought from StubHub or one of the other secondary sites is for real? Can you tell me whether that same number, which does not exist on there—or they have put another number on it—is for real before I incur a lot of costs?”.

It is a simple additional consumer protection measure which does not cost anything. It would look after consumers—in this context, particularly fans of sport and fans of music— which is what we should be all about. I beg to move the amendment and I should like to test the will of the House on it.

7.33 pm

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Amendment 33ZLZA agreed.

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Pidding, B.
Polak, L.
Porter of Spalding, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Ridley, V.
Robathan, L.
Rogan, L.
Rose of Mownden, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Skelmistersdale, L.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
[Teller]
Taylor of Warwick, L.
Tebbit, L.
Telfgarne, L.
Trenchard, V.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Wasserman, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

7.44 pm
Amendments 33ZLZB and 33ZLZC not moved.

Consideration on Report adjourned until not before 8.45 pm.

Horserace Betting Levy Regulations 2017

Motion to Approve

7.45 pm

Moved by Lord Ashton of Hyde

That the draft Regulations laid before the House on 7 March be approved.

Relevant documents: 29th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Government are proposing to extend the horserace betting levy to betting operators based offshore. Currently, betting operators in Britain are required to pay the levy, whereas those based offshore but otherwise in identical circumstances are not. This is manifestly unfair. Alongside this we are setting the rate of the levy, providing long-term certainty for betting and racing industries.
Horseracing is an extremely popular sport, being the second best-attended sport in Britain last year. Some 6 million people enjoyed a day at the races in 2016 and it is an important contributor to the economy. The symbiotic relationship between betting and racing is well established. The principle of transferring funding to racing from the proceeds of betting under statutory arrangements dates back to 1928 and the levy itself has been in place since the early 1960s.

The levy generally works well, providing distinct funding for specific purposes. Areas of expenditure include prize money, veterinary research and education, and upholding integrity. These areas are also crucial from a betting perspective. For example, a healthy prize supports large and competitive field sizes, ensuring that racing remains attractive as a betting product. However, wider changes have meant that the levy is no longer fair to either betting or racing. Given the introduction and subsequent rapid growth in remote—primarily online—gambling in recent years, this has created a system which puts British-based operators at a competitive disadvantage. It has contributed to a significant decline in levy receipts.

While I applaud and pay tribute to those betting operators that have chosen to make voluntary contributions to the sport, efforts at securing a long-term arrangement have failed to materialise. The Government have been left with little choice but to take action to ensure fair competition among betting operators. The UK is by no means unique in this regard. France, Ireland, Germany and others all have similar statutory arrangements in place.

The Government’s proposed changes to the levy have two principal objectives. They will create a level playing field between all betting operators and provide a fair return to the racing industry, helping to sustain and develop the sport. The levy is a pre-existing state aid, as it was in place prior to the United Kingdom’s accession to the European Economic Community, as it then was. As we are making material changes to the levy, we now require state aid approval from the European Commission. The Government are seeking state aid clearance and these regulations will come into force only once this approval is granted. We have today been informed by the European Commission that state aid approval will not be received before 1 April. Therefore, the reformed levy will not be in place on this date. However, we are confident that clearance will be received shortly. The statutory instrument provides for the reforms to come into force once state aid clearance has been received. Until that time, the 56th levy scheme, as determined by the Secretary of State, will take effect from 1 April, ensuring a continued flow of funding to the racing industry.

I turn now to the levy itself. The levy will be payable on bets on British racing made by customers located in Britain. The location of the operator will be irrelevant. The levy will apply equally to all bookmakers, including pool-betting and spread-betting operators, and betting exchange providers. The levy rate will be set at 10% of a betting operator’s gross profits on such activity and it will apply whether the bet is placed at a course, a high-street bookmaker, or online.

The Government considered a range of evidence in arriving at a fair levy rate. This included responses to three previous consultations on the levy and extensive engagement with representatives from the betting and racing industries. We have also considered the recent history of the levy, the overall landscape of the betting market and the findings of an independent report on the funding of racing.

Alongside the headline rate, we are proposing a threshold amount. As a result, no operators will pay levy on their first slice of gross profits derived from taking bets on British horseracing. This exempt amount will be set at £500,000 and will mean that the majority of small and medium-sized operators will not be required to pay the levy. The Government are of the view that a rate of 10%, with a £500,000 de minimis threshold, is a fair and proportionate contribution from betting to the mutual interest it has in a good-quality racing industry.

A fixed rate provides a foundation for betting and racing to make longer-term investments with confidence. However, the market can change, so it is important that the levy can respond. Therefore, the regulations require the Secretary of State to review the rate of the levy within seven years.

The changes I have outlined will make necessary alterations to the levy scheme itself. In addition, the Government have previously announced that we intend to make changes to the administration of the levy to reduce administration costs and remove government funding for day-to-day involvement relating to levy expenditure. We will consult on this second phase of levy reform in due course and the issue will return to this House then. That is a matter for another day.

These reforms will ensure a level playing field for competition for all betting operators, and will give racing a fair return from those who make significant profits from the British racing product. The levy will support funding for a range of areas, including prize money, integrity, veterinary science, and equine welfare.

As we approach the final furlong towards these much-needed reforms, the Government believe that resolving the unfairness in the current system will enable betting and racing to move forward and to work together to grow both industries in the mutual benefit of a sustainable and vibrant racing product. I beg to move.

Amendment to the Motion

Moved by Lord Lipsey

At end insert “but this House regrets that Her Majesty’s Government have taken insufficient account of authoritative legal opinion that the draft Regulations are ultra vires.”

Lord Lipsey (Lab): My Lords, I beg to move the amendment in my name. I declare a remote interest as a member of the Starting Price Regulatory Commission, chaired by the noble Lord, Lord Donoughue, and as a recipient of occasional hospitality from bookmakers, as stated in the register.
The Minister said that this is approaching the final furlong: I think this is the first of three gigantic Becher’s Brooks, at which this legislation will fail, and I shall explain why.

I make no secret of the fact that I am against the levy—I am against statutory support for a particular industry. I believe that racing should stand on its own feet through a proper market-oriented system of money from bookmaking. Of course, that is what has been happening, because media rights have now far dwarfed any yield from the levy—they are three times as much as the levy, which was fading away. I oppose the levy because it is a state-mandated picking of the pockets of poor punters to fill the boots of rich owners such as me. But I do accept that, if you are going to have a levy, it is right that everybody should pay it and that offshore operators should not escape it. So to that extent, I sympathise with the Minister, and if that was the objective, the Government could have proceeded in a perfectly straightforward way and introduced primary legislation, which would be subject to full parliamentary scrutiny, to reconstruct the levy.

Indeed, it was the clear advice of the parliamentary authorities that that is what the Government should have done. Mr Colin Lee, Clerk of Bills in the Commons, said in a note to Philip Davies MP:

“I can say with reasonable confidence that changes to the levy itself and its scope would need primary legislation”. However, we do not have primary legislation before us tonight. The truth is that Mr Lee was speaking unto power has had no effect, and DCMS, no doubt under pressure from some of its Ministers, has cobbled together a two-phase process to reconstruct the levy: the order before us now, and another in the autumn to abolish the levy board and hand over collection to the Gambling Commission.

This House is rightly sensitive about secondary legislation, the use and abuse of Henry VIII powers, ministerial attempts to minimise parliamentary scrutiny and so on. However, in this case there is a further problem. According to legal experts who have examined the order, it is not only the wrong way of doing things, it is actually ultra vires. I will cite the opinion of two such authorities: Olswang, the leading firm of gambling lawyers; and Tim Ward QC, in counsel’s opinion prepared for the Remote Gambling Association. The Library has copies of their documents if anyone wants to read up on this in more detail. I shall paraphrase their arguments.

In the latest note from Olswang, Mr Dan Tench does not dispute that an order to impose levy on foreign betting operators who do not at present pay it is in order; the 2014 Act provides for that. However, Mr Tench says that this order goes “well beyond” that. It mandates a fixed levy of 10% for all bookmakers, in place of the present process of annual levy fixed by the Levy Board. It mandates the extension of the levy to the Tote’s on-course operation. Incidentally, it was rather telling that the DCMS told a delegation only a week or two ago that the Tote already pays levy on its on-course business. It does not. I was a director of the Tote, so I am something of an authority on it. The DCMS just got that wrong, as it has got this order wrong. There is a £500,000 per annum exemption limit for on-course bookmakers, but it is an extension.

To summarise Mr Ward’s opinion, in paragraph 4 he says:

“DCMS has failed to establish a robust legal basis for the measures in these Draft Regulations. The explanations now given by DCMS raise serious concerns in circumstances where DCMS is seeking to enact under delegated legislative power a wide-ranging reform of the statutory Levy regime in the absence of any express statutory power to do so … On DCMS view, the Henry VIII clauses can be used to effect a wide-ranging restructuring of the Levy, even though on its face it affords only a power to ‘secure’ the levy is extended to offshore bookmakers. Such a broad reading of the clause is in stark contrast to the restrictive approach approved by the Supreme Court”.

I should say that this evidence was not available to the Joint Committee on Statutory Instruments when it considered the order.

I know why the DCMS has made these extra changes: it thinks they will help to get state aid approval. However, it may be significant that Ministers have been disappointed in their hope that they would have that state aid approval by tonight. The thing is, Commission approval is not enough. As we have seen before in the horseracing field, the Commission can be taken to the European Court, and I can say with total confidence that this order will be challenged in the European court. I am not a legal expert and I cannot judge the chances of success of that challenge. However, the lawyers I have spoken to think that the Government’s retort that this is rather similar to the French parasitical case, where something slightly similar was approved, will crumble on examination, the French system being so different from ours. We have a competitive market, they did not.

More broadly, what are the prospects of this balsa boat surviving the rough seas into which it is being launched? Not strong, I think. Any interested party can challenge the order, and in the opinion of those I have cited, they would have a good chance of success. Next, the Government have to launch their second order, a legislative reform order, in the autumn. I will have a chance to make my views on that known—or rather, the views of the lawyers I have consulted—but again, there is a strong legal view that this is outside the scope of the legislative reform order they are seeking. Then, there is the possibility, which I have mentioned, of a state-aid challenge to the European court. I do not think Brexit will come along fast enough to affect that and if it does, there are likely to be other restrictions on state aid and whatever arrangements follow.

I make one closing point. Ministers, in proceeding with what I fear they must know is a dodgy order, are making a political calculation. They thought, wrongly, that the new levy was uncontroversial in both Houses of Parliament. They think that they have the bookmakers by the short and curlies so long as the triennial review is impending, with the threat of slashing FOBT stakes deterring them from making legal challenges. They might be right, but let us suppose that they are wrong. Let us suppose that a challenge arises, if not from the big bookmakers then from some other betting firms, and the Government lose. For racing—and there are many present in this House tonight because they are supporters of racing, as I am—that could be a catastrophe. In all likelihood, they would end up not
even with the existing levy but having to pay back the money that had been collected under the terms of this order; that is, roughly £50 million a year.

For Ministers, too, I have to say to the noble Lord that it would be a catastrophe. They were warned by the lawyers, by me tonight and by others that if they went ahead, they would be behaving illegally; they went ahead anyway; and they have been caught. I can see the short-term advantages to Ministers of going ahead with this scheme. The Queen will no doubt warmly thank the Prime Minister at her weekly audience because her horses will cost her less. Mr Hancock, the Minister of State for Culture in another place, will no doubt feel confident that his Newmarket constituents will be minded to add still more to his 13,000 majority. But those thanks will turn to ashes. Far from providing certainty to racing, the order promises prolonged uncertainty. Long term, there is every chance that this half-baked legislative scheme will collapse at the hands of the courts. The Queen, Mr Hancock’s constituents and indeed the racing public will ask: “Why did you plough ahead? You had been warned”. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I declare my interest in that I took the Bill through in place of Matt Hancock when he started his ministerial career. I also did a six-month stage, or apprenticeship, in DG IV of the European Commission, now known as the Directorate-General for Competition. Like the noble Lord, Lord Lipsey, I have enjoyed hospitality through membership of the all-party horseracing group.

I do not share the noble Lord’s pessimistic approach and entirely endorse my noble friend the Minister’s recommendation that we support the statutory instrument before us. That the Government have set the threshold at a rate that will exclude the majority of small and medium-sized businesses is to be welcomed.

Perhaps I may say why there is such a need for the regulations and for the levy to be applied in this way. The regulations answer a basic question: why should the horse community benefits from that money or at least receive receipts? People are hurt regularly, and then there is the task of dealing with a half-tonne of animal which has a mind of its own and muscle, which moves up and down. Those people’s livelihoods depend on this money or at least the racing public will ask: “Why did you plough ahead? You had been warned”. I beg to move.

8 pm

Lord Addington (LD): My Lords, I support the Government’s measures and think the noble Lord, Lord Lipsey, is wrong. That is primarily because I live in the village of Lambourne. Lambourne might claim to be one of the beating hearts of the racing scene, but I will not contest with the noble Baroness who has the biggest claim to that status. I live in a community dominated by racing and by people who work and live in it. These people are not fat-cat owners; they are people who get up, usually when it is still dark, to go and deal with the horses. They risk life and limb in dealing with a half-tonne of animal which has a mind of its own and muscle, which moves up and down. People are hurt regularly, and then there is the task of supporting the horses themselves. The rest of the horse community benefits from that, because when you get one type of horse, you get others going down there and congregating around them in hubs. The levy supports them, but receipts from it have halved. We need something down there. Those communities and people benefit from that money being spent.

Anti-corruption and anti-doping, which racing has taken a real lead on and which the rest of the sporting sector can learn from, has been tackled well in this industry. It is money well spent as a whole and I recommend that we proceed with these regulations. Those people’s livelihoods depend on this money or at least on being able to live with a degree of certainty and support. If we have to take a little bit more off a person who is sitting or standing fatly back and watching as opposed to taking part, I have no objection to that. Those who work in racing should receive that support, thus I hope that the Government will stand firm.

Lord Donoughue (Lab): My Lords, I declare my interests as in the register, particularly as secretary of the racing and blood stock all-party group and of the Betting and Gaming All-Party Group. I am also chairman of the Starting Price Regulatory Commission. In 2005, I chaired on behalf of the racing industry the independent review of the future funding of racing, with particular reference to the levy and the commercial alternatives to it. That was against a background of the chairman of the then British Horseracing Board having recently called for the abolition of the levy from his racing base. Our three-stage review—I shall not delay your Lordships on it, but they will see the relevance—concluded that we should replace the levy. It had been introduced 40 years earlier to compensate racing for the assumed, although unproven, damage to its revenues caused by the introduction of off-course bookmakers. We identified commercial alternative revenues to racing, with race courses selling race data and television pictures to bookies, but because of the doubts regarding the legal security of such revenues, we reluctantly decided not to recommend abolishing the levy until alternative commercial revenues were legally secure. That is the background I come from.

The then Minister accepted our report and the levy was resumed for three years.
However, I think I can say that we assumed that the levy would go; its original purpose was achieved. I note that the Government have helped and cleverly defined a new justification, which is well drafted. Since then, the levy debate has rumbled on, as we have seen, through different Governments. It has wobbled between replacing and reforming the levy. Sometimes we have seen different proposals from the Treasury and from DCMS, the department sponsoring it. A year ago, the then Chancellor announced dramatically a new racing right. Now that has quietly disappeared. The levy is restored at 10% for seven years. As I mentioned, a new justification has been produced, replacing the earlier outworn one. Presumably, that was drafted to meet Brussels' requirements in not discriminating, reconciling racing and betting interests, and with a fixed rate. Elsewhere, the offshore avoidance loopholes have rightly been closed. I am sure all noble Lords support that and will thank the Government for doing it.

Meanwhile, media revenues to racing have continued to rise as our 2005 review predicted, more than doubling since then to around—I read—some £120 million, and double the current levy. Personally, I am always instinctively pleased to see racing receive revenue from any source. I love racing. I can also see the political attractions to the Minister of getting this annual irritation of the levy settlement off his desk for seven years. However, a number of issues clearly remain, including those my noble friend Lord Lipsey so strongly set out. I trust the Minister will address them adequately in his response. I am not sure that it can be a case of just one person trained in law claiming they know a bit more about the law than, for instance, Olswang—a major City firm.

I will summarise my concerns, some of which of course share ground with my noble friend. I see that the new measure may—I hope will—avoid a Brussels challenge over European state aid, thought it clearly seems to be state aid. I assume and hope that Brussels assisted drafting to ensure its safe passage over that hurdle. I accept that French support, wishing to protect French racing, should help there. We will see but my noble friend raised serious doubts. We also have the question of the domestic legal challenge from our bookmakers' body which may trip it up, as happened—as some of us remember painfully—with William Hill in the past. Again, we will see.

The use of the regulatory order to transfer the levy collection to the Gambling Commission seems unusual. I trust the Minister will be convincing in explaining that. I hope that the Gambling Commission, for which I have great respect, is fully resourced for its new and unexpected task. I note that as recently as 16 March last year, when DCMS published its plans to replace the levy, it specifically stated that the existing Levy Board would collect the funds. Why was that changed? I assume that the Gambling Act 2005, which many of us were deeply and painfully involved in, properly authorises the commission to do this job. Incidentally, at this point we should pay tribute to the fine work done by the Levy Board in its past very tricky job.

However, the biggest remaining problem is the familiar financial one: securing adequate future funding for racing. My view remains, as earlier, that that financial path must be basically a commercial one. This new levy may help in a small way for a while but we should be aware—this is my key point—that it also makes it more difficult for bookmakers to assist racing. This renewed levy impost plus the growing charges for pictures, over which there are current disputes, inevitably make horseracing an expensive betting product. Bookmakers, already under great commercial pressure, will increasingly, inevitably, focus on cheaper betting products such as football in its various betting forms.

8.15 pm

If the FOBT machines are soon hit—as they should be, in my view, and recent bookmaking managements have been guilty of gross complacency in approaching or ignoring this social problem—then these commercial pressures will increase. Hence, as that happens, the recent decline in the importance of race betting revenues to bookmakers may, ironically, be accelerated by these proposals. That will not help racing in the long run.

For the future, racing and betting must always where possible seek to work together and not be, as too often it seems, in adversarial opposition. As industries, they are joined at the hip. In the long term, each prospers best if the other prospers. They would be prudent to plan that future as being not always with a state levy. This seven-year break should not be wasted. With DCMS, betting and racing should spend some of that time preparing a secure commercial future for racing, which is what all sides want. Finally, and above all, I hope the Minister has indeed taken good legal advice or the department and racing may be in a little trouble.

Viscount Astor (Con): My Lords, briefly, I welcome this order and congratulate the Government on it. I claim some very small credit for it because the noble Lord, Lord Collins, and I, in a cross-party movement, managed to persuade the Government to accept an amendment to the earlier Bill, one that had been rejected in the Commons, which allowed these regulations to be brought forward.

I note that when the regulations went through another place they were endorsed and supported by the Opposition. They were even supported by the SNP, although I am not sure your Lordships would necessarily regard that as a terribly good endorsement of any prospect. However, it gives certainty to racing and to the bookmakers. They know that we will avoid the annual or tri-annual reviews that have beset racing and various Secretaries of State. I am sure my noble friend Lord Howard will refer to that.

I always noted that the noble Lord, Lord Lipsey, never liked the levy. Of course, we know his interest in greyhound racing, which has never benefited from the levy. However, I saw that the Minister in another place said that the noble Lord has volunteered to chair an active mediation. Although there are no plans to introduce a statutory levy for greyhound racing, we will try to encourage more money into the sector. I hope that gives him some assurance that greyhound racing will be supported.

Lord Lipsey: I thank the noble Viscount for drawing attention to that. Of course, the reason I took this job on is precisely in order that a statutory levy is not
necessary for greyhound racing and that sensible parties working in a market environment sort it out between themselves, perhaps with a little help from me.

Viscount Astor: I am sure that the noble Lord’s involvement will be very helpful to greyhound racing. I was recently at the new greyhound track in Towcester for a very successful event.

I will not say anything about the legal things as my noble friend Lord Howard will mention them. I just note that, should there be any involvement of and appeal to Brussels, after what happened today one would have thought that by the time the appeal got resolved other events might have made the whole thing unnecessary.

Viscount Falkland (CB): My Lords, the last time many of us who are in the Chamber tonight spoke was in 2014, during the licensing and advertising Bill. Many of the topics that we are touching on today we discussed then. But as the song goes, times are a-changing. The great change, of course, took place in 1963 when the levy was born and betting shops arrived on the scene. At that time, which I remember well, when I used to gamble quite a lot—I do not now—racing and greyhound racing were the two methods by which people who liked to have a gamble could do so.

In his concise introduction, the Minister mentioned the sport of racing as having high attendance and popularity among the public. That may well be so but that is against a very sharp decline in betting on horses, which is one of the reasons why bookmakers have been extremely worried and extremely tight in responding to the levy demands. The reasons for that are quite obvious. One is the different ways in which you can bet, many of which I would recommend. If some young man came to me and asked, “What is the best and most amusing way to have a bet”, I would say, “If you had come to me 30 or 40 years ago, I would have said: go racing, take a limited amount of money and enjoy it. But I would not say that today because there are far better ways of making money out of gambling”. I would suggest snooker or tennis—all these things people gamble on nowadays. Racing is a very difficult business in which to win. I ought to know; I suffered for many years.

In fact, I had a friend at school who I used to go racing with. I used to stay with his family in the holidays. They were great racing people. Unfortunately, he became a compulsive gambler, so much so that he found himself in court for fraud, trying to make up his gambling losses. The judge said, “This is a sad day for me to have to impose a custodial sentence on someone who comes from such a good family background and has had so many advantages and a good education. It is a sad duty for me and I expect my dismay will be shared by many in court. Perhaps I could ask the accused if he would like to say anything to the court to explain how he finds himself in this position”. My friend’s answer was simple. It got a great round of laughter but it was serious. He said, “Bad information, my lord”. The thing about betting on racing is that it is entirely on information. You need good information and the only good information you can get in racing is from either the trainer or the lad—male or female—who looks after the horse. They are well protected these days, I am glad to say, by the security people who work for the horseracing association.

Nowadays we are in a different world and I am worried about the seven-year period before we have a review. I probably will not be here. Some other Members of this House may not be here in seven years. It seems an enormously long time to wait to see whether there are any satisfactory results. But you will get satisfactory results only if people go back to racing and start betting. I am afraid that I have come to the conclusion that they will not do that. The betting pound, if you like, is limited and people will choose the way in which they want to spend their betting pound. They will move to cricket. Cricket is very popular. In fact, it is the area globally in which there is the most crime—not in this country but in other countries in the Indian subcontinent and elsewhere. Most other sports here on which people gamble are generally well controlled. People bet on every kind of thing and bookmakers will give them the odds.

One thing that puzzles me, which has not come up in the debate so far, is: what about the betting exchanges? Another important change in this country was the arrival of betting exchanges, where not only could you back a horse to win but you could back it to lose, which caused a great deal of concern among people in racing because it increased the chance of skulduggery and getting the information that I referred to.

I listened very carefully to the noble Lord, Lord Lipsey, as I always do. I remember his definition, which I will not repeat in the House, of the drawbacks of FOBTs, which stands for—I hate acronyms—fixed-odds betting terminals. What on earth does that mean? It means nothing at all. What in fact it refers to are casino games in betting shops, which the Labour Party decided was a good thing to do when it was in power. Each betting shop has four of these things and that is why they are still open. People are not backing horses. What the people who can least afford it are doing with the little money left in their pockets is putting it in casino machines in betting shops. There is a lot of denial about this.

I declare my position as a deputy chairman of the Racing and Bloodstock APPG, and I also belong to the Betting and Gaming APPG, but I fear that the betting and gaming group does not agree with my views on the social damage from these machines. This is a complicated area. I do not criticise the Government for bringing this in. The great thing it does—temporarily, anyway—is to bring in a flat rate of 10% with a discount for more than £500,000, if I can put it that way. It will be administered by the levy board. The endless unnecessarily wrangles between bookmakers and the levy board will cease. That is a good thing, and I hope it will go on for longer than I suspect it will.

I do not think that in seven years’ time the betting scene will be the same as it is now. Horseracing will continue. British horseracing has a world reputation, and the people who work in racing—in the stables and in the breeding—have a reputation which they cherish. They will find a way of surviving. They do not need an enormous amount of money, as long as there are
owners, and there are people who love owning well-bred horses. You do not need a racecourse and all the money you have to pump into it. You really only need a bit of land with suitable turf on which horses can compete. We may go backwards towards the 18th century when rich people had matches with one horse against another.

I am pessimistic. I do not think I am as pessimistic as the noble Lord, Lord Lipsey, but we have to pay attention to him because state aid is a complicated business. When the Minister sums up, will he explain to the House, because I do not understand it, the effect of this French parafiscal decision? I have consulted my friend on the Labour Benches, the noble Lord, Lord Donoughue, about this. He lives in France, so he should know, and I know the French pretty well. They have found a way of getting round European law. If they have done that, they will not be too busy making life difficult for us.

What the noble Lord, Lord Lipsey, described contains a lot of sense. I am not going to bet on a fight between the noble Baroness, Lady McIntosh, and the noble Lord, Lord Lipsey, although I know which one I would back in the long run. I hope they will not come to blows on this, but my opinion edges towards the noble Lord, Lord Lipsey. We have to be very aware of the dangers of state aid.

8.30 pm

Baroness Mallalieu (Lab): I appreciate that time is very short, so I shall be very short. I strongly support these regulations, and I pay tribute to the Minister in the other place, Miss Tracey Crouch, who has made enormous efforts to try to bring both sides together and produce a workable set of regulations. As my noble friend Lord Donoughue said, the betting and racing industries are pretty well joined at the hip, but they are also a minefield of conflicting interests. How to craft a fair and mutually acceptable system for funding a £3.5 billion industry has been the subject of a number of earlier failed—or, at best, imperfect—attempts. Indeed, the turf is scattered like confetti with, to use my noble friend Lord Lipsey’s phrase, “authoritative legal opinions”, usually conflicting, on how it should be done. I well remember one of them. Some years ago, when I was an independent member of the British Horseracing Board, we relied on such an opinion and fell foul of it later when challenged in the European court.

Every effort has been made by the Government to produce an agreement on which both sides can meet. That has proved difficult, if not impossible. We cannot leave things as they are. The levy is dwindling. The levy makes essential investments not solely in rich owners but in the sort of people who work in racing who were spoken about by the noble Lord, Lord Addington: 6,500 of them. I know them, and I declare my interest as a trustee of Racing Welfare, the charity that looks after them, and their union, the National Association of Stable Staff. There is also the money that goes straight to research which benefits not just the racing industry but the whole of the equine population. We cannot afford to see that continue to dwindle, and with it the small grants that go to keep the gene pool of our native species. That all comes from racing. Without the changes that are being proposed today, the levy is going to shrink. The needs are the same or greater, and we cannot meet them. As a lawyer, I know that there is no such thing as legal certainty—but there are times when, as in racing, you must simply do your best and go for the gap. I think this is one of them.

Lord Howard of Lympne (Con): My Lords, it is a pleasure to follow the noble Baroness, and I agree with everything she said. I declare my interest as a member of three horseracing syndicates and as a former chairman of a racecourse group. The issues before your Lordships this evening have bedevilled racing for decades. They were a matter of great contention when, more than 20 years ago, as Home Secretary I had responsibility for the racing industry and betting. Like the noble Baroness, I congratulate Tracey Crouch, the Sports Minister, on having had the courage to grapple with this issue, which has eluded the attention of Ministers for far too long.

I, too, listened attentively to the noble Lord, Lord Lipsey. As far as I could make out, apart from his principled opposition to the levy as a whole, his main objection to these regulations related to the possibility that they might fall foul of the courts, either in this country or in Europe. It grieves me to say that, given the growing assertiveness of the courts, that could be said of very many measures of legislation, both primary and secondary, which come before your Lordships’ House. If that were a sensible and satisfactory basis for opposing legislation, the legislative burden on your Lordships’ time would very light—much lighter than it is today. As the noble Baroness rightly said, we have to do the right thing—and if in due course the courts take a different view, I fear that that is something we all have to live with in these days of growing judicial intervention. I strongly support these regulations.

Lord Mancroft (Con): My Lords, I will speak just for two minutes, and start by declaring my interest, first as the chairman of one of the three regulatory bodies of point-to-point racing, which is the smallest area of racing. I should also say that I too have received entertainment from bookmakers from time to time, although by the time I have finished this evening I probably shall not receive any more.

I listened very carefully to the noble Lord, Lord Lipsey. The noble Viscount, Lord Falkland, said he did too, as it was important to do so, because the noble Lord knows what he is talking about in these matters and deserves our careful attention. I have some sympathy with the comments that he made and understand the whole principle that he is opposed to. The idea that the Government should impose a levy to support one particular industry and not another is a ridiculous one, in theory. But the reality is, as my noble friend the Minister said in starting and as I think other noble Lords have said, that the relationship between racing and betting is symbiotic. They are, as the noble Lord, Lord Donoughue, said, joined at the hip, and we should not do anything to break that join if either is to continue successfully. One comes to the conclusion that this is indeed a bit of a fudge, but the relationship between racing, government and betting has been a bit of a fudge since long before my noble friend Lord Howard
was Home Secretary—indeed since the 1960s—and it has been a fudge that has sort of worked. Occasionally, it has to be given a bit of a nudge to continue the relationship and make it go further. It is unsatisfactory that, every year over the last few years, the Secretary of State has had to reset a levy because the two industries have not been able to find a way forward.

What we have before us today is a fudge but, as several noble Lords have said, the Minister in another place, Tracey Crouch, has worked very hard to come up with a very nice sweet piece of fudge, which certainly the racing side of the industry approves of, although I suspect that some of the bookmaking side of the equation will not be quite so happy. But it is reasonable that the online betting operators should contribute as they have not before, and I conclude that this is a fudge worth going for. As my noble friend Lord Howard said, if we rejected every single statutory instrument that we thought might end up in the courts, we would have nothing to do in dinner hour after dinner hour from now on—that may be a very splendid idea, but the reality is that we must not be put off with that. Yes, this is not without problems going forward, and it may not work for ever, but on balance I think we should support the Government and let this statutory instrument go forward.

**Lord Trees (CB):** My Lords, I will try to be very brief as I am very aware of the time, but want to support these regulations, which simply extend the reach of the levy to include offshore betting and which, in my opinion, quite simply right a wrong. One of the major benefits of the levy in the past has been, as I hope it will be in the future, the support it gives to equine veterinary science, research and education. Here I declare an interest as a former head of a veterinary school. Over the past 15 years, something like £32 million has been contributed by the levy to research and education. It has led to real improvements in the health and safety of horses, to a reduction in injuries, and to the prevention of infectious disease and many other facets of ill health. It has also contributed to the education of equine specialists, ensuring that here in the UK we are a global leader in equine healthcare.

I emphasise that that support is important because there are very few other sources of support for funding equine research. The research councils generally do not do it. In summary, this legislation corrects an injustice, which, in my opinion, quite simply right a wrong. One of the major benefits of the levy in the past has been, as I hope it will be in the future, the support it gives to equine veterinary science, research and education. Here I declare an interest as a former head of a veterinary school. Over the past 15 years, something like £32 million has been contributed by the levy to research and education. It has led to real improvements in the health and safety of horses, to a reduction in injuries, and to the prevention of infectious disease and many other facets of ill health. It has also contributed to the education of equine specialists, ensuring that here in the UK we are a global leader in equine healthcare.

**Lord Clement-Jones (LD):** My Lords, I am conscious of the time, and we must allow the Minister time to respond. I simply indicate the support of these Benches for the proposals. We have had many knowledgeable contributions from around the House, most of which I support. We do not support the noble Lord, Lord Lipsey, in his amendment to the Motion, but I thank him for the courtesy of providing a copy of the legal advice.

I was very interested to hear what the noble Baroness, Lady McIntosh, and the noble Lord, Lord Howard, had to say on that score. It seems to me to be pretty thin, but there is always an arguable case, as the noble Baroness, Lady Mallalieu, said. That does not seem to me to be a barrier to the adoption of this excellent scheme.

As the noble Lord, Lord Donoughue, outlined, it has been quite a saga. It is now since 2005 that the levy has been up for grabs, so to speak. Then we had the discussion about racing rights, and so on. I think we have come to the right place. I entirely agree with the noble Lord, Lord Howard, that Tracey Crouch has grasped the nettle in the right way. The Secondary Legislation Scrutiny Committee had no great things to say about the scheme. We very much welcome the £500,000 threshold. Some questions have been raised about why it is the Gambling Commission and why seven years, but I am sure that the Minister will answer them.
wanting to capture that income. It was the pressure in this Chamber that forced the Government to consider the continuation of the levy. I hope that in the next seven years we will see that matter progress.

From these Benches, I would like to see the betting right cover more sports so that, when people gamble on football, grass-roots football benefits and when they are gambling on other sports, grass-roots sports benefit. That is not what tonight is about—and I welcome the debate initiated by my noble friend. I welcome the fact that he has tried to avoid having a wide debate about the principle. He has raised important issues about legality, and I am sure that the Minister will respond to those points but, as a point of principle, this side strongly welcomes the continuation of the levy.

8.45 pm

Lord Ashton of Hyde: My Lords, I thank all noble Lords who have made interesting contributions to this debate, and a number of very important points. The levy has been around for many decades and needed fixing. It is clear that the existing system is unfair and that the fudge, as my noble friend Lord Mancroft called it, creates more money for horseracing in general and is fairer. It includes things like veterinary research, which the noble Lord, Lord Trees, talked about. Since 2000, £32 million has been raised from the levy. This will raise more money and some of it can go to things such as veterinary research.

The noble Lord, Lord Lipsey, raised a number of points. His opposition to the levy is something of a well-trodden path, and he was honest enough to say that some of the technical reasons he was putting forward were really based on the fact that he does not approve of the levy. Before I go on, I should acknowledge that he has been completely open, and we have had useful meetings. We absolutely listen to his views and respect his knowledge but, ultimately, we have agreed to disagree.

Betting and racing have a well-established, intertwined relationship, and the Government are clear that the levy continues to be necessary to aid horseracing and the equine sector, reflecting that mutual interest. But it must be right that all operators who derive significant benefit from British racing should contribute.

On the legal basis mentioned by the noble Lord, Lord Lipsey, the levy is a state aid. Section 2 of the Gambling (Licensing and Advertising) Act 2014 allows the Government to extend the levy in a state-aid compatible way, using secondary legislation. At the time, my noble friend Lord Gardiner, who I am glad to see is in his place, was explicit that the power had to be broad enough to enable the Secretary of State to make changes to ensure state aid approval. That was Parliament’s clear intention when enacting the power in 2014. So there is no need for primary legislation. The point of securing the power in 2014 was to allow us the flexibility to use secondary legislation, and that power is broad enough to address all the issues to secure state aid approval.

We have thought through very carefully the right way to apply the state aid requirements to the British context. We consider that our proposals, taken together, represent the right approach for Britain. The exempt amount means that we can protect smaller operators, and the diversity of the betting market at racecourses in particular. There is no justifiable reason for differential treatment between different types of betting operators going forward.

There was talk about the challenge to state aid approval in the European court. The noble Lord, Lord Lipsey, questioned whether racing would have to repay funds in the event of a successful challenge, but that will depend on the reasons why the European court sets aside the Commission’s decision. Racing would not be liable to repay historic funds. We are confident that the European court will uphold the decision of the Commission to approve the levy as compatible state aid, as it did in the French case, so we do not expect that to happen. The noble Viscount, Lord Falkland, was worried about the seven-year period being a long time, but I can confirm that the Secretary of State has to review the levy within seven years—if need be, it can be sooner than that. Looking ahead, in terms of the transfer of functions to the Gambling Commission and racing authority respectively, we will consult on this in due course. This will provide an opportunity for all interested stakeholders, including the noble Lord, Lord Lipsey, to inform our consideration of this issue.

The noble Lord, Lord Donoughue, talked about media rights and he is right that they have increased in recent years. For example, they were £90 million in 2012 and increased to £128 million in 2014. But media rights are a distinct commercial product and are voluntarily entered into. Many online operators do not purchase media payments, so relying on media payments alone would not secure a contribution from many online betting companies to racing. Racing has told us that the current price for media payments has reached a peak. Since January 2017, some high street betting shops—Ladbrokes, Coral and Betfred—have not been showing pictures from Arena Racing Company racecourses due to a media rights dispute. This demonstrates the uncertainty attached to this form of income. The noble Lord also asked whether we had changed our mind on the Levy Board collection since March 2016. For the time being, collection remains with the Levy Board and we will be consulting on the transfer of the collection function to the Gambling Commission in due course.

The noble Lord, Lord Lipsey, said that we were wrong about the Tote paying the levy; the Tote on course is liable to pay the levy but amounts paid are negotiated with the Levy Board. These regulations abolish that differential treatment and apply the levy equally to all operators.

We think that these reforms will make a profound difference to the British racing industry and will help the sport to grow as an attractive betting product. I hope that my explanation will have satisfied the noble Lord, Lord Lipsey, sufficiently and will allow him to withdraw his amendment.

Lord Lipsey: My Lords, this has been a really excellent debate and the arguments on all sides have been well expressed. I just say that the Government, by laying these regulations, have disposed but—at the
end of the day, and whether the noble Lord, Lord Howard, likes it or not—the Commission, our courts and the European court will decide. I do not wish to put this to a vote tonight. We will see in the light of history who turns out to have been right. I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Digital Economy Bill
Report (3rd Day) (Continued)

8.52 pm

Amendment 33ZLA

Moved by Baroness Howe of Idlicote

33ZLA: After Clause 91, insert the following new Clause—

“Duty on Ofcom to report on filtering by internet access providers

(1) Ofcom must prepare a report for the Secretary of State, every two years from the date on which this Act is passed—

(a) on the number of providers of an internet access service who are preventing or restricting access on the service to information, content, applications or services, for child protection purposes;

(b) on the number of providers of an internet access service who are not preventing or restricting access on the service to information, content, applications or services, for child protection services; and

(c) describing the actions that are being taken by providers of an internet access service to—

(i) prevent or restrict access on the service to information, content, applications or services, for child protection purposes;

(ii) provide and improve child protection via other means other than those listed in sub-paragraph (i); and

(iii) provide relevant information to parents.

(2) The report produced under subsection (1) must be laid before each House of Parliament.

(3) In this section “internet access service” has the same meaning as in section 91.”

Baroness Howe of Idlicote (CB): My Lords, I rise to speak to my Amendment 33ZLA on adult content filters. After all the lengthy discussions about age verification, some might be tempted to think that filters have been overtaken and eclipsed by age verification checks. However, that is not the case. The age verification checks in Part 3 relate narrowly to pornography and not to other non-pornographic adult content. This leaves out any protections in Part 3 on violence, self-harm, gambling and so on. In another place there was a debate about extending age verification checks to other forms of adult content and this is something that I think is worthy of further consideration, perhaps in the forthcoming Green Paper on internet safety.

In the short term, however, it seems to me that we should make better use of adult content filters. The Government have asked Ofcom to produce a series of reports on the filtering provisions and practices of the four largest ISPs. These reports have helped to provide objective analysis of the way each of the four ISPs have approached adult content filters, the standards to which they have subscribed and the extent to which customers have used them. This information has been very useful for policymakers and parents. If we concede that it is important to understand what ISPs are doing in relation to adult content filters, however, it simply makes no sense to look only at the conduct of some ISPs. Indeed, if Ofcom was only going to look at the conduct of some ISPs, it would make more sense for it to shine the spotlight on the conduct of the smaller ISPs as they are not party to the family-friendly filtering agreement between the big four ISPs.

There is no public clarity about the conduct of smaller ISPs in terms of whether or not they provide adult content filtering options, how they provide these options or what filtering standards they apply. Far from making for transparency, this generates confusion for both parents and policymakers. My amendment would end this very unsatisfactory state of affairs and require Ofcom to assess the conduct of all ISPs in relation to adult content filters.

In making this argument, I am mindful that some have suggested that the smaller ISPs primarily serve business premises rather than homes, which might cause them to conclude that it is not relevant to assess their conduct in relation to adult content filters. In the first instance, even if it were true that the smaller ISPs primarily serve business premises, to the degree that they would not do this exclusively or would also serve homes, there would be a clear need to assess their conduct in relation to adult content filters. After all, every child matters.

Secondly, and more importantly, while I certainly acknowledge that some small ISPs such as Claranet focus only on business customers, that is not the case for others such as KCOM, the Post Office and Plusnet. There is a sense in which the different assessment as to whether the smaller ISPs service businesses or homes highlights all too well the lack of clarity about the smaller ISPs, demonstrating the need to ask Ofcom to review their conduct in relation to adult content filters, as well as that of TalkTalk, Sky, Virgin and BT. I believe in transparency, and that we particularly need greater transparency in relation to the conduct of the smaller ISPs. This will serve two important ends. In the first instance, it will help service a clearer public policy debate about child safety online and on the role of filters, which I believe would greatly assist the Green Paper process. In the second instance, the data gathered could be made available to help parents wanting to have a good objective understanding from an official source of the kind of filtering options that an ISP provides and of the filtering standards to which it subscribes. This would help empower parents as they seek to rise to the challenge of helping to keep their children safer in a digital age.

In closing, I thank the Minister for meeting me to discuss the conduct of the smaller ISPs and for the conversations that he had subsequently about the approach of smaller ISPs with the Internet Service Providers’ Association. I very much welcome the fact that ISP has now agreed to introduce a new step in its members’
sign-up process, which requires members to consider whether online safety tools are suitable for their customers. This provision, together with my amendment, would certainly help to move things forward. I beg to move.

9 pm

Lord McColl of Dulwich (Con): My Lords, I am very pleased to have been able to put my name to this amendment, which is also in the names of the noble Baroness, Lady Howe, and the noble Lord, Lord Collins. I commend the noble Baroness, Lady Howe, for all the work she has done in this important area and for her persistence in ensuring that we have the best internet filtering options available.

The noble Baroness’s amendment comes only a week after the House of Lords Communications Select Committee published its report, *Growing up with the Internet*. Most of us will need to read it carefully, as it has some important things to say about internet filtering which I hope the Government will consider as they put together their promised Green Paper on internet safety. I am concerned that the committee’s report says on page 3 that, “self-regulation by industry is failing”. Indeed, it makes me wonder whether we will need to revisit Clause 91 at some point so that it goes further in mandating all internet service providers to provide filtering.

For the time being, I am glad that the Government have taken measures to ensure that family-friendly filtering can continue to operate under the EU rules on net neutrality for both internet service providers and mobile phone operators. I am also glad that they will be hosting conversations which will be influenced by the noble Lords’ report on what is needed to ensure the best interests of children.

The internet, mobile phones and young people go together. If they did not, we would not have needed the age verification plans that the Government have introduced under Part 3. Last year, Ofcom’s annual report on children’s media use showed that, for the first time, children’s internet use overtook their use of TV. Some 79% of 12 to 15 year-olds own a smartphone. This is technology in our teens’ pockets with no 9 pm watershed. While there is an automatic adult bar in place on smartphones, 46% of parents of 12 to 15 year-olds do not know whether it is in place or not.

Internet network filtering is another option for parents as they raise digital natives. While Part 3 seeks to tackle children’s access to pornography, filters on both mobile phones and home broadband can target other adult content, including violence and drugs. The ISPs offer customised filtering and different variations of the filtering options. When the big four ISPs agreed to provide family-friendly filtering, the Government asked Ofcom to produce a series of reports on how their commitment was progressing. Amendment 33ZLA is an extension of that requirement and would apply to all ISPs for the first time—big and small—and to mobile phone operators.


I agree, but I am concerned about the transparency of options for parents, especially in relation to the smaller ISPs. A mystery shopper exercise revealed that, when asked on the phone about filtering provision, some smaller ISPs were able to say whether filtering was offered, but seven were unable to confirm either way.

In this context it seems to me that, having conceded that Ofcom should report on some of the filtering policies of some ISPs, it makes no sense not to cover the smaller providers. Indeed, it is in respect of them that the need for a review is greatest—although the review of the four larger providers is vital and must continue. The findings of the last report were very useful.

These options need to be clearly set out to parents, and I support the requirement in Amendment 33ZLA that Ofcom should produce a report every two years setting out what all the mobile phone operators and ISPs are doing—or not doing—on internet filtering. This state-of-the-nation filtering report would serve two key purposes. First, it would help to bring greater clarity and transparency, which would be invaluable for policymakers, especially in the context of the Green Paper and beyond. Secondly, the data could also help inform parents of their options for filtering, so that they would not have to go to multiple websites, with differing levels of transparency, and try to work out the differing options.

I hope that, if this information is more accessible to parents, it will empower them to make the right ISP choice for their family and will increase their take-up of filters. The use of home network filters has been increasing over the last few years but they are still used by only about a third of parents. There are 7.96 million families with dependent children in the UK, and 99% of these households have fixed broadband. By my calculations, that means that 5.25 million households do not use internet filtering. Some parents have deliberately chosen not to use filtering, but 42% of parents of 12 to 15 year-olds do not know about internet filters. I hope that our Amendment 33ZLA will help provide the support and information they need.

This proposal is quite modest and fully in line with the intentions of the Government’s Green Paper on internet safety, which has as an objective, “helping parents face up to the dangers and discuss them with children”. Indeed, it is difficult for the Government to argue against this, given that they have established the relevant precedent by helpfully asking Ofcom to review some of the ISPs’ filtering practices. I hope that the House will support Amendment 33ZLA to ensure that Ofcom reports on all ISPs, big and small.

Baroness Benjamin (LD): My Lords, I support Amendment 33ZLA, which would require Ofcom to report on internet filtering. I, too, thank the noble Baroness, Lady Howe, for persistently raising this issue in the House, and I welcomed the Government’s proposal at Second Reading to bring forward an amendment on filtering.

As we have already heard, last week the Communications Select Committee, on which I sit, published its report, *Growing up with the Internet*, which covered the important subject of internet filters.
[BARONESS BENJAMIN]  
We should not be lulled into complacency by Part 3 of the Bill. Although it is very welcome, it deals only with children’s access to pornography and not to any of the other subjects covered by internet filtering. The Select Committee heard of a “worrying rise in unhappy and anxious children emerging alongside the upward trend of childhood internet use”. This is a sobering reminder that there are many challenges ahead of us.

I hope that the Government will read our report carefully as they prepare their Green Paper on internet safety. In doing so, I particularly hope that they will review the committee’s two recommendations on internet filters. On page 60, the report recommends that, “all ISPs and mobile network operators should be required not only to offer child-friendly content control filters, but also for those filters to be ‘on’ by default for all customers. Adult customers should be able to switch off such filters”. We also recommend: “Filter systems should be designed to an agreed minimum standard”.

In this context, while the Government’s Committee stage amendment, which basically says to ISPs, “You may provide filtering if you want to, but, equally, you don’t have to if you don’t want to”, is clearly problematic. As we move towards the Green Paper we must look to require all ISPs that service homes among their customer base to provide unavoidable choice—or, better still, default-on adult-content filtering options.

I know that the Minister gave us assurances that the Internet Service Providers’ Association was going to encourage its members to consider what was appropriate for their customer base. But, given the strong messages in our report for child-centred design, I am not convinced that that is enough—unless an ISP is solely for businesses.

I hope that the Government will review their position on internet filtering in the light of our report and that, in the meantime, they will support this modest but important amendment. It will give policymakers a clear picture of the landscape of what is and is not being provided by ISPs. Having conceded that it is appropriate to ask Ofcom to review the approach of some ISPs to adult-content filters, logically they should be looking at the conduct of all ISPs that service homes. This is especially important in relation to smaller ISPs whose practices and standards are often less accessible. This will really help the preparation for the Green Paper.

The information should also be provided to consumers on the Ofcom website on the web page Advice for Consumers. We need to put as many tools as we can in the hands of parents to help them navigate the complexities of filters. Of course, if the Government adopted the committee’s recommendation that there should be minimum standards for filtering, we would make parents’ lives much easier. I look forward to discussing this further with the Minister in one of his round tables on the Green Paper and I very much hope that noble Lords will support Amendment 32ZLA. It is a vital step towards greater industry transparency with respect to child protection online.

Lord Collins of Highbury (Lab): My Lords, I too thank the noble Baroness, Lady Howe, for this amendment. I added my name to it and support very much the principles contained in it. As she said in her introduction, this is not simply about pornography or about age verification, where we have addressed those issues. It is about giving parents the tools for the job so that they can be sure that their children are accessing the internet in a responsible way. That is a key issue because we have just had an hour-long debate on gambling; we know that access to gambling is on the internet nowadays. We have controls in casinos and age limits in betting shops, but we also know that someone can bet huge amounts on mobile phones using the internet. We need to give parents those tools. That is what the House of Lords Communications Committee resolved. The report is excellent and I welcome noble Lords’ references to it.

The Minister will no doubt reassure the House about what we are doing with the major ISPs and how Ofcom will be reviewing that, but if, as the noble Baroness said, 10% or potentially even 15% of the market is not covered by that review, we are not addressing the full picture. What we need to aim for in this highly competitive market is an industry standard so that consumers understand that, wherever they go to get the best price for access to the internet, the whole industry will be applying the same standards in terms of the ability of parents to ensure that their children are accessing the internet in a responsible way.

Reference has been made in this discussion to the review being conducted by Ofcom. Will the Minister consider whether that review could be extended to all ISPs? He has the authority and he does not need this amendment to be approved, but he could reassure us that we will not simply rely on the letter from the industry saying, “we will approach the other ISPs and seek their co-operation”. He can ask Ofcom to do this and I urge him to give noble Lords that reassurance.

9.15 pm

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I thank all noble Lords who have contributed to the debate. I will start by saying that the noble Baroness, Lady Howe, has been a consistently strong voice in this House in favour of protecting children online and we pay tribute to that. As noble Lords know, we introduced Clause 91 in Committee on the provision of family-friendly filters, clarifying that internet service providers may restrict access to information, content, applications or services where that is in accordance with the terms of service agreed by the end user. That clause gives a reassurance to providers that such filters are compliant with EU net neutrality regulations, so the debate on that has been had in this Bill.

The noble Lord, Lord Collins, my noble friend Lord McColl and the noble Baroness, Lady Benjamin, referred to the report of the House of Lords Communications Committee, Growing up with the internet, which was published on 21 March. The noble Baroness, Lady Benjamin, hopes that we will take careful note of it. She knows that we listen to her—she had an amendment accepted. Among the many recommendations in the
report, there is a call for a mandatory default on filters set to a minimum standard to be a requirement made of all ISPs and mobile network operators. Of course I can confirm that we will consider the recommendations in the report carefully as part of our developing work on the new internet safety strategy, and we will respond to it formally in due course.

However, we believe that the current voluntary approach on filters works well and that a mandatory approach would run the risk of replacing the current user-friendly parental control tools with a more inflexible top-down system. As has been noted by several noble Lords, the Internet Service Providers’ Association, the trade body for the industry, is taking further action to encourage smaller ISPs to consider online safety issues and parental control filters for their customers where appropriate. But having said that, I can make the commitment that we will listen to what the committee has said on this subject and, as I say, we will respond in due course. This amendment would require Ofcom to report to the Secretary of State every two years on the number of internet access providers which do or do not offer filters and to describe the actions being undertaken by them in relation to child protection.

As noble Lords will know, in 2013 the previous Prime Minister announced our agreement with the big four ISPs—Sky, Virgin Media, BT and TalkTalk—that they would offer network-level family filters to all customers by the end of December 2014. Ofcom was asked to produce reports on this rollout and did so in four reports issued between January 2014 and December 2015 covering the detail on the provision of filters and child protection measures by the big four ISPs, covering 88% of the fixed broadband market. The vast majority of consumer-focused broadband is therefore a matter of public record. The Ofcom reports also cover data on take-up and usage by parents of these filters. The data are now updated annually in Ofcom’s Children and Parents: Media Use and Attitudes reports, which provide statistics on parental usage and awareness of filters and experience of online safety. In respect of ISPs other than the big four, which run into hundreds, the vast majority of these are SMEs and micro-businesses, as noble Lords may be aware, offering niche, specialist and business-to-business services to small subscriber bases.

With that in mind, it is not clear from the amendment how Ofcom would gather the information it would need to prepare the statutory reports. It is likely that Ofcom would need to identify and ask providers for this information. This would be a very big task for Ofcom as ISPs enter and leave the market constantly and there is no requirement for them to register with Ofcom. It would also be disproportionate for the majority of ISPs, most of which are not focused on the mainstream consumer market, to be asked to provide this information.

The information covered by the existing Ofcom reporting ensures that the most relevant data are sourced on the actual usage of filters by parents, without disproportionate costs or impact on SMEs and micro-businesses. A statutory approach could also unnecessarily limit the scope and focus of reporting moving forward, as technology and the market changes.

On that basis, we consider it more appropriate for Ofcom’s reporting to be on a non-statutory basis to allow greater flexibility. Therefore, I hope that in light of that the noble Baroness will withdraw her amendment.

Baroness Howe of Idlicote: My Lords, I am most grateful to all noble Lords who have taken part in this debate and raised all these extremely important issues, and to the Minister for setting out his views on what has been achieved and some of what he considers the danger of asking Ofcom to do rather more than at present, therefore perhaps limiting some of the other work. I would certainly like to see rather more progress being achieved, but on the other hand I understand the extent to which steps have been taken. In the circumstances I will not press the amendment further, but I hope that the Minister will keep the whole issue under review and let us know as and when he becomes even more satisfied with what has been achieved, remembering that at the back of all this is the small users, such as the parents and children, who we are really concerned about protecting. Having said that, I will withdraw my amendment.

Amendment 33ZLA withdrawn.

Amendment 33ZM
Moved by Lord Ashton of Hyde

33ZM: After Clause 92, insert the following new Clause—

“Regulations about charges payable to the Information Commissioner

(1) The Secretary of State may by regulations require data controllers to pay charges of an amount specified in the regulations to the Information Commissioner.

(2) Regulations under subsection (1) may require a data controller to pay a charge regardless of whether the Information Commissioner has provided, or proposes to provide, a service to the data controller.

(3) Regulations under subsection (1) may make provision about the time or times at which, or period or periods within which, a charge must be paid.

(4) Regulations under subsection (1) may make provision—

(a) for different charges to be payable in different cases;
(b) for cases in which a discounted charge is payable;
(c) for cases in which no charge is payable;
(d) for cases in which a charge which has been paid is to be refunded.

(5) The Secretary of State may by regulations make provision—

(a) requiring a data controller to provide information to the Information Commissioner, or
(b) enabling the Commissioner to require a data controller to provide information to the Commissioner,

for either or both of the purposes mentioned in subsection (6),

(6) Those purposes are—

(a) determining whether a charge is payable by the data controller under regulations under subsection (1);
(b) determining the amount of a charge payable by the data controller.

(7) The provision that may be made under subsection (5)(a) includes, in particular, provision requiring a data controller to notify the Information Commissioner of a change in the data controller’s circumstances of a kind specified in the regulations.”
(8) In this section “data controller” means a person who, alone or jointly with others, determines the purposes and means of the processing of personal data.

(9) In subsection (8) “personal data” means any information relating to an identified or identifiable individual.

(10) For this purpose an individual is “identifiable” if the individual can be identified, directly or indirectly, in particular by reference to—

(a) an identifier such as a name, an identification number, location data or an online identifier, or

(b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

(11) Where the purposes and means of the processing of personal data are determined by or on behalf of the House of Commons or House of Lords, other than where they are determined by or on behalf of the Intelligence and Security Committee of Parliament, the data controller in respect of those data for the purposes of this section is the Corporate Officer of that House.”

Lord Ashton of Hyde: My Lords, the government amendments in this group seek to give the Secretary of State the power to make regulations introducing new charges to fund the regulatory functions of the Information Commissioner for data protection. The charges will replace the existing notification fees set out in regulations made under Sections 18 and 26 of the Data Protection Act 1998.

The amendments will also repeal Part 3 of the Data Protection Act, which imposes an obligation on data controllers to notify the Information Commissioner of certain types of data processing. The commissioner maintains a register of all data controllers. The General Data Protection Regulation removes the obligation on data controllers to notify the Commissioner, so it is necessary to repeal Part 3. The GDPR will become part of UK law on 25 May 2018.

The amendments seek to replicate the substance of the fee-raising powers in the Data Protection Act 1998. I can confirm that charges will continue to be based on the principle of full cost recovery and, in line with the current model, fee levels will be determined on size and turnover of organisation, but will also take account of the volume of personal data being processed by organisations to recognise the additional risk of a breach occurring when an organisation processes large volumes of sensitive personal data.

Although organisations will no longer be required to notify the Information Commissioner that they are processing personal data, they will continue to receive a range of services from the Information Commissioner’s Office in return for the charge. This includes good practice guidance on organisations’ obligations under the data protection framework and how to comply; online training videos; free voluntary audits of organisations’ data protection practices to support improved compliance; and advisory visits.

The Government have considered the DPRRC’s recommendations on these clauses and have responded. We agree with the committee that regulations made under the new charging powers should be subject to appropriate external consultation and parliamentary oversight. We will therefore bring forward an amendment at Third Reading to require the Secretary of State to consult,

“such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate and such other persons as the Secretary of State thinks appropriate”,

in addition to the Information Commissioner. We will also bring forward an amendment to require the Secretary of State to use the affirmative procedure when making regulations under the new power, except in the case of purely inflationary increases, where the negative procedure will apply.

We have considered carefully the committee’s recommendation to require the Secretary of State to ensure that the income from the charges does not exceed the reasonably anticipated costs of discharging the specified functions of the Information Commissioner and Secretary of State related to data protection. It is the Government’s view that the limited flexibility given in the government amendments is necessary, given rapid developments in the digital economy and to manage the inevitable period of transition as the ICO takes on additional responsibilities under the forthcoming general data protection regulation. The language used in the Government’s amendment mirrors that in the existing Data Protection Act. Parliament has not expressed any concerns about how the existing powers have been exercised and we believe that by subjecting each exercise of the power to the affirmative procedure, we are putting in place sufficient parliamentary safeguards to ensure the powers will be exercised in a rational and responsible way in the future. We therefore do not intend to table an amendment to address this recommendation. I beg to move.

Amendment 33ZN (to Amendment 33ZM)
Moved by Lord Clement-Jones

33ZN: After Clause 92, in subsection (2), leave out from “charge” to end and insert “for a service provided to the data controller by the Information Commissioner.”

Lord Clement-Jones (LD): My Lords, I thank the Minister for that introduction but I must confess to being somewhat baffled by it. I am very happy that he has taken on board some of the Delegated Powers and Regulatory Reform Committee’s recommendations. However, he read out word for word from his letter to us of 22 March why he is not agreeing to table an amendment similar to Amendment 33ZP, which is in my name and that of my noble friend Lady Hamwee, yet in his introduction, he assured us that the actual charges would be no more than full cost recovery. I therefore do not really understand what his objection is to enshrining that in primary legislation. I certainly do not understand the paragraph that begins:

“It is the Government’s view that the limited flexibility given in the Government’s amendments is necessary given rapid developments in the digital economy and to manage the inevitable period of transition.”

Full cost recovery is full cost recovery—I cannot see any ambiguity or any need to be particularly flexible going forward. Just because the language used in the Government’s amendment mirrors the existing Data Protection Act does not mean that we cannot improve on it.

This is a bit of a curate’s egg. Although I am of course pleased that the Minister is responding to two-thirds of the committee’s report, the really important
bit—making sure that the ICO does not overcharge—is not catered for. A bit more explanation from the Minister is needed as to why he cannot simply enshrine that in a third amendment at Third Reading.

9.30 pm

Lord Collins of Highbury: I have tabled Amendment 33ZPA, which deals explicitly with the Delegated Powers Committee’s recommendation. As the Minister will know, immediately on seeing the government amendments I approached him and wanted a discussion, because I was anxious that items were suddenly being put in the Bill of which no mention had been made before. We had had amendments relating to the Government’s willingness to implement the GDPR and they were reluctant to address that issue in the Bill, but suddenly the GDPR was to come into force on 18 May and we needed time to ensure that charges could be properly accommodated. I was concerned that suddenly all this was happening. The Minister wrote to me after our meeting and I was happy to learn that the Delegated Powers Committee had come up with the same concerns as me.

I want to be clear that my amendment specifically picks up the words of the committee. This is not simply about covering costs—I am sure that the Minister will reassure us about that; it is also about creep. It is about whether the Government will ask the ICO to undertake other things for which charges will suddenly become applicable, as was referenced in the report. It cited, “broadly similar legislation enabling the Government to prescribe enhanced court fees, which they are relying on to introduce large increases in probate fees”.

We know that the ICO wants to extend its powers—quite rightly in some respects—but it should not do so without proper parliamentary scrutiny. I want the Minister to give me a clear assurance that the specific example given by the committee will not be applicable in relation to these charges. The “limited flexibility” of which he spoke gives the Government much wider powers. Why do they need limited flexibility when they are introducing a charging regime to meet the requirements of the GDPR and the specified responsibilities of the ICO? If they are to go beyond that and say that they need wriggle room to ensure the powers are used proportionately. I therefore respectfully ask that the noble Lord withdraws the amendment.

![Digital Economy Bill](https://example.com/digital-economy-bill)

Lord Ashton of Hyde: My Lords, I listened with interest and a certain amount of apprehension to this debate and the contributions made by noble Lords. As I said in my opening remarks, the Government intend to bring forward at Third Reading amendments to address the intentions of Amendments 33ZR, 33ZS, 33ZT and 33ZV tabled by the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Hamwee.

I listened to the arguments in support of Amendments 33ZN, 33ZP and 33ZPA. However, we need the existing flexibility in the government amendments because there is rapid development in the digital economy. That means that the role of the data protection regulator is continually evolving. We want to allow flexibility to manage the period of transition as the ICO takes on additional responsibilities under the forthcoming GDPR. For example, in our amendment we specifically refer to discounts to certain organisations.

I understand why noble Lords are worried about giving additional powers to the ICO. The noble Lord, Lord Collins, talked about “creep” on this. I reassure noble Lords that this will be on a full cost recovery basis and it is in line with the current charging regime, so the fees will be determined by the size and turnover of the organisation, as I said at the beginning. We will consult data controllers on the shape of the new regime before laying regulations to introduce new charges. I repeat that the new model will continue to be based on the full cost recovery principle. On parliamentary scrutiny, the affirmative procedure will allow that scrutiny in Parliament.

The other reason for this is that the ICO fees regime needs to be in place by 1 April, ahead of the GDPR. In advance of this, it will be necessary to consult organisations on the proposed fees levels and lay the fees regulations in sufficient time for the start of the 2018-19 financial year. We would not be able to do that in the third Session.

To answer the noble Lord, Lord Clement-Jones, on the language in the proposed new section, the nature of the ICO role is changing with the changes in electronic communications—for example, in the regulation on cookies. We need some flexibility without the restrictive language of the noble Lord’s amendment.

I hope noble Lords will agree that subjecting regulations made under these powers to consultation and the affirmative procedure offers the necessary safeguards to ensure the powers are used proportionately. I therefore respectfully ask that the noble Lord withdraws the amendment.

Lord Collins of Highbury: Bearing in mind the comments I made, would the Minister take the opportunity to meet me and other interested Peers before Third Reading so that we can be clear and reassured that those points are covered by the government amendments?

Lord Ashton of Hyde: It is always a pleasure to meet the noble Lord and I give that undertaking.

Lord Clement-Jones: My Lords, I thank the Minister for that undertaking, which would be extremely helpful and sensible in the circumstances. We will have rather a limited amount of business at Third Reading, no doubt in prime time. We might well want to take this issue forward if we have not had satisfactory discussions in the meantime. No doubt, that can take place early next week if Third Reading takes place on Wednesday.

Lord Ashton of Hyde: I am very happy to meet. Obviously, I make no commitments as to what will emerge from that meeting.

Lord Clement-Jones: My Lords, I would not expect the Minister to make commitments at this stage, just to listen to the arguments that we have already made.
[LORD CLEMENT-JONES]
and will no doubt make again in the meeting. I am very grateful to the Minister. We have Third Reading where we can—

Lord Stevenson of Balmacara (Lab): I am abusing the system. I apologise for interrupting. I am grateful to the noble Lord for giving way. My question is directed at the Minister through the noble Lord, to maintain some semblance of protocol. I think the question my noble friend was trying to ask was, given that the Minister has committed to bringing back an amendment which covers much of the ground that has been discussed today, because there are issues he wishes to solidify, the assumption is that the points that have been raised may be raised again at Third Reading. He is not asking him to concede any additional work. I make it absolutely clear, because of the need for the clerks to be sure about this, that there will be a discussion at Third Reading on the substantive points that have been made so far.

Lord Ashton of Hyde: What the noble Lord, Lord Collins, asked me to do was to meet to discuss these issues before Third Reading. I agreed to meet him and the noble Lord, Lord Clement-Jones, if he wants to do that. I said that we were going to bring forward two amendments and we will continue to do that. I think it is the other one, where we have agreed not to do that, that he wants to talk about, but I am happy to talk about all of them. We will bring forward the two amendments at Third Reading. Obviously, I can make no commitment about any extra amendments but I am happy to talk about it.

Lord Clement-Jones: I completely understand that but, as the Minister is fully aware, because it is Third Reading, our ability to discuss is limited by the rules. But we could do it by way of an amendment to the Minister’s amendment. That is our assumption, I think, in the circumstances. On that basis, I am happy to withdraw Amendment 33ZN.

Amendment 33ZN (to Amendment 33ZM) withdrawn.

Amendment 33ZP and 33ZPA (to Amendment 33ZM) not moved.

Amendment 33ZM agreed.

Amendment 33ZQ

Moved by Lord Ashton of Hyde

33ZQ: After Clause 92, insert the following new Clause—

“Functions relating to regulations under section (Regulations about charges payable to the Information Commissioner)

(1) Before making regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) the Secretary of State must consult the Information Commissioner.

(2) In making regulations under section (Regulations about charges payable to the Information Commissioner)(1), the Secretary of State must have regard to the desirability of securing that the charges payable to the Information Commissioner under such regulations are sufficient to offset—

(a) expenses incurred by the Commissioner in discharging the Commissioner’s functions—

(i) under the Data Protection Act 1998,

(ii) under or by virtue of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426),

(iii) under the General Data Protection Regulation,

(iv) under regulations which implement the General Data Protection Regulation or the Criminal Data Directive,

(v) by virtue of section (Regulations about charges payable to the Information Commissioner), and

(vi) under this section,

(b) any expenses of the Secretary of State in respect of the Commissioner so far as attributable to those functions,

(c) to the extent that the Secretary of State considers appropriate, any deficit previously incurred (whether before or after the passing of this Act) in respect of the expenses mentioned in paragraph (a), and

(d) to the extent that the Secretary of State considers appropriate, expenses incurred by the Secretary of State in respect of the inclusion of any officers or staff of the Commissioner in any scheme under section 1 of the Superannuation Act 1972.

(3) In subsection (2)—

“the Criminal Data Directive” means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of personal data with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;


(4) The Secretary of State may from time to time require the Information Commissioner to provide information about the expenses referred to in subsection (2)(a).

(5) The Information Commissioner must keep under review the working of regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5) and may from time to time submit proposals to the Secretary of State for amendments to be made to the regulations.

(6) The Secretary of State must review the working of regulations under section (Regulations about charges payable to the Information Commissioner)(1) or (5)—

(a) at the end of the period of five years beginning with the making of the first set of regulations under that section, and

(b) at the end of each subsequent five year period.”

Amendments 33ZR to 33ZT (to Amendment 33ZQ) not moved.

Amendment 33ZQ agreed.

Amendment 33ZU

Moved by Lord Ashton of Hyde

33ZU: After Clause 92, insert the following new Clause—

“Supplementary provision relating to section (Regulations about charges payable to the Information Commissioner)
Amendment 33ZW agreed.

**Amendments 33ZX to 33ZYB**

Moved by Lord Ashton of Hyde

33ZX: Before Schedule 4, insert the following new Schedule—

"PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTION 31"

1. The Secretary of State for the Home Department.
2. The Secretary of State for Defence.
3. The Lord Chancellor.
4. The Secretary of State for Justice.
5. The Secretary of State for Education.
7. The Secretary of State for Work and Pensions.
8. The Secretary of State for Communities and Local Government.
9. The Secretary of State for Culture, Media and Sport.
10. Her Majesty’s Revenue and Customs.
15. The Common Council of the City of London in its capacity as a local authority.
17. The Greater London Authority.
18. A metropolitan county fire and rescue authority.
20. A fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
22. A chief officer of police for a police area in England and Wales.
23. The proprietor of a school within the meaning of the Education Act 1996.
24. The proprietor of an academy within the meaning of that Act.
25. The responsible person in relation to an educational institution as defined by section 72(5) of the Education and Skills Act 2008 (other than a person within paragraph 23 or 24).
26. The Gas and Electricity Markets Authority.
27. The Chief Land Registrar.
28. A person providing services in connection with a specified objective (within the meaning of section 31) to a specified person who is a public authority."

33ZY: Before Schedule 4, insert the following new Schedule—
"PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTIONS 32 AND 33
1. The Secretary of State for Business, Energy and Industrial Strategy.
2. The Secretary of State for Work and Pensions.
3. The Secretary of State for Communities and Local Government.
4. Her Majesty’s Revenue and Customs.
7. A London borough council.
9. The Common Council of the City of London in its capacity as a local authority.
12. A metropolitan county fire and rescue authority.
14. A fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
15. A fire and rescue authority created by a scheme under section 4A of the Fire and Rescue Services Act 2004.
16. The Gas and Electricity Markets Authority.
17. The Chief Land Registrar.
18. A person providing services in connection with a fuel poverty measure (within the meaning of section 32) to a specified person who is a public authority."

33ZYA: Before Schedule 4, insert the following new Schedule—
"PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTIONS 34 AND 35
1. The Secretary of State for the Home Department.
2. The Secretary of State for Defence.
3. The Lord Chancellor.
4. The Secretary of State for Education.
5. The Secretary of State for Justice.
6. The Secretary of State for Work and Pensions.
7. The Secretary of State for Transport.
8. Her Majesty’s Revenue and Customs.
9. The Minister for the Cabinet Office.
13. The Common Council of the City of London in its capacity as a local authority.
15. Greater London Authority.
16. The Student Loans Company.
17. A person providing services to a specified person who is a public authority in respect of the taking of action in connection with debt owed to a public authority or to the Crown."

Amendments 33ZX to 33ZYB agreed.

Amendment 33ZYC

Moved by Lord Ashton of Hyde

33ZYC: Before Schedule 4, insert the following new Schedule—
"SPECIFIED PERSONS FOR THE PURPOSES OF THE FRAUD PROVISIONS
1. The Secretary of State for the Home Department.
2. The Secretary of State for Defence.
3. The Lord Chancellor.
4. The Secretary of State for Education.
5. The Secretary of State for Justice.
6. The Secretary of State for Work and Pensions.
7. The Secretary of State for Transport.
8. Her Majesty’s Revenue and Customs.
9. The Minister for the Cabinet Office.
13. The Common Council of the City of London in its capacity as a local authority.
15. The Greater London Authority.
16. The Student Loans Company.
17. A person providing services to a specified person who is a public authority in respect of the taking of action in connection with debt owed to a public authority or to the Crown."

Amendment 33ZYD

Moved by Lord Ashton of Hyde

33ZYD: Before Schedule 4, insert the following new Schedule—
"SPECIFIED PERSONS FOR THE PURPOSES OF THE DEBT PROVISIONS
1. The Secretary of State for the Home Department.
2. The Lord Chancellor.
3. The Secretary of State for Justice.
4. The Secretary of State for Education.
5. The Secretary of State for Business, Energy and Industrial Strategy.
6. The Secretary of State for Work and Pensions.
7. The Secretary of State for Transport.
8. Her Majesty’s Revenue and Customs.
9. The Minister for the Cabinet Office.
13. The Common Council of the City of London in its capacity as a local authority.
15. Greater London Authority.
16. The Student Loans Company.
17. The Homes and Communities Agency.
22. The Big Lottery Fund.
23. The Nuclear Decommissioning Authority.
25. The Export Credits Guarantee Department.
29. The Student Loans Company.
33. The Technology Strategy Board.
34. The Arts and Humanities Research Council.
35. The Medical Research Council.
37. The Biotechnology and Biological Sciences Research Council.
38. The Economic and Social Research Council.
40. The Science and Technology Facilities Council.
41. A person providing services to a specified person who is a public authority in respect of the taking of action in connection with a public authority.”

Amendment 33ZYD (to Amendment 33ZYC) not moved.
Amendment 33ZYC agreed.

9.45 pm

Amendment 33ZYE

Moved by Lord Ashton of Hyde

33ZYE: After Clause 95, insert the following new Clause—
“Guarantee of pension liabilities under Telecommunications Act 1984

Guarantee of pension liabilities under Telecommunications Act 1984

(1) The Secretary of State may make regulations modifying or supplementing section 68 of the Telecommunications Act 1984 (liability of Secretary of State in respect of British Telecommunications public limited company’s liabilities as successor for payment of pensions) in accordance with subsection (4).

(2) Subsection (4) applies in relation to relevant employees of British Telecommunications public limited company (‘BT plc’) becoming employees of another company (a ‘transferee’) in connection with any part of the undertaking of BT plc being transferred or outsourced (whether or not to the transferee).

(3) Employees are relevant if the liability of BT plc for the payment of pensions which vested in it in virtue of section 68 of the Telecommunications Act 1984 included, immediately before the employees ceased to be employees of BT plc, liability for the payment of pensions to or in respect of those employees.

(4) The regulations may provide for the Secretary of State (in addition to any liability apart from the regulations) to become liable—
(a) on the winding up of BT plc, to discharge any outstanding liability of BT plc for the payment of pensions to or in respect of relevant employees of the transferee or a successor;
(b) on the winding up of the transferee or a successor, to discharge any outstanding liability of the transferee or successor for the payment of pensions to or in respect of relevant employees.

(5) The regulations may provide for any liability that the Secretary of State is liable to discharge under the regulations not to include liability arising by virtue of a person’s employment on or after a specified date, or by virtue of anything else occurring on or after a specified date.

(6) The specified date must be not earlier than the date on which the regulations come into force.

(7) The power to make regulations under this section is exercisable so as to—
(a) make provision in relation to all cases or circumstances to which the power extends or in relation to specified cases or circumstances;
(b) in particular, make provision in relation to all employees to whom the power extends or in relation to employees of a specified description;
(c) make different provision for different purposes.

(8) The regulations may—
(a) amend section 68 of the Telecommunications Act 1984;
(b) re-enact any provision of that section with or without modifications.

(9) In this section references to the winding up of a company are references to—
(a) the passing of a resolution, in accordance with the Insolvency Act 1986, for the voluntary winding up of the company, or
(b) the making of an order for the winding up of the company by the court under that Act.

(10) In this section—
“specified” means specified in regulations under this section;
“successor” means—
(a) where relevant employees of a transferee become employees of another person, that person, and
(b) where relevant employees of a successor within paragraph (a) or this paragraph become employees of another person, that person.”

Lord Ashton of Hyde: My Lords, Amendments 33ZYE and 33ZF confer a power on the Secretary of State to modify Section 68 of the Telecommunications Act 1984, which put in place a Crown guarantee covering the BT pension scheme when BT was privatised. This is essential so that the Government can continue to guarantee the BT pension scheme liabilities relating to employees transferred to a separate Openreach.

This amendment is necessary following the announcement on 10 March of a voluntary deal between BT and Ofcom legally to separate BT and Openreach, making Openreach a wholly-owned subsidiary of BT. Ofcom has identified an issue concerning the Crown guarantee as a barrier to the implementation of that deal. This amendment removes that barrier.

When BT was privatised in 1984, the Government legislated that BT plc’s pension liabilities were subject to a Crown guarantee. This meant that government would stand behind the BT pension scheme if BT entered insolvent winding-up. However, if that legislation were to remain unamended, the protection of the Crown guarantee would be removed from BT pension scheme members who transferred to a separate Openreach.

The welfare of BT pension scheme members is a critical consideration for the separation deal. That is why this amendment will enable the Secretary of State to ensure that the Crown guarantee can continue to apply to the pensions of all the staff who benefited from it before separation. The Government are clear that maintaining existing pension protections for BT and Openreach employees is vital. We intend to use the power to do that. Dialogue and consultation with
the trustee on the exact exercise of this power will therefore be crucial, and we will engage with it before and during the creation of the implementing regulations.

This power also ensures that the Government can respond to a range of potential outcomes. It would not be right to amend the Telecommunications Act 1984 directly at this stage, when many technical details of the transfer of employment to Openreach and the management of the BT pension scheme after separation are unknown or unclear. That is why we need to take a power so that we can get the detailed secondary legislation on the Crown guarantee right.

The power taken under this amendment has a comprehensive set of safeguards on its use, including a duty to consult appropriate stakeholders: the trustee of the BT pension scheme, the Pensions Regulator and the companies involved. The power may be exercised only with the consent of the Treasury, and a draft of the instrument must be laid before, and approved by resolutions in, both Houses of Parliament.

The separation of BT and Openreach lays the ground for a more competitive broadband market that will improve the speed and reliability of our nation’s broadband services to the benefit of businesses and consumers. Ofcom has also stated that separation will promote investment in next-generation full-fibre infrastructure, and I hope that noble Lords will join me in calling on BT to make that a reality and deliver the connectivity that our nation needs. Further, I hope noble Lords will support this necessary amendment so that Ofcom can implement a more separate Openreach without delay, and so that the welfare of all BT pension scheme members may be safeguarded. I beg to move.

Amendment 33ZYEA (to Amendment 33ZYE)

Moved by Baroness Drake

Baroness Drake (Lab): My Lords, Amendments 33ZYEA and 33ZYE B, which are in my name and that of my noble friend Lord Mendelsohn, amend the Government’s Amendment 33ZYE on the Crown guarantee for pensions liabilities in BT plc. I am not a member of the BT pension scheme, but for some years as a trade union official I represented the majority of BT employees, including on pension matters. In March this year, BT and Ofcom announced agreement on a regulatory settlement that would see Openreach become a distinct, legally separate company within the BT group. Once the agreement is implemented, around 32,000 employees will transfer to the new Openreach Ltd, following TUPE consultation and once pension arrangements are in place. This transfer is expected to be the largest TUPE transfer in UK corporate history and is an important pillar of the agreement between BT and Ofcom.

My amendments seek to address causes of concern for employees who will be transferred and to seek assurances that they and the BT pension scheme trustees need. As the noble Lord mentioned, the BT pension scheme currently has a Crown guarantee of BT’s obligations to the liabilities of the scheme provided for in the Telecommunications Act 1984. The implementation of the agreement between BT and Ofcom is subject to the satisfaction of certain conditions, which include new legislation providing for Openreach pension liabilities to be covered by the maintenance or equivalence of the current BT plc Crown guarantee, so ensuring that employees who are BT pension scheme members will not lose that protection on transfer to Openreach—in effect, ensuring maintenance of the existing Crown guarantee for both BT plc and the new Openreach Ltd pension liabilities.

I believe government Amendment 33ZYE does not make explicit provision for Openreach pension liabilities to be covered by the maintenance or equivalence of the current Crown guarantee for two reasons. The purpose of my two amendments is to address each of those two reasons. Amendment 33ZYE B addresses the first reason, which goes to the future scope and operation of the Crown guarantee covering Openreach pension liabilities, which I believe is of material concern to the scheme members and the trustee.

New subsection (5) proposed in the Government’s amendment—which my amendment would delete—sets out that any regulations made under the proposed new clause may provide for the Secretary of State’s liabilities to be limited so that the Crown guarantee does not cover pension liabilities arising in Openreach Ltd after a future date, whether such liabilities arise because of a person’s continuing employment or indeed from anything else occurring. The Crown guarantee covering Openreach Ltd would be more restricted than the current Crown guarantee covering BT plc—they would not be equivalent.

The trustee’s engagement in the Ofcom review was on the understood basis that affected employees of BT plc who transfer to Openreach will continue to benefit from the same Crown guarantee protections as they would have done with BT plc—that the guarantee in respect of Openreach pension liabilities would be, “equivalent in operation and scope”, to the current Crown guarantee. The DCMS press release of 15 March states that the Government’s intention in bringing forward this amendment is to, “maintain pension protections for BT Pension Scheme members … and provide peace of mind to affected workers”.

The power to restrict the guarantee to exclude Openreach pension liabilities arising after a future date is problematic for several reasons. First, it does not maintain equivalent Crown guarantee protection, as there is no provision in legislation for the current Crown guarantee to be so curtailed. Secondly, restricting the Crown guarantee will cause significant concern to the trustees and employees affected. It would not maintain existing pension protections and is outside the understood implementation of Openreach Ltd.

If Ofcom has reserved revisiting full separation of Openreach from BT if it considers functional separation not to be working appropriately, the implications of full separation would need to be addressed at that time. BT workers who are members of the BT pension scheme have the security of a Crown guarantee to all their service. These rights were confirmed by the Court.
of Appeal. To remove them is wrong and in no way required by this regulatory settlement between Ofcom and BT plc.

For the Government to give themselves, through proposed new subsection (5) in their amendment, a power now to limit the Crown guarantee adds to the trustees’ uncertainty, fails to reassure employees and provides an unhelpful backdrop to the scheme’s 2017 triennial valuation. Proposed new subsection (5) seems to allow regulations that enable the Secretary of State to turn off the tap of the Crown guarantee to Openreach from a future date. That would not be maintenance of the Crown guarantee or provide peace of mind to affected workers—the Government’s promised intention. Proposed new subsection (5) could also inhibit employees moving freely between employment with BT and with Openreach, because the security of their pensions could be prejudiced, and deny Openreach access to skilled people in BT plc.

My amendment deletes proposed new subsection (5) in the government amendment, which is not required to implement the Ofcom-BT agreement on Openreach. Proposed new subsection (5) has also caused lingering anxiety about the Crown guarantee for BT plc pension liabilities. The Government have said that they intend to maintain the Crown guarantee for BT pension scheme members who transfer from BT plc to the new Openreach company and those whose employment may move in future between the two companies, but their amendment does not expressly commit them to maintain the current Crown guarantee to cover Openreach pension liabilities.

Will the Minister give a categorical assurance that relevant employees can move over to Openreach knowing that the pension liabilities, including those arising from future service of Openreach—a legal entity created as a result of the new regulatory settlement between BT plc and Ofcom—will continue to be covered by the current Crown guarantee, maintained for all members of the BT plc pension scheme?

The Minister will be aware of the extensive litigation on the interpretation of the Crown guarantee and will understand that members of the BT pension scheme will be anxious to ensure that no changes could be made to the Crown guarantee which, whether deliberately or inadvertently, might reduce or alter its scope or coverage in so far as it relates to the pension liabilities of BT plc. My understanding is that the amendment is not intended to have that effect. There are circa 330,000 members of the BT pension scheme. Many are pensioners. Will the Minister confirm that my understanding is correct and that it is not possible for any regulations made under the powers arising from the government amendment to disturb or reduce the scope for effect of the Crown guarantee as it applies to the pension liabilities of BT plc in any way?

My Amendment 33ZEA addresses my second reason for concern. Proposed new subsection (2) in the Government’s amendment sets out the circumstances in which regulations may extend the coverage of the Crown guarantee. It states that the relevant circumstance is one where relevant BT plc employees become employees of another company.

“in connection with any part of the undertaking of BT plc being transferred or outsourced”.

Proposed new subsection (2) is important because how existing BT plc employees switch to become employees of the new Openreach Ltd needs to fall within the circumstances set out in that subsection.

10 pm

Under TUPE, there are two ways in which employees can transfer—first, where an undertaking is transferred and, secondly, where activities cease to be carried out by one entity and are instead carried out by a different entity, such as out-sourcings. The implementation of the Openreach agreement intends to use the second service provision change limb of TUPE to effect the change of employment. My concern is that, while proposed new subsection (2) refers to outsourcing, it provides that “part of the undertaking” must be outsourced to engage the regulation-making power which allows for the Crown guarantee. In the instance of the Openreach agreement, it is harder to see that any undertaking is outsourced but rather that “activities” are outsourced. If that is the case, the employees transferred to Openreach might not come within the scope of proposed new subsection (2).

The purpose of my Amendment 33ZYEB is simply to insert the word “activities” and to remove any ambiguity. Could the Minister take time to seriously reflect on this amendment before Third Reading, because ambiguity is not at all desirable on a matter of this moment and people are genuinely concerned?

Lord Clement-Jones: The noble Baroness, Lady Drake, has asked a number of very pertinent questions, but I have one question—probably because I am a bear of small brain in these circumstances. Would the new section apply on full structural separation of Openreach from BT, if that were to arise in future?

Lord Mendelsohn (Lab): My Lords, this group of amendments addresses two crucial issues—first, the Crown guarantee on BT pensions and, secondly, the relationship between Openreach and BT. In relation to the Crown guarantee, I have added my name to Amendments 33ZYEA and 33ZYEB in the name of my noble friend Lady Drake. These Benches support her arguments completely, and I hope that the clear, comprehensive and compelling case that she made will receive a good reception across the whole House. I thank her for her excellent and assiduous work on this matter.

It is clear that these government amendments do not yet have the robustness that assures this House, and I think that my noble friend’s unequalled expertise has come up with an impressive formulation. I look forward to hearing the Minister respond to these issues and wish to hear some specific reassurances, if he is not minded to accept her amendments. It is important that nothing weakens the covenant on pensions; it is extremely important that the Crown guarantee is carried across and that nothing undermines the responsibilities of the trustees in exercising their duties properly. It is a colossal task. BT has the second-worst-funded pension scheme in the world, according to the MSCI survey of 5,000 company pensions, second only to Du Pont, which is the subject of a merger which will make it better funded, so BT will become the worst-funded pension scheme in the world. In addition to uncertainties...
[Lord Mendelsohn] about the Crown guarantee, that will put trustees in an impossible position, if these amendments are not addressed as my noble friend suggested. The Government and all those concerned in this discussion should be in a position to confirm—as indeed Matthew Hancock, the Minister responsible, did in a meeting with Members of this House—that the proposed arrangements for the pension scheme should ensure long-term assurance to pension holders whether Openreach is legally or structurally separated.

This brings us to Amendment 33M in my name and that of my noble friend Lord Stevenson of Balmacara, which proposes the structural separation of Openreach. I will make a few very brief points to support this view. This is not a negative statement about BT, which is an excellent British company and one that we hope will continue to grow and thrive. There are many keen to criticise BT’s behaviour in relation to the supply of broadband but this must be properly balanced by the realities of the regulatory framework and policy context it was given to operate in and which has incentivised and guided its approach. It is slightly unfair to create such arrangements and then criticise someone for following them, and many of the criticisms of BT have been unfair and misdirected.

The differences between the benefits of legal and structural separation are important to note. Legal separation, which has been proposed by Ofcom, is where the upstream business is established as a separate legal entity within the wider group but remains under BT’s complete ownership. It includes functional separation with independent governance. There is a clear benefit to a regulator that would lend itself to suggesting this approach. It certainly makes the regulatory task of overseeing this arrangement much more economic. But having one place to look at is a benefit only for the regulator. The alternative is structural separation, where the vertically integrated operation is split with no significant common ownership and “line of business” restrictions to prevent them re-entering each other’s markets. There are some issues that people think are reasonable to achieve separation, such as improvements to service levels, broadband speeds and end-customer services, but these are not dependent on separation.

BT has contributed massively to getting us to where we are now, where we have—in relative terms to international peers—availability of superfast average speeds and lowish prices. But the challenge is the future, and this is where investment needs to be higher. Crucially the UK is lagging in fibre to the premises; the majority of the network is either fibre to the cabinet or cable. The future will require us to commit to FTTP. Other solutions such as G.fast will not keep us as a leading nation. Structural separation is the only mechanism that can sufficiently address the investment issues, and this was the matter that Ofcom did not adequately address in its proposal. The legal separation does not address the problem that strategic decisions on investment will still be dependent on BT, even though I hope that it takes note of the Minister’s exhortation for it to do better.

Ofcom’s statement of reasons for its approach says that this will provide improved investment outcomes from new models of investment such as co-investment and risk sharing. But BT has never lacked access to capital, which is why even Ofcom acknowledges that this model will be reviewed in order to ensure that the new structure achieves its objectives. This is not an equivocal “may” or “could”, but an emphatic “must” and “should” be reviewed. I hope that the Minister can confirm that this will be done and a broad timetable for it.

Our concern is that policy is drifting and opportunities to ensure that we maintain a leading position in the new communications technologies are being weighed down by compromise, confusion and a terrible lack of clarity. It is surely better to provide leadership and certainty by choosing the only arrangement that will ensure the necessary level of investment to make our broadband fit for the future.

Lord Ashton of Hyde: My Lords, I thank the noble Baroness, Lady Drake, for the time and effort that she has put into examining this matter and meeting with me and my officials to explore the details. The noble Baroness is an expert in pension matters and we have all benefited from her advice, and I am very grateful.

Government Amendment 33ZY is explicitly designed to ensure the continuation of the Crown guarantee for those transferees from BT plc to a future Openreach or other successor company. Amendment 33ZYE is a technical point and concerns the adequacy of the word “undertakings”. I believe that our existing wording on undertakings is sufficient and would cover any transfer of staff, including one that was consequential on the application of the TUPE regulations about the movement of activities from one company to another. The “activities”, suggested by the noble Baroness, if moved to another company, are part of the undertaking of BT.

We agree with the noble Baroness on the policy intent. We intend to cover all ways by which BT staff might be transferred to the new Openreach company, but technical detail is important here, and I will table a technical clarification for Third Reading.

Amendment 33ZYE0 seeks to delete a subsection of the Government’s amendment that provides a power to vary the Crown guarantee. I understand the reasoning behind this amendment but want to remind noble Lords that the Government have been clear that we are providing a power to ensure that, following Openreach’s separation, the extent of protection afforded by the Crown guarantee is no less and no more than at present. I reassure noble Lords that nothing in the Bill or in the delegated powers it gives to the Secretary of State will change or alter the Crown guarantee to BT plc pension liabilities.

We have seen the documents published by BT and Ofcom that outline plans for a legally separate Openreach Ltd. On the basis of those, the Government fully intend to ensure that the Crown guarantee protection continues to be maintained for all current members of the BT pension scheme, including those who will become part of the wholly owned subsidiary Openreach Ltd. So, our clear intention is that the protection of the guarantee provided to BT pension scheme members should be maintained. That is why the power includes an ability to define that protection in secondary legislation so that it may be neither wider nor narrower than
existing protections. However, until we see the detail of the agreement on Openreach separation, and how the liability for payments to the BT pension scheme will be divided between BT plc and the new Openreach, we cannot say that the power defined in new subsection (5) will not be required. In applying the Crown guarantee to the pension liabilities of the new company, we are creating new risks. There is the potential for unintended consequences, which concerns us particularly. This power helps guard against them, while enabling the Government to maintain Crown guarantee protections for pension scheme members in line with our clearly stated intention to do so.

New subsection (5) gives the power for the Secretary of State to consider whether to maintain the Crown guarantee for any staff who then move on to spin-off companies: for example, if part or all of Openreach were sold. I believe that the need for this power is clear. I reiterate that it is the Government’s intention to ensure that current members of the scheme who transfer to Openreach are certain that their pension rights will continue to be safeguarded by a Crown guarantee.

I turn now to Amendment 33M, which seeks to place obligations on the Secretary of State to direct Ofcom to begin the process of “legal and functional separation” of Openreach from BT plc. Functional separation of Openreach and BT has been in place since 2006 by means of undertakings that BT gave to Ofcom pursuant to the Enterprise Act 2002. On 10 March 2017, Ofcom and BT announced that they had agreed to Openreach creating as a result of the regulatory settlement—obviously I will read the detail in Hansard, because I was trying to take all the words in. That provides quite a lot of assurance to the members and the trustees, but I would like to read it and, if I may, reserve any concern I may have in that reading. However, on first hearing it seems to confirm that the Government’s intention is that the existing Crown guarantee will be applied in all respects to those people transferred to Openreach under the regulatory settlement agreed with Ofcom. On that basis, I beg leave to withdraw the amendment.

Amendment 33ZYEA withdrawn.
Amendment 33ZYEB not moved.
Amendment 33ZYF agreed.

Amendment 33ZYF

Moved by Lord Ashton of Hyde

33ZYF: After Clause 95, insert the following new Clause—

“Regulations under section (Guarantee of pension liabilities under Telecommunications Act 1984)

(1) The power to make regulations under section (Guarantee of pension liabilities under Telecommunications Act 1984) is exercisable by statutory instrument.

(2) That power is exercisable by the Secretary of State only with the consent of the Treasury.

(3) A statutory instrument containing regulations under that section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(4) Before making regulations under that section the Secretary of State must consult—

(a) the Pensions Regulator;

(b) BT plc;

(c) the trustees of the BT Pensions Scheme;

(d) any transferee or successor to which the regulations apply;

(e) any other persons the Secretary of State considers it appropriate to consult.”

Amendment 33ZYF agreed.
Amendment 33A
Moved by Baroness Janke

33A: After Clause 95, insert the following new Clause—
“Duties on providers of social media services
After section 131 of the Communications Act 2003 (statement of policy on persistent misuse) insert—
“131A Duties on providers of social media services
(1) In this section “social media service” means a website or application that enables users to create and share content, to communicate publicly and privately with other users, and to participate in social networking.
(2) Social media services have a general duty to respond to reports of material shared or communicated via their website or application (“the content”) that passes the “criminal test” set out in subsection (3).
(3) The criminal test is whether the content would, if published by other means, or communicated in person, cause a criminal offence to be committed.
(4) Social media services have a duty to provide a means for users to report content which, in the view of the user, meets the criminal test.
(5) Social media services have a duty to remove content which demonstrably meets the criminal test within the prescribed period, and to inform the police.
(6) The prescribed period must be set out in regulations made by the Secretary of State within 120 days of the commencement of this section.
(7) Regulations under subsection (6) may prescribe different periods for different categories of social media services, to be determined by the number of users that service has at the time a report is made under the provisions of subsection (4).
(8) Regulations made under this section must be made by statutory instrument, and may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Baroness Janke: My Lords, this amendment has already been debated. Although the assurances the Minister gave in the previous debate were very interesting and will bring forward some new issues and some reassurances, this is a very urgent matter and I would like to hear what he has to say. I therefore beg to move.

Lord Ashton of Hyde: My Lords, as the noble Baroness said, this has been debated. However, I will respond briefly. First, on 27 February the Government announced work on an internet safety strategy which aims to make the UK the safest place in the world for children and young people to go online. With the help of experts, social media companies, tech firms, charities and young people, we aim to publish a Green Paper in June. We need the time to do this.

Secondly, on 20 March this House agreed the amendment in the name of the noble Baroness, Lady Jones, on a code of practice for social media. The House has already debated this issue. To accept Amendment 33A would create overlap and duplication between the two amendments. It simply does not make sense to have agreement to both amendments.

Thirdly, defining “social media service” is difficult, but I regret that the noble Baroness’s definition is very wide, and therefore unworkable and disproportionate.

Finally, and perhaps most importantly, it should not be left to social media companies or their users to judge whether or not content is criminal.

However, we know that there is more to do and I give a firm commitment to the House that we will consider all available options through our internet safety strategy, which will be published in June, and that we will implement its proposals as quickly as possible.

Baroness Janke: I thank the Minister for his comments. The difference between this amendment and the one that he mentioned is that the previous amendment referred to children, whereas this amendment covers a much wider range of adults, particularly vulnerable adults and adults who are subject to bullying, criticism and unfair treatment on the internet.

Having heard what the Minister said, I look forward to the Green Paper and to participating in discussions on it. I hope that the Government see this as a very serious issue and that they are committed to doing something about it. Having said that, I beg leave to withdraw the amendment.

Amendment 33A withdrawn.

Amendments 33B to 33D had been retabled as Amendments 33LZA to 33LZC.

Amendment 33E not moved.

Amendment 33F
Moved by Lord Lansley

33F: After Clause 95, insert the following new Clause—
“Definition of media enterprise
(1) The Enterprise Act 2002 is amended as follows.
(2) In section 58A(1) (construction of consideration specified in section 58(2C)) for “broadcasting” substitute “the provision of television, radio and other services through which audio-visual content is made generally available to the public, whether by subscription, for payment or otherwise”.”

Lord Lansley (Con): My Lords, as we turn the final bend, I hope that this group of amendments will be worthy of your Lordships’ patience. This group of five amendments in my name and those of my noble friends Lord Puttnam and Lord McNally all concern aspects of the public interest test on media mergers.

My co-signatories to these amendments and I worked together during the passage of the Communications Act 2003, when your Lordships successfully put the public interest test for media mergers into statute. That has proved a necessary and valuable intervention. Fourteen years on, the media landscape has greatly changed and with it, in our view, has come the need to review, strengthen and future-proof this important legislative measure. I am very grateful to my noble friend Lord Puttnam, who initiated this debate in Committee. Your Lordships who were present will recall that debate, which has permitted us to refine the amendments for Report and, indeed, has led to a positive and constructive engagement with the Secretary...
of State, the Minister and officials. I am very grateful, as I know my colleagues are, for all that engagement and discussion.

I should emphasise that the amendments are not occasioned by, nor intended directly to affect, the current intervention notice and review by Ofcom, which is expected to be considered under existing legislation. Our concern is to strengthen and future-proof the legislation.

So what is the purpose and effect of the amendments? Amendment 33F would widen the definition of “media enterprises”, to which the public interest test refers. Currently the definition is that,

> “an enterprise is a media enterprise if it consists in or involves broadcasting”.

Broadcasting, as one will see under the Broadcasting Act, means television and radio services, and therefore does not include enterprises such as Google, including YouTube, Facebook, Twitter, Snap and many others, which are, as Martin Sorrell said the weekend before last, not technology enterprises but media enterprises.

Many people take more of their audio-visual content off YouTube than off conventional broadcast channels, or they seek their news through Twitter or take their news from apps on smartphones, not necessarily through broadcast platforms or channels. If a public interest can be engaged by the dominance or inappropriate control of a broadcast channel, why not therefore of a platform or channel through which social media is offered, delivering large-scale news-related and other material to the whole population? Therefore, this amendment widens the definition of a media enterprise to include those which involve the control of audio-visual content made generally available to the public.

Amendment 33G would give Ofcom the same powers—that is, powers when carrying out an Enterprise Act competition function—as would be available to the Competition and Markets Authority, and most specifically the power to require the attendance of witnesses and the production of documents as specified under Section 109 of the Enterprise Act 2002.

Amendment 33H relates to one of the existing grounds for a public interest intervention notice—namely that of the

> “commitment to the attainment in relation to broadcasting of the standards objectives”.

The standards referred to are broadcasting-related standards: they relate to television and radio services. The amendment therefore enables further standards to be prescribed that may relate to media extending beyond television and radio. The amendment therefore also refers to the commitment to the attainment of standards as evidenced through the control of media enterprises, linking back to Amendment 33F. Media enterprises in that context would be more widely construed. This test therefore, suitably widened in scope, would give a clearer basis for examining the behaviour of a person and their commitment to standards across media more generally. It would eliminate the risk that behaviour outside the scope of television and radio and beyond the specifics of the broadcasting standards code would not be able to be drawn in aid in determining whether the grounds for an intervention are met. Amendment 33J adds to the reasons why a public interest intervention notice on a media merger may be issued by reference to three additional grounds. The first is that the control of a media enterprise which includes a Broadcasting Act licence should be exercised by someone who is a fit and proper person to hold such a licence. In the current media merger referral, Ofcom has chosen to conduct a fit and proper person test under the Broadcasting Act alongside the review of the Enterprise Act and including therefore the actions in corporate governance. It was not required to do so and it is possible that control of a media enterprise may therefore be disassociated from the fit and proper person test relating to the holding of a Broadcasting Act licence. The amendment is designed to align the public interest test under the Enterprise Act with the Broadcasting Act test at the point at which control may be acquired over a regulated broadcaster. To that extent, it is intended to be necessarily proactive in relation to the control of enterprises and not necessarily reactive.

Amendment 33L in the name of the noble Lord, Lord Stevenson of Balmacara, introduces a further limb to the question of what “fit and proper” means in this context. In our amendment, we propose to specify to some extent what it means beyond the tests already included in the media merger public interest test. What the noble Lord says in his amendment is reminiscent of what the Financial Conduct Authority says in relation to its fit and proper person test. He may not have intended it to be, but it is very similar. Indeed, other economic regulators, when they apply a fit and proper person test, have in a number of instances been more specific than Ofcom has about what it means by a fit and proper person. The time may well have come—it is implied by our amendment and that of the noble Lord, Lord Stevenson of Balmacara—when we need to be more specific about what “fit and proper person” means in relation to the control of media enterprises. This is a helpful way of stimulating that debate and potentially, if not putting it in statute, clearly putting it in guidance from Ofcom.

The second limb of Amendment 33J is to protect the editorial freedom of the news services of media enterprises and see that safeguards are in place. In a nutshell, media plurality—the plurality of ownership—does not necessarily mean that in relation to that ownership editorial freedom is protected and safeguarded. That is what the amendment is directed to achieve.

The third limb would extend that plurality test beyond television and radio and therefore beyond the platforms, channels and the plurality of news, which the test is currently focused on, to the plurality of control of rights, talent and cultural assets. On the principle that content is king, this would give the power to intervene where an unwarranted and undesirable dominance would otherwise be created in relation to any significant category of cultural assets.

We had a useful and full debate in Committee. I hope that we have made explicit in these amendments the kind of questions that changes to the legislation now need to answer. First, how do we protect the public interest in media plurality rather than just news plurality, given the emergence of new dominant social media platforms and channels? Secondly, how do we
ensure that those with control of the media, especially news media, are committed to high standards across all media and in their wider business dealings? Thirdly, how do we ensure that plurality is maintained in the control not only of news content, but of significant content of a cultural nature relating to both rights and assets? Lastly, how can we ensure not only the plurality of news but the editorial freedom applying to news?

We have greatly appreciated the engagement of Ministers and officials and I look forward to a positive response. I hope that we may be able to see a positive answer to these questions incorporated into legislation very soon. I beg to move.

10.30 pm

Lord McNally (LD): My Lords, earlier today we had a Question on divorce. Sir James Munby, the president of the Family Division, was quoted as saying that the law that he had to administer and make judgments on showed hypocrisy and a lack of intellectual honesty. That is a good example of what happens when, as in this case, a 44 year-old law does not reflect the society and the social mores that now exist. In a way, what we are doing here is similar. In 2003 we tried to persuade the then Government—with partial success—to give Ofcom some teeth in terms of the fit and proper person test. Our allies included the Minister herself: she was in that fray, as were the noble Lords, Lord Crickhowell, Lord Lansley and Lord Putnam. I think that we can be proud of our work at that time.

Earlier today the noble Viscount, Lord Colville, referred to Ofcom as a world-class media regulator, and I think that is true. The debates at the time reflected a degree of uncertainty about whether Ofcom would prove to be up to the job. Would it not be swamped by the massed ranks of corporate lawyers from the big media companies? In fact, at the time we did not want to give the BBC to Ofcom because we thought, again, that that would be too big a burden for it. Now there is general agreement that it is a very satisfactory place to put the BBC in terms of regulation—so it has done a good job.

What these amendments are about, as the noble Lord, Lord Lansley, explained so ably, is trying to make our current laws ready to give Ofcom powers that are clear, robust and wide-ranging. In terms of what we gave Ofcom in 2003, one former CEO of Ofcom was quoted as saying that somebody would have to commit a murder before he would fail the fit and proper person test. That is the problem. The Secretary of State very correctly clings to her quasi-judicial status, pleading that rules and regulations are so tightly drawn that they are impotent and then allowing organisations or individuals into our media who threaten the ecology, diversity and quality. Not only has the government a great deal of advice. “Why look into the crystal ball when you can read the book?”, is apposite here. We see constant attempts to intimidate the BBC. Although this does not affect the present problem, the Murdochs are an ever-incoming tide—as the noble Lord, Lord Lansley, referred to it. As he also said, there are possibly even bigger fish in the pool now.

So there is a need to pass the Clapham omnibus test and to strengthen and future-proof the legislation. The intention is to protect the integrity of our media ecology, but we must give the regulator the power and teeth to be able to do that.

Lord Putnam (Lab): My Lords, I am very happy to add my name to the amendments set out so ably by the noble Lord, Lord Lansley. I will build on what has been said by the noble Lord, Lord McNally. Today of all days it cannot be an overstatement to claim that these amendments go somewhat to the heart of a fundamental question: what kind of society do we wish to become, or, more importantly, what kind of society do we wish to leave to our children and our grandchildren? Is it one that is well informed, thoughtful and compassionate? Or, as an alternative, is it one that is easily manipulated, fearful and grasping at simple answers to ever more complex questions?

In answering that, I will quote at some length from a speech by the noble Lord, Lord Crickhowell, who I am delighted to see in his place this evening. He made it in this House on 2 July 2003 and it can be found in Hansard. He was speaking to an amendment on so-called foreign ownership, which he had co-signed with the now Lord Speaker, the noble Lord, Lord Fowler. The purpose of their amendment was to place a pause on the possibility of UK broadcasting assets being bought by foreign media owners, at least until a proper assessment of the impact of such ownership changes could be investigated and reported on by the then newly created regulator, Ofcom.

In this speech I believe that he nailed the issue that has bedevilled the creation of good legislation on this. Towards the end of his speech the noble Lord said:

“Public service broadcasting is now comprehensively defined ... in legislative language. We are talking about creativity, diversity and standards ... When my noble friend the Chief Whip circulates a note saying that we are being watched closely—minute by minute and in detail—by the media and that the most careful consideration has been given to the issues by senior colleagues in both Houses, I know that those who tell me that heavy pressure has been applied by media moguls are right. My reaction is not to climb down in the face of such pressure but to feel even more strongly that the Bill needs strengthening, not weakening”.
He concluded by saying:

“I hope that there will be many in all parts of the House, and a substantial number in my party, who will feel as I do and will insist on retaining effective standards that are immensely valuable and need our protection.”—[Official Report, 27/03; cols. 928-29.]

Fourteen years later, that is essentially the purpose of these amendments: to strengthen and, as noble Lords have heard, future-proof the legislation, along with the definitions that drive it, in such a way as to enhance the clarity and conviction with which Ofcom can make its judgments. This in turn should have the effect of helping depoliticise the position of this or any other Secretary of State in making a final quasi-judicial decision on mergers and takeovers.

The word “sovereignty” has rippled around this Chamber more in the past few weeks than at possibly any time in living memory. One of the underpinnings of sovereignty is the integrity of our media, through which we see a daily reflection of ourselves at our best—and sometimes, I am afraid, at our very worst. We are at present a nation at odds with one another, to a greater degree than I can ever remember. As the Prime Minister stressed in her Statement to the House today, the need to focus on the things that bind us, the values we share and a belief in a future that is better and fairer than the past has surely never been more important.

Without confidence in an honest and truthful media, how can we ever develop sufficient trust in each other to help steer society towards a sustainable, let alone successful, post-Brexit future? Only Parliament, through its statutory regulatory bodies, can insist on a commitment to the standards that the noble Lord, Lord Crickhowell, referred to 14 years ago: those of truthfulness, justice, compassion and tolerance—values which I suspect all believe to be an essential aspect of a truly civilised society. The very idea of licensing any broadcast media organisation that does not demonstrably embrace and adhere to those values would in my judgment be an act of wilful national self-harm. These amendments, set out in the names of the noble Lords, Lord Lansley, Lord McNally, and myself, are intended to make any such act of self-harm that much more unlikely.

**Lord Crickhowell (Con):** My Lords, I have not taken any part in the debates on this Bill, but in view of the fact that a speech I delivered 14 years ago and which I had entirely forgotten has been quoted at some length today, I hope I may be allowed to say that, on having reread it, I am rather proud of it and stand by every single word I said on that occasion. For that reason, I wholly support the general principles being advanced by my noble friend Lord Lansley and others who support the amendment. If it cannot be accepted tonight, I hope the Minister will at least indicate that the Government will follow this up with some very serious consideration indeed of the principles being advanced.

**Viscount Colville of Culross (CB):** I too rise to support these very well-crafted amendments, particularly Amendments 33J and 33L, which are crucial in ensuring that Ofcom’s fit and proper test is extended to not just existing licence holders but prospective ones.

The amendments come as the proposed 21st Century Fox merger with BSkyB goes for the Ofcom fit and proper review. At the moment, I fear that the regulator can look only at the present situation, with Fox holding a 39% stake in BSkyB. Surely, that test should concentrate on what would happen if the merger went ahead and Fox took 100% control of BSkyB. Such a test would look at the assessment of James Murdoch. I refer your Lordships to the 2012 Ofcom report on “fit and proper assessment of Sky”. It said:

“In our view, James Murdoch’s conduct in relation to events at NGN repeatedly fell short of the exercise of responsibility to be expected of him as CEO and chairman.”

At the time, Murdoch was not chairman of BSkyB, merely a non-executive director, and therefore junior enough for Ofcom to conclude that the finding did not affect BSkyB as a fit and proper licence holder. But last year, he was appointed chairman of BSkyB. The prospective merger with 21st Century Fox would give him massively increased power, with the full backing of a 21st Century Fox-appointed board. Ofcom surely should have the power to investigate what would happen in mergers such as these.

I am also concerned by developments with the federal grand jury sitting in Manhattan which is investigating the business practices of Fox News and claims by the Attorney’s Office that Fox News violated securities laws by not reporting to the Securities and Exchange Commission a series of massive settlements to employees. If Fox News is found guilty, there will be an American investigation into whether it is fit to hold a broadcasting licence. I ask the Minister, would it not be strange if the UK Government went ahead and granted 21st Century Fox a merger with BSkyB in this country, at a time when the sword of Damocles hangs over Fox News in America?

I look forward to the Minister reassuring me on these matters.

10.45 pm

**Lord Stevenson of Balmacara:** My Lords, it is clear that we have saved the best till last. It has been a terrific debate. The hour is late and I shall not delay the House too long, but it is worth reflecting that a 14-year-old speech can be brought out, dusted down, given the once-over and realised to be fit for purpose and continue to have relevance today.

I support the amendments tabled by the noble Lords, Lord Lansley, Lord Puttnam and Lord McNally. They are absolutely right; they are on the mark. They are matters that need to be addressed now but also for the long term. The Government need to take them away and come back with some proposals as soon as possible.

The noble Lord, Lord Lansley, was right that the existing legislation, stemming from a variety of sources but crystallising around the Enterprise Act 2002, is strong, but it needs to be looked at in light of technological change, of developments and of the new way in which the world receives its information. Many things have not changed. We want to be sure that by moving around some of the architecture, we do not lose something, but it is clear that we need to widen the definition of a media enterprise—as the noble Lord said, broadcasting
[LORD STEVENSON OF BALMACARA]
is far too narrow a definition for the way in which we consume and rebroadcast our information today. Ofcom needs powers equal to those of the CMA, in terms of getting papers and material in front of it so that it can have exactly the same authority in its work. It is not clear that it has those at the moment.

We need to think about the term “broadcasting standards” and make sure that it is fit for purpose in respect of the various companies now operating, which are definitely media companies and not technology companies, as many would argue. Certainly, all those involved in the current merger arrangements need to be considered closely in terms of the impact both of individuals and of the corporate structures which they employ.

The questions raised in our amendments to Amendment 33L, as was picked up by the noble Lord, Lord Lansley, are based closely on the model offered by the FCA in its fit and proper person test. If the noble Lord detected a similarity, it is because 90% of the words are the same—and well spotted. However, it shows that there is a commonality of approach which would repay some discussion and debate. Everyone will say that it is different in financial regulation, but some of the words copied out in Amendment 33L, for instance, which are taken straight from the FCA with only a couple of points lost, are appropriate. There are other examples and I commend them to the Minister when she comes to consider this matter, perhaps away from this sitting.

A point well made by the noble Lord, Lord Lansley, was that the work done in 2010 and 2011 is worth revisiting in some detail. In particular, a section on page 15 of the Report on Public Interest Test produced by Ofcom and published in 2011—to no significant media comment at that time because, by that stage, the Milly Dowler case had broken and the merger then in proposal had gone, so the public’s attention moved away—deals with:

“Concerns about wider market developments and sufficient plurality”.

It is incredibly relevant for today—I shall not read it all; I want to touch on just a few things. The point is made that,

“the current statutory framework may no longer be equipped to achieve Parliament’s policy objective of ensuring sufficient plurality of media ownership”.

The market developments have changed so much and some consideration of that broader issue must be given. The report identifies the problem that, at present, the regulations require that,

“a public interest consideration can only be triggered by a specific corporate transaction”,
such as merger proposals, but that can be done by organic growth and change. It is important that we have something in the regulations which allows Ofcom to use judgment over whether it is time to intervene, particularly on the fit and proper person test.

The report expresses concern about the differential arrangements for remedying competition concerns. Such concerns are not carried forward into considerations about whether transactions are operating in the public interest depending on plurality. In other words, the narrow competition concerns largely operated through the CMA are on one side of the calculation, but those that deal with media mergers are not given the same weight. Therefore, there is a discrepancy of approach.

Finally, the point is made that,

“a more fundamental review and possible reform of the current … framework”,
is probably necessary. This was said in 2010 and published in 2011. I do not think much work has been done on this since then. It is overdue time for us to look at it.

Specifically on Amendment 33L and the questions it raises, it is important that we think harder about what this phrase, a “fit and proper person”, should aim for. As I said, the wording of Amendment 33L is not necessarily perfect but it points us further down this track. I have heard it said that the problem with the fit and proper person test and the work operated under Ofcom is that precedents in relation to media mergers in earlier times under earlier regimes, such as the old ITC regime, which must be nearly 30 years old. Since it is not used very often, there are only occasional examples of it. We have a problem in ensuring there is a join-up between the considerations that should be brought into play today and what happened in the past. It was said—perhaps slightly light-heartedly but it makes the point—that it would be difficult in today’s world if one were using the tests provided by the ITC in the early 1980s and 1990s, as you would be able to prove that someone was not a fit and proper person to hold a broadcasting licence only if they had been not only charged with a crime of murder but also put away for it. That is probably too high a standard. Generally, most people would accept that. If it is true, there is a bigger question here.

It may be that the territory is such that we must be a bit more concerned about fit and proper persons in a more generic sense. In a time of fake news and with what is happening across America, we have difficulties enough coming our way. We also read in today’s papers that Andy Coulson, no less, is about to be hired as the PR consultant for a well-known daily newspaper on the very far right of the political spectrum. If it is right that his brief is to make people believe that the paper is authoritative and truthful, we have problems.

Baroness Buscombe: My Lords, I agree that the best is left until last. I start by thanking my noble friend, Lord Lansley, and the noble Lords, Lord Puttnam and Lord McNally, for the constructive way they engaged in discussions with the Secretary of State and me; and with the department’s officials, on seeking a common understanding on the very important issues raised in this debate.

As noble Lords said, in particular the noble Viscount, Lord Colville, the Secretary of State issued a European intervention notice in relation to the Fox/Sky merger on 16 March. She did so on two grounds: media plurality and commitment to broadcasting standards. Ofcom also announced on 16 March that it will conduct its fit and proper assessment at the same time as it will consider the public interest considerations raised in the intervention notice.

It is now time to leave the independent regulators, Ofcom and the Competition and Markets Authority, to carry out their reviews as set out in legislation. Under the terms of the intervention notice, both will
As my noble friend Lord Lansley made clear, the purpose of these amendments is to future-proof the issue when it comes to media mergers. I listened carefully to the noble Lord, Lord McNally, talk about the changes over the past 14 years in terms of social mores and societal changes. The noble Lord, Lord Puttnam, referenced the need to talk about trust in each other, truthfulness, justice, compassion and tolerance. Of course, there was the reference to my noble friend Lord Crickhowell, whom I well remember speaking in those debates on foreign ownership. They were controversial at the time. There were some real difficulties in accepting what my noble friend sought to achieve but times have changed. We have moved on and learned a lot, and we have built a great deal of trust in the ability of Ofcom to do its work and do it well.

The first point I want to deal with is the amendment on Ofcom’s powers. In a phase 1 assessment of any media merger, Ofcom’s role is not to conclusively decide whether concerns about the merger have been established but rather to advise on whether or not they warrant a more thorough, phase 2 review. In our view, the timing and nature of Ofcom’s phase 1 review simply do not necessitate the powers that Amendment 33G is proposing. Phase 2, if this is needed, is a more in-depth review that the CMA carries out over a longer period of 24 weeks. At this stage in the process, the CMA does need more extensive powers and this is already provided for under the Enterprise Act 2002. It is at the end of this review that a decision is made by the relevant Secretary of State on whether the merger operates against the public interest and whether it should be able to proceed.

If a party to a merger does not co-operate with Ofcom in its phase 1 review, Ofcom can, and indeed should, draw out that point—and the behaviour of the parties—in its report and conclusions, which will be published. The provision of false or misleading information by anyone to Ofcom or the CMA is a criminal offence under Section 117 of the Enterprise Act. Our conclusion, therefore, is that extending the powers to Ofcom in phase 1, as Amendment 33G seeks to do, is not necessary and indeed changes the nature of what is a first-phase review to decide whether a fuller, much more thorough investigation is warranted.

As noble Lords have said, the media landscape is changing at a faster and faster rate and the tests set down in 2003 may no longer fully cover all the public interest considerations needed in media mergers. We have heard arguments throughout the passage of the Bill that the fit and proper assessment needs to be baked into the media public interest test. As the Secretary of State made clear in her Statement of 16 March, Parliament has given Ofcom a duty to assess on an ongoing basis the question of fit and proper for all organisations applying for broadcast licences. For corporate bodies, Ofcom’s assessment will cover controlling directors and shareholders.

Both the Secretary of State and Ofcom have said that while many of the same issues will be relevant to both the assessment of the commitment to broadcasting standards’ public interest ground and to an assessment of the fitness and propriety of licence holders, it is right that the latter—the fit and proper test—sits with an independent regulator. The current grounds for intervention in media mergers are all linked to the important public interest consideration of media plurality: plurality of ownership, plurality of content, and a commitment to standards that support plurality of views and content.

Although I acknowledge that, in a quasi-judicial role, political considerations do not come into play, adding fit and proper as a ground of intervention goes beyond the plurality test into questions of character and fitness, and puts the ultimate decision on those questions in the hands of a politician. Notwithstanding what the noble Lord, Lord McNally, said about the Government having a duty to protect the ecology of our media, this is a different position. We are very clear that the decision on fit and proper should be made by an independent authority; that is, Ofcom. This cuts entirely across what is generally the role of an independent regulator and, in my view, takes the grounds of intervention a step too far.

On the general premise that the media merger public interest consideration may not fully capture future shifts, we agree that it is time to consider this. Amendment 33F seeks to broaden the definition of media enterprise to take account of new forms of delivery and distribution. Amendment 33J, although introducing a media public interest test around fit and proper in proposed new subsection (2CC), adds a new media public interest test to cover access to cultural and performing rights, talent and other expression available to UK audiences in terms of media plurality.

\textbf{11 pm}

As my noble friend Lord Lansley explained, this would help to clarify that the tests cover plurality concerns about control of content. In our view, the changing nature of media markets and the increased importance of control of content may well need to be covered by the media public interest considerations. However, in our view such changes would require further thought and consideration, as well as proper consultation, to ensure that a revised test captured fully the various types of scenarios that might arise in future.

Existing powers under the Enterprise Act 2002 allow the Secretary of State to amend or update the public interest criteria and amend the definition of media enterprises without primary legislation. That is in Sections 58(3) and 58A(9). Having considered the views of noble Lords, the Secretary of State has agreed to a limited review of the public interest intervention regime for media mergers to ensure that it continues to work in the light of today’s media landscape and the changing nature of media consumption.

To be clear, this will not cover any changes that relate to the import of the fit and proper test. Instead, the review will look at measures to future-proof the media public interest tests. The Secretary of State is also keen to work with all noble Lords who have
worked on this and to consult on the changes. Of course, as the noble Lord, Lord Stevenson, said, this will include the work done back in 2010 and the need to reconsider competition issues. Her aim would be to ensure that legislative changes needed as a result of this review were brought forward by the end of the next Session—that is, by May 2018. The Secretary of State is also willing to look at whether there needs to be a formal trigger for Ofcom’s consideration of fit and proper in media merger cases. She is prepared to amend legislation if such a change is necessary and if this can be done without impacting on Ofcom’s operational independence. As this would need primary legislation, she cannot give a definite timetable but, as noble Lords are aware, the Government announced in September 2016 that they were reviewing the wider public interest regime in relation to foreign takeovers.

In the light of the Secretary of State’s clear commitment, now on the record, to meet noble Lords’ views on the need to future-proof the media public interest tests, I very much hope that the noble Lord will withdraw the amendment.

**Lord Lansley:** My Lords, I am very grateful to all noble Lords who have participated in this debate. Every contributor added something of significant value to the debate as a whole. It is a very good debate with which to conclude—practically conclude—our proceedings. I am sure noble Lords will forgive me if I say a special thank you to my noble friend Lord Crickhowell for coming and reiterating his remarks of 14 years ago. I, too, remember them very well, even if I was in another place at the time.

I am very grateful for the engagement of the Secretary of State, the Minister and officials and for the Minister’s response tonight. On Report, one is often pressing very hard because the window of opportunity is about to slam shut. As the Minister quite rightly said, in relation to some of the very important issues that we are putting forward relating to the definition of media enterprises and the nature of the grounds on which a public interest test can be triggered under the specified considerations in the Enterprise Act 2002, there is a power in Sections 58(3) and 58A(9) for those specified considerations to be amended by order.

The debate that has been given life during the passage of the Bill does not stop with the passage of the Bill, and I am therefore very grateful for the way in which the Minister has said that she and her Secretary of State and colleagues are going to take these issues forward and look at how they may be given life beyond here, in orders or in future primary legislation. The point about competition is important.

I neglected to refer to Amendment 33K, which was tabled by the noble Lord, Lord Stevenson of Balmacara. He illustrated very well what he was about. I am sure he will accept that inserting “any other reason” into merger control would be a jarring legislative intervention into a merger regime, but the point he makes is a very good one. When one is looking at the abuse of a dominant position under competition legislation, the nature of the abuse is not necessarily simply that there is consumer detriment. There may be wider detriments to the public interest which are not necessarily reflected in the nature of that abuse of the dominant position, so it is a very proper issue to be further considered.

Given what my noble friend the Minister said, and the ability to engage with her and the Government in looking at this in the months rather than years ahead, I hope that colleagues will accept that I should at this stage beg leave to withdraw the amendment.

**Amendment 33F withdrawn.**

**Amendments 33G to 33M not moved.**

**Clause 97: Commencement**

**Amendment 34 not moved.**

**Amendments 34A to 38**

**Moved by Lord Ashton of Hyde**

**Amendment 34A**

34A: Clause 97, page 100, line 26, at end insert—

“( ) section (Televising events of national interest: power to amend qualifying conditions);”

**Amendment 34A agreed.**

**Amendments 34B to 35 not moved.**

**Amendments 35A to 38**

**Moved by Lord Ashton of Hyde**

35A: Clause 97, page 100, line 36, at end insert—

“( ) sections (Provision of children’s programmes);”

36: Clause 97, page 100, line 37, at end insert—

“( ) section (Televising events of national interest: power to amend qualifying conditions);”

37: Clause 97, page 101, line 5, leave out “Chapter 5, so far as that Chapter relates” and insert “Chapters 5 and 6, so far as those Chapters relate”

38: Clause 97, page 101, line 9, leave out subsections (5) and (6) and insert—

“( ) The provisions mentioned in subsection (4)(a) and (c) come into force on whatever day the Welsh Ministers appoint by regulations made by statutory instrument.”

**Amendments 35A to 38 agreed.**

**Amendment 39 not moved.**

**Amendments 40 and 41**

**Moved by Lord Ashton of Hyde**

40: Clause 97, page 101, line 18, at end insert “or different areas”

41: Clause 97, page 101, line 18, at end insert—

“(9) The appropriate authority may by regulations made by statutory instrument make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

(10) Subsection (9) does not apply to section 4 or Schedule 1 (for which see section 5).

(11) The appropriate authority, subject to subsection (12), is the Secretary of State.

(12) The appropriate authority in relation to Part 5 is—

(a) the Secretary of State, in relation to Chapter 2;

(b) the Welsh Ministers, in relation to—
(i) Chapter 1 so far as relating to the disclosure of information to or by a water or sewerage undertaker for an area which is wholly or mainly in Wales, and
(ii) Chapters 5 and 6 so far as relating to the disclosure of information by the Welsh Revenue Authority;
(c) otherwise, the Secretary of State or the Minister for the Cabinet Office.”

Amendments 40 and 41 agreed.

In the Title

Amendments 42 to 44

Moved by Lord Ashton of Hyde

42: In the Title, line 4, after “data-sharing;” insert “to make provision in connection with section 68 of the Telecommunications Act 1984;”

43: In the Title, line 10, after “offences;” insert “to confer power to create an offence of breaching limits on ticket sales;”

44: In the Title, line 10, after “offences;” insert “to make provision about the payment of charges to the Information Commissioner;”

Amendments 42 to 44 agreed.

Neighbourhood Planning Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with a reason and amendments. The Commons reason and amendments were ordered to be printed.

House adjourned at 11.07 pm.
House of Lords

Thursday 30 March 2017

11 am

Prayers—read by the Lord Bishop of Winchester.

Brexit: Crime Prevention

Question

11.06 am

Asked by Lord Paddick

To ask Her Majesty’s Government whether they plan to continue sharing sensitive personal information with other European Union member states for the purposes of crime prevention and detection following the United Kingdom’s withdrawal from the European Union.

Lord Paddick (LD): My Lords, the issue of information exchange has taken on an added significance this week. I hope the House will forgive me but I take the avoidable death of one of my former police colleagues very seriously. Less than a week after four people died as a result of terrorism on our doorstep, does the Minister think that the implied threat made by the Prime Minister in her Article 50 letter—backed up yesterday by the Home Secretary—that the UK will withhold security co-operation with the EU if it does not get the trade deal that it wants, was insensitive, reckless, an empty threat, or all three?

Baroness Williams of Trafford (Con): My Lords, the Government are clear that our commitment to co-operation with European allies on security and law enforcement will be undiminished as a result of leaving the EU. The effective use of data to underpin that co-operation will be an important consideration as we look to establish a new relationship with the EU, but it is too early to say what the future arrangements might look like.

Lord Reid of Cardowan (Lab): My Lords, I too pay tribute to the people who lost their lives last week and who still lie in hospital injured. However, I take exception to what the noble Lord says. The letter says that both sides would cope, but our co-operation would be weakened. We want and we believe that the EU wants to underpin that co-operation will be an important consideration as we look to establish a new relationship with the EU, but it is too early to say what the future arrangements might look like.

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Lord Blair of Broughton (CB): My Lords, does the Minister not agree with me that the best way of answering the Question asked by the noble Lord, Lord Paddick, is to ensure that the Government arrange with our European partners to deal with security issues first and foremost, separately from trade, to make sure there is no moment when we fall off a security cliff?

Baroness Williams of Trafford: The noble Lord is quite right in the sense that the Prime Minister put these aspects of the negotiation right at the forefront. I have been in debates in the last few weeks talking about this co-operation. The fact that we have been world leaders in those areas is so important as we go forward, but of course it is all part of a whole deal, bearing in mind the context in which we operate.

Lord West of Spithead (Lab): My Lords, I am afraid I disagree with my noble friend Lord Kinnock on the reading of this particular piece. For some seven decades now, the US and the UK have been the prime safety net for Europe in defence and security terms. We must not allow this very complex web of agreements somehow to be damaged in these negotiations. The security of Europe is crucial for us. Everyone knows that, and we must not let it be damaged by some silliness in the negotiations. Does the Minister agree?

Baroness Williams of Trafford: I am very pleased that the noble Lord has put this in the broader context. He is absolutely right about our cooperation beyond the EU. The sharing of intelligence with the EU and international partners is far broader than simple measures within EU laws. He is right in that broader context.

Brexit: Court of Justice of the European Union

11.14 am

Asking the Question

Baroness Williams of Trafford: It depends which intemperate remarks my noble friend is referring to, but yes, I think we all have to be very careful about what we say.

Baroness Williams of Trafford: I am very pleased that the noble Lord has put this in the broader context. He is absolutely right about our cooperation beyond the EU. The sharing of intelligence with the EU and international partners is far broader than simple measures within EU laws. He is right in that broader context.

Baroness Williams of Trafford: The noble Lord is quite right in the sense that the Prime Minister put these aspects of the negotiation right at the forefront. I have been in debates in the last few weeks talking about this co-operation. The fact that we have been world leaders in those areas is so important as we go forward, but of course it is all part of a whole deal, bearing in mind the context in which we operate.

Lord West of Spithead (Lab): My Lords, I am afraid I disagree with my noble friend Lord Kinnock on the reading of this particular piece. For some seven decades now, the US and the UK have been the prime safety net for Europe in defence and security terms. We must not allow this very complex web of agreements somehow to be damaged in these negotiations. The security of Europe is crucial for us. Everyone knows that, and we must not let it be damaged by some silliness in the negotiations. Does the Minister agree?

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Baroness Hayter of Kentish Town (Lab): Given Germany’s demand for the acceptance of an ECJ role for access to the single market, will the Government rethink their blanket opposition to this, should that be the price of frictionless trade and a free trade agreement?

Baroness Goldie: Let me try to unpick some of the stitches in that closely woven interrogation. First of all, we all agree that the rule of law is important—there is no question about that. Respect for the rule of law and a suitable judicial mechanism within any jurisdiction of any country is necessary to ensure that the rule of law can be interpreted and applied. I disagree with the noble Lord that in some way the CJEU and the principles of Roman law will be abruptly terminated when we leave the EU. I have made it quite clear that there is a recognition that EU law, which derives from many sources—indeed, my own Scottish legal system is derived largely from Roman law—will not stop being an important component of the body of UK law on leaving the EU. It is not that the jurisdictions of our courts are diminished; it is that we will be taking back control of law-making and law enforcement. That is a very important distinction.

Lord Richard: My Lords, whatever the Minister says about the jurisdiction of the European Court of Justice, will she re-emphasise the Government’s position that they do not intend to withdraw from the jurisdiction of the European Court of Human Rights?

Baroness Goldie: These are technical issues which of course will be reflected upon—that is absolutely clear. It is perfectly obvious to all that when you begin the mechanism of withdrawing from a very complex set of principles and jurisdictions in international law, questions will arise. But the Prime Minister has made it crystal clear that when we leave the EU, we will return sovereignty—including law-making and the enforcement of law—to the UK.

Disabled People: Independent Living

11.23 am

Asked by Baroness Thomas of Winchester

To ask Her Majesty’s Government what steps they are taking to support independent living for disabled people of working age.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley): My Lords, the Government believe that individuals should have the opportunity to work and realise the benefit of stable employment where they can, enabling them to live independently and fulfil their potential. We are therefore working to join up the health system, the welfare system and society more widely so that we focus on the strengths of people with disabilities or health conditions and what they can do.

Baroness Thomas of Winchester (LD): I very much welcome that reply. The most important thing is that the infrastructure—such as enough care support and accessible transport—is got right around the country. Disabled people must have enough support. I wonder whether the Minister’s department will now agree to conduct a cumulative impact assessment on current government policies, which shows their effect on disabled people. The Equality and Human Rights Commission has offered its support and this should be taken up.
Lord Henley: My Lords, I am sure that I should necessarily want to do it in the manner suggested by the noble Baroness, but I assure her that we shall continue to examine the effectiveness of all our policies and of all the benefits that we administer on behalf of the Government. Only today, the second of two reviews conducted by Paul Gray into PIP has been published. We promised these statutory reviews as a result of legislation passed some years ago. The Government will respond to the second review in due course.

Baroness Masham of Ilton (CB): My Lords, I declare an interest as president of the Spinal Injuries Association. Is the Minister aware that we have many young people of working age who have broken their backs and necks and are paralysed and who need help to get in and out of bed and into their cars? They need expensive personal care so that they can get to work. If they do not get this, they cannot work.

Lord Henley: My Lords, the noble Baroness is right to draw attention to the problems of people with spinal injuries. The same is true for people with any of a host of other conditions, be they mental or physical. That is why we offer the help that we can and why we are committed to trying to reduce the employment gap between those who are disabled and those who are not by seeking greater working opportunities for those with health problems.

The Lord Bishop of St Albans: My Lords, the Motability scheme is a crucial element for getting people back into work, yet about 50,000 people have lost out on it. What is particularly worrying is that the vast majority of appeals are upheld, by which time those concerned have lost the vehicle and then have to get it again. It is costing a lot of time and money. Would Her Majesty's Government consider having a scheme whereby people do not lose the vehicle until the end of the appeal process? This would make much more sense where the appeal is upheld.

Lord Henley: My Lords, I understand the problems to which the right reverend Prelate refers. The department is looking at these matters. My honourable friend the Minister for Disabled People, Health and Work is well aware of these problems. As the right reverend Prelate will appreciate that the right reverend Prelate refers. The department is currently developing a proposed approach before publishing the new strategy.

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that the appropriate children benefit. I am terribly sorry but a lot of that £3.9 billion is in effect lost, as the noble Baroness said, to those children who are no longer children now.

Baroness Eaton (Con): My Lords, financial arrears are often symptomatic of an adversarial approach to collecting child maintenance. How is the new child maintenance system encouraging parents to set up family-based arrangements, and what success is it having?

Lord Henley: My Lords, I thank my noble friend for that question. I am not going to go into what we are doing about arrears. However, I shall talk about the 2012 scheme of child maintenance. By bringing in more simplified methods of calculation, we are helping parents to sort these matters out. We are also encouraging parents to sort these things out themselves without necessarily using the department. We are now at a stage where in nine out of 10 cases parents are paying towards the child maintenance that they owe, and paying the appropriate amount. Therefore, we are making progress but there are still some who are not doing what they can.

Lord Kirkwood of Kirkhope (LD): But is the Minister aware of the concern that the government arrangements to manage the outstanding £3 billion-worth of arrears are not yet clear? Arrears are still sitting in the CSA legacy schemes. They need to be sorted out because the biggest risk to the 2012 scheme is a botched job in closing the legacy CSA schemes.

Lord Henley: My Lords, as I said, this goes back a long way. It covers Conservative Governments, Labour Governments and the coalition Government. We have all tried to sort this out. I am afraid that a lot of this money is lost for ever. We are looking at a new arrears scheme and will consult on that to try to get what we can, but I am sure the House would agree that the first priority should be to get money that can still benefit the children of today rather than trying to get the money that was owed yesterday, or the money that is owed to the department. The bulk of the money is very historic.

Baroness Sherlock (Lab): My Lords, I am happy to take the Minister at his word. Let us look at today, but in doing so I declare an historic interest as a member of the board of CMEC before I came into the House. The Government are closing the CSA and if you have an active case on the CSA, instead of transferring it to the new system, it is shut down and you are invited to apply to the new system. The Government estimated that two-thirds of parents would apply to the new system, it is shut down and you are invited to apply to the new system. The Government estimated that two-thirds of parents would apply to the new system. The NAO has found that only one in five is doing so. The Government have said that most of the rest would make private, family-based arrangements. More than half of families have no arrangement at all in place. This matters because it is not just important for tackling child poverty: a decent child support system sends out a message to the world at large that you might divorce your spouse or separate from your partner but you do not stop being responsible for your kids. Will the Government sort this out?

Lord Henley: My Lords, I agree with the noble Baroness’s last sentence: the important thing is that the children of today benefit. That is why I cited the figures earlier. We are now at a stage where in nearly nine out of 10 cases parents pay towards the child maintenance they owe. When we are dealing with historic debt, I am sure the noble Baroness will agree that the right thing to do is to pursue that debt that is likely to benefit the children of today rather than those of before. I think that we were also right to seek reforms to the Child Support Agency, which the noble Baroness’s party tried to do in 2003 and 2008. That is why we brought in CMS. CMS allows us to provide assistance to parents on some occasions, but on many occasions it allows many others to manage these things for themselves without the interference of the Government. The noble Baroness thinks I have not answered sufficiently, but this is why I started off with the fact that most people are making payments.

Prescribed Persons (Reports on Disclosures of Information) Regulations 2017

Motion to Approve

11.36 am

Moved by Baroness Buscombe

That the draft Regulations laid before the House on 20 February be approved.

Baroness Buscombe (Con): My Lords, there is currently no legal obligation within the whistleblowing framework for prescribed persons to investigate a disclosure made to them. The call for evidence in 2013 identified that whistleblowers did not have the confidence that their reports of wrongdoing were being investigated. The Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 and subsequently, provides employment protection for workers who have blown the whistle. It protects them from detriment if they have made a “protected disclosure” when they reasonably believe the disclosure tends to show wrongdoing and is in the public interest. The legislation is intended to build openness and trust in workplaces by ensuring that workers who hold their employers to account are treated fairly. Individuals should be able to report malpractice without fear of reprisal and employers should be prepared to work with them to resolve any concerns that may arise, particularly by means of effective internal procedures.

To ensure that a worker’s employment rights are protected, they must make their disclosure either to their employer or to the relevant “prescribed person” as set out in the prescribed persons order, or others, such as a Minister of the Crown or the media. Disclosures can also be made to a legal adviser. If a worker decides to blow the whistle to a prescribed person rather than to their employer, they must choose the person or body from the prescribed person list whose remit is relevant to the wrongdoing that they are disclosing. We have kept the prescribed persons list up to date with annual reviews. This will ensure that workers who are not able to go to their employers to report wrongdoing can generally find the relevant responsible body on the prescribed persons list.
There is also comprehensive guidance to assist employers and prescribed persons in handling disclosures, including guidance for employers on creating a whistleblowing policy and a code of practice. The Government are updating the guidance for prescribed persons and will publish an updated version online by 1 April. Workers also have clear information and guidance available on who they can report wrongdoing to and guidance on how whistleblowing works in practice. This will assist workers and give them the confidence—this is the most important thing about these regulations—to come forward with genuine disclosures.

In response to the concerns raised following the call for evidence in 2013, the Government sought a way to increase confidence that disclosures from workers were indeed investigated and followed through. They sought to increase transparency in the system, which might identify which prescribed persons are not as effectively discharging their responsibilities, while respecting the importance of treating disclosures in confidence. The Government introduced a power in the Small Business, Enterprise and Employment Act 2015 to enable the Secretary of State to make regulations to require certain prescribed persons to report annually on whistleblowing disclosures. The regulations before us today are laid under that power. This approach aims to increase confidence in the actions taken by prescribed persons through greater transparency about how disclosures are handled. In turn, that will also improve consistency across different bodies in the way they respond to disclosures.

I turn now to the detail of the regulations. They require most prescribed persons to report annually on a number of details. First, a prescribed person will need to report on the number of concerns that have been raised with that body in a 12-month period which it reasonably believes are qualifying disclosures. Secondly, from those disclosures they will need to report on the numbers in which a decision to take further action was made. They will also need to provide general commentary on the action taken in response to whistleblowing disclosures and how the information from whistleblowers has impacted on the prescribed body’s activity in its relevant sector.

The regulations require prescribed persons to publish their reports online so that they are available to all or, if not online, in another place which will bring them to the public’s attention. We intend to have their reports collated and to lay them before the House. To minimise the burden on prescribed persons, the reports are not required to be separate documents. For example, they may be included in a wider annual report that a body already publishes routinely. The new measures will require prescribed persons to reflect upon what they do with whistleblowing disclosures. We envisage that this in turn will encourage greater focus on the positive impact of whistleblowing in their respective sectors.

The regulations do not apply to Members of the other House. Although they are prescribed persons so that constituents can contact them about wrongdoings at work without affecting their employment protection, they are not in quite the same position as bodies with a regulatory responsibility in relation to a particular sector or type of wrongdoing. Likewise, the regulations do not apply to Ministers of the Crown.

In conclusion, in recent years the Government have undertaken significant reforms to the whistleblowing framework, working to improve the environment for whistleblowers. This includes improved guidance for individuals, employers and prescribed persons on how whistleblowing works in practice, including a non-statutory code of practice, which we will review this year; bringing the prescribed persons list up to date, including designating MPs as prescribed persons; and delivering on the commitment to review the list annually. These regulations are an important step to ensure that workers have the confidence to report any wrongdoing and ensure greater transparency in the way disclosures are handled and taken forward. I commend the regulations to the House.

Lord Stevenson of Balmacara (Lab): My Lords, I am very grateful to the Minister for appearing so fresh and alert at the Dispatch Box. She certainly has the upper hand on me, given that we finished near midnight last night and we were in the same positions across the Dispatch Box. The rest of you were all sleeping soundly in your beds, but we were doing the best we could, and here we are again.

We absolutely support the regulations before us today. They come from a Bill that I was involved in and we are aware of the background, which the noble Baroness has very helpfully outlined. We want to give the regulations our full support.

I have two very small points and one slightly larger one to raise with her. I do not necessarily expect an answer today, but perhaps the noble Baroness could write to me, if she wishes. Your Lordships will be aware that I have a long-standing issue with the Government—with all Governments, in fact—for not adhering to the good practice, which I thought had support on all sides of the House, of bringing new regulations forward on set days in the year, even though they may not have a major impact, so that businesses and other persons affected by them can be aware of the fact that there will be a change. These dates are 6 April and 1 October, and they are broadly adhered to now by the Department for Business, which is good. However, I see that this one from the department with responsibility for employment is coming in on 1 April, and I think that it would not have been very difficult to defer it to 6 April. I suggest that, in future, they might think about this. Common commencement dates are important to those who have to respond to SIs. It is therefore important that we try to have a unilateral practice across government.

11.45 am

As for the substance of these regulations, what they do—which is terrific—is address the problem of a lack of consistency in approach and how communications from prescribed persons are circulated. What the noble Baroness said in this area is very good. However, there is one issue that would help us understand a bit more about this.

The Explanatory Memorandum helpfully reviews the consultation that was run by the Government from 1 August to 30 September 2014, and broadly this...
is very supportive of the proposals here, which is a good thing. However, the Explanatory Memorandum states that, “respondents … challenged the government to ensure that reporting requirements struck a balance between transparency and confidentiality, including protecting the identities of both the worker and employer”.

I looked in the text of the statutory instrument for an expression of how that was to be brought forward in the regulations but I cannot find it. It may be that it is going to be in the memorandum or notes of guidance that will issued separately, in which case that is something we can deal with by correspondence. The only reference to this is in Regulation 5 of the SI, entitled “Content of report”. It simply says: “The report must contain, without including any information in the report that would identify a worker who has made a disclosure of information, or an employer or other person in respect of whom a disclosure of information has been made”, followed by the details of what it is. I do not think that quite takes the point that was raised in the consultation process about needing to be much surer that the requirements strike that balance. As I say, if the answer is that there will be details put forward in future in guidance, then obviously that can be done at a later date.

I am not a lawyer and maybe it needs a lawyer’s brain to explain my third and final point which is that the formulation of the “Extent and Territorial Applications” in this particular SI is unusual in the sense that the extent of the instrument is Great Britain and the territorial application of the instrument is Great Britain. That means, of course, Scotland, England and Wales but not Northern Ireland. Can I have an assurance from the Minister on the question of how this important issue is to be taken forward in Northern Ireland? It seems to be left uncovered by the statutory instrument. I assume that other arrangements, perhaps by the Assembly when it gets going again, will be carried forward but I would be grateful for some information on how that is going to happen. Whistleblowing is an important area. It should apply to all parts of the United Kingdom. In fact, there may be reasons why it is even more important in Northern Ireland. I look forward to hearing from the Minister on that point.

Lord Palmer of Childs Hill (LD): My Lords, I thank the Minister for her detailed explanation. I am slightly fresher because I did not have a late-night assignment in this House last night and I want to try to clear up some confusion in some of the points that she made.

The Minister talked about annual reviews of the list of prescribed persons. As far as I can see, and this is reiterated within the statutory instrument that we are debating today, she was referring to the 111 prescribed persons listed in the Public Interest Disclosure (Prescribed Persons) Order 2014. That does not really tie up with the idea of an annual review, so I find that confusing. Can the Minister also explain how consistency will be maintained, assuming there are still over 100 organisations? It would be so much easier for anyone looking at this to have those 100 or so organisations actually listed in the statutory instrument rather than people having to look back to other legislation for them. As the noble Lord has just said, we are not all lawyers and it should be on the face of the statutory instrument. I find it very sad that it is not. Can the Minister say whether there is going to be any government action to compare these various bodies and how they report?

For someone who is a professional it is a fact of life that whatever the regulations say, if you have numerous organisations, they will have different attitudes to how they report.

I also understand that the annual reports will not require the disclosure of any information which could identify the worker who made the disclosure—that is absolutely right. However, I query, and ask the Government to reconsider, that the same anonymity applies to the employer about whom the disclosure is made if it is then found that further action was taken. I can see that there should be anonymity for both employer and employee if there is no further action, but if the employer is found guilty—to use the word in its general sense—why should that person or organisation not be named? I hope that the Minister will be able to answer my queries.

Baroness Buscombe: My Lords, I am rather glad that the noble Lord, Lord Stevenson, referenced our late hour last night, because I am not sure that I will be able to answer all the questions that have been put to me this morning. However, I will do my best to answer at least some of them.

First, on the question about 1 April, the reason for that date is the timing of the reporting period, which is 1 April to 31 March each year. The regulations do not impact on prior business, and prescribed persons whom it impacts on have been advised. I hope that that makes sense.

On Northern Ireland, bodies operating in devolved fields that are prescribed persons for the purposes of Great Britain employment law are included in the reporting duty and will be required to publish reports on their own websites. This does not affect their existing lines of accountability. I can confirm that employment law is devolved in Northern Ireland.

In response to the noble Lord, Lord Palmer, perhaps I will come back to anonymity across the board in a moment. Sorry, I am advised that it is probably better if I write to the noble Lord, Lord Palmer, with respect to whether there is anonymity for the employer if guilty.

It might be helpful, with respect to both noble Lords, if I made some reference to the question of blacklisting, which is important to this. It is important that we address the issue of whistleblowers becoming blacklisted as a result of making disclosures. The Government have taken action to deal with serious offences of blacklisting relating to trade union activity that were uncovered in the past. Among the actions taken, the Government have increased the penalty that the Information Commissioner’s Office can impose for serious breaches of the Data Protection Act 1998 to £500,000. Data protection law is undergoing reform as a result of the general data protection regulation, which takes effect from 25 May 2018. The ICO’s fining powers will substantially increase as a result.

We are also bringing forward regulations in the health service to introduce protections for job applicants who have been whistleblowers, and there is a similar
Motion agreed.

Baroness Buscombe [Con]: My Lords, I hope I have the right speech. If I may, I will take a few moments of your Lordships’ time to set these regulations into context. They make consequential amendments and savings provisions to legislation that refers to the Insolvency Act 1986—as it will be amended by the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015 on 6 April 2017—and to the Insolvency Rules 1986, which have been repealed by the Insolvency (England and Wales) Rules 2016. These amendments will come into force on 6 April 2017.

The insolvency reforms will initially be adopted by the mainstream insolvency processes and it is anticipated that departments responsible for special insolvency regimes will update their legislation in due course.

Regulation 4 is a savings provision. It provides that the Insolvency Act will not be amended and will continue to apply as it does now for certain purposes or certain insolvency regimes. This provision will ensure that these other insolvency regimes remain operational in the interim period.

These regulations make amendments to various pieces of primary and secondary legislation. The most significant changes by volume update the Administration of Insolvent Estates of Deceased Persons Order 1986, which is the procedural framework that deals with the administration of the insolvent estates of deceased debtors, and the Insolvent Partnerships Order 1994, which deals with insolvent partnerships.

Over the last two years, the Government have introduced a series of reforms to modernise and streamline the insolvency process. They have achieved this through the Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the new Insolvency (England and Wales) Rules 2016. The policy impetus for these measures was to remove unnecessary burdens and enable greater use of technology to reduce the cost of administering insolvency proceedings. It was part of the Government’s Red Tape Challenge, which asked stakeholders for views on how unnecessary regulation could be reduced and how procedures could be modernised, simplified and made more efficient. The responses produced a package of measures aimed at reducing costs and improving returns to creditors. The changes, which commence in April 2017, will deliver a net benefit to business of £22 million per year.

The key policy changes to which these consequential amendments apply include, first, changes to the way in which decisions are made; secondly, the abolition of final meetings; thirdly, the ability for creditors to opt out of receiving correspondence; fourthly,
measures to increase the use of electronic communication and websites; and, fifthly, the removal of a requirement to formally file claims for small debts.

With regard to changing the way in which decisions are made, in the past, to begin some insolvency proceedings and make decisions in all insolvency proceedings the officeholder was required to call a physical meeting of the creditors of the insolvent person. Feedback from stakeholders was that this process was more expensive and cumbersome than was really necessary. In response to that feedback, changes have been made to the way in which officeholders will engage with and seek decisions from creditors. Physical meetings will no longer be the default mechanism for making decisions in insolvency proceedings. In fact, an officeholder will not be allowed to hold a physical meeting unless 10% in value of the creditors, 10% of the creditors in number or 10 individual creditors request that a meeting is held. This puts control back into the hands of creditors, and it is anticipated that this move alone will result in savings of more than £6 million per year. In many cases, an officeholder will be able to use a process of “deemed consent”, where they write to creditors with a proposal and, provided they do not receive objections from more than 10% in value of creditors, the proposal will be deemed to have been approved. Alternatively, officeholders can use an online virtual meeting, a telephone meeting or an electronic voting system, or seek decisions by way of correspondence.

With regard to the abolition of final meetings, currently an officeholder must hold a face-to-face meeting with creditors in order to lay his or her final report on the outcome of the case. These meetings were in fact rarely attended by creditors. Going forward, the officeholder will simply send a final account of the case to creditors, but this will not reduce the creditors’ rights to challenge any actions of the officeholder.

With regard to opting out of correspondence, previously in insolvency proceedings the officeholder was required to send all notices, all reports and all other documents and communications required by legislation to all known creditors, even where a creditor was in fact rarely attended by creditors. Going forward, the officeholder will simply send a final account of the case to creditors, but this will not reduce the creditors’ rights to challenge any actions of the officeholder.

With regard to increasing the use of electronic communication, where, before the commencement of insolvency proceedings, parties have customarily corresponded electronically with one another, it is government policy that this should be allowed to continue without onerous regulatory burdens as to the means of communication. The reforms remove the need for the officeholder to obtain permission from each creditor to communicate electronically after the commencement of the insolvency proceedings. This will encourage e-communication, which is generally cheaper and speedier than traditional post. With regard to the use of websites, under the current rules an officeholder must obtain a court order if he or she wants to put all future communications with creditors on a website. This considerably restricts the use of technology. The requirement for a court order has therefore been removed.

With regard to no need to formally file claims for small debts, where a creditor is owed up to £1,000, new provisions will allow an officeholder to rely on information contained in a company’s or bankrupt’s records and to pay a dividend without the need for the creditor to submit a formal claim.

It is fair to say that as business practice has developed, particularly through new technologies, corresponding changes to insolvency law have been slow to follow. Users have not always been able to take advantage of the quickest, most cost-effective or most convenient methods of engaging with the insolvency process. The changes coming into force on 6 April modernise the insolvency process by encouraging the use of electronic communication and decision-making processes fit for the 21st century. These changes will increase creditor engagement through more convenient methods of interaction, as well as reducing the costs of seeking decisions. In particular, amendments enabling modern methods of communication and decision-making to be used in place of paper communications and physical meetings will be introduced. This will increase creditors’ engagement in insolvency cases by encouraging the use of decision-making processes fit for the 21st century.

The insolvency reforms have been informed by extensive consultation and engagement with a range of parties affected by insolvency, including the insolvency profession, creditor representatives, insolvency regulators and public bodies. I hope that gives a full explanation of these regulations and I commend them to the House. I beg to move.

Lord Palmer of Childs Hill (LD): My Lords, I thank the Minister very much for that detailed explanation. I welcome the streamlining and digitising of the system, which is well overdue.

I raise two points, which I hope the Minister can answer. On the European Convention on Human Rights, the Minister for Small Business says: “In my view, the provisions of the”, various regulations, “are compatible with the Convention rights”. Can the Minister be a little more definite on what legal opinions the Government have taken on these regulations post-Brexit, which is around the corner? The Minister for Small Business just gives her view rather than the legal view, which the House is entitled to hear.

The other points I take up with the Minister are the non-requirement of creditors meetings and the streamlining of methods. That is absolutely ideal and it is the way to reduce the costs, but there is no mention in this legislation or the Minister’s introduction of the statutory instrument of the not insubstantial insolvency fees coming out of the carcass of an insolvency. I am a registered chartered accountant, though I have never been an insolvency practitioner, but I have seen, sadly, many of my clients being subject to bankruptcy and insolvency. The one thing that I have always
thought a little worrying was that the insolvency practitioners’ fees—with all insolvency practitioners—come out of the carcass of that insolvency before anybody else gets a dip into it. By streamlining it in the way we have, I wonder whether the Minister and the Government’s civil servants have looked at the attitude of creditors to the size of and, sometimes, lack of change in the level of insolvency fees. It tends to happen in smaller bankruptcies that, after the insolvency practitioner has charged their fees—at a not insubstantial hourly rate, particularly in London—there is not much left.

Lord Stevenson of Balmacara (Lab): My Lords, I too thank the Minister for her very full introduction to this. I was involved in the passage of the Deregulation Bill 2015 and the Small Business, Enterprise and Employment Bill 2015, so I have some background and previous on this. I do not think the noble Lord, Lord Palmer, was involved, but he might be advised to read Hansard for both those Bills because extensive discussion of the points he raised took place on the primary legislation. It is not irrelevant for him to be referred to that because a number of very important points were made along the lines of the ones he made. Good responses were given by the Government at that time, which I recommend to him.

There was one point in what the noble Lord said that it would be useful to put on the record again. A lot of the Minister’s statement was concerned with making the case that these changes, which are in practice quite narrow, will make a huge difference to the insolvency arrangements. At the end of my remarks I will come to a couple of points on the broader picture here.

In truth, the main debates we had on the Bills that led to this statutory instrument were concerned with making the case that these changes, which are in practice quite narrow, will make a huge difference to the insolvency arrangements. At the end of my remarks I will come to a couple of points on the broader picture here.

In truth, the main debates we had on the Bills that led to this statutory instrument were concerned with making the case that these changes, which are in practice quite narrow, will make a huge difference to the insolvency arrangements. At the end of my remarks I will come to a couple of points on the broader picture here.

I thank both noble Lords for their contribution to this debate. To respond first to the noble Lord, Lord Palmer, on his question of whether legal advice is obtained by the Government before making the ECHR statement, the answer is very much yes. Ministers are advised by government legal advisers before expressing such a view. Further than that, or on what happens post-Brexit, I would not like to comment.

My experience of insolvency goes right back to the Insolvency Act 2000, when I was in the same position as the noble Lord, Lord Stevenson of Balmacara, is now. The language of regulations and primary legislation in those days was very different but ever since then I have been able to understand where the noble Lord, Lord Palmer, is coming from with regard to the not insubstantial fees of the insolvency process. The question, of course, is what the Government are doing, if they can do anything, to interfere in the marketplace with regard to who charges what fees. In October 2015, the Government introduced the need for officeholders to provide a fees estimate, which creditors are asked to agree. These rules will be reviewed and possibly revised, depending on how effective they are proving. I hope that is helpful. I absolutely understand why the question was asked.

I thank the noble Lord, Lord Stevenson, for helpfully expanding on where we have come from in terms of the rule of 10, as, yes, on the face of it, these appear quite narrow changes. It was also helpful of him to
suggest to the noble Lord, Lord Palmer, that on the question of expenses and so on, we should look back in Hansard to when these issues were discussed in much more detail then they can be in relation to the regulations before us.

The proposal to abolish meetings of creditors is important. It struck me when I first looked at it because, as the noble Lord suggested, of course some people want to be at the insolvency meeting to put forward their case, particularly the smaller creditors involved. I am advised that research shows that physical meetings are very poorly attended by creditors and, as a result, are not an effective means of engaging with them. They do not reflect modern methods of communication that are available and could be used to seek decisions from creditors. There are better ways of seeking a view, such as using video or telephone conferencing or online voting methods, and officeholders are now being given the flexibility to identify and use the most appropriate of these. We very much hope that these new provisions will give more scope for creditors to actively participate in making case-related decisions.

I am reminded of a debate on a recent order before your Lordships’ House, when the noble Lord, Lord Mendelsohn, talked about the need to find more savings in regard to the cost to business. We estimate that this will be a £22 million saving, which is one small contribution to that difficult process. There is always the possibility of unintended consequences when trying to make things more streamlined, effective, efficient or 21st century—whatever that can mean. We have to be very careful that we do not compromise people such as the small creditor who is having to push his or her weight against the larger creditor, who can take his or her place more aggressively—if I may use that term.

I am glad that the noble Lord, Lord Stevenson, referenced the change of language. I agree that it really does help. It is important that we think about language when drafting legislation in areas such as this—the change from “must” to “may” is a good move in that sense.

I thank noble Lords for their consideration of the regulations and for their valuable contributions to the debate. I hope we can agree that these regulations will bring important benefits from updating the legislation to ensure that it is efficient and effective, delivering the best returns possible for those affected by insolvency. I commend these regulations to the House.

Motion agreed.

**Public Sector Apprenticeship Targets Regulations 2017**

**Motion to Approve**

12.19 pm

Moved by Viscount Younger of Leckie

That the draft Regulations laid before the House on 6 March be approved.

Viscount Younger of Leckie (Con): My Lords, these regulations are the first use of the power under Sections A9 and A10 of the Apprenticeships, Skills, Children and Learning Act 2009 which enables the setting of apprenticeship targets for prescribed public bodies. There is a fair amount of ground to cover so I hope the House will forgive me if my remarks take slightly longer than usual.

I will start by setting out what we are trying to achieve, the scale of our ambition and how these regulations enable that to be met. The public sector comprises bodies ranging from large government departments, such as the Department for Work and Pensions, to more independent institutions such as local NHS trusts. With 4.2 million people working in the public sector, in professions stretching from front-line nursing to local council administration, it is vital that all those employed have the skills they need to succeed.

Apprenticeships are the cornerstone of our skills strategy and across the country employers are hiring apprentices as part of the workforces of the future. Therefore, to encourage public sector bodies to incorporate apprentices into their own workforce planning, these regulations set an apprenticeship target for prescribed public bodies. The apprenticeship target is for the number of apprentices who start working for the public body over the target period to be equal to 2.3% of the public body’s headcount in England. The target period is from 1 April 2017 to 31 March 2021.

I do not intend to go into the formula used to set the target at 2.3% of a public body’s headcount but I will say that this figure reflects the public sector’s proportional share of our broader target to achieve 3 million apprenticeships starts by 2020. Across the public sector, 2.3% means a goal of more than 80,000 new, employer-led, quality apprenticeships in each year the target is in effect, with the positive impact felt by everyone from police forces to schools to government agencies, and the public benefiting throughout from the delivery of world-class public services.

To realise this, the regulations prescribe the public bodies in scope of the target, how public bodies can calculate their progress towards meeting the 2.3% target, and the information they must publish and send to the Secretary of State. The regulations enable the Government to effectively set and monitor this target, and they will be supported by statutory guidance, assisting public sector bodies to understand how they can best have regard to the target.

I will now focus on quality and benefit. Historically, the public sector has employed far fewer apprentices than the private sector and that is why it is necessary to establish the target, to ensure that all parts of the economy are able to benefit from a skills revolution. Through these regulations we are creating more opportunities for people to earn as they learn in an apprenticeship.

Quality remains at the core of the Government’s apprenticeship reforms. New, employer-led standards will ensure that each apprentice will be fully competent in their profession, and the Institute for Apprenticeships, which is coming on stream on 1 April 2017, will oversee the quality of apprenticeship standards and assessment plans. We have also legislated to protect the term “apprenticeship” by creating an offence for a person to provide or offer a course or training as an apprenticeship in England if it is not a statutory...
[Viscount Younger of Leckie]

apprenticeship. This is crucial as we must uphold quality in order that the strong benefits of apprenticeships may continue.

Employing apprentices makes sense for everyone involved. It makes economic sense and delivers a high return on investment, with research indicating that adult apprenticeships at level 3 bring £28 of economic benefits respectively for each pound of government investment. Employers benefit, too. In a 2015 survey 87% of employers said they were satisfied with their apprenticeship programme. That is the latest survey that we have.

Finally, the financial benefits to apprentices themselves are immediately apparent. Apprenticeships boost current earnings by 11% and 16% for levels 2 and 3 apprenticeships respectively.

Although we are not intending to set sub-targets for individual groups, we remain committed to improving access to apprenticeships for all, including those from BAME backgrounds, those with learning difficulties or disabilities, care leavers, and those from deprived areas. We are taking a range of actions to make apprenticeships more accessible, including implementing the recommendations of the Maynard taskforce for people with learning difficulties or disabilities, and establishing the Apprenticeships Diversity Champions Network.

We are also investing over £60 million in supporting apprentices from deprived areas. As a priority, we are establishing parity of esteem to ensure that doing an apprenticeship is no longer seen as a secondary choice to the academic route. This is particularly important as we ensure that apprenticeships are valued by all and remain opportunities open to all. Apprentices no longer fit the image of old; now they work in all sectors from first job even up to management level, and they are from all backgrounds.

During the passage of the Enterprise Act 2016, which inserted this provision into the Apprenticeships, Skills, Children and Learning Act 2009, this House debated and voted on provisions enabling the Government to set apprenticeship targets for prescribed public bodies. At that time there was cross-party support for what was rightly recognised as an opportunity to improve public services and provide more opportunities for people of all backgrounds.

We consulted extensively on the proposed bodies and scope and the calculation of the target, and heard from a wide range of 180 public bodies and representative groups of different sectors. The majority of respondents felt it vital that the public sector engaged with our reforms and that public sector bodies also benefited from the growing apprenticeship movement, with one trade union commenting that they, “welcome the extension of good quality apprenticeships”.

We also listened to concerns raised. For example, some respondents were critical of the target being assessed on an annual basis. As such, while still continuing to monitor public bodies’ progress in annual returns, for grouped bodies the target is calculated as an average over the target period. For all other public bodies, the target is calculated with respect to only those years in which the public body has 250 or more employees.

This will enable organisations to plan their training and recruitment of apprentices to meet their workforce needs, and for government to monitor and support public bodies where needed.

Following consultation, we will also allow local authorities to separate the headcount of those bodies where they employ staff but do not direct the workforce planning—including schools and emergency services—in their information returns. We have also responded to those who were concerned about how the target may impact them given their high proportion of part-time workers. We suggest that these bodies can, should they choose to, use their full-time equivalent number in parallel under their obligation to report on headcount, in order to explain any underachievement of the target as necessary.

I will move on to reporting requirements. In order to promote transparency, public bodies will be required to publish and/or provide information relating to their progress. They must do this in the six months following 31 March, in each year of the target period in which the body is in scope. There are two parts to this requirement. First, to make it clear which bodies are leading in their investment in apprenticeships, public bodies must publish and send information about their progress towards the target. This includes how many apprentices they employ as a percentage of their total headcount.

Secondly, public bodies will have to send an “apprenticeship activity return” to the department, detailing the actions they have taken to have regard to the target, why they may not have met the target, and their intended future actions to do so. This information does not have to be made available publicly but will instead be used by government to determine which bodies have had regard to the target before offering suitable support and guidance thereafter. To be clear, we do not intend to use a heavy hand in our approach to public bodies in this respect but rather consider the details that they have provided in the return, before assessing whether they have had regard, or enough regard, to the target.

We do not wish to overburden the public sector unnecessarily and we remain aware of the challenges faced by different bodies. That is why the Department for Education is liaising with the Department for Communities and Local Government, the Department for Health, the Home Office and other departments across Whitehall to support them in delivering apprenticeships throughout their own wider public sectors. Departments will also work with public bodies to develop new, employer-led apprenticeship standards and increase the number of quality apprenticeships, thereby directly improving services delivered to the public.

12.30 pm

Let me take this opportunity to highlight the progress we have already made across government to ensure that there are opportunities for apprentices to develop their careers throughout the public sector. Four main areas of the public sector will deliver a majority of apprentices towards the target: the NHS, schools, local government and the emergency services. I will now set out what we are doing to ensure not only that
they can have regard to the target but that they can employed apprentices most effectively to deliver the services that people need.

First, we estimate that there will be 100,000 new apprentice starts in our National Health Service over the course of this Parliament, and the Department for Health and its partners are working proactively to make this a reality. With all NHS trusts included within scope of the target, there is a real opportunity to ensure access to high-quality careers in the health sector nationwide, building from a strong start which saw 20,000 apprentices employed in the NHS in 2015-16. The Department for Health and Health Education England have worked closely with Skills for Health and the National Skills Academy for Health to develop guidance for employers to support them in creating quality apprenticeships in the NHS. In addition, Health Education England is taking the lead in bringing trailblazing employers together in order to develop suitable standards. To date, they have focused on creating a pathway of apprentice standards in nursing, starting with level 2 healthcare support worker and leading to level 6 nursing degree apprenticeship.

Secondly, on schools, we recognise the importance of ensuring that apprentices in the educational sector are employed in the school setting. Not only will this help build skills and deliver more for local parents and students, but it will ensure that young people are exposed to apprentices working around them, allowing them to more easily recognise the value of the apprenticeship route. In order to support schools to more easily recognise the value of the apprenticeship route, the Department for Education is also supporting them to learn from each other. The Department for Education England is taking the lead in bringing trailblazer groups, which are developing apprenticeship opportunities in schools, including an apprenticeship standard for teaching.

Thirdly, the local government sector will be the largest contributor to the public sector apprenticeship target, aiming for more than 30,000 new apprenticeship starts each year. This means that councils across England are being set an ambitious collective target to deliver more than 120,000 apprentices over the period the target is in effect, ensuring that this policy will have a truly national impact. Some councils have already made great progress in incorporating apprentices into their workforces, and with all but the smallest councils being in scope of the target, there is a great opportunity for them to learn from each other. The Department for Communities and Local Government has been actively working with the Local Government Association and other stakeholders on a range of awareness-raising activity. This activity has already reached hundreds of councils, and DCLG will continue to work closely with the LGA to identify suitable standards to meet the skills gaps of the sector. This includes consideration of standards in social care, regulatory services and planning functions.

Fourthly, our emergency services—so important, as we know from the awful events of last week—will also utilise the opportunity that this target presents to build the skills that they need as first responders to keep our neighbourhoods safe. The target will aim for 5,000 police and 1,000 fire and rescue apprenticeship starts per annum, with all police forces and all but two fire and rescue services in scope.

To achieve this, the Home Office has been working closely with stakeholders across government and front-line bodies to develop “blue light” entry schemes for apprentices. For example, the police, fire and ambulance services have come together and are currently developing an emergency call handling apprenticeship standard. In addition, a standard for police constables has now been approved, subject to some final revisions, and a trailblazer group of leading employers is developing a new firefighter standard.

To conclude, the impact of these regulations will be felt, we believe, across the public sector in some depth, impacting and improving the lives of citizens nationwide. The regulations are an important part of our wider plans for the delivery of world-class public services and a skills system with apprentices at the heart of the workplace. They set an ambitious and demanding target, but one that has the potential to bring transformative results to public services nationwide, while opening up more opportunities for people from all backgrounds to progress in the workplace. I commend these regulations to the House.

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for his comprehensive introduction of these regulations. He has gone into considerably more detail than Mr Halfon did in the other place, and that is helpful. I will look with interest in Hansard at the amount of information on the different sectors that the noble Viscount outlined. It would probably be quite a surprise if I began by saying anything other than that we welcome these regulations and the aim of the Government that they seek to facilitate. The extent to which it is achievable may be slightly more problematic, but only time will judge on that.

As the Minister said, apprenticeships have a crucial role to play in ensuring that young people—but not only young people, of course—are provided with the ability to take up proper training that enables them to progress to well-paid and sustainable employment into their adult lives. The public sector clearly has a major role to play in that, and I welcome the fact that the Government have placed an onus on the public sector to play, and to be seen to play, its part in the long haul towards the target of 3 million apprenticeship starts by 2020.

On that point, I would ask the Minister to clarify the target for the four years spanned by these regulations. I listened carefully to what he said and I think I am
correct in saying that he mentioned the figure of 80,000 each year, which he said reflected the public sector’s proportionate share of the 3 million target. We are slightly puzzled by that because those projections do not suggest that the public sector will be pulling its full weight towards the aim of 3 million. My understanding is that the public sector accounts for some 16.2% of the total workforce, yet the figure of 320,000 apprenticeship starts over four years represents around 11% of the 3 million target, and 16.2% of 3 million is almost 500,000. Perhaps I am missing something—the fact that there is a significant gap between the two figures suggests that I may well be—so it would be helpful if the Minister could explain why the public sector target is not more in line with that figure of 16.2%.

I was struck by the fact that the only government department excluded from these regulations is GCHQ. I can just about understand why that might be—although it is not rather a shame that there will be no openings for apprentice spies, albeit those who operate in front of a computer screen or in a darkened room wearing headphones? Just imagine the surge of applications for those apprenticeships, had they been available—or is it the case that they are available but the information is classified?

A question which the Minister might be more comfortable answering relates to the figure of 2.3% of a department’s or a body’s headcount being the target for apprenticeship starts. That figure is to be averaged over the four years beginning next month, which is not unreasonable as the target is unlikely to be achieved in the first year and perhaps also in the second year. If that happens, it is self-evident that in future years the figure will need to exceed 2.3% to achieve the average. Is the Minister confident that that will happen? If he is, on what basis does he have such confidence?

I will not repeat the argument made by my honourable friend Mr Marsden in the other place about the demands being placed on local authorities by the funding shortfall that they face. The Local Government Association estimates that figure at £5.8 billion by 2020. The Minister cannot deny that this will place many in a very difficult position when it comes to funding apprenticeships. Yes, most will be subject to the apprentice levy on the basis of their pay bill and will be able to draw from that pot—but the smaller ones will encounter real difficulties.

The Local Government Association has advocated that apprenticeships emanating in supply chains should be open to public bodies to assist them in reaching their target. The Government have changed their position—which I welcome—by allowing a figure of 10%, although that is said to be provisional, to be included. Can the Minister say how the figure will ultimately be arrived at? By that I mean: how will it be calculated? I believe that there is considerable potential for including supply chains, given the multiplier effect that they have.

In terms of social mobility, it is also to be welcomed that Mr Halfon, the Apprenticeships and Skills Minister, announced some £60 million this year for apprentices from disadvantaged backgrounds. Apprenticeships really can make a difference by giving young people opportunities that previously they were unaware of or turned away from. I look forward to hearing of at least a similar figure for the other three years of the scheme. In the meantime, as one who advocates moves that assist social mobility, the Minister will, I am sure, join me in welcoming the vote in your Lordships’ House on Monday on the Technical and Further Education Bill, which provided assistance for apprentices who might be dissuaded by families who stand to lose benefits if their son or daughter takes up an apprenticeship, when they would not do so had their offspring gone into further or higher education.

A similar situation was secured in that vote for care leavers in terms of bursaries. Both these measures will assist with social mobility and so, for consistency’s sake, surely the Minister can regard them only as positive developments. I trust that his colleague Mr Halfon will also adopt that view and will not seek to overturn the vote then the Bill returns to the other place.

Mr Halfon made an intriguing comment in the debate on these regulations earlier this week in relation to Schedule 2, excluding both Houses of Parliament. He mentioned that, although the ban on smoking in workplaces did not formally apply to the House of Commons, the Speaker had decreed that it does. Although I am not aware of the formal position in your Lordships’ House, I presume there must have been an equivalent decree by the Lord Speaker. So will the Minister say whether, although these regulations do not apply to your Lordships’ House, he would be in favour of seeking a means by which they could be applied? It would set an excellent example to other public bodies and there would be many opportunities for apprenticeships in interesting and fulfilling jobs within Parliament that the case.

My final point concerns the gender balance within apprenticeships. It is widely acknowledged that 53% of apprentices are female, yet they tend to be in lower-paid sectors of the workforce. A year ago, in answer to an Oral Question in your Lordships’ House, the then Parliamentary Under-Secretary of State at the Department for Business, Innovation and Skills, the noble Baroness, Lady Neville-Rolfe, stated that since May 2015 there had been 366,000 apprenticeship starts in England and that, while a narrow majority were females, “of the 74,060 apprentices in engineering and manufacturing”,—[Official Report, 14/4/16; col. 354].

a mere 6.8% were female, while in ICT the figure was 17.5%. I doubt that those figures will have changed markedly in the intervening period, but these regulations allow the Government to lead by example and begin to turn them around, ensuring that young women are encouraged to apply for apprenticeships that both require and develop skills that involve the STEM subject areas. There is certainly a wealth of opportunity within the public sector for that gap to be addressed.

A year ago, the noble Baroness, Lady Neville-Rolfe, told noble Lords that only 26% of apprentices in her department were women. It would be both interesting and helpful if the Minister could tell noble Lords what the current percentage is within the Department for Education. His officials may have the figure at their fingertips—but, if not, I would be quite happy for him
to write to me, including an outline of what specific plans his department has to ensure that it not only reaches a figure of 2.3% of the headcount as apprentices but indeed exceeds it. Can he say what the projected figure for the Department for Education in the first year will be?

I have posed a number of questions, not all of which the Minister will be able to answer in his reply, but questions of a wider nature will need to be resolved if the Government are to achieve the success that we on these Benches want to see in terms of a broad expansion of apprenticeships, not least in the public sector.

Lord Storey (LD): My Lords, I very much welcome the statement from the Minister. We have seen a revolution in apprenticeships, which of course was started by the previous Government. While I am in favour of targets, they have to be sympathetic to the quality of the provision—I would much rather see quality provision even if we do not reach the exact target that we want.

I have four particular questions. Some of my other questions have already been asked. First, the Minister said that there were not going to be subtargets for people from different ethnic backgrounds—men, women et cetera—but I presume that if, from the information we get back, we find a lack of opportunities for, for example, young people from particular ethnic backgrounds, we might have to revisit that issue. Similarly, if we find a concern about the spread of levels of targets related to age, we might have to revisit that as well. So while I accept his comment about subtargets, we have to keep this under review.

My second question is relevant to the target for local government of 125,000 apprentices but applies equally to other public sector employees. How do we ensure, given that local government is strapped for cash, that full-time permanent jobs are not replaced by apprenticeships to save money?

My third question is on reporting. Of course there has to be reporting back on numbers, but we have to keep it simple. We do not want to get involved in too much red tape. If, for example, a school is taking on apprentices, the last thing it wants is yet more form filling.

My fourth question is on the different levels. How can we ensure across the piece that apprentices cover each level? We do not want to see them predominantly at one level.

To conclude, over the next three or four years apprentices will revolutionise higher and further education. Already we see an increasing number of young people who might have chosen to go to university suddenly saying, “Ah, if I do an apprenticeship with, say, the BBC at level 7 in media post-production, not only will I not have to borrow and worry about finance but I shall get paid while I do it. I shall get practical experience, I shall get the equivalent of a degree and at the end of it I have a good chance of getting a job”—and I think that at levels 1, 2 and 3 we shall see changes as well. So that’s a yes to apprenticeships. I welcome the Minister’s statement and I hope that he will answer some of the questions that I have raised.

Viscount Younger of Leckie: My Lords, I thank the noble Lords, Lord Watson and Lord Storey, for their comments and questions. First, I am pleased that in general they welcome what we are doing. As the noble Lord, Lord Storey, said, these initiatives started under the previous Government. We realise that this is long-term work. We fully intend to roll this out and stick with it over the long term. It takes many years to ensure the success of this sort of initiative.

The noble Lord, Lord Watson, asked about the Department for Education in relation to apprenticeship participation. This is a fair point. The Department for Education is confident that it will meet the target. I shall write to the noble Lord setting out precise numbers and the wider plan in the education sector. I shall also cover his other points as to the percentage of apprenticeships in the department and the percentage of women apprentices. I can certainly do that.

The noble Lord also asked whether the House of Commons or the House of Lords were in scope of the targets. In other words, would we and the other place be taking on apprenticeships? While we are not imposing this target on this House and the other place, there is nothing to prevent us or the other place from creating apprenticeships. We do not fall in scope because we do not seek to have Ministers tell us what to do.

Lord Watson of Invergowrie: I understand that the Minister cannot direct either House and I accept that. That is why I referred to smoking in the workplace. That, equally, cannot be enforced. However, it is de facto, if not de jure. I welcome the noble Viscount’s response because he is encouraging both Houses to adopt this measure. It is interesting to have that on the record. We shall see what figures emerge over the next two to three years and proceed with that, perhaps even jointly.

Viscount Younger of Leckie: I entirely agree with the noble Lord that having this recorded in Hansard encourages the Houses to initiate it.

Perhaps more important, though, is the question that the noble Lord raised about the target and the clarity of the target—in other words, the 80,000 which I mentioned. I may have to write to clarify this matter further because it is somewhat complex. I say, to be helpful, that this is a proportional target. It is based on the proportion of public sector employees as part of the total workforce in 2015. As this target is set from 2017-18 up to 2020-21, the number is not an exact copy of the 2015 number. In addition, following reaction to the consultation, we have excluded certain bodies who presented a good reason for not being included. We reiterate that this remains an ambitious and transformative target. It is important to have targets, but it is not set in stone. However, the 80,000 figure is there, and it is meant to be.

The noble Lord, Lord Storey, asked about the support offered to engage those from BAME backgrounds. We are taking action in this area, as he will know. We have launched the diversity champions network, chaired by Nus Ghani MP, to champion equality and diversity. Public sector organisations, including councils and NHS trusts, are among our diversity champions. We are also celebrating the BAME apprenticeships in our Get In Go Far publicity campaign.
The question that he really asked concerned what we would do if there was concern about the targets not being met. I reassure him that the targets in these areas will be kept under review. Although I cannot promise any particular action, being kept under review means that, if there were any concerns, they should rightly be addressed.

The noble Lord, Lord Watson, asked about supply chains in the target. Supply chains are mostly, normally, in the private sector, so they are not included. However, the Government are using their procurement for contracts of over £10 million to take this forward. In the Department for Transport, for example, we should see 30,000 apprenticeships in the road and rail sectors through the use of the Government’s procurement programme. We anticipate that this will be about 2.3% of employees in those workforces.

The noble Lord also asked about the target of 2.3% and whether a higher target would be achievable in later years. That is a fair question. As I mentioned, we are asking public bodies to have regard to this figure. Some will achieve it each year, and some may not. But where they do not achieve it in the early years, we will look to employers to make further progress. We will do our best to support them to make that progress.

I hope that answers all the questions. I will, of course, read Hansard to check what questions were raised—quite a few questions were asked by the two noble Lords—and I will, of course, write to them if there are other questions to be answered.

Motion agreed.

Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) (Amendment) Regulations 2017

Motion to Approve

12.53 pm

Moved by Lord O’Shaughnessy

That the draft Regulations laid before the House on 1 March be approved.

The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) and Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment) Regulations 2015 transferred responsibility for commissioning public health services for children aged zero to five from NHS England to local authorities, allowing local public health services to be shaped to meet local needs. This includes responsibility for delivering the healthy child programme. This programme is the main universal health service for improving the health and well-being of children, providing families with health and development assessments and reviews, health promotion, screening and immunisation. This is supplemented by advice around health, well-being and parenting. The five reviews are offered by health visitors to pregnant women, new mothers and children from birth to age five and include the antenatal visit, the newborn review, the six to eight week check, the one year review and the two to two and a half year review. They are required to be provided by all local authorities in England.

I know that your Lordships will agree that health visitors play a crucial role in ensuring that children have the best possible start in life, and lead the delivery of the elements of the healthy child programme which relate to these children. Health visitors provide valuable advice and support to families and are trained to identify health and well-being concerns. Through the health visitor programme, the Government have supported the profession more than ever before to transform the service and I pay warm tribute to its excellent work. In April 2015, at the end of the health visitor programme, there was an increase of around 4,000 in the number of full-time equivalent health visitors in the workplace since May 2010. Health Education England is now ensuring sustainable development of the health visitor workforce and there are presently more than 800 health visitor student training places commissioned. This, along with service transformation, means that more families now have access to the support they need in those precious early years.

The Government are also committed to supporting school-aged children and young people by promoting their health and well-being through school nursing services. There are currently around 1,100 school nurses in England, supported by other professionals, such as community staff nurses, healthcare support workers and nursery nurses. In January 2016, Public Health England published commissioning guidance for school nursing which makes it clear that school nurses should be accessible and responsive to children’s needs. The current 2015 regulations, which place a duty on local authorities to provide the five universal health visitor reviews, contain a sunset clause and so will lapse on 31 March 2017—tomorrow. The legal obligation on local authorities to provide health visitor services is also set to lapse tomorrow. The draft regulations before the House will prevent this. The current regulations also include provision for a review to be undertaken of the operation of the regulations.

The Department of Health commissioned Public Health England to carry out a review of the operation of the five mandated universal health visitor reviews following the transfer of responsibility to local authorities,
as set out in the 2015 regulations. A review was carried out in summer 2016 and Public Health England’s report of the review was published on 1 March 2017. The review found widespread support from local authorities and commissioners for the universal health visitor programme remaining in place, in order to secure the delivery of long-term benefits from the healthy child programme, including improved health and well-being outcomes for children and their families. There was also a strong view held by professional representatives of local government and the nursing profession that the services are essential for prevention and early intervention and a general agreement that they deliver a positive return on investment and contribute to other government priorities such as reducing childhood obesity, controlling tobacco and improving maternal mental health. I thank Public Health England for its important work on the review and for helping to inform these regulations.

Local authorities will continue to be funded to deliver the mandated health visitor reviews. They will receive more than £16 billion between 2015-16 and 2020-21 to spend on public health, which includes children’s services including health visitors. This is in addition to what the NHS will continue to spend on vaccinations, screening and other preventive interventions. The Government announced earlier this month that the ring-fence on the public health grant will be retained for a further year, until 2019, as we move towards implementing 100% local business rate retention. This is a step on the way to a more locally-owned system and will help smooth the transition by providing some certainty for the next two financial years.

It is right that local authorities should have appropriate flexibility to deliver against their local priorities, but it is also appropriate that there are some key requirements set nationally, such as the five universal health visitor reviews. By continuing these mandated elements of the healthy child programme, this Government intend to maintain consistency across all local authorities when ensuring the delivery of these services. The draft regulations before your Lordships today will remove the sunset clause from the current regulations, ensuring that local authorities continue to provide these important visits to families. Removing the sunset clause will ensure that the current duty on local authorities to provide these services does not lapse on 1 April. I am confident that this sends a clear signal to health visitors, family nurses, local authorities and the public of the Government’s ongoing commitment to universal public health support for pregnant women, children, and their families.

This Government are committed to improving the health outcomes of our children and young people, so that they become among the best in the world. What happens in pregnancy and during the early years of life has a huge impact throughout the life course. Therefore, a healthy start for all children is vital for individuals, families, communities and ultimately the nation. I commend these regulations to the House.

1 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the Minister for explaining the intent of this statutory instrument. The Opposition supported the transfer of public health functions from the NHS to local government, including those for children from birth until the age of five in public health services. Indeed, that was the only bit of a lamentable Act of 2012 that we did support. We also support the provision of a universal health visiting service and the prescribed reviews, which are elements of the healthy child programme. The noble Lord has said that this decision was supported by the outcome of the PHE review, and I would like to come back to that.

I want first to refer him to the question of resources. He mentioned the changes in local government funding but he will be aware that, overall, the Government’s record in funding public health services has been lamentable. In February 2017, the Department of Health told local authorities that an average 3.9% real terms cut to health service budgets per annum would take place until 2020. This is a large reduction, as it accumulates. According to the King’s Fund, which has done an analysis of the impact that has had, as a result of these reductions stop-smoking services and interventions have lost 25% between 2015-16 and 2016-17, while other areas such as the health check programmes and sexual health services lost 7% to 14% of their funding. As the Local Government Association said, given that the Government issued a firm commitment to the NHS five-year forward view, with prevention put very much at its heart, to then make significant cuts to the public health service budget over the next five years sends entirely the wrong message and could undermine the objectives that we all share to improve the public’s health and keep pressure off the NHS and adult social care.

Recent work by the King’s Fund on sustainability and transformation plans—an Orwellian phrase, if ever there was one—points out that what is actually happening on the ground is going in the opposite direction to that which was set out in this plan. It is the same in public health. I would therefore like the Minister to explain a little more about how the Government justify the reductions in funding for public health services.

I refer the Minister to table 29 on page 58 of the report by Public Health England. It is a summary of written feedback from professional representative and membership organisations. Comments were made by the Society of Local Authority Chief Executives on the issue of the mandation of services, about which clearly local authorities have some reservations. It suggests that the Government collect and review all mandated public health services next year, including health visiting, when the overall position on local government funding and business rate reforms is clearer. In a sense, the Local Government Association has made the same request. Will the Minister inform the House whether the Government are going to respond to that?

On the outcome of services so far and the PHE review, it says that there was a statistically significant increase in the eligible population reach by a universal service during 2015-16. It states also that, largely, there is a positive national picture of progress with statistically significant improvement observed in many relevant outcomes over the lifetime of the national
health visiting programme. However, it points to some large local variation and trends in the rates of breastfeeding, which it says are disappointing. It points also to the fall in the number of health visitors in employment in 2015-16. Will the Minister comment on the issue of disappointing rates of breastfeeding on the one hand and the fall in the number of health visitors on the other? What action do the Government intend to take on that?

Baroness Walmsley (LD): My Lords, I am delighted to support these regulations because I am an enormous fan of a universal health visitor service, and in particular the healthy child programme. Our economy is never going to keep up with the demand for health services unless we pay more attention to the issue of prevention. That really is the public health agenda. Any doctor will tell you that you really must lay the foundations for a healthy body, lifestyle and habits in the early years or you will get illnesses later on. The review of the programme so far has been very positive. As the noble Lord, Lord Hunt, said, there have been significant improvements in the populations reached. However, we will not see the true benefit of this programme until we are years down the track and find that those young children who have been given a healthy foundation grow up to have fewer of the terrible but preventable chronic diseases that are costing the country so much.

I am very proud of the coalition Government’s vision of improving the health outcomes of children, young people and their families. Transferring the responsibility to local authorities was part of that: it gives them the chance to combine services, right up to the age of 19. However, as the noble Lord, Lord Hunt, said, there are serious questions to be asked. The first, of course, is about resources. Although these services are mandated, and although the Minister may say that the money has been ring-fenced, budgets have been cut and are going to be further cut. Local authority councillor friends of mine tell me that it is getting more and more difficult for local authorities to provide even those services which they are mandated to provide because things are getting so tight financially. I hope the Minister can give us some encouragement on that, although I somehow doubt it.

The other question on resources is about people. We have heard from the Minister about the number of health visitors in training. Are they going to be enough to serve rising demand? We have a rising population and a lot of additional young people and families who require services. A universal service is terribly important because you do not just get health problems among the most deprived. However, there is a great deal of poverty in this country and the need for these services is growing. How confident is the Minister that we will have enough sufficiently trained nurses, given the stresses on all health service staff and given that so many people are leaving and retention is getting more difficult? Are we going to have enough people?

Are there any plans to extend these services a little further up the age range? I am particularly concerned about the large number of children who are starting school between the ages of four and five already overweight, obese or with poor eating habits. So, although the healthy child programme and the reviews that are mandated here in these regulations go up to the final check at two to two and a half years, it is really important that we do it again just before the child goes to school, because at that point they are already at a disadvantage. Many of these children are from a disadvantaged background and sadly these problems occur more frequently in those backgrounds. They get to school and they are already developmentally a good deal behind children from more advantaged backgrounds. I think the proof that we have had over the few years that this programme has been in place is sufficiently convincing to tell us that perhaps we ought to extend it a little bit further.

Lord O’Shaughnessy: My Lords, I am grateful to both the noble Lord, Lord Hunt, and the noble Baroness, Lady Walmsley, for their endorsement of the universal health visiting service. The noble Baroness is quite right to emphasise the long-term benefits that derive from a universal health visiting service of high quality and it is true that it is a great coalition achievement that we should be proud of. I am also grateful to the noble Lord, Lord Hunt, for his endorsement of not only the programme but also the mandated reviews and indeed of local authorities taking ownership of the programme.

To deal with the funding issue first, as I set out there is both the £16 billion that is going into local authorities for public health and the extension of the ring fence for another year. I will not gloss over the fact that it is a challenging fiscal environment. We know why that is; it is because the country continues to borrow more than it is bringing in in tax. I do not want to go into the reasons for that for fear of being accused of being too political, but we do operate in a challenging environment. That is why the business rate retention and reform is so important, to give local authorities more sustainability for their own funding base. I should also point out that, whether the issue is smoking or other risky behaviours, we are still making good progress, so it is possible to continue to reduce these kinds of risky behaviours, notwithstanding the pressures that are inevitably placed on budgets. In the round, total health budgets are increasing, not just in the NHS but across all health budgets. So while I do not gloss over the fact that it is a challenging fiscal environment, we are still making very strong progress, not just on health visitors but on a number of important public health issues.

In terms of the point that the noble Lord, Lord Hunt, made about the review by Public Health England of mandated services, obviously there are no plans to review the health visiting service, as I think we are all agreed that this is something we want to happen. Health visitors are popular and desired. I am not in a position to say at this point whether any other services are under review but I shall certainly write to him about that.

Both the noble Baroness, Lady Walmsley, and the noble Lord, Lord Hunt, asked about the numbers of health visitors. They increased by 50% in the last Parliament, which I think is a huge achievement. It has become slightly more difficult to track their numbers because they have a number of employers now that the
budget has been devolved, but there are still very high numbers of them as a result of the changes made in the last Parliament. There are over 800 training places for health visitors and there are more nurses in the system as well. So there is investment going into the workforce, and I absolutely recognise that there has got to be a high-quality workforce. It is also the case that other healthcare professionals are able to deliver some of these services. If a family, which of course will more likely be a poorer or more disadvantaged family, is receiving support from a family nurse partnership, then the nurses that are delivering that can also deliver the health visit and some of the early reviews, so it is a mixed picture. The number of family nurse partnership places has increased over the past few years as well.

There are a couple of final issues. Breastfeeding is part of health visitor training and indeed their mandate is to encourage greater breastfeeding. I am not aware of the specifics of the variability. I shall certainly look into that. It is a critical part of maternal and child health and to be encouraged. I know that there are variations from one part of the country to another. Whether they are due to training and workforce or to other cultural or longer-term issues is a different question and it is bound to be more challenging in some areas than others.

The noble Baroness, Lady Walmsley, asked about the age range. It is important for the health visiting service to stick to what it does best. I certainly recognise the picture she is describing, having worked in primary schools. There is an increase in children coming unprepared to school, or increasingly to nurseries, whether in their eating habits or toilet habits or whatever it is. The increase in formal childcare places that has been made available to both three year-olds and disadvantaged two year-olds will go some way to addressing that but I shall certainly keep an eye on that issue.

Baroness Walmsley: Sorry to spring this on the noble Lord but there was something that I forgot to ask him. He mentioned the accessibility of school nurses. The fact is that if a school nurse is looking after five schools they are not terribly accessible. I wonder if he might write to me as to whether there are any plans to increase the number of school nurses, because that is part of increasing the child’s health right the way through the age range.

Lord O'Shaughnessy: Yes, I shall certainly be happy to do that, probably looking at it in the round in terms of all the local health support that is available for school-age children. I hope, in responding, that I have been able to talk to all the points that have been made by noble Lords in this debate. I am glad that we all agree that health visitor support to families is vital and is about giving children the best possible start in life. It is why the Government have taken this action to continue to ensure the provision of the five mandatory health and development assessments and reviews so that this service continues to be provided for all families with children aged nought to five. I beg to move.

Motion agreed.

European Organisation for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017

Motion to Approve

1.16 pm

Moved by Baroness Goldie

That the draft Order laid before the House on 28 February be approved.

Baroness Goldie (Con): My Lords, this order amends the 2009 order of the same name, and this revision confers on British nationals working for the organisation the limited privileges and immunities to which they are entitled under an international agreement between the organisation and the United Kingdom.

The European Organisation for Astronomical Research in the Southern Hemisphere is important to the United Kingdom. We contribute £17.5 million annually to its budget for a 16.4% share and 40 British nationals currently work there. The space sector offers significant research and economic opportunities. UK academics and businesses operating in the sector are internationally renowned and are in a strong position to take advantage of those opportunities.

I now turn to the details of the order. The European Organisation for Astronomical Research in the Southern Hemisphere was established by a convention in 1962. In 1974 its member states agreed by protocol to confer, in their respective jurisdictions, legal personality and certain privileges and immunities on the organisation and its staff. The United Kingdom acceded to the convention and joined the organisation in 2002. In 2012 we acceded to the protocol. The protocol was given effect in domestic law by the European Organisation for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009. However, the 2009 order failed to confer on British nationals working for the organisation the limited privileges and immunities to which they were entitled under the protocol. That error came to light in June 2014, and for the United Kingdom to continue its fruitful relationship with the organisation we must make this amendment order to give full effect to its international obligations.

The amendments concern three issues. First, on the taxation of employees, the protocol requires the UK to exempt from taxation the emoluments of officers who are British nationals or permanent residents. Of around 40 UK nationals or permanent residents working for the ESO, we know that at least 38 are based overseas in Germany or Chile; the remaining two have previously or occasionally worked in the UK and are directly affected. Secondly, the protocol requires the United Kingdom to confer on officers of the organisation who are British nationals or permanent residents immunity from legal process in respect of their official acts, excluding motor vehicle offences and damage, which are not included in this immunity. Thirdly, the protocol requires the United Kingdom to grant social security exemptions to officers of the organisation who are British nationals or permanent residents.

The 1968 Act of Parliament under which the 2009 order was issued permits social security exemptions to be
Baroness Goldie granted only to “high officers”, namely the director-general and his or her deputy. This amendment order therefore confers exemption from national insurance contributions on the director-general and his or her deputy. In respect of social security exemptions for all other officers, the UK has entered a reservation to the protocol. The UK filed this reservation with the French Ministry of Foreign Affairs, which acts as a repository for all papers relating to the convention and the protocol on 14 February of this year. I make clear that the other states party to the protocol have 12 months to object to the UK’s reservation. In the unlikely event that another state party objects, the reservation will not be valid between the UK and the objecting state. However, the UK’s membership of the organisation should be unaffected.

Article 2(3) of this order amends Article 15 of the principal order to ensure that, if the director-general or person appointed to act instead of the director-general has a form of British nationality or permanent residence, that person shall benefit from: immunity from suit and legal process in respect of official acts, excluding motor vehicle offences or damage; exemption from income tax on emoluments received as an officer of the organisation; and exemptions relating to social security.

Article 2(4) amends Article 16 of the 2009 order to provide that any officer of the organisation who has a form of British nationality or permanent residence, other than the director-general of the organisation or his or her deputy, shall benefit from immunity from suit and legal process in respect of official acts, not including motor vehicle offences or damage, and they will benefit from exemption from income tax in respect of emoluments received as an officer of the organisation.

Both the 2009 order and this order apply to the whole of the UK, but some provisions do not extend to, or apply in, Scotland. The opportunity has been taken to clarify which of the provisions in the 2009 order apply or extend to Scotland. Article 2(2) therefore inserts new Article 1A into the 2009 order to clarify the existing position. A separate Scottish Order in Council has been prepared in respect of those amendments within the legislative competence of the Scottish Parliament, and has been laid in parallel before that Parliament.

I reassure your Lordships that the privileges and immunities afforded to officers of the organisation, including those with a form of British nationality, are limited to those that the organisation needs to conduct its official activities. They are in line with those offered to officers of other international organisations of which the UK is a member.

Leaving the European Union will have no direct impact on the UK’s membership of the European Organisation for Astronomical Research in the Southern Hemisphere. The ability for UK staff to work effectively for the organisation before and after the UK’s departure from the European Union is controlled by our adherence to legislation that accurately reflects the convention and its protocol, and the privileges and immunities they afford to staff. In the light of that explanation, I beg to move.

Lord Collins of Highbury (Lab): I see that there are not too many volunteers for this one. This order appears to have had a difficult gestation period. It has gone through all kinds of hurdles and has failed at each one. That gives rise to a number of questions.

When I first saw that this order was on our forthcoming business, my noble friend Lord Foulkes suddenly thought that it was a great opportunity to raise the question of why a telescope on St Helena is not being funded by this organisation, as that might also ensure that we can improve travel and transport links there. However, on detailed reading I advised him that there was not really an opportunity to do that here, although I said that I would mention it. I hope that the noble Baroness could make some reference to that.

As the noble Baroness said in her introduction, we joined the convention in 2002, which of course was signed in 1962. According to the briefing from the Foreign Office—I express my appreciation to officials there, who helped me with the background and briefing on this—we signed the protocol in 2012, although it was given effect by this order in 2009, which of course is the beginning of the journey for this matter. I do not quite understand why the protocol was acceded to in 2012 when it was given effect by that order in 2009.

The error that the Minister referred to, namely that the 2009 order was defective as it did not give clear immunities in accordance with the protocol that we signed up to, was not discovered until June 2014. This error must have some implications; the individuals involved must have raised the issue, because they would have been working with people who were employed in accordance with the overall protocol. Therefore, when this error was discovered, how many people were affected by it, and is there any liability on the United Kingdom Government for this error? I assume that there may well be, if two people have been working in the United Kingdom. However, it may be more extensive; it may be that some people, this error being no fault of theirs, may be seeking some sort of recompense. I would like to be clear about that for the future.

I was also slightly concerned that the noble Baroness referred to the numbers that could potentially be affected. Of around 40, we know that at least 38 are based overseas in Germany and Chile. These are not huge numbers—I would have thought that we would be able to be a little more specific about the numbers involved and how we will put right this error.

On the general principle—the Minister referred to this—the briefing says: “Providing privileges and immunities to International Organisations is standard practice where the Organisations need these privileges and immunities to operate and function effectively”.

That is accepted and I understand that, particularly if that is a requirement of the original protocol. It continues: “The UK only agrees to confer privileges and immunities on International Organisations to the extent necessary for the proper functioning of the Organisation”.

What does that mean? How do we measure that? Why have we determined that certain individuals will benefit from the requirements of the protocol? This would be a classic episode of “Yes Minister”, I suspect, in terms
of understanding the language and the errors and the fact that this 2009 order has been brought before the House three times and still failed. It would help in terms of general policy to understand exactly how these things operate. I hope the Minister will forgive me for this direct approach and will be able to answer.

Baroness Goldie: As the noble Lord, Lord Collins, predicted, there is hardly a rush of enthusiastic interrogatories to deal with on this issue. I thank him for his insightful and helpful contribution to the debate.

The amendment order simply corrects a number of errors in the order it replaces and aligns domestic law with the obligations we have made to the European partners, with which we share an endeavour to increase our knowledge of space.

The UK’s commitment to the European Organisation for Astronomical Research in the Southern Hemisphere remains unchanged. We remain committed to strengthening our position as a world leader in astronomy and space exploration. Belonging to this organisation brings with it opportunities from which British companies and our scientists, academics, astronomers and astronauts of the future are well placed to benefit.

I will try to deal with some of the points which the noble Lord, Lord Collins, raised. He mentioned the nature of the journey to this point. I will be quite candid. The journey has involved a road with a number of potholes, and a certain degree of stumbling into and over the potholes has taken place. Why has it taken three years since the order was laid? While the order was laid in 2009, the UK did not complete payment of all the joining fees until 2010 and thereafter we went through necessary internal processes to ensure that we acceded to the protocol. This process took two years as it was given low priority because it was likely to impact on very few UK nationals.

As an aside, the noble Lord mentioned his noble friend Lord Foulkes and the matter of St Helena. I have no information on that but I undertake to look into his question and to write to him. I should make clear that the current telescopic facilities are based in Chile.

The noble Lord also raised the important issue of why the staff of the ESO need privileges and immunities. It is a legitimate question and important we endeavour to answer it. The UK is obliged to confer privileges and immunities by virtue of its accession to the convention establishing the European Organisation for Astronomical Research in the Southern Hemisphere and the protocol on the privileges and immunities of that organisation. Privileges and immunities are important for the organisation to conduct its official activities in the UK, irrespective of whether it has a physical presence in the UK. In particular, tax immunities ensure that partner contributions are directed to the construction and operation of the project and not into tax revenue.

The other issue that the noble Lord raised in that connection—and again it is an important one—was its impact and the personnel affected. As I said, my understanding is that of the 40 identified personnel, 38 work in Chile and two have worked or sometimes work within the UK.

I make it clear that UK nationals or permanent residents working for the ESO overseas are not liable to pay income tax in the UK on emoluments received as an officer of the organisation. However, if UK nationals or permanent residents working for the ESO overseas have income from a second employment, business, or financial investments in the UK, they will be liable for UK tax on such income on the same basis as anyone else working abroad.

The noble Lord, Lord Collins, raised a pertinent point about the potential impact for persons now covered by the order. I make clear that Her Majesty’s Government are not legally financially liable because the amendment order does not include a retrospective effect. In other words, it does not say that the Government will refund income tax payments. However, we will be sympathetic to the concerns of the organisation or the individuals affected if we are approached.

Lord Collins of Highbury: How much?

Baroness Goldie: The noble Lord poses a question that he knows I cannot possibly answer. I have not even given a commitment. I have merely, I hope, indicated a note of empathy in respect of the concern which he has raised.

The noble Lord was also concerned about whether this amendment order was the complete solution given the rather troubled history of where we have been and how we got there. Certainly, it is an important step forward in implementing the protocol in respect of officers with British nationality or UK permanent residence to the extent permitted by the Act of Parliament under which it is made. The Act does not permit us to confer by order the social security exemptions on any British nationals or UK permanent residents, other than the director-general. That is why I anticipated what the noble Lord might be interested in and obtained the specific information from the officials, which I was able to include in my speech. I hope that has reassured him.

I hope I have managed to answer the points raised by the noble Lord, Lord Collins. In conclusion, this Government remain committed to the European Organisation for Astronomical Research in the Southern Hemisphere and its ambitious programme to make scientific discoveries and look deeper into space than we have ever managed to do before. This will clearly be for the benefit not just of this generation but for many generations to come. I hope my comments have allayed any apprehensions that the noble Lord had.

Motion agreed.

Electoral Registration Pilot Scheme (England) (Amendment) Order 2017

Electoral Registration Pilot Scheme (England and Wales) Order 2017

Electoral Registration Pilot Scheme (Scotland) Order 2017
Representation of the People (Scotland) (Amendment) Regulations 2017
Motions to Approve

1.37 pm

Moved by Lord Young of Cookham

That the draft Orders and Regulations laid before the House on 8 March be approved.

Lord Young of Cookham (Con): My Lords, I shall speak also to the Electoral Registration Pilot Scheme (England and Wales) Order 2017, the Electoral Registration Pilot Scheme (Scotland) Order 2017 and the Representation of the People (Scotland) (Amendment) Regulations 2017. The instruments will help enhance the operation of electoral registration across Great Britain. Noble Lords will be aware that individual electoral registration—IER—was successfully introduced in 2014 and for the first time ever enabled people in Great Britain to apply online to register to vote. Nearly 24 million people have applied to register under IER, 18 million of them online.

Applications to register to vote peak in the run-up to elections and during the autumn canvass, when each household in the country receives registration forms. Noble Lord will be aware that this process, and indeed registration overall, is costly for electoral registration officers—ER Os. While the Cabinet Office currently provides direct financial assistance for registration linked to the introduction of IER, the total costs of the annual canvass are high, at some £65 million per year. The current process is inefficient, costly and burdensome for local authorities.

What is more, a large proportion of these costs relate to activities required by law that simply confirm that people are correctly registered. What is needed is a more effective and efficient system that targets resources on reaching out to underregistered groups to add new names to the register, rather than simply confirming names already there. The Cabinet Office is therefore working with ER Os across Great Britain to pilot alternative approaches to the current paper-based, inflexible and prescriptive annual canvass. Three of today’s instruments will enable such pilots this year. The fourth instrument will enhance the operation of IER in Scotland to allow cost savings for ER Os throughout the year.

I turn, first, to the annual canvass pilots for 2017. Three of these instruments establish pilot schemes under Sections 7 and 9 of the Electoral Registration and Administration Act 2013. As noble Lords may already be aware, Section 9D(3) of the Act requires the annual canvass to be conducted in the manner prescribed in the Representation of the People (England and Wales) Regulations 2001 and the Representation of the People (Scotland) Regulations 2001. This process requires ER Os to send an annual canvass form—the household enquiry form, or HEF as it is known—to every property in their area. The HEF asks residents to set out whether there have been any changes in the composition of the household since the previous year’s canvass, and it enables ER Os to identify whether any residents should be removed from the register or be invited to make an application. Response rates to the HEF are significantly lower under IER, as it is no longer a registration tool, yet, where no response is received, ER Os are required to issue up to two further forms and to carry out at least one visit to the property.

These three orders disapply those requirements for 23 participating ER Os in areas of England, Wales and Scotland. Instead, the orders require ER Os in the specified areas to attempt to make contact with a person at each residential address in the area for which they act at least once between the date the order comes into force and 2 February 2018. The manner in which they do so, however, and whether they take further steps where no information is received at a particular address will be at the ER Os’ discretion. This will enable ER Os to test new and innovative approaches to canvassing—including using data, such as council tax data, the local land and property gazetteer, and internal local authority databases—to determine whether chasing responses to ERO inquiries is necessary. These approaches have been developed closely with the Electoral Commission, which is supportive of the pilots. The commission will be reporting on the schemes and will provide a copy of its evaluation to Ministers and the ER Os by 29 June 2018. The order ceases to have effect on 6 July 2018.

The fundamental objective of the annual canvass—namely, the maintenance of a complete and accurate register through regular data collection—is and will continue to be a government priority. However, consultation with ER Os and local authorities over an extended period has indicated that the annual canvass in its current form is not a sustainable way to achieve that aim. Many ER Os, who are on the front line of electoral registration activity, have told the Cabinet Office that the canvass procedure is time-consuming and expensive. Electors will receive up to three letters and a visit from their local ER O, even if they are already registered, solely for the purposes of information gathering.

Last year, for example, huge numbers of citizens registered to vote in the run-up to the EU referendum in June. This year, many may register to vote in local and devolved elections in May, and perhaps even for a by-election as well, yet, when the annual canvass takes place between July and December, they will receive fresh inquiries in the form of the HEF about their registration status. The reality is that household churn is around 12% per annum—thus the majority of the canvass activity is redundant. Over half of households do not respond to the initial HEF, meaning that ER Os are required to chase them up with the further two forms and a visit, despite the fact that 88% of households will be listed as “no change” on the electoral register.

This tremendously bureaucratic process is frustrating for administrators. Having to follow steps prescribed in statute is stifling their capacity to innovate and adopt new approaches to canvassing. Through knowing their local area or having access to local authority data, ER Os may well be aware of the registration status of households in their area. However, the current system does not allow them to draw on their own expertise or on other information held by the local authority. This is not an example of “smart working”, and it does not allow citizens to “tell us once” of changes to their registration.
Furthermore, it is worth noting that the recent referendum was conducted using one of the largest electoral registers ever. With the advent of online registration, it is becoming increasingly apparent that electoral cheats can drive registration to new heights and that the current system of canvassing around six months in advance of a poll, through an inefficient cycle of paper HEFs and household visits, may not be the best approach for the modern world.

It is important to note that the canvass itself is purely an information-gathering process. The pilots will not alter the requirements for the registration process and for invitation to register forms to be sent to individuals. Therefore, what is being proposed—the impetus for which has come from EROs themselves—is to enable local authorities to test alternative methods for conducting the annual canvass that have the potential to be more cost-effective while still securing the same or higher levels of information on changes to the register compared with the current annual canvass process.

Operations along these lines were successfully carried out in 2016. Specifically, during the 2016 annual canvass process, the Cabinet Office ran initial pilots in three areas of England—Birmingham, Ryedale and South Lakeland. In order to broaden the evidence base, however, further pilots, including in Wales and Scotland, are needed to inform a wider change to the annual canvass across Great Britain. Early results from the pilots last year have been very promising, with provisional figures indicating that the costs of the alternative canvasses were substantially lower than those of the legislated canvass due to the reduction in printing, paper, postage and staffing costs. Ryedale, for example, estimated that the new methodology it employed resulted in an 89% saving in staff time and costs. The Cabinet Office and the Electoral Commission are currently analysing the full cost data of the whole process and intend to report initial results in May.

In addition to the pilot areas from last year, the areas selected to participate in 2017 are Barrow-in-Furness, Bath and North East Somerset, Blaenau Gwent, Camden, Coventry, Derbyshire Dales, Dumfries and Galloway, East Devon, Glasgow, Hounslow, Luton, Newcastle, Salford, South Holland, South Norfolk, South Oxfordshire and Vale of White Horse, Sunderland, Torfaen, Wakefield and Woking.

Although the initial results suggest that alternative approaches to the annual canvass can be at least as effective as the currently prescribed method, the Cabinet Office intends to ensure that applying this learning to local authorities across Great Britain, including Wales and Scotland, generates similar results. If successful, the pilots will demonstrate that the annual canvass does not need to be so prescriptive and that a number of alternative methods are just as effective and more cost-efficient, potentially saving at least £20 million from the cost of electoral registration each year.

The 2017 pilots will take place in local authority areas across England, Wales and Scotland. The areas were chosen using robust research methodology to ensure a spread of electoral register churn, population size, chosen pilot model and region. In each area, the EROs will be operating control groups and pilot groups so that the results of these approaches can be rigorously evaluated.

Four models of piloting activities will run with these EROs in the 2017 pilot scheme. Each model has been created based on proposals from EROs, and each participating ERO has chosen the model they wish to apply to their area based on their local knowledge and expertise. Each model reduces the number of paper communications sent to electors, using means such as telephone and email channels, and one model uses existing local data to determine where best to focus resources. Again, these ideas have all come from the experts on the front line and are designed to improve the citizen experience as well as ease administrative burdens on hard-pressed electoral teams. The elector will benefit from the local authority being able to redirect resources and target canvassing more effectively towards underregistered groups.

I will now give more detail on each pilot model in turn to offer some insight into the innovative approaches being taken to move us towards a more effective and targeted canvass process.

The first model, which is being piloted in areas such as Torfaen, Ryedale and Barrow-in-Furness, tests the use of a household notification letter, or HNL. Under this model, the ERO will send all households in the treatment group a HNL instead of a standard household enquiry form. The HNL lists the details of everyone registered to vote in that household and advises residents to take action only where the details held are no longer up to date. This model allows EROs to reduce the number of paper communications sent to electors and also reduces the number of expensive household visits required.

The second piloting model involves the use of email in areas including Hounslow and Woking. For this model, an electronic HEF will be sent to households by email, chased with a visit if necessary. Where no email is held, households receive a postal HEF followed by a visit. This model further tests the use of email communication between EROs and electors, following the uptake of email invitations to register in England and Wales. This also expects to reduce the number of overall communications with electors including, again, expensive household visits.

The third model uses a discernment step to identity different types of properties, in areas such as Glasgow and Birmingham, so that EROs can take the most appropriate approach. This discernment could involve local data matching using sources such as council tax, or assignment by ward based on the ERO’s expert knowledge. Depending on the assignment, some properties will receive a HNL, while others will be more actively canvassed where a change in household composition is suspected. Where possible, communication will be sent to these households by email before being chased with postal reminders and visits if necessary. This model allows EROs to use the existing data and knowledge they have of their areas to target resources better as well as use digital means to communicate with electors.

Finally, a fourth model tests the use of telephones in the canvass process. Areas participating in this model include Dumfries and Galloway as well as East
Devon. Under this model, EROs will send initial postal HEFs but will then be able to chase non-responding households by telephone, rather than by additional canvas forms or household visits. Where no telephone number is held, households will receive two letters followed by a visit. This model allows EROs to test the use of telephone canvassing and should also reduce the number of household visits and postal communications.

The Government have consulted widely, including with the Electoral Commission, on the pilot proposals. The commission has been very supportive of these plans and has been involved from the early stages of their development. The Electoral Commission has also been consulted on these orders, on which it is content, following the Cabinet Office’s confirmation that Section 13 of the Representation of the People Act 1983 remains applicable to participating local authorities during the pilot scheme so that participating authorities are still expected to publish their registers by 1 December 2017, unless exceptional circumstances apply, such as a local election, where they are required to publish a revised register by 1 February next year.

Consultation has also taken place with bodies such as the Association of Electoral Administrators, the Society of Local Authority Chief Executives, and the Scottish Assessors Association. This is in addition to the work the Government have been doing with interested councils directly and who have helped shape the four pilot models. The Information Commissioner’s Office was also consulted during the development of these pilot orders and is content that they do not raise any new or significant data protection or privacy issues.

Equality impact assessments have been completed to ensure that underregistered groups, as well as those groups protected by virtue of the Equality Act 2010, will not be negatively impacted by these pilot schemes. Privacy impact assessments have also been completed to ensure that no new negative privacy impacts under the Data Protection Act 1998 will arise.

While the purpose of these pilot schemes is to give EROs the space to innovate and test alternative and more effective approaches in relation to the annual canvass, I stress that the integrity of the register will be maintained throughout the pilot schemes. EROs have a duty, under the Representation of the People Act 1983, to maintain their registers and nothing in these orders change that.

I turn now to the draft Representation of the People (Scotland) (Amendment) Regulations 2017. These regulations take steps to allow Scottish EROs to benefit from the same cost optimisation measures as have been available to English and Welsh EROs since last year. This will be achieved by amending the registration application forms for Scotland to allow applicants to identify that they are the only person resident at the address aged 14 or over. It also provides discretion to EROs as to whether to canvass a property within 12 months of an indication of single occupancy. Allowing EROs to make this choice decreases the amount of resources spent processing applications and increases the efficiency and speed of the registration process.

Secondly, the regulations will modernise the system of registration by enabling Scottish EROs to send invitations to register and ITR reminders by electronic means if they wish to do so. This delivers a quicker and more efficient service to the elector, who expects electronic communication in this age, as well as enabling cost savings. The instrument will also allow an attester to an applicant’s identity to be registered in any local authority area in Scotland. At present, both the attester and the applicant must be registered in the same local authority. This provision will assist those applicants whose identity cannot be verified using the Department for Work and Pensions matching process, local data matching or by documentary evidence who have to provide an attestation to verify their identity. This change will result in more eligible applicants becoming registered to vote. In addition, the regulations make a minor amendment to correct an error in an existing regulation concerning the requirement to provide fresh signatures following rejection of a postal voting statement.

The measures were conceived to generate savings from the cost of the annual canvass process to counteract the fact that the introduction of IER has increased the cost and administrative burden on local authorities. These provisions also aim to reduce unnecessary ERO correspondence and contact. Preliminary estimations project that these regulations will reduce the overall cost of IER in Scotland by around £125,000 for the single-occupancy provision and around £400,000 for email ITRs per year. The Electoral Commission was consulted during the development of these measures and on the specifics of this order, and it is supportive of these regulations offering the same provisions to Scotland as already exist in England and Wales.

The Cabinet Office has worked very closely with Scottish Government officials to ensure that these measures can be in place for the 2017 annual canvass, and to ensure that Scottish EROs are able to participate in the aforementioned pilot schemes. The Minister for the Constitution and the Scottish Government’s Minister for Parliamentary Business agreed last year for these instruments to make provision in respect of both the parliamentary and local government registers in Scotland. This will be done before commencement of the relevant provisions of the Scotland Act 2016, which will devolve competence in relation to the local government register in Scotland. This was agreed in order to ensure that Scottish EROs could take advantage of these cost-optimisation measures in respect of both the parliamentary and local government registers this year, and that local authorities in Scotland are represented in the canvass pilot schemes.

With this in mind, the Government believe that the instruments allowing for annual canvass piloting schemes are a crucial step towards improving the annual canvass and wider registration process. I therefore commend them and hope noble Lords will also agree that the statutory instrument relating to cost-optimisation measures in Scotland helps move electors and electoral administrators towards an enhanced IER system for members of the public and for EROs as part of the continued successful implementation of IER across Great Britain. I beg to move.
Lord Blunkett (Lab): My Lords, I was waiting to see whether anyone else would intervene. I will not detain the House very long. Will the Minister, either now or in writing—I promise I will not talk about Sheffield this afternoon—be kind enough to reflect on the juxtaposition of the existing Data Protection Act 1998 with the Digital Economy Bill in relation to data sharing and, crucially, with the general data protection regulation of 2016, which the Government indicated on 1 March they would be taking forward and putting on statute the necessary changes, prior to implementation, in May 2018?

I welcome very strongly the proposals for the pilot schemes. The discerning approach will be very important for getting to households that are difficult to reach, dealing with churn and ensuring that, particularly with the Glasgow and Birmingham proposition, there is a real understanding of the difficulty within inner cities. I am concerned that we do not get caught with what is otherwise a very sensible privacy change—a tightening of the regulations under the GDPR—taking into account, as the Minister indicated, that there will be a privacy impact assessment. Will he say a little more about that?

2 pm

Lord Hayward (Con): My Lords, before I comment specifically on the statutory instruments before the House, I will raise one or two questions relating to the general principle of ensuring that our electoral rolls are as accurate and complete as possible. I see the noble Lords, Lord Kennedy and Lord Rennard, in their seats. I think the noble Lord, Lord Rennard, in particular is likely to touch on the subject if he speaks soon after me. I am concerned, as I think we all have been concerned and successive Governments have been concerned, about the fact that the register is accurate for certain groups—the noble Lord, Lord Blunkett, touched on that in part in his brief comments—but large groups of the population are regularly missed in one form or another.

I mentioned this to the noble Lord, Lord Kennedy, in advance, but I did not have a chance to mention it to the noble Lord, Lord Rennard. Yesterday during Questions a Question came up relating to the 18 pilot projects identified around the country as a result of what one might describe as the Pickles review. I have been informed—I have not had the chance to check it, but I believe it to be correct—that in the case of both Burnley and Pendle the Labour and Liberal Democrat councillors on those councils have voted against participating in the schemes, despite the fact that in each case they are among the 18 authorities identified for review. I will say only this: I regret it enormously if that is the case, because being innovative and trying to find ways to deal with fraud and underregistration are key to the processes of our elections, whether they be local or national.

Specifically on the statutory instruments, I broadly welcome them for the same reason that the noble Lord, Lord Blunkett, identified. We should be innovative. Society is changing quite markedly. It is much more mobile than it was when the original legislation was introduced. We have very different forms of campaigning nowadays from those we had when I was somewhat younger. Therefore, we have to find ways of getting hold of potential voters in whichever way we can. I shall comment also on the Minister’s opening remarks, which concentrated rather too much for my comfort on savings. We were not given indications relating to the accuracy of the trials that have taken place so far. The Electoral Commission and other interested parties are conscious of not only the potential savings but the potential accuracy and gain achieved by any particular process within this trial.

I notice that the noble Lord, Lord Young, in his opening comments said that the results had been fairly positive from 2016. I recognise that it is a small step forward with a limited number of trials in local authorities. That is a good basis from which to work. Given where we are in the electoral cycle, and given that there are discussions with the local authorities that he identified, I shall ask for clarification just for confirmation that these projects will not interfere in any way with the local elections that are taking place. I assume that most of the preparatory work will take place later in the calendar year, but I would like that confirmation because a fair number of the local authorities to which he referred have elections—either in Scotland or Wales or in the county council elections this year.

I must admit that I am surprised and disappointed that the locations that he identified were the ones chosen. I think I understood him correctly to say that they would provide a range of local authorities to test the system. The Minister referred to model 1. Looking at the order to identify the local authorities involved, two of the authorities in model 1 are Welsh: Blaenau Gwent and Torfaen, which demographically are very similar. As far as I could see, there was no marked variation between those two local authorities: they are essentially valley mining communities. They touch on my other keen interest, rugby, in that they have produced many of the great Welsh rugby players and the great Welsh rugby teams—but they are very similar. If one was looking for Welsh authorities, I would have thought that one would not go for two Welsh valley authorities.

Equally, on the same list we have the authorities of South Holland, South Norfolk and Ryedale—which, again, are very similar in general make-up. We do not have one London borough in that group, but we have two metropolitan authorities. One could reasonably argue that the metropolitan authorities balance for a London authority, but it would have been better, rather than having two metropolitan authorities, Newcastle and Wakefield, if we had looked for slightly different mets across the country.

The second group, the email group, has a balanced combination of authorities: Bath, Coventry, the Derbyshire Dales, Hounslow—the first local authority in London—and Woking. The third category, described as the discernment model, has one London authority: Camden. I am sure that Camden will produce stellar results in its review. I declare a personal interest here: my niece is the Labour leader of that council, so I am sure that it will do its job very effectively indeed. Alongside that authority we have Salford, Sunderland and Birmingham—again, a combination of three mets,
which I do not think shows a reasonable balance. That is combined with South Lakeland. There are no unitary authorities from any part of the country. That is not a particularly balanced grouping.

I have the same observation relating to the fourth grouping, the telephone model, where four local authorities are identified in England: East Devon, Luton, South Oxfordshire and the Vale of White Horse. Three of those are district councils; most people would regard them as rural and fairly wealthy; and we have the rather odd position where South Oxfordshire and the Vale of White Horse—I again declare an interest as, being Lord Hayward, of Cumner, I originate from one of those local authorities—are neighbouring authorities in Oxfordshire. You will not get much variation of information by picking that as a group. Therefore, if it is possible at this stage, I ask whether some of those local authorities could be switched round. It may be too late, but I make those observations on the different groupings.

I shall ask one final question relating to the use of telephones. More and more people do not have a landline. They operate totally on mobiles. It was not clear from the Minister’s opening comments whether the tests would include solely landlines or a combination of landlines and mobiles, or whether the authorities have access in one form or another to mobile numbers—I would be surprised if they do not in most cases. Those should be used, in the right circumstances and with the right qualifications—the noble Lord, Lord Blankett, referred to data protection—because that will help the process.

I have made a few overall comments. I hope I have raised specific questions that can be dealt with today or at a later stage in a written reply. But, overall, I broadly welcome the process as long as the objective is to achieve greater rates of registration, as well as the saving to local authorities in the process.

Lord Rennard (LD): My Lords, the sentiments expressed in the Minister’s very thorough brief about modernisation, efficiency and cost saving are very worthy and have my support. But we should consider the issues very carefully because none of the sentiments outweigh the overarching principle of the requirement in a democracy to make sure that every citizen entitled to vote is enabled to do so by being on the electoral register.

During the passage of the Electoral Registration and Administration Act 2013, I was among those who fought to preserve the principle of the annual canvass, and we ensured then that it was retained. After much deliberation, the canvass was seen—as the noble Lord, Lord Hayward, has just said—as an essential part of ensuring both the completeness and the accuracy of the electoral register. But the principle was hotly contested during those debates. Certainly, there were some within the Government who simply argued that it should go as a cost-saving measure; while others of us argued that ensuring that people entitled to vote were registered to do so was part of the cost of democracy and essential to the principle of fair elections. We come now, four years later, to look again at the issue of the annual canvass and how it can best be operated.

People like me have accepted that there might be better and more cost-effective ways of canvassing to complete the register and ensure its accuracy. Those of us—and there are many of us in the House—with long experience of canvassing in elections know a lot. I suspect, about targeting canvass efforts. In some areas it may be worth knocking on doors several times, while in others it may perhaps be impractical to call upon households personally. During the discussions four years ago one Minister told me that he thought the annual canvass was now completely redundant. He had been taken out by his advisers to a gated community and shown how it was almost impossible to gain access to canvass. It was suggested to him that the principle of the annual canvass should therefore be dropped. But such gated communities represent less than 1% of all households in the UK. The vast majority of households are accessible, and canvassing them is often an essential part of the process of completing the electoral register.

What I think can be done, however, is to use more modern methods to try and register as many people as possible in advance of attempting to call personally on doorsteps. Concentrating canvassing efforts on particular households where there is a need to make personal contact, and perhaps on low-registration areas where, for example, there may be many homes in multiple occupation, may be a higher priority—but all of this is predicated on making every effort to get people registered in ways that do not require a personal visit. If we are to extend this principle and vary the methodology involved in the annual canvass, I would like to ask the Minister about a couple of issues relevant to registering more people in advance of the doorstep call.

First, as we have discussed in correspondence, there is the provision of national insurance numbers to 16 and 17 year-olds. The Minister has told me that Her Majesty’s Revenue & Customs is willing, in principle, to supply to young people with their national insurance number information about how it can be used to register to vote. That clearly will save money and reduce the number of people who need to be called on personally. Since then, the Electoral Commission has said that there should be an automatic process of registration, so that when HMRC issues a national insurance number to a 16 or 17 year-old they are automatically included on the electoral register. That must fulfil the cost-saving principle that the Minister outlined in detail and would be a much better way of ensuring that 16 and 17 year-olds are included on the register. At that age they are already able to vote in Scottish Parliament elections, and it will ensure that they are on the register by the time they are 18 and can vote in England, Wales and Northern Ireland.

Secondly, I come again to the issue of student registration. It is particularly hard under the old-fashioned household canvass rules to canvass students in halls of residence and put them on the electoral register. The Explanatory Memorandum for the statutory instruments states:

“The purposes of these pilots are to gather evidence to establish whether alternative methods can be used to conduct the canvass that are just as efficient and more cost effective”.

We know that the traditional annual canvass method is not appropriate for students and we already know
from pilots—which the Cabinet Office itself has referred to—that it is far cheaper and much more effective to offer students the opportunity to go on to the electoral register at the same time as they enrol for their course.

We know, for example from the Sheffield pilot that we debated, that students can be registered at a cost—according to Sheffield Council—of approximately £1.4 per student, compared to £5 per student using the traditional methodology which includes the annual canvass. In terms of completeness, which is a stated aim of government policy, the Sheffield model is registering students at a rate of about 76%, compared to institutions of a similar size registering students at a rate of only around 13%. The models may need to vary for different higher education students, but, if we are to change the principles of the annual canvass, we need to use all these methods to make sure that underregistered groups are more effectively represented on the electoral register.

2.15 pm

I have a couple of other questions relating specifically to the paperwork accompanying the statutory instruments. Can the Minister tell us a little more about what he means by “at least one”? It says in the paperwork that there should be at least one call at the door or attempt to canvass the voter. But that, of course, does not mean very much. It may mean just one attempt or it might mean more. I hope the Minister will provide guidance. The policy background section of the Explanatory Memorandum says that, “there will be a minimum requirement that they attempt to make contact with a person at each residential address in the area for which they act at least once during the pilot period”.

That should mean they will try to make contact as many times as is reasonably necessary and cost-effective to try to complete the registration process. It should not mean that the norm should be one attempt to call at a door. Those of us with experience of elections know that as politicians we often call at the same doors many times until we meet the voter we need to meet. This process should also involve making as many attempts as are reasonable to see the person who needs to be registered, bearing in mind the cost savings from registering many other people in other ways.

Finally, the privacy impact assessment, discussing the impact of canvass pilots on individuals, says that, “individuals are already required by law to provide EROs with the information in order to populate the electoral register”. That is a simple statement of fact but I often hear somewhat different statements coming from the ministerial Benches, implying that the electoral registration process is not compulsory. It is true that it is not compulsory to register to vote but we had great and controversial debates in 2013 to ensure that certain principles of the annual canvass, we need to use all these methods to make sure that underregistered groups are more effectively represented on the electoral register.

ago to maintain the principle, which was introduced many decades ago—the fines were increased substantially in the period when Mrs Thatcher was Prime Minister—that people should understand that it is a civil obligation to register to vote as well as being a benefit to themselves. That element of compulsion must properly be made known if we are to do things such as reduce the cost of conducting the annual canvass.

Lord Kennedy of Southwark (Lab): My Lords, first, I make my usual declaration that I am a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association. The four statutory instruments we are debating today are ones that I accept, as far as they go. I broadly welcome the process outlined by the Minister. Certainly, the entitlement to vote and the accuracy and completeness of the register are the most important things we are debating here. That underpins all this. I have some wider comments and one or two questions for the Minister but generally I welcome the orders and regulations and I am very happy that we are exploring new methods of getting people registered to vote.

On matters concerning elections and electoral registration, it is always desirable to get agreement among the interested parties on the way forward. I accept that that is not always possible but it is a desirable aim nevertheless. Changes should be implemented carefully, should be thought about, should seek to improve voters’ engagement in the electoral process and should command wide confidence. In that sense, pilots are a useful tool to see how certain measures will play out in practice, followed by proper evaluation and informed policy decisions. Can the Minister tell the House why the decision was made to extend these pilots for another year? I cannot believe that the Government have made this decision in isolation. But it is not clear from the papers why they have done so.

There is no mention of the political parties being consulted on the regulations. Will the Minister confirm that neither the Electoral Commission nor the Cabinet Office team that meets the political parties on a regular basis have brought these regulations anywhere near them? Of course, the Parliamentary Parties Panel is a statutory panel set up under PPERA. If that is the case, does the Minister agree that that is regrettable and should be rectified quickly? The political parties use the electoral register for their campaigning, they understand the registration process, and they have a legitimate voice that needs to be heard in any discussions on these matters.

I refer the Minister to page 3 of the Explanatory Memorandum to the Electoral Registration Pilot Scheme (England and Wales) Order 2017; he mentioned it in his introduction. Referring to the annual canvass, paragraph 7.1 in the section headed “Policy background” says:

“In its current form under IER, it is proving to be an unsustainable cost burden for local authorities to administer”. I thought that was an interesting comment. I must say, it is not the biggest issue that comes up when we discuss finance and budgets and unacceptable cost burdens at Lewisham Council. The noble Lord, Lord Rennard, may have let the cat out of the bag by telling us that these issues were discussed in the coalition
Government in 2013. Of course, members of that coalition wanted to bring forward these proposals then.

I had a look at what the Local Government Association was saying and I could not find any mention at all of the unacceptable cost burdens of the annual canvass—not a thing—in its campaigns, press releases or anything else. I then had a look at London Councils and again there was no mention in any of its campaigns or media releases about these unacceptable cost burdens and the problems being caused for local authorities. Both organisations are well known to Members of this House. They are expert at getting their views across to us when they have issues they want to raise with us. But I have had absolutely nothing—not a letter, not an email, not a text message, not a phone call—from these bodies that represent local government.

Of course, there are many issues that these two bodies are interested in: the housing crisis, the social care crisis, education funding, public health budgets, business rates, pavement parking, homelessness and the lack of funding for that, bus funding, and many other issues—the list goes on and on. Many of these issues are putting local authorities in a difficult situation and putting pressure on budgets, but the Government are not the slightest bit interested in dealing with them. I also had a look at SOLACE and the AEA. Again, they are silent on these issues and do not appear to be campaigning on them at the moment.

It really is a bit rich for the Government to hide behind the suggestion that there are all these concerns from elsewhere in local government. The Government do not have a good record here. They spent up IER, against the advice of the Electoral Commission. They reduced the transition period for IER by one year. They threw out the consensus on that point. They moved ahead with reducing the number of seats in the House of Commons by 50. They removed voters from the electoral roll, against the advice of the commission, and of course that helped them in their redistribution of parliamentary seats and limited the scope of electors to get involved in local inquiries. At the same time, we all know that they made a record number of appointments to your Lordships’ House. Their claims about cutting costs just do not hold water.

Democracy costs money. We should cherish it and pay for it. We need an efficient, well-run, properly resourced electoral registration service in every part of the United Kingdom. In comparison with other services, the costs involved are not huge and the Government should be seeing how they can use every avenue of the state to get and keep people registered to vote. They should be learning from other parts of the United Kingdom. How does the Electoral Management Board in Scotland work in getting people registered to vote, compared with what happens here in England and Wales?

Pilots are good to see how we can efficiently and expertly register people to vote. There is nothing presently in force that stops ER Os making any innovation, and many ER Os do an excellent job of innovating to get people registered to vote. We should be looking at the incentives to get people on the rolls. What are schools, colleges and universities doing? What can we learn from the schools issue in Northern Ireland? Many noble Lords from all sides of the House have raised that and so far the Government have not been interested at all in bringing it into play in England. We should look also at what we can learn from other parts of the world.

I worry that the real agenda is just to cut the need to send out a prepaid envelope and a form and to avoid knocking on the door, with very little else under that. I am happy that we have new procedures and new ideas. We have to be absolutely sure that we are not making it any harder to get people registered to vote. I am not confident that so far the Government have done that.

My noble friend Lord Blunkett raised some very important points. The noble Lord, Lord Hayward, spoke about the two local authorities. I do not know that case but if that is the situation, it is regrettable. All the councils that have been invited to be part of the pilot should be part of it when it takes place next year. He made a very important point about savings. I am happy to make savings but, again, the important point in all this is the accuracy and completeness of the register. That must be paramount for all of us. The noble Lord, Lord Rennard, made some important points about automatic registration. Again, young people and students are a very important group and we must make sure that we get them registered. I know that many councils and ER Os have worked closely with universities and colleges. We need to ensure that that happens as well.

I am happy to agree the orders and regulations before us today, although I worry about the Government’s real intention behind these matters.

Lord Young of Cookham: My Lords, I am grateful to all noble Lords who have taken part in this debate and for their broad welcome for the initiatives that are in the orders before the House.

In response to the noble Lord, Lord Kennedy, I am grateful for his welcome for what we are doing, but there were some uncharacteristically partisan comments in his speech. On the size of the House of Lords, I just say, as somebody who was Leader of the House of Commons at the time, that if his great party had supported the programme Motion on the House of Lords Reform Bill, the House of Lords would be a lot smaller than it is now. His party bears some responsibility for the failure to get the numbers down to a more manageable level. I will put that on one side because I know the noble Lord did not mean to stimulate an aggressive partisan debate on these non-controversial orders.

I will try to respond to the issues that were raised. The noble Lord, Lord Blunkett, raised the issue of privacy. Of course I confirm that the protection of personal data is important. As I think I said, the Cabinet Office carried out a privacy impact assessment which took into account privacy impact assessments commissioned from all the participating local authorities. The provisions before us do not have any significant further impact on an individual’s privacy than the current legislative requirements concerning registration. They simply support the ER Os in carrying out their legal duty to take all the necessary steps to maintain
registers of electors in their area. As I said, we have consulted the Information Commissioner’s Office on this order and it does not consider that the proposed measures raise any new or significant data protection or privacy issues. The noble Lord also raised some issues about the Digital Economy Bill and I would like to accept his generous offer to pursue those in writing.

2.30 pm

My noble friend Lord Hayward commented on the selection of the areas for these pilots. As I said, the areas were chosen using robust research methodology to ensure a spread of electoral register churn, population size, chosen pilot model and region. He asked whether it was too late to amend the orders before the House. I think he knows the answer perfectly well—it is too late. He also asked about next year’s pilot of ID in polling stations. I entirely agree with him that it would be in the interests of those local authorities which the Electoral Commission has identified as being at risk to participate in those pilots. The list of pilots to be included in next year’s scheme has not been decided but I certainly take on board the issues that he raised. I will come back in a moment to some of the other issues he touched on.

The noble Lord, Lord Rennard, mentioned the issue of registering at the same time as one gets a national insurance number. That is a move towards automatic registration which so far the Government have resisted. We believe it is up to the individual to register. I am not absolutely certain that what he suggested would necessarily work because of other issues about eligibility; for example, somebody might already be registered. I am not sure whether the nationality issue might have been addressed. However, we are trying to nudge. The noble Lord referred to the correspondence that we are having at the moment which we are taking forward to encourage people to register at the same time as they have an interface with a government department.

On the issue of telephones, whether landline or mobile, it depends on what number the elector gave the local authority when they registered online or were otherwise in contact for the purposes of council tax, or what have you. The pilots do not have specific rules for whether a landline or a mobile is used.

On the question of compulsory or voluntary registration, the noble Lord accurately described the current system; namely, it is not an offence not to register. However if your name is included on a HEF and the ERO then contacts you, it is an offence not to reply. The forms are designed by the Electoral Commission and the EROs may issue a requirement to register and issue a civil penalty for non-response where they think that is appropriate. However, I will pass on to the Electoral Commission the noble Lord’s suggestion about making the powers clearer.

I reassure the noble Lord, Lord Rennard, that the annual canvass stays. I think I made that clear at the beginning. The fundamental objective of the annual canvass, namely the maintenance of a complete and accurate register through regular data collection, is and will continue to be a government priority. I hope I can set the noble Lord’s mind at rest on that point.

South Oxfordshire and the Vale of White Horse are included because they jointly run electoral and registration services. That is why they have been put together.

I was asked what action is being taken to ensure that the pilots do not negatively affect the completeness and accuracy of the pilot areas. The EROs will still be required to make contact with every household at least once and any deletion from the register still requires two sources of evidence.

I return to the question asked by my noble friend Lord Hayward. The EROs themselves chose the pilot models most appropriate to their areas. It is therefore likely that similar authorities will choose similar pilot models. There should be no impact on the local elections in that the annual canvass starts in July after this round of local elections and the register has to be completed by 1 December, so there should be no impact on the timing of next year’s local elections.

We are working through the details of the polling station pilot schemes, which I mentioned a moment ago. The number of pilots to be run will depend on the scope of what is to be tested and the number of local authorities that come forward with suitable applications. The evaluation of these canvass pilots will be due by 29 June next year.

There are a number of initiatives about encouraging underregistered groups which I will not go into today. Black and minority ethnic groups, those who move house frequently, young people and those with long-standing mental health conditions or disabilities are less likely to register to vote. The Government have a number of initiatives with organisations working with those groups to drive up registration.

The noble Lord, Lord Kennedy, asked whether the panel had been consulted. Did he mean the parliamentary panel of Members of both Houses which liaises with the Electoral Commission?

Lord Kennedy of Southwark: No, I am sorry. I meant the political parties panel in PPERA which is drawn from officials.

Lord Young of Cookham: I will make inquiries and deal with the important questions that the noble Lord has raised about the level of consultation, and of course he is entitled to a reply on that.

I think I have dealt with nearly all the issues that have been raised. If I have not, I will write. We have had direct advice from a range of those in local government—the chief executive of Trafford, the electoral registration officer for Grampian and others—about this initiative. I again thank noble Lords for the time they have spent scrutinising these instruments, which will enable EROs in England, Wales and Scotland to pilot innovative approaches to conducting the annual canvass and also allow EROs in Scotland to make use of email invitations to register and single occupancy provisions. I beg to move.

Lord Kennedy of Southwark: Before the noble Lord sits down, the point I was trying to get across is that I am very happy that we have pilots. There is no issue about that. However, when we make changes—and stopping the annual canvass, stopping people knocking on doors and stopping letters going out are very big
changes—we cannot assume that everybody is e-enabled. Each change has to be carried out very carefully; otherwise we make mistakes, things go wrong and people lose their right to vote. That cannot be the case. The heart of this is that the Government must take a long period and absolute care when they pilot changes. The decision to reduce the time for confirmation was a mistake. If we had taken a longer time, we might not have needed these measures now. That is the point I am trying to make.

Lord Young of Cookham: I am grateful to the noble Lord. As I said, we are not stopping the annual canvass. The annual canvass remains. I will just end on this. The initiative for this has come not so much from the Government as from the EROs. They take their responsibilities very seriously and want to have the maximum number of people registered. They still retain all the powers they have at the moment, as well as the powers they have in the pilots, to continue to knock on doors and send all the forms. I personally have confidence that the EROs will use the powers they have, and which we are giving them today, not just to maintain the current accuracy of the register: I think we will end up with a better register if we go ahead with these pilots and extend the lessons that we have learned.

Motions agreed.

West Midlands Combined Authority (Functions and Amendment) Order 2017 Motion to Approve

2.38 pm

Moved by Lord Bourne of Aberystwyth

That the draft Order laid before the House on 6 March be approved.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the draft order which we are considering today, if approved and made, will bring to life the devolution deal which the Government agreed with the West Midlands on 17 November 2015. The Government have already made significant progress in delivering their manifesto commitment to devolve far-reaching powers and budgets to large cities in England which choose to have directly elected mayors. This House has now debated and approved a number of orders establishing combined authority mayors and devolving powers, including Greater Manchester, the West of England, Cambridgeshire and Peterborough and, more recently, the Tees Valley and the Liverpool City Region, for which the noble Lord, Lord Young, stood in my place.

I am very grateful to the House for the attention it has given to these matters. We are now nearing the end of the first stage of this devolution process, with one final order after those today which confers powers on those combined authorities with May elections to be considered—that is, Greater Manchester, which was at the forefront of the devolution process. We also have the draft Combined Authorities (Finance) Order, which we will turn to following this debate.

The order we are considering today will confer important new powers on to the West Midlands mayor and the combined authority as set out in the devolution deal, particularly on transport, housing and regeneration, air quality, smoke-free premises, places and vehicles, anti-social behaviour, and culture. The overall result is to create for the West Midlands arrangements which will materially contribute to the promotion of economic growth across the area, improve productivity, and facilitate investment and the development of the area’s infrastructure. Through this deal, the West Midlands combined authority will receive: first, a devolved transport budget to help provide a more modern, better-connected network, allowing the West Midlands to choose how to spend the money across the area; secondly, new housing and regeneration powers to provide a strategic local approach to tackling these issues in the West Midlands; and thirdly, control over an investment fund of £36.5 million a year for 30 years to boost growth and prosperity in the area.

The implementation of the devolution deal agreed between local leaders and the Government has already seen two orders made, having been approved by this House and the other place, in relation to the West Midlands. First, the West Midlands Combined Authority Order established the combined authority on 17 June 2016, with functions in relation to economic development, regeneration and transport. Secondly, the West Midlands Combined Authority (Election of Mayor) Order created the position of mayor for the West Midlands, with the first election to be held on 4 May for an initial three-year term. Second elections will be held on 7 May 2020, with elections subsequently taking place every four years.

Today’s draft order is to be made under the Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016. As required by the 2016 Act, along with this order we have laid a report which provides details about the public authority functions we are devolving to the combined authority. The statutory origin of this order is in the governance review and scheme prepared by the combined authority, together with the seven constituent councils of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton, in accordance with the requirements of the 2009 Act.

The scheme sets out proposals for powers to be conferred on the combined authority, some to be exercised by the mayor, for funding and constitutional provisions to support the powers and functions conferred, and for the addition of a further five non-constituent members to the combined authority: North Warwickshire, Rugby, Shropshire, Stratford-on-Avon and Warwickshire. As provided for by the 2009 Act, the combined authority and the councils consulted on the proposals in their scheme. This was a public consultation which was entirely undertaken by the authorities concerned. They decided the approach, which was a matter for them.

I know noble Lords are interested in the consultation so will provide some further details. The local consultation undertaken by the combined authority ran for seven
weeks from 4 June to 21 August 2016. In that time, 1,328 responses were received. Of these, 77%—60%—agreed that the mayoral combined authority will promote more efficient and effective governance in the West Midlands. With regards to some of the specific functions covered in the deal and conferred by this order, 79% agreed with the transport proposals, 71% with the air quality proposals and 69% with the housing proposals. On all the questions asked, more people supported than opposed the proposals.

Following that consultation, as statute requires, the combined authority provided the Secretary of State with a summary of the responses to the consultation in September. Before laying this draft order before Parliament, the Secretary of State considered the statutory requirements in the 2009 Act. He is satisfied that these requirements are met. In short, he considers that conferring the functions on the combined authority would be likely to lead to an improvement in the exercise of the statutory functions across the area of the West Midlands combined authority. He has also had regard to the impact on local government and communities. Further, as required by statute, the seven constituent councils and the combined authority have consented to the making of this order.

The detail of the draft order reflects the commitment in the deal that the mayor should take on responsibility for a devolved and consolidated transport budget and a key route network of local authority roads. This key route network of combined authority roads is identified in Schedule 1 to the draft order. It is clear that a lot of consideration and detail have gone into this network, and I congratulate the local area on the work that it has done in identifying this strategic network. The order provides that the mayor, with the assistance of the combined authority, will exercise the following powers over this network: powers to enter into agreements with highway authorities, Ministers and Highways England in relation to the maintenance of roads; powers to promote road safety and regulate traffic; powers to operate a permit scheme to control the carrying out of works on the combined authority roads; and powers to collect contributions from utility companies for diversionary works needed as a result of highways works carried out on the key route network.

2.45 pm

More generally, the mayor will have powers to pay grants—in practice for highways maintenance—to the seven constituent councils of the West Midlands combined authority, with the condition that the mayor has regard to the desirability of ensuring that the councils have sufficient funds to effectively discharge their highways functions. The mayor will also exercise, with the assistance of the combined authority, compulsory purchase powers in relation to housing and regeneration—the same power as the Homes and Communities Agency has elsewhere.

The order also provides that the functional power of competence, already exercisable by the combined authority, is also exercisable by the mayor. The order confers various powers on the combined authority, in addition to its existing transport, economic development and regeneration powers. These are: powers to issue penalty charges in respect of bus lane contraventions across the area of the combined authority; powers and functions of the Homes and Communities Agency relating to improving the supply and quality of housing, securing the regeneration or development of land or infrastructure, and supporting the creation, regeneration or development of communities in the area, to be exercised concurrently with the Homes and Communities Agency; power to designate mayoral development areas, leading to the creation of mayoral development corporations, such as we are seeing in the Tees Valley; powers relating to air quality, which can support the creation of emission control zones; powers to be an enforcement authority in relation to the prohibition of smoking in premises, places and vehicles; powers to issue civil injunctions for anti-social behaviour on the bus and tram network; and powers to take a role in cultural activities, in both the provision and support of cultural events and entertainments in its area.

Finally, the order also provides for the necessary constitutional and funding arrangements to support the mayor and the combined authority, including the establishment of an independent remuneration panel to recommend the allowances of the mayor and deputy mayor. It also provides for the addition of five new non-constituent councils—North Warwickshire, Rugby, Shropshire, Stratford-on-Avon and Warwickshire—to the combined authority, to join the existing five non-constituent councils to the combined authority: Cannock Chase, Nuneaton and Bedworth, Redditch, Tamworth, and Telford and Wrekin.

I should be clear at this stage that the inclusion of non-constituent council members to the West Midlands combined authority is the model proposed by the local area, which considers that this is the most appropriate governance structure to deliver growth across the area of the West Midlands combined authority and indeed the wider region. Furthermore, the addition of these new non-constituent council members does not alter the area of the combined authority, which remains, as it always has, that of the area of the seven constituent councils of the West Midlands. These non-constituent members will be able to sit at the table of the combined authority, but will be able to vote in decisions only if the constituent members of the combined authority choose to involve them in this way. This is a progressive way to ensure appropriate governance and decision-making in the area. However, the Government are clear that devolution of powers and funding should be achieved only through increasing the number of full constituent members. Residents in areas of non-constituent councils do not vote for the mayor.

The order will come into force on 8 May, when the West Midlands mayor takes office, with the exception of the provision relating to the establishment of an independent remuneration panel, which will come into force on the day after the order is made, to enable the combined authority to make any necessary arrangements in advance of the mayor taking office.

In conclusion, this order devolves brand new, far-ranging powers to the West Midlands, putting decision-making in the hands of local people and helping the area to fulfil its long-term ambitions. The draft order we are considering today is a significant milestone that will contribute to greater prosperity in the West Midlands.
Lord Shipley (LD): My Lords, I thank the Minister for introducing this order. I find it refreshing that councils want to join the combined authority, as opposed to wanting to opt out of it. It is good to see the broadly positive outcome of the consultation, with some quite strong figures. It will be helpful to have the extent of the responsibilities and powers that are defined in the order, because they are not up to the same as other combined authority orders, so it makes it much easier to pile up the differences between combined authorities. It is also good to see in the order the checks and balances in the powers of the constituent councils, the combined authority and the mayor. They are quite complex, particularly in view of the number of constituent councils, but I think they are quite workable.

I want to ask the Minister a very specific question about the powers of the mayor and the combined authority, given that they have compulsory purchase powers and, of course, that the combined authority takes over the powers of the Homes and Communities Agency. I just want to be absolutely certain on the record that there is no involvement by the mayor or the combined authority in the granting of planning permission in any part of the West Midlands Combined Authority.

The Minister referred to the independent remuneration panel. This panel relates to the mayor and the deputy mayor of the West Midlands. I think that we are creating too many independent remuneration panels. The time has come for there to be a single, national system for England in the remuneration of combined authority members, elected mayors and councillors. It should not be difficult to construct a system; most other organisations have national schemes. I no longer understand why everything has been localised in the way that it has or, indeed, why there has to be a separate independent remuneration panel for the mayor and deputy mayor of a combined authority.

I want to make two final, very brief points. In the paragraph about the appointment of a political adviser, which I understand applies to all combined authorities, can the Minister clarify the meaning of “within proportionate resource”? A political adviser can be paid “within proportionate resource”, but I do not understand what it is proportionate to. It could be proportionate to the remuneration of the mayor or of the deputy mayor; it could be proportionate to the remuneration of those serving on the combined authority; or it could relate to the budget of the office or of the mayor’s office. We need to be clear about what that phrase means because it is the kind of thing that might cause difficulty later.

My final point relates to political balance. There are 28 members on this combined authority, which I find a welcome number because it means that there is support for the concept of the combined authority. First, I want to be clearer about the political balance of those 28 members to ensure that all interests are involved. In other places—for example, in individual councils—questions of political balance on the appointment of committees are required to be considered. I am slightly concerned that one may find a predominance of only one political party, or maybe two, on a combined authority. How will political balance be ensured, given the number of members on the West Midlands Combined Authority? Secondly, with regard to the scrutiny function, which is subject to legislation that has already been passed by your Lordships’ House, I just want to hear from the Minister that political balance will be ensured on the terms that have already been agreed and that there will be no difference at all in the West Midlands, given the importance that scrutiny is going to have in what is a comparatively large combined authority.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have not been involved in these matters before, but I am a member of the Secondary Legislation Scrutiny Committee and, during our earlier reviews, I have become aware of the questions about the extent of public consultation and the extent to which that consultation has favoured the Government’s proposals. My noble friend referred to that in his opening remarks; I think he said that 1,328 people had responded. That is a decent number, but we are talking about several million people in the organisation that we are talking about, so it is not a significant number statistically. Nevertheless, I welcome that more than half that number were in favour.

I happen to have had a regret Motion on a completely different matter that preceded the discussion we had the other day, about the combined authorities of East Anglia and the north-east, and I noted some of the concerns expressed by other noble Lords at that time. When the scrutiny committee had the West Midlands authority brought before it, I decided to look at it with slightly more care. I entirely appreciate and support the original concept of the urban West Midlands. I know that there are tensions between the Black Country and Birmingham, and so on, but nevertheless there is some cohesion. But when I saw what had been tacked on, I got out my mobile phone and googled the distance from Nuneaton, which is on the eastern end of the area, to Montgomery, which is just over the border in Wales and just outside the western end, and the distance is 96 miles. I did the same from north to south, and the distance is 106 miles. This is a very big area indeed, and I wonder what an authority which runs from the Potteries to the Cotswolds and from the M1 to the Welsh border is going to be able to do to hold this thing together and give it a sense of cohesion.

I understand about the urban West Midlands and the mayor elections taking place there in May. But with this very limited consultation in the first place, which brings in an entirely different type of society—rural, quite lowly populated—I wonder whether we are creating a structure that is really going to deliver what the people in those outlying, tacked-on areas are going to appreciate as a worthwhile and efficient use of local authority and indeed central government funds.

Lord Snape (Lab): My Lords, on the question of remuneration for the mayor, I ask the Minister whether the Government have a particular figure in mind. He will be aware that the election of a mayor in the West Midlands has caused a little controversy in the area...
about the size of the salary. Indeed, I understand that a recent meeting of leaders of various local authorities recommended a figure of around £40,000, which is, understandably, a bit less than one or two of them earn themselves. Can we have an idea from the Minister, before he sets up the remuneration committee, what a sensible figure would be? Does he agree that that figure ought at least to be in excess—perhaps considerably in excess—of the salary of existing local authority leaders, given the wide area, as outlined in the previous contribution, for which the mayor would be responsible?

Can the Minister give us some assurance that whoever is elected will be seen to be independent of government, so that if it is necessary for the mayor to take a decision contradicting the views of government Ministers, he would not, regardless of party, be subject to the sort of treatment that has just been meted out to the noble Lord, Lord Heseltine, who, because of his temerity in disagreeing with the Government’s philosophy, was hurriedly dropped from a particular government position despite his distinguished record? The least the Minister can do is to reassure the House that whoever is elected will be seen to be independent of government.

3 pm

Lord Grocott (Lab): My Lords, the noble Lords, Lord Shipley and Lord Hodgson, both referred to the consultation process. I do not really want to make an observation on that, but consultations are wondrous things, are they not? They are often prayed in evidence. The figure that the Minister gave was, I think, that 777 people or thereabouts had agreed with the proposals. What that represents as a proportion of the West Midlands would barely be able to be determined on a quite sophisticated computer—it is a very, very small proportion of the population of the West Midlands. Having said that, I find myself impressed at the idea that as many as 777 people agreed with the proposal—when I for one find even these orders extraordinarily complex—and had weighed up these issues and thought that, on balance, it was a good system to introduce.

On the question of intelligibility—there are a lot of things that I am not keen on, including the point implied by my noble friend Lord Snape—let us get it down to punter level. I lived just outside the area, but for someone living in the West Midlands area who is faced with a problem involving housing, transport or jobs, is there a simple guide being proposed by the Government that tells them whether to go to their directly elected mayor—even though the people of Birmingham voted against a directly elected mayor, as we know well enough—or to one of the members of the combined authority or to one of the constituent boroughs? Any democratic system, in my book at any rate, needs to be as intelligible as possible, and I am not at all sure about this new structure. It took the Minister, who understands these things, 10 minutes of speed-reading to refer to just these orders. The punters need to know what they are buying.

That brings me to my last point: has anyone worked out the cost so far of reaching the stage that we are at now? I dread to think how much it cost to produce these documents before us—I imagine quite a bit of ministerial and Civil Service time, not to mention the time spent by the local authorities themselves, who have had to submit evidence and attend meetings. And of course there is the cost of these elections, when they take place in May. Some indication, along the lines of the request of my noble friend Lord Snape, would be helpful for us to know precisely what sort of figures we are dealing with.

Lord Rooker (Lab): I will briefly follow up on a couple of the points that have been made. I declare an interest in the sense that I live in the total area, as I live in Ludlow, in Shropshire. I will be amazed when the people of Shropshire wake up on 8 May and discover that they will be sending the combined authority what will be a few tens of thousands of pounds—they are not involved in the election of the mayor, because the mayor is only for the metropolitan county area, which is the old seven councils. I wish it well—do not get me wrong—but the noble Lord, Lord Hodgson, mentioned the variety of the area, and I think that we do need to exploit the assets of the area.

For example, there are 326 local authority areas in England, and their density of population varies from 9,000 people per square kilometre to well under 100 people per square kilometre—as it is in Shropshire. Of the 326, Shropshire lies at about 312; in other words, it is an incredibly sparse area. What that tells me is that it has land for development. We do not need to rip up the countryside to use the land for development, and therefore there is potential in this area—the motorway links are not brilliant, by the way.

I do not know what the local authorities will do about this. The bosses who run Shropshire are not very keen on factories coming into the area. I once raised the issue at a public meeting, as I think jobs and manufacturing are important. In the area of the old seven councils—where I lived and worked and I also represented the area, so I know what it is like—it is not easy to put a factory on a greenfield site. You cannot do that in the Black Country: you can use brownfield sites, but you are absolutely limited for modern, technological industrial undertakings and you cannot do it in the old way. I just want to put that on the record.

On consultation, I have not seen anything in the local papers about the effect of this. I remember that the issue of consultation was raised about three orders ago. I hope that we are not playing with fire, because the body is being set up and it will perform its functions from 8 May.

My final point is that, in the West Midlands, we miss figures of substance, if I can put it that way.

Lord Hodgson of Astley Abbotts: I think that the noble Lord will find that, because Shropshire volunteered, it was not consulted at all. The consultation referred to by the noble Lord, Lord Grocott, was about the West Midlands area. I do not think that there was any consultation in Shropshire at all; it was a volunteering effort by the Shropshire leadership. So I do not think that the people of Ludlow, where the noble Lord and I both live, would ever have had a chance to say anything.

Lord Rooker: That is right; it has not been commented on. It has not been an issue that has figured at all, and that is why I think it will be a bit of a surprise on 8 May.
[Lord Rooker]

My final point is that I hope that the new structure will generate some figures of substance. We miss in the West Midlands people of the stature of the late Sir Adrian Cadbury and the late Denis Howell, who were Midlanders who got things done. That is the one thing that has been missing in the West Midlands compared to the north-east and north-west, where figures of substance have emerged in a leadership role, which has transformed the communities. So in some ways I hope that —although I have not seen any on the horizon at the moment —once this new structure is up and running, such people will come forward.

Lord Kennedy of Southwark (Lab): My Lords, I welcome the order before us today and I welcome the combined authority. It is good news that the constituent councils have all agreed this, and of course there are also non-constituent members taking part in this new arrangement. I lived in Coventry for many years, so I can see the logic of, for example, Nuneaton and Bedworth being part of the combined authority, as that is very near there. However, I do not know the area of Shropshire as well as my noble friend Lord Rooker does.

The noble Lord, Lord Hodgson of Astley Abbots, has raised an important point, though, about the wider area. I will not get into this today, but I think that there is an issue about where are going with local government in England. No party has dealt with this, outside of London, and it is an issue that at some point someone needs to deal with. I am not sure that these patchwork arrangements are the solution.

It is good that the consultation was positive, although I take on board the point that the number of responses was still quite low. However, for some of the other orders that we have looked at, the consultation response was very negative. At least the consultation response on this order was supportive of it.

When the Minister responds, it would be useful if he could comment on the powers that the mayor will have under the order. Will the mayor have the power to dispose of public land at less than market value for use as social housing? In terms of the mayoral development corporation, can he confirm whether it will have that power as well? As he will know, we tried to get this issue resolved in the Neighbourhood Planning Bill in respect of London, but for all sorts of reasons, which I am not yet quite clear on, it never happened, despite it being suggested and everyone being in support of it.

Can the Minister also say something about powers? I am conscious that this combined authority has more powers than some authorities but fewer than others, such as Greater Manchester, which has powers over the police and the health service. How would this authority go about getting further powers? Were there powers that were asked for but were refused? I do not know, and it would be interesting to find out.

The noble Lord, Lord Shipley, made a very important point about the remuneration panel. The idea of an England-wide panel is sensible, rather than having lots of different remuneration panels. That seems a good idea.

Having said that, I am content with the order. I shall finish my remarks by saying that I wish the authority well and, whoever is elected as mayor, I wish them well in this important role.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate. I shall try to pick up the points made. I thank noble Lords for the generally positive way in which they want to take things forward, although there are some understandable concerns. I shall try to address the points in the order in which they were made.

Turning first to the noble Lord, Lord Shipley, I thank him very much for his comments on progress, on checks and balances and on the consultation response. As the noble Lord, Lord Kennedy, has just said, the response was much more positive than has been the generality and was perhaps the most positive of all such consultations. Positive responses outweighed negative ones on every single question asked in the consultation, in most cases by a significant margin.

In that regard, I happily concur with the noble Lord, Lord Grocott, about the intelligence of people in the West Midlands. In relation to the wider and very fair point that he made about an intelligible guide on how this will operate, in the department we are going to publish a plain English guide. I welcome that, because sometimes the language about how mayors and combined authorities will work is obscure and Byzantine. I hope that that guide will be helpful.

The noble Lord, Lord Shipley, rightly said that compulsory purchase powers are exercisable by the mayor. I can confirm, as he has raised the issue, that planning permission stays, as before, with the constituent councils. There is no change on that point.

I take the noble Lord’s point about the independent remuneration panels existing in isolation. Clearly, each authority is bespoke and they are different one from another, so one would expect the remuneration packages to be somewhat different. I shall take away the idea of having some way of cross-referencing the independent remuneration panels, so that we can both share experience and perhaps seek to keep costs down. That seems a sensible approach.

On the point that the noble Lord raised about the political adviser, within the mayoral office there is the capacity for a political adviser. That is paid for out of the mayoral budget, and we anticipate that the cost will be proportionate to that budget.

On my noble friend Lord Hodgson’s point about the scrutiny committee — it may have been the noble Lord, Lord Shipley, who made this point — there must be political balance on the scrutiny committee. With regard to the combined authority, there is no statutory requirement, just as in any local authority election. The balance is the balance as represented in the elections and the process that follows from that. However, there is a legal requirement that carries across to scrutiny committees of combined authorities in the same way as for other authorities.

On my noble friend Lord Hodgson’s point about the extent of the authority, I think that it is important to distinguish the combined authority, with its seven constituent members, from the larger area that he cited as stretching from Nuneaton to just outside Montgomery and from north to south. That larger area includes non-constituent authorities, which do not have rights to vote and do not participate in the mayoral election. They are part of the broader engagement
because of the strategic interest that often arises in relation to transport, housing and so on. They are not tacked on in any casual sense; they are important for strategic concerns.

The noble Lord, Lord Snape, echoed the point about remuneration, which I have already addressed. He talked about how the Government would work with mayors. I share his view that it is important that we work well with mayors. The experience of the Government working with the Mayor of London has been positive—we have engaged with Sadiq Khan on a regular basis on issues such as housing and last week’s atrocity—and it has been a positive exercise.

I pay tribute to the work that my noble friend Lord Heseltine has done in my department. It was considerable. Of course, he was not elected in the same way as a mayor, as the noble Lord knew when he was making the point. However, I place on record the debt that we all owe to the work of my noble friend Lord Heseltine.

3.15 pm

The noble Lord, Lord Grocott, talked about the fact that not that many people responded to the consultation. That is true. As we know, that has been the experience across the piece with consultations. One always wishes that more people did respond. However, 1,328 is at the better end in this area and, as I think that we have all agreed, 777 in favour—about 60%—was considerable. There were quite a lot of “Don’t knows” so those in favour considerably outweighed those that were against.

On the costs of elections—the costs, as it were, of democracy—I shall, as I often do, write to all who have participated in the debate. Of course these things come with a cost, and I shall try to answer. I do not have all the figures to hand. There are costs, but, as I have indicated in my response on the independent remuneration panel, we are trying to keep those costs sensibly down without prejudicing the importance of the process.

The noble Lord, Lord Rooker, also made some valuable points about the differences in the area that includes the non-constituent councils, such as Shropshire. Shropshire is very different from the densely urban parts of the area, such as Birmingham, Coventry and so on. I observe that the seven councils forming the constituent members are pretty heavily urban.

I share with the noble Lord the hope that a national figure of substance will arise from the elections, and I hope that Andy Street will be that person. We may not agree on that particular issue, but I look forward to the forthcoming elections.

How constituent councils decide who serves is a matter for constituent councils. It is usually the leader of the council, but there is no requirement that it should be. I have covered the point about the political balance on scrutiny committees. That balance is still there.

The noble Lord, Lord Snape, asked whether the Government have a view on mayoral remuneration. It would be inappropriate for us to have a view when we are setting up an independent panel on remuneration, but I share his view that this is a substantial role and I am sure that panel members will bear that in mind.

Finally, I thank the noble Lord, Lord Kennedy, for his general welcome—he always provides a general welcome—of what we are seeking to do in this area. I thank him for that and for acknowledging that the consultation was more positive than in some other cases. He asked whether other powers had been discussed with Birmingham, as had been done for Manchester. He is right that Manchester has had a bespoke deal that gives more powers; the powers are not uniform. As he knows, every combined authority is slightly different. I am unaware of any discussion on any other issues, but I shall cover that in a letter because I am not absolutely certain.

The noble Lord also asked about the power of the mayor to dispose of land. I think that that is in conjunction with the combined authority and subject to the normal rules of obtaining best value and acting intra vires. I shall also cover that in a letter to ensure that I am right on that point. I commend the order to the House.

Motion agreed.

Brexit: Legislating for the United Kingdom’s Withdrawal from the European Union

Statement

3.18 pm

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Secretary of State for Exiting the European Union. The Statement is as follows:

“With permission, Mr Speaker, I would like to make a Statement about today’s publication of a White Paper on the great repeal Bill. Yesterday we took the historic step of notifying the European Council of the Government’s decision to invoke Article 50. The United Kingdom is leaving the EU. That notification marks the beginning of our two-year negotiation period with the EU and it reflects the result of last year’s instruction from the people of the United Kingdom. As the Prime Minister said yesterday, it is our fierce determination to get the right deal for every single person. Now is the time to come together to ensure that the UK as a whole is prepared for the challenges and opportunities presented by our exit from the EU.

We have been clear that we want a smooth and orderly exit, and the great repeal Bill is integral to that approach. It will provide clarity and certainty for businesses, workers and consumers across the UK on the day we leave the EU. It will mean that as we exit the EU and seek a new, deep and special partnership with the EU, we will be doing so from a position where we have the same standards and rules. But it will also ensure we deliver on our promise to end the supremacy of EU law in the UK as we exit. Our laws will be made in London, Edinburgh, Cardiff and Belfast, and interpreted not by judges in Luxembourg but by judges across the United Kingdom.

Some have been concerned that Parliament will not play enough of a role in shaping the future of the country once we have left the EU. Today’s White Paper
There is a balance to be struck between the importance of scrutiny and correcting the statute book in time. As the Constitution Committee in the other place recently put it: “The challenge that Parliament will face is in balancing the need for speed, and thus for Governmental discretion, with the need for proper parliamentary control of the content of the UK’s statute book.”

Parliament, of course, can, and does, regularly debate and vote on secondary legislation: we are not considering some form of government “executive orders”, but using a legislative process of long standing. I hope that today’s White Paper and this Statement can be the start of a discussion between Parliament and government about how best to achieve this balance. Similar corrections will be needed to the statute books of the three devolved Administrations, and so we propose that the Bill will also give Ministers in the devolved Administrations a power to amend devolved legislation to correct their law in line with the way that UK Ministers will be able to correct UK law.

Let me turn to the CJEU and its case law. I can confirm that the great repeal Bill will provide no future role for the CJEU in the interpretation of our laws, and the Bill will not oblige our courts to consider cases decided by the CJEU after we have left. However, for as long as EU-derived law remains on the UK statute book, it is essential that there is a common understanding of what that law means. The Government believe that this is best achieved by providing for continuity in how that law is interpreted before and after exit day. To maximise certainty, therefore, the Bill will provide that any question as to the meaning of EU law that has been converted into UK law will be determined in the UK courts by reference to the CJEU’s case law as it exists on the day we leave the EU. Any other starting point would be to change the law and create unnecessary uncertainty.

This approach maximises legal certainty at the point of departure. But our intention is not to fossilise the past decisions of the CJEU for ever. As such, we propose that the Bill will provide that historic CJEU case law be given the same status in our courts as decisions of our own Supreme Court. The Supreme Court does not frequently depart from its own decisions, but it does so from time to time, and we would expect the Supreme Court to take a similar, sparing approach to departing from CJEU case law. But we believe it is right that it should have the power to do so. Of course, Parliament will be free to change the law, and therefore overturn case law, where it decides it is right to do so.

Today’s White Paper also sets out the great repeal Bill’s approach to the Charter of Fundamental Rights. Let me explain our approach here. The Charter of Fundamental Rights applies to member states only when they act within the scope of EU law. This means that its relevance is removed by our withdrawal from the EU. The Government have been clear that in leaving the EU, the UK’s leading role in protecting and advancing human rights will not change. And the fact that the charter will fall away will not mean the protection of rights in the UK will suffer as a result. The Charter of Fundamental Rights was not designed to create new rights, but rather to catalogue rights already recognised as general principles in EU law.

Let me turn to the content of today’s White Paper. The paper we have published today sets out the three principal elements of this great repeal Bill. First, it will repeal the European Communities Act and return power to the United Kingdom. Secondly, the Bill will convert EU law into UK law wherever practical and appropriate, allowing businesses to continue operating knowing that the rules have not changed overnight, and providing fairness to individuals, whose rights and obligations will not be subject to sudden change. Thirdly, the Bill will create the necessary powers to correct the laws that do not operate appropriately once we have left the EU, so that our legal system continues to function correctly outside the EU.

I will address each of these elements in turn before coming to the important issue of the interaction of the Bill with the devolution settlements. Let me begin with the European Communities Act. Repealing the ECA on the day we leave the EU enables the return to this Parliament of the sovereignty we to some degree ceded in 1972, and ends the supremacy of EU law in this country. It is entirely necessary to deliver on the result of the referendum. But repealing the ECA alone is not enough. A simple repeal of the ECA would leave holes in our statute book. The EU regulations that apply directly in the UK would no longer have any effect and many of the domestic regulations we have made to implement our EU obligations would fall away. Therefore, to provide maximum possible legal certainty, the great repeal Bill will convert EU law into domestic law on the day we leave the EU. This means, for example, that the workers’ rights, environmental protection and consumer rights that are enjoyed under EU law in the UK will continue to be available in UK law after we have left the EU. Once EU law has been converted into domestic law, Parliament will be able to pass legislation to amend, repeal or improve any piece of EU law it chooses, as will the devolved legislatures, where they have the power to do so.

However, further steps will be needed to provide a smooth and orderly exit. This is because a large number of laws, both existing domestic laws and those we convert into UK law, will not work properly if we leave the EU without taking further action. Some laws, for example, grant functions to an EU institution with which the UK might no longer have a relationship. To overcome this, the great repeal Bill will provide a power to correct the statute book where necessary to resolve the problems which will occur as a consequence of leaving the EU. This will be done using secondary legislation, the flexibility of which will help make sure we have put in place the necessary corrections before the day we leave the EU. I can confirm that this power will be time-limited, and Parliament will need to be satisfied that the procedures in the Bill for making and approving the secondary legislation are appropriate. Given the scale of the changes that will be necessary and the finite amount of time available to make them, there is a balance to be struck between the importance
Where cases have been decided by reference to those rights, that case law will continue to be used to interpret the underlying rights which will be preserved.

I would now like to turn to devolution. The United Kingdom’s domestic constitutional arrangements have evolved since the UK joined the European Economic Community in 1973. The current devolution settlements were agreed after the UK joined, and reflect that context. In areas where the devolved Administrations and legislatures have competence, such as agriculture, the environment and some areas of transport, this competence is exercised within the constraints set by EU law. The existence of common EU frameworks has also provided a common UK framework in many areas, safeguarding the functioning of the UK internal market.

As powers return from the EU, we have an opportunity to determine the level best placed to take decisions on these issues, ensuring that power sits closer to the people of the United Kingdom than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision-making power of each devolved Administration, but we must also ensure that as we leave the EU no new barriers to living and doing business within our own union are created. In some areas, this will require common UK frameworks. Decisions will be required about where a common framework is needed and, if it is, how it might be established. The devolved Administrations also acknowledge the importance of common UK frameworks. We will work closely with the devolved Administrations to deliver an approach that works for the whole of the United Kingdom and reflects the needs and individual circumstances of Scotland, Wales and Northern Ireland.

Let me conclude by stressing the importance of the great repeal Bill. It will help to ensure certainty and stability across the board. It is vital to ensuring a smooth and orderly exit. It will stand us in good stead for negotiations over our future relationship with the EU. And it will deliver greater control over our laws to this Parliament and, wherever appropriate, the devolved Administrations. These steps are crucial to implementing the result of the referendum in the national interest. I hope all sides will recognise that, and work with us to achieve these aims. I commend the Statement to the House”.

3.31 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for repeating the Statement, which introduces one of three broad areas of scrutiny facing this House over the coming 18 months. The other elements are the array of primary legislation—anywhere between seven and 15 Bills covering agriculture, customs, immigration and all their associated SIs. Alongside this will be our scrutiny of the Government’s negotiation with the EU 27, culminating in a vote in this House on the final deal.

Today’s foreshadowed Bill is, in one way, the easiest of those three tasks, as it takes existing EU law and incorporates it into domestic law. However, we have heard the Secretary of State for International Trade arguing: “To restore Britain’s competitiveness we must begin by deregulating the labour market”.

Meanwhile, the Foreign Secretary wants to use the “opportunity” to axe needless regulations that have “accreted” since Britain joined the EU. How do those comments chime with the Prime Minister’s introduction to the White Paper—and, indeed, the Government’s long-standing promise—which states:

“The same rules and laws will apply on the day after exit as on the day before?”

Will the Minister confirm that it is the Prime Minister who is the boss and that, despite the words of others, there is no intention to follow their madcap ideas within the repeal Bill?

Despite its aim of simply converting existing rules into UK law, the Bill will be, in the words of our Delegated Powers and Regulatory Reform Committee, “a wholly exceptional piece of primary legislation”, with implications for, “the fundamental issue of the balance between the Executive and Parliament”.

We are pleased that the Secretary of State confirmed that delegated powers introduced by the Bill will be subject to time limits, but a number of concerns remain. At paragraph 3.21, the Government believe that current statutory instrument procedures in this House are sufficient for the task. We have our doubts—so will the Minister give serious consideration to our recommendations? They are: that an explanatory memo be published alongside each statutory instrument; that there will be early consultation with outside stakeholders; that there will be provision of a comprehensive delegated powers memorandum for Parliament when the Bill appears; that there will be provision of draft regulations, so that scrutiny can commence before the Bill is enacted, in view of the sheer scale and complexity of the secondary legislation; and, given that delegated legislation is unamendable, that there will be consideration of a strengthened scrutiny procedure to help ensure that Parliament retains some control over significant statutory instruments, including some “triage” of the various proposals. Everyone in this Chamber knows that our committees do excellent work on this, but it is clear that some form of extra capacity will be needed if we are to scrutinise the vast array of statutory instruments that are to come.

Many EU regulations are monitored or enforced by the Commission, the Court of Justice or another EU body. The question, therefore, is how the Government will ensure that the new regulations, once domesticated into UK law, will still be monitored and enforced. There is little point in entrenching EU rights and protections if the Government do not also make sure that they are enforceable. As converting EU acquis into domestic law will have significant implications for the devolution settlements, which were all premised on our continued membership of the EU, can the Minister tell the House about their plans for dealing with repatriation in areas of devolved competence, including London? In particular, can he provide assurance that consultation will improve?

Just yesterday, the First Minister in Wales confirmed that he had not seen the Article 50 letter in advance and had not been invited to contribute to its drafting. He described that as,
Baroness Hayter of Kentish Town: “unacceptable ... the culmination of a deeply frustrating process in which the devolved Administrations have been persistently treated with a lack of respect”.

Today, again, he said on the White Paper:

“We are disappointed we were not given opportunity to contribute to its production, despite assurances that we would be”.

Is this the level of co-operation that the Government think is satisfactory?

Although lacking in certain respects, today’s White Paper provides some clarity. Labour has insisted that our withdrawal from the EU must not lead to a reduction in workplace rights or environmental and consumer protections. These must be retained with no qualifications, limitations or sunset clauses. The White Paper, although I have not had time to read every detail, seems to accept this entirely, and even sets out some welcome examples. However, given the comments by the Foreign and International Trade Secretaries, and the former chairman of the Conservative Party, there are dangers ahead.

If we are to do our job properly, we will need the resources and structures to deal with the avalanche of secondary legislation and a way of ensuring that delegated powers are limited, used only when it is vital and not misused. The Minister knows that the House stands ready to do what is needed, but we will need rather more detail and assurance before we can be sure that the Bill is fit for purpose. The Government stress the importance of sovereignty. For us, this means parliamentary sovereignty, not an unacceptable power grab by the Government. We will be watching you.

3.38 pm

Baroness Ludford (LD): I, too, thank the Minister for repeating the Statement. If the price of pointing out when the Government’s Brexit emperor lacks clothes is to be labelled “a well-known pessimist”, it is a price I willingly pay. The first and most obvious flash of nakedness is in the title of the Bill. It is not great and it repeals nothing. It is, in fact, the “Sneaky Copy/Paste Bill”. After all, we learned yesterday that Brexit does not in fact mean Brexit; it means a deep and special relationship—so of course we will still be complying with lots of EU law. This is, of course, welcome in avoiding the destructive, off-the-cliff, no-deal Brexit that the Prime Minister threatened just weeks ago—and, I noted, repeated in the White Paper, although I thought it had been abandoned.

The deeper our relationship with the EU, the more the flimsiness of the emperor’s red-lined garments becomes apparent. It seems that the Government cynically hope that, as long as they pull out of EU institutions, the fact that the UK will continue to comply with most EU law can be sold as “freedom” and “regained control”. But, instead of taking back control meaning an increase in parliamentary sovereignty, as leave voters were deceived into thinking, Brexit in fact represents a shameless power grab by the Executive on a scale to which the House of Lords will have to be watchful, given the wiggle room that that appears to allow. This power to correct will be exercised by secondary legislation allegedly to provide flexibility and speed. So, although government Executive orders are apparently ruled out, true reassurance is in short supply.

I want to associate myself with the remarks of the noble Baroness, Lady Hayter, about the resources in this House. The Liberal Democrats will be insisting on full parliamentary scrutiny, transparency and due process, including the involvement of the devolved Administrations.

The Statement and the White Paper pledge to end the supremacy of EU law in the United Kingdom, such that the laws we obey will not be interpreted by judges in Luxembourg. However, as I have already had occasion to remind the House today—it bears repetition—the Article 50 letter admits that UK companies trading in the EU will have to abide by EU rules while the UK takes no part in the institutions that shape those laws. In other words, we will become a rule taker and not a rule maker.

Therefore, the claim of no future role for the CJEU in the interpretation of our laws is simply untrue. Unless we want to forfeit whatever single market access is achieved, the CJEU will continue to play a large part in our lives. That is true also of treaty rights. Indeed, a few lines down from the ringing assertion that we will be ending the role of EU law, we learn that UK courts will determine the converted law by reference to the CJEU’s case law.

The abolition of the application of the Charter of Fundamental Rights is shown also to be more apparent than real, because the Luxembourg court has taken account of it in many of its judgments. Again, this is admitted a few paragraphs later. Therefore, the assertion in paragraph 2.23 of the White Paper that the charter’s relevance is, “removed by our withdrawal from the EU”, is also simply incorrect. Can the Minister explain how our courts will keep up not just with historic but with new EU law and CJEU case law? There are obscure references to common frameworks, but this must surely mean EU-compliant ones.

Lastly, how will the Government reconcile their pledge not to repeal protective legislation with the pressure from right-wing Conservatives, backed recently by the Daily Telegraph, to promise a bonfire of EU red tape in their 2020 manifesto to put Britain on a radically different course? Is that what “correction” actually means? If so, when will the Government go back and tell the British people that they voted to diminish their rights, including rights over flight compensation, food labelling or roaming charges?

The Liberal Democrats will not support anything that weakens human rights or environmental, workplace and consumer protection, or which threatens freedoms to study and work in the EU, research funding or security co-operation. This reinforces the need, which

Paragraph 1.21 of the White Paper promises that there will be no “major changes to policy”, just enough to ensure that, “the law continues to function properly”.

We will have to be watchful, given the wiggle room that that appears to allow. This power to correct will be exercised by secondary legislation allegedly to provide flexibility and speed. So, although government Executive orders are apparently ruled out, true reassurance is in short supply.

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The Liberal Democrats will not support anything that weakens human rights or environmental, workplace and consumer protection, or which threatens freedoms to study and work in the EU, research funding or security co-operation. This reinforces the need, which
my party demands, for the British people to have the final say on the Brexit deal and for that say to be before the repeal Bill is enacted.

Lord Bridges of Headley: I thank the noble Baronesses, Lady Hayter and Lady Ludford, for their contributions. I particularly thank the noble Baroness, Lady Hayter, for her overarching view that we have provided at least some clarity on the approach we are taking. I think we are providing a considerable amount of clarity.

In her first point, the noble Baroness, Lady Hayter, asked: is the Prime Minister the boss? To clarify, yes, the Prime Minister is the boss—I had better make that very clear.

Noble Lords: Oh!

Lord Bridges of Headley: On a more serious note, as for the points made by the noble Baronesses about changes that might be made in years hence to EU-derived law once it is in UK law, that is some time off for the very simple reason that we have to get this process through and done in the time that we have. Any changes to EU-derived law, if they were to be made—I should say more correctly “proposed”—would obviously need to be passed by this Parliament, but that is not for now. As this paper makes very clear, the task before us is to provide for a smooth and orderly exit on day one.

I want to pick up on a point made by the noble Baroness, Lady Ludford. I totally understand the concerns about people’s rights, but we are making it absolutely clear that we do not intend to undermine or erode people’s rights as they are derived from the EU. Furthermore, the noble Baroness suggested that this is a power grab. This is not a power grab. We make very clear in the paper the balance that we are striving to achieve between the need to get appropriate scrutiny once we have left the EU and the need to bring those changes through and done in the time that we have. Any changes that might be made in years hence to EU-derived law, if they were to be made—I should say more correctly “proposed”—would obviously need to be passed by this Parliament, but that is not for now. As this paper makes very clear, the task before us is to provide for a smooth and orderly exit on day one.

From paragraph 3.16 onwards, we set out a number of constraints that might be taken. As I said in the Statement, we are committed to a time limit. The noble Baroness, Lady Hayter, made some very interesting suggestions about other constraints that are not in the White Paper as such. I draw the House’s attention to paragraph 3.17 on the scope of the power as it is currently considered and the potential that “we will consider the constraints placed on the delegated power in section 2 of the ECA to assess whether similar constraints may be suitable for the new power, for example preventing the power from being used to make retrospective provision or impose taxation”.

The noble Baroness made a number of other suggestions. She echoed the points made in the excellent report by this House’s Constitution Committee—and many thanks to those Members who contributed to it—on Explanatory Memorandums, which is a very interesting idea. She referred to consultation on drafts, which again is going to be very important as we move to implementing SIs that touch on sectors of the economy, a comprehensive delegated powers memorandum, which is worth mulling over, draft regulations, strengthened scrutiny procedure and finally triage. These are all thoughts that my door is open to have discussions on with any noble Lord who wishes to do so. I stress the point that is made in paragraph 3.23 of the White Paper: “This White Paper is the beginning of a discussion between Government and Parliament as to the most pragmatic and effective approach to take in this area”.

The noble Baroness makes a very good point about the monitoring of EU regulations once they are converted into EU law and why those EU regulations are today enforced by EU regulators. I am glad she has raised this point. We are having extensive discussions with UK regulators on how this will work and furthermore, as she alluded to in her opening remarks, the need for consultation and discussion about that process and how we bring them over.

The noble Baroness, Lady Ludford, moved on to the interpretation of case law. I simply say gently to the noble Baroness that we need to have the certainty of the interpretation of case law which underpins a number of significant legal and policy cases—I am thinking in particular of our VAT policy. A large number of CJEU case law precedents shape that policy. We need to have that certainty on day one, hence the approach that we are taking.

As regards the noble Baroness’s point on consultation with the devolved Assemblies, yes, we will need to consult. We are giving Ministers there a power to amend their legislation to ensure that it, too, is going to be fit for purpose on day one. We are having regular meetings and we will continue to do so.

I am very keen to continue to consult with all Members of this House about the measures contained in the White Paper as it is absolutely critical we get this right.

Lord Howell of Guildford (Con): My Lords, I realise that the bulk of this is mainly a conversion exercise, which is very sensible and I greatly welcome that, but when it comes to the powers to correct statutes and make and approve secondary legislation, as the Minister has described, can we assume that there will be some degree of filtration and even removal? Many of these vast numbers of regulations are not only unwanted—that may be a matter for opinion and debate in Parliament—but obsolete and come down to us from a pre-digital age and an era of centralisation which is long past. It would be a real waste of time, effort and space on the statute book merely to place them there when they are redundant.

Lord Bridges of Headley: My noble friend is making a good point that the noble Baroness, Lady Hayter, made about the potential for triage and flagging up to Parliament whether an SI is of a very technical nature or of a more substantial policy nature and therefore the level of scrutiny that is required. All I will say at this stage is that I am very keen that we get the balance right between bringing noble Lords and the other place with us as we make these changes, making sure that we get the scrutiny right with the level of speed that we need to proceed with. I am very interested in the point that my noble friend makes and we will certainly look at that.

Lord Hain (Lab): Will the Minister clarify the welcome reference in the Statement to a significant increase in the decision-making power of each devolved
Administration? In respect of the Social Chapter, for example, will Wales be able to have that fully enforceable, even if it were to be amended at a UK level? Will he also confirm that any powers coming from Brussels to the UK applying in devolved areas will be able to be retained, for example, a Wales level and will not need to be grabbed back by London? And will the European Convention of Human Rights still apply in the devolved areas?

Lord Bridges of Headley: On the second point, there is absolutely no plan for the Government to withdraw from the ECHR—I can assure the noble Lord of that. On the first point, there is again absolutely no intention to use this process in any shape or form to erode the decision-making powers that currently exist for any of the devolved Administrations. As regards how powers come back, that is clearly a matter, as the Statement makes clear, that we need to consult on very carefully to make sure that it works in all our interests.

Lord Hannay of Chiswick (CB): My Lords, I welcome the fact that the Government have got rid of the Orwellian title the “Great Repeal” Bill on the title page, although they seemed to revert like a ponticum rhododendron when they got inside. Would it not have been better to adopt the by-line of the Prince of Lampedusa’s famous remark in The Leopard when he gave the definition of revolution as:

“Everything was changed so that everything may stay the same”?

I think that is probably rather more the title, and the Daily Telegraph’s regulatory bonfire may be a bit short of dry kindling.

I have two questions. First, paragraphs 1.16 and 1.19 recognise that the provisions of this Bill will be operated in parallel with the Article 50 negotiations but there is no parliamentary process for approving the changes that may have been agreed in a deal with the European Union other than the binary choice when that deal is brought to Parliament. Are the Government really asking us to give them a blank cheque for all those changes they negotiate and to deny Parliament scrutiny of the details?

Secondly, paragraph 1.20 of the White Paper makes it even clearer than it was before that the Government are anticipating no process of parliamentary approval in the context of the UK exiting without a deal. Surely this lacuna has shown even more clearly than it was shown before that we have to have a provision for approving or disapproving a decision to exit without a deal?

Lord Bridges of Headley: My Lords, for fear of frustrating noble Lords, I will not repeat all the arguments regarding the noble Lord’s second point. I will simply say with regard to all these points that there will be ample opportunity, as I have said many times at this Dispatch Box, for your Lordships and the other place to scrutinise how the negotiations are proceeding. In addition, as we make it clear here and as we said before, there will be a vote in both Houses on the agreement at the end of the process, and were measures to come out of the withdrawal treaty that needed to be implemented, again, there would be a chance for Parliament to scrutinise those.

Lord Beith (LD): My Lords, the White Paper referred extensively to the report of the Constitution Committee but not to its recommendation that both Houses need a mechanism for deciding whether enhanced scrutiny is required for some of these instruments. Given that statutory instruments cannot be amended and may be wrong in part but not as a whole, and that this House is reluctant to vote them down if they have been passed in the other House, surely we need that kind of mechanism.

Lord Bridges of Headley: My Lords, the noble Lord makes a valid point. I have read that excellent report, which makes a very useful contribution to the debate. I will not start committing one way now; indeed, it is not my role to start committing on the precise point the noble Lord made. However, I have had private conversations with some of your Lordships about this, whom I thank, and I am happy to meet the noble Lord to discuss this. However, I will not make a commitment on his point right here and now.

Baroness Couttie (Con): My Lords—

Lord Higgins (Con): My Lords, the Prime Minister’s foreword to the White Paper stresses the importance of trying to minimise uncertainty during the negotiations. Does my noble friend agree that among those suffering most from uncertainty are UK citizens living elsewhere in the European Union and those from elsewhere in the European Union living in the United Kingdom? When the Prime Minister approached this in Brussels she was told that she must wait until negotiations had begun and Article 50 had been implemented. Can my noble friend assure us that we will now press ahead with resolving the matter at the earliest possible moment? Should we not be absolutely clear that we must avoid a situation where nothing is agreed until everything is agreed? That would perpetuate the uncertainty for this group of people and many other groups of people for two years or perhaps many more.

Lord Bridges of Headley: My Lords, my noble friend makes a very good point. As regards the substance of it, I draw attention to the second point in the “principles for our discussions”, set out in the letter that my right honourable friend the Prime Minister sent yesterday, which repeated our absolute aim to strike an early agreement about the rights of both EU citizens in this country and UK citizens right across Europe. It is absolutely our intention to do so, and it is obviously good news that we can now start that process. We have been heartened by the fact that in conversations with our European partners, they too largely share that overriding intent.

Lord Grocott (Lab): My Lords, the Minister should gain strength and succour—I am sure he will—from the fact that although he will be on his feet for hours on end in the complexities of this and other Bills, this Bill has the advantage that although the detail may be difficult, the objective could not possibly be simpler. It is to ensure that this Parliament—and we are all
parliamentarians—makes, changes and amends the laws, which the people of this country expect this Parliament to perform. I know from all my experience as an MP that they expect Parliament to carry out that duty by being able to make the decisions on their behalf. Therefore, all of us who are keen parliamentarians and who value the priceless authority we have in either House, but principally in the Commons, should bear in mind, surely, that this is a wholly desirable piece of legislation.

Lord Bridges of Headley: I am delighted that the noble Lord sees it that way. I certainly agree that although the challenge ahead is extremely complex, we need to proceed with some simple principles and as simple an approach as possible, while being mindful of the complexity and of the view, which I know some of your Lordships hold, that in the process of restoring sovereignty to Parliament we should not give the Government excessive powers. We need to get the balance absolutely right and that is what I am determined to do.

Lord Woolf (CB): My Lords, I am sure the Minister has well in mind the problems with amending legislation of a subordinate nature in this House. I have experience of dealing with a much more modest situation, which arose when I was Lord Chief Justice and the Lord Chancellor’s status was transformed, and we realised that over 300 pieces of legislation had not been taken into account. I suggest that it is possible to include in whatever the Bill will be called—great or otherwise—a provision which enables a statutory instrument to be amended without affecting its validity. That will give much greater comfort to those in this House with regard to what is proposed.

Lord Bridges of Headley: The noble and learned Lord makes an extremely interesting point. I am sure he will make other points and I very much look forward to having discussions with him about this and other issues in the months ahead.

Lord Campbell of Pittenweem (LD): My Lords, I confess to an almost irresistible urge to return to full-time practice at the Bar because this is a legal minefield. When a relevant right of action arises between the United Kingdom and the European Union obviously we continue to be bound by the ECJ. However, the position on case law is the turn of the noble Baroness opposite.

Baroness Royall of Blaisdow (Lab): It is the turn of the noble Baroness opposite.

Baroness Fookes (Con): My Lords, as chairman of the Delegated Powers Committee, I am pleased that the Government seem to be taking on board many of the recommendations we have made in tandem with the Constitution Committee, with which we are working closely. The most important from our point of view is the sunset clause—the time-limiting one—which deals, I think, with many of the worries people have about giving the Government extensive powers. May I take it a little further? There will be primary legislation dealing with other matters where we will wish to take a different approach and have a different policy. My guess is that there will be considerable delegated powers. I ask the Government not to take too much for granted. Our committee will have beady eyes on it all.

Lord Bridges of Headley: I am delighted that the beady eye of my noble friend will continue to survey all that comes from government, and so it should. I thank very much my noble friend and the members of her committee for their work. As I said, we have confirmed that there will be a sunset clause in this piece of legislation. My noble friend is absolutely right about the other pieces of legislation that will follow. I will not say here and now the extent of any delegated powers they might have, but we are obviously very mindful of the need to ensure that those powers are proportionate.

Lord Davies of Stamford (Lab): My Lords, the Government’s policy is to leave the single market, with potentially devastating consequences for the British economy. It is already causing the deepest anxiety in the City and among manufacturing industry particularly. I hope the Minister has read the recent report of the engineering manufacturers’ federation on the subject. The Government defend their policy. Their stated reason, or excuse, for it is that any other policy would be incompatible with their desire to restrict EU immigration. Now that the Secretary of State for Brexit has publicly acknowledged that in practice there will not be any meaningful reduction in EU immigration for some time, would it not be elementary common sense to re-examine this whole policy? The cost of leaving the single market remains the same, but the potential gain or return for which the Government said they were hoping is obviously much less than anticipated and possibly non-existent. Is it not common sense in those circumstances to review their policy, quite apart from the other issues such as the difficulty it would create for Ireland to create a new frontier across the island of Ireland, which could be avoided if we remain in the single market?

Lord Bridges of Headley: I respect the passion with which the noble Lord speaks on this matter; he does so with great eloquence. I have very little more to say to expand on what I have said at the Dispatch Box on this issue many times before. We view the need to leave the single market as reflecting the view and the instruction that the people delivered on 23 June last year. We have always said that we believe we need to take control over our borders. We also see that as an instruction and part of the need to leave the EU. As regards how we do so, my right honourable friends the Secretary of State and the Prime Minister have both said on many occasions that we need to do so in a sensible way, mindful of and sensitive to the needs of the economy. I have little to add to that.
Lord Dykes (CB): My Lords, the Minister is well known for his engaging sense of perpetual optimism, so can he reassure the House that all the legislation in this vast Bill will be completed by the end of the next parliamentary Session, which presumably will start on 17 May or thereabouts? There will be more or less only a year to make sure that it all goes through. Will he also reassure us that, as the word “instruction” is rather an improper term to use in comparison with “indication”, “judgment” or other softer words, the final vote of the sovereign Parliament, particularly the House of Commons, will be the final decision on this matter?

Lord Bridges of Headley: My Lords, the people have said that they wish to leave the European Union and that is what we are doing. As regards the timetable for this Bill, the noble Lord makes a very good point. We obviously have a timetable that reflects the Article 50 process. We fully intend to see this Bill on the statute book as soon as possible so that we can start to use the powers and ensure that our statute book is fit for purpose on the day we leave the European Union.

Lord Blackwell (Con): My Lords, in connection with the challenge—

Baroness Royall of Blaisdon: We have to hear from the noble Baroness on the Conservative Benches.

Lord Taylor of Holbeach (Con): I understand that my noble friend does not wish to proceed.

Lord Blackwell: In connection with the challenge set out in the White Paper of ensuring appropriate parliamentary scrutiny of the EU legislation being translated into UK law, might my noble friend consider the precedent set some years ago by the tax law rewrite committee? As noble Lords may remember, this Joint Committee of both Houses was set up in similar circumstances with the simple purpose of replicating laws without changing them. It had the advantage that laws could be published in draft, others could look at them, and a Joint Committee of both Houses could scrutinise them and ensure, as the remit was set, that the laws were being translated without changing their meaning. That might be an effective way of dealing with the volume of legislation in this situation.

Lord Bridges of Headley: That is an extremely interesting point and I will look at that suggestion. Obviously we will look at what is practical and what will work best in consultation with appropriate committees of this House and the other place.

Baroness Andrews (Lab): My Lords, I have been encouraged by the Minister’s response to my noble friend on the Front Bench about his door always being open regarding the recommendations of the Constitution Committee, which have been marshalled around the House. He says—and the White Paper makes it clear—that the Government want to strike a balance between scrutiny and speed. I understand the constraints of speed but will he assure the House that, when it comes to finding that balance, they will have to lean towards scrutiny as far as this House and its role are concerned? In particular, will he look closely at the provision of draft regulations? One problem that has beset this House and its scrutiny processes in recent years has been our inability to comment on the impact of legislation because we have not had draft regulations for consideration. When so much of such a profound, not technical, nature will be dealt with through secondary legislation, we will need draft regulations to do that job properly.

Lord Bridges of Headley: I thank the noble Baroness for that contribution, and I totally take heed of what she says. I think this comes back to the points raised by the noble Baroness, Lady Hayter, and my noble friend Lord Howell about how to ensure, in some shape or form, that there is a reflection of the technical nature or otherwise of the SI s, making sure that the legislation is presented to Parliament in a timely manner. I hear what the noble Baroness says and I will certainly reflect on it.

Lord Thomas of Gresford (LD): My Lords, following the contribution of my noble friend Lord Campbell, can the Minister confirm my reading of the White Paper: any obligations incurred under pre-exit European law, including obligations on the Government of this country, will be justiciable in our domestic courts following exit?

Lord Bridges of Headley: I make it clear that EU case law will be preserved as it stands on the day of exit, and it will be that which the UK courts will need to observe from then on.

Combined Authorities (Finance) Order 2017

Motion to Approve

4.09 pm

Moved by Lord Bourne of Aberystwyth

That the draft Order laid before the House on 13 March be approved.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the order puts in place the process that elected mayors and their combined authorities will follow for setting the mayoral budget and issuing precepts. For the six mayoral combined authorities with elections this May, these processes will apply in relation to 2018-19 and each subsequent year. This is applicable to all mayoral combined authorities, except for the West of England. In this case, reflecting local choice, there will be no mayoral precept, an outcome secured by provisions in the order establishing that combined authority. In addition, the order makes certain transitional finance provisions for Greater Manchester, reflecting that, from 8 May 2017, its mayor will have police and crime commissioner responsibilities, and be responsible for the Greater Manchester Fire and Rescue Service.

This order establishes the final element in the funding framework for mayoral combined authorities. Under this framework, the activities of combined authorities and their mayors will be funded as follows. First, combined authorities and their mayors, as provided for in the devolution deals, will receive new, additional

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financial resources from government. In particular, noble Lords will recall that the Government are providing £30 million per year for 30 years of investment funding, known as “gain share”, to areas such as Greater Manchester, the West of England and the Liverpool City Region. In the case of the West Midlands, which we have considered in the previous debate ahead of the Statement, this investment funding is £36.5 million per year for 30 years. In the case of Cambridgeshire and Peterborough it is £20 million per year for 30 years and in the Tees Valley, reflecting the size of the area, it is £15 million per year for 30 years. Central government resources also include budgets for transport, and the mayors will have the powers to allocate this funding to the constituent councils, as we saw in the order that we previously considered today for the West Midlands.

Secondly, the primary legislation—the Local Democracy, Economic Development and Construction Act 2009—together with the orders we have made for individual combined authorities, provides that the constituent councils can make contributions to combined authorities and mayors. Importantly the orders also provide that, in the case of mayoral expenses, the mayor must agree contributions with the constituent councils in advance of incurring expenditure.

Thirdly, combined authorities can impose a levy on their constituent councils for transport costs. It is open to us also to make further secondary legislation to extend these levy powers for other functions of the combined authority. The constituent councils then build these levies into their own budgets.

Finally, mayoral functions—to the extent they are not met by other means—are to be met by a precept. This precept is determined each year through the mayoral budget process and is formally issued by the combined authority to the billing authorities in its area. The billing authorities then build this precept into their council taxes and the precept will be visible on council tax bills. As I said earlier, the mayor for the West of England does not set a precept. In this area, the costs of the mayor will be funded through contributions from the constituent councils.

If approved by Parliament, today’s order is to be made under the Local Democracy, Economic Development and Construction Act 2009—as amended by the Cities and Local Government Act 2016—and makes detailed provision about budgeting and precepting. If approved by Parliament, the order will come into effect the day after it is made. The specific provisions, which are designed to ensure an effective process including robust arrangements for scrutiny and challenge of the mayors’ proposals, are as follows. First, there is a requirement for combined authority mayors to submit by 1 February of a given year a draft budget to their combined authority for consideration. Secondly, the combined authority recommends any amendments to the draft budget before 8 February, and the mayor considers them and makes a further proposal if he should choose to do so. Thirdly, the constituent members of the combined authority may impose amendments to the mayor’s draft budget, if supported by a two-thirds majority—except in the case of the Tees Valley, where that majority is three-fifths. In the absence of this majority, the mayor’s proposals must be accepted by the combined authority.

Fourthly, the combined authority must set a mayoral budget if the mayor does not submit a draft for consideration by 1 February. Fifthly, the mayor is to fund mayoral functions through a precept, which will be subject to referendum principles that limit precept increases in the absence of a council tax referendum. Sixthly, the standard local government finance regime applies so that precepts must be issued by 1 March. Seventhly and lastly, to aid transparency the mayor is required to maintain a fund relating to the receipts and expenses of the mayor’s functions, excluding police and crime commissioner functions, for which Manchester city combined authority is responsible and for which there is a separate police fund.

The order also contains detailed provisions about transitional measures. The duty to issue a precept is disapplied in relation to the year in which the first mayor for the combined authority is elected. This is because for this year the mayor will not be in office in time for the precept to be set. Mayoral expenses in this first year will therefore be met by contributions from the constituent councils.

The final transitional provisions relate to Greater Manchester, where the mayor will be responsible for police and crime functions and the fire and rescue services. These provide that the precepts for 2017-18, which have been issued by the Greater Manchester police and crime commissioner and the fire and rescue service, will from 8 May this year fund the mayor’s activities in respect of policing and fire and rescue functions.

In conclusion, the order will support the new combined authority mayors to fund their functions through a precept and a budget-setting process that allows for effective challenge and robust and transparent scrutiny by the combined authority. The draft order will complement the orders already approved by this House to implement the devolution deals agreed between local areas and the Government, paving the way for a more balanced and successful economy and improving housing supply across the country. I therefore commend the order to the House.

Lord Shipley (LD): My Lords, I shall make two brief points. First, the powers and the checks and balances proposed in the order seem appropriate, but I note the final paragraph of the Explanatory Memorandum concerning monitoring and review, which says: “Mayoral combined authorities will be required ... to put in place an extensive programme of evaluation”. I suggest to the Minister, not least because there are two different methods for creating the mayoral budget now—for most the precept, and for the West of England by agreement of the constituent councils—that evaluating how that works could well be something for independent review as opposed to being done by the combined authorities. I hope the Minister will pay some regard to that.

The other issue is that I did not quite understand what the Minister said about audit and, in particular, scrutiny. There is a very tight timetable between the
Lord Shipley: beginning of February and the beginning of March. There is to be a budget proposed by the mayor, then to be agreed by the combined authority. The combined authority is of course scrutinising that mayoral budget, except that the combined authority itself is subject to scrutiny. My question is: at what point will the scrutiny arrangements that have already been approved by another order apply? Will there be a role for the scrutiny panel before 1 March, or will the scrutiny panel put forward its views at a date between 1 March and the date at which the constituent councils are setting their budgets, which need to come very early in March? There is a process issue about the role of scrutiny, because I think the Minister said that the combined authority has a scrutiny power over the mayoral budget, but the combined authority is actually itself subject to a formal statutory scrutiny arrangement.

Lord Kennedy of Southwark (Lab): My Lords, I refer the House to my declaration of interests and put on record that I am a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association. I have no objections to the order before us and I am very happy to agree it. There does, however, need to be a wider debate at another time about where we are going with local government in England outside London. I will leave that for another day.

The section of the order with respect to mayors’ budgets is particularly welcome. I was pleased that the Minister made reference to the fact that there is a veto provision. All mayors will be mindful of that but, equally, it is set at the high bar of a two-thirds majority, or, in the case of Tees Valley Combined Authority, of a three-fifths majority. That is an important provision that mayors should be aware of.

The noble Lord, Lord Shipley, made important points regarding auditing and scrutiny. I welcome the Minister’s response to that. I assume I am correct that if local electors have objections to the council they can make these as normal, but could the Minister confirm that as well as he can in writing?

For the record, in the previous debate when asking about mayors and their function the point I made was about selling land below market value, not at market value. Will the Minister also respond to that point in writing?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords, Lord Shipley and Lord Kennedy, for their contributions on the issue of local government finance. If I may first pick up the point from the noble Lord, Lord Kennedy, in relation to the previous debate, I will certainly take another look at that. As I indicated, I think the function will be balanced between the mayor and the combined authority. But there will of course be an overriding obligation to get best value and, if land is being sold below market value, I would anticipate that there was a danger of falling foul of that. I will cover that issue in a letter to the Minister—I mean the noble Lord; days of yore in the National Assembly for Wales are kicking in, so I apologise.

I thank the noble Lord, Lord Shipley, once again for the generous welcome he has given to this piece of secondary legislation as well as for his attention to the different interests of the mayor and the combined authority and to the important checks and balances. He asked specifically about the budget process and about scrutiny. As I think he will know, the overview and scrutiny committees can require the mayor to appear before them at any time, including in the first year of the mayor’s term, before this more detailed process kicks in. In the first year, of course, it is too late for the precepting procedure, which applies later on. The budget scrutiny requirement refers to the scrutiny of the mayor’s budget by the combined authorities, though there is a specific requirement under the order, as the noble Lord appreciates, for a mayoral fund to be set up. I will perhaps enlarge on that in a letter because it is a fairly technical area.

I thank the noble Lord, Lord Kennedy, again for his pragmatic approach and for welcoming this particular measure. He raised similar points about scrutiny in addition to the point he raised on the last order. I will of course pick those up in a detailed letter.

As I said, this issue is central to the system of mayors, which I think we all support in principle. I accept that we have different concerns but it is obviously essential that going forward we have a system for how money is to be organised. I also accept that we have bespoke deals. For example, the West of England Combined Authority did not want precepting, while Tees Valley Combined Authority wanted decisions to be made with a 60% rather than a 66% majority because it has five constituent councils—I think that is the reason for that; they would each have 20% of the vote. Accepting that there are going to be slight differences, the general approach to scrutiny and budgets is set out in this order, which I think is non-controversial. As I said, any points that have been raised and that have not been covered in my response will be picked up in a letter, in addition to the point made by the noble Lord, Lord Kennedy, in relation to the previous debate. I commend the order to the House.

Motion agreed.

Role of the Lord Speaker

Question for Short Debate

4.24 pm

Asked by Lord Grocott

To ask the Leader of the House what plans she has to initiate a review of the role of the Lord Speaker.

Lord Grocott (Lab): My Lords, almost 11 years ago, in June 2006, the House of Lords took what was considered at the time to be a quite dramatic, almost revolutionary step. Despite considerable opposition, the House decided to elect its own presiding officer: the Lord Speaker. Prior to that, the person sitting on the Woolsack had been a senior member of the Cabinet, appointed by the Prime Minister. When you think about it, it is astonishing that a legislative assembly, the House of Lords, should have had so many of its Members preferring to have a member of the Government as its figurehead rather than someone who the Members themselves could elect—almost as odd, you might think, as having by-elections to elect hereditary Peers.
I mention this bit of history for two reasons. First, I want to remind everyone that yesterday’s revolutionary suggestion soon becomes today’s accepted practice. I do not know of any Member of this House today who is suggesting that we should replace the Lord Speaker with a senior member of the Cabinet. Secondly, the strong opposition at the time explains why the newly elected Speaker was given the bare minimum of powers, reflecting the views of so many Members that we were embarking on such a risky new venture. In fact, I kid you not, when one of the candidates in the first Speaker’s election was asked what he planned to do with the role, he replied, “As little as possible”.

In keeping with the caution of this Chamber, I am suggesting two small changes to the role of the Speaker which I believe would improve both the efficiency of the House and the intelligibility to the public of the way in which we conduct our affairs. The first relates to Question Time. In 2011 the then Leader’s Group on the House and the intelligibility to the public of the result was an increasingly fragmented and at times aggressive atmosphere many Members, from whom the House might wish to hear, and whose knowledge and experience would be particularly valuable... are discouraged from participating”.

The House voted on the proposal of the Leader’s Group to transfer Question Time responsibilities to the Lord Speaker, but the Motion was defeated. But since that vote six years ago, there have been significant changes. The House has grown even larger, in both size and daily attendance. This has made it even more difficult for people without loud voices to make themselves heard at Question Time. What is more, there has been increasing scrutiny of this House and the way in which we manage our affairs by the media and the public. Something that should be of concern to us all is the impression given to the public when they view Question Time. At times it appears to be a complete shambles, with people shouting at each other and no one in control. Anyone who observed Question Time this morning would find at least one example of that.

I believe there is a simple and cost-free solution to this problem; we should give control of Question Time to the Lord Speaker. In recommending this, I want to make one thing very clear. I am not criticising in any way the current Leader of the House, the Chief Whip—I never criticise Chief Whips—or any other Minister who might intervene at Question Time. I am saying simply that where they sit in the Chamber, on the Front Bench, is an absurd position from which to see the House and exercise control.

The House of Lords is unique in many ways but none more so for being the only legislative Chamber anywhere on the planet where the person responsible for maintaining order has their back to half the audience. I know that I have done myself harm from time to time. You cannot see who is standing up behind you. You need wing mirrors. The people in the Gallery—the people we are here to serve—cannot see who is in control either. They look to the person in the chair, as they would at any other public event. But the Lord Speaker’s role in the chair is purely decorative—and he does that very well. The Companion to the Standing Orders insists on this. Paragraph 4.06 says:

“The role of assisting the House at question time rests with the Leader of the House, not the Lord Speaker”.

I hear the objectors say, “You are eroding the authority of the Leader”, to which the answer is that from the very start the establishment of our elected Lord Speaker has involved the transfer of responsibilities from members of the Cabinet to the Speaker. I will give a couple of examples. Until 2006 the power to determine whether or not a Private Notice Question should be allowed, believe it or not, was in the hands of the Leader of the House. Imagine that for a moment. The power to grant an Urgent Question, invariably requested by a Member of the Opposition and, to put it mildly, not often welcomed by the Government, until 2006 was determined by the Leader of the House as a senior member of the Government. That power was transferred to the Lord Speaker, and rightly so.

Another precedent involves the Lord Chancellor. Prior to 2006, the power to recall Parliament during a recess lay with the Lord Chancellor—like the Leader, a senior member of the Government. That power now rests with the Lord Speaker. Paragraph 1.55 of the Companion says:

“The Lord Speaker may, after consultation with the government, recall the House whenever it stands adjourned”.

So there are two examples—Private Notice Questions and the recall of the Lords—where power has been transferred from the Government to our elected Lord Speaker. In my book, that is entirely consistent with, and indeed an enhancement of, our valued tradition of being a self-regulating House.

I need to emphasise very strongly that I am in no way recommending a Speaker comparable to the Speaker in the House of Commons. I do not think anyone here, including former MPs like me, would want a Lord Speaker who, for example, had to rule every day on seemingly endless, usually bogus, points of order. There are a number of experts on that sitting around me this afternoon, and occasionally I would include myself. But paragraph 1.52 of the Companion states quite clearly:

“The House does not recognise points of order”.

That prohibition would remain. All I am suggesting is that the Lord Speaker should in future perform precisely the functions that the Leader does at present—no more and no less. I have no doubt whatever that this modest change would diminish the shouting match which often characterises Question Time. It would make proceedings more intelligible to the public and encourage and enable many more Members to participate who are reluctant to do so at present.

I suggest one other change to the Lord Speaker’s role, and today is a timely day to suggest it. I would like to see the Speaker take control of the House when Statements are made. At present, all that happens is that the Minister making the Statement simply stands up and reads it with no introduction. It is bizarre, but we are so used to it that we do not regard it as unusual. I think the Lord Speaker should announce the Statement and call the Minister. Otherwise, the matter is not that intelligible to the public. I have sat in this House many times when halfway through a debate or between two
orders a Minister stands up and reads a Statement. It would be helpful if that were done by the Lord Speaker. All we have at present is a message on the annunciator to say that a Statement is due. It would also fall to the Lord Speaker to manage Statements in order to prevent mini-speeches—we had the odd example of that today—and to ensure that as many Members as possible are able to contribute in the 20 minutes that are allowed.

I believe the role of the Lord Speaker has grown over the years entirely to the benefit of the House. I also believe that the profile and leadership shown by the current Lord Speaker in speaking for the House on matters of public interest which are relevant to the House as a whole—both to the press and to the public—have been very much to our advantage. Enhancing the profile and leadership shown by the current Lord Speaker in speaking for the House on matters of public interest which are relevant to the House as a whole—both to the press and to the public—have been very much to our advantage. Enhancing his role at Question Time, in particular, and for Ministerial Statements would establishing him more effectively in the eyes of the public and the media as the person who can speak for the House of Lords.

My proposals today represent a small but significant extension to the responsibilities which were given to our first Lord Speaker 11 years ago. Nearly half our Members today—362 out of 804—were not Members then. It is high time that we reflected on our experience of having an elected presiding officer and consider the changes that I have suggested. They would make our proceedings fairer to Members and more comprehensible to the public. They would cost nothing and disadvantage no one. I commend them to the Leader, who will be responding, and to the House.

4.35 pm

Earl Attlee (Con): My Lords, I am grateful to the extremely experienced and noble Lord, Lord Grocott, for tabling his QSD. I have agreed with much of his counsel in the past, and even today, but on this occasion, I think we should maintain the status quo and rely entirely on our excellent system of self-regulation.

I observed that when I was a junior Member of the Opposition Benches, I had no difficulty in getting my fair share of questions, even though I do not particularly have the gift of the gab. When I have guests attend Question Time, they often marvel to me how your Lordships know when to get up, as the Lord Speaker appears to have no role and very often my noble friend the Leader has no need to intervene. When she comes to respond, perhaps she can tell the House how often she has had to intervene. I also take this opportunity to say how well she performs her duties and to express our gratitude to her.

No doubt, many noble Lords will focus on Question Time, and I shall point out some of the advantages of the current arrangement that could be lost with any changes. I expect many noble Lords will make the point that the Leader has a better view of the House than the Lord Speaker. Although, unlike the Speaker in the Commons the Lord Speaker sits on his own, in the House of Lords, the Leader, the Government Chief Whip and the Clerk of the Parliaments work together as a team, especially at Question Time. Either the Chief Whip or the Leader will create a matrix to ensure that each Bench has its fair share of supplementaries. The Leader will need to be seen by the House as being scrupulously fair or she will risk losing the confidence of the House, and then be in danger of losing her job.

For ordinary legislative business, Statements and time-limited debates, the role of the Leader is usually delegated to a junior Government Whip, who seeks to express or suggest the sense of the House, in the same way as the Leader. Your Lordships will recall that I have performed this role, and I sought to do so as a servant of the House and not of the Government. I had no difficulty in helping the House manage Statements: it was quite easy. Once, when I got the sense of the House slightly wrong, I was able to say, “My Lords, this is a self-regulating House and a self-regulating Committee. If the Committee wants to hear more from the noble Lord, he should continue”. That is what self-regulation is about.

When noble Lords address the House, they generally do so looking very carefully at the Minister and the Government Front Bench in order to gauge their reaction. They do not look at the Lord Speaker. If a noble Lord is running out of his time, the Whip has a number of non-verbal techniques, which can be escalated, and these can easily be detected by the noble Lord speaking long before the Whip need rise to the Dispatch Box. In these circumstances, noble Lords know that they should drop their remaining points and conclude. Indeed, when I did have to go to the Dispatch Box to intervene on a noble Lord regarding time, I regarded it as a failure on my part. The beauty of this arrangement is that the Whip’s activity will not be seen on the video link, and no guests will be aware—they will not realise that the Government Whip is giving non-verbal directions to the speaker.

I have another reason for being very cautious about expanding the role of the Lord Speaker. The noble Lord, Lord Grocott, was very careful to say that this would be only a very small change, but I fear that we are talking about a slippery slope—the noble Lord correctly anticipated that. With the sensible exception of money Bills, nothing on God’s earth can prevent a Peer tabling an amendment and having it debated to the extent that he or she desires and then if, necessary, calling a Division. In the Commons, amendments are grouped and selected by the Speaker, obviously, “for the convenience of the House”.

We should be ever so careful about expanding the role of the Lord Speaker, lest we eventually find ourselves in the position of Back-Bench Members of the House of Commons, who are severely constrained.

My final point is this. I expect that the noble Lord, Lord Foulkes, believes that he has a unique parliamentary style which will in time make it necessary to give the Lord Speaker increased powers. The noble Lord looks shocked at that, and I can assure him that this is not the case. When my noble friend Lord Trefgarne was a Minister, he had to enjoy the antics of Lord Hatch of Lusby, who had a similar style—I am getting gestures from the Opposition Benches, but I am not yet getting anything non-verbal from the Government Whip. When I arrived it was Lord Molloy. Now it is the noble Lord, Lord Foulkes, and I can assure him that the House has no difficulty in accommodating him or his predecessors, or in enjoying his contributions.
4.39 pm

Lord Rooker (Lab): My Lords, I agree with one point made by the noble Earl: that the issue of creep would stop Back-Benchers. But that is not what my noble friend Lord Grocott was talking about. I want to support exactly what he said—no more, no less. I do not want this House to replicate the other place anyway. It is a very modest change. For two years, between July 2005 and July 2007, while the noble Baroness, Lady Amos, was the Leader of the House, I was delegated as Deputy Leader and, as such, on occasion I had to help the House out. Because I am a squirrel, I have here two years’ worth of Order Papers, where I meticulously kept a record of every Question. I was not waiting until trouble arose. I looked at every Question as it went through the House, so that I knew there was fairness in there. Because I am a squirrel, I put them all in a box and they are all there so that I have a record. We were meticulous in making sure that all sides got to know the debate. One has to consider that some of our Members are a bit slower in getting up than others. I will not mention any names because that is not fair, but occasionally I was tipped off in advance that such a Peer would like to speak and therefore I could commend the House to listen to the Peer.

It is not easy to perform the role. When I sat there, I had the Labour Peers behind me and, if I remember rightly, the Cross-Benchers were to the immediate right; the configuration has changed slightly. You need your head on a swivel wire because you cannot hear who is shouting, and that is part of the problem.

It is not right that a Minister should be the person to choose the Member to question a Minister. There is a point of principle there. In fact, in performing the role, I was a bit rigid in being scrupulously fair on occasion. I recall one day when I cut off the noble Baroness, Lady Trumpington, just about to go into full flight. I can tell noble Lords that later that day I was on my knees at the side of her desk, begging forgiveness. When the noble Baroness, Lady Ashton, became Leader, I was instructed to cease the role.

While I was in the role, I once checked on speakers at Question Time—I would like to think that the noble Baroness the Leader of the House has already done this—and discovered that 50% of the supplementary questions were asked by 10% of the Members. This is because it is a bear pit with verbal bullies—pure bullies. They are on all sides of the House and of all genders. This is grossly unfair to the vast majority of the House. Some noble Lords have never asked a supplementary. They are here because they are world-class experts on a subject, but they cannot bring themselves to get involved in the bear pit. If the Lord Speaker had the role, all the noble Baroness would have to do is stand—not shout to try to be heard over everybody else—and hope to be called by the Lord Speaker. At least it would be a fairer system.

We should hear from the Members themselves who do not participate at Question Time. There is a job to be done there—to ask them why they do not. They are here in their hundreds but they never participate at Question Time. Bearing in mind that at the moment a sub-committee is looking at cutting down the size of this House, I would hate for it to come up with the idea, “This person never speaks at Question Time. Get them out”. The reason for that is the bullying tactics of the system. I am not accusing anybody and I have no criticism of anybody—the Leader, the Deputy Leader, the Chief Whip or anybody. The fact is that it is the system that is wrong. I found it really difficult when I became a Back-Bencher in 2008, because I had arrived here in 2001 as a Minister. I thought, “What the hell am I going to do? How do I get in at Question Time?”. I found it incredibly difficult to start to participate, and I am quite restrained these days because there is a serious problem.

It is a very modest technical challenge that does not alter anything for anybody but would give an impression of this House to the public that we are a bit more professional and look as though we know what we are doing. At present, at Question Time—I watch it on television occasionally—it looks as though we do not know what we are doing. That diminishes the House and we cannot defend it outside.

4.44 pm

Lord Low of Dalston (CB): My Lords, as I have said only recently, it is always a pleasure to follow the noble Lord, Lord Rooker—it feels like only the other day but I see that it was last December. Uncharacteristically, I could not hear him as well as I usually can to begin with; it must have been some quirk of the microphones because I am sure that it cannot have been a quirk of the noble Lord.

It is also a pleasure to support the noble Lord, Lord Foulkes of Cumnock. I usually do so from behind, but on this occasion I hope that I may be blazing a trail for him. Of course, I have no idea what he is planning to say, but I think we can have a fair idea. If I am right, I hope that my remarks will be supportive, but I in no sense wish to steal his thunder—I am merely the warm-up act for the pyrotechnics to come.

I am very grateful to the noble Lord, Lord Grocott, for tabling this QSD and securing this debate, because I have long held that the Lord Speaker’s role needs to be enhanced to give him or her the power to call speakers at Question Time and in response to Statements. A recommendation along these lines—originally emanating from the Leader’s Group on working practices of the House, under the chairmanship of the noble Lord, Lord Goodlad, but recrafted by the Procedure Committee for formal presentation to the House—was debated by the House on 8 November 2011. The recommendation ran:

“that the role currently performed by the Leader of the House or Government front bench during oral questions and oral statements be transferred for a trial period to the Lord Speaker”.

It did not go as far as I have just suggested, because it continued:

“the role thus transferred includes the responsibility to arbitrate between groups within the House, but not any responsibility to arbitrate between individual members by name”.

However that may be, it was a good start and I was very much in favour of it—no doubt because it was a recommendation I had myself made to the Leader’s Group. I argued that the principle of self-regulation had not been working well at Question Time. The free-for-all, which was by no means an exceptional feature of Question Time, with Members unwilling to give way to one other, verged on the unseemly. It did
The noble Lord, Lord Grocott, in that debate, said that,
“our procedures work pretty well on the whole. However, the one area where they do not work well is at Question Time. All I would say is that a House that approaches matters with more dignity than the Commons becomes extremely undignified when we get to Question Time or questions on Statements, and I do not like that”.—[Official Report, 8/11/11; col. 142.]

I also said that I was not alone in thinking it inappropriate that identifying speakers should be the function of the Government Chief Whip. I might interpolate here that as I came into the Chamber this afternoon as the Statement was being discussed, with umpteen people jumping up to speak simultaneously, it was not so much a matter of dignity or unseemliness; the spectacle was simply one of confusion.

In an earlier debate on the Goodlad report on 27 June 2011, the noble Lord, Lord Grocott, said that the role that was proposed to be given to the Lord Speaker was,

“not an enhanced role as such: the role currently fulfilled by the Government Front Bench is being transferred to the Speaker. This does, I suppose, enhance the role of the Speaker, but it does not give any more powers—it is very important to note that”.—[Official Report, 27/6/11; col. 1573]

He concluded that, “This is long overdue”.

When the House came to consider the report of Procedure Committee—as opposed to the Goodlad report—in November 2011, there was disagreement as to who could see more of the House: the person on the Woolsack or the Government Front Bench. The noble Lord, Lord Rooker, on that occasion as well as this afternoon assured the House—from experience—that it was the person on the Woolsack. The other day I spoke to a Minister sitting on the Front Bench. He was clear that he was handicapped by comparison with the Lord Speaker in not having eyes in the back of his head.

When the House debated the Procedure Committee’s report in November 2011, the proposal to transfer the function of advising the House on which group’s turn it was to speak next was defeated by 233 to 169. I was in the Lebanon at the time and thus unable to attend the debate—otherwise, I am sure that the result would have been different.

At all events, I am sure that it is time for a review of the role of the Lord Speaker. With a new office like this, it made sense to start low key, but the position has now been in being for 10 years and the House now has confidence in it. No one should worry about its going up a gear. Those who make a fetish of self-regulation may have some qualms, but I hope that they are willing to countenance an experiment in the interests of finding out pragmatically what works best.

I hope that the noble Baroness the Leader of the House will give serious consideration to instituting a review. You never know, but we might find, as the noble Lord, Lord Grocott, says, that what seems like a revolutionary innovation today becomes the orthodoxy of tomorrow.
Chair. It seemed very strange. It might be more appropriate for the Lord Speaker to call for order at that time.

Non-verbal messages may be used to indicate that a speaker’s time is up. Pointing at one’s watch is one such non-verbal message. However, it would be more dignified and appropriate for the Lord Speaker to indicate that someone’s time is up and bring the House to order. By the way, I am watching the clock to note when five minutes have passed.

I would go a little further than my noble friend Lord Grocott in that I would like to see points of order introduced in this Chamber, although I do not think that will happen in the immediate future. However, there are ways of raising points of order. My noble friend the Leader of the Opposition can do it from time to time. I have found mischievous little ways of raising a point of order when we discuss the business of the House. However, it should not be just the Leader of the House and people like me, with mischievous intent, who can raise these things. There should be a proper procedure for doing that. As my noble friend Lord Grocott said, there is a danger that this could be abused, and I think it is something for the longer grass and longer consideration.

However, I hope that the noble Baroness the Leader of the House will look at the other points that have been made. If she could set up just a small group—a Leader’s group—to look at those points, it would show that she understands there is concern about these issues, and that action will be taken on them.

4.56 pm

Lord Horam (Con): My Lords, coming after the “Lord Foulkes show” is a bit like coming after the Lord Mayor’s show.

This was inevitably going to be a good-natured—indeed, humorous—debate, and I am glad that it is. However, few could compare it with the debate on the recently issued White Paper. That debate was rather fractious, people were shouting and some found it difficult to intervene. Indeed, two newish Members on this side of the House were unable to make their remarks. That is an example of what we are trying to deal with—good-natured, responsible, sensible and relaxed contributions in a main debate compared with rather fractious, somewhat aggressive and, frankly, rather disappointing contributions when noble Lords respond to a Statement. However, I am always delighted with the conduct of the Leader of the House and of the Chief Whip, even when he puts me right at the end of the speakers list, as he has done from time to time.

Like the noble Lord, Lord Grocott, I shall concentrate on Question Time and Statements, which I think are the nub of the issue. I noted that my noble friend Lord Attlee, in his interesting remarks, quickly ran out of arguments in relation to conduct at Question Time and Statements and had to pursue other elements of the discussion about what the power of the Lord Speaker might be. I take a very practical view of all these things. The fact is that the present arrangements do not work very well. Question Time and Statements descend too quickly into shouting matches. The words used by previous speakers—fractious, aggressive and so forth—are correct in that regard. We also have increasingly to look at the impression created on the public. I will never forget, some time ago, bringing an American friend of mine into the House to witness our proceedings from below the Bar when a previous Lord Speaker was on the Woolsack. There was a little bit of a shambles and my friend asked, “Why doesn’t that woman in the middle do something? She’s in the chair—why doesn’t she do something about it?”. I explained that she was not allowed to. He replied, “You elect her and she’s not allowed to do anything?” The look of bafflement on his face when he said that was a treat, and rather disappointing.

As the noble Lord, Lord Rooker, pointed out, it is unfair that many noble Lords are not able to intervene. The situation works against new Members in particular. He was once a new Back-Bencher and appreciates what it is like. The Whips have often told me that new Members find this place rather intimidating. If they have been highly successful in other walks of life, they do not like to lose their dignity here. They see that that can happen if they are trying to intervene and cannot do so. They are not used to that. They need to be led in a little more gently. If that were done, I suspect that we would get a better response. It is probably right that a lot of noble Lords do not partake in Question Time because they are simply intimidated by the atmosphere. Curious though older hands may consider that to be, I think that it is the case.

The noble Earl, Lord Attlee, said that it is self-regulation. It is not self-regulation. How can it be self-regulation when it is regulation by the Front Bench? That is not, by definition, self-regulation. It has to be regulation by the Lord Speaker, who is elected by the Back-Benchers and the entire House of Lords. That is self-regulation. As a former Member of the House of Commons, I find there is less self-regulation here than there was in the House of Commons. That is the truth of the matter, because we do not only get regulation by the Front Benches during Question Time; they also choose the order of speaking, as they have today. That does not happen in the House of Commons, so I think there is far too little self-regulation.

I know that the noble Earl, Lord Attlee, is worried about the “thin end of the wedge” argument, but the time it has taken to get nowhere on this issue means that we need not worry about a further step beyond this: it will be decades before we ever get there, frankly, so it is not anything to worry about. I support the first resolution of the 2011 Leader’s Group, the so-called Goodlad report, which said that the Lord Speaker should take over the role of the Leader of the House during Question Time for a trial period of 12 months. I would add “during Statements as well”, as I think that makes sense. In my view it would improve self-regulation and fairness; there would be more order, less embarrassing chaos; and it would be more understandable to the outside world. To that end, I would like to see the Government promote a Motion in government time, with government support, by which we could test the opinion of the House today, rather than several years ago. We all know that the Leader of the House, my noble friend, is charming, modern minded and practical, and I am sure she will see the total sense in this.
5.01 pm

Lord Haskel (Lab): My Lords, I think that I am going to be the odd man out, because in reviewing the role of the Speaker, I think that we should think in much broader terms than just Question Time in the House. Yes, the Speaker has a crucial role inside the Chamber, but there is a much more crucial role outside the Chamber. It has always seemed to me that this is of greater importance because we are an unelected House: we must reach out to the public so that the public understand the work and the role of this House.

When you google the Lord Speaker, yes, he is there on the parliamentary website and Wikipedia, with plenty of information about him and what he does, so that the public can learn about him, his job and responsibilities, but it needs a lot more. Already 100 of us are involved in the Lord Speaker’s “Peers in Schools” outreach scheme. We must add to this by reaching out to other places—universities and colleges, businesses, trade organisations and charities. I have rarely met a Peer who is not involved in a charity and I have always felt that an outreach scheme could both help the charities and say something about us. The Lord Speaker could maintain a public schedule of this involvement: it would be easily done on a website.

Of course, we receive Speakers and other parliamentarians from overseas, and once a year we reach out with our Chamber event for non-Members, but I think that the Lord Speaker has a particular role in outreach. It is a role that I would like to see further emphasised, to clearly enunciate our mission and sense of purpose. We are here to challenge the Government, to challenge the elected Chamber, to challenge proposed legislation. This is what defines us and by reaching out in this way, I think that the public will understand far better what we do and why we do it than they did through the recent BBC programmes.

Turning to the role of the Speaker inside Parliament, I agree with my noble friend Lord Grocott that his task must be to take a lead in maintaining the House’s reputation; yes, at Question Time, but also in other areas. Where I think the Speaker could intervene at Question Time might be by giving a signal when a Question or an Answer has been going on for too long, often much to the irritation of the House.

There is a case for the Speaker leading the way on modernising the House. Take dress, for example. Clerks in the other place no longer wear wigs. Should we follow suit? Are we going to dress down? I think that this is the kind of thing on which the Lord Speaker could take the lead.

Lord Foulkes of Cumnock: His is not a wig.

Lord Grocott: It’s real.

Lord Haskel: He is lucky.

Thanks to several changes in recent years, the House now has a clearly established code of conduct, with powers to discipline or even expel Members who have broken the code. It is by being a champion for this code that the Lord Speaker plays an important role in maintaining the reputation of the House.

Over the years, we have taken small steps regarding behaviour, standards and procedure, sometimes initiated by the Lord Speaker. Question Time, obviously, is no exception. The role of the Lord Speaker in these matters does not necessarily need reform; what it needs is for the Speaker to be urged and encouraged in taking these small steps, judging when the House is ready for them.

The Speaker’s special role is to help maintain the correct balance between lawmaking and our civil rights and liberties. This is not easy. As times become more difficult, so the Speaker’s task becomes more difficult. At the same time, however, it becomes more necessary.

5.06 pm

Lord Cormack (Con): My Lords, I am delighted to follow the noble Lord, Lord Haskel, and I very much agree with him about the representational role of the Lord Speaker. I bet that the Lord Speaker is extremely glad he does not have the power to intervene today, but it would benefit us to reflect on how the office of Speaker in another place began. It began as the Members choosing somebody who would be their spokesman, originally to the sovereign. Some of them suffered for their pains, and indeed at least two parted company with their heads.

In the present Lord Speaker, this House has a figurehead. He had two admirable predecessors but he has taken the post a stage further. His recent comments on the BBC series and so on have been extraordinarily helpful, and he has shown himself to be a true servant of the House, which is the prime role of the Speaker.

I believe it was said when the office was first established that there should be quinquennial reviews. I am delighted that the Leader of the House is here to reply and that the shadow Leader is also here to help wind up the debate. The noble Lord, Lord Foulkes, in his spirited speech, recommended that the Leader of the House should set up a Leader’s Group to look at the role of the Speaker. That would be an extremely sensible move.

To those who have gone a little far I say: beware of what you wish for. I had the great good fortune of being 40 years in the other place, and sat under seven Speakers. One of the most outstanding is a Member of your Lordships’ House today: the noble Baroness, Lady Boothroyd. All seven Speakers gave of their best, and we had some interesting times. Of course, when you give the power to the Speaker to select who will take part, not only in Question Time but in debate, you give an enormous amount of power to an individual. I know Members of the other place who were wary of saying or doing certain things for fear of falling foul of the Speaker of the day. We are grateful to the noble Lord, Lord Grocott, for instituting this debate, but I am sure that he will have similar memories.

The best thing we can do is, first of all, to ask for the quinquennial review. Secondly, if we are to consider giving the Lord Speaker a real role in Question Time, we should go back to the resolution that was defeated and give him the role that is at the moment exercised by the Leader and the Chief Whip, both of whom do...
it with grace, dignity and scrupulous fairness. My view is that the Lord Speaker should do it in the same way, saying, for example, “It is now the turn of the Liberal Benches” or “It is now the turn of the Conservative Benches”. I think we want to be a little bit careful before we give to the Lord Speaker the absolute power of selecting who will take part.

One thing leads to another. I was very attracted before I came to this place by the knowledge that if you want to speak in a debate in this place and you put your name down, you know you will take part. There is no question of arbitrary selection. There is a little on the part of my noble friend the Chief Whip when he is deciding where you will be in the batting order; I accept that. Once or twice I have been quite high up; much more I have been rather low down, but that does not matter. The knowledge that you will be able to make a contribution is of enormous importance and I would be wary of giving the Lord Speaker the power to decide who will speak and who will not speak in a debate. So we have to take this thing gently and we have to take it sensibly forward.

On points of order, I completely agree with the noble Lord, Lord Grocott, that they are an absolute abuse in the other place, but there ought to be in this place an opportunity for Members to raise matters of real concern. I believe that we perhaps ought to allow the Lord Speaker to decide not only on Private Notice Questions but on business questions, so that if there is a matter that is going to come before the House which is not for voting, at least the chairman of the appropriate committee can be called to the Box to explain what it is all about. I have in mind a proposal which I read recently. It says that the Services Committee is going to make some changes to our stationery. We are not necessarily going to have an opportunity to debate that but we ought to have the opportunity to ask questions.

The noble Lord, Lord Grocott, has given us a lot to think about. We have an excellent Lord Speaker but we should not place too many new responsibilities upon him. We should, however, look at those that I have mentioned.

5.11 pm

**Lord Snape (Lab)**: My Lords, it is a pleasure to follow the noble Lord, Lord Cormack, who, if I may say so, would have made a distinguished Lord Speaker himself, had the House taken a different view late last year. I am grateful, too, to my noble friend Lord Rooker said about some of the procedures and still wonder why we tolerate a system which, as was said earlier, benefits some of the procedures and still wonder why we

Lord Snape: I am prepared to concede that that might be the case if my noble friend says so. However, it illustrates one of the weaknesses of self-regulation in this place.

While I am on my feet and complaining, another matter which having a Lord Speaker with real power would help to combat is the reading of speeches. I have with me a copy of the Companion—noble Lords on both sides will be relieved to know that I do not propose to read very much of it in the five minutes available to me. In paragraph 4, on conduct in the House, the Companion specifically says:

“The House has resolved that the reading of speeches is ‘alien to the custom of this House, and injurious to the traditional conduct of its debates’”.

Again, all too often speeches are read into the record. I understand that in the House of Representatives in the United States, it is possible to have a speech
written out, send it to the Congressional Record—their version of Hansard—and it appears the following day. Perhaps we should adopt that system rather than having to sit through noble Lords on both sides—we all do it—reading speeches, some of which give the impression that the noble Lords have never seen them before and that they are written by somebody else anyway. Again, if we had a presiding officer, not necessarily intervening on each and every occasion the rules of conduct are breached, it would help to bring about a more sensible way of conducting our affairs. Having said that, I hope that the Leader of the House will listen to the debate, act on the genuine concerns that have been expressed during the course of it, and we should and I hope we will—thanks to her—look again at our proceedings.

5.17 pm

Lord Newby (LD): My Lords, I find myself in the somewhat disconcerting position of broadly agreeing with the noble Lord, Lord Grocott. This has never happened to me before on a constitutional issue, and I would not necessarily want your Lordships to feel that my remarks today could in any sense constitute a precedent.

The starting point should be one that a number of noble Lords have made: why are we the only deliberative assembly in the world that does things in this particular way? It therefore seems that, looking at this afresh, we should ask why we, uniquely, should behave in this way when the rest of the world has decided to do things somewhat differently.

Obviously, your Lordships’ House has considered this; it considered it at great length in 2011 and decided that it did not want to make any change. But, as the noble Lord, Lord Grocott, said, the size of the House has increased, and there are more people wanting to come in, and it is undoubtedly the case that more people watch proceedings in your Lordships’ House than ever before. The perception that they gain, as a number of noble Lords said, is that Question Time is unduly shambolic. I do not think that having a Lord Speaker exercising a role would stop it being contentious—but the perception would be significantly improved.

I have to accept that the noble Lord, Lord Taylor, the Government Chief Whip, is an extremely benevolent, subtle dictator at Question Time. He does the job extremely well and extremely fairly, as does the noble Baroness the Leader. No Lord Speaker would do the job more fairly; I have no worries about that. But, having been a Whip on the Government Benches, I think that the role the Government Whips play is pretty difficult in practice.

This is not strictly related to today, but my role very often was to try to impose time limits on speeches. I felt that I was often seeking to reduce the time of Opposition Members. They felt that this was partisan and I felt very uncomfortable doing it. My free tip to the Whips is that the best way of getting people to realise that they have gone over time is not excessive gesticulation but just tapping one’s wristwatch with a pen. It is very effective non-verbal communication—but it is not a very impressive way of doing things.

I have great sympathy with this proposal. However, I have to accept that it is not the universal view of the House or indeed my own group—I slightly feel the breath of my noble friend Lord Beith down my neck as I speak. The qualms expressed today are largely born out of experience of the House of Commons that they do not want replicated here. In particular, the point was made by the noble Lord, Lord Cormack, that if the Lord Speaker has the power to call individual Members, they might over time moderate their behaviour. I am not sure that it would quite work in that way in your Lordships’ House.

The proposal put to the House in 2011 was not for greater powers to go to the Speaker than currently obtain in the Government Front Bench but simply to transfer the existing powers. I would have thought that that was a pretty good way of avoiding the slippery slope. It is a very easy argument—and not always wrong—to say that if you make any change it is the start of a slippery slope. However, given that we are a self-regulating House and it is virtually impossible ever to change anything here, the idea that making one modest change is going to lead to an avalanche of changes for the Lord Speaker seems implausible. So I recommend that this narrow proposal should go back to the Procedure Committee, whence it came originally, for another look. I would not recommend the kind of review that the noble Lord, Lord Cormack, suggested, because if we went for that we would probably never get anywhere—the only change we will ever make is incremental.

5.23 pm

Baroness Smith of Basildon (Lab): My Lords, this has certainly been a very interesting debate. I also hope it will be a useful one for your Lordships’ House. We should be grateful to my noble friend Lord Grocott for giving us the opportunity to debate it today. However, this debate should not exist in a vacuum of what the Lord Speaker does. It seems from noble Lords’ comments that we are looking to ensure we have orderly, efficient business of the House, to which as many Members as possible can contribute. Management of that business needs to enable us to conduct our business as well as possible.

We need to be very clear about what has been suggested and what has not. No noble Lord—not even my noble friend Lord Foulkes—has suggested today that we replicate the House of Commons system and that the Lord Speaker should have the same powers or role in the Chamber as the Speaker in the other place. It is worth noting that we have had an elected Lord Speaker only since 2006. In the true gender equality that we see in this House, where the Leader of the Opposition and the Leader of the House are female, the current Lord Speaker is the first male to occupy the position.

The three Lord Speakers who have been elected have all willingly taken up the position, yet anyone who has witnessed the drama of the election of the House of Commons Speaker will have seen them being dragged to the Speaker’s Chair—a point alluded to by the noble Lord, Lord Cormack, although uncharacteristically inaccurately. In the past, Commons Speakers who have been seen as too partisan for the
Government or the monarch have been beheaded, but it was not two who were beheaded; in fact, seven suffered that fate at the hands of the axe, and we would not want that to befall any Lord Speaker, or indeed any Commons Speaker, in the future.

I do not know why this week in particular things have felt so bad—I do not know whether other noble Lords have felt this too; perhaps it has been because we have known that this debate was coming up—but this week your Lordships’ House has at times felt extremely undignified, and I have some examples. We are supposed to be a self-regulating House but I do not know how often the noble Baroness has had to rise to her feet to intervene at Question Time. The fact is that does not happen very often and it is normally because the House has been very bad tempered and ill behaved, and somebody has had to try to bring some order to the proceedings.

However, it seems to me that more often than not some of the self-regulation is rather bad tempered and sometimes quite rude. This week a noble Baroness on the Liberal Democrat Benches—I accept that her question was far too long, however important the issue—was told to shut up and sit down. I thought it was extremely offensive for any Member of your Lordships’ House to speak to another noble Lord in that way. When somebody speaks for too long or moves away from the Question and asks about another matter—to the disappointment of the noble Lords who wish to get in on that issue—it is rather undignified to have other noble Lords making a comment. A noble Lord who often sits where the noble Earl, Lord Attlee, is sitting now shouts out “Reading!” or “Too long!” That is undignified and does nothing for the good standing of your Lordships’ House.

On the subject of noble Lords who speak for too long, the noble Baroness, Lady Evans, earned her spurs and the great appreciation of this House when she was a Government Whip. She smiles because she recalls the occasion. A noble Lord on the Liberal Democrat Benches, who should perhaps remain nameless, tested the patience of the House by speaking for far too long. The noble Baroness, as a relatively new Whip, jumped up and told him that he had spoken for too long and that it was time to sit down. He replied, “I’ll just finish”, to which she responded, “No, you won’t. Sit down”—in a very polite way, I should add. That earned the appreciation of noble Lords because somebody took charge when the House itself did not want to intervene.

The point is that it is not just those with the loudest voices who manage to be heard first but those with the deepest voices. My noble friend Lord Snape referred to the fact that a lot of our female colleagues find it harder to intervene than our male colleagues. Often, just the tone of the voice can make things more difficult. Unless you are under a microphone—I have one in front of me here—it can be more difficult to get in at Questions. Also, if you are on the Front Bench, you cannot see who is behind you and you just carry on regardless. You can ignore the people behind you and pretend that you cannot hear them. Therefore, there is certainly room for change.

Another point is that the Lord Speaker can see who turns up late. Sometimes a Minister who is reading or repeating a Statement does not know who is in the House at the beginning of the Statement, and someone who has not heard most of it can get in with a question, thereby disadvantaging those who have sat through the whole Statement. The House as a whole may notice but the Lord Speaker is more likely to notice that than every Member who wishes to contribute to the debate. A favourite of mine, although it is probably inappropriate today, is those who make Second Reading speeches in Committee. Many of us who take part in deliberations on a Bill will have heard many Second Reading speeches by the time we get to Committee.

We need to look at the sensible, wise, incremental proposals put forward by my noble friend Lord Grocott. It is a question not of change for change’s sake but change for the good working and good reputation of your Lordships’ House. If the noble Baroness is minded to discuss this further, I would welcome the opportunity to do so, because I am sure we can come up with proposals to satisfy those who seek change as well as those who are concerned that any change might go too far or lead to even greater change. There are sensible, incremental changes that could be made to enhance the workings and reputation of this House.

5.29 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I am grateful to answer this Question for Short Debate and to the noble Lord, Lord Grocott, for initiating it, and to all those who have contributed. I assure him that I do not take this as a personal insult. In fact, I am delighted several noble Lords have said some nice things about me today, so I thank him for that. I am also very pleased to see the noble Lord, Lord Fowler, in his place on the Woolsack.

As the role of Lord Speaker was established 11 years ago, I entirely understand the desire of the noble Lord, Lord Grocott, to have a debate on it and, as we have seen today, there are a range of views across the House. While I will reflect on the comments made and discuss them with the Lord Speaker, I am very happy to have discussions with the leaders of the other parties. I do not consider a formal review of the role to be a priority. For my part, I believe that our system of self-regulation continues to work well and sets us apart from the other place, as the noble Lord, Lord Newby, and my noble friend Lord Cormack highlighted.

As is clear from the Companion to the Standing Orders, all sides of this House have a role to play in maintaining order.

The preservation of self-regulation was a key part of the House’s decision to establish the office of Lord Speaker in 2006. Successive Lord Speakers have played an important role in allowing self-regulation to continue to flourish, evolving with the needs of the House while maintaining throughout its distinctive character.

Nevertheless, the possibility of transferring the role played by the Leader during Question Time to the Lord Speaker, to which most noble Lords alluded and to which I will return shortly, has been discussed on several occasions since the role of the Lord Speaker...
was first established. A little over five years ago, in response to a proposal from the Leader’s Group on working practices, chaired by my noble friend Lord Goodlad, the House voted decisively against such a change when the question was put to it on 8 November 2011.

Notwithstanding today’s debate, since becoming Leader I have to say that this is not a subject that has been raised with me as a significant issue for the House—unlike, for instance, concerns around our size, which is a matter now being explored by the Lord Speaker’s committee.

I hope it goes without saying that I entirely agree with the noble Baroness, Lady Smith, that the Lord Speaker and his hard-working team of deputies have an essential role to play in the Chamber. Their mastery of procedure, particularly when we consider legislation, is essential to the Chamber’s effective functioning. Beyond the House’s vital role in making and shaping laws, noble Lords across the House play an active role in holding the Government to account, particularly through debates and Questions.

I am sure I speak for the whole House when I say that Question Time is one of the most valued—and valuable—parts of our day. It exemplifies our spirit of self-regulation, where we have to work together across the House to make the occasion effective. I assure noble Lords that the Front Bench takes its responsibilities in advising and guiding the will of the House on matters of order very seriously. I do not do it alone; I work very closely with the Chief Whip, the leaders and Chief Whips across all Benches to try and ensure that we manage things. In practice, guidance from the Front Bench is rarely required. In response to the question from my noble friend Lord Attlee, I have checked: as Leader I have been required to make only around a dozen such interventions since the beginning of this year.

During Question Time, the Front Bench also does its utmost to ensure that the distribution of Questions between all sides of the House is handled fairly, and I am grateful to the noble Lord, Lord Newby, for his comments in recognising this. For example, so far this year, 82% of Questions have been asked by noble Lords other than from the Conservative Party, which is only right because, after all, it is the House’s role to scrutinise the Government. I hope that the House recognises when I am acting in a political capacity and when I am trying to represent the interests of the whole House, which is what I try to do at Question Time.

Lord Snape: I will not detain the noble Baroness for longer than 10 seconds. We accept that impartiality plays a big part in her role. Will she accept that there is nothing she can do when two noble Lords from the same party wish to speak at the same time, and that only a Lord Speaker can resolve that dilemma?

Baroness Evans of Bowes Park: As I am coming on to, that is a role for party leaderships as well, but I will come back to that in a second.

I entirely agree that Questions is an occasion that could and should be enhanced by hearing from a broader range of voices across the House. One of our great strengths is the breadth of knowledge and expertise on our Benches, and Questions presents an excellent opportunity both to highlight that and—although difficult for those of us answering them—to hold the Government of the day to account. In order to achieve this, we rely on noble Lords to exercise restraint and self-discipline. We waste valuable time for Questions when noble Lords refuse to give way, but I also think we should expect noble Lords across the House to recognise this and take responsibility for it.

The noble Lords, Lord Grocott, Lord Rooker, Lord Low, Lord Foulkes, Lord Horam and Lord Snape, and the noble Baroness, Lady Smith, all referred to the atmosphere and behaviour sometimes see at Question Time. Words such as “intimidating”, “fractious”, “undignified” and “unfair” were all used during various contributions. I gently suggest that it is for us as individuals to consider how we behave and to become more considerate of colleagues. If this is how we view Question Time, it is surely within our gift to help to change that. I am afraid I am not totally convinced that just having the Lord Speaker preside over this is the magic bullet. We are all beholden to look at our behaviour, but I also think there is a role for the party leaders—I include myself in this—to reflect on how we might try to encourage more Peers to take part and how we can more effectively look to encourage a wider range of voices to be heard.

Baroness Smith of Basildon: Will the noble Baroness accept that she is perhaps speaking to the converted? It may be that those who are not here act in the slightly grumpier and less courteous manner than noble Lords who are here today and are concerned about the issue.

Baroness Evans of Bowes Park: I understand that but, as I said, we as Leaders have a role to think about how we might help to do this. As I have said, I am not completely convinced that just this move would change that, but I am very happy to have conversations about ways we can try to improve Question Time. I agree that it is an extremely important and valuable part of the work of the House.

As noble Lords will be aware, apart from overseeing proceedings in the Chamber, the Lord Speaker plays a key role in the Lords administration as the chairman of the House of Lords Commission. In this regard, we have seen recent reform with new governance arrangements agreed only last year on the back of the recommendations of a Leader’s Group established by my noble friend Lady Stowell of Beeston. That group’s recommendations were accepted by the House last May and have led to a refreshed and streamlined domestic committee structure and the new role of Senior Deputy Speaker, ably filled by the noble Lord, Lord McFall. The Lord Speaker is at the apex of this new structure and his partnerships with the party leaders, the Convenor of the Cross Benches and the Clerk of the Parliaments are at the heart of the decisions that direct the way the House is run.

The Lord Speaker is also ultimately responsible for security on the Lords part of the Parliamentary Estate—a responsibility that will assume only greater importance following the tragic events of last week. In this respect, he has a heavy burden to bear on our behalf and he
does so with admirable grace and common sense. As my noble friend Lord Cormack and the noble Lord, Lord Haskel, recognised, he also has a very significant role representing the House on ceremonial occasions and as an ambassador at home and abroad. I entirely agree with the noble Lord, Lord Haskel, about the important role that the Lord Speaker has in our outreach work, including the excellent Peers in Schools initiative. The Lord Speaker also takes extremely seriously the reputation of this House. I entirely endorse the comments that we are very grateful to him for the way he has been leading us in this regard. I hope we will all continue to support him to do so, because this is an extremely important role and we are very lucky to have him as an advocate for us.

I thank everybody who has contributed to this important debate. As I indicated at the beginning of my remarks, I do not intend to initiate an official review of the role of the Lord Speaker. As I am sure noble Lords will understand, there are other priorities on which I believe we should be focused—to name just a few, the increased legislation this House will be scrutinising as a result of Brexit; plans for the restoration and renewal of the Palace; and, of course, the security reviews that are now under way as a result of last week’s terrible events.

Ultimately, of course, this is a matter for the House to decide, with the option to bring forward proposals to the Procedure Committee being available to each noble Lord. As I hope I have indicated, I will keep an open mind about the working practices and procedures of the House more generally, and I of course appreciate that there is always room for improvement, so I am grateful for the opportunity to hear the views of noble Lords. I look forward to further conversations on this.

Motion to Adjourn

Moved by The Earl of Courtown

That the House do now adjourn.

The Earl of Courtown (Con): My Lords, I beg to move that the House do now adjourn.

The Lord Speaker (Lord Fowler): My Lords, I think I do have a role here: that the House do now adjourn.

Motion agreed.

Pension Schemes Bill [HL]

Returned from the Commons

The Bill was returned from the Commons with amendments.

House adjourned at 5.39 pm.
House of Lords

Monday 3 April 2017

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Death of a Former Member:

Lord Prys-Davies

Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Prys-Davies, on 28 March. On behalf of the House, I extend our condolences to the noble Lord's family and his friends.

Retirement of Member:

Lord Nicholls of Birkenhead

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): I should like to notify the House of the retirement, with effect from today, of the noble and learned Lord, Lord Nicholls of Birkenhead, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble and learned Lord for his much-valued service to the House.

Type 31 Frigate

Question

2.37 pm

Asked by Lord West of Spithead

To ask Her Majesty’s Government when they will have to cut the first steel on the Type 31 frigate that will replace the last Type 23 when it pays off on its due date.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, in the SDSR we committed to maintaining the Royal Navy’s frigate and destroyer fleet of 19 warships and to increasing it by the 2030s. This included our commitment to the Type 26 and Type 31E general purpose frigate. We will provide further detail on how and when the Type 31 will be procured in the national shipbuilding strategy, which will be published in spring 2017.

Lord West of Spithead (Lab): My Lords, I thank the noble Earl for his Answer, but I am rather disappointed. It seems extraordinary that the noble Earl, whose illustrious ancestor raised the siege of Gibraltar, had not told his noble friend Lord Howard about the parlous state of our Armed Forces before his comments on Sunday. The noble Earl quite rightly said that the Government are committed to there being more frigates. I cannot see how that can occur by 2035, by which time the oldest of the Type 23s will be 35 years old. Does he agree that a steady drumbeat of orders is absolutely necessary, because we will then have sufficient escorts to do what is required by this nation? It will drive down costs and make those ships easier to buy and to sell abroad; we will have much greater capability, innovation and growth of skills within our industries.

Earl Howe: My Lords, all the latter points made by the noble Lord are well made and I agree with him. The steady drumbeat was a point emphasised by Sir John Parker in his advice to the Government. I hope the noble Lord will not have long to wait for the national shipbuilding strategy. It will provide further detail on how and when the Type 31 will be procured and how this will align with the Type 23 frigate replacement programme and the Type 26 build programme.

Lord Spicer (Con): My Lords, how many Type 31s will be able to dock in Gibraltar at any one time?

Earl Howe: My Lords, as we do not have a Type 31 and do not know yet what tonnage it will be, I cannot answer my noble friend’s question. However, I do not anticipate any problems with docking in Gibraltar.

Lord Dannatt (CB): My Lords, does this Question not get to the heart of the fact that our defence budget is woefully underfunded at present? We would not be discussing the number of frigates and destroyers if that were not the case. At the time of Brexit, and in the wider context of NATO, is there not a case for this country showing leadership in taking responsibility for security in Europe by increasing our defence spending, perhaps by rebalancing between the 2% of GDP spent on defence and the 0.7% spent on international development?

Earl Howe: My Lords, I am grateful to the noble Lord. That was indeed a point that came out loud and clear from the recent defence debate we had in your Lordships’ House. However, the UK is leading the way in NATO. Our defence budget is considerably more than 2% at the moment, which is the NATO target. There are, however, other European members of NATO whose defence spending does not even reach 1%. Therefore, I agree that there is a lot of ground to make up with our allies. However, in our case I remind the House that we have a budget over the next 10 years of £178 billion to invest in equipment and support, which is no mean sum.

Baroness Jolly (LD): My Lords, the plans to build the Type 31 frigate are welcome and indeed interesting. However, that does not hide the fact that once the Type 23s are out of service, the size of the fleet will be at a historic low. Would the Minister tell the House what is now determined to be a minimum fleet size and, indeed, configuration, and whether there is any contingency for delays in the Type 31 construction?

Earl Howe: My Lords, there are a number of assumptions in the noble Baroness’s question, which I will not be in a position to answer until we publish the national shipbuilding strategy. I do not accept her hypothesis that the size of the fleet in the 2030s will be smaller than it is today. Indeed, it is our ambition to make it larger.
Lord Davies of Stamford (Lab): When can we expect a clear, authoritative and detailed statement on what is wrong with the Type 45 and what is being done about it?

Earl Howe: My Lords, a study was done in 2011 substantially to rectify the propulsion problems in the Type 45. Those problems have largely been addressed, although not completely. We will initiate Project Napier, which will deal with the propulsion problems once and for all. However, my advice is that the Type 45 destroyers are not now encountering the difficulties that they were.

Lord Hamilton of Epsom (Con): Can my noble friend tell us how many frigates and destroyers will be needed to escort one of our aircraft carriers when it is finally deployed?

Earl Howe: It depends whose frigates and destroyers one is talking about, because we are in an alliance and no doubt we will depend on those frigates and destroyers of other allies as well as our own.

Lord Morris of Aberavon (Lab): My Lords, the Minister mentioned publication of the strategy in the spring of 2017. Is this not the spring? Are we not in April now?

Earl Howe: My Lords, if winter comes, can spring be far behind?

Baroness Redfern (Con): My Lords, a commitment was made to the Steel Council regarding the effectiveness of government purchasing guidelines. Sections that British Steel produces in Scunthorpe in my area and Teesside play a valuable part in the supply chain. By updating our procurement approach on major projects, we are now creating a level playing field for UK steel. Does the Minister agree that, despite the hard work of government, industry and trade unions, more work needs to be done to ensure that returns improve further in the coming months and years to compete with China and elsewhere in the world?

Earl Howe: My Lords, my noble friend makes some extremely important points about the steel industry in this country. It is worth reflecting that if one looks at the Queen Elizabeth carrier programme, 88% of the steel that went into that carrier programme was from British steel mills, which indicates that we are competitive in world terms.

Lord Touhig (Lab): My Lords,

“Our national security and our economic security go hand-in-hand”.

I am not quoting from the Prime Minister’s letter to Donald Tusk—those were the opening words of the MoD’s single departmental plan in 2015. Promoting defence exports was the clear objective. Sir John Parker, whom the Minister has already quoted, and who wrote the national shipbuilding strategy, said that not enough went into the export market for ships, and that the Type 31E would have export potential. He added that they should be built “urgently”. Is it not therefore a no-brainer? Should we not follow Sir John’s advice, build the ships our Navy needs now, and gain the export opportunities for British shipbuilders?

Earl Howe: My Lords, Sir John made some very compelling recommendations, which we are seriously addressing. Broadly, they were to inject greater grip and pace into procurement and construction of ships, to make the Government a better customer, to make industry a stronger and more efficient supplier, and to create scope for exports in warship building, thus feeding into the prosperity agenda. Those were all very sensible recommendations.

Balfour Declaration
Question

2.45 pm

Tabled by Baroness Tonge

To ask Her Majesty’s Government what plans they have to commemorate the centenary of the Balfour Declaration.

Lord Warner (CB): My Lords, on behalf of the noble Baroness, Lady Tonge, and at her request, I beg leave to ask the Question standing in her name on the Order Paper.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we will mark the centenary of Balfour with pride. The Prime Minister has extended a guest of Government invitation to Prime Minister Netanyahu to visit the UK on the centenary. We are proud of our role in the creation of Israel. However, we recognise that the declaration should have called for the protection of political rights of non-Jewish communities in Palestine, particularly their right to self-determination. This is why we support a two-state solution.

Lord Warner: First, I am sure that the whole House wishes the noble Baroness, Lady Tonge, a speedy recovery, and recognises the huge contribution she has made on Palestinian matters. I thank the Minister for her reply. She recognises, I think, that there was a conditionality on granting in the terms of the Balfour Declaration the establishment in Palestine of a national home for the Jewish people. That conditionality was very clear, as the declaration states, “it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine”. Does the Minister agree that successive British Governments, both under the British mandate and subsequently, have failed to deliver that declaration protection to the Palestinian people? Furthermore, should we not mark the centenary with a gracious apology from the British Government and Parliament for the suffering that that failure has caused and try to make amends—

Noble Lords: Too long.

Lord Warner: We have waited a long time, my Lords—with a clear commitment to recognition of a viable independent Palestinian state?
Baroness Anelay of St Johns: First, my Lords, I send my good wishes to the noble Baroness, Lady Tonge, and wish her a strong and full recovery. The Balfour Declaration was an historic statement and one for which the United Kingdom has no intention to apologise. We are focused on encouraging the Israelis and Palestinians to take steps which bring them closer to peace. That is the whole thrust of government policy which has underwritten the work of this Government, the coalition Government, and the Labour Government before that. We continue to carry that work forward. With regard to recognition, perhaps in the future, of Palestine as an independent state, bilateral recognition does not deliver reality. We will make sure that we recognise a Palestinian state when we judge that it is in the best interests of peace and a lasting negotiated solution between Israel and the Palestinian Authorities to do so.

Lord Collins of Highbury (Lab): My Lords, I associate myself with the remarks of the Minister about the noble Baroness, Lady Tonge. I also welcome the commitment again to the two-state solution, which the Opposition have supported historically. The most important thing we can achieve, 100 years after the Balfour Declaration, is to ensure that peace talks commence. Can the Minister tell us how she can put direct pressure on both parties to start talking to each other rather than firing rockets at each other?

Baroness Anelay of St Johns: My Lords, that point is extremely well made. I assure the noble Lord and the House that we are making our best efforts to encourage both sides to come to the table for discussions. When my right honourable friend the Foreign Secretary visited Israel and the Occupied Palestinian Territories, he made just those points. When I had discussions last week in New York with Nikki Haley, who is a member of the President’s Cabinet, I too made those points, and we agreed entirely that it is important that we all work together to get the interested parties to the table to talk, not fire weapons.

Lord Leigh of Hurley (Con): My Lords, at the 34th session of the Human Rights Council in Geneva on Friday last week regarding Israel, Her Majesty’s Government expressed regret that neither terrorism nor incitement was a focus of that council's meeting. Syria’s regime butchers and murders its people on a daily basis, but it is not Syria that is a permanent item on the council’s agenda. Since 2007, it has been only Israel—the one country in the Middle East that protects human rights for women and gays, among others. Therefore, I welcome the Minister’s statement that, if things do not change in the future, Her Majesty’s Government will adopt a policy of voting against all resolutions concerning Israel in the Occupied Territories and Palestine. What steps have been taken to encourage our European partners to adopt the same principled and even-handed statements? I declare my interest.

Baroness Anelay of St Johns: My Lords, we are in active discussions with like-minded partners to support the council in addressing the fact that there appears to be a disproportionate focus on Israel in the council, which we believe hardens positions on both sides.

The Lord Bishop of Worcester: My Lords, will the Minister accept that there is grave concern about facts on the ground tending to suggest the impossibility of a two-state solution?

Baroness Anelay of St Johns: My Lords, the right reverend Prelate raises a vital issue. Announcements such as the one made last Friday by the Israeli Government about building a new settlement in the West Bank—the first such government decision there for over 25 years—make one worried that it is becoming more difficult for negotiations that could lead to a two-state solution, and it is necessary to ensure that they do not proceed with such settlements.

Lord Hughes of Woodside (Lab): My Lords—

Baroness Northover (LD): My Lords, the Minister referred to the Balfour Declaration, which says that nothing should be done, “which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine”, and I welcome that. However, with the tinderbox in the Middle East, is it not even more urgent than ever that the future of Israel and the Palestinians is taken forward, and does that not mean reversing rather than expanding the settlements?

Baroness Anelay of St Johns: Yes, my Lords.

Viscount Waverley (CB): My Lords, given the increasing vacuum from the United States and the concern expressed by Arab partners, is it now realised that Israel can become a strategic ally in the common cause of combating terrorism and Islamist extremism?

Baroness Anelay of St Johns: My Lords, I think it is incumbent on all those who believe in peace around the world to do exactly that, and I hope and expect that Israel would be part of that work.

Alcohol: Children’s Health

Question

2.52 pm

Asked by Lord Brooke of Alverthorpe

To ask Her Majesty’s Government what assessment they have made of whether the way in which supermarkets and convenience stores display and promote alcohol can endanger the well-being and health of children.

The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, Public Health England’s evidence review identified the negative impact that the advertising and marketing of alcohol can have on children and young adults. The Government are committed to working with industry to address concerns over any irresponsible alcohol promotions, advertising or marketing to make sure that children and young people are protected.

Lord Brooke of Alverthorpe (Lab): My Lords, I take it from that reply that no research has been undertaken on this. In those circumstances, I wonder whether the
Lord Brooke of Alverthorpe: Minster is prepared to commit himself to the Government undertaking such research. If they are not willing to do so on their own, will they enter into discussions with the drinks industry—probably the Portman Group, which represents the drinks industry—to see whether such research can be undertaken jointly?

Lord O'Shaughnessy: The noble Lord is not quite right on that. Public Health England’s evidence review identified a negative impact, and that constitutes research. It looked at the evidence, which is that advertising and marketing to young people has a negative impact on their drinking behaviours. There are stringent rules, particularly around advertising, which is policed by the Advertising Standards Authority, to make sure that that does not happen.

Lord Robathan (Con): My Lords, while we all wish to see responsible supermarket advertising, is it not the case that law already exists to prevent the sale of alcohol to children? Surely this law should be enforced and parents held responsible if their children are drinking illegally.

Lord O'Shaughnessy: As my noble friend points out, there are very strict rules around the sale of alcohol to children under the age of 18, and tough punishments exist for anyone who is doing so.

Lord Rennard (LD): My Lords, does the Minister accept that we really need better labelling on alcohol products, particularly to assist those seeking to follow a healthier lifestyle and who might be seeking to purchase low-alcohol or no-alcohol products? We need to improve labels to show more clearly the level of alcohol, the number of calories in the product and the amount of sugar in the product to assist those consumers.

Lord O'Shaughnessy: The noble Lord makes a good point. I believe that something like 80% of alcohol for sale is now labelled in some way, whether that is in units or calories and so on. The issue is currently being looked at at a European level—

Noble Lords: Oh!

Lord O'Shaughnessy: Given what is going to happen in the next couple of years, we might want to look at it ourselves, too.

Baroness McIntosh of Pickering (Con): My Lords, is my noble friend aware that it is currently not an offence to sell alcohol to those under 18 at airports, airside, for the simple reason that the Licensing Act 2003 does not apply? Will my noble friend undertake to review this with a view to making it an offence in future and to bring the whole regime under the Licensing Act 2003 without delay?

Lord O'Shaughnessy: I thank my noble friend for that question; I was not aware of that issue. I understand that there is a voluntary code in place, but I shall write to her to outline in much greater detail what the situation is regarding the sale of alcohol to underage young people at airports.

Lord Hunt of Kings Heath (Lab): Now that we can see the end of the light-touch European regulations on alcohol labelling, can I take it that the Minister’s department is looking to 2019 to produce a much tougher labelling regime, for which we have called for many years?

Lord O'Shaughnessy: We are obviously looking at all aspects of alcohol control, and this has nothing to do with Brexit per se. It is worth pointing out that successive Governments’ alcohol policies have had a very positive impact on the activities of young people. Fewer young people than ever are drinking—it is fair to say that they set an example to older cohorts. However, there is more to do. Around 400 11 to 15 year-olds drink weekly. That is clearly not acceptable and we need to do more.

Baroness Royall of Blaisdon (Lab): Will the Minister remind the House of what the Government’s attitude now is towards a minimum price for alcohol?

Lord O'Shaughnessy: The noble Baroness will know that on minimum unit pricing a court case is ongoing in Scotland, where the proposed introduction of minimum unit pricing has been challenged by the Scotch Whisky Association. We are awaiting the outcome of that court case before we move ahead.

Baroness Farrington of Ribbleton (Lab): Will the Minister give an undertaking that, in looking at this issue in the broad, the Government will have regard to the number of children who grow up in households where there is a severe alcohol problem among the parents or adults? Will he undertake to monitor carefully how much the public health authorities are providing and enhancing alcohol treatment centres, which appear to be diminishing in some parts of the country? Many children grow up suffering because of this sort of family problem.

Lord O'Shaughnessy: The noble Baroness highlights a difficult and, indeed, tragic area. The other day, my honourable friend the Public Health Minister met the APPG on Children of Alcoholics. In preparing for a debate last week organised by the noble Lord, Lord Brooke, I discovered that Alcohol Concern estimates that there are 95,000 children under the age of one who live in a family where the parent has an alcohol problem. That is a rather horrifying statistic. One way we are dealing with that is through the family nurse partnerships; indeed, more than 16,000 places are now available and one of the capacities they have is to provide help for families struggling with addiction, whether it is to alcohol, drugs or other things.

Lord Brooke of Alverthorpe: My Lords, I want to come back to the Public Health England report that the Minister mentioned, of which I am aware. Would he concede that many issues are raised in that report? For example, it recommends that minimum unit pricing should be introduced, but it is not being introduced. When I am in my local Co-op, I am surrounded by alcohol as I queue for the checkout. I am also surrounded by children. Why are the Government not taking action to stop that?
Lord O'Shaughnessy: Action is being taken. There are clear rules and mandatory guidelines around the promotion of alcohol. It is important to point out that alcohol is different from smoking, where there are extremely strict rules on promotion. Most people enjoy alcohol in moderation as part of their healthy, pleasurable, normal social life, so there is a difference. However, there are clear and strict rules around promoting, advertising or selling to children.

Lord McColl of Dulwich (Con): Does the Minister agree that whereas the commonest cause of cirrhosis of the liver used to be alcohol, it is now the obesity epidemic, which could be cured by eating less?

Lord O'Shaughnessy: My noble friend is right. Of all the things we should do in our lives, we should eat less and drink less—as I am sure every Member of this House does.

Diesel Vehicles
Question

3 pm

Asked by Lord Dubs

To ask Her Majesty's Government what action they propose to take to reduce the number of diesel cars and other diesel vehicles.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the Environment Secretary and the Transport Secretary will consult on a revised air quality plan later this month. Both departments are working across government and with local authorities to tackle air quality problems in our cities and towns. Since 2011, the Government have committed more than £2 billion to increase the uptake of ultra-low emissions vehicles and support greener transport schemes, with a further £290 million committed in 2016.

Lord Dubs (Lab): My Lords, will the Minister confirm that diesel emissions from vehicles contribute to the early death of 30,000 people in the UK and 9,000 people in London and seriously endanger the health of children? Do we have to leave it to the Mayor of London to show any leadership in this?

Lord Ahmad of Wimbledon: The noble Lord is right to point out the health issues which arise from emissions, particularly of nitrogen dioxide from diesel vehicles. The noble Lord mentioned the Mayor of London and I acknowledge the efforts that the mayor is making in this respect. However, I am sure that the noble Lord would agree that this requires a partnership across government, within London and with local authorities to ensure that we get the results we all desire.

Baroness Randerson (LD): My Lords, unless you are buying a purely electric car, from 1 April this year, if you buy a new car, you will end up paying more car tax for a low-emission car than under the old car tax system and less for a highly polluting car than under the old system. Can the Minister explain how that will incentivise people to buy low-emission vehicles?

Lord Ahmad of Wimbledon: The noble Baroness drives an electric car and is well placed to ask that question. The Government are focused on ensuring a sustainable revenue stream for English roads raised through vehicle excise duties. Under the new system, after the first year all new cars will pay the same but no existing cars will pay any more tax. Also under the new system there will be strong incentives in the first year, again, to buy the cleanest vehicles.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that after the introduction of speed bumps in Hyde Park the rate of pollution went up tremendously because of the delays they caused to traffic? Is it not now incumbent on whoever is responsible for traffic lights in London to ensure that they are phased to use the best timing? I say this because a horrible bicycle lane has been introduced in Bayswater Road and although it has been hell while it was being constructed, traffic is now moving at least reasonably well; but when you get near to Marble Arch, all traffic is stuck and the huge pile-back is worse than the bike lane ever was because the phasing of the lights needs to be adjusted. Will the Minister ask the people responsible for traffic lights to consider adjusting the timing?

Lord Ahmad of Wimbledon: Given my noble friend’s knowledge of London roads, she is well suited to be adviser to the Mayor of London. She makes the salient point that we need to ensure that any road schemes are integrated and that any changes that are implemented are sustainable for the long term in addressing the issues raised by the noble Lord, Lord Dubs, in his Question.

Baroness Jones of Moulsecoomb: My Lords, one of the problems I have with this Government is that they show no leadership on issues that are national scandals. Air pollution is not only killing thousands of people every year, it is reducing children’s lung capacity so that in the future they will have endless respiratory problems. Why do the Government not see that the health of the people is their biggest concern?

Lord Ahmad of Wimbledon: I do not agree with the noble Baroness, and perhaps I may put this into context. I have already talked about a total of £2 billion spent since 2011, with £116 million invested in green bus technology. We have also talked about the £5 million investment by Transport for London in 900 buses, along with £14.1 million for the clean bus technology fund, £8 million for the clean vehicle technology fund and £100 million for Highways England. Those are some of the examples of how the Government are putting money towards schemes across the country for transport support. I accept that we are currently facing challenges on health, but at the same time we are pursuing sustainable transport solutions.

Lord Borwick (Con): My Lords, does the Minister agree that the modern diesel engines being produced at Dagenham among other places are so much better than the old ones that the very best thing the owner of an old diesel car can do to avoid poisoning our children is to buy a new car?
Lord Ahmad of Wimbledon: That is why the Government are incentivising new cars in our tax regime, in road tax. On diesel, what we need to consider carefully—and history is a source of great learning on this—is that although change might sound appropriate and the right thing to do at the time, we need to ensure that whatever changes and schemes the Government put money behind are sustainable over the long term.

Lord Rosser (Lab): The Minister has referred more than once to the fact that the Government are looking at the issue which has been raised by my noble friend Lord Dubs but he has not said what action they propose to take to reduce the number of diesel vehicles. I am still not entirely clear whether the Government envisage taking further action or not. The Minister has referred to what the Government have already done, but are they looking at taking further action? If so, by when will we know what that action is likely to be?

Lord Ahmad of Wimbledon: My Lords, to continue on the sustainable theme, I am inclined to say “shortly”, but I will not do so. As the noble Lord is aware—I have already alluded to it—the Secretary of State for the Environment, Food and Rural Affairs, supported by the Secretary of State for Transport, will publish the new air quality plan later this month. That is to be a consultation and will provide the time and the opportunity to consider the issues. I encourage all noble Lords to contribute to the consultation to ensure that when the final plan is published in the summer, it reflects the concerns that have rightly been raised in your Lordships' House.

Lord Cormack (Con): If my noble friend accepts, as he did earlier, that gridlock can lead to extra pollution, does he not accept that the proliferation of cycle lanes has made an enormous contribution to gridlock, stagnation and therefore pollution?

Lord Ahmad of Wimbledon: My noble friend again makes a forceful point and I am sure that the Mayor of London, among others, will take note of it.

Gibraltar

Private Notice Question

3.07 pm

Asked by Baroness Northover

To ask Her Majesty's Government if they will make a statement on the developments surrounding the future of Gibraltar.

Baroness Northover (LD): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we are steadfast in our support of Gibraltar. We are firm in our commitment never to enter arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their wishes, or to enter into a process of sovereignty negotiations with which Gibraltar is not content. We are clear that Gibraltar is covered by our exit negotiations and we have committed to involving Gibraltar fully in the work that we are doing.

3.08 pm

Baroness Northover: My Lords, I thank the noble Baroness for that reply. Can she explain why Gibraltar did not merit a mention in the Prime Minister's letter of last week, despite the EU Select Committee of this House reporting on the complexity of the matter? Will she also distance herself from the idea that we might go to war with our NATO ally Spain over Gibraltar? Moreover, does she not find it an extreme irony that this was suggested merely days after we triggered Article 50 to leave the EU, which in 2012 was awarded the Nobel peace prize for the, “advancement of peace and reconciliation, democracy and human rights in Europe”?

Baroness Anelay of St Johns: My Lords, on the first part of the noble Baroness's Question, it is a matter of fact that Gibraltar and other overseas territories, and the Crown dependencies, were mentioned specifically in the White Paper, as they should be. The letter was not the occasion to convey that matter in addition, but I can assure the noble Baroness that we have engaged thoroughly with Gibraltar during all the processes so far. On other matters, I understand that the noble Baroness may be referring to a comment made by one of my noble friends. We still have free speech in this country; may that long continue.

Lord Collins of Highbury (Lab): My Lords, what the overwhelming number of people in Gibraltar recognised when they voted to remain was that, when Spain acceded to membership, this country negotiated an extremely good deal for very unique circumstances. The unhelpful remarks about gunboat diplomacy do not address the fundamental issue, which is not that the people of Gibraltar doubt Britain's commitment to them to maintain their sovereignty, but that they doubt Britain's ability to negotiate on their behalf the best deal economically. That is what they want to hear from this Government.

Baroness Anelay of St Johns: My Lords, they have heard that and they very much welcome it, as the Chief Minister has made clear. Since the referendum we have set up a system from the Department for Exiting the European Union and the FCO, whereby the overseas territories, including Gibraltar, can be best consulted. For Gibraltar there is a very special track that that particular negotiation follows, which is a joint negotiating committee set up by the Department for Exiting the European Union, chaired by Robin Walker, a Minister in that department, and attended by my right honourable friend Alan Duncan. We take extremely seriously the importance of negotiating the best outcome for the whole of the UK family. That includes Gibraltar.

Lord Garel-Jones (Con): Does my noble friend agree that this dreadful deadlock is unlikely to move forward? First, Spain simply has to recognise that no British Government will ever take any steps that do not have the support of the people of Gibraltar. Secondly, the
people of Gibraltar have to recognise that so long as Spain retains its territorial claim, it will from time to time seek to make life extremely uncomfortable for Gibraltar. Unless and until both sides wish to move forward, this deadlock will remain.

**Baroness Anelay of St Johns:** My noble friend has a long history of professionalism in this as a previous Minister. He is absolutely right.

**Lord Forsyth of Drumlean (Con):** My Lords, is it not obvious that the reason for the sovereignty and status of Gibraltar not being included in the letter is that it has nothing whatever to do with the European Union? Why was that not included in the six-page letter outlining our priorities? Surely, if we have an ex-leader of the Conservative Party pontificating on it, it must be a priority. Why was it not included in the letter?

**Baroness Anelay of St Johns:** My Lords, it is because we take it so seriously that we did not mention simply one aspect in that letter, which, as the noble Lord will be aware—I am sure he has read it in detail—set out general principles, all of which apply to Gibraltar. We are taking our negotiations very seriously and taking every step along the way the opportunity to consult and reflect with Gibraltar on how the discussions will go ahead. Border issues are of course key to our negotiations.

**Lord Liddle (Lab):** While I accept the noble Baroness's sincerity in saying that there is no change in Gibraltar's position, surely the fact that we are leaving the European Union disadvantages Gibraltar an awful lot. When Spain has interfered improperly with the border in the past, we have had the strong support of the European Commission because this was in breach of the freedom of movement rules of the treaty. Does the noble Baroness accept that, now that we can no longer rely on those rules, Gibraltar's position is bound to be considerably worse?

**Baroness Anelay of St Johns:** No, my Lords, because we intend to ensure that the rights of Gibraltar are maintained throughout the negotiations. The border is an important issue; it will continue to be so, and it is a matter that we will resolve. Of course, at this stage, I am not able to provide the exact details of what agreements will be reached. After all, the leaked document to which noble Lords referred is a draft document; it is not even a final document produced by the Commission.

**Liaison Committee**

**Motion to Agree**

3.18 pm

**Moved by The Senior Deputy Speaker**

That the Report from the Committee *New Investigative Committees in the 2017–18 Session* (2nd Report, HL Paper 144) be agreed to.

**The Senior Deputy Speaker (Lord McFall of Alcluith):** My Lords, it is widely acknowledged that Select Committee activity is one of the greatest strengths of the House. The expansion of this activity in the 2010-15 Parliament with the growth in the number of ad hoc committees from one each Session to three, together with the introduction of post-legislative scrutiny, has been rightly popular. In the present Session, we have seen the establishment of the International Relations Committee, which is currently considering its second
report. In addition, it is probably true that there has been more committee activity generally in the House of Lords than ever before, in large part in response to the result of the EU referendum. The work of our committees has never been more important or had greater potential to inform debate on issues of national and international consequence and significance.

I am grateful to all the Members of the House who put forward proposals for ad hoc committees in the next Session. Once again, this has been a very popular exercise and the Liaison Committee has had an excellent range of topics to choose from, with many detailed proposals which were clearly a culmination of great preparatory work and which underline the range and breadth of expertise in your Lordships’ House.

I am also most grateful to members of the Liaison Committee for the constructive and thoughtful way in which they approached the task of first shortlisting, and then selecting, the proposals recommended to the House. We all know only too well that it is never possible to please every Member of your Lordships’ House, even some of the time, but I hope that noble Lords will agree that the committee’s recommendations cover a wide range of subjects which will make excellent use of Members’ talents and contribute to debate and policy-making in a range of topical and cross-cutting areas.

We agreed the following proposals: an ad hoc committee on artificial intelligence; an ad hoc committee on citizenship and civic engagement; and an ad hoc committee on political polling and digital media. We also agreed to recommend an ad hoc post-legislative scrutiny committee to consider the Natural Environment and Rural Communities Act 2006. Inevitably, there is disappointment that not everyone’s proposal could be selected. We received proposals from 45 Members, individually or severally; therefore, 33 proposals have not been chosen.

We considered all the proposals against our published set of criteria, considering which inquiries would make best use of the knowledge and experience of Members of the House, complement the work of Commons departmental Select Committees, address areas of policy that cross departmental boundaries and be able to be confined to one Session. This was no easy task and it was a duty that the Liaison Committee took great care and time in fulfilling. I hope that the House will agree with me that our recommendations provide a timely and manageable set of inquiries for the coming Session.

I end on the note of thanks with which I began. Both the process which led to the committee’s report and the process of agreeing it have confirmed to me the seriousness with which noble Lords approach their role in your Lordships’ House and the range and depth of expertise I am most grateful to all concerned. I beg to move.

Lord Campbell-Savours (Lab): My Lords, it is not my practice to question decisions of the Liaison Committee, having spent some years on the committee myself. I congratulate those who have been successful in their applications. I understand that not everyone can be pleased, but I am finding it difficult to understand the Liaison Committee’s attitude to yet another failed application for an ad hoc inquiry into national identity cards.

The story I am hearing is that the committee felt that attitudes to the introduction of national identity cards are too polarised, with strong feelings on both sides of the argument. There was also a view that the Government were unlikely to respond positively. I was a member of the committee when additional resources were made available to increase the number of inquiries: the ability to deal with difficult issues, where further thinking was required, was one of the principal reasons for setting them up, and the potential response of the Government was not to be a consideration for the committee. Its remit was to carry out in-depth inquiries, enabling Parliament and the public access to information on what are sometimes the most difficult subjects.

This application was supported by four former Cabinet Ministers in both Labour and Conservative Governments, yet the application was rejected. The truth is that only we in this House can do this work in depth. Those of us who have been in the Commons know that Select Committee examinations of issues take place only over short periods: two months for a Select Committee inquiry in the Commons is a lengthy inquiry. The potential of ad hoc committees is for six- and 12-month inquiries, enabling us to carry them out in far greater depth.

I understand the position of the Liberal Democrats on the committee because historically they have been opposed to national identity cards, but I am having great difficulty understanding the position of the Government. A huge change is taking place in both Houses of Parliament in attitudes to national identity cards. There is strong support among Conservative supporters in the country. I say to Conservative Members of this House that they should check with their own associations because my Conservative friends—and there are quite a few of them—almost universally tell me that they support the introduction of national identity cards. Furthermore, there is no longer pressure on the Government from the Liberal Democrats, as there was when they were in coalition, when they blocked the Labour Government’s initiative of introducing national identity cards. Moreover, we now have the Brexit debate, where the issue of identity is becoming more important. On my own Benches, there is overwhelming support for the reintroduction of national identity cards. Whereas originally they were voluntary, after a compromise arrangement was made, many of my colleagues now believe that they should be mandatory.

However, there are aspects of the Liaison Committee procedures that I believe need further thought. First, there is a member of the Government on the committee: the Leader of the House. I have no objections to the Leader of the House being on the committee but whether the Leader of the House should influence what is essentially a Buck-Bench decision made by the committee is questionable. Then there is the question of who is actually making the decisions. We know that at least one member was called away on important business abroad when some of the applications were approved, although all members approve the final list on a write-round.
I believe we need an amendment to the way the committee deals with applications. As ad hoc committees make an important contribution to the House's work and reputation, they should be the subject of a special approval procedure. All committee members should be required to list their preferences and, after either a formal or an informal consultation with their own groups, then make the decisions. Decisions on ad hoc committees can influence the credibility of the House and they should reflect the widest possible consultation and consideration. A handful of members, dependent on their diaries, able to attend a committee only at a particular time, is a totally inadequate basis on which to make such important decisions, which command hundreds of thousands of pounds of the House's resources.

Finally, in light of what has happened, I have a suggestion—perhaps even a solution. Why can the House authorities not be tasked to find the additional resource in this year to fund an additional ad hoc committee? The Clerk of the Parliaments and officials responsible for financial control, through their diligence and sensitive understanding of our needs, have made huge savings on House expenditure over recent years. Why cannot a little of that saving find its way into an additional ad hoc committee on this important issue? The introduction of these cards is an extremely important issue in these times of both social and economic instability internationally. An ID card inquiry is now a must and Parliament needs to move with the public debate. I call upon the House authorities to seriously consider whether the additional resources can be found.

Lord Naseby (Con): My Lords, I should like to make a short additional point. It seems to me that your Lordships spend an enormous amount of time and use quality arguments, and we produce good reports. Unfortunately, those reports seem to get very little exposure in the nation and in the departments of state. This is somewhat in contrast to the Public Accounts Committee in another place, which I had the privilege to be on for some 12 years. Every one of its reports was covered in all the media that are worth talking about and by every department of state. Perhaps I may say to the Senior Deputy Speaker that he and his colleagues need to look at the distribution of these reports and what happens to them, and make sure that they reach the potential audience for which they were originally prescribed.

3.30 pm

Baroness Seccombe (Con): My Lords, I had the privilege of serving on this committee under the very able chairmanship of the Senior Deputy Speaker. I always feel that committee work is democracy in action. Even members of the committee do not necessarily get their first choice considered, because a lot of hard work goes into discussion. I hope that people who have been disappointed will accept that disappointment and approve this Motion.

Lord Hope of Craighead (CB): My Lords, I should like to follow what the noble Baroness has just said. I too am a member of the Liaison Committee. When we were told about the people who should be thanked, it occurred to me that among others they should be the clerk to the committee and those who worked for her. One thing which all of us shared was a substantial briefing, prepared by her and her assistants, on each of the topics before us. The decisions that we took were based not only on discussion among ourselves but on private reading, so that we had informed ourselves as to what the issues were and how the various contestants should be balanced against each other. As was pointed out, it was a two-stage process. First, there was the reduction of a wide number of cases to a shorter list. Secondly, when we looked at it again, that shorter list was supported by further research. It should be understood that these decisions are not taken lightly. I am not aware of any political influence. As a Cross-Bencher, I think that the decisions were taken on their merits and on the basis of the information which we were given.

Lord Foulkes of Cumnock (Lab): My Lords, as I am a member of the committee as well, I want to endorse what the noble and learned Lord, Lord Hope, has just said. The staff did a tremendous job. I hope that my noble friend Lord Campbell-Savours was not implying that a huge amount of work was not done by them, because it was—they did scoping reports on each of the subjects, right from the start. As my noble friend knows, I agree with him that his is an important topic but, with respect, he is not the only one who is disappointed by their topic not having been chosen.

One thing that the Senior Deputy Speaker said needs to be underlined. I agree on the importance of the work of committees of this House. I have recently been rather annoyed by some of the comments about the work of the House, which have detracted from the work done in committees. I was particularly disappointed that the documentary series “Meet the Lords”, which otherwise had some quite good parts in it, did not cover the work of committees. The EU Select Committee and all its sub-committees, and all the other committees, were not there. When I suggested to one of the producers that they should cover them, they said, “Committees are boring—they don't make good television”. But if you want to give a clear idea of what the House does, you should cover committees, where a huge amount of work is done.

I must declare an interest. Not only am I a member, but I was lucky enough this year that the only topic I suggested was elaborated on and ultimately included in the recommendations.

Noble Lords: Oh!

Lord Foulkes of Cumnock: The House is jumping to the wrong conclusion. If your Lordships look back to a year ago, you will see that I also spoke in that debate and, on that occasion, I had put forward six proposals. None of those was accepted and I still thought that the committee had done a damn good job.

Particularly with the noble Lord, Lord McFall, in the chair—like with his predecessor the noble Lord, Lord Laming—a huge amount of careful work is done. The noble Lord, Lord McFall, spent hours and hours going into this and discussing options with the staff. In the end, someone will always be disappointed—more than one on this occasion, although only one has raised it.
I would go along with what my noble friend Lord Campbell-Savours has said, and if further resources are available, the topic ought to be looked at carefully. But I hope that will not stop this report being endorsed, because as I understand it, the committees need to be up and running immediately after the Queen’s Speech if they are to be effective. If we delay endorsing this report until after Easter, that will not be possible. I hope we will give a vote of confidence to the noble Lord, Lord McFall, and to the staff of the Liaison Committee, who have done a tremendous job.

Lord Harries of Pentregarth (CB): I would like, very briefly, to commend the committee for its work on a very wide and interesting range of subjects, but in particular for the way, at least in respect of one proposal, it has managed to put together three proposals. That seems to me to be a very satisfactory way of approaching this, if it is possible.

Lord Fox (LD): My Lords, I agree with the noble Lord opposite who spoke about how sometimes excellent and well-researched reports fall on fallow ground as far as publicity is concerned, but I disagree with his conclusion that it is up to the authorities to do something about these reports. It is very much up to those of us who sit on these committees to work hard to get these reports out into the public domain. We are the people who can talk these reports up and get them out among the different constituencies which we have direct lines into. I encourage all of your Lordships to work very hard in making sure that the great work of these committees actually gets out there.

Lord Higgins (Con): My Lords, the ad hoc committees are an excellent innovation, but as the noble Lord and the Liaison Committee know, the committee on which I happen to have the honour of serving, on personal service companies, did not receive co-operation from the Treasury Minister concerned, who did not allow his officials to appear and give evidence to us. I am sure that is completely wrong. Can I be assured that the House authorities will make it clear that we expect government officials to co-operate in our inquiries, not least because in this particular case the Government then adopted in a Budget many of the ideas we put forward but gave us absolutely no acknowledgement?

The Senior Deputy Speaker: My Lords, I thank all noble Lords for their comments, in particular the noble Baroness for her very positive ones.

The noble Lord, Lord Naseby, made the point about communication, but I have to disagree with him. If we had been looking at the press for the past three or four months, we would have seen the coverage that many reports the House of Lords have produced, not least on the EU, have had. I remember leaders in the Financial Times, the Guardian and the Telegraph on those reports. Is there more that we can do in this area? Yes, but we are looking at the communications strategy for getting this out, and a lot of hard work has been undertaken by staff in that area, which I would like to build on. I reassure the noble Lord that a lot of good work has been going on in that area.

The noble and right reverend Lord, Lord Harries, and the noble Lord, Lord Higgins, put recommendations in which were not accepted, but I recognise the point that the noble Lord, Lord Higgins, made about officials co-operating with the committee. The Liaison Committee will certainly look at that issue.

To give your Lordships a bit more understanding of how we went about our business, there were 33 proposals, so we decided we would have two meetings. The first would look at all the proposals and condense them down to about 10 or 12. In that process, we combined a number of proposals. For example, the proposal of the noble Baroness, Lady Royall, whom I see in her place, was combined with the citizenship proposal, and the staff engaged with the individuals who had contributed these suggestions to get that number down.

The result of those three weeks of intense negotiation was that we had nine proposals to consider at our second meeting.

I say very strongly that there was no political bias in the Liaison Committee report—no hint whatever. That must be a matter of public record. The Leader of the House was mentioned. It is not for me to decide whether the Leader of the House is on the committee or not, but I can say on reflection that the Leader of the House wanted one proposal to be considered for one of the ad hoc committees and it failed to be selected. So there was no influence from anyone, whether Liberal Democrats or the Leader of the House, and I can say today that, as long as I am chairing a committee of the House of Lords, I will not allow any political influence at all. That is a guarantee to noble Lords, and I hope that they take that on board.

Let us remind people that this is a very difficult exercise. The issue of staff capacity has to be taken into consideration. Noble Lords should remember that a review of committee staff is taking place in 2017-18, which I shall be chairing. I should like Members to contribute their points of view to the review, because with us exiting the EU and the EU committees eventually dissolving, there is an opportunity for us to consider that again. I will be taking that on board as we go along. So, yes, I want more engagement from Members.

When I got this job, I mentioned three themes: transparency, accountability and engagement. That applies with force to my chairmanship of the Liaison Committee and adopting any further enhancements of committee work, which I think we in the House of Lords should all be proud of. I commend the Motion.

Motion agreed.
Privileges and Conduct Committee  
Motion to Agree

3.41 pm

Moved by The Senior Deputy Speaker

That the report from the Select Committee Declarations of Interests: People with Significant Control of a Company (8th Report, HL Paper 147) be agreed to.

The Senior Deputy Speaker (Lord McFall of Alcluthu): My Lords, in moving that the eighth report from the Committee for Privileges and Conduct be agreed, I will speak also to the third Motion in my name on the Order Paper amending the Code of Conduct. The eighth report covers three areas. First, it proposes minor changes to the Code of Conduct and the guide to the code to provide greater clarity for Members about what needs to be declared when speaking in the House. Secondly, it proposes an amendment to the guide to provide that when the commissioner upholds a complaint alleging non-declaration of a relevant interest, she should examine whether there were other possible instances of non-declaration of that interest in the four years preceding the complaint. Finally, it recommends that Members should register in the Register of Lords’ Interests if they are on the central Register of People with Significant Control and should list the companies or organisations in question.

Lord Forsyth of Drumlean (Con): My Lords, I do not want to detain the House. First, I very much welcome this eighth report, but reading it made my brain hurt a little, and it is still hurting. The Senior Deputy Speaker said that there are minor changes to the code. Paragraph 7 of the report focuses on the word "might" in relation to where a declaration is required. Paragraph 11 of the Code of Conduct states:

"The test of relevant interest is whether the interest might be thought by a reasonable member of the House of Lords discharges his or her parliamentary duties".

I have always thought that “might” was a bit vague. Paragraph 7 of the report states:

"'Might' implies speculation as to whether an interest is relevant. 'Would' implies more certainty".

I thought: excellent—that is absolutely right. But what is proposed is that the test of a relevant interest is therefore not whether a Member’s actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this would be the case. In other words, one “might” has been removed but another remains. I ask the Senior Deputy Speaker to explain why, if the committee felt that “might” implies speculation and “would” implies more certainty, we did not get rid of all the “might” and replace them with “woulds”.

The Senior Deputy Speaker: All I can say is that the challenge of the mighty noble Lord, Lord Forsyth, is too much for me here today. This was undertaken by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, with the intention to make the code more consistent. In moving that, the committee accepted it at the time. I invite the House to agree the Motion, mindful of the comments of the noble Lord, Lord Forsyth. I will go back and ensure that his comments are taken on board when we finally produce the new code.

3.45 pm

Lord Brown of Eaton-under-Heywood (CB): I had the honour, as has already been mentioned, to chair the Sub-Committee on Conduct of the committee whose report this is. Part of our function is to keep the code under review. Declaration of interests is always a tricky area, but we were particularly concerned with the oddity of paragraphs 11 and 12 as they currently stand.

The House will know that under paragraph 10(b), set out in paragraph 1 of the report, there is an obligation to declare relevant interests when speaking in the House, and so forth. Paragraph 11 of the code, set out in paragraph 4 of this report, is the governing provision. It says:

"The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member ... discharges his ... parliamentary duties".

On the face of it, that has stood for some years and seems to me a perfectly sensible provision.

Paragraph 12 of the code, set out in paragraph 5 of this report, by way of elaboration, exegesis or explanation—call it what one will—seeks to assist in the interpretation or understanding of the previous paragraph. It states:

"The test of relevant interest is therefore not whether a Member’s actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case".

What troubled us, and still troubles me is that it is a rather curious formulation which, far from assisting in understanding paragraph 11 of the code, seems positively unhelpful. Paragraph 37 of the guide defines who a reasonable person is, and it is worth reading. It is very short, and states:

"A reasonable member of the public is taken to mean an impartial and well-informed person who judges all the relevant facts in an objective manner".

One has to have such an approach, and it seems a perfectly sensible definition of a reasonable person. The trouble with paragraph 12, unless we change it as this report recommends, is that once you introduce two “mights” there is uncertainty beyond good sense. The noble Lord, Lord Forsyth, would redraft paragraph 11 by substituting for the word “might” in the first line the word “would”. Think how that then reads:

"The test of relevant interest is whether the interest—" would—"be thought by a reasonable member of the public to influence the way in which a member of the House ... discharges his ... duties”.

Surely that would weaken the obligation to a wholly unacceptable point. It raises the threshold at which you have to declare an interest, so that the only time you have to do so is if a reasonable person would think that what you are about to say is coloured by your interest. That is surely absurdly high. The governing test must remain as it is and in paragraph 12 we are just clearing things up by substituting for the second “might” the word “would”. 
Lord Forsyth of Drumlean: Paragraph 7 says: “Might’ implies speculation as to whether an interest is relevant. ‘Would’ implies more certainty”. Surely in this area we need certainty, not speculation.

Lord Brown of Eaton-under-Heywood: We need certainty as to when the obligation arises and the interest has to be declared. Surely, the whole object of this is to allay the public’s concern and allay a reasonable person’s suspicion that your interest might influence what you are going to say. That is what paragraph 11 currently provides for. You cannot sit quietly and not declare an interest merely because a reasonable person might, rather than necessarily would, think that it is going to affect what you are going to say. That would be an absurdly low test and completely out of harmony with all other public bodies, with the code in the House of Commons and the rest of it. I respectfully urge your Lordships to consider that, if you crossed out “might” and put “would” in the governing paragraph 11, this House would be brought into disrepute because it would be said, “They don’t have to declare an interest unless a reasonable person not might but would think that it would affect them”. Is not that an absurdly high test for when this obligation is brought into being?

Lord Grabiner (CB): I respectfully agree with the noble and learned Lord, Lord Brown, and perhaps refer to the point made by the noble Lord, Lord Forsyth. “Might” is less likely than “would”, but it is a realistic possibility, and it is not, with respect, speculative at all; it just means that it could happen in a realistic sense. In those circumstances, if a member of the public might take that view, surely it would be much more impressive if the obligation imposed on the Member of the House is to make a proper disclosure.

Lord Mackay of Clashfern (Con): I have the responsibility of having participated in the report now put before your Lordships by the Senior Deputy Speaker. What we are proposing is as good as you can get in this area. First, the member of the public is a hypothetical individual—and the more hypothetical you may think he is when you have heard the qualifications. But the relationship between the Member of the House and a particular interest is not in any sense speculative; it is something that he or she knows they are going to have. Whether that will influence what he or she is going to say in the House of Lords is a very definite matter, so it is perfectly appropriate that “would” should be used. When you are dealing with a hypothetical man or woman—“member of the public” is the phrase used to cover that difficulty—it is purely hypothetical. To say that a member of the public would if properly qualified do this is to set it at a very high level indeed. Having due regard to the difficulty expressed by my noble friend Lord Forsyth, because the paragraph does not say “would” every time, I think that it has made the distinction in a suitable and appropriate way where it has done so.

The Senior Deputy Speaker: My Lords, I am very much aware that I am speaking to a House full of reasonable people. In that regard, earlier I invited the House to agree the Motion and I shall go back and ensure a positive exchange between the noble Lord, Lord Forsyth, myself and the noble and learned Lord, Lord Brown. If the House is agreed on that, I beg to move.

Motion agreed.

Code of Conduct
Motion to Resolve

3.54 pm

Moved by The Senior Deputy Speaker

To resolve that the Code of Conduct for Members of the House of Lords be amended as follows:

In paragraph 12, in the first sentence, leave out “this might be” and insert “this would be”.

Motion agreed.

Criminal Finances Bill
Committee (2nd Day)

3.55 pm

Relevant documents: 22nd Report from the Delegated Powers Committee.

Clause 42: Failure to prevent facilitation of UK tax evasion offences

Amendment 161

Moved by Baroness Bowles of Berkhamsted

161: Clause 42, page 107, line 27, at end insert—

“(9) The Secretary of State may by regulations made by statutory instrument create, amend or remove further facilitation offences in respect of economic crimes other than UK tax evasion.

(10) Regulations under subsection (9) may create offences conferring liability on a relevant body where a person commits an economic crime when acting in the capacity of a person associated with the relevant body.

(11) Regulations made under subsection (9) must contain the safeguards set out under subsections (2) to (8) and sections 44 to 47.

(12) For the purposes of subsections (9) and (10), “economic crimes” means any of the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into) with the exception of an offence under section 1 of the Theft Act 1968.

(13) A statutory instrument containing regulations under subsection (9) may not provide for more than one facilitation offence, but, for the avoidance of doubt, more than one statutory instrument may be made under subsection (9).

(14) A statutory instrument containing regulations under subsection (9) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Baroness Bowles of Berkhamsted (LD): My Lords, the Bill creates a second failure to prevent or facilitation offence for tax evasion, the first such offence being in the Bribery Act. It therefore makes sense to have an extended family of failure to prevent offences for other serious crimes for which the UK has spectacularly failed to prosecute large companies. The purpose of
A prosecutor should take into account the commercial consequences of a relevant conviction”.

At paragraph 34, concerning exclusion from participation in public contracts, the guidance states:

“A prosecutor should take into account the commercial consequences of a relevant conviction”.

No wonder it is only smaller companies that get pursued. I fear that we do not have equality before the law.

The Attorney-General, in identifying LIBOR as one of the cases the UK was not able to prosecute, noted the, “clear implications for the reputation of our justice system”.

The Telegraph chief business correspondent said of LIBOR and forex in 2016 that we outsource, “corporate accountability for criminality in the City to US prosecutors”.

It is not as if there is no financial incentive to fix it. In May 2016, the Annual Fraud Indicator put the cost of fraud to the UK economy at £193 billion, with the largest element being procurement fraud, estimated to be £127 billion a year, including from false invoicing.

Last week, in discussing Amendment 11, we debated money laundering, property, the role of banks and the sorry tale—far stronger action in the US, regulatory fines here, no culprits. Therefore, it seems particularly unfortunate that the crimes of fraud and money laundering, which feature in the high-profile failure to prosecute cases, have not yet been covered by failure to prevent offences. When will we truly be a failure to prevent jurisdiction, not a failure to prosecute jurisdiction?

In replying on Second Reading, the Minister said that the call for evidence was part of a two-stage process, and that, should it justify changes, a consultation on a firm proposal would follow. However, I would say that the consultation was wider. There is plenty of evidence concerning failure to prevent offences. It is in use for bribery, is in this Bill for tax evasion, and is a Conservative manifesto promise. Why not give ourselves this option to get it done?

Fraud and money laundering cost billions, fund terror and misery and make us a low-justice country for big business—and could even be used against us in seeking trade agreements. There is urgency. I beg to move.

Lord Rosser (Lab): My Lords, I will speak to my Amendment 166, which is also in this group. It would require the Secretary of State to issue a public consultation on new criminal offences for corporate criminal liability and for economic crime within six months of the day on which the Bill becomes an Act, and for the Secretary of State then to bring forward legislative proposals in response to the consultation within 12 months of the day on which the Bill becomes an Act.

Amendment 161 and Amendment 163—the alternative, narrower version—explore putting additional failure to prevent offences into the Bill and bringing them into effect later. I suggest creating an option in this way because it gives time to evaluate the recent call for evidence and because of the limited legislative opportunities due to Brexit. Amendment 161 is broader and more flexible and uses a statutory instrument to introduce further failure to prevent-type offences. I know that sounds a bit scary, so I encourage noble Lords to look at the whole of the amendment, because there are significant constraints on the SI’s content. First, as specified in proposed new subsection (11), the new offences “must” have the same safeguards and procedures that the Bill introduces for tax avoidance. Importantly, this will include due diligence defence and provision of guidance concerning procedures for preventing the offence.

Secondly, the new offences are not plucked from thin air. Proposed new subsection (12) states that they have to be from the serious crimes listed in the Crime and Courts Act for which deferred prosecution agreements are possible. That list can be added to under that Act, but it will always be for serious crimes. Thirdly, to compensate for the flexibility, proposed new subsection (13) provides that each SI should introduce only one offence. The idea here is that each receives individual consideration and scrutiny.

Amendment 163 is the narrowest way I can see to pursue the same objective. It creates four specific additional offences and provides for separate commencement from the general commencement provisions in the Bill. There is also a sunset clause so that, if the decision is not to commence, there is no hanging about. The four offences are those named in the Government’s call for evidence: common law fraud, statutory fraud, money laundering and Theft Act false accounting. These are the high-profile and costly areas where we have failed to prosecute large companies. As before, the defence guidelines and procedures follow the same pattern. That is important for businesses so that there is no additional complexity.

4 pm

In proposed new subsection (5) I put in an avoidance of doubt provision whereby the standard of proof for the due diligence defence is only to the civil standard. I believe this is how these defences are intended to operate—perhaps that is inevitably how the standards of evidence work—but I could not find it anywhere, so I would like to hear the Minister confirm that for the existing offences.

Those are the technical points, but why the urgency? First, we are not looking at unknown economic crimes—they are already criminal—but the modern large corporation escapes justice unless guilt is pinned on a specific senior individual who is considered the directing mind. As long ago as 2010, the Law Commission in its consultation paper No. 195 at paragraph 5.84 called the identification doctrine, “an inappropriate and ineffective method of establishing criminal liability of corporations”.

The Crown Prosecution Service legal guidance states under its evidential considerations in paragraph 21:

“The smaller the corporation, the more likely it will be that guilty knowledge can be attributed to the controlling officer and therefore to the company itself”.

At paragraph 34, concerning exclusion from participation in public contracts, the guidance states:

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Last week, in discussing Amendment 11, we debated money laundering, property, the role of banks and the sorry tale—far stronger action in the US, regulatory fines here, no culprits. Therefore, it seems particularly unfortunate that the crimes of fraud and money laundering, which feature in the high-profile failure to prosecute cases, have not yet been covered by failure to prevent offences. When will we truly be a failure to prevent jurisdiction, not a failure to prosecute jurisdiction? In replying on Second Reading, the Minister said that the call for evidence was part of a two-stage process, and that, should it justify changes, a consultation on a firm proposal would follow. However, I would say that the consultation was wider. There is plenty of evidence concerning failure to prevent offences. It is in use for bribery, is in this Bill for tax evasion, and is a Conservative manifesto promise. Why not give ourselves this option to get it done?

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Lord Rosser (Lab): My Lords, I will speak to my Amendment 166, which is also in this group. It would require the Secretary of State to issue a public consultation on new criminal offences for corporate criminal liability and for economic crime within six months of the day on which the Bill becomes an Act, and for the Secretary of State then to bring forward legislative proposals in response to the consultation within 12 months of the day on which the Bill becomes an Act.
The Bill makes it a corporate offence to fail to prevent tax evasion and adopts a similar approach to prosecution of bribery offences. However, as the noble Baroness, Lady Bowles of Berkhamsted, again indicated, the issue was raised at Second Reading, when the Government said that, "it would be wrong to rush into legislation in this area", of corporate liability for economic crime, and that there was, "a need to establish whether changes to the law are justified".

The Government said that they launched a public call for evidence—the closing date for which has now passed—and that if the responses, "justify changes to the law, a consultation on a firm proposal would follow". Accordingly, the Government declined to comment on a timetable for reform, "should that be the way forward".—[Official Report, 9/3/17; col. 1518.]

The Business & Human Rights Resource Centre recorded just over 300 allegations of human rights abuses made against 127 UK-linked companies between 2004 and 2014. Although there is clear evidence that some companies were potentially serial offenders, it seems that there have been no corporate criminal prosecutions. Nearly half the allegations were made against extractive companies.

If there is a consultation following the call for evidence—and that may well be a big if—will the Government also consult on the need, or otherwise, to change the law on corporate criminal liability on human rights violations as well as economic crimes? When an individual injures or kills another person, a criminal prosecution is initiated, but when a company is involved in causing similar harm—not least overseas—the ability to prosecute companies successfully is much reduced to the point of it being almost a deterrent to proceeding at all.

Overall, the corporate criminal law needs to provide that companies can be held liable for committing offences and not just for omitting to prevent them. No UK financial institution has faced criminal charges as a result of the 2008 financial crisis, and there appear to have been some recent serious issues which have resulted in no prosecution against companies as opposed to an ability to resolve the matter through financial payment.

There is also the issue that it appears from a relatively recent case that, under corporate liability laws, it is not illegal for companies to mislead their auditors. As has been said, current laws seriously disadvantage small and medium-sized businesses compared with larger businesses. SMEs, where directors are more involved, are much more easily prosecuted under the existing corporate liability regime, since current UK corporate liability laws rely on a "directing mind" test that requires prosecutors to prove that senior board-level executives intended the misconduct to occur. The Crown Prosecution Service, for example, stated that because of corporate liability laws it could not mount a successful prosecution against the companies involved in the phone-hacking scandal.

When do the Government intend to commit themselves to address this issue of the deficiencies within the current corporate criminal liability laws? They could do so today by accepting one of the amendments in this group. They could do so today by accepting my amendment, with its timetable for a public consultation and then legislation. If that is more than the Government are prepared to do, they could today at least announce that there will definitely be a public consultation on a firm proposal on the issue, following the call for evidence, and say when that public consultation is likely to commence.

Lord Leigh of Hurley (Con): My Lords, I declare my interests, principally as a member of the Chartered Institute of Taxation. I wish to speak particularly on Amendment 161. The noble Baroness, Lady Bowles of Berkhamsted, is right that the mood of the public has changed dramatically and significantly against those who practise tax evasion—and to some extent tax avoidance, which I think she mentioned, although we are focusing here on tax evasion—so having such a clause in the Bill is very welcome.

Turning my mind back to 20 or 30 years ago when I was a tax practitioner, in many respects it would have been remarkable to think that this clause might appear in a Bill. Indeed, many of your Lordships may have noticed in Sunday's and today's national papers a two-page advertisement by a large Swiss bank protesting that it does not in any way condone tax evasion. It is quite extraordinary to see that—and most welcome—and it has no doubt come about in part because of the pressure to change public opinion brought to bear by the Government and Members of this House.

However, in respect of Amendment 161, I agree that the damage caused by economic crime is very serious. I welcome the Government's consultation on corporate criminal liability for economic crime, but this is an extremely complex legal area that could significantly impact on the UK's financial sector, in which I work, and in particular on the UK's SME financial sector, which has a lot on its plate at the moment. Therefore, I hope that the Government will bring forward a consultation on possible options for reform following the conclusion of the call for evidence, which I think has just ended or will close shortly. We should wait until that is completed before a decision is made on introducing new legislation.

Lord Beith (LD): My Lords, my noble friend has explained with magnificent clarity the purpose and nature of her two amendments. However, in discussions that I have had with her, she has still not quite convinced me that the use of a statutory instrument to create further facilitation crimes is something that I ought to be enthusiastic about. I well understand the purpose that she is pursuing and the care with which Amendment 161 incorporates various safeguards both within its
own text and by reference to other legislative provisions. My concerns are not raised by Amendment 163, which she offers as an option.

As your Lordships look further at this matter, I just hope that we can focus a little attention on the fact that, if anything is created as a crime by a statutory instrument, it is done by a process which, although affirmative in terms of the amendment, is not capable of amendment. Therefore, any defect in the way it is worded or presented can only result in either it going through in a faulty way or the Government accepting that they should withdraw the amendment and come back with a better one. I wish that they would do that more often and quite quickly, because it would resolve some of the problems that we have with statutory instrument procedure. However, I listened to that part of the debate with still unresolved anxiety about the use of a statutory instrument without further qualification.

Lord Hodgson of Astley Abbots (Con): My Lords, I think it is worth making two points. I understand the point that the noble Baroness, Lady Bowles, was making and the importance of the topic that she has raised. It is quite a serious matter to introduce a change of this nature by a statutory instrument—an issue that has concerned your Lordships’ House in the past. I understand that the noble Baroness has drafted her amendment to try to avoid some of the worst excesses but it is something which—with Henry VIII powers and so on—we are very concerned about. Widening this provision through a statutory instrument could lead to some difficulties regarding the appropriate level of parliamentary scrutiny, given that statutory instruments are, by definition, not amendable.

My second point relates to Amendment 166 in the name of the noble Lord, Lord Rosser. I always support him when he wishes to do post-legislative scrutiny. I think that part of what he is getting at here is that we should look at whether all the holes have been blocked up. However, to do so within six months of the day on which the Act is passed will not give much time to see how the new legislative provisions are bedding down. Therefore, from my point of view, it would be more appropriate if a longer time was allowed during which the serious impact of the Act would, I hope, make itself felt.

4.15 pm

Baroness Kramer (LD): My Lords, I speak very much in support of my noble friend Lady Bowles on this occasion. The issue she is attempting to tackle is that of delay. There are serious gaps in the Bill—as they have just finished a consultation, I suspect that the Government recognise that. The “failure to prevent” focus which it has brought on a limited number of issues should have been applied to the broader range of very serious business and economic crimes. On these Benches, our great fear is that if occasion is not taken in this Bill to put in place the structure that will enable action to be taken on those issues, there will be a long delay, because bringing forward new legislation in the environment of Brexit will mean that everything is very seriously delayed. In that time, we will find ourselves in a situation where companies believe that they are potentially able to get away with it.

Lord Judge (CB): My Lords, I had intended to speak at a little length but the noble Lord, Lord Beith, has said everything that I wished to say about the dangers of creating criminal offences by secondary legislation.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I am very pleased to be able to return today to our debate in Committee, beginning with the very important issue of corporate criminal liability. Through this Bill the Government are building on the efforts of the last Labour Government, when they created the Bribery Act, by creating new corporate offences of failure to prevent the facilitation of tax evasion. These are significant proposals and I look forward to debating them further shortly. The amendments in this group relate to corporate criminal liability for other types of economic crime—that is, other than bribery and the facilitation of tax evasion. This issue has, of course, arisen a number of times in both Houses during the passage of the Bill, and these amendments have allowed us to have an insightful and constructive debate.

As noble Lords have said, the damage caused by economic crime perpetrated on behalf of or in the name of companies—to individuals, businesses, the wider economy and the reputation of the United Kingdom as a place to do business—is a very serious matter. As this House will be aware, the Bribery Act is widely respected as both a sound enforcement tool and a measure that incentivises bribery prevention as part of good corporate governance. As I have said, this Bill makes similar provision in regard to the facilitation of tax evasion. That provision has followed a process of full and lengthy public consultation, as did the implementation of the Bribery Act. As my noble friend Lord Leigh alluded to, these are very complex legal and policy issues with the potential for significant impact on companies operating in the UK.

I hope noble Lords will agree that this level of detailed consideration of both the existing legal framework and any proposals to extend it was crucial. That is why the Government announced, at the time of last year’s London Anti-Corruption Summit, that we would consult on the creation of new forms of criminal liability. The Government’s public call for evidence on corporate criminal liability for economic crime was published on 13 January. It openly requested evidence for and against the case for reform, and sought views on a number of possible options, such as the Bribery Act’s “failure to prevent” model, as an alternative to the current common law rules. The consultation closed only last week, on Friday 31 March. The Ministry of Justice is now assessing the responses received, but, as noble Lords will appreciate, it is too early to confirm the outcome. Should the responses received justify changes to the law, the Government would then consult on a firm proposal, as the noble Lord, Lord Rosser, articulated. I hope that reassures him that we are continuing to explore this issue as his amendment proposes. I trust noble Lords will agree that it would be wrong to rush into legislation, or to commit to doing so in the future, prior to giving the matter the appropriate consideration, as my noble friend Lord Hodgson said.

Amendment 161 provides for the novel approach that we could add additional offences to the legislation
by regulations. I commend the noble Baroness on her ingenuity—I was promised she would show it—but, as I have said, these are complex issues with potentially significant implications for companies across the country. The Government do not, therefore, believe that it would be appropriate to extend the failure to prevent offences via secondary legislation, which would not allow for the appropriate level of parliamentary scrutiny of proposals such as this.

The noble Baroness, Lady Kramer, asked about the timing of the failure to prevent measures and why the Government do not act now. She said we cannot afford to delay and made a point about the upcoming Brexit legislation. I remind noble Lords that the Bribery Act offence has been on the statute book for a number of years, allowing us to assess its effectiveness. We are now legislating on tax evasion and already looking closely and openly at the question of extending it to wider economic crimes. The Government are not delaying, we are acting—and we are doing so in a sensible and considered way.

The noble Baroness, Lady Bowles of Berkhamsted, asked about the standard of proof for the failure to prevent economic crime. Her Amendment 163 allows for the defence of reasonable procedures to be satisfied by the civil standard—that is, the balance of probabilities. I can confirm, as she wanted, that it mirrors the approach in the Government’s proposed offence of corporate failure to prevent the facilitation of tax evasion.

The noble Lord, Lord Rosser, asked whether HMG will legislate to create corporate liability for failure to prevent serious harm or human rights abuse. I wrote to the noble Lord about this—it is obviously seared in his brain or, probably, was passed straight to his outbox. All businesses are expected to comply with the legislation that comes under the jurisdiction of the UK, including that which relates to human rights. While the Government have no ability to regulate UK businesses operating in overseas jurisdictions, we encourage them to honour the principles of internationally recognised human rights wherever they operate. More broadly, in 2013, we were the first country in the world to produce the world-leading Modern Slavery Act, which requires them to produce annual statements on what they have done to ensure that such issues do not occur in their business and supply chains.

Large UK-domiciled businesses must also comply with laws that require them to report certain human rights issues, including the Companies Act and our world-leading Modern Slavery Act, which requires them to produce annual statements on what they have done to ensure that such issues do not occur in their business and supply chains.

I hope I have fully answered noble Lords’ questions and that the noble Baroness, Lady Bowles, will feel free to withdraw the amendment.

Lord Rosser: My Lords, I suspect I am on a mission that is not going to succeed, but it is unfortunate that a number of key decisions are likely not to be taken by the Government until this Bill becomes an Act. The Minister said that the closing date of the public call for evidence in relation to corporate criminal liability has just gone, but do the Government expect to give any indication before Report as to whether or not they will be moving to consultation on a firm proposal or, alternatively, are they likely to indicate before Third Reading whether they will be moving to consultation on a further proposal?

Baroness Williams of Trafford: Perhaps I may look into that and let the noble Lord know because I am reluctant to make sweeping promises at the Dispatch Box without knowing exactly what the timescales will be. I will let him know, certainly before Report, what the expected timescales are.

Baroness Hamwee (LD): Before my noble friend responds, the Minister referred to the Modern Slavery Act. I do not want to be overly pedantic but I do want to be a bit pedantic because this is an important point. She mentioned the requirement on certain companies to report on the steps that they are taking under Section 54 with regard to their supply chains. I think that she will agree that their statement as regards the steps they are taking can be a statement, “that the organisation has taken no such steps”.

That would be regrettable. However, there seems to be a feeling that every organisation has got to report the detail of the steps when that is not quite the case.

Baroness Williams of Trafford: My Lords, I would say that the statement a company makes reflects the company, and if a statement of no effort is made, it will be for others to judge the efficacy of that company.

Baroness Bowles of Berkhamsted: My Lords, I thank the Minister and other noble Lords for this debate and of course I appreciate that it is a little awkward that the call for evidence and consultation process are lagging behind the progress of the Bill. That is why I had my novel idea that we could put in place a framework here which is only an option. The circumstances are such that it would not be an outcry if the decision was that you had to do it in a different way, so as in my Amendment 163, the provision would just fall away. Of course, that provision would not be introduced by statutory instrument, it is just a delayed commencement. I still feel that there is some mileage in taking a further look at this kind of provision.

As a result of this debate, I think we have the answer to one of the questions in the call for evidence because of what the Government have said that they are thinking of introducing for the four criminal offences I have picked up on and that it may be by statutory instrument for the others. We have heard some good reasons as to why statutory instruments are not such a good idea, and indeed I think the Minister has conceded that. That may be the outcome of the ticks in the call for evidence. I would like to know how many ticks were made in that box; perhaps she could count them and let me know.

I reserve the right to have another go along the lines of Amendment 163, but at this stage I beg leave to withdraw the amendment.

Amendment 161 withdrawn.

Clause 42 agreed.

Clause 43 agreed.
Clause 44: Guidance about preventing facilitation of tax evasion offences

Amendment 162

Moved by Baroness Hamwee

162: Clause 44, page 108, line 27, leave out “can put in place to” and insert “shall have regard to in order to”

Baroness Hamwee: My Lords, this is a probing amendment. Clause 44(1) provides that the Chancellor, “must prepare and publish guidance about procedures that relevant bodies can put in place”, to deal with certain matters. My amendment suggests that organisations should “have regard to” such guidance, and is really intended to probe precisely what is meant here. The phrase “can put in place” strikes me as an interesting one to use in the middle of a piece of legislation. Does it mean “must put in place”, or if they want to have guidance on procedures, it is only what the Chancellor prepares and there can be no other procedures? I wonder whether the Minister can explain what is actually required in subsection (1). I beg to move.

4.30 pm

Lord Leigh of Hurley: My Lords, I spent quite a lot of time reading the amendment and trying to understand it. I am grateful to the noble Baroness, Lady Hamwee, for explaining it to us. As I understand it, the clause does not require relevant bodies to put these procedures in place; it just mandates the Chancellor to produce some presumably helpful guidelines, which the amendment would then require those relevant bodies to adopt. I think that is the gist of it.

If the amendment is prompted by concerns raised about the guidance the Chancellor will have to offer as a result of the clause, I hope the Minister might consider returning to that issue at subsequent readings as no explanation is given in the clause as to what the guidance will be. It would be very helpful for corporations affected to understand how they can rely on the defence of “reasonable prevention procedures”, so that they can put in place an appropriate strategy to ensure compliance with their new obligations if those are put on them through this amendment, or possibly—as is perhaps my great concern—at a later stage in the Bill or by statutory instrument.

It must be sensible to allow corporations to build on their current policies and procedures already in place under other legislative requirements to show that they have a defence to this offence. If not, the compliance costs would be significant. Even where current policies are acceptable there will still be costs involved in training staff, certification and reporting processes. It is, therefore, a need to ensure that the measures can be implemented in a way that mitigates additional costs as far as possible.

Guidance can help corporations to identify how they can demonstrate that they have followed satisfactory due diligence procedures and have a “reasonable care” defence in the event that one of their associates is discovered to have criminally facilitated tax evasion. However, it must be recognised that every business is different. The importance of the guidance will be enhanced if the legislation explicitly states that the courts should “have regard to” it. This would provide a valuable extra—although not absolute—safeguard for corporations that have relied on the guidance when implementing their procedures, although, of course, it cannot be a safe harbour;

In short, the amendment will be onerous to apply to every relevant body. I therefore speak against it.

Lord Kennedy of Southwark (Lab): My Lords, I support Amendment 162, proposed by the noble Baroness, Lady Hamwee. It would strengthen Clause 44, which is in part of the Bill concerned with corporate offences of failure to prevent tax evasion. Failure to pay the right levels of tax due as an individual or as a corporate body hurts everyone. Having robust procedures in place to combat these offences is important. Some corporate entities will employ lawyers and accountants to minimise their tax liability, but where that steps over the line into tax evasion we have to be prepared to take swift action.

The clause so far will place a requirement on the Chancellor of the Exchequer to publish and prepare guidance, using the word “must”, which is not something we often see in government Bills—I have always thought parliamentary draftspersons preferred “shall”—but since it uses the word “must”, noble Lords can draw from that great importance is implied about this guidance on the procedures. The idea is to help relevant bodies. The Bill then moves on and says, “can put in place to”, which negates the emphasis in the earlier part of the clause.

The amendment from the noble Baroness would place the right emphasis, saying that relevant bodies “shall have regard to” this important advice prepared by the Treasury and published by the Chancellor. The Government clearly thought it was important that companies should be aware of this advice. I hope they will tell us why they think their wording is sufficient and that that of the noble Baroness is not necessary in this case.

Baroness Vere of Norbiton (Con): My Lords, I am grateful to the noble Baroness, Lady Hamwee, for tabling this amendment, which allows us to discuss the Government’s guidance on the new corporate offences in Part 3 of the Bill. Part 3 creates two new offences for relevant bodies that fail to prevent the criminal facilitation of tax evasion. It also provides a defence for a body to show that it has put in place reasonable prevention procedures designed to prevent such criminal facilitation.

The Government produced guidance on the offences, and the related defence, in 2015 and conducted a full public consultation on it. Much of the guidance focuses on the operation of the defence and helps to inform businesses’ understanding of how to determine what prevention procedures are reasonable in their circumstances.

The guidance has been discussed extensively with a wide range of businesses and organisations both within the UK and overseas. Following the consultation, the updated guidance was published last year.

In addition to the government guidance, officials have been working with a number of representative bodies to support them in producing their own sector-specific guidance, which can be endorsed by the Chancellor
Baroness Vere of Norbiton: if it is clearly in keeping with the overarching government guidance. The Chancellor’s endorsement of external guidance will provide a hallmark of quality for individual businesses to identify good practice for their sector.

The government guidance makes it clear that it is just that: guidance. It does not set out a tick-box exercise of mandatory requirements for businesses but rather six principles to help each business decide what prevention procedures, if any, are reasonable for them in their individual circumstances.

The government guidance makes it clear that, for each business, there may be a number of appropriate approaches for them to take and that departure from suggested procedures will not mean that an organisation does not have reasonable prevention procedures. Likewise, different organisations may implement the same or similar procedures differently due to their individual circumstances. For example, what is reasonable for a small, multinational financial institution will be different from what is reasonable for a small, domestic retail business.

Conversely, while departing from the guidance will not mean that a relevant body does not have reasonable prevention procedures, nor does complying with the guidance necessarily guarantee that prevention procedures are reasonable. The guidance is not intended to be a safe harbour.

The new offences also provide a defence for a business where it was reasonable for it to have no procedures in place. A business can therefore avail itself of the defence without having followed the Government’s guidance if it was reasonable for it to have no procedures in place; for example, because the risks it faced were so remote that it would be unduly burdensome for it to put in place prevention procedures.

I hope that noble Lords will therefore agree that it is not necessary, and may impose undue burden, to force businesses to have regard to the government guidance. Those businesses which need to put in place prevention procedures and which seek to be compliant will likely already have regard to the government guidance. This has been demonstrated by the excellent engagement from many sectors on the development of the guidance. Accordingly, I invite the noble Baroness to withdraw her amendment.

Baroness Hamwee: My Lords, the noble Lord, Lord Kennedy, understood my thinking exactly, although I wonder whether it would be helpful to this House to use a procedure which is often used in the Commons to explain that one is probing to try to understand whatever is proposed and the thrust of a particular amendment—I was probing, as I had indicated to the Bill team.

I had not expected that answer, but I now understand the range of things which can happen under this clause. One is accustomed to phrases such as “for different purposes and for different persons”, which is what I think we are being asked to read into this provision. I note that the Minister said that guidance, “can be endorsed by the Chancellor”—

I was not sure what route that was taking me down. I am grateful to noble Lords for indulging me. I, for one, now understand better what is proposed. I beg leave to withdraw the amendment.

Amendment 162 withdrawn.
Clause 44 withdrawn.
Clauses 45 to 47 agreed.
Amendment 163 not moved.

Amendment 164
Moved by Lord Kennedy of Southwark

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

“Exclusion of companies from public procurement

The Secretary of State must publish an annual report on
the number of companies which have been excluded
from tendering for public contracts under the Public
Contracts Regulations 2015 or had an existing public
contract terminated as a result of being charged with
an offence under section 42 or 43 of this Act.”

Lord Kennedy of Southwark: My Lords, Amendment 164, proposed by myself and my noble friend Lord Rosser, seeks to add a new clause to Part 3 of the Bill requiring the Secretary of State to publish a report on the number of companies that have been excluded from tendering for public sector contracts, or had an existing contract terminated as a result of being charged with the offence of failing to prevent the facilitation of UK or foreign tax evasion offences. The more light that is shone into the whole area of corporate failure in respect of tax evasion, the better, as this in itself would force companies that are sloppy or that do not follow procedures to take more notice of the provisions, take greater care and be clear that the Government and the tax authorities do not take such matters lightly.

Amendment 165, again in my name and that of my noble friend Lord Rosser, would be, in effect, a supervision order imposed by a court on a company convicted of a serious offence in these matters. The court could appoint a third party, such as an expert or body, to supervise the probation period of companies that co-operate with law enforcement bodies to the extent that they are offered a deferred prosecution agreement. Companies convicted under the Corporate Manslaughter and Corporate Homicide Act 2007 may have an order imposed on them to remedy the management system that allowed the manslaughter to occur. However, there are currently no powers available to a court to impose such an order on companies convicted of non-manslaughter offences which have not co-operated sufficiently with law enforcement agencies for a DPA. The perverse result is that companies that co-operate with law enforcement bodies have greater external scrutiny of their corporate governance programmes than companies that do not co-operate with enforcement agencies. This lack of scrutiny represents a missed opportunity to improve corporate governance among convicted companies, but also a powerful disincentive for companies to co-operate with enforcement authorities.

Corporate probation orders are used in other jurisdictions. The US Sentencing Commission, for instance, has given the courts the power to introduce any probationary condition relating to the nature and circumstances of the entire case when sentencing companies convicted of criminal offences. Introduction of such a power in the UK would add another significant tool to the armoury of courts and prosecutors in
dealing with financial crime and ensure that the discrepancy of treatment for companies that co-operate with law enforcement authorities and those that do not is evened out, creating a more level playing field for business.

Amendment 170, in the names of the noble Baronesses, Lady Bowles of Berkhamsted and Lady Kramer, addresses the very real issue that senior executives rarely face any consequences when companies they run engage in criminal activity—a point made numerous times from all sides in Committee. The lack of senior executives being held to account properly is a serious matter of public concern. I look forward to the contribution of the noble Baroness, Lady Bowles, who will shortly be speaking to her amendment, and I beg to move.

Baroness Bowles of Berkhamsted: My Lords, I shall indeed speak to Amendment 170 and I thank the noble Lord for his comments on it. This concerns the procedure for disqualification of directors where there has been a criminal conviction of a company, or a deferred prosecution agreement. The amendment seeks to make it possible, following a criminal conviction of a company, for the court to consider whether any directors should be disqualified. This is not seeking to make a criminal conviction against directors—disqualification is a civil procedure—but to put company criminality procedures on a par with that which exists when there is a breach of competition law.

4.45 pm

Under Section 9A of the Company Directors Disqualification Act, the court must make a disqualification order against a person if a company of which they are a director commits a breach of competition law and the court considers that their conduct as a director makes them, “unfit to be concerned in the management of a company”. This means that the Competition Commission can seek disqualification orders as part of its suite of enforcement powers. In contrast, after a corporate criminality finding, the matter would have to be brought to the attention of the Secretary of State, who is the only person entitled to make a disqualification application to the court. However, there does not seem to be a mechanism by which conduct reports or the like are sent to the Secretary of State in such a case, as they would have to be for insolvency; nor does the Secretary of State have the specialised knowledge to address the public interest issues arising out of the prosecution. It also prevents the prosecuting authority having the power to use disqualification as a direct tool to punish or deter criminal behaviour by companies.

When I raised disqualification at Second Reading, the Minister explained three things. First, she said: “Where a director is convicted, they can be disqualified as part of their sentence”. I agree; it happens some of the time. Last year there were 47 disqualifications under Section 2 out of 483 referrals. Secondly, the Minister said: “Where a company is convicted of a Part 3 offence and the director is not party to that, fairness requires a separate hearing of application to disqualify”. I do not understand why criminality differs from competition breach. The Minister will recognise that there is a sequence, as in the recent competition case, where the director disqualification was dealt with after the finding of competition breach. If there has been a “failure to prevent” conviction under the Bribery Act or under this Bill, or indeed if the company has been convicted of fraud, money laundering or some other serious crime and it appears that one or more of the directors has not exerted the right kind of responsibility and control, why is that treated less seriously than competition breach or various aspects of insolvency, where reports on director behaviour are required?

Thirdly, the Minister explained: “Where a director of a corporation is implicated in wrongdoing, they can be subject to prosecution. If their actions amount to criminality or facilitating tax evasion where their actions fall short of being criminal, investigators can already investigate whether they are fit and proper to continue to hold the position of a company director and report their findings to the Secretary of State”—[Official Report, 9/3/17; col. 1521.]

With due respect to the Minister, I think this misses the point. The point at issue is not the criminality or near-criminality of the director—that is the identification doctrine hang-up—but their role in adequate governance. As I mentioned before, there are no comprehensive provisions for reports to be prepared beyond those in Section 432 of the Companies Act 1985, which relates to fraud or misfeasance towards members.

When disqualification was raised in the other place, the Minister of State, Mr Wallace, gave a similar answer to that given by the Minister, and also said: “There is no evidence of which we are aware that the power is not being used in the appropriate cases. When not used, it is not used for appropriate reasons”—[Official Report, Commons, Criminal Finances Bill Committee, 22/11/16; col. 149.]

There are a lot of negatives there, which of course are hard to prove. After some investigation by me, aided by some QCs—it is still ongoing—I have a negative of my own: I can find no evidence that the general Section 8 powers are being used. I have discovered from BEIS that Section 8 was used five times last year. I understand this was on referral from the insolvency agency and with respect to Sections 447 and 432 of the Companies Act 1985. That takes us back to behaviour and reports that affect members—shareholders—not anything that is in the public interest. So who does the report on bribery or tax evasion? Is it ad hoc? If a prosecutor did it, could he be challenged as outside his remit in some way?

Of course one problem is that getting convictions against large companies is notoriously difficult but the point of principle, clearly brought out in a failure to prevent conviction, is: “What was the role of the directors in making sure that the appropriate procedures were in place?”. This goes to the heart of governance. There is no other public accountability mechanism and if it is right for competition, why not for bribery, tax avoidance or other serious criminality? Why should the specialist prosecutor not have the full toolkit?

Baroness Butler-Sloss (CB): My Lords, I have some doubts about Amendment 165. I find a corporate probation order to be rather unusual and although I am not an expert on crime, it seems to me that there would be considerable difficulties with it. Also, if one
looks at subsection (5) of the proposed new clause in Amendment 165, the liability is, “on conviction on indictment, to a fine”, but it does not say how much. There would be a fine, “on summary conviction in England and Wales”, but there are limits to fines in the magistrates’ court. Whatever that figure is, it is not included. This seems an inadequately drafted amendment.

Lord Judge: My Lords, I add my voice to that. I support the general idea behind Amendment 165 but it proposes rather a bureaucratic new clause. Why cannot the court simply have power to make orders in accordance with its subsections (2)(a) and (2)(b), where it thinks it appropriate? Why do we need subsections (3) and (4) at all, as company B has already been convicted? It is a matter for the court to decide what sentence should be imposed; it does not need permission or an application by the prosecution. If I may say so, it seems that this would make a complex process to deal with something very straightforward. The court needs to be vested with the powers which are understood to be included on the basis of this amendment. Its compliance procedure would require an external body and, if we are doing that, can we perhaps add that there should be a report to the court about whether the appointed verifier is satisfied that verification has taken place?

As to Amendment 170, I am just a little troubled about subsection (2ZB) in its proposed new clause. It says: “The court must not make any order under this section unless it is satisfied that the person bears responsibility”. Fine—I understand that—but this is a penal decision. Are we saying that the court must be satisfied to a criminal standard or to a civil standard?

Baroness Kramer: My Lords, perhaps I may add one phrase only to this debate. I want to speak to Amendment 170, the liability is, “on conviction on indictment, to a fine”, but it does not say how much. There would be a fine, “on summary conviction in England and Wales”, but there are limits to fines in the magistrates’ court. Whatever that figure is, it is not included. This seems an inadequately drafted amendment.

Baroness Williams of Trafford: My Lords, I am pleased that the amendments in this group have allowed us to have an extended debate on the tax evasion offences in Part 3 of the Bill. I am pleased to say that the Government are supportive of the intentions of these amendments, although that is not to say that further legislation is necessarily required.

Amendment 164 seeks to require the Secretary of State to publish an annual report on the number of companies that have, under the Public Contracts Regulations 2015, been excluded from tendering for public contracts, or had existing contracts terminated after being charged under the new offences. I fully agree that contracting authorities should be able to exclude bidders that have been convicted under the new offences. The Public Contracts Regulations allow for this in appropriate cases. They grant contracting authorities discretion to refuse to award a public contract to an entity that has been involved in grave professional misconduct. Such misconduct may include committing the new offences of corporate failure to prevent the criminal facilitation of tax evasion. However, government does not collect information centrally on the number of organisations that have been excluded from public contracts under the 2015 regulations. This is because these decisions to exclude are taken by individual contracting authorities on a case-by-case basis, and this may include the new corporate offences.

Introducing a reporting requirement would create a burden on contracting authorities. Each contracting authority would have to make a return to central government, detailing the occasions that exclusion from a bidding process has occurred, and central government would then have to collate all these reports in order to compile national statistics to be published in the report. Such a reporting requirement would go against the Government’s drive to simplify the public procurement process and to cut red tape.

Current efforts are focused on ensuring that contracting authorities have the necessary information to know whether those bidding for contracts have relevant convictions so that contracting authorities can make more informed decisions on whether to exclude them. This includes the introduction of a robust conviction-checking process to prevent bidders with convictions for relevant offences—including the new offences—winning public contracts. This was announced at last year’s anti-corruption summit and is about to be piloted by the Crown Commercial Service.

Amendment 165 seeks to introduce a system of corporate probation orders. This would allow a court to require relevant bodies found guilty of the new corporate offences to amend their prevention procedures. I welcome the noble Lords’ amendment. It is absolutely right that relevant bodies convicted of the new offences, and thus found to have inadequate prevention procedures, should be required to implement changes to those procedures. In response, I draw noble Lords’ attention to Clause 48(2) of the Bill, which adds the corporate offences to the list of offences for which a serious crime prevention order can be imposed under the Serious Crime Act 2007. This enables a court passing sentence on a person, including a legal person such as a corporate body, to impose a serious crime prevention order to prevent, restrict or disrupt their involvement in serious crime by imposing prohibitions, restrictions or requirements on them. The terms of these orders may require the relevant body to allow a law enforcement agency to monitor how it provides services in the future.

Relevant bodies convicted of the new offences are criminals. They do not require special or different sentencing powers. They can be adequately sentenced under the existing criminal law, using a serious crime prevention order to enforce change to prevention procedures. Such an order can do anything that a
corporate probation order would. Alternatively, similar provision can be included within the terms of a deferred prosecution agreement. I trust therefore that noble Lords will see that their commendable objective can already be achieved within existing law.

I thank the noble Baroness, Lady Bowles, for Amendment 170. I share concerns about ensuring that those who are unfit to be directors are identified and disqualified from holding such posts. The amendment seeks to amend the Company Directors Disqualification Act 1986 in order to allow a company director to be disqualified by the court when a relevant body is found to have committed one of the new corporate offences, or a similar failure to prevent an offence under the Bribery Act 2010.

At present, under the Company Directors Disqualification Act 1986, a company director can be disqualified on conviction by the sentencing court. Alternatively, the Secretary of State for Business, Energy and Industrial Strategy can apply to the High Court for an order that a company director be disqualified. In either case, the company director would be a party to the proceedings, and thus given the opportunity to present their defence.

5 pm

However, under the amendment, a company director could be disqualified simply because the relevant body was found liable for failing to prevent the facilitation of tax evasion or bribery. This would be the case even where the company director was not a party to the proceedings. This could see a director disqualified without the opportunity to present their case or defend themselves. There may be cases where, despite the relevant body committing the offence, an individual director is not sufficiently culpable to warrant disqualification. That is why it is so important that the director can make representations in their own defence.

The orders have draconian consequences, and they must be made fairly—the noble Baroness mentioned fairness. The right to a fair hearing is protected by human rights legislation.

I can nevertheless assure noble Lords that, where a director has been personally complicit in tax evasion, it will be possible for the director to be prosecuted for tax evasion and tried alongside the relevant body charged with the new offences. Where the director is convicted, disqualification can be considered by the sentencing court under existing law.

I shall answer some other questions that the noble Baroness, Lady Bowles, asked. Who reports on bribery or tax evasion? A sentencing judge can invite the prosecuting agency—for example, the CPS—to refer the matter to BEIS on its own volition. On Amendment 170, she also asked: why not allow for a director to be disqualified? Conviction for the new offence does not necessarily mean that an individual director is at fault or necessarily involve director wrongdoing. The sentencing judge can recommend referral by the prosecutor in such cases.

Finally, I reassure noble Lords that, where a director has been personally complicit in tax evasion, it will be possible for the director to be prosecuted for tax evasion and tried alongside the relevant body. We therefore take the view that the existing powers are sufficient and that the approach taken under the amendment would be disproportionate and at risk of successful legal challenge.

I hope that, with those words, noble Lords are satisfied with my responses and feel able not to press their amendments.

Baroness Bowles of Berkhamsted: The point is that a procedure exists when there is a breach of competition law. That does not have to be referred back to the Secretary of State. There is a subsequent hearing as to whether the director was culpable by not having established the right procedures. It does not automatically say that, if the company is guilty, the directors are guilty. If the circumstance is such that the judge says, “I think we should look further at this”, why should it not then be in the prosecutor's toolbox to say, “We want to continue smoothly on to the next stage”, which the prosecutor has probably already investigated? It is a civil procedure to disqualify a director, I remind the Minister, so the human rights implications are slightly different. If it works for competition, why can it not work for criminality? It seems to be saying that there is a stricter rule, where directors sit up and take notice of the fact that it looks a little bit more automatic even though the same defence is there. Therefore, it has a huge impact on corporate governance in making sure that the procedures are there. It may even be on a piece of paper on the boardroom table. I have personally heard, “Oh, this is something we can get disqualified for if we don’t get it right”. That is exactly how more boards should be thinking. This kind of procedure induces that. Maybe the Minister can write to me and explain why it is good for competition and not for criminality.

Baroness Williams of Trafford: The noble Baroness foxed me when she asked that question the first time and she is still foxing me. I shall write to her before Report because I really do not know the answer.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who have spoken in this short debate, and I am pleased that the Minister understands the spirit and intention behind our amendment. The comments of the noble and learned Baroness, Lady Butler-Sloss, and the noble and learned Lord, Lord Judge, are points well made. They have vast legal experience and if I bring the issue back at all on Report, I shall take on board their comments and wise legal advice and draft my amendment accordingly. I certainly thank all noble Lords for their contribution today, and beg leave to withdraw the amendment.

Amendment 164 withdrawn.

Amendments 165 and 166 not moved.

Clause 48 agreed.

Amendment 167

Moved by Baroness Stern

167: After Clause 48, insert the following new Clause—

“Public registers of beneficial ownership of companies in the Overseas Territories
After section 2A of the Proceeds of Crime Act 2002, insert—

“2AA Duty of the Secretary of State: Public registers of the beneficial ownership of companies registered in Overseas Territories

(1) It shall be the duty of the Secretary of State, in the furtherance of the purposes of—
(a) this Act; and
(b) Part 3 of the Criminal Finances Act 2017, to take the steps set out in this section.

(2) The first step is that, between the date on which this section comes into force and 31 December 2018, the Secretary of State must provide all reasonable assistance to the governments of—
(a) Anguilla;
(b) Bermuda;
(c) the British Virgin Islands;
(d) the Cayman Islands;
(e) Montserrat; and
(f) the Turks and Caicos Islands,
to enable each of those governments to establish a publicly accessible register of the beneficial ownership of companies registered in that government’s jurisdiction.

(3) The second step is that, no later than 31 December 2019, the Secretary of State must prepare an Order in Council, and take all reasonable steps to ensure its implementation, in respect of any Overseas Territories listed in subsection (2) that have not by that date introduced a publicly accessible register of the beneficial ownership of companies within their jurisdiction, requiring them to adopt such a register.

(4) In this section a “publicly accessible register of beneficial ownership of companies” means a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available in accordance with the provisions of Part 21A of the Companies Act 2006 (information about people with significant control).”

Baroness Stern (CB): My Lords, I rise to speak to Amendment 167 in my name and those of the noble Baroness, Lady Kramer, and the noble Lords, Lord Kirkhope and Lord Rosser.

The amendment, as a proposed new clause, stems from our concern to fight grand corruption and tax evasion—two ills that damage the well-being of millions from our concern to fight grand corruption and tax evasion—two ills that damage the well-being of millions.

The amendment addresses offshore banking and the secrecy that surrounds it. It is perhaps appropriate that we are discussing offshore banking and secrecy on 3 April—exactly to the day the first anniversary of the publication of the Panama papers.

The Panama papers revealed to the world very clearly the connection between offshore financial operators, shell companies and secrecy. One outcome of the publication which happened only two days later was that the Prime Minister of Iceland left his post because information about wealth he held in a company registered in the British Virgin Islands—information that had not been in the public domain—led to the Icelandic people losing confidence in him.

The amendment addresses those offshore financial centres that are British Overseas Territories. It excludes the Crown dependencies, where the constitutional issues are more complex. It calls for the Government to go further than they currently propose to do in ensuring that all the overseas territories that have financial centres—Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos—allow public access to registers of beneficial ownership. I stress that the list does not include Gibraltar. I am grateful to all those who have spoken to me about Gibraltar and its special situation at this time of Brexit negotiations. We recognise the unique status of Gibraltar. I hope that the noble and learned Baroness, Lady Butler-Sloss, who is very active on matters to do with Gibraltar, accepts that position.

It must be said that the Government have already made great, admirable efforts to encourage the British Overseas Territories to put their operations within the framework of transparency which is slowly being developed across the globe. Four years ago, in 2013, the then Prime Minister David Cameron wrote to them asking them to consider public registers of beneficial ownership. In May 2014, he wrote again, saying that he was hoping that they would, “consult on a public registry and look closely at what we are doing in the UK”.

That encouragement has had some welcome results; registers are slowly being developed, and there is a commitment to producing them by June this year. I hope very much that when the Minister replies she can update us on that development. The registers will not be public but will be open to UK law enforcement officials; only Montserrat has so far committed to producing a public register. As noble Lords will know, the UK produced the world’s first fully open register of beneficial ownership, which became available last year. Other countries have said that they will do the same as the UK has done.

The amendment requires, first, that the Government give help with the process of establishing the registers in the overseas territories, with the aim that they are all in place and fully operational by the end of next year, 2018—five years since the first David Cameron letter. Secondly, the amendment requires that if that help, support and encouragement is not successful in getting the registers into the public domain, the Government should secure compliance through an Order in Council by December 2019. That gives another two and a half years from now for the registers to be fully developed and made public.

The Government have not accepted that timetable—and I thank the Minister for arranging a very helpful discussion with me this morning on this subject. They are now arguing that moving in the direction suggested by the amendment is not the route that they wish to follow, which is very disappointing, as it comes rather suddenly after the Government showed, by their world-leading work on anti-corruption, money laundering and tax evasion, that they were determined to take the steps needed to curb these evils. It was very disappointing to many in the other place, where there was support from all parties for an amendment along these lines. I imagine that it is disappointing to many in your Lordships’ House, too, and to the members of the House of Commons International Development Select Committee, who in their 2016 report, Tackling Corruption Overseas, concluded that,
"lack of transparency in the Overseas Territories and Crown Dependencies will significantly hinder efforts to curb global corruption and continue to damage the UK’s reputation as a leader on anti-corruption”.

It is well understood that there are difficulties. Clearly, it is not ideal for the Government to have to make threats of using Orders in Council. It would be infinitely preferable if the Orders in Council did not have to be used, but they are needed as a backstop if the Government are unsuccessful in persuading the overseas territories to publish their registers.

At Second Reading, the Minister told the House that the power to legislate for the overseas territories is almost always done with consent and that the Government legislate without consent only,

“on moral and human rights issues, such as homosexuality and the death penalty”.—[Official Report, 9/3/17; col. 1516.]

It is hard not to see the moral and human rights issues that stem from money laundering and grand corruption. An Oxfam report quoted by the International Development Committee says:

“Almost a third (30%) of rich Africans’ wealth—a total of $500bn—is held offshore in tax havens. It is estimated that this costs African countries $14bn a year in lost tax revenues. This is enough money to pay for healthcare that could save the lives of 4 million children and employ enough teachers to get every African child into school”.

I have great respect for the Minister and hold her in high regard, but to me that is both a moral question and a human rights issue.

The Government have stressed the progress that has been made and the advantages that will come from the current plans, which help prosecutors here by giving our law enforcement agencies easy access to the registers. That is indeed a step forward, but it is not far enough—transparency is essential. As Andrew Mitchell MP, former Secretary of State for International Development, said in the other place, “The point is to enable civic society to hold the powerful to account”.—[Official Report, Commons, 21/2/17; col. 934.]

That is what the Icelanders managed to do as a result of the transparency provided by the Panama papers.

Finally, when the Minister replies, will she explain the Government’s new approach, set out in their response to the International Development Committee report, that the overseas territories will only be expected to introduce public registers when they become “a global standard”? How will “a global standard” be defined? How many countries will need to introduce a public register of beneficial ownership before they become “a global standard”; and is any time limit envisaged in waiting for that standard to be reached? I beg to move.

5.15 pm

Baroness Meacher (CB): I support Amendment 167, so ably moved by my noble friend Lady Stern. I apologise to the House that I was not able to be present at Second Reading. I applaud the Government for bringing forward this important Bill, which will do much to improve our capability to recover the proceeds of crime and to tackle money laundering and corruption.

My particular interest in the amendment comes from my awareness, over the past decade in particular, of the devastation to many countries—particularly Colombia, Mexico, Guatemala and many others in central America and, increasingly, west African states—caused by the production of, and international trade in, narcotics. The Governments of the drug-producing countries have to spend billions of dollars dealing with the drug barons. These are scarce resources which need to be devoted to the development of their infrastructure and to social support for their people, who are, frankly, pretty poor. The secrecy surrounding bank accounts in our overseas territories enables huge wealth to accumulate untaxed, and to be used to control substantial tracts of these countries. For example, I understand that one-third of Guatemala is completely under the control of drug barons, not its Government.

Perhaps the single most effective criminal justice response to the situation is through access to their bank accounts in tax havens.

The prevention of corruption and money laundering is therefore of the utmost importance to those countries and Britain, along with our European neighbours, is of course a major contributor to these problems. Britain is a substantial consumer of narcotic drugs: without the demand for these there would be no production or trade. We therefore have a particular responsibility to deal with corruption and money laundering by those involved in the drugs trade. The Minister did assure me that our overseas territories are making good progress towards producing registers of beneficial ownership of companies registered in their territories, albeit not public ones. Like my noble friend Lady Stern, I hope that the Minister will say more in her response about the progress made so far. For example, how many of the territories will actually have registers accessible to police services in place by the end of this year? When do the Government anticipate that all our overseas territories will have such registers in place?

The key element of Amendment 167 is that the registers must be publicly available. The potential for kidnapping of innocent very rich people with large balances held in our overseas territories needs consideration. Clearly, none of us would want to create a system which would increase the risk of kidnap. However, rich people are very inclined to be easily recognised by their lifestyle—the size of their yacht or their private plane, for example. People who amass great riches generally do not want to hide them. They really do want the world to know what they have achieved. It is their own actions which appear to me to cause risk of kidnap. I therefore do not believe that we should reject the proposal in Amendment 167.

The important underlying point is that the UK, together with our tax havens, is still the biggest financial secrecy jurisdiction in the world. I have no doubt that much of the black money from the drugs trade in Central America and west Africa is lodged within the wider UK jurisdiction. Having led the world in legislating for a public register of beneficial ownership in 2015 for the UK, money will surely have been moved to our overseas territories. Is the Minister able to give the House any information about the transfer of funds to our overseas territories following the 2015 Act? Presumably, for the very reasons why we need Amendment 167, the Government may not be in a position to give us that information, which would be very helpful to know.
According to Christian Aid, Save the Children and other leading charities, Ministers have for more than three years made it clear that they want public registers of beneficial ownership in the overseas territories, and that they are working to get them. Despite the Minister’s comments to my noble friend Lady Stern a little earlier, I hope that she will therefore agree that the case remains as strong as ever to extend transparency to those territories and to bring them into line with the UK itself.

Lord Kirkhope of Harrogate (Con): My Lords, I rise as a signatory to Amendment 167, which I fully support. As the noble Baroness, Lady Stern, highlighted, the recent “global laundromat” revelations make the need for our amendment rather pressing. As she said, it is exactly a year since the Panama papers were published and we have yet another leak. Must we wait for the next one before we follow through on the commitment made by our former Prime Minister David Cameron?

In general, of course, I add my support to the overall measures in the Bill. I know that they will go a long way to addressing corruption. I think that almost all Members of Parliament and Peers who have spoken have supported its measures, which should give the Government comfort. I also agree that the Government deserve enormous praise for the work they have done both here in the UK and internationally to tackle corruption, tax evasion and avoidance. Since David Cameron put the issue at the centre of his 2013 G8 summit, the Government have shown global leadership on an issue that blights so many countries. I very much support the progress made on this agenda, particularly at the anti-corruption summit in May last year, and the work taken forward by the OECD to tackle corporate tax avoidance. It is also worth noting that the former Prime Minister committed himself to seek to persuade the overseas territories to introduce transparency. That is the element I want to take forward today.

We all welcome the progress that has been made by the overseas territories. I am pleased that they have now agreed on the importance of having registers of beneficial ownership and I look forward to them being in place very soon. However, we must also recognise that the UK’s Crown dependencies have made real progress on this in recent years. My understanding is that they will all have central registers of beneficial ownership. While these will not be publicly accessible yet, central registers are much easier to interrogate, and crucially they will be much easier to make public in due course. This contrasts with some of the overseas territories that have not yet put in place central registers. The British Virgin Islands and Cayman Islands are, as I understand it, instead implementing—or wishing to implement—a complex system of linked registers. Is my noble friend the Minister content with this? Exactly how would linked registers work in such places? If, for instance, the UK Government made a request, would the Government in the jurisdiction concerned then make a separate request to whoever administers that bit of the register? Is the Minister satisfied that these linked registers will give the UK Government the ability to request information quickly, and does she have any concerns about how they will work, and whether they will make making requests for information easier or harder for the UK Government?

Also, to what extent and with what vigour are the UK Government making representations to the overseas territories about introducing central registers, so that they will be easier to make public when public registers become the new global standard? Naturally, such registers are a good first step for law enforcement agencies to be able to access information quickly. But the Government have already accepted that in order to properly tackle corruption, this information must be open to public scrutiny. Journalists, NGOs and the public must be able to examine the information, not just for us in the UK but also for those developing countries which suffer most from corruption and need access to the information the most. People in developing countries cannot currently benefit from the huge plethora of information-sharing agreements that we have around the world.

I admit that I am a bit confused by the Government’s recent comments on this issue. I was of the impression that it was our strong desire to see public registers of beneficial ownership. I need hardly remind noble Lords again of David Cameron calling them the “gold standard” at last year’s very welcome anti-corruption summit in London. Yet, I noted the Minister’s comments in the other place that we do not expect our overseas territories to have public registers until and unless they become a global standard. My concern is that if we wait for this to happen, it could be an excuse for no progress to be made for many years. Can the Minister assure me that this will not be the case and say how we can guarantee faster movement? I understand that in some cases, there has even been a failure to respond positively to UK inquiries on the subject.

We should remember that the historic relationship with the overseas territories has benefits for all of us. It is fair to ask those jurisdictions that while their economy and defence depend on the stability and integrity of the UK, they should also be expected to follow the same rules of business and investment that we follow here. This is not about destroying a country’s economic business model or anything like that. That is why this amendment has given an extra two years to make registers public. It is about working with them and making sure that they are following the rules in taking clean money and not gaining from illicit finance. The UK’s global reputation is also very much at stake.

I know that there are concerns in this House about interfering in the affairs of overseas territories, but I remind noble Lords that we have done this before, as the noble Baroness, Lady Stern, said, on issues of equivalent moral importance. I confess that if the Government now think that we should not insist on these registers being made public, why on earth did they suggest it in the first place, and why did Ministers expend so much energy over such a period of time on it? Surely we should not give up at this point. David Cameron was right. We should keep trying as hard as we can and should give all the assistance we possibly can to the overseas territory Governments to achieve this.
Finally, can the Minister give an assurance that all overseas territories will at least have central registers of beneficial ownership by that June deadline? If not, when will all of them have them? The complex arrangements for linked registers seem overly problematic and will make publishing registers more difficult in future. What specific progress has been made in persuading the overseas territories to adopt those public registers? Simply saying that they will adopt them if other countries do it is not enough, and neither is not mentioning transparency while the private registers are being put in place.

As we look towards the UK’s role in a post-Brexit world, we must continue to lead in this important area of anti-corruption and transparency.

Lord Rosser: My Lords, my name is attached to Amendment 167, and I will also bring my Amendments 168 and 169 into play, not least because, unless I have misunderstood the situation, my noble friend Lord Eatwell will certainly wish to speak about one of my amendments in this group, if not all three of them.

I fully support Amendment 167 and will touch on some of the arguments in support of it when referring to Amendments 168 and 169. Amendment 169 would provide a duty on the Secretary of State to hold a consultation on the establishment of a publicly accessible register of the beneficial ownership of UK property by companies registered outside the United Kingdom within six months of the commencement of Section 1 of this legislation. It would also require the Secretary of State to bring forward legislative proposals to set up such a register within 12 months of the commencement of the section.

5.30 pm

We had a discussion last week in Committee about the state of the London property market in particular. What became evident from the Panama papers was that just fewer than 3,000 less-than-transparent companies set up by Mossack Fonseca held 6,000 Land Registry titles in this country, with combined historical costs of £7 billion, and that more than 40,000 properties—10% in the London borough of Westminster—are owned by offshore companies with unknown beneficiaries. Not only has that had an impact on housing costs, to the detriment of those on lower and middle incomes, including first-time buyers, both within and beyond London, but it has also given rise to strong suspicions about property being used for money laundering and for keeping finance hidden. If offshore companies holding property titles in this country were required to declare their beneficiaries, it would be in line with the requirement on UK companies to disclose ownership. Having a public register as provided for in this amendment in relation to UK property would help to lift offshore secrecy and eradicate money laundering in the United Kingdom.

In Committee in the Commons, the Government said that they planned to create a beneficial ownership register of overseas companies that owned or wished to purchase property in the United Kingdom. They said that they were developing the detail of how the register would work before issuing a call for evidence “in the coming months”. They said that their intention was, “to bring forward legislation to provide a statutory basis for the register in due course and as soon as possible”. [Official Report, Commons, Criminal Finances Bill Committee, 22/11/16, col. 182.]

During discussion on this issue in the Commons, the Government said that the register would apply throughout the United Kingdom but that Scotland and Northern Ireland had different land registration requirements from those of England and Wales, which made the drafting more complex. Can the Minister confirm that this register will be publicly available and accessible? I do not doubt the point about the complex nature of the drafting; nevertheless, for the Government to say simply—if they are not prepared to accept this amendment—that they will bring forward legislation, “in due course and as soon as possible”, is being, to put it mildly, just a trifle vague.

As the call for evidence will be on how the register would work, and therefore the Government appear to have accepted that it should be created, surely they can be a little more precise about how long it will be before legislation is brought forward, and indeed when the call for evidence will be made. Will the legislation appear in time for it to be properly debated, passed by both Houses and implemented before, say, the end of this Parliament, bearing in mind the concerns that have been raised about the potential lack of legislative time for anything other than matters related to the triggering of Article 50? That would hardly be an ambitious timescale, but it would at least provide an assurance that the register of beneficial ownership of UK property would not just be talked about but would actually happen.

My Amendment 169 provides a duty on the Secretary of State to provide all reasonable assistance to the Crown dependencies to create public registers of beneficial ownership of companies before the end of 2018. It also provides for the Secretary of State to lay a report before Parliament on progress.

As I think has already been said, in 2014 the then Prime Minister made it clear that beneficial ownership and public access to a central register were key to improving the transparency of company ownership and vital to meeting the urgent challenges of illicit finance and tax evasion. He said also that it would, “give businesses and individuals a clearer picture of who ultimately owns and controls the companies they are dealing with and make it easier for banks, lawyers and others to conduct due diligence on their customers. It will shed light on those who have provided false information, helping to tackle crime where it occurs and deterring people from providing this false information in the first place.”

He said it would help, “reduce the cost of investigations for tax and law enforcement authorities … particularly in developing countries, by making information more easily available to them at the very start of an investigation”.

He said he hoped that the overseas territories would, “consult on a public registry and look closely at what we are doing in the UK”.

Perhaps the Minister will say what the responses were to that 2014 letter from the then Prime Minister to the overseas territories on consultation on a public registry.

In a letter of 6 March this year sent to Members of this House, the Government confirmed that they had significantly changed—and in my view weakened—their
[LORD ROSSER]
previous stance to which I have just referred. This letter says that the Government’s stance is as follows:
“It remains our ambition that public registers become a global standard. If and when they do, we would expect the Overseas Territories and Crown Dependencies to follow suit”.

In other words, we will no longer take a lead where we can in seeking to ensure that public registers become a global standard, since it is now only an “ambition” and not, presumably, “vital to meeting the urgent challenges of illicit finance and tax evasion”.

So we will not be making it clear to the overseas territories and Crown dependencies that they should take a lead, since we would expect them only to “follow suit” if and when public registers become a global standard.

In essence, our amendment in respect of the Crown dependencies, where there are central registers and exchanges between tax and law enforcement authorities but where there is no movement towards public registers, provides for the Secretary of State to provide a progress report on the creation of public registers to Parliament before the end of 2018. It requires the Government to report by the end of next year on the progress being made, in the light of the recent letter, towards the Government’s declared “ambition” of public registers becoming a global standard in relation to the Crown dependencies.

When the Minister comes to respond to my amendment, perhaps through her the Government will clarify, as the noble Baroness, Lady Stern, requested, what the letter of 6 March means. Since the Government will require the overseas territories and Crown dependencies to “follow suit” once public registers become a global standard, will the Minister confirm that this means that until public registers of beneficial ownership of companies have been adopted globally—as we have done in this country—there will be no pressure from this Government on the overseas territories and Crown dependencies to follow suit and do likewise?

Will the Minister confirm that what the letter also means is that if overseas territories do not move to a public register, the Government would not expect the Crown dependencies to go down that road, and that if the Crown dependencies did not go down the road of public registers, the Government would not expect the overseas territories to do so either, as public registers would not be a global standard with the omission of the overseas territories or Crown dependencies? Perhaps the Minister could clarify that point one way or the other.

If the wording in the letter does not mean what I have just suggested, what does it mean? What are the criteria against which the Government will determine whether public registers have become a global standard and that, therefore, the overseas territories and Crown dependencies would then be expected to follow suit? Does this mean that we will no longer be encouraging or expecting the overseas territories and Crown dependencies to take a lead with public registers, as opposed to following suit?

At the moment it very much appears that the Government under the previous Prime Minister gave the impression that they would act on public registers and then adopted rather different and much more limited policy goals and objectives on public registers of beneficial ownership beyond the UK without any real explanation of why the tenor of the Government’s commitment changed.

I await the Government’s response to my questions and to the amendments in this group.

The Lord Bishop of Peterborough: My Lords, I support the amendment. I also support the Bill and I am grateful for it.

I particularly support and follow a point made by the noble Baroness, Lady Stern, about this being a moral issue. I refer to Amendment 167. This time last year, shortly after the publication of the Panama papers, there was a Question in the House about this issue. I asked a supplementary and was assured by the then Minister that this was seen by the Government as a moral issue. It is important that we hold to that.

It is particularly a moral issue because of the effect of tax havens on people in developing countries. According to the United Nations conference on trade and development, tax havens cost developing countries at least $100 billion a year. That means three times the global aid budget is lost to developing countries in this way. It is a huge amount, which would be able to do a great deal in terms of health, education and so on in those countries which so badly need it.

My right reverend friend the Bishop of Oxford spoke on this issue in the Second Reading debate. He is sorry that he cannot be here in your Lordships’ House today but, on his behalf and that of others, I gladly ally these Benches with the four signatories to Amendment 167, who come from four different parts of the House.

Lord Beith: My Lords, I wish to refer to Amendment 169, to which the noble Lord, Lord Rosser, has spoken. In doing so, I declare an interest as having been chairman of the Justice Committee of the House of Commons, which produced two reports about the constitutional relationship between the United Kingdom and the Crown dependencies. It made recommendations which were accepted by the United Kingdom Government and the Governments of the dependencies and appear to be working successfully. That relationship involves respect for the democratic nature of the dependencies and their jurisdiction as legislatures and sets clear limits on what it is appropriate for the United Kingdom Government to do.

An amendment was considered and voted on in the House of Commons which ignored the constitutional relationship. This Parliament does not legislate for Crown dependencies, the Channel Islands and the Isle of Man except by consent, and rarely does so even by consent. I am grateful that the noble Lord, Lord Rosser, has given some thought to this. We had a brief discussion about it and the amendment he has included in this group is a much more ingenious and respectful one towards those provisions but it is still somewhat in breach of the spirit, although not the letter, of them.

There are obviously real benefits to be had from public, open registers of beneficial ownership. In those areas and parts of the world where public authorities are taking no action in the kind of circumstances
noble Lords have described, exposure and publicity can lead to action being taken. In circumstances where what was being done may not have been criminal but did not seem consistent with being the Prime Minister of Iceland, say, public reaction can play a real part.

There are also problems with public registers, particularly if you are in a jurisdiction that is competing with others which have no intention of going in that direction. For legitimate financial business properly conducted—the position which, to some extent, the Crown dependencies find themselves in. The place to pursue the argument for public registers of beneficial ownership in the dependencies is of course in the legislatures of those dependencies, and that discussion ought to be taking place. However, there is another route, which the Government refer to rather negatively but is in fact quite positive. We should seek international agreement imposing similar conditions across the world, accepted by a whole range of nations which are engaged in the kind of trade that can legitimately be carried out but can also be grossly abused by those with wealth ill-got by criminal means. The importance of a global standard is that it would create a level playing field for the various jurisdictions involved, and that is why it is seen as significant in the dependencies. If agreement was reached internationally, the Crown dependencies would have to revise their current view; not only that, the UK Government would then acquire responsibility because the United Kingdom has a responsibility for international treaties to which the Crown dependencies are committed. The Government would have to represent their interests in any discussion about the achievement of a global standard when such a standard takes the form of a treaty. They would have a responsibility to make sure that the Crown dependencies abided by it, but that is not the situation we are in.

Nor is that the priority in this legislation, because here the priority is to achieve effective action by law enforcement and the tax authorities, and what they most need is accurate and up-to-date registers which can be accessed quickly in real time. By June there will be no Crown dependency which does not have up-to-date registers that a central register which can be accessed in all cases within 24 hours, or significantly less in urgent circumstances such as a terrorist case. That is the main thrust of this legislation and we should not ignore the fact that that has been achieved. It is partly a result of the Cameron exchanges by letter which have been referred to, but also of developments that were already the fact that that has been achieved. It is partly a result of the thrust of this legislation and we should not ignore the.

5.45 pm

Lord Eatwell (Non-Afl): My Lords, I regret that I did not have the opportunity to participate in the Second Reading debate on this Bill as I was abroad. I have, however, read with care the record in Hansard, in particular those speeches by noble Lords who referred to the matters under consideration in this group of amendments. I wish to speak to Amendment 169 and do so because I have a particular interest to declare. I am the chairman of the Jersey Financial Services Commission. The company register in Jersey, which maintains the register of beneficial ownership, is a division of the Financial Services Commission and hence Amendment 169 refers to matters which are my direct personal responsibility.

I should say at the outset that I will not comment on the main issue of this debate, which is whether a register should be publicly available, other than to comment on the claims by Her Majesty’s Government that link public availability to effective verification. The issue of public availability is a political matter. The JFSC is an independent regulator; that is, it is independent of the political authorities in Jersey and hence the question of public availability is not a matter for me. What is a matter for me is subsection (4) of the proposed new clause in this amendment which states that, “a publicly accessible register of the beneficial ownership of companies’ means a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available in accordance with the provisions of Part 21A of the Companies Act 2006”.

It is of course this information that forms the basis of the register at Companies House. I regret that this subsection reflects a serious lack of relevant understanding of the issue of reliability both of the Jersey register of beneficial ownership and of the Companies House register of People with Significant Control. Reliability depends upon verification, whether the information is true or false. The Panama papers were so successful in revealing ill-doing because they happened to contain information that was broadly true. I am afraid that this is not the case in the Companies House register.

Jersey has maintained a register of beneficial ownership since 1989. Initially, the legal requirement was for a statement of beneficial ownership when a company was first registered. That statement had to be updated when there was a change in circumstances amounting to a 25% change in ownership. Today, the requirement is for regular updating. At this very moment a detailed survey of beneficial ownership is under way to provide a complete picture of the state of affairs on 30 June this year. Thereafter, it will become a requirement to update information in Jersey on a 21-day limit when information is available.

This information is subject to detailed supervision and verification. For example, trust companies are required under the money laundering order to obtain and maintain beneficial ownership information. Client files are checked on supervisory visits to ensure that they have done so. Record-keeping failures are subject to enforcement action with failures resulting in individuals being banned from the industry and firms being subject to significant remediation. As was noted earlier, the Jersey register is available to all relevant authorities, including the National Crime Agency’s financial intelligence unit, and in the next year or so will be available in real time. In addition to current procedures, an annual validation process on beneficial ownership and control is to be introduced in 2019 to replace annual company returns.

Jersey not only maintains a detailed register of beneficial ownership, but subjects that register to detailed supervision and verification. Compare this state of affairs with the UK’s register of People with Significant Control. Almost all UK companies are required to maintain registers of people with significant control,
known as PSCs. This information is maintained on the Companies House register and is available publicly through the Companies House website. But note: Companies House carries out no noticeable verification of the information provided. It certainly does not in terms of annual returns or regular confirmation. Companies House has always seen itself as a repository of information—a library, if you like, but not a regulator. Of course, company formation agents are often used in the UK and they are subject to anti-money laundering supervision by Her Majesty's Revenue & Customs. However, I understand it is standard practice for such agents to argue that setting up a company is a one-off transaction and thus exempt from anti-money laundering requirements. So HMRC does not verify either.

Just as in Jersey, it is of course an offence to submit false information to Companies House and a company will commit an offence if it does not declare its beneficial ownership information accurately. But I am afraid that enforcement of this offence is akin to the enforcement of the offence of not putting the ball in straight at a rugby scrum. The consequences for the UK register are well known. For example, an investigation in November last year by the organisation Global Witness noted that with respect to the UK register there were, “2,160 beneficial owners born in 2016. Now either these are a very precocious bunch of toddlers or the data has been entered incorrectly”—there is no verification. It continued:

“…we also had people who listed 9988 as their year of birth—clearly a visitor from the future”.

It will not surprise noble Lords that the UK register has been the subject of some criticism, notably in the recent consultation on the fourth money laundering directive. Referring to such criticism in the consultation, Her Majesty’s Treasury argued:

“Some responses argued that consideration should be given to the accuracy of data on the PSC register, and the benefit of introducing verification measures in the incorporation process conducted by Companies House. The government is confident that maintaining one of the most open and extensively accessed registers that can be believed in?

Indeed, it is evident that, in reality, Her Majesty’s Treasury has no confidence in the Companies House register. In the draft regulations published by Her Majesty’s Treasury for the implementation of the fourth money laundering directive, Regulation 28 sets out the requirements for a firm to carry out due diligence on its customers. In doing so, Regulation 28(9) states that firms, “do not satisfy their requirements … by relying only on the information … contained in … the register of people with significant control kept by a company under section 790M of the Companies Act 2006”.

In other words, Her Majesty’s Treasury will not accept information taken from the register at Companies House as fulfilling any due diligence responsibility. It does not believe the register.

Given that Her Majesty’s Treasury clearly regards the Companies House register as inadequate, I would be grateful if the Minister would tell the House what are the current conclusions of Her Majesty’s Government’s “considerations” as to whether the Companies House register will be verified. When will the UK produce a register that can be believed in?

To return to the main point, I hope that it is now clear that proposed new subsection (4) in Amendment 169, which calls for information in Crown dependency registers to be “broadly equivalent” to the Companies House register, would result in a major deterioration in the quality of the Jersey register. The amendment calls for the replacement of information that is subject to detailed and regular supervisory scrutiny with information that is not verified at all. I hope that, on this basis, noble Lords will not press their amendment, having been made aware of the damage that it would do to the cause of the availability of accurate and verified information on beneficial ownership.

Lord Naseby (Con): My Lords, it is always a pleasure to follow the noble Lord, Lord Eatwell. I apologise to the noble Baroness for not hearing the totality of her speech.

I shall not repeat what the noble Lord has just said. He cited in particular Jersey. I declare an interest as vice-chairman of the All-Party Group for the Cayman Islands, and I necessarily had some discussions about this Bill. I also have a member of my family working in the Cayman Islands. As to verifying beneficial ownership, which is what we are primarily talking about here, the situation in the Cayman Islands is that it has been a legal requirement there for 10 years now, and the authorities do verify the accuracy of the information that is given, in contrast to what the noble Lord rightly says about UK Companies House, which is basically a self-registration system. That is clearly nowhere near comparable to the norm in the best of the overseas territories.

6 pm

However, it goes further than that, certainly in the case of Cayman: that register is constantly updated, and therefore more accurate. That is much more useful to the law enforcement agencies and the regulatory authorities. It will be of interest to noble Lords that in June—only a couple of months away—there will be a new Cayman beneficial ownership platform which will give the UK authorities access to accurate, real-time
and verified beneficial ownership information within 24 hours, seven days a week. In dealing with the rogues in the world, time is often of the essence. For the interest of noble Lords, including my colleague who spoke earlier, I asked how often Her Majesty’s authorities had sought information. Over the past 13 years, UK law enforcement has made an average of only five requests a year. On the other side, beneficial ownership information for Cayman companies has been collected and verified, as I have said, for 15 years.

I do not need to say any more on that, but there are two other dimensions. As far as all the overseas territories are concerned, they should obviously be brought up to the best standard that is available among the overseas territories. But we have to realise that this is happening in the real world: there remain four states of the United States, the largest and richest economy in the world, which do not have any register of any sort and refuse to co-operate with the central government. So it would be lunacy, certainly for the West Indies overseas territories, to go out on a limb and lose all their business to Delaware, Utah, et cetera, with the resulting adverse effects on the UK, which would be quite significant. Of course, if there is a global agreement, that is a different kettle of fish, but it must be global and include the United States.

Finally, in 2009, at the meeting at Lancaster House, the Cayman Islands entered into a new constitution. That is not very long ago. That constitution contained measures on the rule of law and human rights that meet the most stringent international and European standards, including a bill of rights which includes a right to privacy and laws on data protection. That was entered into after much discussion and is working and successful. I submit to your Lordships that the amendments before us are certainly extremely premature in terms of the world situation, and not needed in relation to the Bill. This Bill is a good Bill and needs to be supported.

Baroness Butler-Sloss: My Lords, as vice-chairman of the All-Party Parliamentary Group on Gibraltar I am grateful to the noble Baroness, Lady Stern, for having noticed that I was here and expressly excluded Gibraltar from Amendment 167. It is possible, however, having noticed that I was here and expressly excluded Gibraltar from Amendment 167. It is possible, however, that the omission of Gibraltar might be misunderstood; consequently I want to put on record Gibraltar’s position on its financial affairs. It is compliant with all the anti-money laundering requirements. The fourth anti-money laundering directive has been transposed by June of this year. That includes the creation of a central register of beneficial ownership, which points out that Gibraltar is doing well as a financial centre and is compliant.

Lord Hodgson of Astley Abbotts: My Lords, the theme of corruption and the damage it does to society has been the thread running through all our debates this afternoon and, indeed, on our first day in Committee last week. When you have powerful speeches from the noble Baronesses, Lady Stern and Lady Meacher, the right reverend Prelate the Bishop of Peterborough and my noble friend Lord Kirkhope, you have to be influenced by what they are telling you. When they link it to the idea of a gold standard of a publicly available register—although after the noble Lord, Lord Eatwell, had finished with Companies House, gold was no longer the metal that I would associate with that institution—you feel that there may be an exceptionally strong case. Equally, as you reflect on it, you begin to wonder whether the best may not become the enemy of the good.

In trying to clarify my thinking on this very difficult issue, I ask my noble friend on the Front Bench to focus in her reply on three points that are important to me. They relate to the big three of the overseas territories mentioned in the amendment: Bermuda, the British Virgin Islands and the Cayman Islands. The others are much smaller; they may be important in the future but the major difficulties will arise with the first three.

First, can my noble friend confirm what the noble Lord, Lord Beith, said—that those three territories are going to have an up-to-date register of company ownership—and the date by which it is going to be in place? If it is going to be in place, are the Government satisfied that each register operates effectively and accurately?

Secondly, I come to the verification point raised by the noble Lords, Lord Eatwell and Lord Naseby. Since information is put into these registers by third parties, which have titles such as corporate service providers—CSPs—trust or company service providers, and so forth, are the UK Government satisfied that the regulatory regime in each of these territories ensures that the CSPs operate to timely and accurate standards? Are there adequate checks on their performance? For example, are there, as we have in the City of London, fit and proper person tests to make sure that those who are providing the information have decent standards of behaviour imposed on them?

Thirdly and finally, as my noble friend Lord Kirkhope said, are UK law enforcement agencies satisfied with the level of co-operation and assistance provided by these regulatory authorities? Do they get prompt and helpful responses or are the responses dilatory and evasive? If my noble friend was to say that she could give the Committee assurances on those points, my concerns about the best being the enemy of the good would rise in significance. Of course we are seeking a gold standard but surely in the short term what is vital is not that I or other Members of your Lordships’ House should be able to interrogate the register but that the relevant law enforcement agencies should be able to do so, and should be able to do so promptly and to get information promptly. Then, I hope, as enforcement standards rise and, as my noble friend Lord Naseby said, the United States begins to bring all parts of its dominion into proper behaviour, the gold standard of full public disclosure may well be appropriate.

I quite understand why the noble Baroness wishes to do this but my concern is that if we go too far, too fast now, the malfeasant—and it will be those who go first—will drift away to still murkier regimes. We may
[Lord Hodgson of Astley Abbotts] have only half a loaf and the noble Baroness would like the full loaf, but at least we have half a loaf. If we go to murkier regimes, there will be no way of getting any sort of collaboration, cooperation or help at all to tackle what I think everybody in your Lordships’ House agrees is a really important problem and is imposing terrific damage and harm on our fellow citizens, particularly in the developing world.

I hope my noble friend can answer my questions. Are there going to be prompt and accurate registers in the major territories—and, if so, by when—or are they there now? Are those who upload information into the registers properly checked, verified and regulated? Do our law enforcement agencies really get wholehearted collaboration and assistance from their opposite numbers in those three territories?

Baroness Kramer: My Lords, I am a signatory to Amendment 167, which was moved so eloquently by the noble Baroness, Lady Stern. I have signed that amendment because I struggle to see any effective way forward other than a route that essentially follows the lines that she outlined.

In this House, I think that every Member is utterly dismayed by the level of corruption in many countries across the globe, particularly those with some of the poorest and weakest populations. But there are also kleptocracies with sophisticated developed populations which do huge damage to their countries and to international affairs. If we look at the stribe that drives people to become refugees and migrate across borders, on a scale that we have hardly seen in the past, there are criminal groups which manage themselves so effectively. All of those groups are enabled—indeed, can survive—only because they can find a portal with which to interface with the legitimate financial services community.

The work we are trying to do with these amendments is to close down those portals because the impact of that would be phenomenal, and not just for developing countries. It would have a great impact on the developing world and potentially on us. There is almost nothing we could do that would have more impact in bringing peace, opportunity and prosperity across the globe.

This takes great courage, but it is also a great prize.

On the argument being made today, first, I congratulate many of the countries which have moved forward, for example to establish central registers. Work is being done in the overseas territories—I know it is true in the Crown dependencies as well but I understand their different constitutional position, which is why they are not included in Amendment 167—to establish a powerful relationship with UK enforcement authorities. If that were sufficient to close down those portals to the people who we know should not be able to use them, I would be happy to stop at that point. But I have found no one who believes it is true that enforcement authorities would be able to act through those central registries in ways sufficient to close down the routes and effectively shut out so many of the people who we think should be shut out from the legitimate financial world.

The only route I can see to make this reasonably or wholly effective is transparency. I fully accept that transparency at the global level is the obvious ideal, but I am a realist. I do not think anybody in this House believes that a global standard of transparency, with public access to central registers, will be available in my lifetime—and probably not in my children’s lifetime. Achieving that global standard is near impossible, so how do we move forward and at least create the reality that more and more portals will be closed down to those who try to use them? I was proud of this country when it took a very strong and difficult position to lead not only on central registers, for example, but on transparency. It said that if nobody takes the lead and moves out in advance, the rest will never follow. There is no basis if one waits for everybody to move together. We still face that situation.

I have met with representatives of the BVI and Bermuda and I hear the case presented for the Cayman Islands, and others such as Jersey and Gibraltar. I fully understand that every country on our list, even those that think they are touched by the underlying principle of the amendment, are quite offended. They feel that they are reputable places which have done a great deal to make progress on the elimination of corrupt practices. I understand their sensitivity on that issue, but the problem with which we are dealing is so much bigger.

6.15 pm

Do the Government truly believe that central registers, well linked into our enforcement agencies, will shut down access to those portals for the corrupt kleptocracies and criminals, or do the Government believe only that they will somewhat reduce the ability of those groups to access the legitimate financial services industry? I would be very interested to hear the number of enforcement actions that have been carried out through those growing linkages that are in place for many of the overseas territories. I fear that not very many enforcement actions have been taken—there certainly do not seem to have been any that have managed to make their way into the public arena. If this is not an effective tool, it surely is not a satisfactory point at which to stop.

I very much take the point that the noble Lord, Lord Rosser, is making with his Amendment 168 on the failure of the UK to establish a proper register of beneficial interests in UK property. That has to be tackled. It really is an appalling scandal and a great weakness, and I can understand why many of the overseas territories point to that when they argue their own case. I join very much with the noble Lord, Lord Eatwell, in pointing out the inadequacies of Companies House and the regime that we have there. We have to fix those, but we surely do not stop at that point in time. It is for that reason that I support Amendment 167.

Lord Leigh of Hurley: My Lords, it may come as a surprise to some, but having carefully researched the matter, I find I have no interests or conflicts to declare in respect of this matter—perhaps sadly.

The financial services sectors of the overseas territories and the Crown dependencies are crucial as global hubs. Our close connections with them contribute to the UK’s position as a global financial centre—which is of course close to all our hearts—and, now more than ever, it is important we maintain and strengthen our ties with key economic partners.
At the same time, as with all financial services, there must be appropriate transparency to prevent abuse by those who would seek to exploit them for criminal purposes, as the noble Baroness, Lady Kramer, has just so eloquently said. It is quite clear to me that the UK is leading the way in this, which is in no small part due to the foundation stones set down by the former Prime Minister, David Cameron, who ensured that the issue of transparency was prominent in the coalition Government, from the time he chaired the G8 summit in Lough Erne and it was at the top of the agenda of that meeting.

That led to the PSC clauses in the Small Business, Enterprise and Employment Bill, on which I spoke quite extensively. Those applied only in the UK, but I recall that the noble Lord, Lord Watson of Invergowrie, commented in Committee that the overseas territories and Crown dependencies were next. Accordingly, I welcome the subsequent commitments made by the overseas territories and Crown dependencies to establish central registers of beneficial ownership—clearly, those territories are listening very carefully to Labour Peers in Committee. Once these have been implemented in June 2017, UK law enforcement will gain access to previously inaccessible information on entities registered in those jurisdictions. That will enable it to investigate corruption and money laundering through BOSS—beneficial ownership secure search systems. These are significant benefits for UK law enforcement, and I am pleased to see the overseas territories and Crown dependencies make strides towards improved financial transparency and integrity. It is an approach that will reap dividends for our law enforcement agencies and their ability to investigate financial crime, while maintaining the positive relations that we enjoy with these territories.

It is right that we should aspire to public registers of beneficial ownership, not just for the overseas territories and Crown dependencies but for all jurisdictions. I welcome the continued government commitment for public registers to be the global standard, as an aspiration. But it is clear we will achieve more by working in partnership and collaboration than by forcing legislation—to the extent we can—on independent jurisdictions with their own elected legislatures. If we threaten that, I foresee that those territories might not continue to co-operate gladly with the UK on issues such as this. We may even take backward steps.

My heart skipped a beat when the noble Baroness, Lady Stern, said that 3 April was an auspicious day: had someone told her that it was my birthday? No, it was because of the Panama papers. Panama is very different.

Part of Panama’s very different business proposition is a far lower level of financial regulation. The Financial Action Task Force gave Panama the worst rating—non-compliant—for 14 of its 40 recommendations in its most recent evaluation of Panama, one of the worst records for any country in the world.

Law enforcement agencies do not support public registers, as they do not improve their capabilities. David Lewis, formerly of the NCA and now heading the global anti-money laundering standard-setter, the Financial Action Task Force, told the Commonwealth anti-corruption summit last year:

“Incomplete, unverified, out of date information in a public register is not as useful as law enforcement agencies being able to access the right information at the point they need it”.

Tax authorities also do not support public registers, as they encourage people to report less fully and accurately. The OECD stated that for taxpayers to abide by their obligations, they, “need to have confidence that the often sensitive financial information is not disclosed inappropriately”.

Those multilateral organisations, and the efforts to raise standards globally, are undermined by unilaterally adopting different standards, such as public registers. That is why OECD Secretary-General Angel Gurría said:

“A proliferation of different standards is in nobody’s interests”.

Indeed, much of the United States’ aversion to implementing international standards, as explained by my noble friend Lord Naseby, is the belief that it will lead to pressure to make personal information public. I cannot imagine that that situation will improve much with President Trump in the White House.

The UK rightly wants to raise implemented standards globally, but it cannot do so by undermining multilateral efforts to create a level playing field. We should not impose legislation on independent jurisdictions when financial services are matters for their internal affairs and their citizens have no representation in this House or the other place. Instead, I ask the Government to increase their efforts to raise global standards and make public registers the norm. The overseas territories and Crown dependencies have said that, should that happen, they will comply.

Equally, I am not convinced that we should unduly disadvantage the overseas territories’ economies. Indeed, an amendment such as that of the noble Baroness, Lady Stern, which excludes Gibraltar and the Crown dependencies, may give them an unfair advantage when competing for new investment with the Caribbean overseas territories. There should be a level playing field, but that means the vast majority of major financial centres moving in that direction, with encouragement from international bodies such as the Financial Action Task Force.

However, I encourage the Government to keep this matter under review and Parliament updated. That way, we can return to this issue in due course and assess the effectiveness of the central registers. That is the right thing to do, rather than hypothetically committing to legislation in two years’ time.

Lord Thomas of Gresford (LD): My Lords, the right reverend Prelate the Bishop of Peterborough reminded us that corruption in the modern world is a moral issue—and so it is; perhaps one of the greatest moral issues that we face. I was reminded by the speech of the noble Lord, Lord Naseby, that the great moral issue of the late 18th century and the beginning of the 19th century was slavery. It was the judgment of Lord Mansfield in the 1780s that put an end to slavery in this country.

The anti-slavery movement then began to campaign on the basis that if slavery is abolished in this country, how can it be that we permit it in our colonies, so that when a slave from the colonies comes to this country, the shackles fall away? It took until 1833 for William
Wilberforce to lead a movement to pass the anti-slavery Act. Even then, it did not abolish slavery in the East India Company territories or in Ceylon.

However, at that time slavery continued in the United States; it took a civil war to put an end to slavery in the United States. The arguments advanced then were that if we abolished slavery in the colonies and the West Indies, it would undermine the economies of those territories. The same argument again was used: how will those colonies in the West Indies be able to compete with the United States in the production of sugar and cotton if slavery is abolished there?

The important point is that this country laid down the standard. We did not wait for global standards to be brought about; we took the lead. I urge the Government to take the lead, along the lines that have been advanced today by the noble Baroness, Lady Stern, who sees not only the importance of having registers in the overseas territories but that there should be something behind it—the possibility of an Order in Council to deal with that moral issue if they do not take up the cudgels in the way that they should.

Lord Faulks (Con): I have a very short and slightly less theatrical point than the noble Lord’s—although the point he made was good. It relates to Amendment 169, which concerns the Crown dependencies. As at Second Reading, I declare an interest as the former Minister with responsibility for the constitutional relationship between the Crown and the Crown dependencies. It is a relationship of considerable importance to all parties involved, and of particular importance now with the prospect of Brexit. It is important that we maintain the competence of the Crown dependencies and it is also important that we do not exceed our constitutional role, as the noble Lord, Lord Beith, said, in seeking to make laws that in my view are not consistent with the specific constitutional relationship that we have with the Crown dependencies.

I notice that the noble Baroness, Lady Stern, eschewed any reference to the Crown dependencies. Amendment 169 does not, however. Quite apart from the point made by the noble Lord, Lord Eatwell, in relation to subsection (4), I invite the Minister to accept that there is a real problem legally with this amendment and to endorse what I said at Second Reading: that all the Crown dependencies have made very real progress in co-operating to produce a register which is available to all law enforcement agencies.

Lord Borwick (Con): My Lords, I became alarmed when I saw Amendment 167, and I then received a joint briefing on this specific amendment from groups such as Christian Aid, Oxfam and Save the Children—all great charities doing tremendously important work around the world.

What is clear is that this group of NGOs believes that countries like Bermuda cannot be trusted to run their own affairs and need orders from legislators in Britain. Noble Lords will know that Bermuda started its central register of beneficial ownership some 70 years ago—long before it was started in Britain. It is therefore offensive to believe that it is only the great parties here, and a bunch of patronising charities, that can help them. In fact, according to the IFC Forum, information on beneficial ownership of companies will be centrally held by all overseas territories from next year.

Data can be provided to the relevant authorities on the same day that it is requested. So Bermuda is actually ahead of other jurisdictions in this area. Targeting them, as has been done in this amendment, is especially misguided. In fact, the UK is the outlier. International standards do not require that we adopt a public register—and, unsurprisingly, most other countries are not adopting public registers. Our competitors in the US, Hong Kong and elsewhere will not be doing so.

We should consider what we risk losing. Reinsurance provision from Bermuda covered over 20% of flooding losses from the 2015 winter. It supports around 70,000 jobs in the UK and has provided our economy with £10 billion of capital since 2008. Forcing the overseas territories to go beyond what is required will simply mean that business moves elsewhere. It will move to financial centres that are less well regulated than ours—centres that will not co-operate with UK authorities—which is surely the opposite of what noble Lords are trying to achieve with this amendment.

Most politicians and civil servants simply do not understand the rule of unintended consequences. They think in straight lines, but the real world works differently. There are a large number of urgent problems in the world to be solved, and the efforts of these NGOs to create the ability for self-selecting, worldwide tax collectors to examine registers is unwise. Have these charities really decided that they have not got anything better to do?

6.30 pm

Baroness Williams of Trafford: My Lords, I thank all noble Lords who have taken part in an excellent debate. I pay particular tribute to the noble Baroness, Lady Stern, along with others who have spoken with passion and given considered contributions on a crucial issue.

I have addressed much of what has been raised in correspondence with noble Lords, but I hope that the House will allow me to put certain points on the record. As David Cameron said last year, international corruption, "is the cancer at the heart of so many of the world’s problems”.

The Panama papers revealed the extent to which anonymous shell companies are used to hide large sums of wealth and circumvent sanctions. The UK is a global leader in the fight against corruption, and we are proud to be at the forefront of international efforts to increase corporate transparency. This includes working with all UK overseas territories with financial centres, and with the Crown dependencies, to tackle money laundering, terrorist financing, corruption and fraud. The territories and dependencies are, in turn, committed to fully meeting international standards, and in some respects are going beyond them, and to working with us to ensure that they do not act as a hiding place for illicit financial flows.

Last year, the UK signed an exchange of notes with all overseas territories with significant financial centres and with the Crown dependencies, setting out
new arrangements on law enforcement access to beneficial ownership data. The exchange of notes provides that, when they have not already done so, overseas territories and Crown dependencies must all set up central registers or similarly effective systems of beneficial ownership information. It also provides that UK law enforcement authorities should have the automatic right to access this information, which means that beneficial ownership information will be available within 24 hours, or within one hour in urgent cases. Ensuring that law enforcement authorities are able to establish who is the ultimate owner of companies registered in the overseas territories and Crown dependencies is a crucial part of tackling the complex criminal networks that can exploit the system.

These arrangements are due to be implemented no later than June this year and will put them well ahead of most jurisdictions in terms of transparency, including many of our G20 partners and other major corporate and financial centres, including some states in the United States. Once in place, these arrangements will bring significant law enforcement benefits. They will prevent criminals hiding behind anonymous shell companies and mark a significant increase in UK law enforcement authorities’ ability to investigate bribery and corruption, money laundering and tax evasion.

The noble Baroness and other noble Lords started off by asking for a global standard definition, and I thought that I might address that up front. There is no single definition of a global standard for reach and coverage, but organisations such as the OECD and the Financial Action Task Force are key to the development of international standards in this area. As the noble Lord, Lord Eatwell, said, the UK believes that a public register is a powerful tool, and we will continue to make that point in international fora. However, the OECD has focused on accurate, independently verifiable data as an important standard, which all the overseas territories are looking to implement.

The EU has also played an important role in advocating transparency, but the fourth anti-money laundering directive does not require EU states to make their registers public. In this context, I reiterate that the overseas territories and Crown dependencies are actually ahead of the current standard in implementing the exchange of notes. I will come back to this when I address the point made by the noble and learned Baroness, Lady Butler-Sloss. We are not saying that the global standard means that every country must have a public register, but we would certainly expect it to reflect the recommendations of groups like the OECD and FATF. The UK is leading the way in this area and we are, of course, working on transparency issues with international partners through these groups. I make it clear that the UK firmly believes that public registers are the gold standard. Our position has not changed, but putting a timeline on this work simply does not reflect the scale and complexity of these issues. The OTs and Crown dependencies will be significantly ahead of the global standard as it stands. They have their existing commitments and this, in itself, is moving the standard in the right direction.

Many noble Lords have asked about progress to date and I am pleased to be able to talk about that. We have been working closely with both the overseas territories and the Crown dependencies on implementation by the deadline. I can confirm that significant progress has been made and I will briefly share some highlights with noble Lords. The British Virgin Islands, one of the overseas territories, has already completed the technical construction and testing of its new cloud-based platform. It is now taking forward engagement with corporate service providers to ensure that data formatting is fully standardised in order to enable beneficial ownership data to be uploaded on to the system in advance of the deadline.

In December, the Cayman Islands Government passed an amendment to the Police Law, which is necessary for law enforcement co-operation, and have recently successfully amended three key pieces of legislation to underpin the functioning of their new system: the Companies Management Law, the Companies Law and the Limited Liability Companies Law. Bermuda has a long-standing central registry of beneficial ownership data. It is currently moving legislation through its legislature to enhance the register, including a requirement on legal entities in Bermuda to maintain registers of up-to-date information on their beneficial owners, and to file updated beneficial ownership information with the Bermuda Monetary Authority. Gibraltar is already committed to implementing the EU fourth anti-money laundering directive and has prepared legislation to take forward these commitments and the exchange of notes. The technical construction of its system is well advanced and it is now considering steps to populate the registry with data.

All these jurisdictions have also committed to the automatic exchange of beneficial ownership information, along with 50 other countries. This is important progress, but there is more to be done and we are not resting on our laurels. We are committed to following up on these arrangements to ensure that they deliver in practice. The exchanges of notes with all overseas territories and Crown dependencies make explicit provision for the Secretary of State and the Premier or Chief Minister to undertake a review of the arrangements six months after they come into force—that is, on 31 December 2017—and for further reviews to take place annually thereafter. The arrangements also provide for continuous monitoring by both parties. I hope this provides clear assurance that the effectiveness of the arrangements will be kept under careful scrutiny to ensure that they are meeting our law enforcement objectives.

The NCA has confirmed that it is already seeing enhanced co-operation from some overseas territories, and much shorter turnaround times for processing requests for information. We expect to see this further improved to meet the agreed standards by June this year. This progress demonstrates what can be achieved by working consensually with the overseas territories and Crown dependencies. It is reaping benefits and I believe it will continue to do so.

I turn to the amendments. Amendment 167 is similar to one tabled on Report in the Commons, in that it envisages a timetable for the adoption of public registers of beneficial ownership by the overseas territories. If they have not done so by the end of 2019, it would require the Government to force them to do so. The key difference with this amendment is that it does not cover Gibraltar.
Amendment 169 also requires the Government to support the Crown dependencies to establish public registers of beneficial ownership by the end of 2019, and to report to Parliament on the progress made. However, it does not require the Government to impose public registers on them.

A key feature of the Government’s approach is that it creates a level playing field between all of the overseas territories with financial centres and the Crown dependencies. By taking a different approach to the Crown dependencies and territories, these amendments risk disrupting this level playing field, creating weaknesses in certain jurisdictions that could be exploited and damaging the spirit of co-operation we have been able to create between them.

The noble and learned Baroness, Lady Butler-Sloss, made the point that Gibraltar need not be covered by Amendment 167 as it is committed to implementing the EU’s fourth anti-money laundering directive. However, it is important to note, as I said earlier, that the fourth anti-money laundering directive does not require member states to establish publicly accessible registers of beneficial ownership information, so to impose such a requirement on the overseas territories and Crown dependencies would go beyond what has been agreed with our neighbours in Europe. The provisions in the exchange of notes also go beyond the fourth anti-money laundering directive in providing UK law enforcement with access to information within 24 hours, and within one hour in certain cases.

Rather than imposing new requirements on the overseas territories, the Government feel strongly that we should continue to work with them and focus our efforts on the implementation of the existing arrangements, including the passage of new primary legislation in the territories and complex technological improvements. I recognise that it is the wish of some noble Lords that a timetable be set for public registers. However, the UK Government respect the constitutional relationship with the overseas territories and the Crown dependencies. My noble friend Lord Faulks queried whether there might be a legal issue. I suspect that he is right but I shall look into that before Report.

As I noted earlier, legislating for the overseas territories is something we have done only very rarely. It is done on issues such as the abolition of the death penalty, which raised issues of compliance with human rights obligations for which the UK retains responsibility. While tackling this kind of complex criminality and its consequences is extremely serious, there is a clear constitutional difference in the fact that financial services is an area that is devolved to territory Governments and, in the case of the Crown dependencies, the UK has never legislated for them without their consent. That may be the point to which my noble friend Lord Faulks referred.

Lord Faulks: I confirm that that is precisely the point I was making.

Baroness Williams of Trafford: I am so glad that I read it right. The UK is directly responsible for the OTs’ and the CD’s compliance with international obligations, including the European Convention on Human Rights. It is our responsibility in international law, as the overseas territories have no legal personality under international law. That was a key factor in the UK taking the rare step to legislate for the OTs on the issue of, for example, the decriminalisation of homosexuality. While I acknowledge the moral dimension of tackling criminal finances, the same responsibility does not exist for financial services policy, which is OT government responsibility.

6.45 pm

I am sorry that I have taken up so much of noble Lords’ time, but this debate has created a lot of interest in the Chamber. I will talk now about the long-term ambition. The UK is the only G20 country to have established a public register, which has been in operation for less than a year. The Government have made it very clear that it is the Government’s long-term ambition that publicly accessible registers of beneficial ownership will in time become the global standard. Should this happen, we would expect the overseas territories and Crown dependencies to implement this standard. Given that so many jurisdictions fail even to reach the standards set by the Financial Action Task Force for beneficial ownership transparency, it is right to focus our efforts on persuading others to up their game, while ensuring that the overseas territories, as well as the Crown dependencies, deliver on what they have promised.

Finally, on the Opposition’s Amendment 168, as noble Lords will be aware, the Government announced at the London Anti-Corruption Summit in May last year their intention to create a register of overseas company beneficial ownership information where the company owns UK property. The register will be an important tool in law enforcement investigations and will bring transparency to the ownership and control of overseas companies that own UK property. I welcome the Opposition’s support for this proposal and hope that it will go some way to addressing the concerns raised by my noble friend Lord Faulks last week. Since the summit, the Department for Business, Energy and Industrial Strategy has been working closely with experts in many disciplines to develop the proposals and ensure that the register will work effectively across the whole UK.

The policy is unusually multifaceted, bringing together complex legal areas of international company law and land law across the UK. It is therefore taking time to develop effective proposals to ensure that we deliver full transparency without creating undue burdens on business or adversely impacting commercial property transactions. We intend to publish a call for evidence, which will set out the policy proposals in full, in the coming weeks. We will also introduce legislation to implement the register as soon as parliamentary time allows.

I will mop up some other questions that were asked. My noble friend Lord Kirkhope asked whether all the overseas territories will have central registers by June. I think he probably knows the answer by now, given the debate that we have had, which is that all the territories are working towards implementation by June 2017. I should make noble Lords aware that in the cases of Anguilla and the Turks and Caicos Islands, specific challenges have arisen.
Anguilla is a very small jurisdiction of just 15,000 people, and has faced in the last year the significant challenge of the resolution of its two national banks, which has placed certain constraints on its public finances. It has therefore requested support to fund the upgrade of its electronic register, which UK officials are currently considering. While it is important that Anguilla is held to the same standard as other overseas territories, I am sure that noble Lords will appreciate the need to follow all proper processes to ensure value for money and the use of any UK public funds.

In the Turks and Caicos Islands, general elections were held in December 2016 and a new Government were elected. In February my noble friend Lady Anelay met the newly elected Premier, who confirmed her intention to stand by the agreement signed by her predecessor. The Premier has also recently instructed that the drafting of the necessary legislation to give effect to the arrangements should begin and that a project should be prepared on IT infrastructure and related issues.

The noble Lord, Lord Eatwell, asked about the verification of—oh, he has gone; I think I might have bored him to death, but I will get my reply on the record. The UK register of PSCs is public, which means that many people view the information and check its accuracy. The UK does not directly verify the information on the register; instead, it relies on others to check it in the course of using the register.

The noble Lord, Lord Rosser, asked about the timing of legislation on the public register of beneficial ownership. He will understand that I cannot say what legislation might be announced in this House in the coming months. However, I can assure him that it is my strong expectation that legislation to introduce a public register of beneficial ownership of UK property will be introduced before the end of the Parliament.

My noble friend Lord Kirkhope asked about similarly effective systems and electronic search platforms. As he explained, under the bilateral arrangements concluded with the UK, some jurisdictions have opted to establish an electronic search platform allowing them to access beneficial ownership information. The exchange of notes permits similarly effective arrangements provided that the following criteria are met: law enforcement authorities can obtain beneficial ownership information without restriction, and this information is available for both civil and criminal proceedings; law enforcement authorities can quickly identify all corporate and legal entities connected to a beneficial owner without needing to submit multiple and repeated requests; and corporate and legal entities or those to whom the beneficial ownership information relates are not to be alerted to the fact that a request has been made or that an investigation is under way. We will be monitoring this arrangement to ensure that it does indeed provide the same results.

My noble friend Lord Hodgson asked whether TCSPs are regulated. They are regulated in the OTIs by their financial service commission or monetary authorities. Law enforcement authorities have reported enhanced co-operation since the signing of the exchange of notes, and we expect to see co-operation improve further once the deadline for full implementation is reached.

I am sorry that I have taken so long. I hope that I have given as fulsome an explanation as noble Lords expected.

Lord Rosser: Perhaps I may ask the Minister to clarify a couple of points. First, in the light of what she has said and what has been said in this debate about competitive disadvantage, are the Government arguing that accepting Amendment 167 would place the overseas territories at a competitive disadvantage and that that is a key reason for the Government opposing the amendment? Secondly, in view of what the Government have said about wanting to work with the overseas territories in particular, is the reality that if either the overseas territories or the Crown dependencies do not agree to public registers of beneficial ownership, then that will not happen in relation to the overseas territories and Crown dependencies?

Baroness Williams of Trafford: Can the noble Lord repeat his last point?

Lord Rosser: Certainly. My question relates to what the Government have said about working with the overseas territories. Does that mean that if either the overseas territories or the Crown dependencies decline to agree to public registers of beneficial ownership, then that will not happen in relation to the overseas territories and Crown dependencies? Is that the Government’s position?

Baroness Williams of Trafford: My Lords, they are all committed to working towards the same end. It would be perverse if, having signed up to this arrangement, they then decided that they were not going to work with the Government. If they suddenly stalled on working with the Government, the Government would encourage them to do so in strong terms.

Lord Rosser: I did not realise they had signed up to public registers. Since the Government say they want to work with the overseas territories in particular, I am simply asking what would happen if either the overseas territories or Crown dependencies declined to agree to have public registers of beneficial ownership. Is the Government’s position that it would therefore not happen as far as the overseas territories and Crown dependencies are concerned?

Baroness Williams of Trafford: My Lords, the Government are fully committed to working with the Crown dependencies and overseas territories to achieve the ultimate end of public registers. I have now forgotten what the noble Lord asked me on Amendment 167.

Lord Rosser: I was simply saying that, in the light of what has been said in this debate by a number of noble Lords about the overseas territories being placed at a competitive disadvantage if the amendment was accepted, are the Government arguing that to accept Amendment 167 would place the overseas territories at a competitive disadvantage and that that is a key reason for them opposing the amendment? Or is the reason for the Government’s opposition to the amendment...
a dislike of what they would describe as imposing something on the overseas territories rather than working with them?  

Baroness Williams of Trafford: The noble Lord’s latter suggestion is correct: we do not want to impose on the overseas territories but want to work consensually with them to achieve the aims that we seek. The overseas territories may face competitive disadvantage in the short term, but in the long term, the transparent and open way in which the territories intend to work, and with them, will be to their advantage.

Baroness Stern: I thank all noble Lords who have spoken in this debate, which has been a cornucopia of oratory, wisdom and detailed, reliable knowledge. I am very grateful to my co-signatories for their strong support. I appreciate the words of the right reverend Prelate the Bishop of Peterborough that this is a moral issue, and the contribution of the noble Lord, Lord Thomas of Gresford, about the United States and the abolition of slavery. I am most grateful for the detailed information from the Minister on progress; it was a bit of an “in” line 28 and insert—

Clause 50 agreed.

Amendment 170 not moved.

Clause 49 agreed.

Amendment 167 withdrawn.

Amendments 168 and 169 not moved.

Clause 49 agreed.

Amendment 170 not moved.

Clause 50 agreed.

Schedule 5: Minor and consequential amendments

Amendments 171 to 176

Moved by Baroness Williams of Trafford

171: Schedule 5, page 152, line 27, leave out from beginning to “in” in line 28 and insert—

“(1) Section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of UK judgments in other parts of UK) is amended as follows.

(2) In subsection (2)(f), at the end insert “or an unexplained wealth order made under that Part (see sections 362A and 396A of that Act)”.

(3) ”

172: Schedule 5, page 152, line 31, at end insert—

“(1) In subsection (3) for “(4ZA)” substitute “, (4ZA) and (4ZB)”.  

(2) After subsection (4ZA) insert—

“(4ZB) This section applies to the following orders made by a magistrates’ court in England and Wales or Northern Ireland—

(a) an account freezing order made under section 303Z3 of the Proceeds of Crime Act 2002;
(b) an order for the forfeiture of money made under section 303Z14 of that Act;
(c) an account freezing order made under paragraph 108 of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001;
(d) an order for the forfeiture of money made under paragraph 102ZB of that Schedule.”

( ) In subsection (5)(d), for the words after “measure” substitute “other than an order of any of the following kinds—

(i) a freezing order of the kind mentioned in paragraph (a) or (c) of subsection (4ZA) made in Scotland by the sheriff (in addition to such orders made by a magistrates’ court in England and Wales or Northern Ireland);
(ii) an order for the making of an interim payment;
(iii) an interim order made in connection with the civil recovery of proceeds of unlawful conduct;
(iv) an interim freezing order under section 362I of the Proceeds of Crime Act 2002;
(v) an interim freezing order under section 396I of that Act.”

173: Schedule 5, page 160, leave out lines 19 and 20

174: Schedule 5, page 169, line 30, at end insert—

“(4A) In section 414 (property), in subsection (3) before paragraph (a) insert—

“(za) property is held by a person if he holds an interest in it;”. ”

175: Schedule 5, page 170, line 3, at end insert—

“( ) After subsection (7) insert—

“(7ZA) “Settlement” has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005.”

176: Schedule 5, page 170, line 3, at end insert—

“(5A) In section 438 (disclosure of information by certain Directors), in subsection (1)(e) at end insert “or 8”.

75B_ In section 439 (disclosure of information to Lord Advocate and to Scottish Ministers), in subsection (1) at end insert “or 8”.

75C_ In section 441 (disclosure of information by Lord Advocate and by Scottish Ministers), in subsection (2)—

(a) in the words before paragraph (a), after “5” insert “or 8”;
(b) in paragraph (d), after “5” insert “or 8”.”

Amendments 171 to 176 agreed.

Schedule 5, as amended, agreed.

Clauses 51 to 53 agreed.

Clause 54: Extent

Amendments 177 to 179

Moved by Baroness Williams of Trafford

177: Clause 54, page 113, line 42, at end insert—

“( ) section (Reconsideration of discharged orders)(2) and (3);”

178: Clause 54, page 114, line 20, at end insert—

“( ) section (Reconsideration of discharged orders)(4);”

179: Clause 54, page 114, line 27, at end insert—

“( ) section (Reconsideration of discharged orders)(5) and (6);”

Amendments 177 to 179 agreed.

Clause 54, as amended, agreed.
Amendment 182 not moved.
Amendments 180 and 181 agreed.
Amendment 182 not moved.

Amendment 180 and 181 agreed.

Amendment 183 agreed.

Clause 55, as amended, agreed.

Clause 56 agreed.

House resumed.

Bill reported with amendments.

**Clause 55: Commencement**

**Amendments 180 and 181**

*Moved by Baroness Williams of Trafford*

180: Clause 55, page 114, line 38, at end insert—

“( ) section (Reconsideration of discharged orders)(4);”

181: Clause 55, page 114, line 44, at end insert—

“( ) section (Reconsideration of discharged orders)(5) and (6);”

Amendments 180 and 181 agreed.

**Amendment 183**

*Moved by Baroness Vere of Norbiton*

183: Clause 55, page 115, line 18, at end insert “or areas”

**Baroness Vere of Norbiton:** My Lords, as my noble friend Lord Dunlop set out to your Lordships’ House last week when repeating a Statement from my right honourable friend the Secretary of State for Northern Ireland, the current political situation in Northern Ireland is highly unusual. The Government are, none the less, committed to the central principles of the Sewel convention. Noble Lords will recall that the Government have made a commitment to not commence provisions relating to matters devolved in Northern Ireland without the appropriate consents having been obtained. Although it should already be possible to commence provisions at different times in different parts of the UK, Amendment 183 puts this beyond doubt, helping to ensure that we can fulfil this commitment. I beg to move.

7 pm

**Baroness Hamwee:** My Lords, if the Minister needs to answer my question after today, that will be fine. I well understand what the noble Baroness has said but some of the provisions to which this amendment will apply deal only with one area—mostly with Northern Ireland but one or two with Scotland. If there is a provision that regulations may apply to areas, how does that work when you have only got one area, as I understand it, being one of the four nations? They are not sub-divisible after that.

**Lord Kennedy of Southwark:** I am happy with the amendment. It is, unfortunately, necessary in this situation. I hope the parties can get round the table and get the Administration back and up and running again.

**Baroness Vere of Norbiton:** I thank the noble Baroness for her comments and, of course, I will write with further clarification.

Amendment 183 agreed.

Clause 55, as amended, agreed.

Clause 56 agreed.

House resumed.

Bill reported with amendments.
or reintroducing NTDs endemic to the Middle East and north Africa to Europe and beyond. All this highlights the global challenge of NTDs and emphasises the need to make progress in tackling these diseases of poverty in our interconnected world if we are to achieve the “ensuring healthy lives for all” sustainable development goal.

In the five years since the London declaration, we have made considerable progress. The bringing together of Governments, pharmaceutical companies, NGOs and researchers, scientists and doctors, has had profound results. Increased donations of essential medicines, targeted funding by international development agencies, private foundations and the domestic financing of NTD programmes by endemic countries are drastically improving the quality of life of millions worldwide. Almost 1 billion people were treated in 2015 alone. Thanks to the donations of several major pharmaceutical companies, billions of doses of drugs have been donated in the past five years so that by last year around 50 treatments were being delivered by mass drug administration programmes every second of the day. UK aid and the work of British institutions, NGOs and partnerships like the Liverpool School of Tropical Medicine, the Schistosomiasis Control Initiative, Sightsavers and the London Centre for Neglected Tropical Disease Research are all playing a critical role in implementing prevention and treatment strategies, and in generating evidence from operational and scientific research to inform efforts to achieve the 2020 WHO targets. Since 2013, four countries in central America have all eliminated river blindness and the misery that the disease brings, and last year both the Maldives and Sri Lanka were certified free of lymphatic filariasis. Great progress has been made and I am happy to pay tribute to the role that the UK Government have played both in their original support for the London declaration and through their ongoing leadership and financial contributions.

But we have to recognise that there are significant challenges ahead and “steady as she goes” will not deliver the targets set, particularly for soil-transmitted helminths. Mass drug administrations will need supporting infrastructure such as water and sanitation projects, additional interventions, including new medicines, and in particular, as I raised in the debate last year, new vaccines. We were then all anxious about Zika and its impact, and the need to make progress in tackling these diseases of poverty in our interconnected world if we are to achieve the “ensuring healthy lives for all” sustainable development goal.

In addition to vaccines, we need to continue searching for better tools across the board. We have new mapping tools and we understand better the burden of disease, but we will have to continue improving diagnostics, such as the new rapid diagnostic test, funded by DFID, for sleeping sickness. We will need to improve our strategies on vector control and, as in most areas of combating poverty, to do more on the education and empowerment of women and girls, which has a demonstrable effect on sustained access to clean water, sanitation and hygiene. Sufficient and safe access to water in turn helps to combat NTDs such as trachoma, schistosomiasis and soil-transmitted helminths.

While most of the targets of both the WHO and the London declaration understandably focus on interrupting transmission and infection cycles, we have to be aware that NTDs cause severe morbidity and lifelong disabling conditions such as blindness and disfigurement, which can in turn lead to stigma and exclusion. So resources should also be directed towards improving the quality of life for people suffering from the consequences of these diseases and integrating services into existing health systems and ongoing NTD programmes. I hope the Minister can give us some information about the Government’s plans for NTD spending and how the NTD portion of the Ross fund will be managed and allocated, as this portfolio will be key to the delivery of UK aid to NTDs.

Next month, the WHO, Uniting to Combat NTDs and the NTD community will host a summit in Geneva to mark the fifth anniversary of the road map and declaration, and to plan for the future control, elimination and eradication of NTDs. I hope the Minister will make clear the Government’s commitment to that summit; that we will have high-level political representation at that meeting; and that we will have a commitment to further funding and continuing the task set five years ago. That meeting is an opportunity for us to continue our leadership with other donors in the philanthropic world and other national donors, and to work with the Governments of endemic countries to come together and once again commit to consigning these diseases of poverty to history.

Baroness Buscombe (Con): My Lords, all noble Lords may speak for five minutes.

7.13 pm

Lord Stone of Blackheath (Lab): My Lords, I declare an interest as a member of the advisory board of the Schistosomiasis Control Initiative at Imperial College. I am on the board only because I am one of the few people who can say schistosomiasis. No wonder it is neglected. I have asked them to rebrand it. I am also on the board because I am a businessman and retailer. I will focus on the enormous cost/benefit of SCTI’s work and the huge return on capital employed. It effectively controls schistosomiasis across 11 countries in Africa at a cost for each child treated of $30 a year.

This is one of the most cost-effective public health programmes ever. Let us look at the scale: more than 91 million treatments have already been delivered, with funding largely from DFID. More than 200 million treatments will be delivered by 2019, half of them to girls and women. The worms are killed in children by just one safe and effective treatment; anaemia and malnutrition are reduced; the healthier children will then go on to attend school, and in the longer term, free from serious organ damage, they can contribute to their society for life.

So let us look at the maths. Disability-adjusted life years, or DALYs, due to schistosomiasis cost Africa hugely. Treated youths will be able to work for years to come. For every million who can work, even at just $1 a day, it is like $400 million of aid for Africa every
year for ever. Other business people see this immediately as a must. Merck and GlaxoSmithKline donate tens of millions of praziquantel and albendazole tablets every year. The "effective altruism" movement has highly recommended our project. Philanthropists such as Luke Ding are there year after year donating large sums through Prism the Gift Fund—where I declare a trusteeship. The Bill & Melinda Gates Foundation has supported us hugely over the long term. Just recently, Dustin Moskovitz and Cari Tuna, through their charity, Good Ventures, have made one of the largest gifts ever received to Imperial College for this cause.

In addition to controlling schistosomiasis, we could eliminate it in most countries across Africa by 2030. Elimination would pay back enormously in increased prosperity across Africa and the world. To this end, and to break down the silos, SCI is part of a global network which, together with DFID investments, is working to strengthen local health systems. It is working with the World Health Organization; with Oxfam's water, sanitation and hygiene programme—or WASH; with the Natural History Museum in a partnership studying the larvae, worms and snails that cause schistosomiasis; and with the noble Lord, Lord Trees, and the Royal College of Veterinary Surgeons.

Schistosomiasis elimination is not only the right thing to do but would be massively cost effective. Perhaps the Minister would like to meet those expert practitioners at the Schistosomiasis Control Initiative at Imperial College to discuss the cost effectiveness of all this and a brighter future for all.

7.17 pm

Baroness Northover (LD): My Lords, I thank the noble Baroness, Lady Hayman, for securing this debate and, as ever, for opening it so effectively. I declare an interest: I am a trustee of the Malaria Consortium, a position that I took over from the noble Baroness.

Baroness Hayman: I shall not take up more time, but I did not declare my interests at the beginning of my speech, which I should have done. I therefore do so now: they are as recorded in the register.

Baroness Northover: I remember the huge excitement of the London meeting in 2012, when the UK, by that stage moving towards spending 0.7% of GNI on aid, as so long promised, was able to increase its commitment on neglected tropical diseases so substantially, by an additional £195 million. I was proud to be part of DFID's ministerial team at the time and recall the amazing briefings that I was given by committed experts not only from the department but from the London School of Hygiene & Tropical Medicine—including on how you pronounce the names of all these various diseases.

As the noble Baroness has pointed out, NTDs affect more than 1.3 billion people worldwide and cause half a million deaths each year. They cause chronic disability, disfigurement, stigma and ill health. They disproportionately affect the poor and marginalised.

It is vital for delivering the SDGs that we address the NTDs. Of course, there is goal 3 on healthy lives, but it is much more than that. The SDGs aim to eliminate extreme poverty while leaving no one behind. It is the poorest and those with disabilities who are so often left behind. Tackling these diseases is part of the overall strategy of all the SDGs. In doing so, we need to focus on research, and here the London School of Hygiene & Tropical Medicine and the Liverpool School of Tropical Medicine have been so important, and the UK has had such strengths.

We need to make sure that treatments and preventive measures, such as vaccines, are coming forward and that we get them where they are needed. We need also to ensure that we have adequate surveillance. This is, of course, vital for understanding a country's true burden of disease, as well as for securing and achieving intervention, detecting the last cases and, when and if we are in that fortunate position, making sure that there is no resurgence. I urge the Government to use their position as a leader in this area to encourage others to increase their own support. The noble Baroness, Lady Hayman, mentioned the upcoming summit in Geneva towards the end of April as a key opportunity for this. I, too, ask whether the Secretary of State will attend.

Like the noble Baroness, Lady Hayman, I want to ask about the Government's Ross fund, announced by the former Chancellor in the autumn of 2015. It seems an absolute age ago, but it included £200 million to tackle NTDs. As far as I know, there have been no announcements yet relating to NTDs. Can the Minister clarify what is happening? It has also been flagged to those of us speaking today that leprosy remains a neglected disease, where others are no longer so neglected. Will the Minister comment on this?

I come now to the eradication of certain NTDs: it is fantastic that we have reached that point. We had the wonderful visit from President Carter last year—in 1986, Guinea worm disease affected 3.5 million people; now, it is almost eradicated. President Carter said that he hoped to outlast the last Guinea worm. I am delighted that the former President is still with us and I want to ask about those last Guinea worms. Have we almost reached that point and do we have any information on other NTDs which are on their way out?

Finally and most importantly, what assessment has DFID made of the effect of Brexit in this area? We know that scientists working in the United Kingdom come from many different parts of the world, but especially from the EU. What are we doing to encourage them to stay? How can we make sure that they know that the UK's leadership in this area, as in many others, depends so much on them and that we are very grateful to them? I look forward to the Minister's responses in this vital area, which is so important for the health of the poorest around the world, and where the United Kingdom has such a proud record.

7.23 pm

Baroness Chalker of Wallasey (Con): My Lords, I congratulate my noble friend Lady Hayman on what she said at the commencement of this special debate. I endorse everything she said 100%. We have had many battles in the past but on this issue we agree completely. I have many interests in this field but I want to focus mainly, as a long-term supporter and as a patron of WaterAid, on the critical role of water and sanitation in helping to defeat NTDs.
Baroness Chalker of Wallasey

First, I pay tribute to Barbara Frost, the chief executive of WaterAid, who is to retire in the coming months after more than 10 notable years at its head. Much of what has come into the WASH programme and into other considerations, could not have occurred but for her leadership and her team’s work and we should put on record our thanks to her. She has been totally relentless in what she has done to get increased action to supply clean water and basic sanitation, not just through our own department’s programme, which has been notable, but also in other countries’ programmes which were not as well led as the water and sanitation programmes led by DFID in this country.

One question I want to ask my noble friend is whether the Ross fund can be extended to some of the further work that needs to be done to get better water engineering, which is essential to the supply of clean water. It seems to me that we know what needs to be done, but the resources are very often at the end of the pipe, rather than at the beginning of the process. I believe that we should be paying more attention to this.

There is one further area of work that I hope DFID will undertake. We are doing very well indeed, with the help of the London School of Hygiene & Tropical Medicine, where I was proud to be the chairman for eight years, and the Liverpool School of Tropical Medicine, where I was on the council. But we are not doing enough on basic health training for doctors in countries where the NTDs are still thriving. We need to focus, with the royal colleges, on better training in-country for the doctors of the countries that suffer the NTDs. We are doing insufficient work in that field. Much as we try, it is certainly not reaching many of the doctors who are practising, when it is accepted knowledge in this country and many other developed countries.

I do not wish to repeat what the noble Baroness, Lady Northover, or anyone else in the debate said, but I believe that we should have not just an annual repeat of our efforts but more frequent debates on these vital subjects. Healthy societies in the developing world of our efforts but more frequent debates on these vital issues if we are really to mobilise all people in delivering good health advice, some of which is preventive. This is where we can act as a bridge between local people and outside agencies, often in hard-to-reach areas.

This is especially important for countries or areas which are in conflict or at war. At such times, NGOs can find it very difficult to deploy anybody and if war breaks out they have to withdraw their staff, rightly, to protect them—there is not much choice if you employ people from elsewhere. But unlike the NGOs, the churches will be there before, during and after the conflict or disaster and their clergy tend to be local community leaders, rather than outsiders. Very often it is local parishes or the diocese which run the schools, clinics and hospitals.

My simple plea to DFID, NGOs and all parties involved in this area is to bear in mind the vital need to get everybody round the table at the earliest stage. I think about the cultural traditions and local faith issues if we are really to mobilise all people in delivering good health advice, some of which is preventive. This is so that we do not just look at the medical challenges, but work with all the networks on the ground to address the social and religious contexts of those communities which are suffering so from these terrible diseases.

7.31 pm

Lord Rea (Lab): My Lords, the noble Baroness, Lady Hayman, deserves our thanks for asking this Question and for her persistence with NTDs. She makes sure that these debilitating diseases are not neglected, at least in your Lordships’ House. It seems to me that we know what needs to be done. I am not a medic and do not want to engage in the medical aspect of this, but I want to make one, very brief point: the need to adopt clear protocols and joined-up approaches if we are going to be really effective in combating neglected tropical diseases.

I will illustrate this with the Ebola crisis in Sierra Leone, which broke out in 2014. At that point, medical teams were deployed from various parts of the world in the most extraordinary way. They adopted various measures for containment and treatment that were not always understood or appreciated by many local people. Indeed, it was very frightening, and the first-hand accounts of these teams by local people showed that it was quite shocking for many of them. In some areas there was actually hostility to what appeared to be draconian measures—made for the very best medical reasons—some of which were confronting local customs or traditions that the local population held dear.

Of course, community leaders have a role in education and communication, yet it took quite a long time to realise the role that faith leaders could play in mobilising and educating local people. Faith communities were to be found in virtually every community. They had regular meetings. They had resources, networks and communication. In Sierra Leone, respected Christian and Muslim leaders were eventually recognised as allies in challenging some of the myths and misinformation that were around. It was as important as the medical interventions that people had to want to collaborate. It was about local empowerment as well as medicine. That provided an important avenue by which to get life-saving advice about protection and prevention out to the community. Then there was the question of preventing and confronting the stigmatisation of the survivors, which was a profound problem.

This sort of engagement is an excellent example of what, at their best, worldwide religious networks such as the Anglican communion can do so effectively. Of course we are involved in raising money for water projects. A number of my churches proudly have signs up saying they have adopted toilets in other countries, and so on. These are the sorts of things that are happening because of the links right across the world. This is where we can act as a bridge between local people and outside agencies, often in hard-to-reach areas.

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these diseases are now mostly treatable, the accent up to now has been on medication, with less emphasis on prevention. But the underlying causal factors will allow the diseases to return, requiring repeated medication if they are not addressed. An example of this is onchocerciasis, or river blindness, where it is extremely difficult to eliminate the insect vector—a tiny blackfly. Repeated courses to treat river blindness are often necessary.

Tackling the causes, as at least two if not three previous speakers have said, requires the introduction of clean water, sanitation, improved hygiene and vector control where possible. As my noble friend Lord Stone said, this is encapsulated in the acronym WASH, which is now very much part of the NTD programmes of the WHO, DFID and other agencies. Of course, WASH plays a big part in the control of other diseases and the elimination of extreme poverty. We should remember that the provision of clean water and sanitation was and still is a basic part of all public health, dating from the time of our great-grandfathers in the 19th and early 20th centuries. Much earlier, water-borne sanitation was used by the ancient Romans, but with the decline and fall sanitation was also lost. Can the noble Lord, Lord Bates, give us a report on international progress with WASH programmes across the board and DFID’s part in them?

I also repeat the request of the noble Baroness, Lady Hayman, for information about the development of new vaccines for NTDs. In particular, I wonder whether we are having success in developing new point-of-care rapid diagnostic tests. These can greatly increase the cost-effectiveness of treatment programmes because it is possible to identify people who are not carrying the disease.

As a further point, the Leprosy Mission is concerned that not enough is being done to control and eradicate that stigmatising neglected disease. There are still pockets around the world where it is not eliminated. Can the Minister say whether DFID’s role in this will continue—it already plays a certain part—and, I hope, be stepped up?

Finally, I follow other speakers in hoping the Minister can assure us that the UK’s contribution to the international collaboration on NTDs will continue to be adequately funded, Brexit or not, and help to achieve the UN’s sustainable development goals.

7.35 pm

Baroness Barker (LD): My Lords, I thank the noble Baroness, Lady Hayman, not just for today’s debate but for the succession of world-leading scientists who she and Jeremy Lefroy bring into Parliament week after week so that some of us can begin to understand the complex science about which we are speaking tonight. Having listened to those scientists for over a year, I now understand that we are talking about three main types of disease when we talk about neglected tropical diseases. Those caused by worms and flukes are largely treated by very simple population management methods. Those which are vector-borne are much more complicated and need treatment in hospital; malaria is the classic example. The third group is made up of the very highly contagious epidemics which hit a population with a much more profound effect than they would do here when that population is, as noble Lords have said, living in poverty and without access to basic medicine.

The approaches to all three of these disease groups are quite distinct, and the hazards that they pose are quite different. They are also all happening, worryingly, against the background of multidrug resistance, for example for TB and malaria, which is probably the equivalent of climate change in medicine and something that we should be very focused on and frightened of. But a very important point is that the same institutions and scientists that work on drug resistance mechanisms are the same scientists who work on the mechanism behind NTDs. So the science is interconnected, and I want to talk about maintaining that science base.

Other noble Lords have spoken about the heritage that we have from our colonial past in the schools of tropical medicine in London and Liverpool, and it is time that we repaid what we took from the world, by ensuring that those institutions continue to work to provide the basic science to support pharmaceutical companies to take forward new compounds into development and clinical trials and on towards new medicines. In that, international funding from Governments, including for example from DFID, is really important. It does two different things: humanitarian aid, which is very important, but also funding for long-term scientific and medical development. That is the stuff which the public do not really see and which is therefore much more vulnerable to cuts. I hope the Minister might be able to assure the House that DFID will continue to play its leading role in humanitarian funding but will also not take its foot off the pedal in terms of funding the scientific research.

Other noble Lords have spoken about the fact that it is always the marginalised people in these countries who suffer the most, but I want to raise one other issue with the Minister. The disengagement from global health by the USA under the Trump Administration will have a huge impact on in-country programmes, particularly in Africa, where many institutions such as hospitals and universities are very dependent on American support for funding both their staff and the equipment and buildings. In Ethiopia, for example, the whole of the medical school expansion programme is funded from the USA via the World Bank. It remains to be seen whether organisations such as the Bill & Melinda Gates Foundation, the Carter Center and the Clinton Foundation can step up and fill that gap. US government institutions such as the CDC and American universities such as Johns Hopkins, we think, may also be forced to stand back.

It is really important when we are trying to deal with outbreaks of these diseases around the world that there is a standing body of people in countries who have the scientific expertise to bring about a response. Will DFID perhaps switch its funding, in light of the Americans’ withdrawal of funding from certain sexual and reproductive health programmes, to ensure that funding for those programmes continues? Will the Government also press the Trump Administration, who have less objection to work on NTDs, to place some of the money that they have withdrawn from the other programmes into programmes supporting the science and treatment of neglected tropical diseases?
Lord Alton of Liverpool (CB): My Lords, it is a great pleasure to support my noble friend Lady Hayman and salute her dogged persistence in raising the issue of rare and neglected tropical diseases. In doing so, I should mention that I am a vice-president of the Liverpool School of Tropical Medicine and have been associated with the school in one way or another for the best part of 40 years. I particularly pay tribute to Professor Janet Hemingway, whose brilliant leadership has ensured that the school has maintained its world-class status, and the remarkable Professor David Molyneux, who ranks as one of the foremost global authorities on neglected tropical diseases.

The Liverpool school has been involved with NTDs since its creation in 1898, and has been responsible for many of the ground-breaking discoveries in the field. A school staff member was among the small group who coined the term “NTDs” with the World Health Organization in 2004-05. I should like to use my brief contribution to this evening’s debate to shine a light on the school’s amazing work and to encourage the noble Lord, Lord Bates, to consider what extra assistance might be given.

Let me give the House just some examples of the ground-breaking work in which the Liverpool school has been involved in the past decade. With DFID support, the lymphatic filariasis programme continues to make a real impact on poor people in 12 countries, having assisted ministries of health to deliver 200 million drug doses since 2009. As a result, in Malawi, for instance, transmission of filariasis has stopped. The Liverpool school and the London Centre for Neglected Tropical Diseases have expanded their commitment to those who remain disabled through the disease, recognising the tandem aims of stopping transmission and, as my noble friend Lady Hayman said, reducing chronic disablment. The school has been identifying patients, training surgeons to alleviate this stigmatising male genital disease, and demonstrating the benefits of surgery to those who are disabled.

Secondly, LSTM researchers are at the forefront of new and exciting approaches to mapping neglected tropical diseases using remote sensing technologies, mobile smartphone technologies for detecting NTD cases, patient identification and mapping diseases. I should be grateful if the Minister could tell us what study DFID has made of the use of such technologies.

Thirdly, with support from the Bill and Melinda Gates Foundation, the school has developed the use of the antibiotic doxycycline and, with industrial partners, has developed a new drug ready for clinical trials to treat river blindness and elephantiasis.

Fourthly, the school’s staff are at the forefront of research on insecticide resistance—a major and increasing problem in the fight against malaria, but now also against Zika. This work has major policy impacts in all insect-transmitted diseases. The LSTM is a key policy adviser to the World Health Organization and is working on Zika projects to assist control. Perhaps the Minister could say a word about that too.

Fifthly, the school leads the way in snake-bite research. Snake-bite is a massively underestimated problem globally. I was amazed to be told that at least 100,000 deaths per year are attributable to a condition that often leads to amputation. Africa is in dire need of anti-venoms, as the major manufacturer has ceased production. The LSTM is seeking to develop new products which are multivalent, do not need to be in production. The LSTM is seeking to develop new products which are multivalent, do not need to be in production. The LSTM is seeking to develop new products which are multivalent, do not need to be in production. The LSTM is seeking to develop new products which are multivalent, do not need to be in production. The LSTM is seeking to develop new products which are multivalent, do not need to be in production.

Sixthly, researchers are undertaking critical work to improve the use and monitoring of insecticide in India to assist visceral leishmaniasis elimination programmes. VL is a fatal disease if untreated, as we have heard, but effective control of the sand-fly is vital to reduce transmission to some of the poorest people of India, Nepal, Bangladesh and elsewhere.

Seventhly, LSTM researchers are involved in reducing the burden of sleeping sickness in several countries, with cases now at the lowest reported level ever—fewer than 3,000 per year. Perhaps the Minister can tell us how and when we expect to see this reach zero.

To conclude, around 1 billion neglected tropical diseases are treated each year via donated quality drugs to the poorest people most in need at lowest per capita cost of any health intervention. This is often called, “the best buy in public health”, addressing equity, human rights, disability alleviation, and based on effective partnerships and alliances from community to global level. It is crucial work and my noble friend is right to press the Government to build on the progress made since the 2012 London declaration.

The Lord Bishop of Peterborough: My Lords, I am grateful to the noble Baroness, Lady Hayman, for raising this short debate. I rise to highlight the issue of leprosy, and I am also grateful to the noble Baroness, Lady Northover, for mentioning that briefly in her contribution.

I also express surprise that the Government seem to be less committed to supporting research into leprosy or the eradication of this terrible scourge than they might be. I suspect that many people think of leprosy as merely a disease of Bible times, but, according to the World Health Organization’s 2016 figures, more than 200,000 people are diagnosed with leprosy every year—10% of them children. There is an effective cure, but many people go untreated, and around 3 million people live with leprosy-related disability.

Leprosy is endemic in 14 countries today, in South Asia, Africa, the Pacific and South America. The complications when it is untreated include severe disfigurement and blindness. But discrimination against leprosy sufferers—some of it by statute in places where leprosy is grounds for divorce, confinement or confiscation of property—makes it a major social problem and a factor in mental illness. Leprosy was listed in the London declaration of 2012 and targeted for eradication by 2020. The Government have made some limited investment in the social aspects of the disease, but none that I can find in the scientific research necessary for eradication. I urge the Minister to include leprosy in the funding priorities for the NTD programme.
There are, of course, other bodies committed to working in this area—I support and commend the work of the Leprosy Mission, for example—but, without government funding, the targets for 2020 are most unlikely to be met.

7.47 pm

Viscount Simon (Lab): My Lords, I congratulate the noble Baroness, Lady Hayman, on getting this debate before us after a number of tries. I have a particular interest in this debate as, in east Africa in 1958, I contracted a nasty form of malaria, which left me for about 10 days totally unaware of what was happening and with the officer cadet on duty having to observe my state of health every 15 minutes.

Neglected tropical diseases comprise a diverse group of 17 communicable diseases which prevail in certain conditions in 149 countries and affect more than 1.3 billion people, most of whom are living in poverty, without sanitation and in contact with infected animals and livestock, as has already been mentioned by other noble Lords. Evidence recently published indicates that there is a heavy geographical overlap between malaria and the neglected tropical disease known as lymphatic filariasis, or LF. Both diseases are transmitted by the same mosquito species in sub-Saharan Africa. LF, also known as elephantiasis, is treatable and curable, but unfortunately the treatment does not reverse the effects of the parasitic infection, which damages the lymph nodes and causes the swelling of limbs. This can often result in lifelong disability, which again has already been mentioned.

To date, synergy between malaria and LF control programmes has been mostly in the form of accidental side-effects of malaria control. There are worries about insecticide resistance, showing the need for an efficient, sustainable and well thought-out approach to controlling multiple diseases. The benefits from attacking two diseases with the same interventions should be exploited to a greater extent in elimination programmes. Like others, I would be interested to learn what measures DFID will take to ensure integration between malaria and NTD control programmes that use similar interventions. This needs clarification.

7.50 pm

Baroness Masham of Ilton (CB): My Lords, I thank my noble friend Lady Hayman for all she does on this subject. One aim of the declaration is to enhance collaboration and co-ordination on neglected tropical diseases at national and international levels, through public and private multilateral organisations, in order to work more efficiently and effectively together. If so many countries were not ravaged by wars, which produces so many refugees and poverty, there might not be so many health problems.

In 2015 alone, pharmaceutical companies donated an estimated 2.4 billion tablets—enough for 1.5 billion treatments—to prevent and treat NTDs. There is now a global problem with the growing resistance to antibiotics, especially in poor countries, which need more education. I had a very good friend, a Holy Rosary nun, who was a health visitor; she worked in Ethiopia and the Cameroons and told me that it is no good bringing babies into this world if they are to die from disease from contaminated water. She became an expert in sinking wells and providing sanitation.

It is encouraging to hear that South Sudan is soon to be certified free of Guinea worm disease, which thrives in poor areas where there is little sanitation and people bathe in and drink stagnant water. I have visited a leprosy colony on one of the islands, and two babies died in half an hour from malaria when I visited a ward in Mombasa where a friend worked. These people working with NTDs are the unsung heroes. There is much to do, and they need concerted support from Governments and anyone involved.

A neglected disease that is a global danger is tuberculosis, which has not had new drugs for a long time. In 2013-15, there were an estimated 480,000 new cases of multidrug resistant TB in the world. There are substantial differences in the frequency of MDR-TB among countries. In some cases, more severe drug resistance can develop; extensively drug-resistant TB is a more serious form of MDR-TB, caused by bacteria that do not respond to the most effective second line anti-TB drugs, often leaving patients without any further treatment options. Worldwide, only 52% of MDR-TB patients and 28% of XDR-TB patients are successfully treated. Infections that are resistant are much more expensive and take much longer to treat. It is vital that global leadership be provided on matters critical to TB. Ending the TB epidemic by 2030 is among the health targets of the newly adopted sustainable development goals but, unless there is less poverty in the world, that will be difficult to achieve. Also, resistance to a form of HIV treatment, antiretroviral therapy, is increasing around the world. The co-infection of HIV and TB, which are resistant to treatment, is very serious. So many people have been working on vaccines. Like my noble friend Lord Rea, I ask the Minister what hope there is of vaccines for TB, HIV and other diseases.

7.55 pm

Baroness Warwick of Undercliffe (Lab): My Lords, I am grateful to the noble Baroness, Lady Hayman, for her tenacity in keeping this issue high on the agenda and for giving the House this opportunity to consider the progress being made in combating neglected tropical diseases. It is certainly worth celebrating. In January, the WHO published an impressive catalogue of progress made in the prevention, control and elimination of NTDs such as Guinea worm disease, sleeping sickness, river blindness and trachoma. The collaboration between the WHO and the global NTD community has clearly had a tremendous impact, but the task remains enormous and we have only four years to meet the WHO’s road map targets. Although we are reaching more people than ever, we need to accelerate to stay on track. Last year’s progress report on the London declaration points out that the road map’s drug donation programme alone is not enough. The coverage and reach of programmes must increase for all these diseases.

I have two questions for the Minister. First, the UK Coalition against Neglected Tropical Diseases said that there must be national government leadership to integrate programmes with other health, water, sanitation...
Baroness Warwick of Undercliffe and education initiatives. DFID has promised to help countries build "resilient, responsive health systems". What priority are the Government giving to supporting health systems in the countries dealing with NTDs? What practical steps are we taking in the UK to ensure that donated treatments, surgical interventions and hygiene promotions are delivered to where they are so desperately needed?

My second point is about research. Even as some NTDs are eliminated, others will take their place. Mycetoma joined the list of poverty-related diseases last year. It is just one of the many tropical, poverty-related diseases affecting the same populations and sharing many features with NTDs. Advancing research and development is essential in tackling the next bend in the road map. Priorities must be debated, but the need for more research and funding remains constant. Globally, in recent years, 60% of clinical research on poverty-related diseases, including NTDs, has been conducted in collaboration with European member countries of the European and Developing Countries Clinical Trials Partnership. Historically, the UK and France have been part of these collaborations, due to our former colonial ties. Several other European countries are now increasing their research interests in PRDs and collaborating both with each other and sub-Saharan African countries. Programmes such as EDCTP, promoting cross-national research, make this possible.

To make progress against these hideous diseases and future threats to global health, existing and new scientific partnerships must be able to flourish. It is so important that the UK collaborates with our European counterparts. Among the many uncertainties that lie ahead for UK involvement in European research programmes, has this area been highlighted in the Prime Minister's agenda for Brexit discussions? Can the Minister reassure us that the UK's research expertise and commitment to the London declaration goals will continue to play their part as we reach 2020?

7.58 pm

Baroness Sheehan (LD): My Lords, I add my thanks to those of other noble Lords to the noble Baroness, Lady Hayman, for finally securing this debate. It comes at an opportune moment for me as just last week I visited the headquarters of global health institutions working in the fight against malaria, HIV/AIDS and TB. While none of those is, technically, neglected tropical diseases, there are nevertheless many lessons that we can learn from the global fight against these big three killer diseases. I will pick out just three from among the many challenges.

The first is communicating key messages to affected communities, a point made by the right reverend Prelate the Bishop of St Albans. The other two points were picked up by other noble Lords. The second issue concerns the in-country training of medical practitioners to administer drugs effectively. The noble Baronesses, Lady Chalker and Lady Barker, spoke forcefully on that. Thirdly, we need to recognise that prevention and long-term sustainable control are key to success in tackling NTDs. My noble friend Lady Northover made the point that no resurgence is a key goal if we are to be successful.

I focus on TB as an example. That disease was the scourge of Victorian times in the UK. However, with improved public health, less overcrowding and better nutrition we were able to control it effectively—crucially, without the use of drugs, although, of course, antibiotics helped with the final push. That is the key message I want to get across.

Prevention has to be the first line of defence. Effective prevention needs an integrated holistic approach, starting with disease surveillance to identify hotspots, to enable an effective targeted response. In hotspots, to be effective, the mass administration of drugs must be followed by WASH initiatives—again, the noble Baroness, Lady Chalker, spoke about this—that is, water, sanitation and hygiene initiatives, coupled with vector control and education about local factors that perpetuate the disease. Overarching all this is the need to tackle gender and child inequalities, ensuring that women and children are not left behind, because all too often they are left untreated. They are inadvertently most active in infecting others—women through their role as primary carers and children as they play together.

Why have these diseases been neglected and why are they called neglected tropical diseases? The reason lies in the fact that in general they tend not to be direct killers but instead leave people with disfiguring disabilities, which impact on their schooling, work and economic independence. In 2010, the Global Burden of Disease Study, the precursor to the 2012 London declaration, confirmed that collectively they rank as the most common affliction of the world's poor, blighting the lives and livelihoods of more than a billion people. If developing countries are to pull themselves out of poverty, these diseases must be eradicated. Eradication, however, will need increased focus on research and development. The Ebola outbreaks in 2014 and the 2015-16 Zika epidemics in the western hemisphere highlighted an almost empty pipeline of new NTD products. I would be very interested to hear the Minister's response to the Ross fund's work with respect to NTDs.

The 2012 London declaration will come to an end in 2020. Given that NTDs are an indicator for a number of SDGs, in particular SDGs 1, 3, 6, 10 and 11—I might say what they are later if I have time—what commitment or strategy is planned for post-2020? Could international diplomatic pressure be brought to bear to expand commitment to the London declaration? Lastly, could the Minister and his colleagues in government give some thought to placing NTDs on the G20 agenda given that most NTDs and other poverty-related diseases are also found among the poor in developed countries?

8.04 pm

Lord Collins of Highbury (Lab): My Lords, the first time that I participated in a debate on this subject was on 30 January 2013. Like today, that first anniversary debate of the London declaration was initiated by the noble Baroness, Lady Hayman. I, too, thank her for once again ensuring that this vitally important subject is brought to public attention.

NTDs remain the most common infections among the world’s poorest communities and affect, as we have heard, close to one in six of the global population. As the WHO NTD head put it,
“the combination of the NTD Roadmap and the London Declaration has been a game-changer”.

However, he reminded us:

“The next four years will be crucial in achieving the 2020 targets as we continue to work to integrate interventions into the broader health system and development agenda so that no one is left behind”.

As the Minister pointed out, while NTDs are not always fatal, their effect on individuals and communities can be devastating. The brunt is often felt by women and children, which acts as a serious impediment to economic development in many countries. On that point, what progress has the department made in measuring the impact of its NTD funding on women and girls, who disproportionately suffer from NTDs and the stigma attached to them?

As the noble Baroness, Lady Masham, pointed out, nor must we forget that individuals with NTDs are at a higher risk of contracting, or not recovering from, HIV/AIDS, malaria and TB, because they weaken the immune system. On that point, I welcome the UK replenishment of the Global Fund, but can the Minister tell us what assessment has been made of the value of strengthening AIDS, TB and malaria investments, with the collaboration of national NTD programmes?

Reference has been made in the debate to the recognition given in the SDGs. Goal 3—healthy lives—has given the fight against NTDs new momentum, which is a positive thing. The noble Baroness, Lady Northover, referred to the £1 billion Ross fund and the Gates Foundation, from which £200 million has been specifically allocated to NTDs. Like the noble Baroness, I would like to understand what progress has been made since that announcement in distributing work such as funding new research areas, vaccines and drugs.

One of the things every noble Lord mentioned is that the EU is one of the top global funders of NTD research, and the UK has an exceptionally strong track record in leading joint European research initiatives. Will the Minister say what assessment DfID has made of the impact of losing access to this vital source of research income following Brexit?

To meet the 2020 targets, 75% coverage would have had to be reached by the end of 2015. Although data for 2015 are not yet fully available, the target is unlikely to have been met. What does the Minister identify as the key barriers to progress and finding solutions?

At the beginning of the debate the noble Baroness mentioned the forthcoming WHO NTD summit. I declare an interest here; I am a member of the APPG on NTDs, and I signed a letter specifically to the Secretary of State asking her to attend the summit, not only to demonstrate the UK’s role in the fight against NTDs but to use the opportunity to encourage others to meet our level of commitment.

8.08 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, this has been an excellent debate, with 14 contributions. At the last minute, those were allowed to increase from two to five minutes; I am reliably informed by the Whips that my contribution cannot increase in the same proportion, and therefore I am limited to 12 minutes.

There are a number of important issues to cover, but if I can, I will go through this at some pace.

Like the noble Lord, Lord Collins, I can trace the antecedents of raising these issues back a number of years—not quite back to 2013, but to 6 February 2014, when I responded from the Front Bench to the debate in the name of the noble Baroness, Lady Hayman, on this issue. The noble Lord, Rea, is right to say that the noble Baroness, Lady Hayman, deserves a great tribute for ensuring that neglected tropical diseases are not neglected in your Lordships’ House. We thank her for that and commend the work of the very active APPG on Malaria and NTDs, of which she is vice-chair.

NTDs affect 1.6 billion of the world’s poorest people, as the noble Baronesses, Lady Hayman and Lady Northover, reminded us, and they result in disability and have a tremendous impact on people. They cause a great economic burden for people, as the noble Baroness, Lady Sheehan, reminded us, as well as creating stigma and hardship, which were also mentioned.

Reference was made by the noble Baronesses, Lady Hayman and Lady Warwick, and the right reverend Prelate the Bishop of St Albans to the progress that has been made. The number of people at risk from NTDs fell from 2 billion in 2010 to 1.6 billion in 2015. In the 1950s, before programmes started, one in four people over the age of 40 went blind from river blindness in some of the highest endemic areas. Blindness caused in this way has now been virtually eradicated.

The noble Baroness, Lady Northover, who served as a Minister in the department during the coalition Government, reminded us of the visit to the House of Lords by President Carter, who spoke in the Robing Room—an event that I, too, attended. He spoke about Guinea worm eradication. Only three countries reported a total of 25 cases of guinea worm disease in 2016—down from 3 million cases a year when the programme started in 1986. This is well on the way towards the target that has been set and shows what can be achieved in this area.

A number of noble Lords referred to the high-profile London declaration event in 2012, when the UK committed an additional £195 million to tackle these diseases. The UK, along with the US, is a world leader on NTDs. We are meeting our commitments. The UK supports high-performing programmes tackling a range of NTDs, and these programmes are delivering results. DfID programmes delivered more than 136 million treatments for NTDs in 2016. We have supported over 60,000 surgeries to prevent blindness due to trachoma, and over half a million people have been screened for kala-azar, a disease that is invariably fatal if not treated.

Much of our support for the implementation of NTD programmes is through our world-class British institutions. The noble Lords, Lord Stone and Lord Alton, referred to many of these, particularly the Liverpool School of Tropical Medicine, and I pay tribute to the expertise that is to be found there. I am delighted to accept the invitation from the noble Lord, Lord Stone, to meet the SCI group at Imperial and would be very interested to find out more about its work.

Many noble Lords, including the noble Baronesses, Lady Warwick and Lady Barker, referred to the importance of research. This is at the heart of what we
do. DfID is committed to spending approximately 3% of its annual budget on research, and of course that also impacts on the NTD process. We also support research into new drugs, diagnostics and better vector control, as well as operational research into the best ways to implement programmes. I very much recognise the point made on vectors by the noble Baroness, Lady Barker, as I do the very important point about prevention made by the noble Baroness, Lady Sheehan. The UK Government have a strong track record of supporting successful product development research through public-private product development partnerships, such as the Drugs for Neglected Diseases initiative and the Foundation for Innovative New Diagnostics.

Tackling NTDs is highly cost effective, as the noble Lord, Lord Stone, reminded us. The average cost of treating one person for a range of commonly occurring NTDs is about 50 US cents. The noble Lord, Lord Alton, described it as a “best buy”, which it very much is. NTDs are an excellent example of a unique public-private partnership: most of the medicines are donated by pharmaceutical companies, which have pledged drugs valued at $17 billion between 2014 and 2020—a point made by the noble Baroness, Lady Masham. Without this very generous support there would be far less progress and considerably higher costs.

A number of noble Lords referred to the London declaration. I am pleased to report that there will be a very high level of representation at the event taking place on 19 April. I do not in any way want to undermine the importance of NTDs, but when we discussed this as a ministerial team, we realised that so many important meetings are taking place this very month: this week on Syria, and in a couple of weeks’ time on Yemen and the wider humanitarian crisis in Africa. However, I will certainly convey to the department and the Secretary of State the importance that your Lordships attach to this initiative and the gathering that will occur on 19 April.

The noble Baroness, Lady Barker, referred to the interconnectivity of scientific research with the attempts we are making. That is a point I recall being made by David Nabarro, who is a very strong candidate to be the next director-general of the World Health Organization.

The noble Lord, Lord Rea, the noble Baroness, Lady Sheehan, and my noble friend Lady Chalker raised the importance of WASH. This very much links to what the noble Baroness, Lady Sheehan, said about prevention. WASH is the best form of prevention that we know for NTDs. There is strong cross-sectoral working on this, in particular on increasing access to water and sanitation. My noble friend asked what commitment we have made in this area. We have a very strong manifesto commitment to increase clean water access to 60 million people during the lifetime of this Parliament, which is sustainable development goal 6. That is a major programme which we are working on.

My noble friend also raised the importance of engineers. I am delighted that through the Commonwealth Scholarship Commission we are giving access to many students from sub-Saharan Africa to come and study at our world-class universities and take that expertise back with them.

The noble Viscount, Lord Simon, raised the importance of co-infections. He particularly focused on malaria. The noble Baroness, Lady Masham, referred to TB, and the noble Lord, Lord Collins, referred to collaboration on HIV-TB. We fully understand and stress that these are all very important areas.

A key element is the availability of good quality data and the disaggregation of those data in connection with the SDGs. We want to ensure that programmes collect and analyse data on how we are making progress against targets and disaggregate those data to ensure that we are reaching girls, women and other vulnerable groups—an issue that the noble Lord, Lord Collins, asked us to work on.

The right reverend Prelate the Bishop of St Albans raised the strong partnerships that we have with faith groups. Through our faith partnerships we work very closely with those groups in a number of parts of the world. He talked about Sierra Leone and, in the past week, I have been looking at what the Anglican community is doing in the terrible situation in South Sudan, where the conflict is making the treatment of neglected tropical diseases and the effects of famine incredibly difficult. That is a real manmade tragedy.

We are making efforts to work with other donors, in particular USAID. I take the important points that were made about the USA, with which we are working very closely. The draft budget was prepared by the President and will be turned into a formal budget to be announced in May. It then, of course, has to work its way through Congress. We are looking very closely at his nominee for USAID. The United States, through its private foundations and as a Government, has played a critical role in this and I very much hope we will be able to work with it in the future in delivering this absolute best-buy for development investment.

Our efforts to map the NTDs have helped to determine the geographical distribution of diseases, a point made by the noble Lord, Lord Alton, so that we can target resources where they are most needed. We are now expanding access to treatment. As countries are now able to stop mass drug administration for some diseases, it will be critical to carry out the surveillance necessary to ascertain progress and to ensure that low infection levels are sustained. However, we must not forget that while some countries are reaching that stage, others are only just starting in their efforts to tackle NTDs.

On this point I echo the urging of the noble Baroness, Lady Hayman, in introducing the debate, that there is no question of us regarding this as “steady as she goes” or, in the phrase of the noble Baroness, Lady Barker, taking our foot off the pedal. This is absolutely essential to the sustainable development goals. It is a treatment programme that works and we want it to continue.

The noble Lord, Lord Rea, the right reverend Prelate the Bishop of Peterborough, and the noble Baronesses, Lady Northover and Lady Masham, asked what progress was being made on leprosy. According to the World Health Organization, there were over 210,000 new cases of leprosy reported in 2015. We need to increase progress. In 2016, the World Health Organization launched a global leprosy strategy for 2016-20 and
UK aid match is supporting work to improve the lives of people affected by leprosy and other NTDs in Mozambique and other countries.

At the conclusion of my remarks I come back to that very important summit. While the UK across a number of levels—from our great research base to the work that many people have been doing through medical science in this area—is advancing the cause and has made great progress, it is vitally important that we use the occasion and the platform of the World Health Organization joint summit on NTDs on 19 April to ensure that other donors come forward and meet their responsibilities towards eradicating these diseases and meeting the sustainable development goals in these areas.

As to the consequential nature of the SDGs, I have been ticking them off and I think we have covered all 17 of the goals, from partnerships, to conflict in number 16, to eradicating poverty in number 1, to education in number 4, to gender equality in number 5. It is a real point of endorsement as to how the SDGs are rightly a lens through which we judge our progress on this.

I again thank all noble Lords who have contributed to the debate. I shall reflect further on it and feed the messages back to my colleagues at the department as we move forward.

House adjourned at 8.22 pm.
House of Lords

Tuesday 4 April 2017

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Television Broadcasts: Audibility

Question

2.36 pm

Asked by Lord Naseby

To ask Her Majesty’s Government whether they will consult United Kingdom television broadcasters, particularly the BBC, to ensure that the viewing public can clearly hear the dialogue, particularly in dramas.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, there have been a number of dramas over the past few years in which the dialogue has been difficult for some people to hear. TV viewers should be able to hear and understand their favourite shows. It is a long-standing principle, however, that government do not interfere in broadcasters’ operational activities, and therefore it would not be right for government to consult on this matter.

Lord Naseby (Con): My Lords, that is an extremely disappointing Answer. Is my noble friend aware that there are 25 million licence fee holders who want to hear the dramas, particularly on the BBC, which is the main offender, and that they want clear audibility? Against that background, does he recognise that all this problem started in 2014 with the drama “Jamaica Inn”? There were well over 1,000 written complaints to the BBC about the inaudibility of that show. That was followed by “Happy Valley”, “To Walk Invisible”, “Taboo” and recently “SS-GB”. Against that background, is it appropriate that the ordinary viewer has to consult subtitles to understand what the dialogue is? If my noble friend cannot apply pressure on the chairman of the BBC, does he recognise that someone will have to make a complaint to Ofcom?

Lord Ashton of Hyde: My noble friend, as always, goes to the heart of the matter. I completely agree that viewers should be able to understand dialogue as they first view a programme. I am clear that this is a matter that the BBC takes seriously, and it has issued new guidelines as recently as December 2016. To put things in perspective, though, the BBC makes 22,000 hours of new programmes every year, so since 2014—the year to which my noble friend referred—that is 66,000 hours of new material, and I think there have been audibility problems with six programmes.

Lord Gordon of Strathblane (Lab): My Lords, while I partly agree with the noble Lord, Lord Naseby, that some producers, in pursuit of authenticity, insist that people mumble, usually in indecipherable regional accents as well, does the Minister agree that the main problem lies with the design of modern television sets? Thin LED television sets have very poor sound systems. I must confess that in my own case, although obviously not in the case of somebody as young as the noble Lord, Lord Naseby, advancing years tend to have something to do with turning up the volume.

Lord Ashton of Hyde: My Lords, the noble Lord is exactly right. There are many reasons why audibility could be a problem. However, the fact is that it is the responsibility of broadcasters to produce programmes that are audible under normal conditions, and they always try to do that. At the end of the day, no broadcaster wants to make programmes that people cannot hear.

Baroness Grender (LD): My Lords, does the Minister agree that now more than ever the BBC is needed to deliver real news and ditch fake news, especially on a day when our own Prime Minister has condemned the National Trust for something it has not done while she is trying to do deals in a country where, if you tried to organise an Easter egg hunt, you would probably end up in prison?

Lord Ashton of Hyde: All the channels have a responsibility to provide impartial news and are regulated by Ofcom, including, very soon, the BBC.

Lord Fellowes of West Stafford (Con): Will the Minister agree that the fashion for mumbling dialogue in search of greater truth—because that is what it is all about—is simply that, a fashion, and not a new one? We had a lot of trouble with it in the 1950s and 1960s. When it comes to an unfortunate fashion, the Government have no proper role other than to hope it will soon pass.

Lord Ashton of Hyde: My Lords, it is all about editorial policy, and the director is in charge. One person’s mumbling is another person’s atmosphere.

Lord Blunkett (Lab): My Lords, atmospheres are fine if you can lip-read but when you cannot, the mumbling which is indecipherable to most people becomes not just an irritant but an impossibility. I hope the Government will lean on the new regulator, Ofcom, to bring a bit of common sense so that when somebody whispers to you, it is expected that you will hear the whisper, and when someone talks to you on television, it is hoped that eventually you will be able to hear them.

Lord Ashton of Hyde: I did not quite catch the last bit of that question. Of course, Ofcom’s Code on Television Access Services sets out the obligations on TV broadcasters to provide subtitling and audio description and signing, and my noble friend Lord Borwick’s amendment has given the Government the power to introduce that for on-demand services as well.
2.45 pm

Baroness Kidron (CB): My Lords, I draw the attention of the House to my interests as a producer and director. Will the Minister agree with me that in our regional and national theatres, on screen and in the cinema, we have a wealth of the finest actors in the world, and, although I am very sympathetic to the noble Lord, that we would prefer fine performance over fine diction?

Lord Ashton of Hyde: That is exactly the sort of thing the Government should not make a decision on.

Baroness Rawlings (Con): My Lords, as many noble Lords may look after elderly people, they will know that television is a great companion. Will the Minister agree that many young actors and people in general do not enunciate clearly—I am afraid that I take issue with the previous speaker—and not as clearly as the noble Lord, Lord Blunkett, did, when you could hear even his softest tone? Elocution and language are so important. Will the Minister agree that if people spoke more clearly, there would be less misunderstanding and less trouble in the world?

Lord Ashton of Hyde: My Lords, I am not an expert on enunciation, but I am told that it is all to do with your diaphragm.

Lord Dobbs (Con): My Lords, perhaps I may take this opportunity to agree with my noble friend Lord Fellowes that when dialogue is written it is always clear. A great part of the problem may be that modern televisions are all screen and the speakers face backwards. It is bound to be a technological problem when the speakers face away from you, apart from the fact that of course we are all getting a little older and perhaps deafer.

Lord Ashton of Hyde: My Lords, I certainly do not agree that all written dialogue is comprehensible, although my noble friend is an obvious exception to that. The point is that the director is in charge of the entire programme and should listen to the rushes and to what he has produced. Sometimes it is perfectly reasonable for an actor to face away from the camera but it is important that he can still be heard.

Healthcare: Spending

Question

2.45 pm

Asked by Lord Clark of Windermere

To ask Her Majesty’s Government whether they will increase spending on healthcare as a percentage of gross domestic product to be in line with the G7 average.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, since 2010 health spend has increased in real terms and is broadly in line with the EU average. This Government are giving the NHS an additional £10 billion above-inflation increase in its annual funding by 2021. We have now gone beyond that, with £425 million of new capital spending for the NHS announced at the spring Budget, and we have pledged to provide further capital at the autumn Budget.

Lord Clark of Windermere (Lab): My Lords, I thank the Minister for his Answer, which goes a long way towards explaining why the NHS is at breaking point. Our hospitals and GPs’ surgeries are full, social care is on its knees and staff are working in impossible conditions. Those are not my words; they are the words of the BMC, which knows what it is talking about. My Question is not about Europe; it is about the G7. First, will the Minister confirm that as a country we are next to the bottom of the G7 nations in health spend? Secondly, why will the Government not commit us to meeting the average of the G7 countries, which would go a long way towards reviving our wonderful National Health Service?

Lord O'Shaughnessy: The noble Lord makes the point that the NHS is operating in challenging conditions, not least because of rising demand and expectations. Notwithstanding that, there is a huge improvement in performance. More operations are being performed, there are more diagnostic tests, more people are starting cancer treatment, and people say that they have never been more satisfied with the quality and dignity of care that they are receiving. Those are the points that you need to bear in mind when we talk about the fantastic work that NHS staff do.

Baroness Brinton (LD): My Lords, perhaps we can push the Minister for a clear answer on this. The average spend of G7 economies is 10.4% of their GDP in comparison with the UK’s 9.8%—a gap of £10.3 billion. The Government are proudly saying that they are putting in just under £0.5 billion this spring, with a bit more capital to follow, but what are they going to do to address that shortage, given that £10 billion could provide 10,000 extra GPs and other help in primary care?

Lord O'Shaughnessy: As I referred to in my previous answer, the Government have provided additional funding to the NHS—£10 billion more by 2020. It is also worth noting that since the 2015 election over £9 billion of additional funding has been found for social care, which of course has huge strains upon it, and that makes a big difference.

Lord Bird (CB): Does the noble Lord agree with Brian Ferguson, the chief economist of Public Health England, when he says that prevention is much more cost effective than other forms of intervention and that we have to push up the amount of spending on that, which is in the region of 4% to 5%? Is the Minister prepared to talk to MPs and Lords who want to push up the amount spent by his Government on prevention methodology in this country?

Lord O'Shaughnessy: The noble Lord is quite right: we need to move from an NHS that deals with illness to one that promotes healthcare, and preventive healthcare is a huge part of that. We are providing over £16 billion of public health funding for local authorities to do that over the period of the spending review. Of course, I shall be delighted to meet any Peers and MPs who want to talk about that further.

Lord Davies of Oldham (Lab): What is the Minister’s response to the fact that we have seen the largest sustained reduction in spending as a percentage of GDP in the history of the NHS? Does not that explain why the NHS system is in crisis?
Lord O'Shaughnessy: The noble Lord might be interested to know that health funding as a proportion of public spending has increased since 2010, from just over 18% to almost 20%. He talks about a challenging position, but that is not just because of rising demand or an ageing population. It is worth remembering that when the coalition Government came into office, we were borrowing £150 billion a year. It is a fantastic testament that we have managed to increase spending on healthcare in real terms while dealing with the problems that Labour left us.

Lord Lamont of Lerwick (Con): Does my noble friend not agree that in making comparisons between the proportion of GDP spent on health by ourselves and other G7 countries, one reason there is a difference is because most other countries in the G7 have a variety of funding sources and are not all providing tax-funded services? Some of them have larger voluntary sectors and some have a larger contribution from the private sector. Although this is a very real problem, is not one avenue for changing things that ought to be considered looking to expand the private and voluntary sectors as well?

Lord O'Shaughnessy: My noble friend is quite right to point out that there are different funding systems in different countries. We, of course, have a taxpayer-funded system that is free at the point of use, which this Government are fully committed to. There are different ways of funding healthcare. However, it is worth reflecting on polling carried out by Ipsos MORI which showed that 69% of the public said they get good healthcare in the UK, contrasted to just 57% in France and 59% in Germany. That is a huge testament to the work that everyone in the NHS does.

Lord Crisp (CB): My Lords, does the Minister accept that there is a real problem here? On prevention and the work that NHS England is trying to do to change the system, does he further accept that there is a need for transitional funding, not least for running services in parallel? Additional funding is needed to make the changes that need to happen.

Lord O'Shaughnessy: The noble Lord is quite right and he speaks with great authority on this issue. The sustainability and transformation plans are providing the changes that we are looking for. That is precisely why additional capital funding was announced in the Budget: to provide and seed that kind of change so that we can run in parallel services that we need to reduce and upscale those that we need to increase, particularly community care.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, it is the responsibility of local NHS commissioners to decide how best to deliver patient transport services. We do not centrally monitor these waiting times. The eligibility criteria for patient transport services stipulate that patients should reach appointments in a reasonable time, in reasonable comfort and without detriment to their medical condition. Where local issues arise in the delivery of these services, we expect commissioners to take swift action.

Lord Harries of Pentregarth (CB): I thank the Minister for his reply. Recently, I had to take my wife, who is extremely disabled, to hospital using hospital patient transport. After a satisfactory medical appointment we then had to wait three and a half hours for hospital transport to take us home. The following day I took her to another hospital and there we had to wait one and three-quarter hours. In the light of this experience, I asked around and discovered that some people are having to wait as long as six hours—and these are people who are extremely disabled, and some of them are without escorts to take them to the loo. Does the Minister agree that this is totally unsatisfactory and that there needs to be a proper system of monitoring and, if necessary, sanctioning the private companies that are now operating this service?

Lord O'Shaughnessy: I am sorry to hear of the wait faced by the noble and right reverend Lord’s wife, and indeed others. Those delays do not sound acceptable. There are clear guidelines in the standard contract for commissioners to outline the quality of patient services, and they are inspected by the CQC. I would certainly be happy to meet him to talk about this in more detail and find out exactly what is going on.

Baroness Walmsley (LD): My Lords, according to the NHS website, there are some areas in which patient transport services are not available. I want to ask the Minister two things about that. First, what should patients in those areas do if they need transport? Secondly, are the Government going to hold to account the CCGs that are not commissioning these services?

Lord O'Shaughnessy: There are challenges in patient transport, particularly in rural areas. That was one of the reasons for the Department for Transport creating the Total Transport pilots in an attempt to deal with the problem. In Devon, the local authority and CCG are now working together to provide better transport. As I said, it is in the clinical commissioning standard contract to provide that kind of transport and NHS England is responsible for making sure that it is provided.

Lord Hunt of Kings Heath (Lab): My Lords, the Minister said that there are no national targets in relation to patient transport services, but there are targets in relation to ambulance services. Can he tell the House when those targets were last met by the ambulance services in England? Can he also tell me why, in the mandate for 2017-18 to NHS England, no guarantee is given that the NHS will come back to meeting those ambulance targets? Can I take it that,
[Lord Hunt of Kings Heath] just as the Government have now decided to drop the 18-week target for surgery, they are also dropping the idea of a target for ambulance services to be met?

Lord O’shaughnessy: I am afraid the noble Lord is wrong on the 18-week target—it has not been dropped. It is within the mandate. The 18-week target is being fulfilled in the vast majority of cases. Performance is much better than it was 10 years ago in terms of both median waits and the number of people who are waiting. I do not have the precise figure for ambulance services. However, they are in the mandate and local trusts are expected to deliver against the targets in the mandate.

Lord Polak (Con): My Lords, some patients cannot use patient transport. Your Lordships will be aware of

Lord O’shaughnessy: I am unable to answer the question. I shall certainly speak to colleagues as soon as humanly possible and come back to the noble Lord with information on the situation.

Lord Hunt of Kings Heath: My Lords, the noble Lord said the Government have not dropped the 18-week target. What on earth, then, did the chief executive of the NHS mean when he said on Friday that the NHS would not achieve that target and that it would take less priority than other targets?

Lord O’shaughnessy: The chief executive of the NHS was talking about the relative priority and importance of achieving A&E waiting times in particular to the targets that it is not hitting at the moment. The five-year forward view delivery plan refers to the fact that elective operations will continue to increase and that the median wait may move marginally. However, it is worth pointing out that 10 years ago the median wait for an in-patient for an elective procedure was 15.6 weeks—under a Labour Government, of course—and in January this year it was 10.6 weeks. The median may increase but it is still within the 18-week target.}

Baroness Royall of Blaisdon (Lab): My Lords, the statement from Simon Stevens was very honest and welcome but it means some profound changes in the National Health Service. Will the Government come forward with a statement as to how these changes will be implemented and when?

Lord O’shaughnessy: The five-year forward view delivery plan is a publication by NHS England. We continue to back it to deliver its ambitious plans, which include further increases in diagnostic tests and making sure that even more people survive cancer. We are focused on ensuring that the system is as efficient as possible in order to do this.

The Archbishop of York: My Lords, the Minister speaks with such clear diction that we can hear every word he says. He is not producing a drama, but although I have been listening to him carefully, I do not think that he has answered the Question put to him by the noble and right reverend Lord, Lord Harries. He asked what steps were being taken, “to reduce waiting times for patients using hospital patient transport”. I did not hear the answer. All I heard was that the Minister was willing to have a word with him, but it is not just about the noble and right reverend Lord and his wife. A lot of other people are in the same predicament. We want to know what those steps are. That is the nature of the Question and, if I did not hear the response, I apologise.

Lord O’shaughnessy: I thank the most reverend Primate for giving me the opportunity to come back on this. First, NHS England is working with clinical commissioning groups to make sure that the kind of delays outlined by the noble and right reverend Lord, Lord Harries, do not happen. Also, a series of 39 pilots are being conducted in rural areas which are particularly badly affected by patient transport delays to put in place the kind of transport necessary to make sure that people who cannot get to hospitals and may miss appointments are able to do so.

Royal Marines

Question

3 pm

Asked by Baroness Jolly

To ask Her Majesty’s Government whether they plan to change the size and role of the Royal Marines.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the naval service, which includes the Royal Marines, is growing, with 400 more personnel, more ships, new aircraft and submarines. It is only right that the naval service decide the balance of roles within it to ensure that skills are matched to front-line priorities. That is a military judgment which is kept under continuous review and thus is a matter for the First Sea Lord and the other military chiefs to advise on.

Baroness Jolly (LD): My Lords, the House understands that tough decisions are taken in times of austerity, but on the “Today” programme last week the Secretary of State said that if something is no longer needed, it is redundant. This could signal a deliberate move towards a capital-intensive engagement, away from elite personnel—the Royal Marines is a world-renowned flexible amphibious force—all at a time when hybrid warfare is increasingly likely. In this context, can the Minister say whether the Royal Marines are viewed as redundant?
Earl Howe: My Lords, the Royal Marines are certainly not redundant. As the noble Baroness knows, they have a worldwide reputation as one of the world’s elite fighting forces. But at the same time it is important that we look at matching roles to tasks, and that lies at the nub of her Question.

Lord West of Spithead (Lab): My Lords, I do not think that the Minister is being completely clear when he talks about the growth in numbers. The 2010 SDSR led to a reduction of around 4,000 naval personnel, which was a ridiculous number, and only 400 were added five years later. There is a shortage of money in the Navy, and it is no good saying that the Navy makes the choice: it is having to make very hard decisions because it is underfunded. Does the Minister not agree that there is a lack of coherence in our amphibious capability, in that we are paying off HMS “Ocean” early, having spent £65 million on her; we have sold an LSD(A) to the Australians and have an LPD in reserve; and now we are talking about reducing the number of Royal Marines?

Earl Howe: My Lords, I do not accept the picture being painted by the noble Lord. As he knows, the annual budget cycle is our yearly process which allocates resources to defence spending requirements for the next 10 years. It focuses on ensuring that the programme is affordable and balances military and financial risk. The 2017 annual budget cycle is in fact still under way, but the process means that we continually reassess our financial position and prioritise accordingly.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend the Minister not agree that this is precisely the sort of operational matter that should be left to the Joint Chiefs of Staff? I want to place on record my admiration for the Royal Marines, with whom I had contact on HMS “Cumberland” and at other times when serving with the Armed Forces Parliamentary Scheme, which I commend to the House.

Earl Howe: My Lords, I am grateful to my noble friend and I fully agree with her. Ministers make decisions based on military advice in this area.

Lord Touhig (Lab): My Lords, I shall take this to another point. The whole House would be shocked if there were redundancies among the Royal Marines, but the Government have form on denying full pensions to Armed Forces personnel made redundant. In 2013 I raised the issue of servicemen who had fought in Iraq and Afghanistan and were made redundant just days before they qualified for their full pension. One was so left to the Joint Chiefs of Staff? I want to place on record my admiration for the Royal Marines, surely the last strategic defence and security review was the time and opportunity to do that. It was not done then, so is not the only conclusion we can draw from the current situation that there is insufficient funding in the Ministry of Defence to afford what was decided upon at the end of the last SDSR?

Earl Howe: My Lords, we set out our key priorities in the 2015 strategic defence and security review. At that time we announced an £11 billion investment package towards our highest priority defence equipment needs over the course of this Parliament. We have been quite open that some of the funding for this is contingent on delivering efficiency savings. I concede that the savings are challenging, but we are working very hard to deliver them.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, the Minister has generously acknowledged that what Britain needs in these uncertain times is forces that are fast, flexible and mobile. As he rightly said, the Royal Marines are second to none worldwide with that capacity. If this is about hard choices, would it not be to play fast and loose with the nation’s defence to place the strength and capability of the Royal Marines at risk in order to fund two gigantic, empty tin cans rattling around the oceans without aircraft to fly from them—or now, it seems, troops to put in them?

Earl Howe: My Lords, I hope that the noble Lord and the House know that the carriers, when they arrive, will be fully manned and have British aircraft on them before they are brought into service. I can assure him that we will make sure that the Royal Marines are properly trained and equipped to perform the vital tasks we ask them to undertake.

Lord Stirrup (CB): My Lords, I listened very carefully to the answers the Minister has given. If there is a key strategic judgment to be made about the balance of capabilities between the surface fleet and the Royal Marines, surely the last strategic defence and security review was the time and opportunity to do that. It was not done then, so is not the only conclusion we can draw from the current situation that there is insufficient funding in the Ministry of Defence to afford what was decided upon at the end of the last SDSR?

Earl Howe: My Lords, I listened very carefully to the answers the Minister has given. If there is a key strategic judgment to be made about the balance of capabilities between the surface fleet and the Royal Marines, surely the last strategic defence and security review was the time and opportunity to do that. It was not done then, so is not the only conclusion we can draw from the current situation that there is insufficient funding in the Ministry of Defence to afford what was decided upon at the end of the last SDSR?

National Citizen Service Bill [HL]

Commons Amendments

3.10 pm

Motion on Amendments 1 to 3

Moved by Lord Ashton of Hyde

That this House do agree with the Commons in their Amendments 1 to 3.

1: Clause 13, page 4, line 37, at end insert “, subject to subsection (2).”

2: Clause 14, page 5, line 2, leave out “This Part comes” and insert “Sections 1, 10 and 12 to 15 come”

3: Clause 15, page 5, line 8, leave out subsection (2)
The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the National Citizen Service Bill returns to us after its passage through the other place. I shall explain briefly two government amendments that have been made there. They are minor and technical amendments to correct the drafting of the “Extent” and “Commencement” provisions in Part 2. These are merely technicalities and it falls to me to ask the House to approve the corrections.

When the Bill was introduced in this House, Clause 13 provided that the extent of the Bill was England and Wales only. Schedule 2, however, contains four consequential amendments to other Acts: for example, the Freedom of Information Act 2000 and the Equality Act 2010. Those Acts have extent beyond England and Wales.

When consequential amendments are made to those other Acts, they should have the same extent as the provision of the Acts they are amending. This ensures that the section being amended has a uniform extent. This is standard legislative practice. The consequential amendment to the Freedom of Information Act, for example, should have the same extent as the section of the Freedom of Information Act that it amends. Clause 13 should reflect that.

Commons Amendment 1 ensures that this is the case by qualifying Clause 13 with: “An amendment made by this Act has the same extent as the provision to which it relates (and this Part extends accordingly).” In other words, if the part of the original Act being amended has provision beyond England and Wales, the consequential amendment does too.

The second amendment is to Clause 14, “Commencement”. The Bill as introduced in this House provided that the whole of Part 2, which sets out general technical provisions, and Schedule 2 should both come into force on the day the Act is passed. This would have meant that the consequential amendments referred to in Clause 11 of Part 2 came into force on the day the Bill received Royal Assent. At this point, the new NCS Trust charter body will not necessarily exist. Part 1 of the Bill and Schedule 1 come into force on such day as the Secretary of State decides and makes by regulation. In reality, this will be after Royal Assent and once the royal charter is granted.

This would have meant that, even though the new NCS Trust would not have come into existence until after Royal Assent, the Freedom of Information Act and others would have included it straightaway on Royal Assent, and there is no sense in these Acts covering a body that does not yet exist. Commons Amendment 2 corrects that.

I hope that this explanation serves to justify the need for the amendments. I beg to move.

Baroness Barker (LD): My Lords, I shall speak to government Amendment 2. Last October, when this legislation to turn the National Citizen Service into a royal charter body came before your Lordships, I said that, “the fact that the National Citizen Service provides young people with a great opportunity to meet new people, try new activities and develop skills and confidence at the critical age of 16 or 17 is not up for debate. However, pretty well everything else in this Bill should be.”—[Official Report, 25/10/16; col. 120.]

I did so partly because the political decision of Mrs May’s Government to spend £1 billion on one project at a time when public services for young people were disappearing seemed somewhat cavalier. Furthermore, the NCS Trust, an organisation which enjoys unprecedented political support, receives 99% of its funding—£475 million in 2015—from government, but it has a weak governance structure and a patchy performance record.

However, my main concern stemmed from the fact that the decision to scale up this project was justified on the basis of an evaluation report commissioned by the Cabinet Office at a cost of £1 million. Extensive and expensive as it was, it failed to ask two crucial questions: how does the scheme compare with other similar schemes for young people and could the intended outcomes be achieved more efficiently and effectively by putting the scheme out to tender?

Since the NCS Trust accounts do not meet public sector transparency requirements, we on these Benches—lone voices—asked searching questions of the Government last autumn. We asked why this organisation, whose four-week engagement programme with 16 and 17-year-olds costs somewhere between £1,500 and £1,850 per place, was given preference over other schemes such as the Scouts, whose placements cost about £500 and last, on average, about four years.

Why should an organisation which from the outset was insulated from the rest of the voluntary sector be fast-tracked to royal charter status? Why should an organisation that not only failed to meet its targets for young people on placements but overpaid £10 million for places that were not filled be deemed not just suitable to be scaled up but, in the words of the noble Lord, Lord Maude, become, “a permanent feature on the landscape of our nation”.—[Official Report, 25/10/16; col. 123.]

Why have the Government ignored the lessons of past failures, such as the Work Programme? The more forensic our questions, the more bluster came from the Government.

3.15 pm

But someone listened. The Public Accounts Committee decided to hold an inquiry and put our questions directly to the NCS. Its hard-hitting report was published on 14 March this year and it uncovered further weaknesses in the governance, leadership and safeguarding of the NCS Trust. It called for robust plans from the trust and the Department for Culture, Media and Sport for short-term costs would be modelled and long-term outcomes systematically evaluated. This is the only opportunity to raise the key points made in that report.

The Public Accounts Committee said:

“NCS has shown early signs of success but the Department for Culture, Media & Sport lacks the data to measure long-term outcomes or understand what works”. That point was reinforced when Mr Stephen Greene, in his interview on the “Today” programme of 14 March, was unable to answer that point when questioned.

The Public Accounts Committee recommended that the department should, “establish a clear plan, and secure agreement with other government departments where necessary, by September 2017 for how it is going to evaluate the long-term impact of NCS”.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the National Citizen Service Bill returns to us after its passage through the other place. I shall explain briefly two government amendments that have been made there. They are minor and technical amendments to correct the drafting of the “Extent” and “Commencement” provisions in Part 2. These are merely technicalities and it falls to me to ask the House to approve the corrections.

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This would have meant that, even though the new NCS Trust would not have come into existence until after Royal Assent, the Freedom of Information Act and others would have included it straightaway on Royal Assent, and there is no sense in these Acts covering a body that does not yet exist. Commons Amendment 2 corrects that.

I hope that this explanation serves to justify the need for the amendments. I beg to move.
The second recommendation was that, “despite revising downwards the target for the number of NCS participants … The Department and Trust need to think radically about what meeting the revised target means for how NCS is provided and works alongside other organisations. We expect to see detailed plans to support achieving the revised participation figures within six months”. That point was made repeatedly by us on these Benches. The committee said: “The Trust and Department cannot justify the seemingly high cost”. It recommended that they, “develop a robust and complete NCS cost model and publish benchmarking of its costs in advance of the next commissioning round in 2018.”

On the overpayment of £10 million, the Public Accounts Committee said: “In its response to this report the Trust should update us on progress with recovering monies paid to providers, in respect of 2016 and previous years”. It pointed out that the NCS Trust had not met standards of transparency.

Baroness Buscombe (Con): May I say that at this stage of the passage of the Bill it is not right to make what is akin to a Second Reading speech? This is consideration of Commons amendments, so I ask the noble Baroness to come to a close.

Baroness Barker: Perhaps the House will understand that this is my one and only opportunity to raise a matter which is of key importance.

Baroness Buscombe: I say to the noble Baroness that there has been plenty of opportunity through the passage of the Bill.

Baroness Royall of Blaisdon (Lab): I am a fervent supporter of the NCS. However, I think it is absolutely right and proper that the noble Baroness, Lady Barker, puts these questions, because, following the publication of the report of the Public Accounts Committee, this is the only time when she is able to put these questions. That is not to say I am against the Bill, but she is right to put the questions.

Lord Elton (Con): If we do not follow the rules, we shall never get anywhere. The noble Baroness does not appear to me to be addressing the amendments; therefore she is not in order.

Baroness Barker: If the noble Lord will allow me to finish, I am going to come to the point about commencement, which is what this amendment is about.

I simply wish to say that the level of financial and other reporting which the NCS Trust has given so far has been found to be inadequate by the Public Accounts Committee, which has asked the trust to provide a timetable and an action plan to put in place the governance, leadership and expertise necessary to deliver the expansion of this project.

We have argued from these Benches that citizenship and civic participation are important, but we raised these questions throughout the passage of the Bill and we did not get answers. They are fundamental to the capacity of the organisation to deliver this scheme.

The Bill should not be commenced. Its commencement should be delayed until all the recommendations of the Public Accounts Committee have been fulfilled and a report has been provided to Parliament, and until the governance, management, planning and performance of the National Citizen Service Trust and the Challenge Network have been independently evaluated and a report produced. The Public Administration and Constitutional Affairs Committee should hold an inquiry into the role of Ministers and officials, just as it did with Kids Company. The transformation of the NCS into a royal charter body should be delayed until its eligibility can be proven.

In the meantime, the trust should be enabled to run its 2017 programme and it should be informed that its tenure and the remainder of its contract will be subject to the fulfilment of the criteria I have just mentioned. The National Citizen Service is a worthwhile enterprise. The body it has been entrusted to is not yet fit for purpose and a great deal of public funding is going to be staked on an organisation which so far has proven itself unable to deliver. On that basis, the Bill should not go ahead.

Lord Blunkett (Lab): My Lords, I declare my registered interests in this area as a board member. The noble Baroness, Lady Barker, has raised some rational points in relation to the Public Accounts Committee, and they should be taken seriously. But to say that these matters have not been addressed and then to say in the next breath, “I have addressed them throughout the passage of the Bill and did not receive answers”, beggars belief.

I sat in Committee and on Report, as other Members of the House did, and heard the noble Baroness, Lady Barker, quite rightly, repeatedly raising the questions she has raised this afternoon; raising the comparative issues—which are not comparable—with regard to the Scouts; and raising issues in relation to contracting out by the National Citizen Service, which is a commissioning body and contracts out the actual delivery of the service to dozens of organisations in the voluntary and not-for-profit sector. The very reason the Bill is before us—and I welcome the two technical amendments—is precisely to ensure that the lessons of the past four years have been learned and will be taken forward.

That is why the noble Baroness’s speech today, together with her numerous interventions in Committee and on Report, which she is perfectly entitled to make, would make a very good speech in favour of the Bill. As I understand it, she welcomes the National Citizen Service, questions the value for money, and raises issues from the Public Accounts Committee, which have not yet been answered, but raises one absolutely fundamental issue: that the long-term outcome measures of the investment in young people engaging with voluntary service and the week’s residential course cannot yet be proved. That is a non sequitur. How can you prove the long-term outcomes at this stage of measures that have been in place for only four years?
Lord Blunkett: On that count alone, and on the count that the measures that the noble Baroness questions have been questioned—even though this afternoon she says they have not been, and have not been answered—we should progress with the Bill, which will set in place an entirely new board and structure. I will not be part of that, but I wish the National Citizen Service well because, although it was not my idea and did not spring from my party, it is a fundamental investment in the well-being of our country and our young people.

Lord Beecham (Lab): My Lords, I will not detain the House for long at all. I declare my interest as a serving councillor and as an honorary vice-president of the Local Government Association. I rise simply to ask for some reassurance—it may have been given, but I have not seen it—that the new duties comprised in Amendment 1, which is a perfectly sensible amendment that I support, will be regarded as falling within the new burdens doctrine so that, if local authorities are required to expend more on providing the services identified here, they will be reimbursed by government in accordance with that doctrine.

Lord Stevenson of Balmacara (Lab): My Lords, I thank the Minister for his introduction of the amendments. We gave the Bill considerable scrutiny when it was in your Lordships’ House, and I am only sorry that we did not pick up the drafting points that he has had to bring back after consideration in the Commons. We have taken the view that the National Citizen Service Bill has a very narrow purpose, intended to secure the future of the NCS and to make the NCS Trust more accountable to Parliament and the public. This is what it does and we support the amendments.

Lord Ashton of Hyde: My Lords, I am grateful for the comments. I pay tribute to the noble Baroness, Lady Barker, who has been if not a lone voice then a voice that has addressed the scrutiny of the Bill the whole way through. Where I take issue with her is whether this is the correct place to do it. This Bill has been passed by both Houses of Parliament, with the exception of these drafting amendments. Both Houses have agreed it after scrutiny at all the different stages, and I would dispute whether this is her only chance to raise her points about the NAO and the Public Accounts Committee. There are many other avenues, but within the scope of Bill procedure, this is not one of them. I am certainly happy to meet her at any time she wants, along with my officials from the department, to talk about the issues that she has. I am reasonably confident that I can expect further scrutiny in this House on the National Citizen Service from her—I do not want to invite it, but I think that I may have it. I am grateful to the noble Lord, Lord Blunkett, who answered many of the points better than I can, so I will not repeat them now.

As far as the noble Lord, Lord Beecham, is concerned, I am not fully sure whether I understood his question. However, the NCS is a commissioning body, so any provider that does the work and provides the courses, be they local authorities or charities, will be paid by the National Citizen Service. It is not a question of extra duties being placed on other people. The money is there and that commissioning body will commission it from suitable avenues, some of which were mentioned by the noble Baroness, Lady Barker.

I hope that I explained in my opening remarks the technical reasons for these amendments and I therefore commend the Motion.

Motion agreed.
(i) to have been in state care in a place outside England and Wales because he or she would not otherwise have been cared for adequately, and
(ii) to have ceased to be in that state care as a result of being adopted.

Clause 5, page 6, line 43, leave out from “is” to end of line 45 and insert “looked after by a local authority” if the person is looked after by a local authority for the purposes of the Children Act 1989 or Part 6 of the 2014 Act.

Clause 5, page 6, line 45, at end insert—
“(5A) For the purposes of this section a person is in “state care” if he or she is in the care of, or accommodated by—
(a) a public authority,
(b) a religious organisation, or
(c) any other organisation the sole or main purpose of which is to benefit society.”

Clause 6, page 7, line 46, at end insert “or
“(c) appears to the proprietor of the Academy—
(i) to have been in state care in a place outside England and Wales because he or she would not otherwise have been cared for adequately, and
(ii) to have ceased to be in that state care as a result of being adopted.”

Clause 6, page 8, line 11, leave out from “is” to end of line 13 and insert “looked after by a local authority” if the person is looked after by a local authority for the purposes of the Children Act 1989 or Part 6 of the Social Services and Well-being (Wales) Act 2014 (anaw 4).”

Clause 6, page 8, line 13, at end insert—
“(5A) For the purposes of this section a person is in “state care” if he or she is in the care of, or accommodated by—
(a) a public authority,
(b) a religious organisation, or
(c) any other organisation the sole or main purpose of which is to benefit society.”

After Clause 9, insert the following new Clause—
“Placing children in secure accommodation elsewhere in Great Britain
Schedule (Placing children in secure accommodation elsewhere in Great Britain) contains amendments relating to—
(a) the placement by local authorities in England and Wales of children in secure accommodation in Scotland, and
(b) the placement by local authorities in Scotland of children in secure accommodation in England and Wales.”

Clause 11, transpose Clause 11 to after Clause 31.

Clause 32, transpose Clause 32 to after Clause 30.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, for five months last year this House diligently scrutinised the Children and Social Work Bill and produced an important piece of legislation to improve the care and protection of our vulnerable children, and the support provided to those who work with them. Since November, that process has continued in the other place and I am delighted that as a result, the Bill has now been brought for our consideration today. I hope that after today’s debate noble Lords will agree that the Bill is now in good shape and that our productive dialogue on its provisions should move on to the critical matter of effective and timely implementation.

This group of amendments strengthens areas of the Bill to which the House has already devoted much time. These are small but important refinements; I will endeavour to explain how they will make the current provisions of the Bill still more impactful.

3.30 pm

Amendments 1 to 8 deal with educational support for children adopted from care. I am sure noble Lords across the House will remember the thorough debates we had on this topic and, in particular, the heartfelt intervention of the noble Baroness, Lady King. On Report in October I confirmed to the House, “that the Government will table an amendment to the Bill in the other place to bring children adopted from care outside England within the scope of Clauses 4 to 6.”—[Official Report, 18/10/16, col. 2288.]

I am delighted to say that Amendments 1 to 8 deliver on that commitment. Taking account of the differing care systems around the world, they provide for support from the virtual school head at local authority level and designated teachers within schools for children who have been adopted from care in countries other than England and Wales. I am sure the House will welcome this development.

Amendment 9, along with Amendments 22 to 28, and 30, are concerned with the small number of children—20 at present, according to our most recent data—who are placed by local authorities in England and Wales in secure accommodation in Scotland. Making such placements is a well-established practice allowing local authorities to consider a fuller range of specialist provision in seeking to identify the most appropriate placement for a child in their care and making best use of the available capacity within Great Britain. The amendments, therefore, do not make any substantive change to current practice or policy but are rather a technical fix to make clear the powers under which a child might be placed in these settings and address a legal gap identified by the Family Division of the High Court in September last year.

Apart from Amendments 10 and 11, which simply move clauses to new positions in the Bill for housekeeping purposes, the remaining amendments in this group relate to the social work clauses of the Bill.

I thank noble Lords for their challenge and scrutiny in relation to the new regulator for social workers, Social Work England. I am delighted that we have reached an agreed framework for the new body, one which I believe puts us in an excellent position to drive forward the reform and support needed in the profession.

I give my specific thanks to the noble Lords, Lord Hunt and Lord Warner, whose continuous engagement in this subject has greatly helped us achieve a legal framework that supports all our ambitions for the profession while promoting and maintaining the vital protection of the public.

I shall spend a little time on Amendment 14. This new clause will make it possible for government to pursue improvement work for the profession and set improvement standards that make it clear what social workers should know and be able to do to practise effectively. It is only right that vulnerable children and adults should expect strong professional practice from their social workers. We know that they do not receive that strong support and that quality varies across the sector. Almost one in four councils inspected under Ofsted’s current inspection framework has a judgment which indicates that its practice is inadequate. In the light of that startling statistic, it is critical that the
Secretary of State is able to bring forward improvement activity that she believes will help raise the standard of social work practice by making clear what standards are expected of children and family social workers and assessing social workers against those improvement standards.

In other professions, we might expect a professional body to undertake that work but, for now at least, there is no such body for social workers. With the distinct regulatory functions that Social Work England will rightly have, we believe the Secretary of State is in the best position to drive this improvement forward. Indeed, she is the only person who can. In doing so, she will, of course, want to work exceptionally closely with the social work profession.

Amendment 14 will be the subject of review, as is already set out in Part 2, and we will consider whether it is appropriate to transfer the improvement role in the future to another body, which this amendment also allows for.

My honourable friend Edward Timpson has set out in the other place and in speeches to the sector his belief that a sector-led professional body is an important part of the social work profession’s development, and he has made clear his desire to see proposals from the sector about how such a body might be created. I would like to be clear that the improvement standards under Amendment 14 are intended to be distinct from the professional standards that the regulator, Social Work England, will set. This is an important distinction.

The improvement standards will define specialist standards of practice over and above those required by the regulator for registration. The Secretary of State will have no role in taking action against individual social workers who do not meet the regulator’s standards.

In enabling the setting of specialist improvement standards for social workers and enabling assessment against those standards, this clause is critical to the future of the children’s social care system, to social workers and to the children they help and support. It will enable the introduction of a national assessment and accreditation system for child and family social workers, and will enable similar arrangements to be applied in social work with adults where appropriate.

This follows extensive consultation with local authorities, including 31 enthusiastic pilot councils, and with representatives of social workers themselves.

The Government have recently consulted on the national assessment and accreditation system. The consultation closed on 14 March and almost 400 individual responses were received, including responses encapsulating the views of hundreds of social workers. There is a great deal of support for the aims of the new system but there was a wide range of comments about how its rollout can happen in a way that minimises disruption to the social work workforce. We are considering these comments carefully, and Ministers will announce their decisions on the way forward later this year.

In addition, we are working closely with the 31 local authorities that have volunteered to be part of phase one of the rollout of the accreditation system. Recent feedback from them suggests that they continue to see great value in having an indicator of their social workers’ capabilities and a lever to drive a sharper focus on continuing professional development.

The remaining social work amendments, Amendments 15 to 21 and 31 to 33, are a set of technical and consequential changes aimed at bringing clarity to the law governing the social work profession and bringing it into one succinct piece of legislation. These new clauses and amendments and the associated schedule merely provide clarity to the legislation, which will offer simplicity and transparency to the law governing the social work profession. They do not make substantive changes to the content of the present legislative framework but, rather, ensure a continuation of current provisions in light of the changes made by Part 2 of the Bill, particularly to maintain the support that the Government already provide to social work training.

Through Amendment 15, the Government want to make it absolutely certain that the Secretary of State is still able to ensure that adequate provision is made for social work training, as is currently the case. This includes the ability to provide financial assistance to those undertaking training, as well as to the various organisations such as higher education institutions, working in partnership with local authorities, that provide social work training. The Secretary of State currently has functions of this nature under Section 67 of the Care Standards Act 2000. Amendment 15 would replace those functions in respect of social workers in England, setting out the Secretary of State’s powers in this area using modern drafting and in a way that makes clear her powers in relation to social work training in one clear and dedicated piece of legislation.

The amendment is intended to ensure the continuation of current support to those bodies providing social work training, including higher education institutions, something that the Government are absolutely committed to. I beg to move.

Baroness Pinnock (LD): My Lords, I am pleased to say that the Bill has been significantly improved by scrutiny in both Houses. The Minister has been of particular help in this iterative process by being willing to listen and to amend according to the informed debate in Committee and on Report in this House. We support the amendments listed in this group that extend the duty of local authorities in respect of children adopted from outside England and Wales, as well as the other changes in this group regarding secure accommodation and improvements to social work training and standards. On this, I have been alerted by the British Association of Social Workers of its concern that the training is not expressly linked to institutions of higher education. Perhaps the Minister could comment on that concern.
On Amendment 14, we support the action to improve standards in social work training and social work in children’s services, but I regret that the Minister has today linked training with children’s services that are deemed less than satisfactory when inspected by Ofsted. At this point I declare my interest as in the register as a councillor in the Borough of Kirklees and a vice-president of the Local Government Association.

I continue to express my concern that the Bill adds to the duties and responsibilities of local authorities—and of schools—at a time when local authorities are adjusting to very large reductions in their funding, when the Government have made a commitment that there should be no new responsibilities for local government without the funding being provided. I hope to hear from the Minister that there will be additional funding for children’s social services to reflect the additional duties and responsibilities that the Bill rightly places on them. We cannot have something new and improved without providing the means to achieve it.

With those comments, we generally support the amendments in this group.

Baroness Walmsley (LD): My Lords, I add a few words to those of my noble friend Lady Pinnock. I particularly thank the Government for the amendments to Clauses 4, 5 and 6, which were in response to a promise made to the noble Baroness, Lady King of Bow, and me during the Bill’s passage through your Lordships’ House. They will certainly improve the position of children in this country adopted from abroad, but, as you would expect, the amendments can only bring those children within the scope of the measures in the Bill.

The battle is not over for the parents of those children, because many of them are now coming to the age where they transfer from primary to secondary school and are having difficulty getting into the school which their parents feel is most suitable for their particular needs. Is the Minister aware that some parents and I have spoken to Mr Edward Timpson about the need to extend priority admissions and pupil premium plus to those children? We are waiting to see whether the Government will make those changes. Will the Minister agree to meet me and some of the parents of those children so that he may hear for himself their concerns? Having said that, they asked me to say that they thank the Government and very much welcome the changes that they have made.

Lord Ramsbotham (CB): My Lords, I, too, thank the Government for how far they have come since we started work on this Bill in this House many months ago. However, I raise one question, which I raised yesterday in the very helpful drop-in session held by the Minister, which refers to government Amendments 9 and 30. Government Amendment 9 allows children from England and Wales to be held in secure accommodation in Scotland. As we know, the circumstances in which a child looked after by a local authority may be deprived of his or her liberty by placement in secure accommodation are listed in Section 25 of the Children Act 1989.

Government Amendment 30 sets out a new schedule. Paragraph 5 of that schedule refers in particular to the Children (Secure Accommodation) Regulations 1991. It states:

“In regulation 1 .... This Regulation and Regulations 10 to 13 extend to England and Wales and Scotland”.

Does that mean that Regulations 2 to 9 and 13 do not apply to children detained in Scotland? That is very important, because those regulations contain the requirement to obtain the child’s and parents’ consent to a move and the right to independent periodic review. If the regulations as set out in the government amendment are to be believed, those rights are removed from children who are transferred to Scotland.

I suspect that this is either an administrative oversight or has been left out not deliberately but because the implications were not wholly appreciated. I should be grateful if the Minister could clear up this question.

3.45 pm

The Earl of Listowel (CB): My Lords, I too welcome much of what the Minister has said, as well as the work undertaken by the Government and the Members of the other House, particularly their acceptance of the amendment of the noble Baroness, Lady King, on adopted children, as promised. The Minister’s last words highlighting the continued financial support for higher education institutions to train social workers are also very important and very welcome.

I share my noble friend’s concern about proposed new Clause 9 regarding secure accommodation in Scotland. I recognise that there is a crisis in the care of looked-after children. Since the death of baby Peter the number of children taken into care has risen year on year, and we anticipate that the number will increase even more steeply. There is pressure on foster placements and pressure on children’s homes in England and Wales. The Minister agreed to send a child long way from home if there is excellent and specialist provision to meet their needs. However, as a patron of a children’s advocacy charity, I know very well from young people themselves that what they wish for above all is continuity of positive relationships, so sending more children further away from home is always a matter of concern. I know that the Government are apprised of that principle. The thought that we are making it easier through this legislation to place more children out of England and Wales, far from their local authority—in Scotland—therefore causes me concern. The President of the Family Division of the High Court, Lord Justice Munby, said that this was something that needed to be considered, but he also said that there should be a joint Law Commission report into it. My concern is that it needs to be thoroughly considered. I would be grateful to hear from the Minister that, before this amendment is implemented, there will be thorough consultation to consider its implications.

On Amendment 14, on the improvement of standards for social workers, I agree that standards need to be improved. There has been a long-standing concern about the quality of education of social workers. I recognise that they have often not been fully equipped to practice when they have completed their courses. However, it is right to insist that the Secretary of State should consult with the social work profession and higher education institutions in developing these standards. The Minister was fairly reassuring on that point although he did not explicitly mention the higher education institutions. My concern is that there is a risk that ideology and strongly held personal prejudice can lead...
[The Earl of Listowel] judgment in the development of social work. The role of the social worker is highly emotionally charged, and it always has been. These people step into the lives of families and children for understandable reasons. The widest possible consultation with academics and practitioners would avoid the risk that the prejudices of one individual or one group could shape the standards too sharply.

I recognise the benefits of the innovative training models such as Frontline, which the Government introduced. The Minister has been fairly reassuring on this last point so I will not go further on that. I do not intend to speak again this afternoon but I warmly welcome the next set of amendments and the introduction of statutory personal, social health and economic education. A long-standing concern is that teachers in schools are just not equipped to teach the difficult subject of sex and relationship education. I hope that by putting this on a statutory basis many more teachers will be properly equipped and children will get the education they need.

Lord Warner (CB): My Lords, I too welcome what the Government have done in responding to some of the concerns that have been expressed about the Bill. They have shown their willingness to listen and to make amendments and I commend them for that.

I just want to raise an issue around secure accommodation. My warning lights always start flashing on the subject of children’s secure accommodation. It is very difficult to regulate this area and to ensure that good care is provided, because the unit costs tend to be extremely high. If we have now got to the point where we have to take children over the border—which they have to cross the Tweed to get their secure accommodation—we should start to be concerned. This sector has shrunk and shrunk and shrunk in England. This was starting when I was chairman of the Youth Justice Board, up to 2003, and it is very difficult to get people to work in it, to set the systems up and to ensure that they continue to be safe.

There is something to be said, not just for the point made by the noble Lord, Lord Ramsbotham, but for taking an independent look at this sector and its economic viability. This is an area where, in effect, you almost have to pay for spare places to be available because you do not know when a child is going to require that accommodation. The Government now need to have a long, hard look at this. The sector has been shrinking for some time; it has proved difficult to get the finances right and to secure good staff. People are doing their best, but things can often go wrong in this sector. It is very difficult to ensure that these places are regulated properly. The Minister might want to write later, rather than responding today, but will he and his department consider whether a review of the sector is long overdue?

Lord Hunt of Kings Heath (Lab): My Lords, the Minister has paid due tribute to Members of this House for their contribution as the Bill was scrutinised some months ago. In return, the Minister’s willingness—that of his colleague in the other place, Mr Edward Timpson—has been commendable and is much appreciated. There is no doubt that the Bill has changed quite considerably. I particularly welcome the fact that regulation of social workers is now to be undertaken by an independent body, subject to the oversight of the PSA. I also welcome the Government’s decision to accept that the innovation clauses which the Lords took out would not be reinserted in the other place. Essentially, they involved giving local authorities the ability to override primary legislation, so we have maintained an important principle.

The Minister has introduced a number of interesting amendments. I will follow other noble Lords in asking one or two questions. The noble Lord, Lord Ramsbotham, and the noble Earl, Lord Listowel, have raised important points in relation to secure children’s homes in Scotland and the amendments brought forward by the Minister. There can, of course, be no objection whatever to dealing with the technical deficiencies which have been identified, but there is a concern that, across the last six years, there has been a, I think, 22% reduction in secure accommodation places for children. There would be a concern if these provisions were used inappropriately to transfer young people across the border because there were not sufficient resources in England. I hope that the Minister can assure me that this is purely a technical provision, that the Government are actually committed to ensuring that there are sufficient places in England, and that young people are not sent unnecessarily long distances from their homes. As the noble Lord and the noble Earl said, that cannot do very much to improve the quality of their lives, which is the purpose of secure accommodation.

I recognise that the provisions on improvement standards for social workers are a logical outcome of the Government accepting the proposition that social worker regulation should come under an independent regulator. The noble Lord said some welcome words about the Government’s desire to encourage the development of a sector-led improvement body. Clearly, efforts have been made in this regard in the past that have not been deemed to work, but the Government are right to try to inspire another go at getting this right. The noble Lord will probably know that both BASW and UNISON have raised concerns about the Secretary of State setting standards and whether they are linked to the national assessment and accreditation scheme. I shall not go into that in detail, but clearly there is a concern among social workers about the way in which the scheme could be used potentially to penalise individual social workers. I hope that the noble Lord will set my mind at rest on that.

In taking forward these proposals on the establishment of a new regulator and the setting of standards and their assessment by the Secretary of State, I hope that there will be, as the noble Earl, Lord Listowel, said, full engagement with the sector, including with UNISON, BASW and other bodies. There is a particular role for the chief inspector of children’s services here. I look across the Floor of the House at the noble Lord, Lord Laming, who was a most distinguished chief inspector of social services a few years ago. It is a very difficult role comprising being a principal adviser to Ministers and being head of a profession while upholding the public interest. The chief inspector of children’s services has a very strong role to play in trying to pull the stakeholders
together rather than necessarily just confronting them. I hope that she and the Minister will take this suggestion as one that is meant in the best possible way. In the end, if this provision is to work effectively, it is very important that we take the profession with us as much as we can on this journey of improvement. The Opposition fully support the Government in seeking to improve standards in the profession. That is why we support the broad thrust of the Bill.

The noble Baroness, Lady Pinnock, talked about training providers. There has been concern, particularly in the light of the debate on the higher education Bill, about who the providers might be. If the Minister could give some assurance about the quality of provision in social work training, that would be very helpful.

I am grateful to the Minister for his work on the Bill, the amendments he has brought forward and for the overall thrust of where we are now going, which we support.

Lord Nash: My Lords, I thank noble Lords for their helpful comments. I repeat that these amendments, although important, are, for the most part, relatively minor. However, I will attempt to answer the points that were raised.

On the point about the role of higher education institutions, raised by the noble Baroness, Lady Pinnock, the noble Earl, Lord Listowel, and the noble Lord, Lord Hunt, as I said, the amendments in this group already include provision for financial assistance for organisations, including HEIs, providing social work training. The Government already play a role in ensuring that adequate initial HEI training is available and are absolutely committed to continuing to do this. This clause allows for this funding to be provided to HEIs, and the Government are committed to continuing this support.

The noble Baroness, Lady Pinnock, asked about funding. We have published a new burden assessment of the Bill’s provisions, including a commitment to provide additional funding where appropriate.

The noble Baroness, Lady Walmsley, talked about issues that some parents face when their child transfers from primary to secondary education. I would be delighted to meet her and the parents concerned to discuss this matter further.

The noble Earl, Lord Listowel, and the noble Lords, Lord Ramsbotham, Lord Warner and Lord Hunt, also talked about secure placements in Scotland and generally. Placements in Scottish secure homes have happened, commonly, over time. These amendments are necessary to fill a legislative gap relating to secure placements in Scotland by English and Welsh local authorities—a technical point. While important, they do not seek to change policy; as I say, they are a technical fix.

4 pm

In answer to the point about parental consent, Section 25 itself contains no requirement for parental consent, and the proposed amendment does not alter the position as set out in law currently. That is, there is a duty on the placing authority to endeavour to promote contact between the child and their parents and any person who is not a parent but who has parental responsibility for the child and any relative, friend or other person connected with the child, unless it is not reasonably practical or consistent with the child’s welfare. Such cases may include where the child has been abused or the parents or parent pose a significant risk of harm to the child.

On the question that the noble Lord, Lord Warner, raised in particular, as did the noble Lord, Lord Hunt, about whether there is a shortage of placements in this regard, at the moment we are talking of 20 children going across the border, but that is not a reason for not being concerned about the point. The commissioning and provision of secure accommodation rests with local authorities, which have a duty to ensure sufficient provision.

However, in recognition of the absence of a clear national picture of supply and demand for secure beds, and in response to calls from ADACS and other stakeholders to allow better central oversight, last May my department began funding a central co-ordination unit for secure welfare placements. This is run by Hampshire County Council and supports local authorities to find suitable placements for young people. The process is designed to ensure that places are allocated more quickly and easily as soon as a child is identified as needing secure accommodation. Emerging data from the unit are starting to give us a much better picture. I can say that it indicates that there may be pressure on the availability of welfare beds in the English secure estate, and we are engaging with ADACS, the LGA, secure accommodation providers, the MoJ and NHS England to establish how we can better plan and allocate this provision in the future.

I entirely agree with the point the noble Lord, Lord Hunt, made about the essential importance of taking the profession with us every step along the way. On the point about consultation, which the noble Earl, Lord Listowel, also raised, the amendment itself requires consultation, and we are absolutely committed to a full and open consultation.

I hope that I have been able to do justice to most of the points raised and that noble Lords across the House will support the Motion to approve these Commons amendments.

Motion agreed.
(a) requiring the Secretary of State to give guidance to proprietors of schools in relation to the provision of the education and to review the guidance from time to time;
(b) requiring proprietors of schools to have regard to the guidance;
(c) requiring proprietors of schools to make statements of policy in relation to the education to be provided, and to make the statements available to parents or other persons;
(d) about the circumstances in which a pupil (or a pupil below a specified age) is to be excused from receiving relationships and sex education or specified elements of that education.
(3) The regulations must provide that guidance given by virtue of subsection (2)(a) is to be given with a view to ensuring that when relationships education or relationships and sex education is given—
(a) the pupils learn about—
(i) safety in forming and maintaining relationships,
(ii) the characteristics of healthy relationships, and
(iii) how relationships may affect physical and mental health and well-being;
(b) the education is appropriate having regard to the age and the religious background of the pupils.
(4) The regulations may make further provision in connection with the provision of relationships education, or relationships and sex education.
(5) Before making the regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
(6) The regulations may amend any provision (including provision conferring powers) that is made by or under—
(a) section 342 of the Education Act 1996;
(b) Chapter 4 of Part 5 of the Education Act 1996; (c) Schedule 1 to the Education Act 1996;
(d) Part 6 of the Education Act 2002;
(e) Chapter 1 of Part 4 of the Education and Skills Act 2008;
(f) the Academies Act 2010.
(7) Any duty to make provision by regulations under subsection (1) may be discharged by making that provision by regulations under another Act, so long as the Secretary of State consults such persons as the Secretary of State considers appropriate before making the regulations under that Act.
(8) The provision that may be made by regulations under subsection (1) by virtue of section 70 includes, in particular, provision amending, repealing or revoking any provision made by or under any Act or any other instrument or document (whenever passed or made).
(9) Regulations under subsection (1) which amend provision made by or under an Act are subject to the affirmative resolution procedure.
(10) Other regulations under subsection (1) are subject to the negative resolution procedure.
(11) Expressions used in this section, where listed in the left-hand column of the table in section 580 of the Education Act 1996, are to be interpreted in accordance with the provisions of that Act listed in the right-hand column in relation to those expressions."

Lord Nash: My Lords, the Government want all children to have access to age-appropriate relationships education, relationships and sex education—RSE—and personal, social, health and economic education that relate to the modern world. We believe this is vital to ensuring that pupils are taught the knowledge and skills they need to stay safe and develop healthy, supportive relationships, particularly in view of their increasing use of online technology and social media. I know that many noble Lords have worked tirelessly to raise the profile of this issue and I thank them for their valuable contribution.

As my honourable friend the Minister of State for Vulnerable Children and Families stated on Report in the House of Commons, we have listened to calls for further action on this. That includes from professionals working in the field, from parents and carers and from young people themselves. Evidence presented to numerous Select Committees has added to the weight of evidence, and many teaching unions have also called for mandatory status, as have leading parent representative bodies such as Mumsnet and PTA UK. The growing concerns about child sexual abuse and exploitation, and about children sharing and viewing inappropriate materials, have convinced us that there is a compelling case to act in relation to pupil safety.

Amendment 12 places a duty on the Secretary of State to make relationships education and RSE mandatory. The strength of this approach is that it will allow us to engage with a wide range of interests and expertise ahead of putting the duty into effect. The outcome of this engagement will feed into both the legislative process needed to make these subjects mandatory and the guidance that will support schools in delivering high-quality, inclusive relationships education and RSE.

We are creating a regulation-making power to enable the Secretary of State to make PSHE mandatory. It is clear that the most pressing safeguarding concerns relate to relationships and RSE, but it is evident that wider concerns about child safety and well-being relate to the types of life skills that this subject can cover, such as an understanding of the risks of drugs and alcohol, and safeguarding physical and mental health. That is why we want to have the ability to make PSHE also mandatory, subject to the outcome of thorough consideration of the subject and careful consideration of the fit with the content of relationships education and RSE.

The wider engagement to consider content will begin this spring, and we expect that it will result in draft regulations and guidance for consultation in the autumn of this year. Following the consultation, we will lay regulations in both Houses, alongside final draft guidance, allowing for a full and considered debate. We envisage that the statutory guidance will be published in 2018, once the regulations have been debated and approved by both Houses, and at least one full year before the academic year 2019-20.

Our proposals have already been debated fully in the other place, and I have also had the opportunity to discuss them with some noble Lords individually and in drop-in sessions. Therefore, I know that there will be particular interest in certain points of detail, and it may help to cover some of them briefly at the start of the debate.

First, we do not want to be overly prescriptive on content and therefore have chosen not to specify in the Bill the exact content of the subjects. We know that the rapidly changing risks that young people face mean that the legislation could quickly be out of date if we attempted to list key topics. We will ensure that our external engagement results in a clear understanding of the full set of knowledge and skills that relationships education, RSE and PSHE should provide for children and young people.

However, Amendment 12 will ensure that the Secretary of State will be required to issue guidance on delivering these subjects to which all schools must have regard.
The amendment also requires that the guidance is given with a view to ensuring that pupils learn about safety in forming and maintaining relationships, the characteristics of healthy relationships, and how relationships may affect mental and physical health and well-being.

It will be essential, of course, that the content of these subjects is age appropriate. We expect the new subject of relationships education for primary schools to focus on themes such as friendships, different types of family relationships, how to deal with bullying and respect for other people. We anticipate that RSE in secondary schools will include topics such as sexual health, including sexually transmitted infections, and sexuality—all set firmly within the context of healthy relationships. It will also cover helping pupils to understand the law in relation to sex. This will complement elements already taught in the science national curriculum.

This will contribute to wider government efforts to improve all elements of internet safety. We want Britain to be the safest place in the world for young people to go online. We know that more needs to be done and the Department for Culture, Media and Sport has commenced work on a new internet safety strategy. The DCMS will consider all available options. It will want to talk to all the leading stakeholders, collect evidence and test solutions before delivering a sensible package of proposals.

We will consider the need for PSHE topics in this context and we expect our analysis to cover the broad pillars of healthy bodies, lifestyles and healthy minds, economic well-being and making a positive contribution to society. The amendment will ensure that education provided under these subjects is appropriate not only to a child’s age but to their religious background. The Secretary of State must give guidance to schools on how to deliver this, but this provision will give faith schools the flexibility to teach these subjects reflecting the tenets of the faith, while still being consistent with their duties under the Equality Act.

We expect all schools to ensure that young people feel that relationships education and RSE are relevant to them and sensitive to their needs. As part of our wider engagement, we envisage working with organisations such as Stonewall and the Terrence Higgins Trust, which are already supporting schools very well in this area. The guidance will draw on existing good practice on how to provide good-quality, inclusive subject content that is also consistent with the ethos of the school.

Schools will be able to consider how best to teach these subjects, taking account of the age and religious backgrounds of their pupils, but not whether to teach them. The amendment does, however, provide for a right to withdraw from sex education in RSE for parents who would prefer to teach some or all of sex education to their children themselves. We will ensure that the right to withdraw is consistent with current case law regarding the age at which a pupil may have the right to make their own decisions about whether to withdraw from sex education or not. I want to assure noble Lords that all this will be covered in regulations, which will be subject to the affirmative procedure and therefore debated in both Houses.

The amendment does not provide for a right to withdraw from relationships education for pupils receiving primary education. This is because we envisage relationships education will focus on themes such as friendships, family relationships and dealing with strangers.

We are committed to giving schools time to prepare fully for these important changes, so that they will be ready to teach high-quality relationships education, RSE and potentially PSHE, pending the findings from our engagement and consultation. We therefore anticipate implementation will commence from September 2019.

I have mentioned already that we intend to conduct a thorough and wide process of engagement, both to develop regulations and guidance and to assess what support the sector may need as a result of this legislation. The department will begin this process of engagement as soon as possible after Royal Assent. We are considering what expert advice the department requires to help inform this work. We envisage seeking expertise in school leadership and the subject matter. As we have already set out, we intend to consult on the draft regulations and guidance in the autumn of this year.

The process will include activity with the teaching profession; subject associations such as the PSHE Association, whose former CEO Joe Hayman deserves recognition for working tirelessly for this cause for many years, and the Sex Education Forum; faith groups such as the Catholic Education Service, the Church of England and other leading faith representative organisations; leading children’s stakeholders, such as Barnardo’s, the Children’s Society, the National Children’s Bureau, the NSPCC and other voluntary sector groups such as Stonewall, the Terrence Higgins Trust and the End Violence Against Women Coalition; teaching unions; and organisations that work in this space with schools and children such as the Young Enterprise. Perhaps most crucially, we want this work to engage directly with children, young people and parents, so we can be sure that the end result delivers what they need and that we are helping children and young people to be safe and happy as they grow older.

Of course, we would also like noble Lords to contribute to this wider engagement, particularly those who have expertise and experience in these areas; for example, in online safety. I look forward to working with fellow Peers on this.

I hope that noble Lords will join me in supporting this considered approach to reforming this area of the curriculum in collaboration with schools. I know there are some amendments in this group that other noble Lords wish to speak to, but I trust that the House will welcome the important principles I have set out and welcome, as I do, these Commons amendments. I beg to move.

Amendment 12A (as an amendment to Amendment 12)

Moved by Lord Storey

12A: Line 4, after “relationships” insert “and sex”
Lord Storey (LD): I will speak to Amendments 12A, 12C and 12E in this group. I begin by thanking the noble Lord, Lord Nash, and his ministerial colleague Edward Timpson for having brought this very important amendment forward. They are to be congratulated on what they have achieved. The Minister said that many Members have raised this issue and its profile over a long time in this House. It is hard to believe, as my noble friend Lady Maddock is reminding me, that it was perhaps only 20 years ago that we were debating Clause 28—do noble Lords remember that? How quickly things have changed. Of course, during the time of the coalition, we had equal marriage as well.

I want to thank not only the Minister and his Government but also all those who have campaigned on this issue for quite some time. When you think of PSHE, there is only one person in this Chamber you automatically think of. She is not in her usual place but she is here. That person is—I have forgotten her name. Help!

Noble Lords: Massey!

Lord Storey: It is the noble Baroness, Lady Massey—I had a senior moment. She has constantly asked Question after Question and always emails to say, “Make sure you are in the Chamber when I ask my Question”. I am sure that she is thrilled with the result. I am sorry for forgetting her name. Help!

4.15 pm

We need to be aware of the problem. When I first started teaching at a primary school on a council estate in Prescot, once a week for 12 sessions we took the BBC sex education programme “Merry-Go-Round”. At that time there were not some of the frightening issues that children now face in primary schools. I shall come back to that issue in a moment.

To put this in context, the Terrence Higgins Trust in 2016 found that one in seven young people did not receive any sex and relationship education at school. Of this frightening figure, over half—61%—received SRE only once a year or less. The colloquial term was “the drop-down days”. Currently, millions of children are not getting the right kind of information about relationships. Sensitive issues such as relationships with the other sex, with the same sex, domestic violence, abuse, female genital mutilation, forced marriage and stranger danger are all out there and young people do not get the proper support and guidance that they should get.

It is not only about saying—as we are—that we should have sex and relationship education but about the quality of that provision and the teaching of the subject. That is why I again welcome the Government’s decision to provide guidance on this matter. It was only three years ago that Ofsted found that of those secondary schools teaching sexual relationship education, as it was then called, 40% required improvement because the teaching was inadequate. We need to make sure that the teaching, materials and content are right.

My concerns lie in two areas. I hope the Minister will clarify the first area, which concerns the Government’s amendment, when he responds. To a Written Question from the noble Lord, Lord Northbourne, on sex and relationship education in schools, the Minister gave a fulsome reply. He said:

“We plan to undertake a comprehensive programme of engagement with stakeholders about future provision in these areas. A key element of that engagement process will be gathering and using evidence to enable us to get the balance of subject content right … enabling schools to design appropriate lessons”.

Putting that to one side for a moment, I also note that in their amendment the Government refer to the religious backgrounds of pupils. My Amendment 12C seeks to explore what the religious background means. Does it mean, for example, that the programme of study, when it is developed after consultation, will be age appropriate and include something about gay relationships? I assume that that content might include something about safe sex and contraception. How does that square with the traditions or the religious background of a particular faith school? Does it mean that they can say, “We are not happy about contraception or gay relationships so we will withdraw from these aspects of relationship and sex education”? I want the Minister to be very clear in his reply. I know that there are issues around the Equality Act, but I hope that the Minister can say basically what is in my amendment, which is that once the consultation has taken place and the programme of work is agreed, which is only right and proper, it will be expected of all schools, irrespective of their faith traditions or background, to teach these aspects.

The second issue I want to address goes back to primary education. We have come a long way so I am not going to push this, but I want to make the point. I regret that the sex part is not to be included with relationships. Primary school-age children usually have a teacher who they see on a daily basis in a small setting where it is natural to talk about sex and relationship education. Children are facing pressures ranging from sexting to access to pornographic sites and stranger danger, so it seems that as well as relationship education, sex education should go with it. It is interesting to note that around 53% of 11 to 16 year-olds have seen explicit material online and it is a matter of concern that new research undertaken by the security technology company Bitdefenders reports that children under the age of 10 now account for 22% of online porn consumption. If we divorce sex and relationship education, that has the potential to cause problems. As Michael Flood has rightly said in volume 18 of his Child Abuse Review, “pornography is a poor, and indeed dangerous, sex educator”.

I regret the fact that we will not be giving primary school-age children sex and relationship education together.

I thank the Minister for bringing forward this provision and am pleased that this is going to be an affirmative process.

Baroness Massey of Darwen (Lab): My Lords, I wonder if I might speak given that I was named—but not shamed—in the speech made by the noble Lord, Lord Storey, and I thank him for his tribute. I feel that I must speak on what is quite an historic occasion. I am one of those people in your Lordships’ House who has spent many years trying to get the issue of personal, social and health education, including relationships...
and sex education, into the curriculum, and the word “compulsory” is music to my ears. I give the amendments a huge welcome and I think that the Government have been brave in putting them before us today. At last we can see real progress on this.

The noble Lord, Lord Storey, is right to say that these issues have been around in Parliament for the past 20 years. I recall my noble friend Lord Knight speaking in 2010 at a teachers’ conference at which he received a standing ovation when he said that PSHE would be made compulsory by the Labour Party. Sadly the issue was washed away in the wash-up and it never happened, but I shall never forget my noble friend’s standing ovation.

Until now, despite vocal support from children and young people, parents, teachers and other professional bodies, the words “must” and “make provision” have not been applied to these aspects of education; that is, forming and maintaining relationships and how they may affect physical and mental health. Nor have schools been required to make policy statements in relation to the education provided and to make them available to parents or other persons. The noble Lord, Lord Nash, mentioned many organisations, to which we are all grateful for their consistent support for this area of education. Children—it is they who are important here—will have the right to learn about issues that they are concerned about. They will have the right to learn about, for example, the danger of online pornography, abuse and how to protect themselves. But that is not the only thing: they will have the right to learn that most relationships are, in fact, fulfilling, happy and make sense to have.

Regarding the religious aspect, the best sex education teacher I ever met when I was an adviser was a nun. She said to me on issues such as abortion and homosexuality, “I do teach these things. What I do is put forward the Roman Catholic view of what these mean to the Church and to myself, but I do talk about them and feel that I can talk about them because I have put the viewpoint of my Church. It does not prevent me helping children to understand what such issues are about”. I deeply respect that person for what she said to me.

Here I pay particular tribute to the noble Lord, Lord Nash. I remember a conversation with him when he was first made a Minister. I realised then that he understood the importance of enabling children to receive education in school to help them understand themselves, their behaviours and attitudes, and their own rights and responsibilities. I thank him for the legislation that is now before us. I am sure that he had a huge impact on making it happen.

I of course have concerns about delivery. I realise that amendments from colleagues are totally understandable, but we have to get on with delivery. Of course teachers will need to be trained and they will need resources. I wonder how the many excellent resources on PSHE, character education, citizenship and so on will be rationalised and brought together to form a holistic approach. Maybe schools will do it themselves. I do not know. I share Stonewall’s concern; maybe the Minister can respond to this. Do the Government agree that the new legislation and guidance must comply with the Equality Act and will therefore require all schools, including those with a faith character, to provide education on LGBT issues? In Amendment 12, to be inserted after Clause 32, is the sentence, “the education is appropriate having regard to the age and the religious background of the pupils” intended to ensure the faith schools can teach LGBT issues while still respecting the faith ethos of a school? I go back to my nun.

I am delighted that issues relating to sex education and PSHE are now being discussed in this Chamber openly and with respect. I again congratulate the Minister on his influence.

Baroness Walmsley: My Lords, my Amendment 12B is in this group. Today is a day of great celebration for me because ever since I came into your Lordships’ House, I, along with the noble Baronesses, Lady Massey and Lady Gould, who is not in her place, have campaigned across party for this. I thank the Minister most sincerely for making it a reality for children. They have wanted it and demanded it; I hope they will now get it at a very high quality. The fact that it will be mandatory will mean that teachers will train specifically to give them the skills to deliver this sensitively and with an understanding of the young people.

My amendment would remove subsection (2)(d). It is simply to probe the Government’s intentions. The subsection says:

“The regulations must include provision…about the circumstances in which a pupil (or a pupil below a specified age) is to be excused from receiving relationships and sex education or specified elements of that education”.

4.30 pm

If the programme of study is designed as the Bill intends it to be, there should be no need for any parent to want to withdraw their child. However, the current situation—and it is hard to believe, I know—is that a parent can withdraw their child from sex education up to the age of 18 if they stay on at school in the sixth form. In this day and age, that is downright ridiculous. I understand that the Government intend to look at that and come back with regulations which bring the situation much more up to date. When they do so, I hope that they will bear in mind that for 25 years we have been signatories to the UN Convention on the Rights of the Child. A proper course of PSHE and relationship and sex education will give children the right to life-saving and life-enhancing information that will enable them to work towards a healthy body, a healthy mind and healthy relationships in their future life. If they have all that, they will become productive members of society.

It is also important that we bear in mind the “best interests of the child” principle, which I think was introduced in 1945. It is in the best interests of the child that they have all the information about these issues that they need to keep them safe and help them to be healthy and happy. Whatever they hear from their parents, they will then be in a position and have the tools to make their own judgments and choices, which is vital.

I will be honest about the fact that I do not feel that parents should have the right to remove children from this life-saving information at all, but I am not pressing...
that point today. I want to ensure that the consultation will be wide enough—I hope that I will be able to contribute to it—and that the Government bear in mind those principles to which we are already a signatory and look at examples such as Gillick competence, which relates to children’s ability to make decisions for themselves about things such as contraception and the privacy of their medical records. We need to look at the child’s ability to understand the issues and make the decisions for themselves. Under the UN Convention on the Rights of the Child, they have a right to do that. This is just a probing amendment. I look forward to hearing what the noble Lord will tell us about the Government’s approach to the regulations.

Lord Paddick (LD): My Lords, I have Amendment 12D in this group. I apologise to the House for not having spoken at previous stages of the Bill, but this is a new clause that was introduced in the other place. In fact, I blame the Minister for dragging me into this—his officials, having noted my reference to compulsory sex and relationship education in relation to a debate on online pornography in the Digital Economy Bill, kindly invited me to the meeting on this subject with him.

I want to add my personal support for this major step forward in making sex and relationship education compulsory. In particular, with the proliferation of online pornography, teaching young people not to treat each other as portrayed in online pornography, teaching about connection, respect and love, and most of all, teaching about consent when it comes to sex are becoming increasingly important.

Of course, the proof of the pudding will be in the eating, as other noble Lords have said. I have particular concerns about faith schools being able to teach pupils that same-sex relationships are wrong or sinful, or that engaging in a physical relationship with someone of the same sex is wrong or sinful, as the noble Baroness, Lady Massey of Darwen, has just mentioned.

I accept that there are strongly held beliefs in many faiths about sex generally and sex between people of the same sex in particular, and we have to be sensitive to them. But we also have to be aware of the psychological harm that can be done to young people from across the range of gender and sexual diversity. Bullying of any kind is to be condemned, but bullying based on gender or sexual diversity is particularly damaging. Those who wish to engage in such bullying take encouragement from those in authority who teach that same-sex relationships or sex between people of the same sex is wrong.

My specific concern is that we go from a situation where homosexual sex and relationships are not taught at all—Ofsted reported in 2013 that only 5% of pupils were being taught about such things—to a situation where homosexual sex and relationships are being taught in all schools, but in many schools, in accordance with faith traditions, pupils are told that such relationships are wrong or sinful. Research conducted in 2012 showed that 55% of lesbian, gay and bisexual youth had experienced homophobic bullying in school and 41% of those bullied attempted, or thought about, taking their own lives. Separate research in 2014 showed that of more than 7,000 LGBTQ 16 to 25 year-olds, over half reported mental health issues and 44% had considered ending their lives. I know from bitter personal experience as a young gay man who was a devout Christian that devastating consequences can result from the isolation, the guilt, the embarrassment, the shame and the bullying that emanate from intolerance.

This is a probing amendment to seek reassurance from the Minister that schools cannot use compulsory sex and relationship education to teach a one-sided and condemnatory view of same-sex relationships, including the physical aspects of such relationships. I want to say that same-sex relationships are not wrong in themselves provided there is no physical aspect to them is neither a realistic nor a humane position. What protection does the Equality Act provide, and what will be contained in regulations to prevent an increase in intolerance of sexual and gender diversity as a result of making sex and relationship education compulsory? The campaigning group Stonewall is repeating the 2012 research to which I referred earlier. This will provide a benchmark against which any adverse impact of these provisions can be measured.

As the Minister alluded to earlier, there are already 200 faith schools working with Stonewall to deliver good-quality, LGBT-inclusive sex and relationship education without undermining the faith ethos of those schools. How will the Government ensure that all faith schools follow this good practice?

I also support my noble friend Lady Walmsley in her concerns about parents’ ability to withdraw their children from sex and relationship education. I am concerned that in some faith schools, on the advice of the head teacher, all parents could withdraw all their pupils from these lessons, with the teacher facing an empty classroom.

Lord Hylton (CB): My Lords, I shall speak to government Amendment 12, rather than to any of the amendments to it. The Government and the Minister will, I expect, have seen a recent statement by the Roman Catholic Archbishop of Liverpool, speaking as chairman of the Catholic Education Service. He emphasised that the aim and ambition of Catholic schools has always been, “to educate the whole person. Our schools have a long track record of educating young people who are prepared for adult life as informed and engaged members of society, and high quality RSE plays an important part of this. We welcome the Government’s commitment to improving Relationship and Sex Education in all schools. Catholic schools already teach age-appropriate Relationship and Sex Education in both primary and secondary schools”.

I think it is important to emphasise the words, “age-appropriate”.

The statement continues:

“This is supported by a Catholic model RSE curriculum which covers the RSE curriculum from nursery all the way through to sixth form”.

In addition, the statement welcomes, “the Government’s commitment to protect parental right of withdrawal”.

The statement continues, and I support it: “It is essential that parents fully support the school’s approach to these sensitive matters. The experience of Catholic schools is that parental involvement is the basis for providing consistent and high quality RSE at home and at school”. 
The statement concludes:

“We look forward to working closely with the Government to shape any new guidance to enable Catholic schools to continue to deliver outstanding RSE, in accordance with parents’ wishes and Church teaching.”

The Lord Bishop of Peterborough: My Lords, I am very happy indeed to support government Amendments 12 and 13 on relationships and sex education and on PSHE. Compulsory provision and statutory guidance are necessary in these areas. The Church of England welcomes this and we very much look forward to the consultation.

We particularly welcome the decision to reverse the name and put “relationships” rather than “sex” at the heart of this policy. This is not about just sex or sex education. It puts sex in its proper context of committed and consensual relationships. But it is also about friendships, resilience, good disagreement and living with difference. It is about tackling bullying, self-image, social media, advertising and so much else. It is about supporting children and preparing them for adult life.

I have listened carefully to the proposers of the amendments to Amendment 12, and to the noble Baroness, Lady Massey. I agreed with a great deal of what they said and would not want to disagree with eminently sensible points, not least about bullying and making children or young people feel that they do not belong or that there is something wrong with them. We oppose homophobia and all such things very strongly from these Benches.

However, I am not sure that those amendments to Amendment 12 are necessary. The Church believes very strongly that all forms of education have to be in co-operation and partnership with parents, faith communities and, indeed, the wider community. Educating children is not a matter just for the state. It has to be in co-operation with parents. Achieving that co-operation, as far as possible, with parents and faith communities is what is going to work in making the education better and, indeed, building up the resilience and the community cohesion that we really need in our society. So I oppose the amendments but not the spirit in which they are offered, nor many of the good comments that have been made in support of them.

I am open, as others in the Church would be, to the Government working through what the appropriate age is. Eighteen does seem a bit old for not allowing children to make their own decisions until then. Those sorts of things need to be thought through in the context of the way that society is developing and young people are developing. But the idea of age-appropriate and religious background-appropriate education is entirely right and proper. Just because some elements in society try to steal children’s childhoods from them does not mean that we should collude with that. Children must be allowed to be children and we should not be teaching at primary school or at very young ages what is not necessary or appropriate there.

It is entirely right to be teaching relationships in the primary sector in the way that the Minister described; we support that fully. But we on the Bishops’ Benches believe that the Government and the Commons amendments have got this about right and we are very happy to support them.
[Lord Warner]  
Lady Walmsley. I want to enter into the spirit of the way in which she spoke to it to probe the Government a little on the issue of age and the ability to withdraw children from this education.

We have to recognise that there is a need to make some of this compatible with some of the other aspects on which we judge children: for example, the age of criminal responsibility. It would be extremely strange to give people a chance to withdraw their children from this kind of educational opportunity at an age which is older than the age of criminal responsibility, which is based on the principle of doli incapax—children not understanding the implications of what they have done. There are other bits of our social system that need to be taken into account when we write guidance on these issues for children.

We also have to remember that the state does not give parents an absolute right to do whatever they want with their children. The state does step in. It withdraws children from their natural parents when it thinks that they are being abused or that it is not safe for them to stay in the care of their parents. That is based on another principle, well set out in the Children Act 1989: the best interests of the child. We need to balance the principles of the best interests of the child and the willingness of the state to intervene when it thinks a parent is behaving seriously unreasonably and damaging a child. We have to make the rules in this area consistent with rules operating in other areas, such as the age of criminal responsibility.

So I hope that, while the Minister and his department are framing the guidance, they will be able think about these wider issues, including the ability of parents to withdraw their children from this kind of education. It may be that we have to set some point in time where we cannot accept that parents can withdraw their children from this—whatever set of beliefs they happen to hold. At the end of the day it is their children, not they, who are going to have to cope with the world that they are moving into. We have an obligation to think about children and not just about the rights of their parents.

Baroness Tyler of Enfield (LD): My Lords, I rise briefly to lend my support to this important group of amendments. Like the noble Baroness, Lady Massey, I think this is a historic occasion. Many people, including many distinguished noble Lords, have campaigned for this over many years. Like the right reverend Prelate the Bishop of Peterborough, I am very pleased that we have been given specific training in this area. On too many occasions the subject is picked up by rather reluctant teachers. Sometimes they are biology teachers, and sometimes they come from other disciplines. If we are to make a reality of this hugely welcome step forward, for which huge credit goes to the Government, it is vital that they look at the training and role of specialist teachers and, where appropriate, the role of specialist voluntary sector providers.

Lord McColl of Dulwich (Con): My Lords, Amendment 12 presents us with significant changes in the law on sex and relationships education that were introduced in another place rather late and with very little scrutiny. The changes were accompanied by a policy statement from the Government. While the Government will no doubt cite many organisations in support, it is Parliament that scrutinises proposals and determines the law, and I find aspects of this particular policy change troubling.

In setting out my specific concerns, it is important to begin by being clear about what makes for good sex and relationships education. The evidence clearly suggests that parents have a key role to play and that we should be working hard to engage them more, not less. It is specifically in this regard that I find the Government’s proposals rather troubling.

Before looking at some of the relevant research, however, I want to say that I am not convinced that very much can be achieved by the proposed division between sex and relationships education. It seems to me that often the two subjects are mutually interdependent, and I am not at all convinced that they can really be separated in the way the Government suggest.

With that in mind, I turn to an important article from 2009 in the journal Paediatric Nursing, which concludes:

> "there is an association between parental communication, parenting style, and adolescent sexual activity and contraception use. Maternal communication has been shown to delay sexual intercourse and increase contraceptive use. Maternal communication has rich potential as an intervention to impact positive adolescent sexual decision making and contraception use".

If we are to engage seriously with parents on relationships and sex education, we need to do so on the basis of a relationship of trust that affords respect. The main message that comes from these proposals, however, is one in which the state seeks to tell parents what to do by removing the right of parental withdrawal from the relationships aspect of SRE. At the moment, parents can withdraw their child from any aspect of teaching under the sex and relationships education guidance. This includes all aspects of relationships education. Moreover, the freedom to withdraw a child from sex education will also be removed if puberty falls, as the departmental policy statement suggests it will, under the wider PSHE topic in primary schools, as there is no proposed parental right of withdrawal from PSHE.
I do not raise these concerns because I want parents to be withdrawing their children from SRE. I do not think the evidence suggests that many parents are using the right of withdrawal to withdraw their children. My concern is that, when we are engaging with SRE, we are engaging with a subject that, more than others, has to be seen as a joint project in which the research confirms that parents have a key role to play. Knowing what I do about human nature, I think the Government’s proposals are likely to be read by many parents as a statist land grab in which the underlying message from the state to parents is, “We don’t trust you”. I think this would be hugely damaging and could result in a big increase in home schooling. I hazard a guess that this will be a huge issue in responses to the Government’s consultation.

As a Member of your Lordships’ House who is committed to a smaller state, to localism and to choice, I find these proposals troubling. This is the kind of issue that should have been teased out in a proper debate, but it has not been properly debated because these far-reaching changes have been introduced at almost the 12th hour. Moreover, the proposal that everything should effectively be done through regulation means that we will be afforded only one solitary further opportunity for debate, with no amendment.

5 pm

The scale of changes proposed in respect of parents at primary school level is particularly far-reaching. First, the discretion about whether to teach relationship education, which currently governors have in consultation with parents, is removed, as the subject is made mandatory. Secondly, the freedom to withdraw children from relationship education is completely removed by the amendment. Thirdly, the freedom to withdraw a child from sex education will also be removed if puberty falls, as the departmental policy statement suggests it will, under the wider PSHE topic in primary schools, because there is no proposed parental withdrawal from PSHE.

The Government’s policy statement also makes clear that, in secondary schools, the parental right of withdrawal from sex education will be up to only a certain age of the child, yet to be determined under subsection (2)(d). The policy statement reads:

“Providing a parent with a blanket right to withdraw their child from sex education is no longer consistent with English caselaw”. It is not clear what this will mean in practice.

The Government say in their policy statement:

“parents should have the right to teach this”—sex education—

“themselves in a way which is consistent with their values”. I am disappointed that the Government do not recognise that this right should apply to the relationship element of sex education as well as the factual knowledge in both primary and secondary schools. Noble Lords will know that these subjects are sensitive and can be controversial. Parents will have different views on what constitutes a healthy relationship, depending on their culture and religious background. They should be able to exercise their right to have their children educated in line with their religious or philosophical convictions, established through Article 2 of Protocol I to the European Convention on Human Rights.

Amendment 12B, tabled by the noble Baroness, Lady Walmsley, would remove the requirement for the regulations to address the question of parents being able to withdraw their child even from sex education. I hope that your Lordships will not support this amendment for all the reasons I have set out. I also have to disagree with the proposed extension of sex education as a mandatory subject in primary schools, as would be required by Amendments 12A and 12E, tabled by the noble Lord, Lord Storey. I hope that the Government will resist those further changes.

I hope that, as the Government draw up their guidance and regulations, they will do four things: first, that they will clarify that the right for parents to withdraw their children from relationships education will in fact continue; secondly, that they will make it clear that sex education cannot be taught under PSHE without a right of withdrawal; thirdly, that they will take steps proactively to engage parents and give them a greater rather than a lesser role in the way that relationship and sex education is taught in our schools; and, fourthly, that if they conclude that they want to change any aspect of primary legislation, they will not do so through secondary legislation but instead introduce such changes through a future education Bill, where they can be properly scrutinised.

The Government need to repair the damage done by sending out to parents the message, “We don’t trust you”, by replacing that with a different message based not on words but on substantive policy action.

Baroness Butler-Sloss (CB): My Lords, I had not intended to speak, but an issue has been raised that I want to underline. I entirely support government Amendment 12 from the Commons. It seems to me very good sense and I therefore do not support the various amendments to the government amendment. One point in particular comes out from the warning given by the noble Lord, Lord McColl, about trust in parents and what the noble Baroness, Lady Tyler, said about the lack of proper education, with those who do not really know how to teach it in schools.

If Amendment 12 is to work, and I very much hope that it will, the Government must look with great care at the education of those who are going to teach this subject. If the schools continue to have a large number of people who are not properly educated to do so, the point made by the noble Lord, Lord McColl, about the trust of parents will be entirely lost and the benefit of Amendment 12 will itself be lost.

Lord Watson of Invergowrie (Lab): My Lords, we are approaching the final destination of the “Magical Mystery Tour” which has been the Children and Social Work Bill. The Minister is of an age that he will understand the allegory. Indeed, it was 50 years ago this month that that song was recorded. It is not quite as long as that but it is still quite a time since the Bill was introduced to your Lordships’ House. Indeed it is sobering to consider the changes to the political landscape in the 11 months since then. David Cameron was Prime Minister, Nicky Morgan was Secretary of State for Education and the Minister himself was assisted on the Front Bench by the noble Baroness, Lady Evans of Bowes Park—all of whom have now departed, although only one is pleased to have done so.
It would lengthen this debate considerably, and I am not going to do it, if I were to list the various amendments to the Bill secured by opposition parties and Cross-Benchers in your Lordships’ House: only one of them required a vote, albeit on the most contentious part of the Bill—the original Clause 15 under the somewhat euphemistically named heading, “Power to test different ways of working”. I do not propose to open that for debate this afternoon but, given that the Government have chosen not to reinsert the clauses that were taken out in your Lordships’ House on Report, what does the Minister feel has changed between his impassioned speech against deleting the clauses on Report in November and the Government’s decision not to attempt to reinsert them?

In relation to Amendment 12F in my name, the intention was to ensure that the Government accepted the recommendation of the Delegated Powers and Regulatory Reform Committee in regard to guidance and regulations. The response from the Minister to the committee chair, the noble Baroness, Lady Fookes, who was on the Woolsack until a few moments ago, was received yesterday by noble Lords. It does and does not meet those recommendations, I would say. Indeed, it indulges in some rather tortuous syntax in doing so. Not all regulations relating to the new provision will be subject to the affirmative procedure. We now know that amendments to existing legislation will be subject to that procedure but that regulations that do not amend primary or secondary legislation will not be. Nevertheless, in what appears to be a confusing—some might say contradictory—statement, the Minister’s letter goes on to say: “In practice, the affirmative procedure will apply to all regulations which we will be making to establish the new regime”.

It would be most helpful if the Minister would clarify what “in practice” means because either it is affirmative or negative. I am not aware of a halfway house. If it is the Government’s intention that what they call the new regime should be in the affirmative procedure, then why not just say so? The Minister’s response from the Minister to the noble Lords setting out its clear support for the recommendation of the Delegated Powers and Regulatory Reform Committee in regard to guidance and regulations. The response from the Minister to the committee chair, the noble Baroness, Lady Fookes, who was on the Woolsack until a few moments ago, was received yesterday by noble Lords. It does and does not meet those recommendations, I would say. Indeed, it indulges in some rather tortuous syntax in doing so. Not all regulations relating to the new provision will be subject to the affirmative procedure. We now know that amendments to existing legislation will be subject to that procedure but that regulations that do not amend primary or secondary legislation will not be. Nevertheless, in what appears to be a confusing—some might say contradictory—statement, the Minister’s letter goes on to say: “In practice, the affirmative procedure will apply to all regulations which we will be making to establish the new regime”.

It would be most helpful if the Minister would clarify what “in practice” means because either it is affirmative or negative. I am not aware of a halfway house. If it is the Government’s intention that what they call the new regime should be in the affirmative procedure, then why not just say so? The Minister’s letter goes on to say: “In practice, the affirmative procedure will apply to all regulations which we will be making to establish the new regime”.

It goes without saying that we very much welcome the inclusion of Commons Amendments 12 and 13. In my 18 months of facing the Minister at the Dispatch Box, I have on several occasions raised the need for sex and relationships education and personal, social, health and economic education to be formally part of the curriculum—not nearly as often, of course, as my noble friend Lady Massey, whom I was very pleased to hear complimented on her hard work on this over a long period. The response from the Minister was that it was not the availability but the quality of PSHE teaching that mattered and that it was important that all children have access to high-quality teaching—something that the Government did not believe would be achieved simply by statute. There was pressure from noble Lords in all parties and an Education Select Committee report in 2015 was unequivocal in its recommendation. In Scotland, sex and relationships education was already part of the curriculum, yet it seemed that nothing would convince the Government to alter their position on the, although we were always assured that it was “under review”—as all government policy should be at all times.

I have no doubt that a change of Secretary of State played an important part, but it took a cross-party effort and the involvement of the Women and Equalities Select Committee in the other place to build sufficient support and momentum behind the issue. I commend both that committee and Ministers for the fact that this has resulted in the new clauses proposed by Amendments 12 and 13 being inserted in the Bill. The amendments place a duty on the Secretary of State to make relationships and sex education a statutory requirement through regulations and give her power to make personal, social, health and economic education a statutory requirement in all schools. The fact that this includes state-funded and independent schools in all cases is also to be welcomed.

I have some questions for the Minister on the amendments. It is, of course, correct that the provisions will ensure that the education provided to pupils in relationships education and RSE is appropriate to the age of the pupils and their religious background. This issue has been touched on quite a bit in relation to the Equality Act and the noble Lords, Lord Paddick and Lord Storey, and the noble Baroness, Lady Walmsley, all dealt with aspects of it. I echo the comments made by noble Lords in relation to the Roman Catholic Church. The Catholic Education Service has been quite progressive on this matter and has been in touch with noble Lords setting out its clear support for the proposals, which I welcome. However, it is feared that some faith schools may seek to circumvent the legislation by teaching that same-sex relationships are somehow wrong or sinful. I was encouraged by the Minister’s comment on the Equality Act in his opening remarks and his assurance that all details will be covered by regulations debated in both Houses. A lot of people will take comfort for having that on the record as this legislation enters the statute book.

Ofsted’s role under this legislation will be no less important. Will the Minister give assurances that Ofsted will have the necessary resources—including additional ones if necessary—to allow it to make sure that the new legislation is adhered to? This is particularly important in regard to sexual offences in schools, some 5,000 of which were reported to the police by UK schools over the three-year period to 2015. Of these, 600 were rape, which seems barely credible, but this is what the police report. As we have heard, many boys are learning about sex from online pornography and some schools are failing in their legal obligation to keep girls safe. The Minister will, no doubt, agree that Ofsted must include these issues in its inspections and this should be set out clearly in the inspections handbook. Can he confirm that that is the case?

With the exception of the noble Lord, Lord McColl, noble Lords were broadly, if not completely, behind the Government’s amendments. I disagree with the case made by the noble Lord, Lord McColl, although
it was well argued. I do not see this legislation as being in place of parents—it should complement what they are doing. At the moment, parents will be handling sex education in the way they believe is appropriate, but for many it is an extremely difficult subject to tackle. Many noble Lords will have been in that position themselves some years ago and it has not changed. It is essential for schools to ensure that all pupils learn about safety in forming and maintaining relationships, the characteristics of healthy relationships and how relationships may affect physical and mental health and well-being. Research by the charity Barnardo’s, which works with victims of sexual exploitation, has revealed that many who were groomed to be sexually exploited were not always aware that they were being manipulated or coerced for sexual purposes. These issues have to be taken into account but they are in areas where many parents fear to tread.

There are many aspects of harm to young people which we hope the new legislation will at least alleviate. However, there must be an ongoing campaign to bring as much information to young people at the earliest appropriate age for their own safety.

5.15 pm

There is also the issue of resources for teacher training on relationships and sex education and PSHE. Other noble Lords have mentioned this point. PSHE used to have career development funding but the Government have cut it so now there is very little in the way of training or development around this. Now that both are to become compulsory, can the Minister say what plans the Government have to ensure that teachers receive the necessary training and are provided with all the necessary resources to maximise the effect of the new provisions? That will take time, of course, but the Government should already have planning in place to prepare for the introduction of RSE and PSHE in the academic year 2019-20.

The Bill is in a much improved condition. We welcome the fact that the Minister and his colleagues in the other place have been willing to listen and to act where the need arose. I thank him and his officials for the considerable number of meetings that have been facilitated since the Bill left the other place, which have been of real value to noble Lords in their understanding of the intentions behind the legislation and how it might work. I also thank my noble friends Lord Hunt and Lady Wheeler, and our legislative and political adviser, Molly Critchley, for their continued hard work on the Bill.

The words that I used in the Third Reading debate in November bear repeating. As the Bill completes its journey, we at this end of Parliament can point to it as a strong example of what we do well in your Lordships’ House, and why it is more necessary now than it has ever been.

Lord Nash: My Lords, I am grateful for the many comments that have been made in relation to these amendments. I assure noble Lords that we have considered all the issues that have been raised very carefully. We will continue to do so as we develop the regulations and statutory guidance. The Government are clear that children need to have the knowledge and skills at the right time to help them confidently navigate the modern world.

These amendments are not at all driven by the need to lighten my or my successors’ loads by avoiding the necessity of answering regular—I will not say endless—questions from the noble Baroness, Lady Massey, on this subject. I record my gratitude to her for the tireless way in which she has campaigned on it.

The role of parents is central to many of these issues. We are clear that schools have a role in supporting parents to ensure their children develop the knowledge and skills they need to stay safe and happy, hence making the subjects covered by Amendment 12 mandatory. We therefore think it is right that we encourage close working between schools and parents on content and delivery of lessons.

Amendment 12A, in the name of the noble Lord, Lord Storey, seeks to make RSE mandatory in primary schools. I thank the noble Lord for a helpful recent meeting on this. I know that he welcomes the overall proposals made by the Government, as he said today. We want to focus on ensuring that all children can access relationships education at primary school. This will likely include age-appropriate content, online risks such as pornography, particularly in the later stages of primary, and will involve supporting children to learn the building blocks of how to develop mutually respectful relationships both online and offline. This will then provide a solid foundation for RSE at secondary school.

Primary schools will, of course, continue to teach the same as now in the science curriculum. This is a very sensitive issue for many parents, as a number of noble Lords have said, and we need to respect that. Our approach is to trust and encourage schools to engage with parents. This allows schools to take a collective view with parents on whether they would like some elements of sex education to be taught at primary. We know that currently some primary schools teach sex and relationships education in an age-appropriate way. The Government’s intention is to preserve the current situation for parents to allow them to excise their child from any non-science related sex education taught at primary. The right to withdraw would not apply to science teaching, as now. We will engage with the teaching profession and experts, such as the Sex Education Forum and religious groups, to ensure that the guidance clarifies what should be taught to younger pupils to equip them as they begin to make the transition to adulthood. We will also talk to parents so that we can factor in their views about the age-appropriate content they want their children to be taught.

Amendment 12B, in the name of the noble Baroness, Lady Walmsley, seeks to remove the right to withdraw. I thank the noble Baroness for raising the issue. However, we believe that it is important to make appropriate provision for a right for parents to withdraw their child from sex education within RSE. We believe it is right that parents have the option to teach this to their children themselves, in accordance with their values, if they so wish.

We have not provided a right to withdraw from relationships education at primary because this will focus on core concepts of safety and forming healthy relationships that we think all children should be taught. Of course, children in primary school will also
continue to receive the same education in the science curriculum as now, and, as I have said, the right of withdrawal will not apply to that curriculum.

We know that parents can be supportive partners alongside schools in delivering relationships and sex education. That is why we will look to retain the elements of current guidance that encourage schools to actively involve parents when they plan their programmes. We know that in practice, very few parents exercise their right to withdraw, and close working between schools and parents to get the content right is crucial to this.

As we have said in our policy statement to the House, the Secretary of State will consult further to clarify the age at which a young person may have the right to make their own decisions. This is because the current blanket right of parents is inconsistent with English case law, and with the ECHR and the UN Convention on the Rights of the Child. The outcome will be set out in regulations, which will be subject to consultation and debate. I welcome further discussion with the noble Baroness on that point as we move forward, recognising that she has particular expertise in this area.

On Amendments 12C and 12D, in the names of the noble Lords, Lord Storey and Lord Paddick, on removing consideration of religious backgrounds, I appreciate their interest in the topic of teaching that is appropriate to religious backgrounds. We believe it is right that the religious views of parents and children should be respected when teaching about these subjects. However, I reiterate that the religious background point does not allow schools to avoid teaching these subjects; it is about how they teach them. They can teach them in a way that is sensitive to religious background while being compliant with the Equality Act, which of course they must be. Even if a school or individual teacher were to suggest that, within the context of their faith, same-sex relationships or marriage are wrong, they would also be expected to explain that their views are set within a wider context—that beliefs on this subject differ, that the law of the country recognises these relationships and marriages, and that all people should be treated with equal respect. If a school or teacher conveyed their belief in a way that involved discriminating against a particular pupil or group of pupils, this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination.

I am grateful to the right reverend Prelate the Bishop of Peterborough for his comments, and a number of noble Lords also referred to the Catholic Education Service guidance, which sets out that pupils should be taught a broad and balanced RSE programme which provides them with factual information. In secondary schools, this includes teaching about the law in relation to equalities and marriage, including same-sex marriage. It also sets out that pupils should be taught that discriminatory language is unacceptable, including homophobic language, and explains how to challenge it. We believe that it would be inappropriate to refuse the rights of parents by teaching about relationships and sex without having regard to the religious background of the pupils. To do so would risk breaching parents’ rights to freedom of religion.

However, on what the noble Lord, Lord Paddick, said about bullying, we have supported and funded a number of organisations to help schools drive it out. On his concerns about ensuring good practice and that materials are disseminated widely, we will of course support that endeavour. Our proposals have been welcomed by a number of organisations representing the LGBT communities, including Stonewall, which said:

“This is a huge step forward and a fantastic opportunity to improve inclusion and acceptance in education”.

To pick up on a point made so well by my noble friend Lord Deben, the engagement process will be important to ensure that we can agree on an approach that balances all views and interests. We have seen many examples of faith schools already teaching sex education that is both in line with their ethos and inclusive, in compliance with the Equality Act and public sector equality duty. We therefore want to talk to a wide range of stakeholders and learn from existing good practice, and reflect that in the regulations and guidance.

In response to Amendment 12E, in the name of the noble Lord, Lord Storey, on teaching content, I thank him for raising this matter. I agree that the programmes that schools shape and deliver on relationships education and RSE are key. The content of what is taught, and how it is taught, must prepare pupils for the modern world and be age-appropriate. However, I do not agree that we should define the content of the subjects in detail in legislation as, given the nature of these subjects, this would very quickly become out of date. We want schools to be able to respond quickly to changes in society. We also want to give them flexibility to design a programme that meets the particular needs of their pupils. That is why we intend to conduct a thorough and wide-ranging engagement with the subjects, which will consider subject content, school practice and quality of delivery. The aim is to determine the content of the regulations and the statutory guidance, including what level of subject content we should specify.

As I said, that will entail significant involvement of the teaching profession. The department will also engage with, and seek evidence from, a wide range of experts in the field, many of whom I have already referred to. The guidance will provide a clear framework for schools, with core pillars of content, to allow them to design their programmes. Crucially, this approach will still allow expert organisations, such as the PSHE Association, to produce their own high-quality materials for schools to use, as they do at the moment.

In answer to the points made by the noble Baroness, Lady Tyler, the noble and learned Baroness, Lady Butler-Sloss, and the noble Lord, Lord Watson, I completely agree about the importance of training and the use of voluntary organisations, and we will consider this carefully in our considerations in the run-up to delivery.

The noble Lord, Lord Watson, also raised an important point about Ofsted. The chief inspector will of course consider the implications for inspections that arise from the new requirements and the statutory guidance, and will reflect these in future inspections. Ofsted is also seeking to appoint an HMI lead for citizenship
and PSHE. Their role will be to keep abreast of developments in this area and oversee the training of inspectors in the light of the new expectations on schools. On 10 March, HMCI announced that her first major thematic review will be on the curriculum. This will include consideration of PSHE and will inform decisions about follow-up work in this important area.

Amendment 12F in the name of the noble Lord, Lord Watson, is about including the statutory guidance in the regulations and making all regulations subject to the affirmative resolution procedure. I am grateful for the points he made and want to reassure the House that it is government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, this should be achieved using regulations that are subject to parliamentary scrutiny. The purpose of guidance is to aid policy implementation by supplementing legal rules. A vast range of statutory guidance is issued each year and it is important that guidance can be updated rapidly to keep pace with events.

It is my intention to consult fully on any guidance to be issued under these arrangements. I will be very happy to provide copies of the draft guidance to both Houses at that point and to discuss matters with the noble Lord and my noble friend Lord McColl, particularly the four points raised today.

On the parliamentary procedure used for the RSE and PSHE regulations, we absolutely recognise that it would be important for Parliament to scrutinise substantial changes to the existing legislative framework through the affirmative procedure. I therefore reassure noble Lords that our intention is to bring forward a comprehensive set of regulations that would amend existing legislation, set out the new duties and provide for any additional supporting measures. I also confirm that the regulations will be made to establish the new regime will be subject to the affirmative procedure. On that basis, I hope that the noble Lord is reassured of the role of Parliament in the next important phase.

I conclude by saying again how much I appreciate the amendments that have been tabled and the opportunity they have provided to discuss these issues today. I am grateful for all the contributions from noble Lords in this debate. However, I hope that I have given sufficient—

**Lord Elton (Con):** Can my noble friend elaborate a little on what he said in reply to my noble friend Lord McColl and the noble and learned Baroness, Lady Butler-Sloss? Training teachers in a subject with which they are not comfortable is not a quick process. The Minister said that the Government would consult on this. Can he tell us what stage this process will have reached when these provisions come into effect? Sex education is not an easy subject for many people and they really should not be pushed into it until they are properly trained.

**Lord Nash:** My noble friend raises a very good point. Of course, we have to devise the content first, and we need to get on with that so that we can get on with the training. I would be very happy to discuss this further and will write to him with more details.

Having said all that, I hope that I have given sufficient reassurance to convince noble Lords that their amendments are unnecessary and that our proposals as they stand will go far enough in driving improvements, without being overly prescriptive, and strike the right balance. I am delighted to have presented the Commons amendments to the House today. These measures will make a genuinely important contribution to children’s safety and their personal development. I hope the House shares my enthusiasm and will support these Commons amendments.

5.30 pm

**Lord Storey:** My Lords, I thank the Minister for that comprehensive reply. We do share his enthusiasm. What is more, when we on these Benches see that the noble Lord, Lord Nash, is linked to a Bill, we are always joyful because we know that we are getting a Minister who is prepared to listen, compromise and sometimes even accept.

The quality of teaching and CPD is crucial, but it also has to be about sufficient teachers. I was taken by the comment of, I think, the noble Lord, Lord Deben, about stealing childhoods, which I thought was very important. I hope that what we have agreed today will give children and young people the armour they need. I beg leave to withdraw my amendment.

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**Motion agreed.**

**Amendment 12A withdrawn.**

**Amendments 12B to 12F not moved.**

**Motion agreed.**

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**Motion on Amendments 13 to 28**

Moved by **Lord Nash**

That this House do agree with the Commons in their Amendments 13 to 28.

13: After Clause 32, insert the following new Clause—

**“Other personal, social, health and economic education**

(1) The Secretary of State may by regulations make provision requiring personal, social, health and economic education (beyond that required by virtue of section [Education relating to relationships and sex]) to be provided—

(a) to pupils of compulsory school age receiving primary education at schools in England;

(b) to pupils receiving secondary education at schools in England.

(2) The regulations may include—

(a) provision requiring the Secretary of State to give guidance to proprietors of schools in relation to the provision of the education;

(b) provision requiring proprietors of schools to have regard to that guidance;

(c) provision requiring proprietors of schools to make statements of policy in relation to the education to be provided, and to make the statements available to parents or other persons;

(d) further provision in connection with the provision of the education.

(3) Before making the regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) The regulations may amend any provision (including provision conferring powers) that is made by or under—

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(a) section 342 of the Education Act 1996;
(b) Chapter 4 of Part 5 of the Education Act 1996; (c) Schedule 1 to the Education Act 1996;
(d) Part 6 of the Education Act 2002;
(e) Chapter 1 of Part 4 of the Education and Skills Act 2008;
(f) the Academies Act 2010.

(5) The provision that may be made by regulations under subsection (1) (by virtue of section 70 includes, in particular, provision amending, repealing or revoking any provision made by or under any Act or any other instrument or document (whenever passed or made).

(6) Regulations under subsection (1) which amend provision made by or under an Act are subject to the affirmative resolution procedure.

(7) Other regulations under subsection (1) are subject to the negative resolution procedure.

(8) Expressions used in this section, where listed in the left-hand column of the table in section 580 of the Education Act 1996, are to be interpreted in accordance with the provisions of that Act listed in the right-hand column in relation to those expressions.

(9) A power to make provision under this section does not limit any power to make provision of the same kind under another Act.”

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

“Improvement standards

(1) The Secretary of State may—

(a) determine and publish improvement standards for social workers in England;
(b) carry out assessments of whether people meet improvement standards under paragraph (a).

(2) The Secretary of State may make arrangements for another person to do any or all of those things (and may make payments to that person).

(3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before determining a standard under subsection (1)(a).

(4) In this section “improvement standard” means a professional standard the attainment of which demonstrates particular expertise or specialisation.

(5) Nothing in this section limits anything in section 38.”

15: After Clause 41, insert the following new Clause—

“Ensuring adequate provision of social work training

(1) The Secretary of State may take such steps as the Secretary of State considers appropriate—

(a) to ensure that adequate provision is made for social work training, and
(b) to encourage individuals resident in England to undertake social work training.

(2) The power under subsection (1) may, in particular, be used to provide financial or other assistance (subject to any conditions the Secretary of State thinks are appropriate)—

(a) for individuals resident in England to undertake social work training;
(b) for organisations providing social work training.

(3) Functions of the Secretary of State under this section may be exercised by any person, or by employees of any person, authorised to do so by the Secretary of State.

(4) For the purpose of determining—

(a) the terms and effect of an authorisation under subsection (3), and
(b) the effect of so much of any contract made between the Secretary of State and the authorised person as relates to the exercise of the function,

Part 2 of the Deregulation and Contracting Out Act 1994 has effect as if the authorisation were given by virtue of an order under section 69 of that Act; and in subsection (3) “employee” has the same meaning as in that Part.

(5) In this section “social work training” means education or training that is suitable for people who are or wish to become social workers in England.”

16: After Clause 41, insert the following new Clause—

“Exercise by Special Health Authority of functions under section (Ensuring adequate provision of social work training)

(1) The Secretary of State may direct a Special Health Authority to exercise functions under section (Ensuring adequate provision of social work workers)(1)(b) so far as relating to the provision of financial or other assistance.

(2) The National Health Service Act 2006 has effect as if—

(a) any direction under subsection (1) were a direction under section 7 of that Act, and
(b) any functions exercisable by the Special Health Authority by virtue of a direction under subsection (1) were exercisable under that section.

(3) Directions under subsection (1)—

(a) must be given by an instrument in writing, and
(b) may be varied or revoked by subsequent directions.”

17: Clause 55, page 31, line 10, leave out “after subsection (2ZE) insert” and insert “for subsection (2ZE) substitute”

18: Clause 55, page 31, line 17, at end insert—

“(i) in subsection (2A)(c), for “that section” substitute “section 60;”;
19: Clause 55, page 31, line 19, at end insert—

“( ) In Schedule 3 (regulation of health care and associated professions)—

(a) in paragraph 10, for the definitions of “social care work in England”, “social care workers in England” and “the social work profession in England” substitute—

“‘social care work in England’ and ‘social care workers in England’ have the meaning given by section 60.”;
(b) in paragraph 11(2A)(b), for “members of the social work profession in England” substitute “engaging in social work in England”.

20: After Clause 55, insert the following new Clause—

“Amendments to do with this Part

Schedule (Amendments to do with Part 2) contains further minor and consequential amendments relating to this Part.”

21: Clause 56, page 31, line 44, after “England” insert “(but see subsection (2));”

(2) A person who is a member of a profession to which section 60(2) of the Health Act 1997 applies is not to be treated as a social worker in England by reason only of carrying out work as an approved mental health professional.”

22: Clause 62, page 33, line 12, at end insert—

“(A1) Section (Placing children in secure accommodation elsewhere in Great Britain) and paragraphs 2, 4, 5 and 14 of Schedule (Placing children in secure accommodation elsewhere in Great Britain) extend to England and Wales and Scotland.”

23: Clause 62, page 33, line 13, leave out subsection (1).

24: Clause 62, page 33, line 14, at beginning insert “Except as mentioned in subsection (A1),”

25: Clause 62, page 33, line 15, leave out “enactment” and insert “provision”

26: Clause 62, page 33, line 16, leave out subsection (3) and insert—

“( ) Subject to subsections (A1) and (2), Parts 1 and 2 extend to England and Wales only.

( ) This Part extends to England and Wales, Scotland and Northern Ireland.”

27: Clause 63, page 33, line 19, leave out “This Part comes” and insert “The following come”
28: Clause 63, page 33, line 19, at end insert—

“(a) section (Placing children in secure accommodation elsewhere in Great Britain) and Schedule (Placing children in secure accommodation elsewhere in Great Britain),
(b) this Part.”

Motion agreed.

Motion on Amendment 29
Moved by Lord Nash

That this House do agree with the Commons in their Amendment 29.

29: Clause 64, page 33, line 25, leave out subsection (2)

Lord Nash: My Lords, Commons Amendment 29 simply removes the privilege amendment inserted by this House before the Bill was brought to the other place. Its removal is customary at this point.

Motion agreed.

Motion on Amendments 30 to 33
Moved by Lord Nash

That this House do agree with the Commons in their Amendments 30 to 33.

30: Before Schedule 1, insert the following new Schedule—

“SCHEDULE

PLACING CHILDREN IN SECURE ACkommodation ELSEWHERE IN GREAT BRITAIN

Children Act 1989

1 The Children Act 1989 is amended as follows.

2 (1) Section 25 (use of accommodation in England for restricting liberty of children looked after by English and Welsh local authorities)—

(a) is to extend also to Scotland, and
(b) is amended as follows.

(2) In subsection (1)—

(a) for “or local authority in Wales” substitute “in England or Wales”;
(b) after “accommodation in England” insert “or Scotland”;
(c) in subsection (2)—

(a) in paragraphs (a)(i) and (ii) and (b), after “secure accommodation in England” insert “or Scotland”;
(b) in paragraph (c), for “or local authorities in Wales” substitute “in England or Wales”;
(d) after subsection (5) insert—

“(5A) Where a local authority in England or Wales are authorised under this section to keep a child in secure accommodation in Scotland, the person in charge of the accommodation may restrict the child’s liberty to the extent that the person considers appropriate, having regard to the terms of any order made by a court under this section.”

(5) In subsection (7)—

(a) in paragraph (c), after “secure accommodation in England” insert “or Scotland”;
(b) after that paragraph, insert—

“(d) a child may only be placed in secure accommodation that is of a description specified in the regulations (and the description may in particular be framed by reference to whether the accommodation, or the person providing it, has been approved by the Secretary of State or the Scottish Ministers).”

(6) After subsection (8) insert—

“(8A) Sections 168 and 169(1) to (4) of the Children’s Hearings (Scotland) Act 2011 (asp 1) (enforcement and absconding) apply in relation to an order under subsection (4) above as they apply in relation to the orders mentioned in section 168(3) or 169(1)(a) of that Act.”

3 In paragraph 19(9) of Schedule 2 (restrictions on arrangements for children to live abroad), after “does not apply” insert “—

(a) to a local authority placing a child in secure accommodation in Scotland under section 25, or
(b) “.


4 The Children (Secure Accommodation) Regulations 1991 (S.I. 1991/1505) are amended as follows.

5 In regulation 1—

(a) in the heading, for “and commencement” substitute “, commencement and extent;
(b) the existing text becomes paragraph (1); (c) after that paragraph insert—

(2) This Regulation and Regulations 10 to 13 extend to England and Wales and Scotland.

(3) Except as provided by paragraph (2), these Regulations extend to England and Wales.”

6 In regulation 2(1) (interpretation), in the definition of “children’s home”, for the words from “means” to the end, substitute “means—

(a) a private children’s home, a community home or a voluntary home in England, or
(b) an establishment in Scotland (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Children’s Hearings (Scotland) Act 2011, the Children (Scotland) Act 1995 or the Social Work (Scotland) Act 1968”.

7 For regulation 3 substitute—

“3 Approval by Secretary of State of secure accommodation in a children’s home

(1) Accommodation in a children’s home shall not be used as secure accommodation unless—

(a) in the case of accommodation in England, it has been approved by the Secretary of State for that use;
(b) in the case of accommodation in Scotland, it is provided by a service which has been approved by the Scottish Ministers under paragraph 6(b) of Schedule 12 to the Public Services Reform (Scotland) Act 2010.

(2) Approval by the Secretary of State under paragraph (1) may be given subject to any terms and conditions that the Secretary of State thinks fit.”

8 In regulation 17 (records), in the words before paragraph (a), after “children’s home” insert “in England”.

Secure Accommodation (Scotland) Regulations 2013 (S.S.I. 2013 No. 205)

9 The Secure Accommodation (Scotland) Regulations 2013 (S.S.I. 2013 No. 205) are amended as follows.

10 In regulation 5 (maximum period in secure accommodation), after paragraph (2) insert—

“(3) This regulation does not apply in relation to a child placed in secure accommodation in Scotland under section 25 of the Children Act 1989 (which allows accommodation in Scotland to be used for restricting the liberty of children looked after by English and Welsh local authorities).”

11 In regulation 15 (records to be kept by managers of secure accommodation in Scotland), after paragraph (2) insert—

“(3) The managers must provide the Secretary of State or Welsh Ministers, on request, with copies of any records kept under this regulation that relate to a child placed in secure accommodation under section 25 of the Children Act 1989 (which allows local authorities in England or Wales to place children in secure accommodation in Scotland).”

12 In Article 7 of the Children’s Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013 No. 1465) (compulsory supervision orders and interim compulsory supervision orders), after paragraph (2) insert—

“(3) Where—

(a) a compulsory supervision order or interim compulsory supervision order contains a requirement of the type mentioned in section 83(2)(a) of the 2011 Act and a secure accommodation authorisation (as defined in section 85 of that Act),

(b) the place at which the child is required to reside in accordance with the order is a place in England or Wales, and

c) by virtue of a decision to consent to the placement of the child in secure accommodation made under article 16, the child is to be placed in secure accommodation within that place, the order is authority for the child to be placed and kept in secure accommodation within that place.”

13 In section 124(9) of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (restrictions on arrangements for children to live outside England and Wales), after “does not apply” insert—

(a) to a local authority placing a child in secure accommodation in Scotland under section 25 of the Children Act 1989, or

(b) .

Saving for existing powers

14 The amendments made by this Schedule to provisions of subordinate legislation do not affect the power to make further subordinate legislation amending or revoking the amended provisions,”

31: Schedule 3, page 39, line 26, leave out from beginning to “in” in line 27 and insert—

“( ) Section 25 (the Professional Standards Authority for Health and Social Care) is amended as follows.

( ) ”

32: Schedule 3, page 39, line 29, at end insert—

“( ) For subsection (3A) substitute—

“(3A) A reference in an enactment to a body mentioned in subsection (3) is not (unless there is express provision to the contrary) to be read as including—

(a) a reference to Social Work England, or

(b) a reference to the Health and Care Professions Council, or a regulatory body within subsection (3)(j), so far as it has functions relating to social care workers in England.”

( ) In subsection (3B) for the definition of “the social work profession in England” and “social care workers in England” substitute—

“social care workers in England” has the meaning given in section 60 of the 1999 Act.”

33: After Schedule 3, insert the following new Schedule—

“AMENDMENTS TO DO WITH PART 2

PART 1

GENERAL AMENDMENTS

London Local Authorities Act 1991

4 In section 4 of the London Local Authorities Act 1991, in paragraph (c) of the definition of “establishment for special treatment”, after “under the Health and Social Work Professions Order 2001” insert “or section 45(1) of the Children and Social Work Act 2017”.

Value Added Tax Act 1994


Data Protection Act 1998

6 In section 69(1) of the Data Protection Act 1998, in paragraph (h), omit the words from “;” except in so far” to the end.

Care Standards Act 2000

7 The Care Standards Act 2000 is amended as follows.

(2) Omit paragraph (1A).

(3) In subsection (1) as substituted by the Regulation and Inspection of Social Care (Wales) Act 2016, omit paragraph (k).

9 (1) Section 67 is amended as follows.

(2) Omit subsection (1A).

(3) In subsection (2) as substituted by the Regulation and Inspection of Social Care (Wales) Act 2016—

(a) omit paragraph (a) (including the “and” at the end), and

(b) in paragraph (b), omit “other”.

10 The Health and Social Work Professions Order 2001

10 The Health and Social Work Professions Order 2001 (SI 2002/254) is amended as follows.

11 (1) Article 3 is amended as follows.

(2) In paragraph (5)(b)—

(a) in paragraph (ii), after “registrars or” insert “other”;

(b) at end of paragraph (iv) insert “and”;

(c) omit paragraphs (vi) and (vii).

12 In article 6(3)(aa), omit “or social work”.

13 In article 7(4), omit “or social work”.

14 (1) Article 9 is amended as follows.

(2) Omit paragraph (3A).

(3) In paragraph (8), omit “or social work”.

(4) Omit paragraph (7).

(5) Omit paragraph (7).

16 In article 11A, omit paragraph (11).

17 (1) Article 12 is amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (b) insert “or”;

(b) omit sub-paragraph (d) and the “or” before it.

(3) In paragraph (2)—

(a) at the end of sub-paragraph (a) insert “and”;

(b) omit sub-paragraph (c) and the “and” before it.

18 (1) Article 13 is amended as follows.

(2) In paragraph (1), omit “or (1B)”.

(3) Omit paragraph (1B).

19 For the heading of article 13A substitute “Visiting health professionals from relevant European States”.

20 Omit article 13B.

21 In article 19(2A)(b), omit “or social work”.

22 In article 20, omit the words from “;” but the reference” to the end.
23 (1) Article 37 is amended as follows.
   (2) In paragraph (1)(a), omit “or social work”. (3) Omit paragraph (1B).
   (4) In paragraph (5A)(a), omit the words from “or registered as a social worker” to the end of that sub-paragraph.
   (5) In paragraph (8), omit “(other than a hearing on an appeal relating to a social worker in England)”.
   (6) Omit paragraph (8A).

24 (1) Article 38 is amended as follows.
   (2) Omit paragraph (1ZA).
   (3) In paragraph (4), omit “(subject to paragraph (5))”. (4) Omit paragraph (5).

25 In article 39, omit paragraph (1A).

26 In Schedule 1, in paragraph 1A(1)(b), omit paragraph (ia) (but not the “and” at the end).

27 (1) In Schedule 3, paragraph 1 is amended as follows.
   (2) In the definition of “visiting health or social work professional from a relevant European state”, omit “or social work” in both places.
   (3) In the definition of “relevant professions”, omit “social workers in England:”.
   (4) Omit the definition of “social worker in England”.

Adoption and Children Act 2002

28 (1) In section 10 of the Adoption and Children Act 2002, in subsection (2), omit “one of the registers maintained under sub-paragraph—”.

(a) the register of social workers in England maintained under section 45 of the Children and Social Work Act 2017;

(b) any register of social care workers in England maintained under an Order in Council under section 60 of the Health Act 1999 or any register maintained under such an Order in Council so far as relating to social care workers in England, or

(c) the register maintained under “.

(2) Until the coming into force of the amendment made by sub-paragraph (1), section 10(2) of the Adoption and Children Act 2002 is to have effect as if the reference to the registers mentioned there included a reference to the part of the register maintained under article 5 of the Health and Social Work Professions Order 2001 that relates to social workers in England.

Income Tax (Earnings and Pensions) Act 2003

29 In section 343(2) of the Income Tax (Earnings and Pensions) Act 2003, in paragraph 1 of the Table, after sub-paragraph (r) insert—

“(s) the register of social workers in England kept under section 45(1) of the Children and Social Work Act 2017.”

National Health Service Act 2006

30 In section 126 of the National Health Service Act 2006, for subsection

(4A) substitute—

“(4A) Subsection (4)(h) does not apply to persons in so far as they are registered as social care workers in England (within the meaning of section 60 of the Health Act 1999).”

National Health Service (Wales) Act 2006

31 In section 80 of the National Health Service (Wales) Act 2006, for subsection (4A) substitute—

“(4A) Subsection (4)(h) does not apply to persons in so far as they are registered as social care workers in England (within the meaning of section 60 of the Health Act 1999).”

Armed Forces Act 2006

32 In section 257(3) of the Armed Forces Act 2006, for paragraph (a) substitute— “(a) Social Work England;”.

Safeguarding Vulnerable Groups Act 2006

33 The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

34 In section 41(7), in the table, after entry 10 insert—

“11 The register of social workers in England kept under section 45(1) of the Children and Social Work Act 2017

The registrar appointed under section 45(3)(a) of the Children and Social Work Act 2017 or, in the absence of such an appointment, Social Work England”

35 In Schedule 3, in paragraph 16(4), after paragraph (l) insert— “(m) Social Work England.”

36 In section 30A(6) of the Protection of Vulnerable Groups (Scotland) Act 2007—

(a) omit “the social work profession in England or”;

(b) for “each of those expressions having the same meaning as in” substitute “within the meaning of”.

Children and Young Persons Act 2008

37 (1) In section 2 of the Children and Young Persons Act 2008, in subsection

(6), for paragraph (a) substitute—

“(a) in the register maintained by Social Work England under section 45(1) of the Children and Social Work Act 2017;”.

(2) Until the coming into force of the amendment made by sub-paragraph (1), section 2(6)(a) of the Children and Young Persons Act 2008 is to have effect as if the reference to the register mentioned there were to a register maintained under article 5 of the Health and Social Work Professions Order 2001.

Health and Social Care Act 2012

38 In the Health and Social Care Act 2012 omit sections 213, 215 and 216.

Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2)

39 The Regulation and Inspection of Social Care (Wales) Act 2016 is amended as follows.

40 In section 111(4)(b)—

(a) in the Welsh text, for “Cyngor y Proffesiynau Iechyd a Gofal” substitute “Gwath Cymdeithasol Lloegr”;

(b) in the English text, for “the Health and Care Professions Council” substitute “Social Work England”.

41 In section 117(4)(a)—

(a) in the Welsh text, after “Gofal” insert “neu Waith Cymdeithasol Lloegr”;

(b) in the English text, after “Council” insert “or Social Work England”.

42 In section 119(4)(a)(ii)—

(a) in the Welsh text, for “y Cyngor Proffesiynau Iechyd a Gofal” substitute “Gwath Cymdeithasol Lloegr”;

(b) in the English text, for “the Health and Care Professions Council” substitute “Social Work England”.

43 In section 125(5)(a)(ii)—

(a) in the Welsh text, for “y Cyngor Proffesiynau Iechyd a Gofal” substitute “Gwath Cymdeithasol Lloegr”;

(b) in the English text, for “the Health and Care Professions Council” substitute “Social Work England”.

44 In section 174(5)(a)(ii)—

(a) in the Welsh text, for “Cyngor y Proffesiynau Iechyd a Gofal” substitute “Gwath Cymdeithasol Lloegr”;

(b) in the English text, for “the Health and Care Professions Council” substitute “Social Work England”.

PART 2

RENAMEING OF HEALTH AND SOCIAL WORK PROFESSIONS ORDER 2001

45 For the title to the Health and Social Work Professions Order 2001 (SI 2002/254) substitute “Health Professions Order 2001”.

46 In article 1(1) of that Order (citation), for “the Health and Social Work Professions Order 2001” substitute “the Health Professions Order 2001.”
47 In the following provisions, for “the Health and Social Work Professions Order 2001” substitute “the Health Professions Order 2001”—

(a) section 18(e) of the London County Council (General Powers) Act 1920;
(b) section 3(11) of the Video Recordings Act 1984; (c) 114ZA(4) of the Mental Health Act 1983;
(d) paragraph (E) in the entry for the London County Council (General Powers) Act 1920 in Schedule 2 to the Greater London Council (General Powers) Act 1984;
(e) paragraph (c) of the definition of “establishment for special treatment” in section 4 of the London Local Authorities Act 1991;
(f) item 1(c) in Group 7, in Part 2 of Schedule 9 to the Value Added Tax Act 1994;
(g) section 69(1)(h) of the Data Protection Act 1998;
(h) section 60(2)(c) of the Health Act 1999;
(i) sections 25C(8)(h) and 29(1)(j) of the National Health Service Reform and Health Care Professions Act 1999;
(j) section 124(4)(a) of the National Health Service Act 2006;
(k) section 80(4)(a) of the National Health Service (Wales) Act 2006;
(l) entry 10 in the table in section 41(7) of the Safeguarding Vulnerable Groups Act 2006.

48 In the definition of “registered psychologist” in each of the following provisions, for “the Health and Social Work Professions Order 2001” substitute “the Health Professions Order 2001”—

(a) section 307(1) of the Criminal Procedure (Scotland) Act 1995; (b) section 207(6) of the Criminal Justice Act 2003;
(c) section 21(2)(b) of the Criminal Justice (Scotland) Act 2003;
(d) section 25 of the Gender Recognition Act 2004.”

Lord Nash: I conclude by thanking all noble Lords across the House for their constructive work on this Bill and for getting it to this point. Today’s debate has, as ever, been extremely well informed.

Motion agreed.

Technical and Further Education Bill
Third Reading
5.33 pm

Motion
Moved by Lord Nash

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, before the Bill’s Third Reading draws to a close, I take this opportunity to thank all those involved for their interest in and engagement with the Bill over the past few months. There have been important contributions on the Bill from all sides of the House, and we have had very well-informed and thoughtful debates on a number of issues that are critical to ensuring the future health of our country’s technical and further education sectors. In particular, I thank noble Lords for their efforts to strengthen the areas covered by this legislation, which we will take forward when the Bill and its related policies are implemented. I very much hope that discussions continue with noble Lords about technical and further education. There is much work to be done in this area, so the expertise and wisdom of noble Lords is very welcome.

Yesterday, I met the noble Baronesses, Lady Garden and Lady Watkins, to discuss the failure of private providers and, in particular, the support given to learners affected. I thank them for discussing this issue with me. I also thank the noble Baroness, Lady Wolf, who was unable to attend but who has shared her thoughts with my officials. It is clear from our discussions that this is a matter requiring more detailed consideration before we take a view on what action is necessary. We are already taking steps to improve our monitoring of these providers. However, as I said yesterday, we will do further work to explore the scale of the issue and identify a proportionate response to ensure the right support is provided to learners in the rare instances of failure.

I am afraid there is not time to thank everyone who has been involved in the Bill during its passage through this House, but I would like to mention who I can. First, I thank my noble friends on the Government Benches, and in particular my noble friends Lady Vere and Lady Buscombe, who have provided strong support to the Bill. I also thank my noble friend Lord Baker, particularly for his amendment regarding careers advice in schools. I am grateful to my noble friend Lord Lucas for his in-depth engagement with the Bill, especially with respect to the issues of copyright and intellectual property. I pay tribute to my noble friend Lord Liverpool, whose thoughtful contributions included the important issue of the soft skills that young people need to thrive in the workplace.

I particularly thank the noble Lords, Lord Watson and Lord Storey, who have provided rigorous scrutiny and opposition alongside their colleagues the noble Lords, Lord Hunt and Lord Stevenson, and the noble Baroness, Lady Garden. I thank also the noble Baronesses, Lady Cohen, Lady Donaghy and Lady Morris, and the noble Lords, Lord Young of Norwood Green, Lord Blunkett and Lord Knight, for their thoughtful contributions. While we have disagreed on some issues, I believe we are in broad agreement about the importance of the Bill and all support its ambition to improve technical and further education.

I am grateful also to my friends on the Cross Benches for their thoughtful contributions, including the noble Lord, Lord Aberdare, the noble Earl, Lord Listowel, and the noble Baroness, Lady Watkins. In particular, I thank the noble Baroness, Lady Wolf, for her support on the Bill and her role in developing its underlying policy.

Finally, I thank policy officials and lawyers from the Department for Education and other government departments for their work on the Bill’s progress in this House.

It has been a privilege to debate this Bill with noble Lords. It will help pave the way for reforms to technical and further education. It will allow us to create a world-class technical education system that provides all young people with the opportunities they deserve, and let them secure sustained, skilled employment that serves the needs of our country, today and in the future. At the same time, the Bill’s further education insolvency regime will ensure that FE colleges are put on a secure financial footing in the long term. I commend the Bill to the House.
Lord Baker of Dorking (Con): My Lords, I want to comment on how the Bill has been handled in this House. When we saw the Bill that came from the Commons, it seemed a very trivial Bill and quite difficult to understand. The words were dry on the page and the opacity was complete: we had no clear idea what the Government were trying to do. However, during the course of the Bill, those with an interest were privileged to have a series of meetings—not just one or two, but several—with officials from the department and with the Ministers themselves, at which we learned a tremendous amount about the Bill and the apprenticeship system that the Government are setting up, which is going to cost £3.5 billion. None of this was obvious when you read the Bill. Those meetings led us to understand how important the Bill was. Therefore, I very much congratulate the department on providing a series of meetings and the Minister on the support he has given us. It is a very good way of handling a Bill in this House and has worked very well.

Lord Young of Norwood Green (Lab): My Lords, I, too, thank the Government for the series of meetings and echo what the noble Lord, Lord Baker, has said.

I was a little disappointed with the letter sent to us on 30 March. The noble Baroness, Lady Vere of Norbiton, promised on 27 March, at col. 391 of Hansard, to write about the question of signing of contracts, but the letter does not tell us whether or not this is taking place.

We had a significant debate on the question of transition to new technical qualifications but there is no mention of that in the letter. There is in the new guidance issued for the Institute for Apprenticeships, but that merely says:

“We expect the institute to take into account the Department for Education’s development of technical education routes to allow for a smooth transition”.

However, the noble Lord promised that there would be more detailed guidance on the question of transition, so I expected at least a reference to it.

I do not wish to prolong the process but it was disappointing that the House of Commons paper 206 gave apprenticeships a bit of a panning. I do not concur with everything it says but some of the points it makes are valid and worthy of the Minister’s attention, in particular the distribution of the levy and how we will target apprenticeships in areas where there is a drastic skills shortage—in engineering, construction and IT. I would welcome comment from the Minister on that.

Apart from those few caveats, I, too, welcome the way in which the Bill has been handled.

Baroness Garden of Frognal (LD): My Lords, from the Liberal Democrat Benches I add our thanks to the Minister, the noble Baronesses, Lady Vere and Lady Buscombe, and the Bill team for their engagement, briefings and meetings in the course of the Bill’s passage.

We were grateful that the Government accepted the amendment of the noble Lord, Lord Baker, early on, which promised more movement than we subsequently achieved, but we hope that those amendments agreed by the House will be confirmed by the Commons when the Bill returns to it, particularly that of my noble friend Lord Storey on careers advice in FE colleges. We also welcome the movement on private providers and I thank the Minister for the meeting yesterday on that.

Perhaps as a result of the Bill we might hear more about the EBacc including more creative and technical subjects, to promote practical skills in the school timetable. It is surely in order that skills should be raised as early as possible in the schools programme, to open opportunities at an early stage to young people whose enthusiasms lie that way.

As the Minister is aware, we still have considerable concerns that some of the measures in the Bill will damage the chances for the Institute for Apprenticeships and Technical Education to be as effective as it needs to be. Among them is the issue of copyright, which will impede the awarding bodies in giving the wholehearted co-operation they might wish to give. I am grateful that we have a meeting with officials and others to discuss this in greater detail and hope that the Government might find a way forward before the Bill becomes law which does not prevent some of the most expert champions of practical, technical education from playing their full part.

There are other issues, such as single awarding bodies, consortia and certification which we would wish to continue to discuss and monitor. There is a deal of complexity in the model that the Government are proposing, and complexity does not help to promote the skills agenda.

In wishing the institute every success in its ambitious aims, we would also wish to check that it has the framework and the resources to raise the profile and standards of technical work-based achievement. We hope that it will continue to consult and take advice from those who have many years of experience in this sector—employers, awarding bodies, trainers and lecturers—who have ensured brilliant achievements by many people in skills areas. We only have to think of the UK’s successes in world skills competitions, for instance, and of some of our great entrepreneurs and leaders who began their careers through a skills-based route to see that we are not starting from scratch.

However, there is a mounting skills gap. In the interests of the country, the community and the individual learners, we have to hope that this Bill and the institute fulfil the high expectations placed upon them.

Once again, I express the thanks of these Benches for the way in which scrutiny has been conducted.

Lord Watson of Invergowrie (Lab): My Lords, I have not written a speech but, if I had, it would have been more or less word for word what the noble Baroness, Lady Garden, has just said. That is probably an embarrassment to her, but there we are.

The Bill is not the heaviest we have dealt with or will deal with, but it has dealt with important matters. We have all recorded our disappointment that so much of it was to do with the insolvency angle, some of which has caused difficulties to further education colleges, bank loans and, potentially, pensions, but they will have to be dealt with down the line.
The fact that the Institute for Apprenticeships was established a few days ago is a welcome sign. I agree with my noble friend Lord Young that it was disappointing that the letter dated 30 March from the noble Baroness, Lady Vere, did not go into enough detail on what we were looking for in our amendment last week on the institute. However, it will develop and will become the Institute for Apprenticeships and Technical Education in a year’s time and we look forward to that.

I will say a word to the Minister which reflects the report to which my noble friend Lord Young referred. The business last week of the House of Commons sub-committee on education is worth reading. I do not agree with all of it but it highlighted the point—which was also raised by these Benches and other noble Lords over the past few weeks—that it is essential that the 3 million target does not allow quantity to trump quality. It is the quality of the apprenticeships that are provided in the years to come that will decide whether or not this is a success. We have to keep bashing that drum. I know from what he has said that the Minister believes that as well. We will have to make sure that it happens.

I thank all those involved in the Bill. The Public Bill Office, as ever, has been extremely helpful. The Minister and the noble Baronesses, Lady Vere and Lady Buscombe, have been, if not accommodating in Committee, helpful in the briefings that we have had. The Minister’s officials and the meetings they set up have been useful in giving a better understanding of the Bill, its intentions, and how we might work with it or frame amendments to try and change it. I finish by thanking my colleagues, my noble friends Lord Stevenson and Lord Hunt. The Minister has a vast array and army of officials behind him but we have only one person—Dan Stevens, the legislative and political adviser for our team. He has been a tireless worker on what was his first Bill and I can pay him no greater compliment than to say that you would not know it.

Bill passed and returned to the Commons with amendments.

Higher Education and Research Bill
Third Reading

5.48 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Higher Education and Research Bill, has consented to place her prerogative, so far as it concerns the characteristics which the Office for Students will be supported in the planning and implementation of the purposes of the Bill.

Clause 10: Mandatory transparency condition for certain providers

Amendment 1

Moved by Lord Wallace of Tankerness

1: Clause 10, page 7, line 19, at end insert—
“( ) their age.”

Lord Wallace of Tankerness (LD): My Lords, this issue was raised in Committee and on Report and concerns the characteristics which the Office for Students can require of universities seeking registration as higher education providers. On Report I narrowed it down in exchanges with the Minister, saying that we would be prepared to consider solely the question of age, and he agreed that he would look at it. I regret that the Government did not come forward with their own amendments, so I have tabled this one. It is a very short amendment, as will be obvious.

As I have indicated, the importance of this clause is that it will ensure transparency. I acknowledge what the Government have done in the course of the Bill. They have added degree outcomes to the information that is required which will complete, as it were, the student life cycle. The Bill specifies that the information should cover gender, ethnicity and socioeconomic background; this amendment would add age to that list. The reason I have narrowed it down so much is that concerns were expressed on previous occasions that some of the other characteristics, specifically those covered by the Equality Act 2010, involve to a greater or lesser extent an element of self-identification. I do not think that age could be described in that way, given that it is absolutely objective by reference to one’s date of birth.

The amendment might be small but it makes an important point. Throughout the debates on this Bill and indeed in other spheres, many noble Lords have stressed the importance of trying to do something to revitalise part-time education. The inclusion of a description of age would give us at least one tool to evaluate the progress that is being made in promoting part-time education. It is estimated that most initial entrants into part-time education are aged between 31 and 60, but between 2007-08 and 2014-15 there was a 60% decrease in that group coming in.

As I have indicated, there is a widespread view that we should encourage part-time education. The Open University has taken a particular interest in this amendment because of the important provision it makes for students studying courses on a part-time basis—I declare an interest as an honorary graduate of the university—and this would be a useful and important tool if it was included in the legislation.

Since our debates on Report the Minister and I have exchanged ideas and wordings, and through the toing and froing, he agreed to reflect on the matter. Of course the Government have promised a consultation by the Office for Students with regard not only to age but also to the other characteristics. Can the Minister give an indication of the likely timescale for the Office for Students to carry out this consultation because it will help universities to understand better how they will be supported in the planning and implementation of the requirements?

Quite simply, this small amendment meets the criterion of not being one of self-description. Perhaps I may also quote from the letter sent by the Minister jointly with Jo Johnson on 22 March. He refers to the duty and states:

“While the Duty itself must remain balanced and proportionate, it is clear that greater transparency on characteristics such as age is desirable to support equality of opportunity through widening participation”.

So the Government themselves think that this is desirable. The amendment does not run into some of the difficulties...
encountered in the earlier amendments. I am not holding my breath that the Minister will respond positively, but I shall listen to him with great care. I beg to move.

**Lord Stevenson of Balmacara (Lab):** My Lords, I support the noble and learned Lord, Lord Wallace of Tankerness, in his amendment. We tabled a similar amendment, although one that was slightly broader in context, both in Committee and on Report, so we have a continuing interest in this area. We have chosen not to support this amendment at this time, but I do not think that one should read anything into that—rather, I hope that discussions of which I am aware that are being conducted outside your Lordships’ House will have matured to a point where there may be some news that might bring a conclusion to this matter.

One of the main purposes of the Bill, at least as outlined in the White Paper which preceded it, is that it is intended to improve social mobility. That is an admirable aim and one which we fully support. One of the things about social mobility is that it is supported by a number of legislative arrangements, one of which is the Equality Act 2010 which brings into play a series of protected characteristics that define and encapsulate the issues around the need for social mobility in particular groups. It is important that we should have regard to this in all aspects of our public life, and it is therefore very important that new Bills which come forward should be built on that foundation. It is therefore rather surprising that the information requirements which are part of the amendment and focus on the need for transparency conditions that will be organised by the Office for Students—or as we prefer to call it, the office for higher education—do not include all the protected characteristics. It is only with considerable reluctance that the Government are prepared to concede that age is an important part of this area, and I hope that the Minister will confirm that when he comes to respond.

There are other values in having a confident sector that is able to publish information around all the protected characteristics. It will give students of all types and varieties the chance to judge whether a particular institution or institutions more generally are appropriate for them, given their protected characteristics, and of course it will be vital in terms of trying to formulate policy. For all these reasons, it is important that the Minister should reassure the noble and learned Lord, Lord Wallace of Tankerness, about his concerns around age as a matter that must be one of the transparency conditions, and of course subject to the consultation it is hoped that some direction will be given to the office for higher education, also known as the Office for Students, that it is something which should be taken into account. Perhaps the Minister can also reassure me that it is not impossible that in future years, work can be done to gather information around the protected characteristics, which will be important for all the reasons I have given.

**Baroness O’Neill of Bengarve (CB):** My Lords, I am not against collecting information because it is always interesting, but I would regret seeking information under all the protected characteristics set out in this Bill, among other reasons because I do not think asking intending students whether they are pregnant is a good idea. Age has the advantage, as the noble and learned Lord, Lord Wallace, said, that it is quite objective; people know how old they are. However, one characteristic which is not in the list of protected characteristics is socioeconomic background. I think that it is separate from the socioeconomic one and it depends on the utility of the information for the purposes at hand. The noble and learned Lord, Lord Wallace, has made the case that it is useful because of the decline in participation rates among older students. I do not think we know the significance of that decline. It has happened in an age group of whom many more have had the opportunity to participate in higher education when they were younger, and it is in that context that I would be uncertain whether it is of tremendous informational value. I am not against the amendment but I do not believe that it will yield very much additional information.

**Viscount Younger of Leckie (Con):** My Lords, the transparency duty has generated much debate in both Houses and I am pleased to note that there is an appetite for further transparency to be brought to higher education as a whole. Indeed, this Bill and our accompanying reforms will mean that more information than ever before is published and made available to students. I thank the noble and learned Lord, Lord Wallace, for his engagement with the Bill. Let me assure him that I have reflected carefully on the comments he made in Committee, including those of adding attainment as one of the life cycle points in the transparency duty. We did respond to his suggestion and I was pleased to table an amendment on Report which will require higher education providers to publish data on attainment broken down by gender, ethnicity and socioeconomic background, something which the noble Baroness, Lady O’Neill, has just referred to. This will mean that the whole student life cycle is covered by the transparency duty and will support its focus on equality of opportunity.

I would like to take a moment to reassure the noble and learned Lord, Lord Wallace, about the consultation. We will be setting out our expectations for the consultation in our first guidance to the Office for Students. That guidance will be issued before the OfS comes into being in April 2018, so there is no question but that it is definitely a priority.

Let me also make the important point that the transparency duty is focused on widening participation. We have been at pains to balance the need for greater transparency on admissions and performance against the robustness of the available data and burdens on providers. This means that we have prioritised those areas where a renewed emphasis on widening participation will have the most impact. However, we have continued to listen and respond. The noble and learned Lord tabled further amendments on Report and I was grateful for the further opportunity to discuss this important issue. I was delighted to make a firm commitment in response to the points raised, which I will reiterate.

6 pm

We will ask the OfS to consult on what other information should be published by institutions in the
Lord Wallace of Tankerness: My Lords, I thank the noble Lord, Lord Stevenson, and the noble Baroness, Lady O’Neill, for their contributions. The fact that my amendment is limited to age in no way detracts from some of the other characteristics, as the Minister has said. I am grateful to him for his response. I listened carefully to what he said. I am still slightly puzzled as to why we cannot add this to the legislation at the outset. It would not be adding on after the Bill hits the statute book; it would be there for the Office for Students from the very beginning. I heard the Minster indicate that he fully anticipates that age will be part of the information that the OfS will ask institutions to publish, as well as indicating that it will be asked to consult on some of the other characteristics.

In the light of that anticipation, which we will do our utmost to remind the Minister of and continue to monitor, it would be somewhat churlish to press this matter. I therefore beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 58: Revocation of authorisation to use “university” title

Amendment 4

Moved by Viscount Younger of Leckie

4: Clause 58, page 40, line 19, leave out “it” and insert “the OfS”

Amendment 4 agreed.
Clause 78: Power to require information or advice from the OfS

Amendment 5
Moved by Viscount Younger of Leckie
5: Clause 78, page 53, line 6, leave out “or” and insert “and”

Amendment 5 agreed.

Clause 83: Meaning of “English higher education provider” etc

Amendments 6 and 7
Moved by Viscount Younger of Leckie
6: Clause 83, page 55, line 24, at end insert—
“( ) section 11(9) (mandatory fee limit condition for certain providers),”
7: Clause 83, page 55, line 26, at end insert—
“( ) section 33(5)(b) (content of an access and participation plan: equality of opportunity),”

Amendments 6 and 7 agreed.

Clause 119: Pre-commencement consultation

Amendment 8
Moved by Viscount Younger of Leckie
8: Clause 119, page 76, line 26, at end insert—
“(3A) Where the OfS has a consultation function involving registered higher education providers, references to registered higher education providers in the provisions describing the consultees are to be read as references to English higher education providers—
(a) for the purposes of applying subsection (2) at any time when there are no registered higher education providers, and
(b) for the purposes of applying subsection (3) in relation to anything done under subsection (2) in reliance upon paragraph (a) of this subsection.

(3B) For the purposes of subsection (3A), “a consultation function involving registered higher education providers” is a function of consulting—
(a) registered higher education providers (whether generally or a description of such providers), or
(b) persons with a connection (however described) to such providers.

(3C) In subsections (3A) and (3B), “English higher education provider” and “registered higher education provider” have the same meaning as in Part 1 (see sections 83 and 85).”

Amendment 8 agreed.

Schedule 4: Assessing higher education: designated body

Amendment 9
Moved by Viscount Younger of Leckie
9: Schedule 4, page 96, line 14, leave out “Part 1 of”

Amendment 9 agreed.

Schedule 5: Powers of entry and search etc

Amendment 10
Moved by Lord Mackay of Clashfern
10: Schedule 5, page 98, line 43, at end insert “and that all the requirements for the grant specified in this Schedule are met,”

Lord Mackay of Clashfern (Con): My Lords, this amendment has a rather interesting history. It arose from my reaction in Committee to an amendment in the name of the noble Baroness, Lady Brown, in connection with this schedule, which contains a power of search that is absolutely new to the academic community. It therefore required very careful consideration, which the noble Baroness’s amendment provided. In addition, she pointed out that this power had created anxiety in the academic community, as noble Lords might expect. Apart from what it might achieve, one thing is certain: if it were ever carried out, it would do very serious damage to the reputation of a higher education provider whose premises were the subject of a search.

Having listened to this, I suggested that it might be a good idea for the magistrate granting the warrant to indicate that he or she was satisfied that the conditions had been applied and satisfied. These conditions are extremely strong and very useful. When the point was raised by the noble Baroness, Lady Brown, my noble friend the Minister read out the conditions and said that they would certainly be satisfied, and that that was implied in the statutory provision.

After raising in response to that the idea that the magistrate might indicate by signature that he or she had been satisfied that the conditions had been met, I quite quickly received a letter to say that the idea of a separate signature was unheard of and that it would be a quite startling innovation. Well, the search warrant itself was something of an innovation, so I was not particularly disturbed by that—but I thought that I had better meet that and deal with it by suggesting an amendment to the form of the warrant specified in statute and put into the warrant that the magistrate was satisfied that the conditions for the grant set out in the schedule had been met.

Noble Lords who are interested will remember that ultimately this came to Report, when my noble friend Lord Young of Cookham dealt with the amendment. In the course of his observations he referred to two statutes that were supposed to indicate a form of warrant that would exclude my idea. Needless to say, I examined both of those and neither of them seemed to support the proposition for which they were cited. Eventually, my noble friend kindly agreed that the Government would consider the matter further—which is why it is competent for me to raise it at Third Reading. I had permission, as it were.

Since Report, I have had a meeting with the Minister—this time, the noble Viscount, Lord Younger of Leckie—officials from the Department for Education as well as, and this is the vital information, an official from Her Majesty’s courts service. It was not clear from the previous meeting exactly what the objection was to my amendment. It was thought that his department was carrying out an operation to simplify all warrants and
[LORD MACKAY OF CLASHFERN]

make them pretty well the same. It turned out at the meeting that these were related to the criminal procedure and the operations of the committee concerned with the revision of criminal procedure matters. I continued to think that this was not a criminal matter and therefore did not preclude what I wanted.

I was fairly insistent that this should happen, so we had a meeting this afternoon. It transpires that the idea of it being unheard of to have a separate signature is without foundation, because the criminal procedure committee and the Lord Chief Justice, who is no doubt an implement of that, have approved a form of warrant in criminal procedures which includes at the end of the application a space for the magistrate to sign to the effect that he or she has granted a warrant and to give the reasons for it.

It is apparent that this is not a criminal warrant; it is much more general than that. The official from the courts service kindly gave me a copy today of the form of warrant in criminal matters. It refers to the Criminal Court service kindly gave me a copy today of the form sign to the effect that he or she has granted a warrant and to give the reasons for it.

There is a different form for Section 8. So whatever you say about the form, it does not seem expressly to apply to one type of warrant. The official undertook to confirm whether this procedure applies generally as a matter of practice to other warrants—and he rather thought that it did.

I would be content if this form of warrant or something like it was agreed to be applied to the warrants under Schedule 5 to the Act, because it is a form of what I originally suggested. If that is correct, it is a perfectly reasonable way of allaying the concern of the academic community that the warrant would be too readily granted and that the very strict conditions laid down in the schedule might not be fully understood by the magistrate who had the obligation in connection with the warrant.

I think it right that I should move my amendment but explain that, in light of the rather tortuous history that it has had, I would be content if the Minister confirmed that the practice of magistrates’ courts generally in relation to all the warrants that they deal with is to contain in the application a form for the signature of the magistrate confirming that he or she has issued the warrant for the reasons that are summarised.

6.15 pm

It seems a little odd—but odd things happen—that the reason for the decision should be appended to the application, because the application is from somebody other than the magistrate. But that seems to be the form that has been accommodated for criminal procedure, and I suppose that there is no reason why the slightly less formal way of doing it than I suggested would not be appropriate for civil procedure as well. You would think that the reasons for the judgment would normally be in the judgment issued rather than appended to the application for the judgment—but, as I say, strange things happen. So if the Minister is able to say that, as a matter of general practice, warrants issued under this provision as well as under other civil provisions are subject to the procedure which requires a signature on the application form by the magistrate giving the reasons for which he or she has granted the application, I will be content. I beg to move.

Baroness Brown of Cambridge (CB): My Lords, I support the amendment proposed by the noble and learned Lord, Lord Mackay. As a former vice-chancellor of a university that, early in my tenure, did not always get its returns on student numbers to HEFCE correct, and was therefore subject to some stern discussions with the team at HEFCE and some refunding of income to it, I feel that Schedule 5 sounds potentially rather threatening—and I know that is how others in the sector feel. While I recognise that such powers would be used only in exceptional circumstances, the addition proposed by the noble and learned Lord, Lord Mackay, would help provide reassurance to the sector that the greatest care and attention to detail would be applied if and when such powers needed to be invoked.

Lord Stevenson of Balmacara: My Lords, it is otiose to add very much to what was a wonderful account of the ramifications that one can get into when one moves to question some of the wording in the schedules to some of our more complex Bills. As a guide, the noble and learned Lord has been a wonderful education for a higher education specialist such as me. To have gone through a higher education Bill and then to have learned something right at the very end is a touch of magic—a bit of fairy dust that will sprinkle down across all of us. All we now need is for the noble Viscount to stand up and measure up to the relatively low but still quite precise hurdle that has been set for him. He is an elegant, small chap; he has light feet; he has had a brilliant career in dealing with difficult questions that we have thrown at him across the Dispatch Box. I am sure that this is well within his capabilities. He would be strongly advised, given the rather glowing face behind him, to do it right this time.

Viscount Younger of Leckie: My Lords, with that introduction, how can one fail? I thank another noble and learned Lord—this time, my noble and learned friend Lord Mackay—for his helpful and astute contributions on this issue both in Committee and on Report. We are very grateful for the expertise that he brings to bear. As my noble and learned friend said, this amendment has had an interesting history and has done the rounds, but, on a serious note, let me offer my apologies if the department’s letters to him on this issue have misunderstood his area of concern.

I shall briefly reiterate why the powers to enter and inspect higher education providers, set out in Schedule 5, are needed. These powers will allow suspected breaches of registration and funding conditions which are considered by a magistrate to be, to quote directly from Schedule 5, “sufficiently serious to justify entering premises”, such as financial irregularity, to be tackled swiftly and effectively through the new power of entry. This will safeguard the interests of students and the taxpayer, and protect the reputation of the sector. As the NAO
said in its 2014 report on alternative providers, at the moment the department has no rights of access to providers, and this affects the extent to which it can investigate.

We agree that it is vital, of course, that strong safeguards are in place to ensure that these powers are used appropriately. As set out in Schedule 5 as drafted, a magistrate would need to be satisfied that four tests were met before granting a warrant: first, that reasonable grounds existed for suspecting a breach of a condition of funding or registration; secondly, that the suspected breach was sufficiently serious to justify entering the premises; thirdly, that entry to the premises was necessary to determine whether the breach was taking place; and fourthly, that permission to enter would be refused, or else requesting entry would frustrate the purpose of entry. These criteria will ensure that the exercise of the power is appropriately limited. Further limitations are built into Schedule 5, including, first, that entry must be at a reasonable hour; and secondly, that the premises may be searched only to the extent that is reasonably required to determine whether there is or has been a breach.

I believe that the thinking of the Government and that of my noble and learned friend is very largely aligned in relation to these safeguards. I fully understand that this amendment does not seek in any way to alter the conditions which must be met for a warrant to be granted, or prevent warrants being granted where they otherwise would have been. Rather, as my noble and learned friend has set out, the amendment makes a small change to the powers so that the search warrant to enter a higher education provider must state that all the conditions for grant of the warrant specified in Schedule 5 have been met. I am grateful for my noble and learned friend’s valuable contribution and have discussed this with him outside the Chamber and reflected on this matter very carefully. As he said, he spoke with my honourable friend in the other place, Jo Johnson, on this matter today, and with officials from HM Courts and Tribunals Service. I hope that these conversations were helpful. However, the Government remain of the view that this schedule should stand as drafted, as we believe that a requirement to state that the conditions have been met would not provide an extra legal safeguard.

We agree that it is imperative that the conditions in the schedule are fully met before any warrant is granted. However, we believe that this is already the effect of the Bill as drafted, specifically paragraph 1 of Schedule 5. Furthermore, paragraph 3(1)(f) already provides that the warrant must, as far as possible, identify the funding or registration condition breach which is suspected. We understand that, in the past, magistrates may have taken an insufficiently robust approach towards scrutinising warrant applications but, as I have impressed upon my noble and learned friend, the position is markedly different now: the specifics of applications are carefully scrutinised and it is not uncommon for warrants to be refused. I should acknowledge to my noble and learned friend that there may have been a misunderstanding as to the requirement for a magistrate to certify that the statutory requirements for the issue of a search warrant have been met. I want to reassure him that a magistrate will be required to set out the reasons for their decisions in writing, and to add their signature to their reasons. I accept that this may be described as a certificate.

I want to go into a little more detail, bearing in mind the comments of my noble and learned friend. He asked whether an application under Schedule 5 is within the ambit of the criminal procedure rules. The criminal procedures apply to a magistrates’ court, “when dealing with a criminal cause or matter”.

Although an application for a warrant under Schedule 5 can be granted only where the breach under investigation is sufficiently serious, there is no requirement that the investigation must relate to possible breaches of the criminal law. However, in the absence of any specific guidance to the contrary, it is the practice of magistrates’ courts to deal with applications for a warrant to enter premises in accordance with the CPR and the criminal practice directions and using the prescribed form of application and warrant. Magistrates’ courts do not seek to make fine distinctions as to whether an application is civil or criminal. It is the nature of the application that is important.

As I said earlier, I can confirm that a magistrate will sign a separate form which certifies that the statutory criteria are met. In addition, of course, the magistrate will sign the warrant. With that reassurance, with the extra detail that I have set out and the reasons we believe this amendment is not necessary, I respectfully ask my noble and learned friend to withdraw his amendment.

Lord Mackay of Clashfern: My Lords, I am extremely happy because the purpose of my original intervention has been fully met by the description that my noble friend has given of the practice of the court. It is a little odd that the form is to be used only for criminal matters, but practice sometimes overcomes that. I am constrained to add a personal note. When I came to politics rather late in life, I had a very skilled, shrewd and experienced person to guide me. He was operating in a very hostile atmosphere and I gathered from him that if you could do anything to allay the concerns of those who were concerned about your activities, so long as it did not alter your own position it was wise to do so. I have used that criterion for most of my time in these offices. The person to whom I owe this tuition was the father of my noble and learned friend. I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Schedule 6: English higher education information: designated body

Amendment 11

Moved by Viscount Younger of Leckie

11: Schedule 6, page 105, line 29, leave out “Part 1 of”

Amendment 11 agreed.

6.26 pm

Motion

Moved by Viscount Younger of Leckie

That the Bill do now pass.
VISCOUNT YOUNGER OF LECKIE: My Lords, before the Bill does, I hope, indeed pass, I want to say a few words. At this milestone in the Bill’s passage, I, along with my colleague, the Minister in the other place, would like to take a moment—and I hope that noble Lords will indulge me as I use this term one last time—to reflect, and perhaps I should say reflect carefully, on how far it has come since being introduced to this House last November.

The Bill is the most significant piece of legislation that the higher education sector has seen in 25 years. As is fitting for such an important piece of legislation, we have heard powerful speeches from distinguished noble Lords, many of whom have held respected posts in our world-class higher education and research institutions, on key aspects of the Bill. For example, the importance of protecting institutional autonomy has been an area on which we have reached agreement. The amendments on this issue that were brought forward by noble Lords on Report, which the Government supported, were welcomed across these Benches. The Government listened carefully and responded on this issue, as we did on many others. I believe that the Bill is better as a result of this reflection. I look forward to continued discussions on the changes that the Lords is sending to the Commons, but I am truly grateful for the extensive debate, discussion and consideration of all aspects of this important piece of legislation from all sides of the House.

I express particular gratitude for the constructive engagement of numerous noble Lords. Before I forget, I want to thank my noble and learned friend Lord Mackay for his very kind words about my father. It was moving and I am very grateful. I start by thanking noble Lords opposite, particularly the noble Lords, Lord Stevenson, Lord Watson and Lord Mendelsohn, who have led the Bill from the Opposition Benches. The noble Baroness, Lady Garden, and the noble Lords, Lord Storey and Lord Addington, played a key role for the Liberal Democrats. A wealth of experience has been brought to bear from the Cross Benches: to name just a few, I thank the noble Lords, Lord Kerslake, Lord Lisvane and Lord Krebs, and the noble Baronesses, Lady Brown, Lady Wolf in particular, Lady O’Neill, who is in her place today, and Lady Deech. I also thank the right reverend Prelates the Bishops of Durham, Portsmouth and Chester. Of course, I thank my noble friends behind me: my noble and learned friend Lord Mackay, who I have mentioned already, and my noble friends Lord Lucas and Lord Selborne. Above all, I pay tribute to my noble friend Lord Willetts, who may or may not be in his place—I do not have eyes in the back of my head, I am afraid—whose higher education White Paper in 2011 paved the way for the reforms outlined in the Bill.

Finally, I thank my colleagues—my noble friends Lady Goldie, Lord Prior and Lord Young—for their admirable support throughout the passage of the Bill so far; I stress “so far” because there is a little way to go. I also thank the officials in the Department for Education and the Department for Business, Energy and Industrial Strategy, along with officials in the Home Office, the Cabinet Office and the Ministry of Justice who have supported the Bill. I particularly thank the officials in the higher education and research teams and the Bill team. Having mentioned all those departments, I think the Bill has been a great example of how departments can work together effectively. Once again, this House has demonstrated the value of the scrutiny it adds to the legislative process. While we are by no means at the end-point of the Bill, as I have said, I thank all those involved in reaching this significant milestone.

LORD STEVENSON OF BALMACARA: My Lords, I gather from the Public Bill Office that the Bill may have broken all records for the number of amendments tabled during its passage. That is an indication of the interest it generated across the House, which allowed the House to play a full and important role, as just mentioned by the Minister, as we scrutinised every clause and, indeed, virtually every line.

The Minister was kind to say that he felt that the Bill had been improved in this process. Ministers do not always feel that way about Bills that have been torn to pieces and not always put back together in the form that they originally liked. He is right that there were things we could do with the Bill to make it, within the context of its overall shape and form, slightly better and more accommodating of the needs of the sector it was intending to regulate. As the Minister says, there is further to go and perhaps it will change again, but we have certainly made a lot of progress. My noble friend Lord Watson said earlier on another Bill that the work we had done here is what we do best. It is something your Lordships’ House should continue to do.

I add my thanks to those expressed by the Minister, starting with him and his colleagues—the noble Lords, Lord Young and Lord Prior, and the noble Baroness, Lady Goldie, who all contributed to various areas within the Bill—for their unfailing courtesy and willingness to meet and, of course, to write. We have the epistolary Minister in front of us, who writes letters almost as easily as he breathes. We benefited a lot from those because they were very detailed and gave us a lot of information. We also appreciate, as has been mentioned, the substantial involvement of the Minister for Universities and Science in the other place, who, unusually, is not here today but has been seen around as we have discussed the Bill.

I also thank the Bill team. They were very good at organising meetings and often anticipated what we needed. But they also produced some very helpful factsheets, which have not been mentioned but I found very useful. These were necessary, because for those not involved in higher education it was a bit difficult to get down into the detail of the Bill. The factsheets were very useful in exemplifying what was meant by the various regulatory frameworks and what the architecture would do in practice, and we found them very helpful.

My Front-Bench team was superb. I am grateful to my noble friends Lord Watson and Lord Mendelsohn, who covered large areas of the Bill and obtained many of the concessions now in it. Our legislative assistant, Molly Critchley—we have only one—was extraordinary and superb and kept us going with grids and other materials so necessary for an effective Opposition, as well as dealing with the Public Bill Office and all those amendments. We are very grateful for its work as well in that respect.
One of the greatest pleasures of the Bill has been the experience of working closely with the other groups in the House. We quickly discovered that our views on the Bill were shared by the Liberal Democrats and a substantial number of Cross-Benchers, and indeed some Members on the Government Benches. We found that by meeting regularly and sharing intelligence about what Ministers were saying in bilateral meetings, we could make better progress than perhaps would otherwise have been the case. As I approach the end of my current spell of active Front-Bench responsibilities in your Lordships’ House, the close working relationship we built up over the Bill is one of the memories I will cherish the most.

Baroness Garden of Frognal (LD): My Lords, I add the thanks of the Liberal Democrat Benches to the Ministers—the noble Viscount, Lord Younger of Leckie, the noble Lords, Lord Prior of Brampton and Lord Young, and the noble Baroness, Lady Goldie—who have given such detailed contributions throughout some very tough debates on the Bill. I echo the appreciation expressed by the noble Lord, Lord Stevenson, to the Bill team for their engagement, briefings and meetings—and, indeed, their patience—in the course of the Bill.

We are most grateful that the Government have accepted and introduced so many amendments to the Bill, and we live in hope that the amendments agreed by this House will be confirmed by the Commons when the Bill returns to them. These include amendments on the issue of international students, on which the noble Lord, Lord Patten of Barnes, has a compelling article in today’s Guardian; to the teaching excellence framework; on safeguards for the quality of new providers; and on encouraging students to vote. We look forward to hearing the progress of my noble friend Lord Addington’s proposals for guidance for disabled students, and we hope that the Bill more generally will offer more opportunity to adult and part-time students.

Across the House we have all understood the need for teaching in universities to be accorded the same regard as research, but have sought ways which would encourage, rather than brand, institutions. We have seen it as imperative to maintain the worldwide respect of the UK’s higher education, while addressing any areas of shortcoming. I hope that the amended Bill will ensure that both teaching and research continue to flourish and offer learners—young, adult and, indeed, old—opportunities to develop and progress. We wish the ill-named Office for Students and the better-named UKRI every success, in the interests of the country, international collaboration and the individuals who work and achieve within our higher education sector.

I thank my noble friend Lord Storey for his tireless support and invaluable contributions on this and the Technical and Further Education Bill, and Elizabeth Plummer in our Whips’ Office, who provided us with immensely useful briefings. As the noble Lord, Lord Stevenson, said, we have certainly benefited from close co-operation with the Labour Benches and the Cross Benches, as well as those on the Government Benches who shared some of our concerns. Collaboratively, we have left the Bill much better than how it reached us. Once again, I express the thanks of these Benches for the way in which scrutiny has been conducted, and the hope that the final Bill may reflect the wide-ranging expertise and contributions of your Lordships’ House.

Baroness Brown of Cambridge: My Lords, I, too, will say a few words of thanks on my behalf and on behalf of my noble friends Lady Wolf and Lord Kerslake, who apologise that they are unable to be here today. As we have heard, the Cross Benches have played a significant role in scrutinising and revising the Bill, leading on four major amendments that were approved on Report, and championing many of the important changes that the Government have delivered through their amendments.

I thank the Government for listening and engaging with so many noble Lords from across the House. I particularly thank the Ministers—the noble Viscount, Lord Younger, the noble Lord, Lord Prior, and the noble Baroness, Lady Goldie—for their numerous responses. I have been hugely impressed by their stamina under enormous pressure and very long hours, and their numerous meetings and letters, which have been very helpful in developing a shared understanding of how to regulate and support a successful higher education system.

Most of all, I acknowledge the Bill team, with whom we have had some great, fun, controversial and heated meetings. They are really hard-working and committed civil servants. They have worked some very long and unsocial hours to support the passage of the Bill through your Lordships’ House and they deserve huge credit for that. All these efforts have contributed to what I am very pleased to hear we all agree—and I know the sector agrees—is now a much stronger Bill.

Bill passed and returned to the Commons with amendments.

Brexit: European Union-derived Rights

Motion to Resolve

6.39 pm

Moved by Baroness Hayter of Kentish Town

That a Minister of the Crown do report to this House by the end of this Session on the progress made towards ensuring that qualifying non-United Kingdom European Economic Area nationals and their family members are able to retain their fundamental European Union-derived rights after the United Kingdom has left the European Union.

Baroness Hayter of Kentish Town (Lab): My Lords, in moving this Motion I shall not go through all the arguments which led to a majority of 102 when we discussed this issue before. It is clear that the House felt that neither EU citizens here nor UK citizens abroad should pay the penalty of our withdrawal. We said that we would continue to make the case.

As Sadiq Khan said of London, where a third of the EEA nationals—some 1 million—live, Europeans who live and work in London are Londoners and should be given “a cast-iron guarantee” of their right to stay post-Brexit. These Europeans work in every part of our community. As the unions such as Unison
have said, clarity is needed as early as possible because any decrease in the number of EU citizens working here would have a huge impact on our public services, especially in health and social care. One in 15 nurses in England is European, although already the number registering is declining to only a quarter of those in the same period of 2015. We have also lost twice as many doctors as in 2015. The RCP and the BMA blame this on the lack of assurances for EU nationals.

In social care, Europeans comprise 6% of the English workforce—some 84,000—of whom 90% do not have UK citizenship. We should remember that of the 3 million EU citizens only 10% are married to British nationals, which gives them some hope of being able to stay. Other concerns arise for those whose spouses are non-EU. In academia, at the Francis Crick Institute—he of course won his Nobel Prize for the double helix with that immigrant Mr Watson—44% of its staff and 56% of its post-docs are from the EU.

I want to make three points today: on transparency of negotiations; on urgency; and on the EU 27’s priorities. On the first, we have already seen that there is going to be no secrecy. Predictably, we saw the Tusk letter on TV before the ink had dried so our Motion will not expose any secrets. It will simply allow what is in the public domain to be discussed in your Lordships’ House.

Secondly, on urgency people really cannot put their lives on hold for two years while awaiting the outcome of talks. They need to know now whether to take jobs and choose schools for their children, or make plans to leave. We are seeing European citizens turned away by mortgage lenders because of uncertainty over whether they can stay, while some employers are asking proof of permanent residency before workers get more than a fixed-term contract. Certainty is also needed for business. The British Chambers of Commerce has called on the Prime Minister to confirm that EU residents can remain after Brexit, with its director-general Lord, Lord Hope, at Second Reading, nor to answer the question of my noble friend Lord Grocott: what would not want to be the Minister steering this through the Houses but rather as a willing gesture from the Government. How much better it would be as a signal to those 27, and to provide comfort to the 3 million, for the Government to accept our request, which is simply to report back on how the issue is unfolding.

I am in no position to judge the opinion of the three knights or the warning of the noble and learned Lord, Lord Hope, at Second Reading, nor to answer the question of my noble friend Lord Grocott: what happens if the two Houses disagree? But I know that I would not want to be the Minister steering this through its final stages without robust legal certainty. So our advice is not to leave this until we are actively giving serious consideration to the draft withdrawal agreement, when our concentration will be on that. Let us set up a parliamentary route as to how the Houses will vote when our concentration will be on that. Let us set up a parliamentary route as to how the Houses will vote, with no legislative back-up.

Meanwhile, a helpful Politico survey of the wish list of each of the 27 showed, for example, Austria putting the rights of its 25,000 citizens here as the top priority, as did Bulgaria for its 60,000 citizens. The future of 80,000 Latvians is key to their Government’s Brexit strategy. It is the first item for Romania, for Slovakia with its 75,000 Slovaks and for Lithuania’s 200,000 citizens, who are 8% of its population. Budapest wants a mechanism that would give automaticity to renewing the work permits of Hungarians while Warsaw’s main concern—admittedly, alongside money—is the 800,000 Poles. Even in Spain, where alone among the 27, more Brits live there than its citizens live here, Madrid favours a quick reciprocal deal.

Evidence that we take these issues seriously will help our negotiations—not if forced by a vote in the House but rather as a willing gesture from the Government. How much better it would be as a signal to those 27, and to provide comfort to the 3 million, for the Government to accept our request, which is simply to report back on how the issue is unfolding.

The Motion in the name of my noble friend Lady Smith seeks to get the Government off a bit of a hook. It was Mrs May who promised a vote at the end of the process but with little thought, it appears, as to its legal status. Our amendment, moved so effectively by the noble Lord, Lord Pannick, had a majority of 98 but with 634 Peers voting—the highest ever in any Division in your Lordships’ House throughout its long history. The Government should have heeded that but it was overturned in the Commons, on the grounds that it was not a matter that needs to be in the Bill. Perhaps not, but it is a matter for now because without legal clarity we risk being in a difficult position in 18 months’ time when the promised vote comes before us in both Houses.

Neither Motion this evening requires any new government position. We are taking the Government’s policy on both issues. In her letter to Donald Tusk, Theresa May wrote that,

“we should aim to strike an early agreement about”.

EU citizens’ rights. It was also her decision that there would be a vote in both Houses on the outcome of the negotiation. We seek simply to ensure that this House,
and in one case also the Commons, is involved in the discussion of how the Government implement their stated plans. I beg to move.

Viscount Hailsham (Con): My Lords, I rise in support of both Motions. I very much hope that they will prove acceptable to my noble friend on the Front Bench and if he is able to accept them, or at least not oppose them, I will be very grateful to him.

I want to make two brief points as to the first Motion. First, as drafted, the Motion before your Lordships' House does not address the position of UK citizens in European Union countries. That clearly needs to be addressed—I am sure that it will be—and the Government need to be overt about that. Secondly, the obligation to report does not extend beyond the end of this Session. While I am not in possession of any privy information, I suspect that will come quite soon. I therefore hope that with regard to the first Motion, the Government will treat it as an obligation to report as regards UK citizens abroad as well as EU citizens here and that the obligation will extend on a continuing basis beyond the end of the Session.

I now turn to the second Motion. I agree with what the noble Baroness said, but perhaps the House will forgive me if I remind it of what I said about the referendum because it is relevant to this Motion. I never believed that the referendum was an authority to leave the EU, whatever the terms, whatever the outcome, whatever the prejudice. I think it was an instruction to the Government to negotiate the best terms that could be secured for withdrawal and then to come back. The question that then arises is: who makes the decision about the desirability of the outcome, whether there is an agreement or no agreement? In a representative democracy, the answer to that question has to be Parliament and nowhere else—not the Government, but Parliament. This matter was debated very fully in Committee and on Report. The noble Lord, Lord Pannick, made a very distinguished contribution to the debate. In that debate, very proper questions were highlighted, most notably regarding the relationship between the two Houses and, perhaps more importantly, how the primacy of the House of Commons could be entrenched. A proper Joint Committee of the kind proposed by the noble Baroness is precisely the way to address these kinds of questions.

I shall identify just two questions for further reflection. What would happen if, in the opinion of Parliament, remaining in the European Union was preferable to leaving, whether because of an inadequate agreement or because of no agreement? That question has to be addressed because it may happen, and we need to ask ourselves what will happen if Parliament is of that view. The second question overlaps, but it is different. What happens if Parliament senses that there is a real shift in public opinion in favour of remaining within the European Union? That is also a possibility. I very much hope that the Select Committee will address it because if there has been a serious shift in public opinion in favour of remaining in the European Union, we must have a second referendum. That needs to be addressed by the Committee.

I support these two Motions. I very much hope that your Lordships accept them and that my noble friend does not oppose them, and I hope that the Joint Committee may consider addressing some of the questions which I have taken the liberty of identifying.

Lord Oates (LD): My Lords, I support the Motions tabled by the noble Baronesses, Lady Hayter and Lady Smith, because I support any attempt to raise the critical issues that they highlight. I would have preferred to insist on the amendments on these matters during the passage of the Brexit Bill because that would have underlined how seriously we took them—but we are where we are and I am pleased that at least we have another opportunity to highlight these two crucial issues.

The first is the nature of the vote that will happen at the end of the negotiating process. As Liberal Democrats, we believe that the final terms should be subject to the agreement of the public—not least because so many of the commitments made during the referendum campaign have been broken. I agree with the noble Viscount, Lord Hailsham, that if Parliament were to decide that we could not leave on the terms offered, there would have to be some way of consulting the public. To that extent I am sorry that the Motion of the noble Baroness, Lady Smith of Basildon, refers only to votes in Parliament—but I understand why, given the position of the Labour Party. I therefore support the Motion in the terms set out because a Joint Committee could play a very useful role in casting light on how to go forward on this matter.

I also strongly support the Motion moved by the noble Baroness, Lady Hayter of Kentish Town, on the rights of EU and EEA citizens. Again I echo the noble Viscount, Lord Hailsham, in hoping that it can be taken to include UK citizens in the EU, because they are a critical part of our concerns. Nine months after the referendum campaign in which a categorical commitment was given by the official Vote Leave campaign that the rights of EU citizens in the UK would be guaranteed, millions of them are still living in anxiety and fear. It is a shame that noble Lords of the Brexit persuasion who often sit on the Privy Council Bench are not in their place, because it is important to remember just how categorical the statement was. The campaign stated:

“There will be no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be guaranteed indefinite leave to remain in the UK and will be treated no less favourably than they are at present”.

That was the guarantee given by the official Leave campaign. The failure of the Government and, in particular, the Brexit Ministers who supported Vote Leave, to honour an undertaking that they made should be a matter of the deepest shame to each and every one of them. It is therefore important that the Government tell us what they are doing in this respect. This betrayal is causing misery to millions of EU citizens in our country. Not only that, the failure of the Government to take the moral lead suggested by the noble Lord, Lord Cormack, months ago is compounding the anxiety of UK citizens in the EU, who had fervently urged the Government to make a unilateral guarantee as the most effective means to
[LORD OATES]

protect their rights. Instead, the lives of all these people are about to become enmeshed in the negotiating process, which could go on for who knows how long. These are the circumstances that the House of Commons Exiting the European Union Committee described as “unconscionable” — and it seems that they are rapidly coming to pass.

Notwithstanding the opposition of the Government to the cross-party amendment passed in this House, I hoped that they might have used the triggering of Article 50 as an opportunity to take a moral lead and announce a unilateral guarantee to EU citizens in accordance with the unanimous recommendations of your Lordships’ EU Justice Sub-Committee and the House of Commons Exiting the European Union Committee. I admit that it was a slim hope, but it has been dashed.

In the absence of that sort of announcement, I hope that the Minister can answer a number of key questions either today or when he reports back under the terms of the Motion. First, even if the Government refuse to grant rights unilaterally to EU citizens, as I and many people in all parties and on both the remain and the leave sides of the argument believe they should, why will they not set out the rights that they intend to grant if such rights are reciprocated? That would go a long way to reassure people — both EU citizens here and British citizens in the EU — about their intentions.

Secondly, do the Government intend to establish a fast-track process to ensure that the granting of such rights can be effectively and efficiently administered? As Committees of this House and elsewhere have pointed out, the indefinite leave to remain system simply could not do it. Finally, will the Minister take this opportunity to state from the Dispatch Box that no EU or EEA citizen resident in the UK will be denied the right to remain in the UK on the basis of a requirement to produce evidence of comprehensive sickness insurance — something many EU citizens were unaware was required or, if they knew it was required, understood, as does the EU Commission, that the requirement was met by their right to access treatment under the NHS?

I hope that the Minister will address those issues today, in contrast to the Government’s failure to do so during the Brexit Bill. If he did so, he would allay the fear of many of us that the Government in fact have no plan at all, and that the couple of derisory paragraphs included in the White Paper on the issue of citizens’ rights were less a calculated insult to the millions of people whose lives are being thrown into turmoil by the Brexit vote than an admission that the Government have no real idea of what they intend.

I support both resolutions today. While the resolutions in themselves cannot produce results — that is for the Government — they are important because they again give a voice to these issues. We can only hope that at some point the Government will listen and, on the issue of EU citizens, do the right thing.

7 pm

Lord Kerr of Kinlochard (CB): My Lords, I support both Motions. On the first Motion from the noble Baroness, Lady Hayter, I can be very brief. I will start with a quote:

“I think it is absolutely right to issue the strongest possible reassurance to EU nationals in this country, not just for moral or humanitarian reasons, but for very, very sound economic reasons as well. They are welcomed, they are necessary, they are a vital part of our society, and I will passionately support this motion tonight.”

[Official Report, Commons, 6/7/16, col. 939]

That was said by Boris Johnson. The Motion he was passionately supporting asked the Government to “commit today that EU nationals living in the UK shall have the right to remain”.

He was right, for once. I worry that by letting this question get tied up in the negotiation we risk to years of uncertainty for both sets of people — their nationals here and our nationals there.

The European Council’s draft guidelines say:

“Negotiations under Article 50 ... will be conducted as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately”.

That is ominous. Yes, President Tusk and Monsieur Barnier have picked out citizens’ rights as a priority first-phase issue, and, yes, the Prime Minister suggested aiming to strike an early agreement. But it could still be held up behind other first-phase issues such as the money issue — settling the bills — on which negotiations will inevitably be protracted and unpleasant. It is a serious sequencing error to let a win/win common-interest negotiation be held up by a win/lose, zero-sum negotiation — but it could happen.

It could also still be averted — even now — if, before 29 April, before the European Council approves these guidelines, the Government were to do the decent, moral and economically sensible thing, as recommended by the Foreign Secretary on 6 July last year. The Government should be announcing now that those non-UK EU citizens living here will retain the right to do so, and that we expect our partners to follow suit. My answer to the noble Viscount, Lord Hailsham, is that they would. It is a win/win, and our partners see that, too. We should take the issue off the table right now.

On the second Motion, from the noble Baroness, Lady Smith, my particular concern about the amendment that we passed by such a large majority, and which the Commons rejected, was the risk that there would be no deal. My concern was that the Government have as yet given absolutely no commitment, oral or written, that in the event of no deal there would be a meaningful vote in the House of Commons. Indeed, the last time we addressed this question, last week, the noble Lord, Lord Bridges, appeared to be saying that there would be no vote because there would be no deal to vote on. A situation in which there was no deal would be the situation in which we would most need to have a vote.

In the last week, I think the risk of no deal has grown slightly. I had put it at about 30% and it is probably now a little higher than that — not because of Gibraltar and silly interventions from here; not because of the reference to Gibraltar in the European Council
draft guidelines, which was absolutely predictable; not because of the absence of any reference to it in the Prime Minister’s letter, since any reference would not have made the slightest difference, so that criticism of her letter is invalid; nor even because of the unfortunate perception that her letter contained a threat to withdraw co-operation against crime and terrorism if we failed to get a good deal on trade. Any such threat would have been seriously counterproductive and would have suggested a dangerously transactional approach to questions of security—but I believe our partners accept that the drafting infelicity was unintentional.

The reason for my concern is a bigger one: the mismatch between the Prime Minister’s bland assertion in her Statement last Wednesday that there would be a phased process of implementation and her insistence that in two years’ time: “We will take control of our own laws and bring an end to the jurisdiction of the European Court of Justice in Britain.”—[Official Report, Commons, 29/3/17; col. 252.]

Unsurprisingly, the draft European Council guidelines state:

“Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply”.

I do not find anything surprising in that; it is what I would have expected the European Council to be advised to agree, and what it will agree. But it means that, in the transition or implementation phase, the ECJ’s writ will still run in this country—and, presumably, that the European Union’s resistance to our cherry-picking of the acquis would apply to an interim phase just as much as to a permanent position. So, despite the great repeal Bill and despite losing our votes in the Council and the Parliament, we would still be applying all EU laws during the transitional phase. That is not exactly what Mr Davis told the other place and is quite a climbdown from Mrs May. Therefore, the risk of the Government walking out has grown.

That is why it really is troubling that the Government are giving no commitment to a meaningful vote in the Commons in the event that the Government decide to throw in the towel and walk out with no deal or no transition deal. With all due respect to the Prime Minister, “No deal is better than a bad deal” is plain wrong, and Mr Johnson was wrong to say that to leave with no deal would be “perfectly okay”. The Commons Brexit committee’s report, the CBI and the IoD are all correct in saying that no deal would be a disaster. If the Government were to head for the cliff edge, Parliament must be given the chance to require them to think again—to seek an extension of the negotiations or to consult the country. That is the principal reason why I strongly support the Motion from the noble Baroness, Lady Smith. Parliament needs to work out how best to ensure that it gets its say on the emerging outcome of the negotiations, particularly if it does not match Mrs May’s aspirations, and particularly if the outcome is no deal—and Parliament needs to work out how to do so in good time, before the die is cast.

Lord Campbell-Savours (Lab): My Lords, I shall be brief. I have a simple question for the Minister: what happens if there is a blockage in the negotiations on these matters in the wider European Union? In principle, is it possible for the UK to enter into bilateral agreements with 27 individual nation states offering rights to national residency in the UK in return for reciprocal rights for UK citizens living in the Union? The advantage of bilaterals if we hit a stalemate would be that any state opposing such concessions at the time of final settlement of these matters could find their own citizens’ rights in the UK in jeopardy and subject to review. It would have the effect of moving the debate to the capitals of obstructive states in the circumstances of a blockage in the negotiations. I wonder if the Minister might be able to help us with that very simple question.

Lord Cormack (Con): My Lords, like the proverbial Irishman, I would not have started from here. We have to be careful that we do not continually refight the same battles, but that does not mean that we cannot repeatedly restate the same principles.

I remain of the same view that I did the day after the referendum, 24 June last year. I deeply regret the result, and I thought that the first and most positive thing that we could and should do would be to guarantee the rights of EU nationals in this country—I was a week ahead of Boris Johnson. We would have taken the moral high ground; we would have lost nothing; we would have made an extremely important gesture, which I believe would have been reciprocated. My noble friend Lord Bridges, who will be replying to this debate, knows very well that that has been my view throughout, and I have repeated it in this Chamber on a number of occasions.

However, as someone said a few moments ago, we are where we are. What is now crucial—my noble friend Lord Hailsham made this point—is to ensure that we guarantee as soon as possible the right of EU nationals. I am confident that there would be reciprocation. We do not want to let this drag on for two years.

Uncertainty was referred to by the noble Baroness, Lady Hayter, in her admirable opening speech. We all know from our personal lives that nothing is more mentally debilitating than uncertainty. Whether it is concern over a loved one with illness or over a job, if we have uncertainty, we cannot plan ahead, look forward with confidence or aspire. Every human being has the human right to all those things. I very much hope that, when my noble friend comes to wind up, he will be able not only to state his personal agreement but to say that the Government will indeed report back to Parliament and that he will do all in his power—I am sure that he has great negotiating skills—to bring this uncertainty for 3 million human beings in our country to an early and a hopeful end.

I also find myself in agreement with the Motion spoken to persuasively by the noble Baroness, Lady Hayter. We have said these things before in innumerable debates, but the cry from those who did not think that they would win, but did, was, “We want to take back control”. Control where? In a parliamentary democracy, control can lie in only one place, and that is Parliament—particularly in the House which has supreme power, the elected House, but, to a degree, in your Lordships’ House, too.

We must never forget that the single, cardinal principle of our democracy is that government is accountable to Parliament, and Parliament is accountable to the
electorate. It is crucial that we have not only discursive debates—which, in a sense, is what we are having tonight—but debates with real purpose and real votes at the end of them. That is not because I want in any way to circumscribe the freedom of those who will be negotiating on our behalf, but because I want them to be answerable to us and, particularly, to the other place.

7.15 pm

It is a good idea that there be a Joint Committee; there are many precedents. One thing that has disappointed me in the more than six years that I have been in your Lordships’ House is that there is not more co-operation between the two Houses. I sat on one or two Joint Committees myself when I was in the other place. I felt that they were good to have but that there were not enough of them. In the most important journey that our nation has taken since the war, where we do not yet have an agreed destination, still less a route map to get us there, it is crucial that we work with our colleagues in the other place. I believe that this suggestion is both practical and sensible, and I very much hope that it will be adopted.

I conclude on another note. During recent debates and exchanges on the Floor of your Lordships’ House, there has been a degree of fractiousness that is not typical of our debates. It is understandable, because those who won have become, if I may say so, increasingly triumphalist, and those of us who lost have perhaps become increasingly disappointed. We have to try to put that disappointment behind us for the sake of our country, which has known greater perils in the past and has come through them. I think it is incumbent on each and every one of us to try to temper our language and not indulge in inflammatory rhetoric of any sort, but to know that we should have one common aim and purpose. That is to ensure that our country, when all this negotiating is over, is not in an appreciably worse and weaker position than it is at the moment.

There is a real danger of that. I do not think that many of those on the leave side— I talk to a lot of them—that there would be quite so much to unravel. Certainly, outside your Lordships’ House and in the country, many of those I have talked to in my native county of Lincolnshire and the county that I had the honour of representing for 40 years in the other place, Staffordshire, did not realise how much had to be undone. The unpicking of almost half a century of history while ensuring that we do not go back is incredibly difficult.

I have the honour to sit on the Home Affairs Sub-Committee of the EU Committee of your Lordships’ House. We have recently been taking evidence on the European arrest warrant. What becomes increasingly obvious from our sessions is that the whole struggle is to try to maintain a sort of status quo.

We are beginning a long journey. I hope that we can be together on this, and I congratulate the noble Baroness on introducing the Motion tonight.

Lord Taverne (LD): My Lords, I start by thanking the Library for its most helpful analysis of the issues and arguments we are discussing today.

I believe that few things can be more important than the proposed task of the Joint Committee to clarify the options for the promised vote in Parliament on the outcome of the negotiations. At the moment, I submit, the offered choice is meaningless. What are the possible outcomes?

The Government are confident that they will establish a new relationship with the EU which retains for us the benefits of the single market and the customs union but without remaining members of either, without commitment to the freedom of the movement of labour, without continuing to make the present level of contributions to the European budget and without accepting the jurisdiction of the European Court of Justice. With great respect to the Prime Minister, this is perhaps a somewhat overoptimistic scenario. There have been no suggestions from the 27 that they are willing to make any such concessions to a non-member, granting us a special status far more favourable than that granted to any other nation.

Of course, if the Government did succeed in negotiating such a new relationship, Parliament would no doubt be very willing to accept the deal. But if they did not succeed, outside the customs union and the single market, our exporters would face tariff and non-tariff barriers and the high costs and delays of border controls. Our service industry would lose its rights to operate in Europe and we would be bound by regulations in whose formulation we would have no say. In fact, we would be no better off than if there were no deal.

What would Parliament then vote for? It could accept the bad deal, I suppose, because it said that the vote of the people in the referendum must still be obeyed. It could reject the deal and tell the Government to go back and negotiate a better one— some hope. In practice, the choice on offer would be meaningless. Rejecting a bad deal means no deal—WTO terms.

The real alternative would be to withdraw the Article 50 notice, as the noble Lord, Lord Kerr, and indeed, Mr Jean-Claude Piris, the former head of the legal services to the European Council, have told us we are perfectly entitled to do. The Article 50 notice is of an intention to leave. An intention is not a decision. Only the member state can decide to give the notice and therefore only the member state can decide whether to withdraw it. That seems a very convincing argument. But remain is not an option that the Government will allow. Some time ago, Donald Tusk told us that the final choice would be between a hard Brexit and remain. I think he was right.

But the option of remain is not available at present. Now, the anti-European wing of the Conservative Party, including several very distinguished Members of this House, are all for hard breakfast—I mean Brexit. They are not worrying about Parliament having no choice. They favour the WTO route because they predict that, once we have cast off the shackles of the European Union, we can exploit a glorious bonanza of free trade deals with the rest of the world. They may be right: there has never been a more uncertain time.

But it seems at least as likely that we are now in the calm before a storm, that in the Trump era of “America first” the world is likely to be one of protectionism,
The Prime Minister’s welcome assurance to President Tusk, that, “We should always put our citizens first”, will, I hope, as she stated, act as a guiding principle in the negotiations and the legislative programme stemming from the repeal Bill. I hope, too, that this principle will embrace the rights that our citizens enjoy—broader human, equality and environmental rights as well as employment rights to which the Government have committed to safeguarding.

As we have already heard, the first Motion concerns the rights of our fellow EU citizens who have made the UK their home, and also has implications for UK citizens living elsewhere in the EU. We know from the many emails we have received how insecure they now feel and also how insecure many of their loved ones who are British citizens feel. We have heard from my noble friend Lady Hayter and the noble Lord, Lord Cormack, what it means to have that sense of insecurity.

7.30 pm

As well as insecurity about their future, there is another aspect, which I do not think was mentioned during the debates on the relevant amendments to the Article 50 Bill but which was raised by the EU Committee’s excellent report on acquired rights. The committee expressed the fear that, “Question marks about the rights of EU nationals to live in the UK may be fuelling xenophobic sentiment”.

So long as this uncertainty about their status remains, the danger is that they are seen as second-class citizens—the foreign other—rather than as our fellow workers and neighbours, contributing to this country. It is therefore right and proper that resolution of their situation is a priority in the negotiations, and I hope that the first Motion will be accepted as supportive of the Government’s own goal in achieving this.

It has been suggested that the xenophobia unleashed by the referendum result arose in part from the threat that some people have felt to their identity in the face of rapid EU migration in some areas of the country. As I said at Second Reading of the Article 50 Bill, I and many others have felt the loss of European citizenship as a blow to our identity. Since then, there has been talk of some form of associate European citizenship which would, at the very least, enable us to still call ourselves European citizens if we so wish and to move freely within the EU, with appropriate rights for EU citizens wanting to visit the UK. This has been proposed by Guy Verhofstadt, the European Parliament’s Brexit representative, and has been the subject of a new European citizens’ initiative. The President of the European Commission has said that he has not shut the door to the idea. I hope that our Government will, likewise, keep an open mind. Would it not represent a tangible expression of the “deep and special partnership”, to which the Prime Minister and Brexit Secretary have frequently referred in recent days? I would welcome the Minister’s thoughts on this idea.

Last week, the Brexit Minister stated on the “Today” programme that he sees it as a “moral duty” to give EU citizens in the UK certainty and to take away any anxiety they have about their situation. I hope and trust that the Government will accept this Motion in recognition of that moral duty.
Baroness Smith of Newnham (LD): My Lords, it is frequently suggested that any noble Lord who starts a speech with, “I shall be brief”, will drone on for many minutes. However, I do propose to be brief in speaking in favour of the Motion proposed by the noble Baroness, Lady Hayter. As the noble Lord, Lord Cormack, said earlier, so much has already been said and we should not keep refighting the same battles. I therefore have just one question for the Minister. On more than one occasion during the passage of the EU withdrawal Bill, the noble Baroness, Lady Symons, and I said that the nature of EU negotiations is that nothing is agreed until everything is agreed. That is what the European Union has now said. In light of last week’s statement from the EU—not just from people like me—how do Her Majesty’s Government envisage giving certainty to EU nationals who are currently resident in the United Kingdom? The Prime Minister’s frequently stated hope is that the issue can be dealt with early on in the procedure but it is absolutely clear that this is not going to happen if everything has to be agreed at the end. Another two years of uncertainty is clearly wrong.

Lord Lea of Crondall (Lab): My Lords, the noble Baroness, Lady Smith of Newnham, has raised a key question for the Minister to respond to. The principle of nothing being agreed until everything is agreed is now questionable. There is a contradiction on the reciprocity and simultaneity of citizenship and rights in a document to which Mr Tusk and Mr Barnier are both party. Paragraph 2 states that, “nothing is agreed until everything is agreed”, but paragraph 8 states that:

“Agreeing reciprocal guarantees to settle the status and situations at the date of withdrawal of EU and UK citizens, and their families, affected by the United Kingdom’s withdrawal from the Union will be a matter of priority for the negotiations”.

On the issue of process, one has to conclude that there is confusion about the timescale, not only in the British Government but also—dare I say it—in Brussels. If there is confusion in Brussels, do we write a public letter saying, “Your statement says x, y, z; we say a, b, c”? Is there a protocol that has not been agreed about how these negotiations must be conducted in secret? You cannot have things being agreed ad hoc without some clarity and transparency so that we can all have a look at them. I agree with both Motions, but it is not just a question of nothing happening until the end of two years. I agree with the noble Baroness, Lady Smith of Newnham, who made the same point.

Lord Judd (Lab): My Lords, two issues have concerned me throughout recent developments. The first is that this is not a hypothetical or theoretical question. Already in industry, commerce, the university world and other aspects of life, planning is being disrupted by uncertainty about the future availability of personnel. There is an urgent, administrative, economic reason to resolve this issue. Secondly, I am disturbed because, in the very good secondary education which I was fortunate to have, I came to understand the importance of citizenship in a modern civilised society. Many people who have established themselves in this country and who saw a future for themselves and their family here have been sustained by the concept that they had European citizenship. Speaking with knowledge from my own family, people who went to live or establish themselves elsewhere in the European Union had the same concept of citizenship. By our unilateral action in removing ourselves from the European Community we are depriving these people of citizenship. According to the education which I was privileged to receive, that is a very serious matter indeed. On those grounds it is, therefore, essential to resolve this issue rapidly.

In his very good speech, the noble Lord, Lord Cormack, put the issue of the arrangements very well. We were being told constantly that there was going to be a return of power to our own society. But in our society power lies in Parliament. As he said, Ministers are accountable to Parliament and Parliament is accountable to the people. It therefore behoves us to make it very clear and certain—not least to ourselves—what the procedures will be by which we thoroughly review progress. It is not just a case of saying, “We should review progress and we have to have some arrangements”. We have to have very clear arrangements for how we will review progress.

I have been around in Parliament now, in one way or another, for 39 years. There is a way in which we, as it were, adopt a procedure which will satisfy us, our consciences and our approach to the public that we have a procedure. I say to all my colleagues—to my friends on both sides of the House—that we are not playing games. If we have this procedure, we must take it very seriously indeed. We must not have a situation in which debate is rushed, truncated or rationed. There has to be an opportunity to debate and deliberate fully so that we can reassure the public on these matters. I am absolutely certain that if we are to be a parliamentary democracy—I sometimes wonder about this—we have no alternative than the resolutions that are put before us.

There is another thing which I know does not go down well with a lot of people. I totally accept that we in Parliament framed the arrangements for the referendum. I know that we had no threshold of our own volition, but I find it very difficult when I am constantly being told that the will of the people has been expressed. I do not know what this means. A majority voted in favour of the broad position, but there was certainly not a majority of the electorate positively in favour of this position. I am not suggesting that we do other than accept what we did, and we have to live with the results. Having said that, it seems to me to increase even more the moral and legal responsibility of Parliament to look to the interests of the whole population in evaluating what is proposed in the negotiations. It is not just a case of the interests of the people who won the referendum but the interests of the whole people. We have that responsibility.

Lord Berkeley of Knighton (CB): My Lords, my first point echoes nicely the noble Lord, Lord Judd, in that a prime example of the uncertainty facing EU nationals is to be found in the world of music and other artistic institutions and places of learning. Many professional and visiting professional posts are filled, vitally, by artists from the EU. They enrich our lives immeasurably. Indeed, this artistic intercourse—it is true of the world of science too—is absolutely vital to intellectual exchange, innovation and excellence. I understand that
the Minister will not be able to unravel this this evening, he will be glad to hear me say. However, like the noble Lord, Lord Judd, I would be grateful if the Government placed high in their priorities the concept of giving some kind of lead to our great institutions of learning, so that they can fill these professorial posts with people of the quality that our country needs and deserves.

Baroness Wheatcroft (Con): My Lords—

Noble Lords: Lord Rooker!

Lord Rooker (Lab): No, it is the turn of the Conservatives.

7.45 pm

Baroness Wheatcroft: I thank the noble Lord. We are a very friendly Brexit club here.

I speak in support of both these Motions, which seem to me very moderate and reasonable. I know that my noble friend Lord Bridges is a very reasonable and moderate man and I hope that he will have no difficulty accepting them. However, perhaps it will encourage him a little more to know that, as regards the first Motion, my postbag has been full of letters and emails from UK citizens resident in Europe. They unanimously do not want to be used as bargaining chips. They want us to do the decent thing and to do it now because they know the damaging uncertainty that they are going through, and they would like people who come to the UK not to have to cope with that uncertainty. The wonderful thing is that this would also be enlightened self-interest on our part because, as even the Minister for leaving the EU has said, we need these people to stay. Already that is less attractive for them than it was, not just because of the changed climate but because of what Brexit has done to the pound. Those who want to send money back to the countries they come from are already finding that that is much tougher than it was. In the agriculture industry, for instance, wages are already having to go up, and food prices will therefore go up too. Therefore, we should do the decent thing, do it quickly and keep those people we need living here.

Secondly, having a Joint Committee is a very sensible thing to do. We need to be clear about what the vote is and when it is. A vote simply on the proposition, “Accept this deal or we are out of Europe without a deal” would be a travesty of parliamentary democracy and certainly would not amount to taking back control. I wonder whether the Select Committee might look at what we need to know before it is possible to vote on any deal, or no deal. Perhaps the Minister could tell us, for instance, when we might be clearer about what the border in Ireland might be, because for the people living in Ireland there is as much uncertainty as there is for EU citizens living in the UK.

Lord Rooker: My Lords, I support both the Motions but want to address the second one, or what is behind it: in other words, the role of Parliament.

I have much in common with the Minister. I was a remainder and I accept the vote count of 23 June. Indeed, there are not really two sides anymore but the language of contest is still used. It is because I am a democrat that I accept the vote count and it is because I am a democrat that I accept the rule of law. Parliament is sovereign, not the Government, and it is Parliament’s role to protect the rule of law. As such, it has to be Parliament’s role to consider and judge the terms of fundamental changes to our way of life. Governments come and go via Parliament, or in this case through an ill-thought-out advisory referendum held for more purposes than just to remain or leave the EU.

It is in my view more important to protect Parliament than the Government. A Joint Committee would help considerably in this respect. In fact, the Supreme Court case in some ways helped in respect of protecting the rule of law, and at some point will probably need to do so again. When the people voted on 23 June, it was simple—leave or remain. They knew that the Government’s view was to remain, as set out in the booklet sent to every home in the country. They knew then that the Government had abandoned the idea of an advisory referendum and that the decision would be implemented. They also knew that there was a set of rules around the decision, to the extent, for example, that it was not the Government who drafted the question but the Electoral Commission. They knew that there were rules about the funding of the two strands of opinion. Parliament had set out those rules so there was confidence. However, in the last couple of months, any informed person has to be concerned by the extensive reporting by Carole Cadwalladr in the Observer of 26 February and 2 April, to refer to just two of the very long articles. I have never met nor had contact with Ms Cadwalladr; but I contacted the Electoral Commission in February following the first of the three-page articles and received this response on 8 March:

“I can confirm the Electoral Commission has begun an assessment in respect of Leave.EU’s spending return at the EU Referendum to determine whether or not there are potential offences under the law that require investigation. Our assessment is focused on whether any donation—including services—was made by Cambridge Analytica or Goddard Gunster to Leave.EU; whether those donations, if any, were from a permissible source and whether Leave.EU spending return was complete. Given the high public interest in the returns submitted by campaigners, the Commission will announce the outcome of its assessment in due course”.

I suspect that that response will be made public to others.

Accepting the vote count of 23 June, therefore, we need Parliament to play a key role, as via these proposed Motions. There must be concern that the major donor to Leave.EU is now quoted as saying:

“I don’t give a monkey’s what the Electoral Commission says”,

and:

“We were ... cleverer than the regulators and the politicians. Of course we were”.

To me, that is an admission of “cheating”—that they were cleverer than the regulator, the Electoral Commission. The self-confessed cheat Mr Banks is planning to unseat “bad MPs”, via an unregistered organisation. Therefore, Parliament itself is now under threat from dark money, as we have not yet passed the legislation introducing unexplained wealth orders—I suspect that he will be the first candidate for one of those.

Passing these two Motions will send a signal to those who threaten democracy with secret funds and by cheating election regulators. Indeed, it is a wake-up
call which, if we fail to answer it, will put Parliament, not the Government, in peril. When I hear a Brexit extremist raise these concerns, I will know the battle of the referendum is over and the battle for Parliament has begun.

Lord Bilimoria (CB): My Lords, following the noble Lord, Lord Rooker, the important part about these two Motions is that they say that once again, Parliament should be at the heart of everything. Let us not forget that straight after the referendum, the Prime Minister and the Government wanted to bypass Parliament altogether.

On so-called independence day, 29 March, I was on a radio programme following Nigel Farage and Alex Salmond battling it out. Nigel Farage said, “This is independence day—the day we got our country back”. We never lost our country. Philip Hammond said that, “we can’t cherry pick. We can’t have our cake and eat it”. The irony is that we had our cake and were able to eat it too—we had the best of both worlds.

What nobody mentions, and people overlook, is: why the promised rush into triggering Article 50 by 31 March of this year? It is a self-imposed deadline. The answer is very simple: the Prime Minister wants this two-year process to be over, to put it to bed so that she can go into the next election and get re-elected. In every other way, this timing is madness. We have the French and German elections coming up, and we will lose six months of these two years when Europe will be completely distracted. Why rush into it now and try to bypass Parliament altogether?

If you look at the letter that was written, it very clearly admits how complex these negotiations will be. I believe that the letter also shows that the British people have been completely misled. The Conservative Party manifesto very clearly stated that staying in the single market was a priority. Now the Prime Minister, from her Lancaster House speech and then on 29 March, has said that we will not stay in the single market. Had the British people known this and been told this by the leave campaign, many would not have voted to leave. In fact, if British businesses—small, medium and large—had been told, “You vote to leave and you will be leaving the single market”, they would not have done.

What about these 3 million people and their rights? What about the fact that our unemployment is less than 5%—what would we do without these 3 million people? We would have a labour shortage in this country. We are up against it. We need Parliament to be involved because this is not a balanced negotiation. We are one against 27, against the European Commission, against the European Council, and against the European Parliament. Therefore, getting this done in two years, with the bureaucracy that exists in Europe, and dealing with all these countries, will be very difficult.

What about the rights of these European Union nationals? How many of them are there? By the way, on this figure of 3.2 million, we do not know the exact figure. Why? I came back from a short visit to India this morning and came through the passport checks. You scan your passport when you come into the country, but when you leave this country, nobody checks your passport. Every single passport, European Union or not, should be scanned in and scanned out. Then we would know who is in this country, and these European Union citizens, for example, would be able to say, “I’ve stayed here for five years—I’ve got the right to stay regardless”. Why will the Government not bring in those visible extra checks? That would give us security over our borders—and we are not in Schengen.

Now we have the European Union’s chief Brexit negotiator, Michel Barnier, saying that he has told a delegation of EU citizens that he wants to have an agreement in principle to secure the future of EU citizens in the UK and UK citizens throughout Europe by the end of the year. However, he had to admit that it would be late 2018 before he could strike a deal with the UK. Can the Minister tell us why we cannot do this quicker?

We hear that record numbers of EU citizens quit working in the NHS last year. Can he confirm that? As we have heard before, EU nationals are being denied mortgages because of this. The Institute of Directors said just yesterday, very clearly, that a guarantee for EU citizens after Brexit would reduce uncertainty for IoD members. Allie Renison of the IoD said: “Just under 40 per cent of our members employ EU nationals. You’d be surprised about the amount of nervousness that is genuinely giving to a lot of these employees”.

This is a human issue.

The House of Commons Exiting the European Union Committee has not been spoken about much here. Its report has just been released, in which it said: “Sadiq Khan told us that uncertainty over the rights of one million Londoners who are EU citizens is feeding into uncertainty in business recruitment”.

The committee clearly said: “The status of EU nationals in the UK and UK nationals living elsewhere in the EU cannot be left unresolved until the end of the two-year period for negotiations”.

It urges the Government to sort this out now and says: “We note that, to date, Ministers have not taken this step. The debate around whether ’no deal is better than a bad deal’ has focussed on the trade aspects of the future relationship. If the negotiations were to end prematurely without an agreement on rights for the 4 million, this could put them in an uncertain position”.

The committee’s recommendation is very clear. There should be, “a stand-alone and separate deal which is otherwise not dependent on any other exit or future trade deal being agreed to between the parties”.

Will the Minister agree with this?

I conclude with the whole concept of “no deal is better than a bad deal”. This is absolutely ridiculous. It is now clear that the Government have said that it is unsubstantiated—they have not even done the homework. Looking at the report prepared by the Select Committee, there is such complexity: the timescale for reaching agreement, Gibraltar has suddenly come up, there is a potential exit payment, securing a free trade agreement, the customs union, free trade agreements with countries outside the European Union, and co-operating in the fight against crime and terrorism is now being used as a bargaining chip, which is hugely irresponsible. How can we as a country even think of doing that? There is also immigration and consultation with devolved
Administrations, we have the Scotland issue, the Northern Ireland border and the Republic of Ireland, and minimising disruption when we leave the EU.

Sir Simon Fraser has just said that transitional agreements will almost definitely be necessary. Once again, it is crucial that these two Motions be agreed. He has said clearly that we will reach a cliff edge. In fact, a number of EU diplomats have now said that the Government,

“fears the economy could be left in ‘havoc’ if Britain left without agreeing any preferential access”.

Does the Minister agree?

The noble Lord, Lord Kerr, spoke about Boris Johnson saying that it will be “perfectly okay” if we leave, and David Davis admitted that the Government had not assessed what “no deal” means. Michel Barnier—this is not fear-mongering—said that no deal would have, “severe consequences for our people and our economies. It would ... leave the UK worse off”.

I support these two Motions in the name of the noble BaronesSES, Lady Hayter and Lady Smith. The last point is about 16 and 17 year-olds who were not allowed to vote last year. By the time we come to 2019, these individuals will have the right to vote, and almost 100% of them will want to reverse this decision. People will be allowed to change their minds; the public might change their mind, having seen that the Brexiters’ emperor has no clothes. We are watching a train crash in slow motion.

8 pm

Lord Morris of Handsworth (Lab): My Lords, like other noble Lords, I support both Motions in the names of my noble friends Lady Smith and Lady Hayter. Like an overwhelming number of UK nationals, I am at heart a European and I care about all European citizens. To that end, I think that we have to confront what I call the “people issue”. We must do so as a matter of some urgency and stop treating UK and indeed EU citizens as bargaining chips.

The Prime Minister does not seem to understand that, just by saying that no deal is better than a bad deal, she has shattered the lives of thousands. That statement has created uncertainty and fear for thousands throughout the European Union on both sides of the debate, and her letter to Donald Tusk has not given them any confidence. Saying that we should, “aim to strike an early agreement about their rights”, does not fill anyone with any sense of confidence, or indeed suggest any urgency.

As well as affecting the lives of EU nationals here in Britain and British nationals in Europe—their jobs, their housing, their children’s schools, and their social and family lives—the uncertainty has started to impact on all of us. Two years might seem a very long time, but the reality is that time is not on our side.

Following the referendum, there began a trickle of EU nationals leaving their jobs and homes in the United Kingdom in fear of the future. That trickle has now become a flood. The Royal College of Nursing has reported a fall of 92% in the number of EU nationals registering as nurses in England since the referendum in June. It has blamed the haemorrhaging of foreign staff on the failure of the Government to provide EU nationals in the UK with any security about their future. Over 17,000 EU nationals in the NHS left in 2016, compared with 13,000 in 2015. Many were doctors and nurses. The Royal College of Physicians and the British Medical Association blamed the rise on the Prime Minister’s lack of assurances about the position of EU nationals resident in the UK.

A survey of members of the Food and Drink Federation at the end of last year found that their EU employees felt “unwanted and uncomfortable”. The Royal Institution of Chartered Surveyors says that the construction industry could lose more than 175,000 employees. It has cited projects that could be at risk, such as the HS2 rail link. The construction industry reports that its dependence on overseas workers could make it difficult to tackle Britain’s housing shortage if there were to be an exodus of EU workers. Although farmers have been able to recruit enough seasonal workers for this summer, whereas a job previously attracted 10 applicants, this year it attracted only three or, at the most, four. By delaying positive action now, some sectors of the economy will be heading for disaster because of a shortage of labour.

In the meantime, in mainland Europe British families are worried about possible retaliation at what may happen to EU nationals, and they fear for their homes and families outside the UK. For the Prime Minister, they may be no more than negotiating capital, but, for many Europeans, this is an issue that will determine the future life chances of individuals and families for generations to come.

In a recent debate, the Minister was robust in saying that EU citizens living in Britain could apply to stay. However, with due respect to the Minister, that statement was somewhat disingenuous. The Minister knows perfectly well that there is a qualitative difference between the right to apply and the right to stay. In his statement, he offered only the right to apply. Anyone has a right to apply, but it is the outcome which counts and which is important. I will not burden this House and this debate with the requirements of the right to apply. I say no more than the form is 85 pages long.

In my previous contribution on this issue, I said that this was not a political game: that people on both sides of the channel could not be left in limbo. We must urgently give an unequivocal guarantee to EU nationals that they and their families have a right to stay and ensure that reciprocal arrangements are made on behalf of British nationals throughout the EU.

The Prime Minister, in her letter to the President of the EU, had an opportunity to resolve the bilateral status of all the people affected by our departure—but she missed the opportunity. As we have seen over Gibraltar, it would appear that our Prime Minister now never misses an opportunity to miss an opportunity. But missing the opportunity is not without consequences. Already one section of the Tory party is saying that Spain should be treated in the same way as we dealt with the Falkland Islands. That cannot be on the agenda of this debate.
Lord Morris of Handsworth]  
So today I wholeheartedly support the proposal of my noble friend Lady Hayter to resolve that a Minister reports to this House at the end of this Session on progress towards securing what I call the “people issue”. I hope, for the sake of millions of our fellow Europeans, that when that report is made it will bring some comfort and, most importantly, security, and that they will be able to continue their lives in the country of their choice.

Viscount Waverley (CB): My Lords, I believe that the noble Baroness, Lady Hayter, has touched a raw nerve. I refer to a concern and, in doing so, declare that I fall into that bracket. I originally referred to this matter in the form of a Written Question on 4 July last, asking what steps the Government had taken, “to bring UK law into line with the European Court of Justice ruling C-127/08 on the implementation of Directive 2004/38/EC and the rights of non-EU spouses of EU citizens to move freely in the EU”.

The case concerned the ability of a Colombian lady to enter the United Kingdom with no visa impediment.

A response came through from government, in effect saying that United Kingdom law relating to the rights of EU nationals and their family members—this is the key point—to enter and reside in the UK is fully compliant with the decision of the ECJ, to which I referred earlier. I refer to this again as, while in no way doubting the Government, I am not actually sure that this is working in practice. Will the Minister, at his convenience, look at this and confirm that non-EU spouses and family are able to enter the UK without any condition?

Lord Hope of Craighead (CB): My Lords, I should like to say just a few words in support of the Motion in the name of the noble Baroness, Lady Smith of Basildon, to which the noble Baroness, Lady Hayter of Kentish Town, spoke.

I want to stress one word that comes towards the end of the Motion, and that is the word “before”. It is used in a phrase that sets out that among the matters to be looked at by the Joint Committee will be the taking of votes before any agreement is considered by the European Parliament. The timing is very important. The point is made in answer to points made on several occasions in our debates on the notification of withdrawal Bill, with reference to the curiously worded enactment already on our statute book, the Constitutional Reform and Governance Act.

At the end of the whole process, assuming that an agreement is reached and approved by the European Parliament, there will have been created by that agreement a treaty which we in Parliament will be required to ratify. It was suggested that that was enough to satisfy the constitutional requirements of approval by Parliament. The point that the noble Baroness are making, which is absolutely right, is that the time for Parliament to express its wishes is before the agreement is reached to be put before the European Parliament. It is too late once we are presented with a completed agreement in the form of a treaty that we are being asked simply to approve. So this Motion is very carefully worded and, in my respectful submission, very correctly worded to address that point. The issues must be considered before the agreement is handed over to the European Parliament.

The same point arises in regard to a point that is not mentioned in the Motion but which was very properly raised by the noble Baroness, Lady Hayter: the need for legal certainty. I touched on this at Second Reading and do not wish to repeat all that I said then. However, the point I made is that there is a need for parliamentary authority for the making of the agreement itself by the Prime Minister, because it is the Prime Minister who will eventually conclude the agreement on our behalf that is to be handed over to the European Parliament.

The guidance as to how one achieves legal certainty is to be found in the decision of the UK Supreme Court in the case of Miller. It does not need to be repeated, but that decision looked for legislative underpinning for the authority to enter into that agreement. Again, the timing is critical. That is required before the agreement is entered into and before it is handed over to the European Parliament. I stress the word “before” because it identifies a critical point in what will become, at the end of the process, a very important issue of timing, as one event follows another.

Perhaps it is a reason also to stress a point made by the noble Baroness, Lady Hayter, that the sooner legal certainty is achieved, the better. I suggest that the worst thing of all would be to leave the search for legal certainty until near the end of the process, when things will become more and more urgent. The sooner it is sorted out, and sorted out in the correct way, the better. Therefore, I support both Motions—but in particular the second because of its careful wording.

8.15 pm

Baroness Ludford (LD): My Lords, I note that the route of resolution is that chosen by the Opposition to “pursue in other ways” the interests of EU citizens and parliamentary control, rather than voting, as far as possible, those guarantees into legislation three weeks ago. These Benches were reproached by the Opposition on 13 March for falsely raising people’s hopes when we know that the Government will not change their mind. I respectfully point out that a section in an Act would have been more persuasive even than a resolution initiated by Her Majesty’s Opposition.

None the less, the cause of guarantees for EU and British citizens and their families is one for which I am more than ready once more to speak up. I concur wholeheartedly with the remarks of everyone who has spoken. In particular, the noble Lord, Lord Cormack, made a very effective point that there is nothing more mentally debilitating than uncertainty, as did the noble Baroness, Lady Wheatcroft, who said that a guarantee for EU citizens would be enlightened self-interest, as well as morally right.

The point has been very well made that EU migrants make a vital and positive economic and social contribution to the UK. That is indeed why Ministers have said over recent weeks that there will not be a reduction in EU workers in various major sectors of the economy, representing over one-third of EU nationals currently
employed. This is going to make life quite difficult for the Government as they try to square their Brexit promise of immigration cuts with the needs of the economy. I am confident that we will end with the continuation of a large amount of inward migration from the EU but without having the rights pertaining to membership of the single market, including the rights of EU citizens of free movement across the rest of the EU.

The economic realities ought, in all justice, to lead the Government to make life easier for EU free movers already here. The way to do that is to put their minds at rest. There are many months—maybe 18 months—before any Brexit deal becomes clearer or, worse, the cliff-edge scenario reappears. Every day of delay, every hour, perpetuates an economic and moral scandal for which there is no justification. A unilateral announcement by the Government that all rights of EU citizens, acquired and in the process of acquisition, would be guaranteed is essential.

It is unclear why the Home Office has been making life such a misery for applicants for proof—which they do not need—of permanent residence rights. However, it has been doing so, to the extent of rejecting people with the peremptory injunction “make arrangements to leave”. The infamous 85-page form and requirements that, in the words of one person, make acquiring Catholic sainthood look simple, have made life very difficult indeed.

The European Commission, as we know, takes the view that a requirement for so-called comprehensive sickness insurance is a breach of EU law for people who are entitled to use the National Health Service. Infringement proceedings are said to be ongoing and the Minister may wish to comment on that, but the practical question is why have the UK Government allowed EEA citizens to use the NHS continuously without ever once, until now, telling them that they needed to have, what has been interpreted as, in practice, private medical insurance? Many people have lived here for decades and the authorities have never asked them for it.

Let me quote from a student about the difficulties this raises. He writes that, “to avoid the risk of deportation I was forced to incur the expense of £50 per month for private medical coverage. In the absence of a clear instruction of what ‘comprehensive’ means, I had to buy an expensive package, which I will (hopefully) most likely never use.” His words—“considering that the pool of students seeking insurance will invariably be young, low risk and low cost”, for insurance companies. He asks me, and I am asking the Minister, whether the noble Lord can clarify on behalf of the Government what is meant by “comprehensive” in the phrase “comprehensive sickness insurance”? People are having to buy expensive policies because there is no clarity on exactly what is needed. That could at least help mitigate the cost.

Could the Government also tell us whether they are going to introduce a new, less bureaucratic route than that currently operated by the Home Office—something which is a more light-touch mechanism, some kind of conversion, to indefinite leave to remain? That would be fully justified by the history of EU-acquired rights.

On the other resolution, many commentators last week praised the less strident tone of the Prime Minister’s Article 50 notification letter to President Tusk and the accompanying Statement to the House compared to her January speech, such as the absence of the “no deal is better than a bad deal” threat. However, that phrase was repeated in the White Paper the next day on the great repeal Bill and so the threat of hard Brexit is not dead. Indeed, the noble Lord, Lord Kerr, made an interesting prediction of the odds—I do not know which way it is; I am not a gambling person—and the prospect having got more likely. Hence the need for the amendment to the Article 50 Bill, tabled originally by the noble Lord, Lord Pannick, and which became Motion B1 at ping pong.

The Liberal Democrats remain of the view that a political promise, in the words of the noble Lord, Lord Pannick, made by the Prime Minister in good faith is no substitute for an obligation in an Act of Parliament. That obligation should enshrine the need for parliamentary approval of withdrawal, future relations and a no deal scenario. That is why we pushed it to the vote on the central question of who is the master, Ministers or Parliament?

We did not succeed in that legislation and so I welcome the suggestion in the Motion of a Joint Committee. I would like to know the progress on discussions. I believe there have been attempts to get closer liaison between our own EU Select Committee and the Brexit Committee in the other place, including at staff level, but I am not aware where that has got to. Our EU Select Committee last year proposed a new specific European Union withdrawal committee but I do not think that has made any obvious progress. Perhaps the noble Baroness will tell us what prospects there are for a Joint Committee.

We on these Benches will support anything which makes a reality of the parliamentary control which is vital and on which the Government have proven reluctant in the past nine months. We need that to happen, even if it is through a resolution rather than legislation.

Baroness Smith of Basildon (Lab): My Lords, this has been an interesting and somewhat unusual debate. By my reckoning, I am the 21st speaker in the proceedings this evening and I am the 21st Peer to speak in favour of both of the Motions before the House. I do not know why the Government Benches are so empty of supporters who might have opposed them, but I am delighted to have such overwhelming support from noble Lords. Perhaps I should be grateful that all those who support these Motions are not here to speak in favour of them, because perhaps then Brexit really would mean breakfast.

When we debated the Brexit Bill previously, these were the two key issues that your Lordships’ House voted on with significant majorities in favour; in one case with a majority of 98 and in the other a majority of 102. I take issue with some of the comments made by the noble Baroness, Lady Ludford, who has said that the Liberal Democrats wanted them in statute. The entire House wanted that, and that is why we voted...
with such large majorities: to put them in statute. It remains our view that they would have been better in statute, but I have to say to the noble Baroness—noble Lords will understand this—that once the House of Commons had rejected the proposals for the second time, all we could have done was send them back and perhaps delayed the Bill by a few hours. A few people might have missed their train home, but what would that have achieved? In fact, before the dust had settled, as my noble friend Lady Hayter said at this Dispatch Box, we said that we would look at other ways to return to these issues. That is the correct way to proceed. If you lose a vote, you do not give up and walk away. You look for other routes because these matters are far too important to be decided in a debating society or on who can win the last vote. We knew that we were not going to win the vote, but we also knew that we would return to these issues, and we will never give up on them.

When we last debated these matters, the Government were insistent that they wanted what they called a clean Bill—as if these two amendments, with their overwhelming support in your Lordships’ House, would have made it a dirty Bill. They would not, and I think that that was a mistake on the Government’s part. But we move on, and I think the point made by the noble Lord, Lord Cormack, was important. He said that it is not just about principles, but about putting principles into practice. The only reason I got involved in politics and the only reason I accepted a place in your Lordships’ House—I am sure that I speak for many others—is that I want to make a difference. If we cannot make a difference, there is little point in just talking about issues. That is why we are bringing these two amendments back to the House tonight.

As my noble friend Lady Hayter said, we are not asking for anything from the Government that they have not already committed to doing. They have said already that they will give priority to EU nationals, and by extension to UK nationals living in other countries in the EU. That is an important priority. They have also said that they want a final vote on this issue in both Houses. What we are seeking to do tonight is bring some clarity to that, so let us look at the two issues.

On EU nationals, I am grateful to the noble Viscount, Lord Hailsham, for making the point that we are talking about a reciprocal arrangement for our nationals as well. The Government have said that it is a top priority. It had a large majority in your Lordships’ House and the Government have been clear about the importance of the matter. Concern is gathering pace. My noble friend Lord Morris described some of the issues in the construction industry, which will mean that the Government cannot meet their housing targets. We have already heard about the issues developing in the National Health Service and how the number of nurses coming to this country is falling dramatically. These Motions would provide a mechanism, an opportunity, for the Government to report back to your Lordships’ House. We are not expecting an immediate resolution. We are not asking the Government to come back before the House rises with absolute plans about how this can be achieved, but we need an assurance that when they say this is a priority, they are putting it into practice and are already in discussions about the way forward.

I still think that the Government have made a mistake by putting this issue into the negotiations. The noble Baroness, Lady Smith of Newnham, quoted my noble friend Lady Symons of Vernham Dean who spoke from her own experience of international negotiations. She said that when you put things on the table for negotiation, nothing is agreed until everything is agreed. That clearly cannot be allowed to continue in the case of EU nationals. I loved hearing the noble Lord, Lord Kerr, quote Boris Johnson: rarely can there have been so much agreement among noble Lords with his comments, to the effect that this is a moral, economic and practical obligation. I hope the Government understand that we are bringing this forward now because it is a matter of urgency and because damage can follow if their plans are not clear.

On the second Motion, tabled in my name, we have had a useful and interesting debate. We had a similar debate when we voted in favour of the amendments to the Bill. Again, a large majority was rejected by the Government and by the House of Commons. The White Paper, reinforced by Statements from the Prime Minister and the Secretary of State, said that there should be a final vote in Parliament, but, as has been outlined by the noble Lords, Lord Pannick and Lord Kerr, and others, the questions remain: when and how?

8.30 pm

There are three issues here. Concerns were expressed in your Lordships’ House that the Prime Minister’s own words, which were used in the resolution we brought before your Lordships’ House before, lack clarity on how this is to be achieved. As they stand, they brought into question whether your Lordships’ House will have a veto. It was quite clear that nobody in this place or the other place thought that was appropriate. Clarification is needed in the wording to ensure the primacy of the Commons.

The noble and learned Lord, Lord Hope, both tonight and in his Second Reading speech, made it clear that there needs to be some legislative authority to conclude the deal. That has to be put in statute. Why should the European Parliament have it in statute and not the UK Parliament? That seems a somewhat strange position for a Government who say that they want to leave the EU to retain sovereignty for the British Parliament, yet do not give it the same rights as the European Parliament.

My third point is crucial. As the noble Lord, Lord Kerr, reminded us, whether it is deal or no deal, Parliament should have a say. There are different ways of looking at this. The way I look at it is to say that we should be helpful to and co-operate with the Government. There is a way forward here. We can employ, on a completely cross-party basis across both Houses of Parliament, the best of the skills and experience of this Parliament to focus on providing advice to the Prime Minister and to Parliament on how this can be achieved in a practical, workable manner.

The Prime Minister obviously has to focus on the negotiations. Surely it makes sense for Parliament to do the heavy lifting in looking at this and getting
it right. If we do not, we will not, as my noble friend Lady Hayter made clear, have robust legal certainty around the process and the vote at the end. The Prime Minister and the Secretary of State speak of parliamentary engagement. This is an opportunity to use that engagement to make good use of Parliament’s time and expertise. Also, support for this approach will show that the Government take Parliament seriously, will do so throughout the process and will make use of its skills and experience in the national interest.

The Government cannot be seen to swerve this, because it goes to the heart of what Parliament is about and of the national interest. When we debated the Statement earlier this week and we talked about the six tests Keir Starmer and the Labour Party have set for the Government, I set out a seventh test, which we called honesty. That test is that if the Prime Minister can do a good deal for this country she should say so, but equally, if she has concerns or is less than satisfied with the arrangements on offer, she must also say so.

Both Motions are proposed in the true spirit of parliamentary engagement and involvement in the national interest on two crucial issues. The timing of these issues is different because there is an immediate urgency on EU nationals. We have to recognise that the problems are here now and the concerns are being raised now. If we fail to act, the damage to our economy will be huge, in addition to the moral issues and the concerns being raised for individuals. It would be helpful as we progress to have regular updates. The Government reporting back soon to say, “This is the approach we intend to take”, would show that they are upholding their promise to make this a key priority. It would be a move towards certainty, showing that the intention is to achieve that certainty, and that the making of arrangements will not be left until the end of the two-year period.

On a meaningful vote, we understand the concerns and issues that have been raised. We have time to work this out and the best way to use it is through the expertise and experience of Parliament. As my noble friend Lady Hayter made clear, we are not asking for the Government to take a new position on this; we are asking that they live up to their words and say that they believe in genuine parliamentary engagement. That is the process by which, over the next two years, Parliament will be involved.

I see the empty Benches behind the Minister, apart from a few notable and welcome exceptions. The Government should not oppose these Motions tonight but embrace both their spirit and intent. If they are passed, we look forward to early discussions with the Government on their implementation.

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, I am grateful to all those who have contributed in what the noble Lord, Lord Pannick, christened this great “Brexit club”, of which we are all part. I thank the noble Lord, Lord Pannick, and my noble friend Lady Wheatcroft for their kind compliments. They must understand and know me very well to know that flattery gets them everywhere with me. Therefore, I will certainly try to be as reasonable as possible towards these Motions. Both Motions touch on important issues that we have discussed previously in this House and no doubt shall rightly discuss again.

The Motion in the name of the noble Baroness, Lady Hayter, is on a matter we all want to see resolved as soon as possible: the future status of UK nationals in the EU and of EU nationals in the UK—the noble Lord, Lord Morris, made a passionate speech, as did the noble Lord, Lord Bilimoria, about the need to do so. We all want to secure the future status of UK nationals in the EU and of EU nationals in the UK.

I shall not detain your Lordships by going over the rationale behind the Government’s approach to this issue—we debated that at length the other day—other than to repeat that we wish to see the status of both UK and EU nationals resolved at the same time and as early as possible in the negotiations. The only circumstances in which this would not be possible would be if the status of UK nationals was not protected.

As your Lordships will know, the Prime Minister again highlighted the Government’s wish for this issue to be an early priority in the negotiations in her letter to trigger Article 50. As the noble Baroness, Lady Hayter, quite rightly said, this sentiment has been shared by many across Europe. She quoted Guy Verhofstadt, who has said that the issue of EU citizens’ rights after exit should be addressed, “before we talk about anything else”.

The Swedish EU Affairs Minister has suggested much the same thing, saying:

“I am happy to say that the UK side and the EU side agree very much on the need to find a good solution”.

She continued:

“I am convinced that a solution will be found for them”.

As President Donald Tusk said on Friday,

“Our duty is to minimise the uncertainty and disruption caused by the UK decision to withdraw from the EU for our citizens, businesses and Member States”.

The Prime Minister of Malta followed that up by saying:

“The guidelines show that the first priority is settling issues relating to citizens—we need to ensure our citizens in the UK and British citizens in the EU are not used as bargaining chips by any side. There is a wide-ranging commitment to settle this as soon as possible”.

So the omens are good.

We are absolutely clear that we want to reach an agreement on this issue so that we can give people the certainty which so many of your Lordships have spoken about as soon as possible after the negotiations begin and reach a position where we can address the points raised by the noble Lord, Lord Oates.

The noble Lord, Lord Kerr, raised an interesting point—the noble Lord, Lord Lea, and the noble Baroness, Lady Smith, raised it, too—as to whether we might be able to reach an agreement on this before the end of the two years, given the approach of “nothing is agreed until everything is agreed”. There are a number of different ways in which such an agreement could be reached. I hope your Lordships will forgive me if I stick to the words used so far by my right honourable friend the Secretary of State, who suggested that this might come in an exchange of letters between ourselves,
the member states, the Commission and the Council. I am sorry, but I am not going to go beyond that point at the Dispatch Box now.

As to the point that the noble Lord, Lord Campbell-Savours, made—that another good point—as to whether some form of bilateral relationships might be struck, all I would say, and I hope noble Lords will forgive me if I choose my words very carefully, is that the European Commission has made it very clear that there will be no separate negotiations between individual member states and the UK.

The substance of the Motion, however, is that the Government should make a Statement to this House and the other place before Parliament prorogues at the end of this Session. I am absolutely clear that if there is anything to report to Parliament on this issue, the Government will do so as soon as possible. As my noble friend Lord Hailsham so rightly said, it is in everyone’s interests that we do so. Having made seven Statements to Parliament since my department was established—about one every three and a half weeks that the House is sitting—I believe that we have made a clear commitment to report to Parliament.

I also point out gently that the European Commission will only get the guidelines for its negotiating position formally adopted on 29 April. After that, the Commission will need to agree on a mandate for its negotiating position. That too is likely to take some time, so I gently argue that committing to make a Statement before the end of this Session might—and I put it no more strongly—simply raise expectations as to what we might say, as this clearly will be at a time when, at best, we would expect negotiations to be just beginning. I stress that this should not be read as a sign that the Government are doing nothing to prosecute and press our case in this period; for in the next few weeks, while the EU agrees upon its proposed guidelines, Ministers will continue to meet our European colleagues right across Europe to discuss our agenda to create a new partnership.

As I have said, we will stress that agreeing on the future status of EU nationals should and must be a priority for the negotiations. This debate has once again reinforced the concern and focus that Parliament rightly has on this issue, and I assure noble Lords that it is a concern and focus that the Government utterly share. However, in the spirit of reasonableness, I simply question whether it is necessary to pass this Motion, given our clear willingness and commitment to keep this House and the other place updated, and our wish to focus now on making a success of negotiations which will begin shortly. Finally, I point out that the Prime Minister will certainly be updating Parliament in the usual way, with a Statement to be repeated in this House following her attendance at the next European Council on 22 June.

On the second Motion, standing in the name of the noble Baroness, Lady Smith, I will be brief. The Government’s position on the issue overall is clear that there will be a vote of both Houses on the final agreement and we expect and intend this to happen before the European Parliament votes on the agreement. This vote will be either to accept the final agreement or to leave the EU with no agreement. As for what would happen if this House were to reject the agreement, as put forward in the Motion by the Government, then of course the Government would respect the Lords’ decision.

The noble Lord, Lord Kerr, raised the issue of what happens if no deal is reached with the European Union. As I have said on many occasions, and as the Prime Minister has made clear, we want to reach an agreement with the European Union and the Government are confident that the UK can do so, but in the event of there being no deal at all, as I have also said before, it is very hard to see what meaningful vote could be given. In the absence of any agreement, I have absolutely no doubt that there would be further Statements to this House. Furthermore, one needs to bear in mind the other means by which we are going to be keeping Parliament informed on the process as it goes along.

As for the view that some have expressed, including the noble Baroness, Lady Hayter, and the noble and learned Lord, Lord Hope, that we need further legislative cover for our withdrawal so as to protect the Government from further legal challenge, I simply say that the Government’s position is that the requirements of the Miller judgment are entirely fulfilled by the recent Bill passed by this House and the other place. The Supreme Court ruled that, because withdrawal from the EU involves removing a source of domestic law in the United Kingdom, and because of the far-reaching effects of the European Communities Act, the authority of primary legislation was needed before the Government could decide to give notice under Article 50. The Supreme Court did not rule that anything further was required to satisfy our constitutional requirements.

So bearing in mind the importance of these issues—as my noble friend Lord Hailsham implored me, I am trying to be very reasonable—while the Government do not think there is any compelling reason or need for a Joint Committee to be set up, whether your Lordships wish to do so and whether the other place agrees is a matter for Parliament.
need it”. I would trust that Joint Committee to find out if that was the case and report back to us. The urgency of that case, as was said by others, is that we really do not want to muddle our discussion about how the vote takes place and what it means at the point we are actually discussing the agreement that we have, because people might then use the procedure to muddle the discussion about the core issue. We do not want that.

As the Minister knows, there is support all around the House. I hope that we will agree these two Motions but, even more, I hope the Government will respect the will of the House and will move to implement both of them if they find favour with your Lordships. I beg to move.

Motion agreed.

Brexit: Joint Committee
Motion to Approve

Moved by Baroness Smith of Basildon

That it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the terms and options for any votes in Parliament on the outcome of the negotiations on the United Kingdom’s withdrawal from the European Union, including how any such votes be taken before any agreement is considered by the European Parliament; and that the Joint Committee do report by 31 October 2017.

Motion agreed.

House adjourned at 8.47 pm.
**House of Lords**

*Wednesday 5 April 2017*

3 pm

_Prayers—read by the Lord Bishop of Peterborough._

**NHS and Adult Social Care**

**Question**

3.06 pm

_Asked by Lord Patel_

To ask Her Majesty’s Government what is their assessment of the long-term sustainability of the National Health Service and adult social care.

**The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con):** My Lords, the NHS and adult social care systems face unprecedented challenges due to an ageing, growing population and rising expectations. Making these systems sustainable for the long term depends on changing the way that services are delivered, with much greater emphasis on integration and keeping people well and independent for longer, as set out in the *NHS Five Year Forward View* and delivery plan.

**Lord Patel (CB):** I was hoping that the Minister might thank us for the brilliant and well-written report published today. It is, following a great deal of difficulty, a consensus report from all sides of this House, including the Spiritual Benches, and I hope that it will be met with political consensus when the politicians have had time to digest it. It has identified some key threats to the long-term sustainability of health and social care, and I shall allude to just one of them: if we do not get a long-term settlement for social care funding, healthcare will continue to suffer. The report makes some good suggestions, including how individuals who can afford it can make a contribution to funding the long-term sustainability of social care. I hope that the Minister will take that on board when he devises the Green Paper on social care.

**Lord O'Shaughnessy:** I thank the noble Lord for that. I did not want to get ahead of myself but I thank him and all members of the committee for their work in putting together this document. I appreciate that it is an incredibly thorough and important piece of work, and I am also grateful to have received an embargoed copy of it yesterday. I will of course look carefully at all the recommendations and respond properly in due course. I am sure that we will also have an opportunity for a longer debate.

The noble Lord specifically asked about social care, and I completely agree with the priority attached to it in the report. He will know that the Government have committed more money in the short term to support social care, with £2 billion more having been announced at the Budget. But I know that his emphasis and the emphasis of his committee was on long-term reform. He is quite right to point out that the Green Paper is a very important opportunity to take a broad perspective and to put the system on a sustainable long-term footing.

**Lord Hunt of Kings Heath (Lab):** My Lords, I too commend the noble Lord and his committee for a thorough report, which I endorse and on which I hope we can have a full debate in due course. On the future of long-term care, the noble Lord will know that before the 2010 election Andy Burnham, as Secretary of State for Health, made some very striking proposals for its funding. I wonder whether the Minister regrets that David Cameron and other Conservative leaders at the time condemned this as a “death tax” and put back the search for consensus on the funding of social care for many, many years.

**Lord O'Shaughnessy:** The so-called “death tax”, to use the noble Lord’s words—

**Noble Lords:** Oh!

**Lord O'Shaughnessy:** Those were the words just repeated by the noble Lord. The so-called “death tax” was a percentage levy on all estates, regardless of the use of social care systems. The proposals that the coalition Government came forward with—the Dilnot proposals—were about capping amounts and therefore were much more responsive to the amounts being spent. The Chancellor has recently recommitted us to not looking at that proposal but we will, through the Green Paper, seek to put the social care system on a sustainable basis and, of course, seek consensus wherever we can.

**Baroness Walmsley (LD):** My Lords, does the Minister recognise the logic of the committee’s criticism of the cuts to public health funding? Will he go back and commit himself to promoting the prevention agenda and good health agenda, not just in his own department but across government, because so many other departments have an effect on the health of the nation?

**Lord O'Shaughnessy:** The noble Baroness is quite right about the importance of public health. It is worth pointing out that it is not just an issue of money. This country was the first in Europe to act on cigarette packaging, to introduce a soft drinks industry levy and to develop a childhood obesity plan. As we have talked about previously, if you look at the risky behaviours displayed by young people, you will see good evidence that this approach is working.

**Baroness Redfern (Con):** My Lords, as the population ages and the financial pressures on the health and care system increase, evidence tells us of the need to be better at providing proactive, preventive care to ensure that people can live independent, fulfilling lives for
longer. Will the Minister do all he can in expressing these concerns and look at ways to address, as a priority, the uptake of innovation and technology, together with data sharing across the NHS, to emphasise the need to develop a credible strategy?

Lord O’Shaughnessy: I thank my noble friend for that and for her contribution to the work of the committee. She speaks with great experience and authority from her role in running a local authority. She is quite right that technology offers huge opportunities. The key is to make sure that the NHS and social care systems see technology as an opportunity to improve productivity rather than as providing an additional cost. That is why we are taking a variety of actions through the life sciences industrial strategy, the accelerated productivity fund and other initiatives.

Baroness Campbell of Surbiton (CB): My Lords, the current social care narrative is dominated by the lack of residential homes and home care services for older people. Given that working-age disabled adults make up one-third of those reliant on social care, is it not time that we had a more comprehensive government social care strategy that reflects the diverse needs of all service users, and to work with disabled people to produce it?

Lord O’Shaughnessy: The noble Baroness makes an incredibly important point. Despite the ageing population, the fastest-growing part of the adult social care budget is, I think, for adults with learning difficulties. She is quite right that there needs to be a comprehensive approach. That is why additional funding is going in to support not just older people but working-age adults too.

Baroness Blackstone (Lab): My Lords, I declare an interest as the chair of the board of Great Ormond Street Hospital. I was also a member of the Select Committee. I want to pick up on what the Minister said just now about public health—which, if I may say so, I thought was rather complacent. The public health budget has been cut year after year over the past decade. Will he give the House an assurance that this budget will not only be protected but enhanced? Unless that is done, the terrible crisis we have in obesity will have made of the impact of benefit cuts, including

Baroness Tyler of Enfield: My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as vice-president of the charity Relate.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, 11 local authorities bid for the local family offer funding in December 2016. They were notified in January that their bids were successful. Each area has now been offered £50,000 to deliver the local family offer, including a new role as advocates, as we support more areas to integrate action to reduce parental conflict.

Baroness Tyler of Enfield (LD): My Lords, I thank the Minister for his Answer and I am grateful for that explanation. Could the Minister explain how the local family rollout relates to the new programme announced by the Secretary of State yesterday of £30 million to support parents in workless households experiencing relationship distress and to the promised funding across the lifetime of this Parliament of £70 million for relationship support, which I hope will be available for everyone who needs it, not only parents in workless households?

Lord Henley: My Lords, the noble Baroness has highlighted three different aspects of work we are doing in the Department for Work and Pensions, but the work goes across all parts of government. She is right to highlight the different sums of money involved in the three schemes. The one we are discussing today is a small-scale scheme designed to offer a degree of help to local authorities to access expertise and evidence in order to drive forward various local strategies. I hope that will feed into all the other programmes as well but, as I say, that particular programme is a small-scale one to help those 11 local authorities.

Baroness Lister of Burtersett (Lab): My Lords, we know that money, or lack of it, can be an important factor in parental conflict. Given the announcement made yesterday, about which we have just heard, that the Government’s aim is to reduce parental conflict in workless families, can the Minister tell us what assessment they have made of the impact of benefit cuts, including

Local Authorities: Relationship Support Services

3.15 pm

Asked by Baroness Tyler of Enfield

To ask Her Majesty’s Government what progress they are making in assessing the bids submitted by local authorities for the Department for Work and Pensions Local Family Offer programme funding for relationship support services; and when local authorities which have submitted bids will be notified of the outcome.

Baroness Tyler of Enfield (LD): My Lords, I thank my noble friend for her role in running a local authority. She is quite right that technology offers huge opportunities. The public health budget has been cut year after year over the past decade. Will the Minister do all he can in expressing these concerns and look at ways to address, as a priority, the uptake of innovation and technology, together with data sharing across the NHS, to emphasise the need to develop a credible strategy?

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Baroness Lister of Burtersett (Lab): My Lords, we know that money, or lack of it, can be an important factor in parental conflict. Given the announcement made yesterday, about which we have just heard, that the Government’s aim is to reduce parental conflict in workless families, can the Minister tell us what assessment they have made of the impact of benefit cuts, including

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Baroness Lister of Burtersett (Lab): My Lords, we know that money, or lack of it, can be an important factor in parental conflict. Given the announcement made yesterday, about which we have just heard, that the Government’s aim is to reduce parental conflict in workless families, can the Minister tell us what assessment they have made of the impact of benefit cuts, including
the ongoing freeze in benefits, on parental conflict in families who are already struggling, and will be struggling all the more with the impact of these cuts?

**Lord Henley:** My Lords, anyone who has been involved in family matters will know that money is one of the major causes of conflict in parental disputes, and that can be true at all levels of income. I do not accept that the changes and reforms we have made to the benefit system, which will continue to roll out this year, are making any difference in this respect.

**The Earl of Listowel (CB):** My Lords, is the Minister aware that at the beginning of this decade the OECD found that one-fifth of children in this country were growing up without a father, compared with a quarter of children in the United States and one in seven children in Germany? We were performing poorly against our European neighbours. I welcome the funding that the Government are introducing. Does he agree that it is hugely important that children see their parents in harmony together and that, as far as possible, their fathers stay in contact with them and stay in their lives? Do the Government plan to put additional funding into this area in the future?

**Lord Henley:** My Lords, I agree with most of what the noble Earl says. How much the Government can do to solve all these problems is another matter. However, there are things that we can do and that is why I was grateful for the opportunity to respond to this Question and just deal with this one small scheme. As I say, other things can be done—that is why we published our policy paper, *Improving lives: Helping Workless Families*, yesterday—and we will continue to see where we can help in all areas.

**The Lord Bishop of St Albans:** My Lords, perhaps I may build on the response just given by the Minister. The Government can only do so much and we certainly need to see joined-up thinking and action if we are going to help these families. What are Her Majesty’s Government doing to ensure that when local authorities bid for funding for the local family offers, they are working collaboratively with grass-roots organisations—charities, churches and so on—which are already seeking to build up relationship capacity in families?

**Lord Henley:** My Lords, I cannot give precise details of what consideration was taken when assessing the bids, but I am fairly sure that the degree of co-operation that local authorities want to build with such organisations is a factor which would be taken into account.

**Baroness Manzoor (Con):** My Lords, I welcome the Government’s commitment to continue with the troubled families programme, although there were some difficulties with it. Can my noble friend tell us how the outcome of that programme is to be monitored so that it delivers what it is meant to do?

**Lord Henley:** I am grateful to my noble friend for that question and I can give her an assurance that we will be evaluating phase one of the programme, which has been completed, and then phase two, about which I have just given details. We aim to publish an evaluation of phase one later in the summer, whenever that might be, and in due course we will consider an evaluation of phase two.

**Baroness Sherlock (Lab):** My Lords, I should like to return to the answer given by the Minister to my noble friend Lady Lister. Perhaps he should go back to his own paper entitled *Improving Lives: Helping Workless Families*, which came out yesterday. Paragraph 33 cites evidence that problem debt and financial burdens can put pressure on relationships. It attributes those issues to persistent low income and income shocks. Will he think again not only about the damage that has been done by cutting £12 billion off social security for those out of work? Also, given that this is aimed at workless families, if the DWP wants to get them back into work, why is the department persisting in cutting in-work benefits, the very things that make work pay?

Before the Minister tells us more about the living wage, perhaps I may remind him of what he knows already. Most of the living wage for the poorest people goes straight back to the Treasury in taxes and lower benefits. Will the department look again at its strategy and make work pay?

**Lord Henley:** There is no need for the noble Baroness to try to answer my question because I will answer it in my own way.

**Noble Lords:** Oh!

**Lord Henley:** The noble Baroness wanted to answer my question. She can practise those things as long as she likes. Perhaps I may remind her just how high the rates of employment are. Employment is the best route out of poverty for all households, and certainly the best route out of poverty for households with children. Since 2010 we have seen a decline of some 590,000 children in families that are workless.

**Technical Education**

**Question**

3.22 pm

*Tabled by Lord Farmer*

To ask Her Majesty’s Government, in the light of the Budget announcement that new T-Levels will be introduced to give parity of esteem for technical education, how they intend to ensure that young people also have the interpersonal skills required to succeed in the workplace.

**Baroness Eaton (Con):** My Lords, on behalf of my noble friend Lord Farmer, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

**The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con):** My Lords, at the heart of the new T-level is a recognition
that we must do more to prepare young people for skilled employment. The content of T-levels will be determined by employers and industry professionals. They will identify the skills, knowledge and behaviour that are required for specific occupations, as well as the transferable and interpersonal skills that are vital for all employment and career progression. All young people taking the T-level will also undertake a work placement where they will be able to develop core workplace skills.

Baroness Eaton: I thank my noble friend for that Answer. Interpersonal skills are vital, but so too are the supportive relationships which can hone them. What are Her Majesty’s Government doing to ensure that young people, including care leavers and young offenders leaving prison, who are often bereft of such skills, can enter the world of work with a network of supportive relationships behind them?

Lord Nash: My Lords, through the Children and Social Work Bill we are extending the opportunity for support from a personal adviser to all care leavers to the age of 25. We have introduced the “staying put” arrangements, which allow care leavers to continue with their foster parents until they reach the age of 21. We are also piloting the “staying close” scheme for those leaving residential care, and introducing compulsory relationship education in primary schools and a duty on secondary schools to teach relationship and sex education. Together with the MoJ and a partnership led by Achievement for All, we are improving support for young offenders with special educational needs.

Baroness Garden of Frognal (LD): My Lords, what encouragement can the Government offer to employers to engage more with schools and colleges, and what support can they give to schools and colleges to make time for employers to set out not only the technical skills, but the employability skills that are so necessary for future careers, and which mean that young people leave education ready for work?

Lord Nash: The noble Baroness makes an extremely good point. The Government welcome the engagement of the business and professional communities with the school system in any way that works for them. We want that door to be wide open because it is absolutely clear that the more engagement students have with the world of work, the more likely they are to engage in their studies. This is why we have invested nearly £100 million in the Careers & Enterprise Company to work with other organisations such as Business in the Community, Make the Grade and Inspiring the Future, in order to ensure that this connection between the world of work and schools is close.

Baroness Corston (Lab): My Lords, I had the privilege to chair your Lordships’ Social Mobility Committee, of which the noble Lord, Lord Farmer, was a member. One of the recommendations we made was that young people should have life skills education at school, but the Government did not accept it. In our evidence sessions with employers, we found that they unanimously valued life skills education, which helps young people to be ready for work. Problem solving, co-operating with others, timekeeping and making persuasive phone calls all used to have GCSE equivalence until 2010, when the right honourable Michael Gove abolished it with a stroke.

Lord Nash: I agree entirely with the noble Baroness that what are sometimes called essential life skills are vital. As this House knows and I think welcomes, we are introducing a power for the Secretary of State to introduce a duty on secondary schools to teach PSHE. We will be engaging widely on what the contents of PSHE should be. I believe that a lot of the essential life skills to which the noble Baroness refers should be included in that.

Lord Baker of Dorking (Con): My Lords, is the Minister aware that the employability record of the students who go to the 44 university technical colleges is the best in the country? Last July we had 1,300 leavers, and only five joined the ranks of the unemployed. That cannot be matched by any other schools in the country. Some 44% went to universities, 32% into apprenticeships and the rest to jobs or further education. As these colleges get support from right across the political spectrum, I hope he agrees that we should have many more of them.

Lord Nash: I pay tribute to my noble friend’s pioneering work on university technical colleges. I am fully aware of the statistics to which he refers because he has told me about them on many occasions. I am delighted they are so good.

Lord Watson of Invergowrie (Lab): My Lords, the money announced in the Budget for T-levels was welcome, even though it will not be fully developed until 2022. We already have tech levels, a TechBac and a tech bacc, so it seems the DfE will need good interpersonal skills to create a separate identity for T-levels. Interpersonal skills are surely important in the workplace for young people, no matter whether they took the technical or the academic route. Does the Minister agree that the introduction of compulsory relationship education, agreed in your Lordships’ House yesterday in the Children and Social Work Bill, offers an opportunity for schools to do more to build interpersonal skills for life from an early age?

Lord Nash: I agree entirely—it is so important to develop these skills. The noble Baroness referred to some, such as teamwork and communication. Self-management is also very important.

Lord Laming (CB): My Lords, I am sure the Minister will understand how much the House supported the Bill as it passed through the House last evening, particularly the section on relationships to which the noble Lord just referred. Mention has been made of young people who are particularly vulnerable to exploitation or to the dreadful things that can come their way online. The Government are going to introduce
a strategy document. Will the Minister assure the
House that emphasis will be given in it to the most
vulnerable children in our society?

**Lord Nash**: I agree entirely with the noble Lord. We
have to be particularly sensitive to those vulnerable
young children, and I can give that assurance.

**HS2 and CH2M**

**Question**

3.30 pm

**Asked by Baroness Randerson**

To ask Her Majesty’s Government whether they intend to hold an inquiry into the proposed contractual arrangements between HS2 and CH2M.

**The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con)**: My Lords, the Government will not be holding an inquiry, as this is a matter for HS2 Ltd. HS2 Ltd has undertaken a thorough review in light of the queries raised. Decisions on any further steps are a matter for the board of HS2 Ltd and may include increased scrutiny of compliance by bidders with HS2’s requirements with respect to conflicts of interest, particularly for HS2’s higher-value or higher-risk procurements.

**Baroness Randerson (LD)**: My Lords, I fear that that Answer sounds a touch complacent on the Government’s part. This is a depressing indictment of HS2’s working practices. In view of a number of problems recently at HS2, is the Minister still confident that the first phase of HS2 will be completed within budget and on time? Can he confirm that the Government are still fully committed to phases 2a and 2b?

**Lord Ahmad of Wimbledon**: I cannot agree with the premise of the noble Baroness’s initial comments. When issues came to the fore, HS2’s due processes were followed and CH2M took a decision which I think we all regard as the right one at that time. The Government are absolutely committed to HS2 in all its stages—she referred particularly to stages 2a and 2b. We remain on course also to deliver on the hybrid Bill by 2019.

**Lord Framlingham (Con)**: My Lords, given the deep and growing concern about this ridiculously expensive and unnecessary project, will the Minister commit today to making sure that it is subject to the most scrupulous transparency so that we can all see, as it progresses, just how expensive, how complicated and how ridiculous it is?

**Lord Ahmad of Wimbledon**: I acknowledge that my noble friend has not been the biggest fan of this project. As I am sure noble Lords will acknowledge, this underwent full scrutiny during the passage of the Bill in both the House of Commons and in particular in your Lordships’ House. My noble friend referred to transparency. I am sure that he will acknowledge that many elements of the business contracts awarded are of a confidential nature and that it would be totally inappropriate to require that they were all fully transparent.

**Lord Berkeley (Lab)**: My Lords, why have the Government allowed this potential conflict of interest to fester for so many months? The two senior civil servants in the department left last week. I still have not had an answer to evidence that I submitted to the noble Lord and other Ministers that the cost of phase 1 will be about double what the Government say it is. Are the Government, HS2 and the Minister’s officials really committed to getting the governance right, the costs right and the programme right, or is this the start of rats leaving a sinking ship, which I hope it is not?

**Lord Ahmad of Wimbledon**: To continue with transport analogies, HS2 remains on track, so there are no sinking ships. The noble Lord referred to two senior civil servants within the DfT. One is the Permanent Secretary, who has a new role at the Home Office; I am sure that the noble Lord will appreciate that there is a long recruitment process. The other was the director-general of HS2, who is taking up a post at Oxford University. We wish them both well in their new roles.

**Lord Bradshaw (LD)**: My Lords, might the Minister turn his attention to Crossrail? It is a major infrastructure project. There are many such infrastructure projects, including HS2. The Crossrail management team has stayed the same all the way through the project and it looks as if it is going to be delivered as it was planned. Other infrastructure schemes have suffered changes of personnel and changes of consultant throughout their life. Will the Government look at making the people who start projects stay with them so that we can judge their performance?

**Lord Ahmad of Wimbledon**: Let me assure the noble Lord on the subject of Crossrail. The fact that it is delivering on time, the management is in place and it is on budget has nothing to do with the fact that I am the Crossrail Minister. On the point he raised about large infrastructure projects, of course he is right: we want a sustained level of continuity in management for all large infrastructure projects. That is an important part of the delivery of all projects and I note his concern in that respect.

**Lord Rosser (Lab)**: As I understand it, in January of this year it was announced that the European managing director of the global engineering company CH2M, which is mentioned in this Question, would be the new chief executive of HS2. Last month in a Written Answer, the Minister said that there were 84 CH2M people located in HS2 Ltd offices, with 37 CH2M staff on secondment to HS2. In view of this, how many of the other bidders had similarly close connections of this kind with HS2 at the time decisions were made on which bid should be accepted for the phase 2b development contract? Can the Minister confirm—I think he has half said it, but I am not entirely sure—that the Government are satisfied, in the light of what I
Baroness Northover: My Lords, I thank the noble Baroness for that response. It is appalling to see terrible pictures once more of men, women and children in agony from what seems to be a further chemical attack in Syria. Chemical weapons were rightly banned after the First World War, nearly a century ago. Does the noble Baroness agree that we need to have a credible investigation into what happened in Syria? If it turns out to be sarin from the regime’s stocks, what actions will be taken to ensure that this time there is full destruction of all Syria’s chemical weapons?

Baroness Anelay of St Johns: Like the noble Baroness, I deplore events that cause such suffering. She is right to point to the action by the international community over the years to try to ensure that such vile use of chemical weapons cannot happen. It is essential that we work together to prevent these events. At 3 pm British time I understand that the debate at the United Nations should have started—I cannot confirm that because I have been here and so unable to see it. We will have to wait to see the decisions on what actions to take. I entirely agree with the noble Baroness that there must be a thorough and credible investigation.

Lord Collins of Highbury (Lab): My Lords, the key point that the Foreign Secretary made was that all the evidence points to the Assad regime. We have also heard from the Prime Minister, who called for the Organisation for the Prohibition of Chemical Weapons to conduct an investigation. Of course, it has been gathering evidence for some time on the use of chemical weapons in Syria. I welcome the Government’s intention to raise the matter at the Security Council—but, as the Minister has told the House on many occasions, it is sometimes difficult to reach a consensus in the Security Council. Can she tell us what the Government will do if there is a failure to reach consensus? Will we take it up in the full UN General Assembly? The most important point—I know she shares this view—is that the people responsible must understand that they will be held fully accountable.

Baroness Anelay of St Johns: My Lords, the noble Lord is right. My right honourable friend the Foreign Secretary said a short while ago in Brussels:

“I would like to see those culpable pay a price”.

I do not want to predict the result of today’s debate. It is predicted not to conclude until around 6 pm or 7 pm. It is clear that we have to try to ensure that nobody will vote against the resolution. In the past, Russia and China have done so. I hope that they will think very carefully today before they take any action other than to support the resolution before the United Nations.

Lord Alton of Liverpool (CB): My Lords, in welcoming the swift response of Her Majesty’s Government and the reply that the Minister has just given to the Question put by the noble Baroness, Lady Northover, perhaps I might press the Government further on the use of chemical weapons. We have now seen chemical weapons used twice in Syria, but they have also been used, allegedly, in Darfur by the regime of President Omar...
al-Bashir. We have seen a chemical weapons attack using a toxic nerve agent in an international airport in Kuala Lumpur. Does this not all point to a climate of impunity in which those responsible do not believe that they will be brought to justice? In pursuing the point that the noble Lord, Lord Collins, has just made, will we be pressing also for a referral to the International Criminal Court of all those responsible for war crimes, crimes against humanity and genocide?

Baroness Anelay of St Johns: My thoughts today are very much concentrated on the children and other civilians who suffered yesterday in Idlib. The noble Lord will be aware of my previous answers on this issue, to the effect that in the international field we bring cases before the International Criminal Court when we are able to do so, with the agreement of the Security Council. With regard to Syria, there have been more than two occasions when the regime has been proven to use chemical weapons—there have been three. The proof has been gained by the OCPW-UN Joint Investigative Mechanism, and there are further investigations afoot.

Viscount Hailsham (Con): My Lords, does my noble friend agree that the recent use of chemical weapons in Syria—assuming, of course, that the Assad regime is responsible—flows in part from the failure of the United States to use military action after Assad's initial action in 2013? Does this not demonstrate the importance in foreign affairs of not promising or threatening that which you are not prepared to do? I express the hope that President Trump observes that principle in the context of his relations with North Korea.

Baroness Anelay of St Johns: My Lords, a principle that we should all follow is to consider carefully before we commit. All political parties in all countries sometimes fall short of that objective. Today we are working together as one with the United States to try to ensure that the United Nations can agree that we should put pressure on Syria, including from Russia, to ensure that these vile events should not happen, whoever commits them.

The Lord Bishop of Peterborough: My Lords, as the most reverend Primate the Archbishop of Canterbury said yesterday, we on these Benches mourn with the people of Idlib and we pray for justice and an end to violence. However, if and when peace is finally secured in the region, the scale of suffering and damage experienced by the people of Syria over the past six years will demand enormous and costly international effort if Syria is to be rebuilt. Will Her Majesty's Government commit not just to supporting the people of Syria in the short term but to supporting the decades-long process of restoration that will inevitably be needed once the present crisis is over?

Baroness Anelay of St Johns: I welcome the right reverend Prelate's question and I certainly give that commitment. At the moment my right honourable friend the Foreign Secretary is in Brussels at the Syria conference, where the objective is to get the international community not only to deliver on the commitments it made in London last year but to take those further, for the long-term support of the region.

Lord Campbell of Pittenweem (LD): My Lords, it is axiomatic that if these events came about as a result of deliberate action, they constitute a war crime. Will the Minister bear in mind that, even if they were not deliberate, they constitute a war crime, since they came about because of the indiscriminate bombing of civilians?

Baroness Anelay of St Johns: The noble Lord is absolutely right.

Lord West of Spithead (Lab): My Lords, there was no military benefit to the Assad regime from using chemical weapons in this circumstance—it did not help militarily—and there is no political benefit. Is there some internal dynamic that we do not understand within Syria? I cannot see any reason otherwise why these weapons would be used.

Baroness Anelay of St Johns: My Lords, who indeed can get into the mind of somebody who—it has been proven in the past—on at least three occasions used chemical weapons on his own people? We should all remember that the conflict started because there were those who wanted to see democracy in Syria.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree with the sentiments of the great human rights activist Andrei Sakharov, who said that there will be no progress on human rights until we are even-handed in condemnation? Having said that, does she further agree that the indiscriminate bombing of civilians in Mosul should be equally condemned? For survivors and for the relatives of those killed and maimed, it is equally bad.

Baroness Anelay of St Johns: My Lords, where action is taken purposely to bomb civilians it is a war crime and something that we would condemn. I would mention, with regard to Mosul, that I am aware of the recognition there that the Iraqi forces have taken every step they could to avoid hitting civilians, against an enemy that uses civilians as human shields.

Lord Cormack (Con): My Lords, is there not a case now for trying to talk to the Syrian regime? We have broken off all relations and refused to recognise the regime from the outset of the civil war. As we are not in a position to end this, would it not make a great deal of sense at least to have some diplomatic contact?

Baroness Anelay of St Johns: No, my Lords, because when we have engaged before we have been let down. Clear action by the regime has shown that we are right not to have diplomatic relations. What we are right to do and what we will continue to do—I give my absolute assurance to my noble friend—is to seek the path of political agreement through the Geneva talks. That is the only way forward to achieve peace.
3.48 pm

Motion A

Moved by Lord O’Shaughnessy

That this House do not insist on its Amendment 3 to which the Commons have disagreed for their Reason 3A.

Commons Reason

3A: Because it would not always be appropriate to use the powers conferred on the Secretary of State to control the price of medicines and other medical supplies to promote and support the growth of the life sciences sector, and those powers cannot be exercised to ensure that patients have access to medicines and treatments.

The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, before I address the specifics of the Motion I would like to remind the House of the wider policy context in which this Bill sits. In their approach to medicines and the life sciences industry, the Government have three objectives: to make sure that patients have access to the most effective treatments; to secure value for money for the NHS and for the taxpayer; and to encourage innovations that save lives. That is the overall role of government and, indeed, these are the three objectives that I have to balance in my ministerial portfolio.

We must remember that the Bill is about only that middle objective: securing value for money. It is not the appropriate vehicle for fulfilling the other objectives that government has in this area, as important as they are. That is why we have tabled Motion A and oppose the amendment put forward by the noble Lord, Lord Warner. I do not downplay the importance of patient access to innovative medicines or the importance of a strong life sciences industry in this country—quite the opposite—but achieving these objectives is best done through other means, and I will return to this point a little later.

As noble Lords on all sides of the House have agreed, the Bill plays a vital role in delivering better value for money for the NHS and for taxpayers. NHS spending on medicines is second only to spending on staffing costs, with a spend of over £15 billion during 2015-16. In 2015-16, total spend on medicines grew by 7%, more than twice the growth rate of the overall NHS budget. The Bill helps us to tackle some particular issues which have contributed to this rising spend. It will allow us to align our statutory scheme for the control of prices of branded medicines more closely with our voluntary scheme, it gives us stronger powers to set the prices of unbranded generic medicines if companies charge unwarranted prices in the absence of competition, and it allows us to secure better information with which to operate our pricing schemes, reimburse community pharmacies and make sure that the supply chain is delivering good value for money.

As a result of close and welcome scrutiny by your Lordships, significant improvements have been made to the Bill and 23 government amendments have been proposed. I am grateful to the work of all noble Lords who contributed to those changes. That work has been acknowledged by Members of the other place, who accepted all the amendments put to them, with the exception of Amendment 3, to which we return today.

While the Bill represents an important part of our strategy to deliver value for money, we are engaged in a substantial and transformative programme of work to support the life sciences and improve access to medicines. Following the publication of the industrial strategy Green Paper in January, we are working with industry and the NHS to develop a new strategy for the long-term success of life sciences in the UK. This work is being led by Professor Sir John Bell, and its aim is for the UK to be the global home of clinical research and medical innovation, with huge benefits to the UK economy and NHS patients.

I expect the life sciences industrial strategy to be published by late spring, to be followed by discussions on an ambitious sector deal that we aim to conclude this summer. The emerging strategy is focusing on six pillars: science; growth; skills; regulation; digital and data; and NHS uptake. I want to reflect for a moment on these themes.

On the science base, the UK is a world leader in this area, and the Government are supporting it by investing more than £1 billion a year in health and care research through the National Institute for Health Research, including 20 new biomedical research centres and 23 clinical research facilities for experimental medicine, to help to speed up the translation of scientific advances for the benefit of patients. The 2016 Autumn Statement announced £4 billion additional investment in R&D, specifically targeting industry-academia collaboration, and we expect the life sciences industry to be a substantial beneficiary.

On growth, this Government continue to support innovative businesses through our highly competitive taxation regime, including measures such as the patent box and R&D tax credits. The recent Budget contained a welcome announcement of investment in a new wave of advanced manufacturing centres to support the development of cell and gene therapies. This determined action is reaping rewards. The UK has one of the strongest life sciences industries in the world, generating turnover of more than £60 billion each year. Indeed, it is our most productive industry.

On skills, we know that attracting the most talented individuals to our life sciences industry is essential. As the Prime Minister has made clear, the UK will always remain open to those with the skills, drive and expertise to support our economic growth. The Budget announced that more than £100 million will be invested in global research talent over the next four years to attract the brightest minds to the UK.

The future of medicine regulation after Brexit is a critical issue. Any future regulatory model will need to ensure that patients have timely access to safe, effective medicines and support a flourishing life sciences sector. I am having extensive discussions with the industry...
and other stakeholders, and our strong desire is to form a constructive new partnership with the EU on medicine licensing.

On digital and data, technology is already helping to improve patient care, and we are investing £4.2 billion over the spending review period in digital and data transformation, including areas such as electronic patient records, apps and wearable devices, telehealth and assistive technologies. Furthermore, the NHS has a unique opportunity to work with the life sciences industry to use data to patients' benefit, and we expect the life sciences strategy to provide proposals that will accelerate clinical trials and the uptake of medical innovations.

I reiterate my commitment to improving patient access to new medicines and technologies, a subject that we have spoken about many times in the process of going through the Bill. It is a critical objective of our life sciences strategy. The early access to medicines scheme, introduced in 2014, provides a platform from which to provide patients with innovative medicines prior to licensing. The Cancer Drugs Fund has allowed over 100,000 patients to access innovative, life-saving medicines. NHS England’s test beds programme, launched last year, provides an opportunity to link new technologies with new ways of delivering healthcare, and its commissioning through evaluation programme provides an opportunity for promising but experimental treatments to be brought forward for patient use.

There is clear evidence that those actions are having a positive impact. The latest innovation scorecard, published in January, showed that, of the 77 medicines that are measured, over half saw growth in uptake of over 10% year on year. Still, there is of course more to do. That is why the Government will be responding shortly to the recommendations of the accelerated access review, with the aim of getting transformative products to patients who need them up to four years earlier than we do now.

In discussing patient access, I am aware of concerns about changes that NHS England and the National Institute for Health and Care Excellence are making to the way in which drugs and other treatments are assessed and adopted in the NHS. I must remind noble Lords that these changes have been made in response to the recommendations of the Public Accounts Committee, which stated that NICE should, “ensure affordability is considered when making decisions”.

I come to the changes themselves. The first is that NICE is introducing a fast-track appraisal process that will bring forward access for NHS patients by around five months to very cost-effective new treatments. In other words, should pharmaceutical companies offer very good value to the NHS in the pricing of their products, we will see faster patient access—a win for patients, a win for the NHS and a win for industry.

Secondly, NICE and NHS England are introducing a budget impact test for new medicines that are expected to cost more than £20 million in any of the first three years after introduction. I want to take this opportunity to address a number of misconceptions about this policy. The budget impact test is not a cap. It does not represent the maximum that the NHS will spend on any individual drug in a given year. The test is simply intended to provide an opportunity for NHS England to enter into commercial negotiations with companies to bring down the price of medicines that have a significant budget impact on the NHS, and in doing so will allow for the kind of flexibilities—for example, commitments around volume—that companies have been asking for. The proposal will affect only around one in five drugs and, while the proposals are intended to improve affordability, they are not intended to create delay. Most negotiations will be concluded quickly and, where agreement is not reached, a managed access scheme will ensure that those whose clinical need is greatest will be prioritised. Patients will continue to have a right to NICE-recommended drugs, as enshrined in the NHS constitution.

Thirdly, the proposals introduce a sliding cost-benefit threshold for very expensive drugs for rare diseases, evaluated through NICE’s highly specialised technologies programme. It will be possible for transformative treatments that offer significant health gains to be approved up to £300,000 per quality adjusted life year, or QALY. That is 10 times greater than NICE’s threshold for treatments considered by its mainstream technology appraisal process. I do not believe, as some have suggested, that the new threshold will prevent medicines being approved via this route. In fact, with increased commercial capacity within NHS England to strike win-win deals, I am very optimistic that patient access will continue for genuinely transformative medicines.

Lastly, let me also be clear that these arrangements apply to new medicines after 1 April. Any suggestion that a patient receiving a medicine approved under the previous arrangements will have their medicine withdrawn due to these changes is wrong.

I turn to the amendments considered in the other place. The Commons rejected the previous amendment proposed by the noble Lord, Lord Warner, a new version of which he has tabled for discussion today. For reasons I have already explained, I do not believe that the Bill is the right vehicle for promoting the life sciences sector or improving patient access: it is only about providing value for money. Furthermore, there are three specific problems with the amendment.

4 pm

First, it undermines the Government’s ability to put effective cost controls in place. That is because controlling the prices of medicines cannot be said in itself to promote the interests of the life sciences sector and deliver growth. For example, if the Government were to act to control the price of a generic medicine with a vastly inflated price, it could be argued that that is not promoting the life sciences sector because any generic drugs manufacturer can argue that it is a life sciences company. Nevertheless, this would be the right course of action for the NHS, patients and taxpayers. Approving the amendment would encourage companies to bring legal challenges and seriously impair the Government’s ability to operate cost control schemes. It would lead to rising costs and consequently reduce the funding available for the rest of the NHS.

Secondly, cost is not a factor in patient access to medicines that have been approved by NICE. The NHS constitution is clear that commissioners are legally
required to fund drugs and other treatments that have been recommended by NICE technology appraisal guidance. The uptake of medicines is primarily dependent on clinicians’ choices about what is best for their patients, and the cost of a drug is not a factor in clinical prescribing. Indeed, the cost of the drug is not visible at the point of prescription. Improving the uptake of drugs involves working with clinicians to encourage the use of innovative medicines to replace existing treatments, and legislation is not the right way to create such behavioural change.

Finally, there is a fatal contradiction between the two parts of the noble Lord’s amendment. Even if one were to accept the premise that cost is a factor in patient access to NICE-approved medicines, the first part of the amendment, which would make it harder to control costs, would actively reduce, not increase, patient access by making medicines more expensive. The amendment does not, therefore, work on its own terms.

To conclude, I understand the intentions of the noble Lord, Lord Warner, and others who have supported the amendment. Throughout the Bill’s passage, I have been happy to listen to the arguments of noble Lords—and to act on them—in the pursuit of achieving better patient access by making medicines more expensive. The amendment does not, therefore, work on its own terms.

Motion A1 (as an amendment to Motion A)
Moved by Lord Warner
At end insert “and do propose the following amendment in lieu—
3B: Insert the following new Clause—
“Duty to take account of the life sciences sector and access to new medicines and treatments
In discharging, through the provisions established or amended by this Act, its responsibility to secure best value for the National Health Service in purchasing medicines and medical supplies, the Government must take account of the need to—
(a) promote and support a growing life sciences sector within the United Kingdom economy; and
(b) ensure that patients have rapid clinical access to new clinically effective and cost-effective medicines and treatments approved by the National Institute for Health and Care Excellence through their technology appraisal process.”

Lord Warner (CB): My Lords, the amendment removes the requirement on the Government in the original amendment passed by this House to have “full regard” to the considerations relating to life sciences and access to NICE-approved medicines and treatments. Instead, it requires the Government to “take account of” those considerations in discharging its responsibilities under the Act. This responds to the Government’s concerns that the original wording was too inflexible to respond to all the situations with which they might be confronted in controlling the price of medicines and medical supplies. I suggest that the revised wording gives them the flexibility they seek while retaining some requirement to pause to consider the impact and implications of a price cut to NHS-purchased medicines and medical supplies on the UK’s important life sciences sector and on patient access to NICE-approved medicines.

We passed the original amendment and placed it at the front of the Bill because of our central concern that the legislation seemed overpreoccupied with driving down the price of drugs and medical supplies to the NHS and was in serious danger of losing sight of the importance of the life sciences sector to UK plc, despite the Minister’s protestations—and, together with that, the related issue of ensuring that patients have speedy access to the most cost-effective therapies.

Delaying patients’ and NHS access to new proven therapies will only drive life sciences away from the UK at a time when pharmaceutical investment here is already on a downward trajectory, and at the very time when we need this investment to be increasing under the Government’s own industrial strategy post Brexit, as the Minister rightly said. But the money is going down from big Pharma, investing in this country and the Bill has not helped reverse that trend. Delaying patients’ and NHS access to new proven therapies will only make things worse.

The danger of this Bill passing without a pausing mechanism of the kind I am suggesting is that the Act will become yet another example of the short-termism that is criticised in this House’s Select Committee report on NHS sustainability, published today. I recommend that noble Lords read that report about the short-term focus of much of the action taking place in the NHS today. I declare an interest as a member of that Committee.

The Bill has made the ABPI and the pharmaceutical industry worried that it signals the end of the voluntary PPRS system for settling the price of research-based medicines in this country. Only this week the ABPI published a report on a strategy for a thriving med-tech industry outside the EU, calling for the NICE technology appraisal programme to be expanded to assist NHS take-up of new technology. Little did it know that it was this very week, as the Minister recognised, that the Government, through the agency of NHS England, had introduced a new “budget impact test” for NICE-assessed products. That is yet another hurdle to be jumped by British science and research and before NHS patients can benefit.

I have been probing this new system which in plain English is a new affordability test grafted on to the NICE appraisal process following discussions between NHS England and NICE, under, I suggest, a good deal of pressure from the Department of Health. I tabled a Question on this on 14 March, to which the Minister answered on 28 March. I still have concerns about that Answer, which I am pursuing through further Questions. But I want briefly to share those concerns with the House because they are relevant to why we should send the Bill back to the Commons with a new amendment.

First, there is the very real issue of how big a part NICE-approved medicines actually played in the 20% rise in the drugs bill between 2010-11 and 2015-16 that the Government are so concerned about. Were these appraisals the villains or were there other explanations...
for that increase in the drugs bill? We do not know. Nor do we know whether the costs of these appraisals were actually offset by savings derived from the new treatments. The danger is that an unexplained rise in the NHS drugs bill can cause a panic reaction in the department, which will then use this new legislation to curb access to new drugs.

My second concern is over the actual legality of this new system and the damage being done by it to NICE’s reputation for independence. As I understand the 2013 regulations governing NICE functions, they impose a three-month period for NHS implementation of NICE-approved technology appraisals. It is only NICE that can extend the period of implementation, not the Secretary of State and not NHS England. So we are going to see a system being developed under which NICE is regularly put under pressure by the Department of Health or NHS England to extend the three-month implementation period.

I welcome any light that the Minister can throw on these concerns, but it is not just me or this House that he needs to satisfy—or even industry. He also has to convince patient interest groups such as Breast Cancer Now, Prostate Cancer UK and Diabetes UK, which are all very concerned about the budget impact test and what it means for patients’ speedy access to new proven therapies and their rights under the NHS constitution. I am not convinced that what the Minister has said this afternoon will convince them that they should not be suspicious of these changes.

The more events unfold, the more this looks like a piece of legislation originally designed legitimately to tackle a major NHS rip-off from a generic scam which was then rapidly expanded in scope to give the Government more powers to drive down NHS prices for medicines and medical supplies. From our earlier consideration at different stages of the Bill, I suggest that there has been a lack of proper consultation with many interested parties, and the measure provides powers whose exercise could well have some highly undesirable outcomes. The budget impact test could well illustrate what we might expect without some counter-influence; my Amendment A1 strives to do that but without over-restricting the Government’s legitimate freedom of action when there are outrageous increases in drug prices to the NHS. I beg to move.

Baroness Walmsley (LD): My Lords, I support the noble Lord, Lord Warner, in his amendment. I thank the Minister for how he has worked with your Lordships’ House on all sides to improve this Bill; it is unfortunate that we remain with one point of disagreement. We certainly support the policy objective of the Bill in general and very much welcome the list of actions in the Minister’s introduction to promote research and drug development in this country. But in listening to his outline of his particular responsibilities, it occurred to me that no policy area is ever an island; they always impact on other things. The Minister’s responsibility to achieve best value for the NHS actually impacts on other responsibilities that he and his department have—in particular, in relation to this amendment, on the thriving life sciences sector, on which we all depend, and the access of patients to cutting-edge medicines.

Both those things are suffering from particular threats at the moment. One is Brexit, which I shall not go into now; we have discussed it on many occasions. The other is the recent £20 million affordability test that the Government are introducing. Although £20 million sounds like a very large amount of money, if it is applied to medicines where the population of those needing the medicines is very large, such as some of those mentioned by the noble Lord, Lord Warner—diabetes, breast cancer and other things—the individual cost to an individual patient does not need to be very high to be caught up by the affordability test. The Minister used the word “only”; he said that it would affect only one in five of medicines, but I think that that is an awful lot of medicines, and we should be very concerned about it. That is why we feel that it is important to press the Minister on this issue.

I congratulate the noble Lord, Lord Warner, on offering the Government a compromise, which I hope would avoid what the Minister is clearly worried about: being taken to judicial review by a pharmaceutical company about efforts to push down the price of a medicine. I draw the Minister’s attention to the word “sector” in paragraph (a) of the proposed new clause, which asks the Government to take account of the need to, “promote and support a growing life sciences sector”.

The word “sector” makes it unlikely that any pharmaceutical company trying to take the Government to judicial review would succeed if the Government had, in all other respects, promoted a thriving life sciences sector in this country. It is highly unlikely that they would do so.

I therefore hope that the Minister will think again and not resist this amendment. It is essential, given the current threats to patients in this country—and very large populations of patients too, in particular those coming towards the end of life—to pharmaceutical companies, to treatments and access to medicines. I therefore hope that the Minister will reconsider, and, if the noble Lord, Lord Warner, wishes to test the opinion of the House, he will have the support of these Benches.

4.15 pm

Lord Lansley (Con): My Lords, I intervene in this instance not to agree with but, I am afraid, to disagree with the amendment in the name of the noble Lord, Lord Warner. However, I will also make some important points that are relevant to the issues raised in this Motion and the amendment.

I am against the amendment to the Motion because I entirely agree with my noble friend the Minister that Lords Amendment 3, which the Commons disagreed to, was flawed in the sense that—in relation to the specific responsibilities under the Act for the PPRS and pricing medicines and supplies—it would have put into legislation a set of statutory requirements to have regard to, or indeed to take account of, that are partial and disjointed. Over many decades we have argued that the Secretary of State’s responsibility under the PPRS is not to create an industrial strategy. If we had said that that was the objective, it would have been regarded as a state aid, and it was never regarded as such.
**Lord Lansley**

It is not the job of the Secretary of State, through the PPRS, to deliver a successful industry. There are many ways in which my noble friend illustrated them better than I could have—in which the Government can discharge that wider responsibility, and should do so. That responsibility is to secure the best value for the NHS in purchasing medicines and supplies. We should all be in favour of that and not wish to see it abridged.

**Lord Warner:** Perhaps I may just ask the Minister to explain how, under the PPRS, incentives are often given through R&D tax allowances. Does he not consider that state aid?

**Lord Lansley:** I am perfectly happy if the Minister wants to reply but, from my point of view, I do not regard the PPRS as state aid. If R&D tax credits are available, they should be made available. When the Office of Fair Trading reviewed the PPRS back in 2008–09, I think, it concluded that it was neither a state aid nor a spur to innovation but was actually all about managing the drugs budget. That is what this legislation is all about: managing the drugs budget.

It is, however, important to recognise that the statutory duties in Lords Amendment 3 do not include the one which the Secretary of State should have specific regard to: affordability. It is deficient in not providing for that. Noble Lords will recall that, at an earlier stage, I tabled an amendment the purpose of which was to insert a more complete set of statutory duties for the Secretary of State to have regard to. Affordability must form part of that, but it is not present in this amendment. I am therefore against the amendment.

In the course of this legislation we have discussed other important issues which are still coming to a head. It is absolutely right, as my noble friend said, that the Government are setting out to promote innovation and the life sciences sector, and there are many ways of doing that. The Conservative Party manifesto of 2015 stated:

“We will increase the use of cost-effective new medicines and technologies”.

It also stated:

“We will speed up your access to new medicines”.

It is important that we do that as it is in the interests of patients, our life sciences industry and ourselves as a world leader in science in this area. However, we have on the stocks the accelerated access review—which, ironically, took too long to be produced, was delayed in its publication and has not yet been replied to. We also have a life sciences strategy. The many positives in that run the risk of being negated by the way in which NHS England and NICE have gone about the consultation.

As I said at an earlier stage, it is possible to see how NICE and NHS England can work together in ways that would give industry greater confidence as it would mean that it could get early engagement with NHS England about the managed entry of new medicines into the NHS, including, as my noble friend said, on issues of importance to industry, such as the volume of purchasing of new medicines in the early stages of access. However, the budget impact test, at £20 million, is probably not one-fifth of all new medicines; it is one-fifth of all new medicines regarded as cost effective by NICE. Therefore, this is not a case of any old medicine that might be very expensive; it just happens to be medicines which are cost effective but have relatively high volumes, which is exactly the point to which the noble Baroness, Lady Walmsley, referred.

However, the issue for NHS England should not be the cost of introducing new medicines that are cost effective and in the voluntary PPRS, as the purpose of the pharmaceutical price regulation scheme, as currently designed, is—through the clawback—to give government assurance about the overall increase in the drugs budget. As a consequence, that money is made available as part of the overall funding provided to NHS England. Therefore, NHS England should in theory have in its budget the money that is necessary to meet the drugs bill, including new medicines as they come on stream, because there is clawback for that.

We have this Bill in front of us partly, but not entirely, because the drugs budget was rising much faster than anticipated, and much of that growth was outside the voluntary PPRS. This Bill plugs that gap and sorts that out. However, in doing so—and here we are at the beginning of April—once this Bill is on the stocks and secures Royal Assent and the Secretary of State is able to align the statutory PPRS with the voluntary PPRS, there is no reason why NICE and NHS England should continue to apply an overall budgetary impact test. I say to my noble friend that I think the Government should step in at that point and say, “Where this product has come through a PPRS where a clawback is applied and we have a budgetary mechanism in place—redress—for any extra cost to the drugs bill in the course of this PPRS through to the end of 2018, NHS England should not interpose any extra delay, or seek any extra delay, through NICE in introducing that medicine to the NHS”. I am afraid that if it continues to do so in the way that it is at the moment, that will have a severe negative impact on the view held by the boards of major corporations in relation to the take-up of new medicines by the NHS.

I am sorry to say to the noble Lord, Lord Warner, and other noble Lords that the remedy is not contained in this amendment. The remedy is in the Government’s hands if they choose to make that point very clearly to NHS England in relation to what this legislation enables us to achieve in controlling the drugs budget.

**Baroness Finlay of Llandaff (CB):** My Lords, I thank the Minister for the way in which he has conducted all the previous stages of the Bill, the amount of discussion and negotiation that he has had with all of us, and for accepting many of the amendments. It might be helpful to the House, if, when he sums up, he could clarify how much of the 7% increase is due to new NICE-approved drugs coming through into the system.

It would also be helpful to know whether NICE has the ability to refuse to go along with the budget impact test on this estimated one-fifth of medication that it deems to be cost effective if it feels that a new medicine coming on line is extremely cost effective and that its cost efficacy will have a major impact on those
with life-limiting or life-altering conditions. I am talking about people with a disease that will progress at quite a rate, meaning that over a 90-day period they will be likely to experience a significant decline without the intervention of whatever the new medication might be.

It would also be helpful if the Minister could tell us how the independence of NICE will be assured with this budget impact test. In many parts of the world NICE has been viewed as exemplary in deciding how a medication is approved to come on line, but there are problems with it. If it were viewed as having its independence eroded, that would seriously undermine public confidence in the whole process, particularly among those who have serious and life-limiting or life-altering illnesses.

Baroness Masham of Ilton (CB): My Lords, I am all in favour of bringing down the price of drugs where possible, but patients’ access to new drugs is very important. For a long time, NICE has been very slow to approve drugs and that has caused great frustration for patients and the industry. What can the Minister do about orphan drugs? Not having them can be life-threatening for patients, but NICE has taken some of these drugs off the list. That is really serious for patients for whom they are a lifeline. Does Scotland not have a better system?

Lord Hunt of Kings Heath (Lab): Well, that’s a question, my Lords. First, I declare an interest as president of the Health Care Supply Association and of GS1, the barcoding organisation.

I support the Motion in the name of the noble Lord, Lord Warner. I note what the noble Lord, Lord Lansley, says—that it is not a remedy for the problem being described—but it would send a powerful message to the Government. It is a message which, judging by the debate in the Commons on this matter, I am afraid Ministers in the Commons have not really heard, although I acknowledge that in his opening remarks today the Minister certainly turned to the crux of the issue.

Essentially, with a Bill that gives the Government huge power over drug prices—indeed, it gives them absolute power—the real concern is that NHS patients will not get access to new medicines as they would in other countries. This in turn puts at risk investment in R&D by the pharmaceutical industry in this country, which in turn threatens to undermine the life sciences sector. It is one of the most crucial sectors in this country and in our economy, and post Brexit must become even more important. Essentially, we are seeking to turn this into a virtuous circle whereby the NHS is seen to want to invest in new medicines and treatments, industry feels that the UK is therefore a good place in which to invest, and our life sciences sector grows and becomes even more important.

The problem is that over the last few years we have seen increasing rationing or restrictions on access to these new and effective drugs. We have had a short debate on NICE. I was the Minister first in charge of NICE, going back some years now. When it was set up, it was, first, deemed to be wholly independent of the NHS in its judgments, and secondly, designed to speed up access to new technologies and medicines. However, in the past few years the remit has changed. It seems to have been pushed almost into part of NHS management and budgetary control. The noble Lord, Lord Lansley, put his finger on it when he said that after NICE has reached a judgment that a medicine is both clinically and cost effective, NHS England has, in a number of ways, sought to put in additional controls.

That is why there is concern about the new proposal: that if a NICE-approved treatment exceeds or is expected to exceed a cost of £20 million in any of the first three years, NHS England could ask for a longer period for its introduction. The Minister said that the budget impact test, as it has come to be known, is not a cap but a negotiating tactic. I understand that, but I put it to him that in the past few years NHS England has shown neither the willingness nor the capacity to do anything but reduce access for patients. It is very difficult not to see this as another hurdle.

4.30 pm

We have all had correspondence from various charities. The Specialised Healthcare Alliance says its members are concerned because they think these proposals will put patients at risk by impeding access to new treatments. I have also received a letter from a large number of charities concerned that the proposals will delay access, with no limits on how long this can last. As they say, this would effectively mean that officials have the power to put the brakes on a new treatment at the last minute and hold it just out of reach of patients because they cannot afford to give it to all the patients who need it, after they have been told by the experts in NICE that the medicine represents a good use of resources.

Keir Woods, head of oncology at the major pharmaceutical company Merck, points to that company’s investing 20% of its global venture capital in the UK. He celebrates the UK’s position as a global power in health and its world-class universities, centres of excellence in clinical research and top medical journals. All that has a positive impact on investment. We are home to 4,800 life sciences companies, with the largest pipeline of new discoveries in Europe. That is something to celebrate, but the point he makes is that this is at risk unless we increase the uptake of these new innovations in the UK.

Currently, the UK has developed around 14 of the top 100 global medicines. That is something to be pleased about. However, 20 years ago, we were responsible for one quarter of the top 100 global medicines. The noble Lord, Lord Warner, referred to the £4 billion being invested by pharma in R&D. However, six or seven years ago, it was £5 billion. The risk is that it will go down, billion by billion, because the NHS is, frankly, hopeless at adopting these new medicines. Patients are at risk; the industry is at risk; the life sciences sector is at risk.

The Minister listed the six headings of the life sciences strategy, including science-based support for innovation, business and skills, medicine regulation, digital and data, and improving patient access to
The Minister says that the Bill is concerned only with value for money and not with patient access and investment in life sciences. However, this is the Bill before us and this is our opportunity to say to the Government that they have got to do something about speeding up access to medicines, not only for patients but in order to strengthen and support a key element in our economy. For that reason, I support the amendment.

**Lord O'Shaughnessy:** My Lords, I am grateful to all noble Lords for the points they have made in the discussion we have just had. I will try to deal with as many of them as I can in my response.

I am afraid that we do not agree with the first point of the noble Lord, Lord Warner, about the change of wording to make it more flexible. Such wording as exists in the current amendment would increase the risk of judicial review. As my noble friend Lord Lansley pointed out, it would impair our ability to crack down on those companies that are abusing the NHS by raising prices in a completely unwarranted way. I cannot believe that this is what noble Lords want.

The noble Lord, Lord Warner, referred to the Bill providing a pausing mechanism. It is important to point out and remind noble Lords that the Bill requires a consultation before the beginning of any new statutory scheme. One of the key amendments that we made—indeed, I accepted proposals from others in Committee and on Report—was to introduce an affirmative resolution on extending price controls into the devices realm. So those consultations and pauses already exist—and they do so in a way that is appropriate to the core purpose of this Bill, which is to control costs.

The noble Baroness, Lady Walmsley, referred to the balance that is being struck. She is quite right that there is a balance to be struck, but that does not mean that the balance needs to be struck in each and every item of government policy. As my noble friend Lord Lansley pointed out, this Bill is not the right vehicle to achieve support for the life sciences and industry and to improve patient access. These aims are achieved through other routes, as I have outlined, and the Government are doing a huge amount of work on them.

I wholeheartedly agree with all noble Lords on the importance of the life sciences sector and of improving patient access. The noble Lord, Lord Hunt, was right to point out that, post Brexit, it will be more important than ever. The noble Baroness, Lady Masham, said that this is not just a macroeconomic point; it is about the lives of humans, often in great suffering, who need to have access to medicines. I thank her for bringing that out. It is precisely why the Government are developing an ambitious strategy and a sector deal; and it is precisely why I have been keen to ensure that the NHS is seen as a partner and beneficiary of that deal. Rather than this being seen as something that is done to it, it has to be a counterparty, as it were. I disagree with the noble Lord, Lord Hunt, because we are seeing improvements in uptake for the reasons that I have outlined.

In the course of dealing with the Bill, while I have had complaints from the life sciences sector about certain things that we have done—I will touch on those in a moment—it is fair to say that I have not received any complaints from the industry that this Bill will affect it negatively. It understands that the Bill is about providing equality between the statutory and voluntary schemes, cracking down on those who seek to abuse the system and making sure that there is proper information to inform the price control schemes that we have.

Looking further ahead, from 2019 onwards we will need to look at the medicine and pricing regulation system in the round—and we will be doing so from a position of being outside the European Union. It is therefore absolutely essential that we have a world-leading, price and regulatory environment. I am looking at all aspects of that now and talking to industry and others. As my noble friend Lord Lansley pointed out, it is only right to consider the changes introduced by NICE and NHS England as we look to a comprehensive solution from 2019 onwards.

While we are talking about the outcome of that consultation, I should point out that it was provided in response to the Public Accounts Committee and that there is no threat to the independence of those organisations. I completely agree with the noble Baroness, Lady Finlay, in applauding the reputation that NICE has around the world and the fact that the life sciences industry values getting NICE technology approvals.

The changes being made are consistent with the NHS constitution. I explained in my opening statement how this will work and I have addressed the misconceptions. This is not about delay or reducing uptake, it is about costs, and indeed the changes bring about a variety of positive and welcome benefits to commercial agreements and to a fast-track appraisal process.

The noble Baroness, Lady Finlay, asked what proportion of the growth in the drugs bill has been driven by branded drugs. She will know that that is quite difficult to define because of the issue of what are known as parallel imports. These are branded drugs that are outside the schemes which come in, but of course they make a contribution to the bill. As a country we are one of the best, if not the best, in the OECD in terms of the use of generic drugs, which of course is one way of holding down the bill and creating headroom for innovative drugs. There is a good story to be told about that.

The noble Baroness also mentioned orphan drugs and she is quite right to highlight them. There is the highly specialised technology route. I should also point out that there are routes and specialised commissioning within NHS England, including the commissioning through evaluation programme. These routes have been invented by NHS England to facilitate access to drugs, not to delay it.

To conclude, I want to return to the amendment itself. I should stress to noble Lords that this is not a cost-free amendment and it is not simply a declaratory
piece of legislation. It would increase costs to the NHS for drugs for no benefit. No more drugs would be bought and no more people would take them up. Indeed, it would take money away from other care settings. The Government cannot agree with an amendment that would put the NHS at such a disadvantage. I do not believe that it would be in the interests of either patients or the health service. The House of Commons was right to reject the first version of the amendment and this version does not substantively change the intent. I hope and trust that noble Lords will take the same approach in rejecting it, but before that I would like to ask the noble Lord, Lord Warner, on the basis of the arguments that I have made in response to his key points, to withdraw it.

**Lord Warner:** My Lords, this has been an interesting debate and I thank noble Lords for their contributions. I do not interpret this amendment in the same way as the Minister and I am slightly surprised that he thinks there is a happy mood in the industry about all this because that certainly does not square with my contacts. I would also like to draw his attention to a comment made during a pink ribbon conference recently by the oncologist who heads chemotherapy commissioning for NHS England. He was talking about the budget impact test: “That is why we expect the £20 million figure to hit cancer drugs much more than other drugs”. I think that that is quite an interesting revelation which suggests that some of those who are closer to this than perhaps the Minister and me take a different view about how the budget impact test actually works in practice.

The Minister would have had plenty of time, if he had accepted the principle behind the amendment, to negotiate with us a form of wording that would deliver its intent. He has spent his time trying to get us to take it out of the Bill. He has more access to draftspeople than I do. If he had accepted the principle, we could have come up with wording that is more to his taste. Neither he nor his officials have co-operated with that kind of approach. I believe that this amendment as it stands would be of benefit to patients, to UK plc and to the industry. I wish to test the opinion of the House.

4.44 pm

**Division on Motion A1**

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**Motion A1 agreed.**

**Division No. 1**

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Motion on Amendment 1  
Moved by Lord Henley

That this House do agree with the Commons in their Amendment 1.

I: Clause 1, page 1, line 17, leave out “and” and insert “to”

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, if it is convenient to the House I shall speak also to Amendments 3, 4 and 20. The amendments largely respond to points raised in debates in this House. Amendments 1 and 20 address an unintended consequence of the Bill and enable a scheme funder to engage in activities in relation to any part of the scheme, not just the money purchase section. I am grateful to the noble Lord, Lord McKenzie, for drawing our attention to that issue. Amendments 3 and 4 address the original requirement in the Bill that the scheme funder must be a separate legal entity and must only carry out activities directly relating to the master trust scheme in question. Noble Lords and stakeholders raised concerns about the impact of this requirement on business.

First, the amendments enable scheme funders to operate more than one master trust. Secondly, a new regulation-making power will introduce some flexibility to the requirement that scheme funders’ activities be limited to the master trusts of which they are the scheme funder or prospective funder by allowing exceptions subject to certain requirements. For example, the regulations might require that a scheme funder who carries out activities other than those that relate to the master trust disclose information similar to the financial reports in its management accounts, so that the activities relating to the master trust are distinct from other lines of business. The regulations may also require, where a scheme funder is part of a group of companies, that information be disclosed about the corporate structure of the group to the extent that it affects the financing of the master trust.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for introducing this first group of Commons amendments—Amendments 1, 3, 4 and 20. By way of background, we should acknowledge a degree of consensus emerging on the Bill, which has indeed been helped by the amendments before us today, which deal directly with some of the concerns we raised earlier in the parliamentary process.

This does not mean that we consider, as should have been evident in the other place, that the Government are on top of the entirety of the pensions landscape. There is more to do on the level and transparency of charges; governance; extending the benefits of auto-enrolment; and addressing the lingering injustice felt by those women whose state pension age was raised quicker than expected. Of course, the Government will need to consider John Cridland’s analysis of the state pension age, emerging issues from the DB Green Paper, and the need to make progress on proposals for the Money Advice Service, not to mention the continuing combating of pension scams.

The Bill deals with a specific and technical issue and is important to protecting millions of savers and billions of pounds of savings, and we have sought to address it in these terms. One of the criticisms of the Bill is its heavy reliance on secondary legislation, although that has now been changed to affirmative on first use, as we have just heard. The aspiration, as we understand it—and the Minister may confirm—is for this process to be completed during 2018 to enable all the provisions to be commenced. Doubtless this timetable was contemplated without due regard to Brexit. What is clear now is that an enormous amount of legislation, mostly secondary, will be required to give effect across government to our exiting the EU. Can the Minister say what assessment has been made of the capacity of government—indeed, of Parliament—to cope with all of this? Will he undertake to publish a current timetable for implementation of the Pension Schemes Bill?

We support Amendments 1 and 20, which as we have heard deal with an unintended effect of the original drafting. It would have required the scheme...
[LORD McKENZIE OF LUTON]

funder’s activities to relate only to the money purchase benefits aspect of each scheme that is a mixed-benefit scheme.

As the Minister has outlined, Amendments 3 and 4 deal with Clause 11 and the scheme funder requirements. This clause generated considerable debate in your Lordships’ House and in the other place, as the Minister again acknowledged. This was not about challenging the policy, which quite properly seeks to ensure that the financial position of scheme funders and their financial arrangements with master trusts are transparent and clear to the regulator. The concern raised by a number of noble Lords as well as stakeholders was that the original requirement for separate legal entities and activities relating to just one master trust scheme were too restrictive, could force costly corporate restructuring and could detract from market opportunities to consolidate.

The remedy proposed is to allow the scheme funder to carry out activities that relate to more than one master trust and for the Secretary of State to have power to make regulations to exempt a scheme funder from the requirement that it must carry out only activities directly related to master trust schemes for which it is a scheme funder. The power can be used where a scheme funder meets additional requirements relating to its financial position, its arrangements with the master trust involved and its business activities. The regulations can also enable application by the relevant master trust scheme to seek to satisfy the regulator that the scheme is financially viable.

On the face of it, these amendments potentially enable concerns about shared services, FCA-regulated entities and consolidation opportunities to be addressed, but it would be helpful if the Minister put further flesh on the bones of how he sees these relaxations being used. As we expected, he has addressed the Delegated Powers and Regulatory Reform Committee’s requiring a more convincing explanation of why these regulations should be subject to the affirmative procedure on first use—bearing in mind that this is the case in a number of places in the Bill. Subject to any final matter the Minister may raise, we are inclined to support these amendments as they demonstrate that the Government have been listening to the genuine concerns about what the original Clause 11 would have generated.

Lord Henley: My Lords, I am most grateful to the noble Lord, Lord McKenzie, for the constructive approach he has taken to this group of amendments. I hope that this will continue for the rest of this consideration of Commons amendments. He raised various points about Cridland and the state pension age, which go wider than the Bill at the moment. I will not respond to those points but he made an important point about the degree of secondary legislation that will come forward not purely from the Department for Work and Pensions but from across government—he meant late this year, I presume, and throughout next year. He wondered whether we hoped to get all of it completed by 2018. I believe that we do but it will obviously be quite a trying matter. We will want to continue to engage with the regulator, the pension industry and other stakeholders throughout the year. That will be followed by formal consultation on those draft regulations, which we currently hope to get early next year so that we can get them coming into force from 2018.

What pressure there will be on this House and another place from all the various primary and secondary legislation coming before us is probably beyond the noble Lord’s pay grade, and certainly beyond mine. However, I am sure that the usual channels will discuss that and ensure that we give appropriate coverage to all these matters.

As to the detailed timetable of all that consultation with the regulator and pension stakeholders, the noble Lord asked for a table, but it might be helpful if I write him a short letter setting that out, if there is anything that I can add to what I have said. We aim to have those regulations coming into force from 2018, and nothing that I have seen so far seems to suggest that we will not be able to meet that. I think we can go ahead and agree these amendments. I hope the noble Lord will accept that.

Motion agreed.

Motion on Amendment 2

Moved by Lord Henley

That this House do agree with the Commons in their Amendment 2.

2: Clause 9 leave out Clause 9

Lord Henley: My Lords, it will be convenient to take Amendments 5 to 19 at this stage. In the other place, Amendment 2 resulted in the removal of Clause 9, which had been inserted in this House after a vote on Report on an amendment tabled by the noble Baroness, Lady Drake. It provided for a scheme funder of last resort to meet costs where a master trust is being wound up without the necessary funds to transfer the accrued benefits. It remains the Government’s view that this provision is simply not required. I do not want to go through all the arguments put forward by my noble friends Lord Young and Lord Freud who took this Bill through the vast majority of its stages late last year. The Bill requires that in order to operate, a master trust must be authorised. The authorisation criteria include that the master trust must be financially sustainable and have sufficient systems and processes for the running of the scheme. To meet the financial sustainability requirement, the scheme will, among other things, need to provide evidence to the Pensions Regulator that it has sufficient funds to meet the costs of wind up. It will also have to provide evidence that it has sufficient systems and processes, which will include its arrangements for holding accurate records on its members and the rights and benefits to which they are entitled. The Pensions Regulator will carry out ongoing supervision of master trusts. The schemes will be required periodically to provide the Pensions Regulator with information on its financial resources and administration to enable the Pensions Regulator to be satisfied that the funding remains adequate and the systems and processes robust. A scheme funder of last resort would therefore be required only if this whole approach to regulation fails in some catastrophic way. I have no reason to believe that it is likely to do so.
Amendments 5 to 19 concern the provisions in the Bill for a master trust that is going to wind up; they are intended to address concerns that were raised in earlier debates in this House that finding another master trust to take members on may be difficult. The amendments allow regulations to provide that master trusts that are to be wound up under continuity option 1 can transfer their members’ accrued rights and benefits to a pension scheme other than a master trust. In addition, the same restrictions in the Bill on new or increased charges being applied to a master trust receiving scheme could be applied by regulations to that non-master trust receiving scheme.

In introducing these amendments in another place, my honourable friend the Minister for Pensions said:

“The non-master trust receiving scheme would be made subject to exactly the same restrictions on increasing or introducing new charges as those to which master trust receiving schemes are subject”—[Official Report, Commons, Pension Schemes Bill Committee, 7/2/17; col. 65.]

The amendments allow for regulations to be made that would widen the potential destinations to which members of a master trust being wound up can be transferred, while ensuring that their savings cannot be used to fund the costs of that transfer. In another place, my honourable friend the Minister for Pensions explained:

“Allowing other types of pension schemes to receive transferred members, as long as they meet specified requirements, could increase the options available to trustees, introduce extra flexibility and widen the market for potential schemes. This might be useful if trustees found that they were struggling to find somewhere appropriate for their members’ rights, which might particularly benefit members using decumulation options. Being able to increase the options in future might help reduce the risk that trustees of failing master trusts might not be able to find another master trust to take their members on”—[Official Report, Commons, Pension Schemes Bill Committee, 7/2/17; col. 66.]

Amendments 5 to 19 are therefore primarily useful in future-proofing this aspect of the authorisation regime, and will be used as and when developments in the market give rise to a need for them. Not to include them in the Bill at this stage could unnecessarily restrict the market for members’ rights and benefits to their detriment. I beg to move.

5.15 pm

Baroness Drake (Lab): My Lords, the Bill, in strengthening the regulation of master trusts, is indeed welcome. I noted that a recent release by the ONS on funded pensions and insurance in the UK national accounts referred to the significance of the establishment of DC master trusts, so in general there is increasing recognition of the importance of having fit-for-purpose regulation of master trusts. However, the government amendments in this group raise certain questions that I would like to put to the Minister.

Amendment 2 to Clause 9 simply deletes the provision for a funder of last resort. That is disappointing. Will the Minister update the House on what further action the Government have taken since the Bill was last considered by this House to address the protection of scheme member benefits in the event of a master trust winding up with insufficient resources to meet the cost of complying with and obligations under the Bill? The noble Lord, Lord Freud, implied that there was ongoing work and discussions with the industry, so it would be helpful to know what actions have been taken.

The other government amendments in this group, to Clauses 25 and 34, addressed the issue of allowing, in a wind-up on failure, the transfer of scheme members and their benefits to a receiving scheme that is not a master trust—for example, a group personal pension. While not wanting to disagree in principle with widening the pool of schemes to which transfers can be made, I think that that change to the Bill raises some questions. Given that the Pensions Regulator will be authorising a transfer to a scheme that has not been subject to the master trust authorisation regime, how will it satisfy itself that the receiving scheme on transfer is both sustainable and well governed?

The Bill provides under Clause 34 for a prohibition on increasing or imposing new charges on members by either the transferring or the receiving scheme in order to meet the cost of resolving failure. As a non-master trust receiving scheme will not have been subject to the authorisation regime and the continuity and implementation strategy requirements in the Bill, how will the Pensions Regulator apply the prohibition on increasing charges and police it after the transfer of members to a non-master trust, given that the receiving scheme will not be in its regulatory jurisdiction?

Government Amendment 13 provides for regulations to allow for transfers from a master trust to a contract-based scheme. Given that the transfer will be from a trust to a contract arrangement, do the Government consider that there are any special considerations that the regulations will need to address? If so, what are they?

Baroness Altmann (Con): My Lords, I welcome much of the thrust of the Bill. I am also delighted to see Amendments 3 and 4, which, I hope, ensure that insured master trusts will not be forced to separate from their insurance parent, which would have forced them to face higher costs and reduced the security of their members. I am very grateful to my noble friend for taking on board the comments made during the Bill’s passage through this House.

It strikes me that Amendment 2 should be considered separately from those to which it has been joined. I reiterate my strong concern—notwithstanding the reassurances from my noble friend—about leaving out Clause 9. I understand that there is a view that it is unnecessary and that the new regime will ensure that master trusts have sufficient resources, are financially sustainable and have capital adequacy in place. However, even with new schemes and the best will in the world, capital adequacy tests may prove inadequate. No provision in the Bill would cover members of a very large pension scheme that suffered a catastrophic computer failure and lost member records. The cost of restoring that could be well above the capital adequacy put in place, and nothing in the Bill explains where the cost of restoring those records would be covered. The only place might be the members’ pots themselves, which is not supposed to happen.

I vividly recall assurances given by Ministers on defined benefit schemes during the 1990s, when the minimum funding requirement was supposed to ensure
[BARONESS ALTMANN]

that schemes would always have enough money to pay pensions. No one foresaw the problems evident in the early 2000s, when schemes that had met MFR legislation wound up and ended up without enough money to pay any money to some members on the pensions that they were owed.

Even more concerning than that is that the Bill is being introduced when 80 or so master trusts are already in existence in the market with a huge number of members across the country already saving in a pension. These trusts have not been subject to the capital adequacy test or other tests that the Bill will rightly introduce. What is the protection for members of existing schemes who are saving in good faith? They are not protected at all. That was why I was very pleased that we passed the amendment concerning the scheme funder of last resort. I echo the question of the noble Baroness, Lady Drake: what discussions have taken place with the industry to find a solution to cover the eventuality—we do not expect it and it is, I admit, a small probability—that an existing master trust winds up without enough funding to cover the costs of administration to sort out its records and transfer them over to another scheme? I should be grateful for some information from my noble friend about whether there are ongoing discussions and how the department sees that eventuality being covered: where would the money be found?

On Amendments 5 to 19, I share some of the reservations mentioned by the noble Baroness, Lady Drake, such as the regulatory disparity between a master trust, which would be regulated by the Pensions Regulator—and therefore under its control, if you like—and a master trust transferred under the amendments to a pension scheme regulated by the Financial Conduct Authority. How would the regulatory systems work together when they are under different legislation?

I have other concerns, but I may raise them under the next group.

Lord McKenzie of Luton: My Lords, let me start by expressing our regret that the requirement for there to be a funder of last resort—successfully pressed by my noble friend Lady Drake on Report—has been deleted from the Bill. That concern was also expressed by the noble Baroness, Lady Altmann. We of course accept that the whole purpose of the Bill—it protections, including capital adequacy, financial sustainability, systems requirements, scheme funder and transfer regime—is to secure people’s pension pots, mitigate against scheme failure, and ensure good order when difficulties arise. But as my noble friend asserted on Report, notwithstanding this, it cannot be guaranteed that a master trust will not fail and when it does there will be an available master trust to step into the breach so that members’ funds are protected. The noble Baroness, Lady Altmann, has just expressed similar concerns with vivid potential examples.

In seeking to resist the funder of last resort proposition, the noble Lord, Lord Freud, claimed that it would be costly and a disproportional response to the issue and with moral hazard implications—arguments deployed by the Parliamentary Under-Secretary of State for Pensions in the other place. We remain unconvinced of these arguments when put in the balance against the importance of protecting people’s savings. Nevertheless, we need to examine how the Commons amendments to Clauses 25 and 34 contribute to ameliorating this risk, which at least potentially they do.

We acknowledge the amendments to Clauses 25 and 34 which potentially widen the scope of continuity option 1 and expand the prohibition on increasing administration charges or imposing new administration charges. In particular, they raise the prospect of the accrued rights and benefits under a master trust scheme being transferred to an alternative pension scheme which is not a master trust. No detail is offered in the amendment about the likely characteristics of an alternative pension, other than the fact that it must be a pension scheme under the 1993 Act. This of course will include both personal and occupational pension schemes. Regulations will spell out the circumstances when the alternative might be available, and the characteristics of an alternative scheme. Regulations will also spell out how such an option is to be pursued.

While we can see the benefits of a potentially wider pool of pension schemes which could be available in the event of a master trust failure, it begs a number of questions about how any alternative scheme would be regulated and what protection it would offer members. My noble friend Lady Drake, in particular, as ever has produced some forensic questions to seek at least some clarity on key issues: further actions and discussions that have taken place; whether a receiving alternative scheme is sustainable and well governed; how such a scheme can operate a prohibition on increasing charges and preventing members’ funds from being accessed; and consideration of how bulk transfers would work. The noble Baroness, Lady Altmann, joined in the same sort of inquiry.

It remains to be seen how much these amendments provide a real opportunity to add a layer of protection and whether the market will offer up alternative schemes which can assist. We look forward to the Minister’s reply, but we are not minded to oppose these amendments.

Lord Henley: I start by offering my thanks to the noble Lord for making it clear that he is not minded to oppose these amendments. I understand that noble Lords felt quite strongly about their amendments and for that reason wanted them in the Bill to be considered by another place. The other place has considered those amendments and we now have this opportunity for further debate. We can then get on with seeing the Bill on to the statute book.

Before dealing with the questions, I shall respond to the brief point made by my noble friend Lady Altmann about not being happy with the groupings. The groupings are a largely informal matter, sorted out by the usual channels. To my knowledge—and I think that it was probably done in discussion with the Opposition—they have changed a number of times, but that is not unusual. Very often we get it wrong in how things are grouped. But as is made clear on the bit of paper that comes to the House every day, groupings are an informal matter, and it is always open to all noble Lords to intervene on any appropriate amendment at the appropriate stage.
Lord McKenzie of Luton: I can confirm that it was me who suggested that Amendment 2 should be added to the list.

5.30 pm

Lord Henley: I am grateful to the noble Lord. It is a matter that is possibly more in the hands of the Opposition than those of anyone else—but it is also a matter for all other Members of the House to put in their views, if they wish. The groupings are designed purely to assist the House and, as the mantra makes clear, they are informal and can be broken by any noble Lord.

A number of questions were put forward by the noble Baroness, Lady Drake. Again, I commend her for all the work on this Bill; I am grateful that it was largely my noble friends Lord Young and Lord Freud who had to deal with her expertise at those earlier stages, rather than myself. I come to it late, and have learned a certain amount in the course of proceedings—and, no doubt, I shall learn more in due course, particularly when we get to the regulations referred to earlier.

I come to the first of the noble Baroness’s questions, when she asked what further plans the department had for how things would be taken forward. My honourable friend the Minister for Pensions, who takes this Bill and all within it very seriously, referred in Committee to conversations that he had with representatives of certain pension funds who were then contemplating a system for allocation among themselves of any master trust that was going to wind up, if the market did not provide a proper destination. Those discussions will continue and, no doubt, my honourable friend, if he has any further points, will be able to speak to my noble friend Lady Altmann and others who have concerns.

My noble friend Lady Altmann was also worried about the confidence that we had that the risk of a master trust failing in a catastrophic manner is very low. I would still maintain that, and I think so would my honourable friend. The Pensions Regulator has been working very closely with the master trusts, and the work certainly gives us all in the department the comfort that the risk is low. The regulator continues to proactively assess the level of risk in the master trust market, and so will be alert to any changes. We hope that the regulator will publish information, including on confidence in the levels available in due course.

The noble Baroness, Lady Drake, also raised the question of how the Government will be satisfied that the risk is low. I would still maintain that, and I think so would my honourable friend. The Pensions Regulator has been working very closely with the master trusts, and the work certainly gives us all in the department the comfort that the risk is low. The regulator continues to proactively assess the level of risk in the master trust market, and so will be alert to any changes. We hope that the regulator will publish information, including on confidence in the levels available in due course.

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For instance, if the scheme was regulated by the FCA, there would be discussions with the FCA about how to achieve this.

As the regulator of the exiting scheme, the Pensions Regulator would have responsibility and oversight over this scheme’s actions. The master trust pursuing continuity option I will have to set out in its implementation strategy which scheme it intends to use as its receiving scheme. The exiting master trust will have its implementation strategy approved by the Pensions Regulator, which also has the power to direct the trustees of the exiting master trust where they are failing to comply with their duties under the Bill. While the Pensions Regulator may not be the regulator of the receiving scheme, it will have oversight and powers it can use in that situation.

I hope that that deals largely with most of the questions. If there is anything I have failed to address, obviously, I will write. However, there will be further opportunities as we consult on those regulations over the coming year and next year to deal with these matters. Again, I give the assurance that my honourable friend the Minister for Pensions, as well as my right honourable friend the Secretary of State, will keep all this in mind and will be open to all comments that noble Lords wish to make.

Motion agreed.

Motion on Amendments 3 to 20

Moved by Lord Henley

That this House do agree with the Commons in their Amendments 3 to 20.

3: Clause 11, page 7, line 7, leave out subsections (2) and (3) and insert—

“(2) The first requirement is that the scheme funder is a body corporate or a partnership that is a legal person under the law by which it governed.

(3) The second requirement is that the scheme funder only carries out activities that relate directly to Master Trust schemes in relation to which it is a scheme funder or prospective scheme funder.

(3A) The Secretary of State may make regulations providing for exceptions from the second requirement.

(3B) The regulations may include provision excepting a scheme funder from the second requirement

(a) where the scheme funder meets additional requirements specified in the regulations (such as requirements relating to a scheme funder’s financial position, its financial arrangements with the Master Trust scheme in question or its business activities);

(b) where the scheme funder applies to the Regulator and provides the Regulator with information specified in the regulations, or such other information as the Regulator may require in order to satisfy the Regulator that the Master Trust scheme is financially sustainable.”

4: Clause 11, page 7, line 20, leave out subsection (6) and insert—

“( ) The first regulations that are made under subsection (3A) are subject to affirmative resolution procedure.

( ) Any subsequent regulations under subsection (3A), and regulations under subsection (4), are subject to negative resolution procedure.”

5: Clause 25, page 17, line 21, leave out “Master Trust” and insert “pension”
Clause 25, page 17, line 23, leave out “subsection” and insert “subsections (1A)(b) and”

Clause 25, page 17, line 24, after “the” insert “Master Trust”

Clause 25, page 17, line 27, at end insert—

“(1A) Each pension scheme proposed under subsection (1)(a) must be—

(a) a Master Trust scheme, or

(b) in such circumstances as may be specified in regulations made by the Secretary of State, a pension scheme that has characteristics specified in regulations made by the Secretary of State (“an alternative scheme”).”

Clause 25, page 17, line 28, leave out “The notification” insert “Notification under subsection (1)(b)”

Clause 25, page 17, line 33, leave out subsection (3) and insert—

“(3) The Secretary of State—

(a) must make regulations about how continuity option 1 is to be pursued, in a case where a proposed transfer is to a Master Trust scheme;

(b) may make regulations about how continuity option 1 is to be pursued, in a case where a proposed transfer is to an alternative scheme;

(c) may make regulations for the purpose of otherwise giving effect to continuity option 1, in either case.”

Clause 25, page 18, line 29, leave out “receiving”

Clause 25, page 18, line 37, at end insert—

“(4A) Regulations under subsection (3)(b) may include—

(a) any provision mentioned in subsection (4);

(b) provision deeming any member whose accrued rights or benefits are to be transferred to an alternative scheme to have entered into an agreement with a person of a description specified in the regulations.”

Clause 25, page 18, line 46, leave out “subsection” and insert “subsections (1A)(b) and”

Clause 34, page 23, line 41, after “scheme” insert “that is a Master Trust scheme”

Clause 34, page 24, line 16, at end insert—

“(5A) The Secretary of State may by regulations apply some or all of the provisions of this section to a receiving scheme that has characteristics specified in regulations under section 25(1A)(b).”

Clause 34, page 24, line 20, leave out “Master Trust” and insert “pension”

Clause 34, page 24, line 28, at end insert—

“(7A) Regulations under subsection (5A) are subject to affirmative resolution procedure.”

Clause 34, page 24, line 29, at beginning insert “Other”

Clause 40, page 28, line 15, at end insert—

“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993;”

Clause 40, page 28, line 35, at end insert—

“(2A) The reference in section 11(3) to activities that relate directly to Master Trust schemes is, in its application to a Master Trust scheme which provides money purchase benefits in conjunction with other benefits, to be read as a reference to activities that relate directly to the scheme as a whole.”

Motion agreed.

Motion on Amendment 21

Moved by Lord Henley

That this House do agree with the Commons in their Amendment 21.

Baroness Altmann: My Lords, before the Bill passes through, I will make a couple of observations. Perhaps the Minister, who will not have the answers now, might write to me to allay some of my concerns that I will put on the record about the Bill.

The first regards net pay schemes being used for auto-enrolment as master trusts for low earners, who cannot get tax relief so they end up paying 25% more for their pensions. These low earners, who are probably mostly women, are the ones who surely most need extra money yet are unable to receive it. There is nothing in the master trust framework that will require employers to ensure that low earners are not enrolled into such schemes. Indeed, one pension scheme—NOW: Pensions—is reimbursing members for the tax relief they have lost, which is fine; they are not out of pocket.

The second issue on which my noble friend might be able to write to me is that I remain concerned that during a pause order, members may in fact lose entirely their entitlement to an auto-enrolment pension building up for them—for an indefinite period, because we do not know how long the pause order can last.

Lord Henley: My Lords, I am not sure that I have ever spoken on a privilege amendment before, but I have noted what my noble friend had to say and I promise to write to her. I beg to move.

Motion agreed.

Digital Economy Bill

Third Reading

5.39 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Digital Economy Bill, have consented to place their interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Clause 3: Bill limits for mobile phone contracts

Amendment 1

Moved by Lord Stevenson of Balmacara

1: Clause 3, page 3, line 26, leave out “switch” and insert “roam”

Lord Stevenson of Balmacara (Lab): My Lords, this is a technical amendment in the sense that it seeks to correct an error which seems to have been made
inadvertently in the run-up to Report. As a result—
for no particular purpose, these things just happen—
Clause 3(1)(b) states,
“allow the end-user to switch (at no extra charge) to another
provider”. whereas it should state,
“allow the end-user to roam (at no extra charge) to another
provider”. Those noble Lords who are not conversant with the
Bill may find these words rather strange and may feel
that we are making a mountain out of a molehill. However, I assure the House that this is a significant
change. The issue that we are trying to address—and
the reason that I am spending a little time on this,
although it is a technical amendment, and I know that
the Minister would like to make a few remarks in
response—is that there are in this country, despite the
considerable investment, care and concern of those
responsible for the infrastructure, a large number of
what are called not-spots. These are places within
which one’s mobile phone dies and one is unable to
access anything, let alone the emergency services. The
reasons for this are probably more complex than I
need to go into at this stage, but in essence our
amendment seeks to suggest that in areas of not-spots—
not across the whole country—it might be feasible for
those who have mobile phones with one provider to
hook on to the signal provided by another, which
would provide the roaming commonly found when
one goes abroad but not in the UK. The counter-argument
I am sure we will hear from the Minister is that this
would interfere with the current arrangements for
good competition which will drive forward much better
and quicker coverage of the whole country, and that
therefore our proposal is the wrong way to go. However,
we beg to differ.

The wording of our previous amendment may have
been deficient but, given the brilliant arguments put
forward by my noble friend Lord Mendelsohn and our
colleague on the Liberal Benches, the noble Lord,
Lord Fox, we won a vote on this issue. We therefore
seek to change “switch” to “roam”, as I said. I hope
this will be accepted as a technical change and that the
Government will accept the amendment. However, I
have just been alerted to the possibility that the current
wording may still be deficient and may require further
action following Third Reading. Having had a quick
word with the clerks, I am pretty confident that a
simple cross-referencing issue is involved, and that
that can be picked up as we go forward. However, we
may have to return to that if we have ping-pong on the
Bill. I beg to move.

The Parliamentary Under-Secretary of State,
Department for Culture, Media and Sport (Lord Ashton
of Hyde) (Con): My Lords, I have just been informed
by my noble and learned friend that all amendments
were not prohibited. Mobile networks could voluntarily
enter into agreements with each other but they do not
because it is costly and prevents them differentiating
from competitors on the basis of coverage. As the noble
Lord, Lord Stevenson, reminded us, the noble Lord,
Lord Mendelsohn, told us on Report about the benefits
he receives from his chosen provider, which permits
roaming. This is, of course, a provider based outside
the UK and the EU. However, he did not highlight the
cost of that. The advertised price is £100 for one gigabyte
of data and voice calls are £100 for 1,000 minutes,
which is 10 times more expensive than the going rate
for a standard domestic contract. That premium arises
because operators have to pay other operators network
access charges. Networks should be entitled to recover
the cost of their investment. If one relies on another to
provide coverage, it is only reasonable that fees should
be paid, and those fees are of course passed on to the
consumer.

Secondly, as the noble Lord, Lord Stevenson,
anticipated, there is the question of the impact on
investment. Our strategy has been to grow investment
in infrastructure, and that has worked. It has locked in
£5 billion of investment since 2014. Some 89% of UK
premises are now covered by all four operators, and
that percentage is growing. More importantly, this
investment is closing not-spots. Ofcom forecasts that
by the end of this year the number of not-spots will
have more than halved since 2014. Roaming might
make it easier for some people where only a single
operator exists, subject to cost, but it does not do
anything for those in not-spots. Extending coverage
remains our priority and that needs investment.

5.45 pm

Thirdly, if roaming were the silver bullet, why has it
not been done in comparable markets? This approach
has not been adopted elsewhere in Europe. The only
exception is France, where there was an attempt to
kick-start a new market entrant, but now, even there,
the regulator is phasing out roaming. The few countries
with domestic roaming—New Zealand, Canada and
India, for example—have mobile markets and geographical
challenges that do not make them comparable to the UK.

Fourthly, we agree that there is no need for every
corner of the country to be covered by four masts.
Sharing apparatus can be achieved without roaming.
The new electronic communications code, in this Bill,
is an enabler of more sharing, and noble Lords will
have seen the support we have received from the
wholesale infrastructure providers, which lead the way
in this kind of sharing. However, other sharing is also
being pursued, including the open access to Openreach’s
ducts and poles, and Ofcom will soon be consulting
on that.

Finally, the amendment is focused on allowing the
opportunity to roam where services fall below standard.
We are not clear what standards the amendment tries
to refer to but consumers have other protections and
remedies available to them: they may be subject to
statutory cooling-off periods on new contracts; they
may have other contractual rights; and, thanks to this
Bill, they may be able to switch or to qualify for
automatic compensation.
The Government will now consider further Clause 3, as amended by this amendment, when it returns to the other place. In the meantime, as I said, we accept Amendment 1 in the names of the noble Lords, Lord Stevenson and Lord Fox.

Lord Stevenson of Balmacara: I am very grateful to the Minister for that response. I sense that we may be seeing this issue again, so I will not delay the House further. I just want to put on the record that, if there has been a reduction in the number of not-spots, it must have taken place in every conceivable part of the United Kingdom apart from the ones I travel to, because I have not noticed anything.

Amendment 1 agreed.

Clause 10: Statement of strategic priorities

Amendment 2

Moved by Lord Ashton of Hyde

2: Clause 10, leave out Clause 10

Lord Ashton of Hyde: My Lords, this is a group of technical amendments to ensure that the legislation is as clear and consistent as possible.

Amendment 2 removes Clause 10, which creates a new power for the Secretary of State to set a statement of strategic priorities relating to the management of radio spectrum. On Report, Clause 104 was introduced, expanding this power to cover telecommunications and postal services, in addition to the management of radio spectrum. The introduction of this new provision means that Clause 10 is no longer necessary. I promised on Report to introduce this amendment at Third Reading.

Amendments 3 to 8 relate to the measures for age verification for online pornography. Amendments 3 and 6 remove clarificatory wording on, “a means of accessing the internet”, from Clause 16 and put it in Clause 23. Due to an earlier amendment, that phrase is no longer used in Clause 16 but it is still used in Clause 23, so the definition is moved to Clause 23.

Amendment 4 is one for aficionados of parliamentary drafting. It ensures that the Bill is consistent by aligning the wording of Clause 19(7)(a), which refers to, “the House of Commons and the House of Lords”, with the wording of Clause 27(13)(a), which refers to “each House of Parliament”. I think we will all sleep easier at night if that is consistent.

Amendment 5 clarifies that the regulator’s power to require information can be from internet service providers and any other person that the age-verification regulator believes to be involved, or to have been involved, in making pornographic material available on the internet on a commercial basis to persons in the United Kingdom.

Amendments 7 and 8 amend the definition of “video works authority” for the purposes of Clause 24, so that this includes the authority designated in respect of video games. This follows the approach to the extreme pornographic material provisions of the Criminal Justice and Immigration Act 2008.

Amendment 9 removes the provision for transitional, transitory and saving provisions in relation to the repeal of Section 73 of the Copyright, Designs and Patents Act 1988. This is a technical drafting amendment to ensure consistency between this clause and Clause 122 on commencement. I can confirm again to the House that Section 73 will be repealed without a transition period and that the Government will commence repeal without delay.

Turning to Amendment 12, I am very grateful to the noble Baroness, Lady Drake, for drawing my attention on Report to the need for complete clarity as to whom the Government are referring in the undertaking to be transferred from BT plc to a future Openreach Ltd. I accepted that a clear definition of the term “undertaking” was necessary and offered to come back with a government amendment at Third Reading to address this issue. Government Amendment 12 does this, making it clear that we define the term “undertaking” to include anything that may be the subject of a transfer or service provision change, whether or not the Transfer of Undertakings (Protection of Employment) Regulations—TUPE—apply. The intention is that all employees currently benefiting from the Crown guarantee will continue to do so if they transfer to Openreach Ltd. The Government consulted on the wording in advance of laying this technical amendment. I am grateful to the noble Baroness for assisting us, and to both BT plc and the trustee for confirming that this definition was satisfactory.

Amendments 13 to 17 relate to the Electronic Communications Code. Under the new code, an owner or occupier whose access to their land is obstructed by electronic communications apparatus without their agreement has the right to require the removal of that apparatus. Amendments 13 and 14 make it clear that this right arises only where the apparatus itself interferes with access, as opposed, for example, to a temporary obstruction by a vehicle.

Amendments 15, 16 and 17 merely correct minor omissions and referencing errors. I beg to move.

Baroness Howe of Idlicote (CB): My Lords, I welcome these tidying-up amendments. I want to take the opportunity provided by this Third Reading debate to congratulate the Government once again on taking action to protect children from pornography on the internet through age verification. I shall be watching the implementation of Part 3 of the Bill closely. I would like also to put on record my thanks to the Minister for meeting with me to discuss adult content filters. I am very grateful also to noble Lords who supported my amendment at an earlier stage, highlighting the need to get a better understanding of the adult-content filtering approaches adopted by smaller ISPs that service homes with children: the noble Lords, Lord Collins of Highbury and Lord McColl of Dulwich, and the noble Baroness, Lady Benjamin.

Turning to the future, I am very much looking forward to the discussions on the Government’s Green Paper on internet safety and to their response to the
Communications Committee’s report, *Growing up with the Internet*. Part 3 of this Bill is not the end of the story on children and internet safety.

Despite many positives, in comparing and contrasting the Bill that entered your Lordships’ House with the Bill as it now leaves, my response is one of sadness. The underlying principle of parity of content has been removed and the Bill is, in this respect, unquestionably weaker as a result.

In the first instance, the Bill entered your Lordships’ House properly applying the same adult content standard online as applied offline. It leaves your Lordships’ House saying that most material that the law does not accommodate for adults offline will be accommodated online behind age verification. Only the most violent pornography—that which is life-threatening or likely to result in severe injury to breast, anus and genitals—will be caught. Injury or severe injury to other parts of the body appear to be fine as long as they are not life-threatening. As the Bill leaves us, the message goes out loud and clear that violence against women—unless it is “grotesque”, to quote what the Minister said on Report—is, in some senses, acceptable.

In the second instance, the Bill entered your Lordships’ House properly applying the standard of zero tolerance to child sex abuse images, including non-photographic and animated child sex abuse images. Today it leaves your Lordship’s House with the relevant powers of the regulator deleted so that it can no longer take enforcement action against animated child sex abuse images that fall under the Coroners and Justice Act 2009. As such, the Bill goes out from us today proclaiming that non-photographic images of child sex abuse, including animated images, are worthy of accommodation as long as they are behind age verification.

As agreed, Third Reading is a time for tidying up. However, Part 3 of the Bill clearly requires further amendment so that the message can go out once again—as it did in the other place—that there is no place for normalising violence against women and no place for accommodating any form of child sex abuse. I hope that the other place will now rise to that challenge.

**Lord Clement-Jones (LD):** My Lords, I do not wish to detain the House unduly on these amendments. I welcome, in particular, Amendment 9 as it is the fulfilment of a pledge made by the Minister on Report. I am delighted that Section 73 of the Copyright, Designs and Patents Act will be no more as soon as the Bill comes into effect. I am delighted that the Minister has fulfilled his undertaking.

**Baroness Drake (Lab):** My Lords, I, too, thank the noble Lord, Lord Ashton, for tabling Amendment 12, which gives greater clarity to the BT and Openreach employees covered by the provisions of Clause 119. The Government have also made clear their intention to engage fully with the BT pension scheme trustee and I hope their discussions go well.

**Lord Ashton of Hyde:** My Lords, I am grateful for those comments. I take the point of the noble Baroness, Lady Howe, that there is still work to do. As she mentioned, the internet safety strategy Green Paper will be with us in June.

Amendment 2 agreed.

Clause 16: Internet pornography: requirement to prevent access by persons under the age of 18

Amendment 3

Moved by Lord Ashton of Hyde

3: Clause 16, page 20, line 1, leave out paragraph (b)

Amendment 3 agreed.

Clause 19: Parliamentary procedure for designation of age-verification regulator

Amendment 4

Moved by Lord Ashton of Hyde

4: Clause 19, page 23, line 10, leave out “the House of Commons and the House of Lords” and insert “each House of Parliament”

Amendment 4 agreed.

Clause 20: Age-verification regulator’s power to require information

Amendment 5

Moved by Lord Ashton of Hyde

5: Clause 20, page 23, line 26, leave out “a” and insert “any other”

Amendment 5 agreed.

Clause 23: Age-verification regulator’s power to give notice of contravention to payment-services providers and ancillary service providers

Amendment 6

Moved by Lord Ashton of Hyde

6: Clause 23, page 26, line 42, at end insert—

“(6) For the purposes of subsection (5)(b), a means of accessing the internet does not include a device or other equipment for doing so.”

Amendment 6 agreed.

Clause 24: Meaning of “extreme pornographic material”

Amendments 7 and 8

Moved by Lord Ashton of Hyde

7: Clause 24, page 27, line 17, leave out “the” and insert “a”

8: Clause 24, page 27, line 21, insert—

“‘video works authority’ means a person designated under section 4(1) of the Video Recordings Act 1984;”

Amendments 7 and 8 agreed.

Amendments 9 and 10 agreed.
Amendment 9 agreed.

Clause 113: Functions relating to regulations under section 112

Amendment 10 agreed.

Clause 114: Supplementary provision relating to section 112

Amendment 11 agreed.
Amendments 16 and 17 agreed.

Clause 119: Guarantee of pension liabilities under Telecommunications Act 1984

Amendment 12

Moved by Lord Ashton of Hyde

12: Clause 119, page 128, line 42, at end insert—

‘“undertaking” includes anything that may be the subject of a transfer or service provision change, whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply.’

Amendment 12 agreed.

Schedule 1: The electronic communications code

Amendments 13 to 15

Moved by Lord Ashton of Hyde

13: Schedule 1, page 153, line 42, leave out “on, under or over other land” and insert “kept on, under or over other land in exercise of a right mentioned in paragraph 13(1),”

14: Schedule 1, page 153, line 44, leave out from second “the” to “interferes” in line 45 and insert “apparatus”

15: Schedule 1, page 180, line 22, leave out “of the land on which the tree is growing”

Amendments 13 to 15 agreed.

Schedule 2: The electronic communications code: transitional provision

Amendments 16 and 17

Moved by Lord Ashton of Hyde

16: Schedule 2, page 194, line 24, leave out “12” and insert “14”

17: Schedule 2, page 195, line 22, leave out from “any” to end of line 27 and insert “application or order made under paragraph 6 of the existing code.”

Amendments 16 and 17 agreed.

Motion

Moved by Lord Ashton of Hyde

That the Bill do now pass.
My Front Bench team has been superb. I am very grateful to my noble friend Lady Jones of Whitchurch, who led on the difficult and ongoing work to do with age verification. My noble friend Lord Collins of Highbury relished the chance to lead on an issue—horseracing—unrelated to his usual stomping grounds, and coined the phrase “function creep”, which I am sure will be adorning your Lordships’ debates in years to come. My noble friend Lord Grantchester led on the rather dull, but it turns out rather rewarding, area of the electronic communications accord, which paid dividends in a number of amendments that we were able to secure. My noble friend Lord Mendelsohn, who I am sorry is not with us today, dealt very capably with the USO and related issues. My noble friend Lord Wood helped us with the amendments consequent on the BBC charter renewal.

Our legislative assistant, Nicola Jayawickreme, has been a class act and has kept us going with the background material so necessary for effective observation as well as dealing with the Public Bill Office and drafting so substantial pack of all the documents you could possibly want set the gold standard for work of this type. They were very helpful in letting us know what was going on, even when I suspect they would have rather remained silent. We appreciate that they were always willing to organise meetings, even on occasion tracking down Ministers who had gone AWOL.

As I approach the end of my active Front-Bench responsibilities in your Lordships’ House, working on this Bill will be one of the memories I most cherish.

Lord Ashton of Hyde: My Lords, I should feel awful, but I neglected to mention my noble friend Lady Buscombe and my noble and learned friend Lord Keen, who helped enormously. I had written it down on my notes, but, as usual, I did not pay any attention to them. I want to pay tribute to them and thank them very much.

Lord Clement-Jones: My Lords, I am sure that they would have been mentioned fulsomely by other Benches as well. I have not laboured in the vineyard quite as much as the noble Lord, Lord Stevenson. I have not had multiple Bills simultaneously to deal with—and one can only admire that kind of stamina—but, still, the passing of this Bill carries a sense of relief given the variety of subject matter that we have had to deal with during the past few months. The Minister said that it was from Christmas to Easter; these Bills are seasonal in their nature.

We certainly have not achieved everything that we wanted, but I believe that the Bill is leaving this House in much better shape than that in which it arrived.

As the noble Lord, Lord Stevenson, implied, it is certainly a very meaty Bill. It is also a disparate Bill, covering a huge range of issues most of which are unified only by the word “digital”. That was quite a challenge for all those who were trying to cover the whole subject matter of the Bill.

I want to thank my own colleagues, particularly my noble friends Lord Paddick, Lord Fox, Lord Foster, Lord Lester, Lord Storey, Lord Addington, Lady Bonham-Carter, Lady Hamwee, Lady Janke, Lady Benjamin and Lady Greener. I thank our adviser team, particularly Elizabeth Plummer, Rosie Shimell and Vinous Ali. I want also to thank the Opposition Front Bench—the indefatigable noble Lord, Lord Stevenson, the noble Baroness, Lady Jones, and the noble Lords, Lord Collins, Lord Wood and Lord Grantchester—for their collaborative approach. Of course, I thank many others on the Cross Benches, including the noble Lord, Lord Best, with his successful amendment, the noble Viscount, Lord Colville, and the noble Baroness, Lady Howe—indefatigable is too small a word for her.

Lord Stevenson of Balmacara: Indestructible.

Lord Clement-Jones: “Indestructible” is suggested to me by the Opposition Front Bench.

Finally and very sincerely, I thank the noble Lord, Lord Ashton, the noble and learned Lord, Lord Keen, the noble Baroness, Lady Buscombe, and the Bill team. I echo what the noble Lord, Lord Stevenson, had to say about the Bill team for their willingness to engage constructively, explain, amend and give what assurances they could throughout the passage of the Bill. We welcomed considerable movement during that time; changes in definition of “extreme pornographic material”, appeals on site blocking, the incorporation of many of the DPRRC amendments and new Ofcom powers—my noble friend Lady Benjamin is not in her place; she is probably celebrating somewhere the fact that Ofcom has new powers in respect of children’s programmes. There were amendments on remote e-book lending and listed events—the list goes on, which demonstrates that the Government were listening.

Of course, we anticipate ping-pong with great delight. I think that some six amendments to the Bill were passed. I hope that the Government will give consideration to them and not just bat them back to this House. They were all carefully thought through. I hope that we will see some changes as a result of those amendments in this House.

Of course, we did not get everything on our shopping list as the Bill went through. On Ofcom appeals, the noble and learned Lord, Lord Keen, stood fast on Clause 85. I hope that in the future we might find some change on compulsory anonymisation for age verification, and I think that IPTV is something that may come back to haunt us. I hope that the consultation will demonstrate the absolute need for amendments in the future. I am sure that my noble friend Lord Lester will also be returning by popular demand to the question of the statutory underpinning of the BBC charter. In the meantime, I thank the Minister and look forward to the passing of the Bill.
The Earl of Erroll (CB): My Lords, I add my great thanks to the Minister, on behalf of all the people I was talking to, for his intelligent and sensitive handling of the rather difficult, tortuous, twisting turns which were confusing what we saw as the perceived prime purpose of Part 3. I think we got there and have something that is going to be workable. I just hope that the regulator, when it gets operational, will find that what is coming out of the British Standards Institution PAS 1296 will be helpful in trying to make sure that age verification works in protecting children from accessing all the adult content online, which was the only bit that I was dealing with. Thank you very much indeed.

Lord Lester of Herne Hill (LD): My Lords, I suspect that this is au revoir and not adieu to the Bill, if one is still allowed to use French in this House. I thank the Minister for putting up with endless conversations with me about statutory underpinning or something instead. I thank him for arranging for me to see the Culture Secretary, which I look forward to doing if she is free to do so before the Bill comes back. It makes it clear that I am agnostic about how to achieve the protection of the BBC’s independence and viability—whether in the charter, in statutory underpinning or in undertakings given by Ministers. My difficulty at the moment is that we have still not had those undertakings, but I look forward to future debates.

Bill passed and returned to the Commons with amendments.

Higher Education: Loans

Motion to Regret

6.17 pm

Moved by Lord Stevenson of Balmacara

That this House regrets that the Higher Education (Basic Amount) (England) Regulations 2016 and the Higher Education (Higher Amount) (England) Regulations 2016 together with retrospectively changed loan conditions for existing students are further incremental burdens on students that risk worsening the opportunities for young people from low-income backgrounds, mature students and those undertaking part-time courses; and calls on Her Majesty’s Government to report annually to Parliament on the impact on the economy of the increasing quantum of graduate debt, estimates of payback rates, and the estimate of the annual cost to the Exchequer of the present system.

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee

Lord Stevenson of Balmacara (Lab): My Lords, I declare a previous interest in that some time ago I worked in what is now Edinburgh Napier University. My wife is a governor of a university in London and I have two children, believe it or not, currently studying at British universities and one who graduated two years ago.

The Higher Education (Basic Amount) (England) Regulations 2016 and the Higher Education (Higher Amount) (England) Regulations 2016 set variable limits on the maximum fees that publicly funded English higher education institutions can charge students. They are negative instruments and the time for praying against them has long passed. However, in its 21st report, the Secondary Legislation Scrutiny Committee drew these instruments to the special attention of the House, “on the ground that they give rise to issues of public policy likely to be of interest to the House”.

I am taking up that challenge. Despite the fact that we spent something like four months looking at the Higher Education and Research Bill, I still hope to engage the interests of Members of your Lordships’ House.

I am going to argue that the neoliberal marketisation of our higher education system is wrong in principle, because higher education is not a market; that it loads students with personal debt; that it will not improve opportunities to study for young people from disadvantaged and low-income backgrounds, mature students and those who wish to undertake part-time courses; and that linking fee rises, thereby increasing the personal debt of students, to only one of the attributes of a good university is a mistake. I will end by arguing that the cost of these polices to the public purse is now so complex and uncertain that it is virtually impossible to challenge what the Government are doing: we need more and more regular information and I call on the Government to provide it.

I went to university in the 1960s: my fees were paid by the state and I received a full maintenance grant. I would not, and indeed could not, have gone to university without that support, and I am sure my life would have been very different had I not had those chances. Education has been, and always will be, an important ladder out of social disadvantage.

In the period since 2012, our higher education system has been transformed. The tripling of fees, the introduction of income-contingent tax liabilities—loans in common parlance—and the ending of maintenance grants were described as market-driven, aimed at putting students at the heart of the system. According to classical economic theory, those 2012 reforms, with their direct grant payments to institutions, and fixed undergraduate recruitment caps replaced by a voucher system financed by loans, should have improved student choice as the money followed the applicant. Good institutions would expand to meet demand and those that struggled to recruit would have to either up their game or exit the market.

But have these reforms actually achieved what they set out to do, and has it been for the good? According to the IFS think tank, we have students leaving university with personal debts of around £53,000 for a three-year course. A large majority will not repay their loans in full. We have the most expensive courses in the world, and there has been a complete collapse in part-time provision, mature students have all but disappeared, and there is a dearth of home-based postgraduate students.

Even if the reformers of 2012 were right to bring competition into the sector, it was hardly a resounding success. First, all institutions gravitated to the highest
possible fee—then £9,000. Those that did not were regarded as inferior; so that in truth all that was created was a monopsony: a rigged market where prices are set by producers. Secondly, the undergraduate tuition fee is not a price. As 90% of eligible students take out a loan to fully cover tuition fees, the cost of the degree is actually determined by the loan repayments made, not the amount borrowed, and this can vary widely. Somebody who never earns more than the repayment threshold pays nothing, and very high earners have to repay it all. The price signal is determined primarily by future income, not graduating debt. It is smoke and mirrors. That is why the expert commentator in this policy area, Andrew McGettigan, argues that, “the tuition fee cannot signal as a price should in a perfectly competitive market”.

At this point, in my view, Ministers should surely have given up the experiment in neoliberalism. Instead, they have decided—and brought forward in the current Bill—that what was missing from the 2012 reforms was better information and a thorough shake-up of the system by stimulating an influx of challenger institutions. One cannot argue against changes that improve information, but it has to be high-quality. The current proposal for a teaching excellence framework to provide the market with a proxy indication of teaching excellence in each HE provider is, to my mind, hopelessly flawed.

There is widespread agreement on the need to ensure teaching of the highest quality in our higher education system. Indeed, students paying £9,000 or more a year are surely entitled to expect a consistently high quality of teaching, wherever they undertake their degree. But there are, I suggest, four main practical reasons why the Government’s present approach is wrong.

First, the TEF is not ready. There is not yet a settled methodology, no agreement on the metrics to be used, and no agreement on the balance between the metrics and provider submissions. We are clearly some way off where we need to be on even the basic wiring. Secondly, currently the TEF rating will relate to the university and not to the subject or course. We will not see subject-level ratings until 2020, and even that may be ambitious. Thirdly, the customers who are supposed to be benefiting from this behemoth—the students—are vehemently against the proposal. Fourthly, universities are not just teaching machines, and linking fee rises to a faux framework which does not even address teaching in the classroom is to diminish the regard we should have also to scholarship and research excellence, engagement, with wider society, and the dissemination and application of knowledge. A good university should be judged across all its missions.

However, there are also principled reasons why the current TEF proposals should be abandoned. As the noble Lord, Lord Sutherland, who created Ofsted, said at Second Reading of the Higher Education and Research Bill, it is simply not possible to devise a robust and sustainable scheme of evaluating teaching excellence if it does not start in the lecture theatre or classroom. Any scheme that relies on second-order metrics is simply not fit for purpose. Any scheme to measure teaching excellence, particularly if it is to operate at course or class level, surely has to be based wholly or mainly on the systems already in place in higher education providers which ensure that the courses offered are taught to a high standard. Most current HE providers of high standing already have such systems in place. Why duplicate them?

Surely the better way is to build trust and co-operation with the institutions themselves to get this right, subject only to a proportionate and risk-based assessment procedure. Assessing that good-quality teaching exists is one thing, but a system of rating universities gold, silver or bronze with the flawed TEF will jeopardise the excellent international reputation of British higher education, which does so much to attract overseas students and extend British influence and soft power abroad. Why rush to introduce an untested system, which will create the impression that some universities are failing when they are not?

We must not forget that there is a huge downside at a personal level. Students who get a bad deal from a course or university have very limited abilities at present to revisit their choices. They even seem to have their own initiatives penalised by the current system, which does not support transfers or credit accumulation—although I hope that that will change. In any case, caveat emptor is surely not the responsible policy for higher education, which is still the main ladder for those striving to escape from social disadvantage. I conclude that these latest market reform measures will not provide the sustainable HE sector that this country will need in the medium term, let alone in the long run.

The SIs before us change the system of inflationary fee increases, which have been in place since 2004, to one which ties the fee level that may be charged to an assessment of teaching excellence in the sector. According to the Secondary Legislation Scrutiny Committee, the department’s assessment is that the potential increase in fees will not be significant enough to alter participation decisions by prospective students. However, at the same time as laying these regulations, the DfE published an equality analysis covering detailed changes to maximum fee caps for 2017-18 and their impact on protected and disadvantaged groups of students. It is a good report. In its EA, the DfE accepts that one impact will be an increase in student loan debts. However, it also accepts that the current evidence suggests that students from ethnic minorities, less advantaged backgrounds and mature students are more debt averse and cost sensitive than the others. But are these not the very groups that we want to attract?

The committee rightly asked the DfE to comment on this astonishing admission. The department’s response includes a statement acknowledging that there is still much to do. It says that:

“Young people from disadvantaged backgrounds are still much less likely to go to university than their more affluent peers”.

Am I alone in finding that comment deeply troubling?

Where are the policies to reinvigorate part-time provision? The collapse in enrolments at Birkbeck, University of London and the Open University coincided with the hike in course fees and the introduction of maintenance loans. No real change in approach is signalled in the higher education Bill or in the Technical and Further Education Bill, which passed through
this House yesterday. There are plenty of good ideas out there. It is a pity that suggestions such as have been made for a specialist advice and admissions service for lifelong learning courses, similar to UCAS, the creation of a community learning centre in every major city and the reintroduction of individual learning accounts to support flexible learning throughout life have not been given more consideration in either of those Bills. So we have a policy approach which will not work: a system of fee increases, and thereby personal borrowing increases, which will not enhance social mobility or improve part-time provision.

What about the impact on students themselves? In Budget 2015, the Government confirmed that they would freeze the loan repayment threshold for five years and lower the official financial reporting discount rate for loans from RPI plus 2.2% to RPI plus 0.7%. Those of your Lordships who are not numerate in economics or in the detailed and sophisticated analysis of interest rates may wish to drift out for the next few minutes because this is quite technical—I did not say leave, as noble Lords would miss what might be my last speech from the Front Bench, which would be terribly upsetting. I play all the plugs when I need the support.

On the question of abolishing maintenance grants, the IFS said:

“The poorest 40% of students going to university in England will now graduate with debts of up to £53,000 from a three-year course”,

which is up from £40,500. It also points out that high earners coming from poorer backgrounds will now repay for longer,

“with the average individual contributing an extra £9,000 towards the cost of their degree”,

in net present value terms. The IFS concluded that freezing the repayment threshold for five years means that graduates would see their repayments increase by £3,800, on average, and that a median lifetime earner would miss what might be my last speech from the Front Bench, which would be terribly upsetting. I play all the plugs when I need the support.

6.30 pm

Finally, in some ways the most worrying thing of all is the huge uncovered gap in public finances which this system is creating, although I fully admit that it is very hard to untangle the figures as so little is published on this issue. According to a recent report of the Education Policy Institute:

“The contribution of student loans to net government debt is forecast to rise from around 4 per cent of GDP today to over 11 per cent in the 2040s”. There are some published figures about the value of the student loan book, which the Government are trying to sell. At the end of March 2015, existing student loans had a face value of £64 billion—what was nominally owed to the Government—and were expected to generate repayments equivalent to only £42 billion in net present value terms. Who is covering that gap? Where is it held in the government accounts? Have the figures been audited? To which department are all these debts being booked?

By the end of March 2016, following changes in the discount rate, which have been described by some commentators as window dressing for the purposes of the sale of the loan book, the face value of the book had increased to £76 billion, with a fair value of £57 billion. There is still a stunning great £19 billion gap which has to be financed, presumably on the market.

If noble Lords do not follow the maths here, I can sympathise. We are trying to understand a system that requires long-range forecasts, upwards of 30 years, of complex issues including: estimates of gross and average salary levels; emigration; morbidity; and likely future participation in the workforce. These are mind-bendingly difficult to model, let alone to comprehend, even if we could see all the figures.

The issue is that we are kept totally in the dark. The only thing I have been able to find on this issue is figures in the BEIS accounts, which are a year late—that is no criticism, it is just that they are published a year behind. They report that the official RAB estimate for new loans issued is 23%, down from more than 40%, which was the original estimate, but that the Treasury has set a target RAB of 28%, which is plus 5%, although it is down from 35% in the forward plan, which mainly reflects the rebasing of the discount rate change. What does that actually mean in plain English?

This is not good enough. This is why my Motion calls on Her Majesty’s Government to report annually to Parliament on the impact on the economy of the increasing quantum of graduate debt and asks them to provide estimates of payback rates and an estimate of the annual cost to the Exchequer of the present system. It is not a lot to ask, and it is a no-brainer if the Government want to convince us that they are on the right track. I beg to move.

Baroness Garden of Frognal (LD): My Lords, we on these Benches support the case put so eloquently by the noble Lord, Lord Stevenson, and we much regret that he is stepping down from his Front-Bench role. We seem to have had to work together a lot in recent days, and it has always been a great pleasure to do so.

This increase in tuition fees is a significant further step towards full marketisation of the UK higher education sector, which threatens the accessibility and reputation of this vital sector. Allowing some universities with higher teaching ratings to charge higher fees means that students will increasingly have to weigh the opportunity presented by a particular course against the fee being charged. In fact, such a step could simply encourage the development of a two-tier university system whereby richer students go to higher-rated universities while the most disadvantaged students go to the lower-rated universities or not at all.

We on these Benches totally reject the idea of linking fees to teaching excellence framework gradings, as the noble Lord, Lord Stevenson, set out. They are an untried and untested form of assessment which should not be used to determine fees. There appears to be no correlation between increased fees and improved teaching quality. The National Union of Students points out that:
“Since tuition fees were trebled in 2012, there is no evidence to suggest that there was a consequential improvement in teaching quality. There has been no change in student satisfaction with the teaching on their course, while institutions have instead been shown to spend additional income from the fees rise on increased marketing materials, rather than on efforts to improve course quality”.

Doubtless some universities have used the fees to improve quality, but there is no guarantee that that is what the fees are there to do.

We have argued for many years that there is a serious lack of attention to teaching quality in universities. The emphasis has been heavily weighted to research for prestige, funding and career promotions, and we welcome the aims in the Higher Education and Research Bill to redress the balance, but we do not believe the way to solve this is through linking teaching quality to fees.

These changes come on top of other deeply damaging changes to student finance. First, there was the abolition of maintenance grants for lower-income students, which makes these regulations all the more damaging. Getting rid of grants while increasing the cost of university education may put lower-income students off attending higher-performing universities. Secondly, the retrospective change in loan conditions to freeze the repayment threshold for tuition fees at £21,000 breaks the deal done with students by the coalition and changes the terms for many students, meaning paying back from a lower starting point.

These measures will in no way encourage diversity or open access to mature or part-time students, nor encourage lifelong learning. We acknowledge the welcome increase to £833 million for the Director of Fair Access to improve student success for the more disadvantaged, but that is not going to solve the problem. Social mobility is simply not good enough. These measures will do nothing to improve opportunities for those from disadvantaged backgrounds. We join in the regrets.

**Lord Willetts (Con):** My Lords, I declare my interests as a visiting professor at King’s College London, an adviser to 2U and an honorary fellow of Nuffield College, Oxford. I am discovering that this debate is a kind of valedictory for the noble Lord, Lord Stevenson, I would like to say how much I have enjoyed his interventions from the Front Bench during the debates we have both participated in. I am sure he will continue to contribute to this House; we need his contributions, and I have greatly appreciated what he has done.

It is rather peculiar that on this valedictory we are having a debate about these measures, when of course the truth is that the structure of higher education finance we are considering is one that all three parties have introduced during their times in government. If there is any example of a shared consensus on how to finance higher education, it is the Blair/coalition Government proposals for fees and loans. It is now a stable system, and one that all three parties have contributed to and should support.

It is of course not a system of up-front payment; that is its crucial feature. It is a graduate repayment scheme. When graduates repay, at a rate of 9% on earnings above £21,000, it is nothing like having a commercial debt. If a child of mine left university with £25,000 on their credit card or an overdraft of £50,000, I would be extremely worried as a parent. However, knowing that during their working lives they were going to pay back 9% of their earnings above £21,000, and that they would do so only if they were earning more, and if for whatever reason they were earning less they would not have to—in other words, they would be paying through PAYE—would not cause me concern.

Far more importantly, it does not concern students, which is why we have seen steady increases in the numbers of young people going to university as the successive changes have been brought about. Those changes have led to a growth in the number of places, particularly at universities that students have been choosing. We have indeed begun to see growth and shrinkage between different universities, reflecting student choice. We have seen more undergraduates getting their first choice of university. We have seen more places at university in total; indeed, these reforms made it possible to remove the cap on student numbers.

The increase in the number of university places has been particularly beneficial to students from lower-income backgrounds—the marginal students who are not otherwise getting in. Indeed, we have seen a surge in the number of people going to university from low-income backgrounds. At the beginning of this process, nearly 10 years ago when the Blair changes were first brought in and my party opposed them—with exactly the argument that we have been hearing again today: that they would put off low-income students—10% of students from the poorest backgrounds were going to university. After 10 years of these changes, 20% of students from the poorest backgrounds are going to university. That is not good enough—it is still way behind the 60% of young people from the most affluent backgrounds going to university—nevertheless, it is a doubling. We are on a journey in which we are gradually improving social mobility, with more young people from low-income backgrounds having this opportunity.

So the evidence is that they are not, to quote the noble Lord, Lord Stevenson, “debt-averse”, for the reason that it is not debt. I love the noble Lord’s example of his time at university. When he left, I suspect—because we are roughly contemporary—that he was facing an income tax rate of 35%. Now graduates face an income tax rate of 29% above a very high threshold. If he was not income tax-averse to going to university, why should they be income tax-averse now if they are facing a 29% rate of PAYE above a high threshold?

I will not detain the House for much longer, but it is possible, if you get into the figures, to take a flow of payments and convert it into a stock. You can create extraordinary figures for liabilities or assets if you take what is essentially a flow of payments and convert it into a stock.

For example, graduates, during their working lives, are very likely to pay at least £500,000 in income tax. As, by and large, people who go to university earn a bit more, they leave university with the prospect of £500,000 of income tax debt, at least, around their necks. Should we be anxious about that? No. In their working lives, if they earn a decent income, of course...
Higher Education: Loans

[5 APRIL 2017]

we will expect them to make a contribution to the Exchequer through income tax. Just as you can apparently create enormous figures for debt by aggregating lots of years of income tax, if we think of the amount that we as a nation will spend on the National Health Service over the next 20 or 30 years, we can also construct an enormous figure by taking £100 billion a year or whatever and multiplying it by 20 or 30. So graduates have an enormous pile of income tax debt—£500,000 at least—in order to pay for trillions of pounds of National Health Service spending. That is because government is a going concern. Neither of those figures should be of concern to us, because we can manage them through the annual flows of income and expenditure.

I should like to draw these brief remarks to a close, however, by welcoming a point in the Motion of the noble Lord, Lord Stevenson, because it is the only way I should conclude a short speech when we are apparently saying farewell to his Front-Bench service. I agree that we need from time to time to look at how the system is working. We do not need to change the structure—we do not need another big review; another Dearing or Brown—but of course there is a social choice in this system. The social choice is the balance between private repayment by graduates, and the public—the generality of taxpayers—taking the burden of writing off repayments that will not be made by graduates who, for example, do not earn enough to reach the threshold. That is a public-private balance which, in a way, reflects that of public and private benefit from higher education.

It is legitimate from time to time to have a debate about what is the right balance between graduate repayment through PAYE and the likely level at which, eventually, graduates’ loans will be written off because they cannot afford to repay them. Incidentally, that would be impossible if we fixed the term in the way the party opposite want, but I think that every five years—once during the lifetime of a Parliament—such a structured review would be worth while.

I end by welcoming that aspect of the noble Lord’s proposal. This need not be done every year: the information is available. Once again, I thank him personally for the lively and well-informed contributions he has made to our debates on higher education and other matters in the recent past.

**Lord Bew (CB):** My Lords, I particularly support the final part of the Motion to Regret of the noble Lord, Lord Stevenson. I add my voice to that of other Peers to say how much we have benefited, especially during the passage of the Higher Education Bill, from the contributions that he has made in this House. Following the example of the noble Lord, Lord Willetts, I declare my interest as a visiting professor of King’s College, Cambridge, an honorary fellow of King’s College London and an honorary fellow of Pembroke College, Cambridge.

In the first part of his speech tonight, the noble Lord, Lord Stevenson, expressed his rejection of what he regarded as the neoliberal approach to higher education. I must confess that my heart warms to that. Part of me wants to recommend to Ministers the recent book by Stefan Collini on higher education, published by Verso, but I accept that for some years we have had a tripartite consensus about these fundamental matters of financing higher education, and I see little possibility of that consensus changing significantly. I should say, as someone who has worked all his life in the university sector, that I understand that it is not the function of the general public just to keep us in the style to which we have been accustomed. None the less, the last part of the noble Lord’s Motion to Regret contains something of great seriousness. I am more uncomfortable than the noble Lord, Lord Willetts, about the spiralling figures in this area. Everything that we look at unnerves me somewhat. Student loans, for example, in the last year rose to £12.6 billion—17.1% as the first cohort of students who claim the higher level of them graduated. Graduates who pay fees up to £9,000 a year are estimated to have left university with an average of £44,000 worth of debt compared with an average of £16,200 faced by students who graduated five years earlier.

6.45 pm

Something seems to be happening with these numbers which must unnerve anybody who is connected or who has a serious interest in our public finances. The noble Lord, Lord Stevenson, has already referred to the Institute for Fiscal Studies, which claims that 70% of the students from those who graduated in the last year are expected never to repay their loans. These things have to concern us. Of those who graduated in 2002, 44% paid the total amount within 13 years. So, we are in a different place now. These are worrying figures. I think that the request that we have an annual report to Parliament which spells out where we are is perfectly reasonable. In that respect I am very happy to support the noble Lord’s Motion to Regret.

**Viscount Younger of Leckie (Con):** My Lords, I start by thanking the noble Lord, Lord Stevenson, for tabling this Motion. Before I respond, I shall, if I may, take the opportunity to say a few words about the noble Lord. The House now knows from remarks he made towards the end of Third Reading of the Higher Education and Research Bill last night that he is stepping down from his current spell of active Front-Bench responsibilities. This is certainly a surprise to me, and I am genuinely very sorry to hear it.

I have engaged with the noble Lord fairly intensively on a number of Bills in this House over several years, as he will know, as have some of my colleagues. It is fair to say that we usually know where we stand with him. He can be direct; he sometimes tells it as it is, which he should certainly take as a compliment. He also looks to be helpful and constructive—while emphasising his party’s perspective, of course. Above all, I will miss his humour, sometimes cryptic, often sharp and always quick. My colleagues on these Benches have great respect for him and regard him as a bit of a magician—a member of the Magic Circle, perhaps—for his ability to juggle several Bills at the same time with relatively little support, although I am sure it is quality support. He will not be leaving the Front Bench entirely. I understand, but we all wish him well for the future.

These words have nothing at all to do with me trying to warm the seat for the noble Lord as I move on to respond to the concerns he has raised this afternoon. We take pride in the fact that Britain has some of the best universities in the world. To make
...education with more resources...Indeed, Andreas Schleicher of the OECD said in September 2016 that, “the UK had been able to meet rising demand for tertiary education with more resources ... by finding effective ways to share the costs and benefits”.

However, the £9,000 fee cap that was set in 2012 is now worth £8,500 in real terms. If we leave it unchanged, it will be worth £8,000 by the end of this Parliament. As my noble friend Lord Willetts alluded to, the Labour Government under Prime Minister Tony Blair sensibly put in place new legal powers in 2004 which allow Governments to maintain university fees in line with inflation through a negative procedure. Rather than increasing the fees for everyone, we are allowing only high-quality providers to increase their fees in line with inflation. Universities UK and GuildHE, the two main representative bodies that collectively represent more than 170 higher education providers in England, Wales, Scotland and Northern Ireland, have made it clear that allowing the value of fees to be maintained in real terms is essential if our providers are to continue to deliver high-quality teaching.

The importance of this was expressed by Gordon McKenzie the CEO of GuildHE when he wrote that, “fees had to rise by inflation at some point and it was fairer for students if those rises were linked to an assessment of quality.”

The vote on Report of the Higher Education and Research Bill was obviously disappointing. However, I remind noble Lords that the parliamentary process is still ongoing, and I look forward to Peers’ further engagement on this matter. Our policy intention remains to link maximum fees to the quality of provision via the teaching excellence framework as part of our wider reform package, as we are doing through these regulations. It is counter to government policy to see fee caps rise under any other circumstances.

As I mentioned, the fee link has been strongly supported by sector organisations GuildHE, as well as Universities UK, which said, “allowing the value of the fee to be maintained in real terms is essential to allow universities to continue to deliver a high-quality teaching and learning experience for students”.

The noble Lord, Lord Stevenson, stated that the TEF was not ready and that we needed to move to the subject-level TEF. His opposition to TEF flies in the face of the support given to it by the sector bodies—and I have just added a few quotes to support that. It is absolutely our intention to move to subject-level assessment, but carefully, after two years of rigorous pilots.

I refer to the points raised in the Motion about the importance of ensuring access to university for everyone. Through universities being sustainably financed, we have been able to lift the student number cap, meaning that more people than ever before have been able to benefit from a university education, as my noble friend Lord Willetts said. Many people said, when fees were increased to £9,000, that it would dissuade people from disadvantaged backgrounds, but the opposite has happened. For this academic year, 2016-17, the entry rate for 18 year-olds from disadvantaged backgrounds is at a record high—namely, 19.5% in 2016, compared with 13.6% in 2009. So far, that has continued into 2017, with record applications for the 15 January deadline. Disadvantaged young people are now 43% more likely to go to university than in 2009, or 74% more likely to go to university than in 2006. In addition, those who go to university have more funding available to them. By replacing maintenance grants with loans, we have been able to increase the funding for living costs that some of the most disadvantaged students receive. It is an increase of over 10% in the current academic year, with a further 2.8% increase for 2017-18.

The noble Baroness, Lady Garden, stated that there were too few BME students, and of course we would always want more. However, we have record numbers of black and minority ethnic students going into higher education, and we want to go further still. We are legislating for greater transparency that will provide unprecedented access to anonymised applicant data on gender, ethnicity and socioeconomic background, as I think she is aware.

Universities, too, are spending even more to help those from disadvantaged backgrounds to access higher education. In 2017-18, institutions are expected to spend over £800 million on measures to improve the access and success of disadvantaged students, which is more than double what was spent in 2009-10 and can continue to increase if fees are allowed to keep pace with inflation. The Government’s policy will further build on this success, as stated by Les Ebdon, the director of the Office for Fair Access who said that, “TEF will ensure that higher education providers have to carefully consider about how to provide excellent teaching for all their students, whatever their background”.

On the repayment of loans, I wish to assure noble Lords that our repayments system offers a fair deal to students. The current student loan system is heavily subsidised by the taxpayer and universally accessible to all eligible students, regardless of their financial circumstances. While the Motion in front of us states that the Government retrospectively change the terms of loans, I would remind the House that nothing in fact has changed. Our repayments system is based on income and not the amount borrowed. Again, my noble friend Lord Willetts alluded to that issue. Graduates with post-2012 undergraduate loans pay back only when they are earning more than £21,000, and then only 9% of earnings above that threshold. After 30 years, any outstanding debt will be written off, with no detriment to the borrower. That is entirely different to a commercial loan. The maximum fee cap is rising only by inflation, so it will not increase in real terms for anyone going to university.

We believe that it is right for those who benefit most from higher education to contribute to the costs. We should not forget that higher education leads to a better chance of being employed compared to those holding two or more A-levels, and an average net lifetime earnings premium that is comfortably over £100,000.

The noble Lord, Lord Stevenson, asked about reporting to Parliament on student loans, which is a fair question. I reassure the House that the debt repayments and
costs associated with the present system of student loans are already reported annually to Parliament in the Department for Education’s annual report and accounts, the next set of which is due to be published this summer. In addition, student loans also feature regularly in the economic and fiscal outlook publications from the OBR, which are laid in Parliament twice a year.

Finally, I reassure your Lordships that the fee increase under these regulations is open only to those institutions who meet high quality standards. For this year this meant that they passed a quality review carried out by highly respected bodies such as the QAA, and those that wanted to charge the highest fees will need an access agreement.

As the TEF is fully implemented, the assessment process that universities will have to meet to be judged as good enough to raise their fees in line with inflation will become even more rigorous and more robust. The TEF will provide strong reputational and financial incentives to prioritise the student learning experience. We are linking funding to quality of provision, not just quantity of students, and ensuring that providers demonstrate high-quality teaching if they wish to maintain their fees by inflation.

The TEF has been strongly supported by organisations such as OFFA and the Sutton Trust, bodies whose fundamental purpose is to support the life chances of those from disadvantaged backgrounds. The Sutton Trust, for example, has said that, “we need to shake the university sector out of its complacency and open it up to a transparency that has been alien to them for far too long. It is good that they are judged on impact in the research excellence framework, and that the teaching excellence framework will force them to think more about how they impart knowledge to those paying them £9000 a year in fees”.

Ensuring that people from all backgrounds are able to go to university is an essential part of the Government’s ambition to support all people to realise their potential, whether they are young or mature students and whether they study full or part time. The increases to maximum fee caps set out in these regulations are critical to ensuring that universities of the funding they need to provide a high-quality education.

Therefore, in the light of my remarks, I hope that the noble Lord, Lord Stevenson, will consider withdrawing his Motion.

Lord Stevenson of Balmacara: My Lords, I thank noble Lords very much indeed for their comments, particularly about me. I am a deeply private person, and I hate it when the spotlight suddenly swings round and catches you like a rabbit—which I am here today. I did not want that or expect it, and I certainly did not want it to spoil the debate. I hope it has not, because the contributions have been on a serious level, and I thank the Minister in particular for dealing with the issues as they were presented.

The question of personality in this House is interesting. When you first come into the House, the thing that is impressed most on you is how it has to be treated as a third person in a passive sense—namely, as your Lordships’ House. You never speak about individuals. You certainly do not use first names. So the sudden emergence of an individual who has something to say is really rather shocking, and I hope that it does not get repeated—certainly not to me.

We have had a good debate. I have now realised, after nearly seven years here, that the way to tackle these issues is by tabling this sort of Motion because in the normal cut and thrust of debate and in the discussion of legislation and questions, one can never get down to a serious debate about serious issues. Therefore, I agree with the noble Lord, Lord Willetts, that a Motion such as this is a good thing to have now and again—not all the time, but just occasionally—to enable us to have a detailed discussion of issues causing concern. I fully accept what the noble Lord, Lord Bew, said—some of these issues are rather worrying.

The Minister said in his conclusion that he thought we had a fair and sustainable student finance system. It may or may not be fair—I am reminded of Zhou Enlai who, when asked about the impact of the French Revolution, said that it was too soon to say—and we will not know that for 30 years until we look back at the system when it has ended. However, we cannot wait that long. Therefore, the suspicion is that it is not fair. Is it sustainable? We cannot tell that because the figures are very difficult to interpret. The noble Lord, Lord Willetts, with several brains working full time, has not been able to crack it all and will be able to give us lectures and seminars to end all seminars. I look forward to those. However, I cannot cope with that. I just want something simple. If we cannot interpret this system on the basis of the DfE’s published accounts, perhaps tabling another Motion at an appropriate time agreed with the Minister, because he is a friend as well, would be the way forward. However, in the interim, we should get things started by testing the opinion of the House on whether it would like to see more information on this interesting area.
Division on Lord Stevenson’s Motion

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Motion agreed.

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House adjourned at 7.12 pm.
House of Lords

Thursday 6 April 2017

11 am

Prayers—read by the Lord Bishop of Peterborough.

Tax Havens

Question

11.06 am

Asked by Lord Sharkey

To ask Her Majesty’s Government what steps they are taking to curb the use of tax havens.

Lord Young of Cookham (Con): My Lords, the Government are committed to a regime where tax is fair, competitive and paid. The UK is at the forefront of global action to tackle harmful tax practices through implementing the agreed base erosion and profit shifting project outcomes, the OECD’s new common reporting standard and the development of new beneficial ownership information standards.

Lord Sharkey (LD): I thank the noble Lord for that Answer. Last week, Oxfam’s report revealed that last year five UK banks made £9 billion in profit in tax havens, which was 67% of their global profits. Half a billion pounds of this profit was made in UK-linked tax havens, where the banks paid just 7% in tax. What estimate have the Government made of the loss to the Exchequer of profit shifting by UK-based companies?

Lord Young of Cookham: My Lords, I do not have the estimate of the amount lost but the noble Lord will know that we are taking steps to avoid the diversion of profits through country-by-country reporting. This means that we tend to tax the activity in the country where it takes place—so, if the activity takes place in the UK, companies will be taxed in the UK. We have also introduced a diverted profit tax, so if people seek to divert their profits to another country, a higher rate of tax can then be paid. Therefore, we are taking measures to plug the loopholes that the noble Lord has identified.

Lord Howarth of Newport (Lab): My Lords, why have the Government not used the leverage they undoubtedly have to require the British Overseas Territories and Crown dependencies to maintain publicly available registers of beneficial ownership? Will the noble Lord accept that the Government’s failure to do so has not only had bad reputational consequences for our country but impeded law enforcement here and in other countries, and it has allowed the huge inflation of house prices in London, which has had very damaging effects on the lives of Londoners who are not rich?

Lord Young of Cookham: My Lords, we had an extensive debate on this subject on Monday on the Criminal Finances Bill, and I suspect that we will be returning to exactly the same subject on Report on, I believe, 25 April. In that debate, the Minister at the Home Office explained why we had encouraged the Commonwealth dependencies and overseas territories to produce central registers, and they will be doing that by June this year. We are not prepared to use the powers that the noble Lord has referred to, which we believe should be used in exceptional circumstances such as the abolition of capital punishment and rules relating to homosexuality. We do not believe it is appropriate to use those powers in this case.

Lord McConnell of Glenscorrodale (Lab): My Lords, many of us were willing to give the previous Prime Minister and Chancellor the benefit of the doubt on this issue because they were legislating in the UK and were engaged in international negotiations. However, given that we are now leaving the top table of the European Union, where much of this action could have taken place, would it not be appropriate in the brave new world of new trade agreements and Britain becoming more global for this country to lead the way on this issue by legislating to ensure that all British companies operating around the world report on a country-by-country basis to ensure that countries across the world can tax those companies where they make their profits?

Lord Young of Cookham: We already have country-by-country reporting in this country, and multinationals based in this country have to report to HMRC how much profit they make and how much tax they pay in each country. We are encouraging other countries to do this, so we have a multilateral approach, and the Chancellor raises this issue at the G20. In response to the first part of the noble Lord’s question, we have taken the lead on this as a result of our presidency of the G8, and more than 90 countries have agreed automatically to exchange taxpayer information under the common reporting standard. We are also taking initiatives on beneficial ownership and some of the other issues that we have already discussed.

Lord Forsyth of Drumlean (Con): My Lords, given the widespread use of Luxembourg by large companies and multinationals to reduce their tax, will our exit from the European Union provide an opportunity to broaden our tax base?

Lord Young of Cookham: The initiatives we are taking on tax evasion are independent of our membership of the EU, although we are pursuing some EU directives. As I said, this country is in the lead. I do not know whether my noble friend has seen page 9 of today’s Times, which says that:

“Oligarchs must disclose identity as home owners”,

with a register. That is a world first; the people behind anonymous companies that own billions of pounds-worth of property must reveal their identities under new anti-corruption rules. This shows that the country takes the matter very seriously.

Baroness Kramer (LD): My Lords, in arguing that they will not use the powers they have to require the overseas territories to make registers of beneficial ownership public, the Government say that they expect the overseas territories to do so when that becomes the
The noble Baroness looks younger every day, and so I will not go there.

Noble Lords: Oh!

Lord Young of Cookham: More seriously, we are going to return to this matter on 25 April. At the moment I do not know the timescale by which we hope all the other countries in the world will have signed up to these central registers. However, I will make sure that if there is another amendment along those lines on 25 April, we have the most up-to-date information.

Lord Foulkes of Cumnock (Lab): My Lords, is it a breach of our privileges for any Member of this House to avoid paying United Kingdom tax by the use of tax havens?

Lord Young of Cookham: My understanding is that in order to be a Member of your Lordships’ House you have to be registered as a UK taxpayer. My own view is that everybody should pay the tax which is due to them, and I agree with what the former Prime Minister said about the morality of tax avoidance.

Lord Tunnicliffe (Lab): My Lords, the noble Lord has given his usual charming and reasonable answers, if somewhat unconvincingly in some cases. However, I wonder whether the truth of the matter is displayed by his boss, Philip Hammond, who in an interview with a German newspaper in January said:

“I personally hope we will be able to remain in the mainstream of European economic and social thinking. But … We could be forced to change our economic model, and we will have to change our model to regain competitiveness. And you can be sure we will do whatever we have to do.”

Is his boss threatening to turn Britain into a Cayman Islands-like tax haven?

Lord Young of Cookham: My Lords, we want to remain competitive in a world economy and to attract inward investment. Although we have reduced corporation tax since 2010, onshore corporation tax receipts have gone up by 50% since that date, despite the reduction in the rate. Reducing corporation tax encourages business investment and growth, and one estimate has shown that the cuts announced since 2010 amount to an estimated increase in GDP of 1.3%.

Commonwealth Heads of Government Meeting
Question

11.14 am

Asked by Lord Chidgey

To ask Her Majesty’s Government what plans they have to engage United Kingdom parliamentarians in the process and programme for the forthcoming Commonwealth Heads of Government Meeting in the United Kingdom, in particular with respect to the expansion and strengthening of international cultural, trade and investment initiatives.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, this Government recognise the strong contribution of UK parliamentarians to Commonwealth activities, including on enhancing opportunities for trade and investment. We will engage closely with parliamentarians and other Commonwealth stakeholders, including the CPA UK, in designing and delivering an ambitious, creative and innovative Commonwealth summit. We want to make the most of all the Commonwealth has to offer and demonstrate a Commonwealth that is truly relevant for the 21st century.

Lord Chidgey (LD): My Lords, I thank the Minister for that reply. The CHOGM summit provides a golden opportunity for all Commonwealth parliamentarians to demonstrate their commitment to democracy, transparency, the rule of law and human rights as laid down in the Commonwealth charter. Will the Minister, therefore, press the Government to support the CPA UK’s plan to hold a linked Commonwealth conference prior to CHOGM? Will she press for a parliamentary forum at CHOGM itself, following the example set by many international high-level meetings?

Baroness Anelay of St Johns: The noble Lord raises important points, all of which we are very much taking into account, I assure him. Indeed, most recently I met Andrew Tuggey of the CPA UK to discuss what shape its plans might take—not only, of course, what deliverables there could be for the event itself, but the participation by CPA UK members more generally in the civil society events.

Lord Marland (Con): My Lords, I declare an interest as chairman of the Commonwealth Enterprise and Investment Council. Is not one of the best ways of engaging parliamentarians up to CHOGM to boost the current Prime Minister’s trade envoys network, which is cross-parliamentary and has been very successful? Would not my noble friend the Minister agree that a dedicated Commonwealth trade envoy should be appointed, as suggested by the Maltese chair-in-office of the Commonwealth?

Baroness Anelay of St Johns: Again, those are important points. On the trade envoys, eight envoys currently cover 10 Commonwealth countries. The programme has been recently reviewed and recommendations on the future direction of the programme, including suggested new markets, are with No 10 for consideration. We will certainly take the proposal for a trade envoy or ambassador into consideration.

Lord Hunt of Chesterton (Lab): My Lords, does the Minister agree that parliamentarians across the Commonwealth should also be involved in campaigns for more openness, which should include science and...
Baroness Anelay of St Johns: I am delighted that the noble Lord has raised this issue. We discussed it briefly outside the Chamber and I assure him that his views will be taken firmly into account.

Viscount Waverley (CB): My Lords, would it not be plausible to make full use of the internet and to devise a website to allow for two-way exchanges of opinion among all parliamentarians around the whole of the Commonwealth?

Baroness Anelay of St Johns: I am sure the noble Viscount that, as part of the programmes that we are putting forward and consulting widely on, it is our intention to make the best use we can of the internet and all it can deliver. In some areas around the world, of course, it is more difficult to get the broadband speed. However he is absolutely right that modern communication is important. After all, we have to think of the young age of most people across the Commonwealth.

Baroness Northover (LD): My Lords, the first principle of the Commonwealth charter is democracy. Therefore my noble friend is undoubtedly right. The second concerns human rights. Will the Minister guarantee that the Government will put as a major theme the promotion not only of women’s rights but of those within the LGBT community?

Baroness Anelay of St Johns: Again, that is a very important issue; “yes” is the answer to it. However, more particularly, we are working out our plans to ensure that important messages are delivered on LGBTI issues at the summit. I have already had discussions about this and I know that Kaleidoscope and the Commonwealth Equality Network are putting forward an agenda, and we want to see how that can feed into the work that we are doing.

Lord Howell of Guildford (Con): My Lords, I reinforce the remarks of the noble Lord, Lord Chidgey, and my noble friend Lord Marland. Does my noble friend agree that the pathway from here to the Commonwealth summit next April is an immensely important one and that we must do everything we can to strengthen it? Will she accept my very strong welcome for the decision of the Prime Minister to appoint a powerful Cabinet Office unit to carry this work forward? Does she agree with the comments of my noble friend Lord Marland that a network of 2.5 billion people using English as their working language is a fabulous potential opportunity for this country? Will she urge all concerned, especially some of the doubters about the potential of the Commonwealth, that they should look to the future of our service-based economy rather than harp on about the past?

Baroness Anelay of St Johns: As always on Commonwealth matters, my noble friend makes the most important points and I can do no more than thoroughly agree with him.

Lord Soley (Lab): My Lords, will the Government ensure that educational exchanges at all levels are given a high priority?

Baroness Anelay of St Johns: Indeed, my Lords. That is the reason the Commonwealth team is cross-departmental, which ensures that we can take all the issues into account.

Baroness Berridge (Con): My Lords, my noble friend the Minister has outlined the design and creation of an appropriate programme. I declare an interest as the leader of a Commonwealth initiative on freedom of religion or belief. Will she consider meeting, as she has done in the past, parliamentarians and representatives from CPA UK, the Youth Parliament and the Commonwealth Youth Parliament so that everyone can play a part in designing the programme?

Baroness Anelay of St Johns: My Lords, recently I met a representative of the Youth Parliament and discussed issues around the summit. I assure my noble friend that the important point she has made will indeed be taken into consideration. I am already holding a series of meetings, as are members of the Commonwealth team now based in the Cabinet Office.

Lord Collins of Highbury (Lab): My Lords, one important consideration about trade which is often ignored is the need to ensure that we advocate strong minimum standards and support the International Labour Organization. I hope that the noble Baroness will be able to reassure the House that when we engage civil society in CHOGM, we will also include trade unions and the international trade union movement so that we can advocate strong labour standards.

Baroness Anelay of St Johns: Yes, my Lords. Yesterday I had the privilege of being able to meet Owen Tudor, who heads the TUC’s international relations office, to discuss how his agenda and the decisions that might be made in June by TUC organisations can feed into the summit process.

Sport: Women on Governing Bodies

Question

11.22 am

Asked by Lord Addington

To ask Her Majesty’s Government what steps they are taking to encourage all sports governing bodies to increase the number of women on their boards and in senior posts.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, in December 2015 the Government published their Sporting Future strategy, which stated that UK Sport and Sport England would agree to a UK sports governance code to strengthen existing commitments. The code for sports governance was published in October last year and requires each funded
organisation to adopt the target of a minimum of 30% of each gender on its board. That will be in place by October this year. The new governance code will be mandatory for all sports bodies seeking public funding from April this year.

Lord Addington (LD): I thank the noble Lord for that Answer. Can we have some enlightenment about what the Government are doing to make sure that there is not only an attempt to recruit but also a steady stream of candidates? Are we doing enough to identify women with the correct talents and letting them know that there is a pathway to go forward? If not, are these sports required to undertake the correct training?

Lord Ashton of Hyde: My Lords, Sport England is developing its future leadership programme, which will be launched later this year. Women are a priority group identified by Sport England for the scheme. It will identify suitable female candidates who will be given the chance to develop their leadership potential in sports organisations and succeed in senior leadership roles.

Lord Moynihan (Con): My Lords, I declare an interest as an officer of the All-Party Parliamentary Group for Women's Sport and Fitness. I congratulate the Government on the progress which has been made on this issue, but does my noble friend the Minister agree that we should give equal priority to those from BME and disability backgrounds to become members of British governing bodies of sport? At present they are severely and unacceptably underrepresented.

Lord Ashton of Hyde: My Lords, I agree with my noble friend. The figure of 30% for women is one thing, but the Sporting Future strategy also outlines the requirement for diversity in all areas and expects the sports national governing bodies to produce diversity programmes which should be published annually in order to report on progress.

Baroness Grey-Thompson (CB): My Lords, I declare an interest as an officer of the All-Party Parliamentary Group for Women's Sport and Fitness. I congratulate the Government on the progress which has been made on this issue, but does my noble friend the Minister agree that we should give equal priority to those from BME and disability backgrounds to become members of British governing bodies of sport? At present they are severely and unacceptably underrepresented.

Baroness Jowell (Lab): My Lords, will the Minister reflect on the progress achieved in the run-up to the London 2012 Olympics in increasing participation, particularly among girls in school? I therefore invite him to take the opportunity of the Athletics World Championships, which will be held in London this summer, to declare once again the Government's support and commitment to increasing participation in sport among schoolchildren, with a very particular focus on boosting participation among young girls.

Lord Ashton of Hyde: Again, I agree entirely with that. Key to our strategy is getting people involved in sport, but also activity in general, not just sport. We definitely want to include children at a younger age. As I said the other day, we have included children down to the age of five. We want to get all children and young people involved in activity.

Baroness Burt of Solihull (LD): My Lords, the poor state of women's representation on boards is not confined solely to sports boards. Last year, the number of women being promoted to boards of the UK's largest companies slowed for the first time. Women's representation on boards of all kinds is vital if we want a prosperous economy that works for everyone. What do the Government intend to do about this situation?

Lord Ashton of Hyde: My Lords, that really is not in the remit of the Department for Culture, Media and Sport, but I will refer the noble Baroness's question to the relevant department.

Lord Tebbit (Con): My Lords, will my noble friend say whether the Government intend to publish quotas for all categories, not just men and women but all those in between and people who do not feel comfortable with one or the other of those categories? It would be so unfair if we did not—would it not?

Lord Ashton of Hyde: I can be very clear to my noble friend: we do not intend to publish quotas.

Lord Dykes (CB): My Lords, will the Minister confirm that the Government are still very keen on more women in Parliament in both Houses, because they are half the human race? If we had that, we would have less hysterical politics.

Lord Ashton of Hyde: Again, I do not think that is within our remit, but the Government are keen to have more women in Parliament.

Lord Stevenson of Balmacara (Lab): My Lords, this Question is really about ensuring access to sport, particularly for women. While we have been discussing this Question on governance, we are seeing UK Sport reducing its funding for premier sports in areas where women have been involved. Has the Minister any further comment on the turning down of the recent appeals by synchronised swimming, badminton and handball, which has sent a very wrong signal to women?
Baroness Sherlock (Lab): My Lords, I also signed the letter and was pleased to do so. There is genuine feeling around the House that the Government have made a mistake on this. What will happen in practice is that a six-year-old who lost her father last year will be supported until she leaves school; if her father dies next year, that support will stop after 18 months. That cannot be right. I know that I gave the Minister a hard time a few weeks ago when the regulations were in Grand Committee, but I do not blame him; I know that he did not make the decision. I think that we are now at the point where the whole House recognises that the Government have made a mistake. These cuts were simply part of an attempt to cut £12 billion off social security. The House does not believe that the Government should be taking money away from bereaved children. Will he please tell his Secretary of State that?

Lord Henley: My right honourable friend will obviously listen to what the noble Baroness has had to say, but I reject her allegation that these are cuts. There will be no savings to the taxpayer in the first two years; thereafter, as was made clear in the impact assessment, there will be some savings. The important point to get over is that we have increased the initial payment, which was frozen by the previous Government in 2001 and remained frozen for many years, from £2,000 to £2,500. We then make payments for 18 months to those with children. Obviously, no element of money will resolve the problems that individuals who have lost one or other parent will have. This is designed to help with the immediate costs of that bereavement. That is why we think that, by increasing the initial payment, we have made a very real change and provided some support for those with children.

Lord Polak (Con): My Lords, the DWP impact assessment taken from the consultation on the website suggests that bereavement benefits make up a tiny part of the welfare budget, accounting for 0.32% in 2016-17 and anticipated to fall to 0.27% by 2019-20. I totally support the Government in the need to reduce the welfare bill, but it should not be done here. If children are bereaved, there is no fraud; you cannot fake it, or even abuse the system. Are we not, as I fear, targeting the wrong area?

Lord Henley: My Lords, again I do not accept what my noble friend said. We have made changes to this because the old system of three benefits—bereavement payment, bereavement allowance, widowed parent’s allowance—was overcomplicated, had been in place, with minor changes, since around 1920 and needed change. We have made a change that provides extra support at the immediate moment that that support is needed and appropriate support for those with children. There are, as I said, no immediate savings to the taxpayer; there might be savings later but it is always important, in all matters relating to benefits, to keep an eye on the overall costs.
The Lord Bishop of Peterborough: My Lords, I too signed the letter to the Secretary of State. I fully accept that the system needed reform, but those of us who spend a lot of time looking after people in bereavement know that a widowed parent may sometimes have to spend several years giving considerable extra time, attention and care to the children. In practice, that may necessitate working only part-time for a number of years while children are still at home. Previously in this House there was an assurance that income-related benefits would be there to support such parents, but under universal credit that is not so simple. Can the Minister reassure us that bereaved parents will not be subject to the in-work conditionality requirements that apply under universal credit?

Lord Henley: My Lords, those requirements were explained, I think, by my honourable friend Caroline Nokes when the regulations were dealt with in the Commons. They are complicated but the simple fact is that universal credit and other income-related benefits are there to fill the gap after that 18-month period. We believe that, with a contributory benefit such as bereavement support benefit, it is quite right to make that very generous initial payment, to then provide some support for those with children for 18 months and thereafter to let people seek help from income-related benefits.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, we understand the Government’s need to reduce the benefits bill; however, we believe that this is not the right place to do it. Given the spotlight that has recently been shone on the devastating impact of children suffering bereavement by the programme on Rio Ferdinand, I ask the Minister to talk to his colleague, the Secretary of State, and ask him to reconsider this policy and the devastating impact it will have.

Lord Henley: My Lords, I have been trying to explain that I believe that this benefit is an improvement in offering support at the initial stage, which is where it is important. I do not believe, and I do not think that the noble Baroness would believe, that any sum of money is going to deal with the problems of bereavement suffered by the surviving spouse or the children, but I believe that appropriate support ought to be offered for a period. That is what we have done, that is what we consulted on, that is why we made changes after that consultation, having listened to what people said, and that is what this new benefit will do. I think that that is the right way forward.

Brexit: European Parliament Resolution
Private Notice Question

11.38 am

 Asked by Baroness Hayter of Kentish Town

To ask Her Majesty’s Government what assessment it has made of the potential impact of the adoption by the European Parliament of a resolution on the UK’s withdrawal from the EU on its ability to achieve the negotiating objectives set out in its White Paper.

Baroness Hayter of Kentish Town (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

Baroness Goldie (Con): My Lords, we note the European Parliament’s views on our upcoming negotiations and we shall carefully consider the content of the resolution. We recognise and respect the vital role that the European Parliament will play in our exit process and we shall stay engaged with it throughout that process.

Baroness Hayter of Kentish Town: I thank the Minister for that. The significance of the resolution is that the European Parliament will base its decision on whether to grant—or, indeed, withhold—its consent to our withdrawal deal on whether its objectives have been met. In the light of that, I ask the Minister, first, whether she will give some thought to a Parliament-to-Parliament dialogue so that both bodies with a potential veto can discuss and debate the issues together? Secondly, what is the Government’s response to the resolution’s suggestion that an association might be appropriate for our future relationship with the European Union?

Baroness Goldie: I thank the noble Baroness for raising two important points. On the question of inter-Parliament relationships—between the Parliament of the United Kingdom and the European Parliament—the negotiating conduit is clearly from the UK Government to the European Commission. But it seems a perfectly healthy suggestion that the Parliaments should engage; and indeed that is for the Parliaments themselves to determine, as government does not control Parliament and nor should it do so. On the second important issue, it was helpful that the European Parliament recognised the importance of the citizenship issue. The Prime Minister has made it clear that in so far as citizenships are concerned, from the UK perspective, it was helpful that the European Parliament—between the Parliament of the United Kingdom and the European Parliament—the negotiating conduit is clearly from the UK Government to the European Commission.

Lord Wigley (PC): My Lords, speaking as one who sat through the entire three hours of the debate in Strasbourg yesterday, will the noble Baroness accept from me that the pervading feeling there was one of sadness? Is she aware that Michel Barnier suggested that the three conditions for successful negotiations were: first, unity, by which he meant success for both sides; secondly, to dispel uncertainty; and thirdly, the establishing of appropriate sequencing of the negotiations? Will the Government endorse that approach?

Baroness Goldie: I thank the noble Lord for his question. What was reflected in the European Parliament yesterday echoes much of what the United Kingdom Government have been saying. Quite simply, there is a mutual interest for the UK and the EU in conducting
these negotiations in a harmonious, constructive and, yes, robust fashion. That means that there will be issues where firm positions have to be taken, but I very much hope that a mood of constructive concord will prevail. In so far as the particular points made by Mr Barnier are concerned, I am sure that all these matters are already in the mind of the UK Government and that they will pay close attention to those issues.

**Lord Hannay of Chiswick (CB):** My Lords, will the Minister agree that one part of the position endorsed by the European Parliament—which is to talk about sequential rather than concurrent negotiations on the new partnership—is thoroughly unhelpful? Will she recognise that there is broad support, I believe, in this House and in the other place for the Government’s view that the negotiation on all these matters should go ahead without further delay? If she does agree, will she tell us what the Government are doing to persuade the members of the European Council and the European Parliament to soften their unfortunate attachment to a sequential approach?

**Baroness Goldie:** I thank the noble Lord for his observation and am sure that when he asks me what the Government will do, they will pay close attention to his wise words.

**Baroness Ludford (LD):** My Lords, rather than the Government talking up their dangerous no-deal option, do they believe that there is broad support for a constructive and optimistic spirit. That means that there will be issues where firm positions have to be taken, but I very much hope that a mood of constructive concord will prevail. In so far as the particular points made by Mr Barnier are concerned, I am sure that all these matters are already in the mind of the UK Government and that they will pay close attention to those issues.

**Lord Howell of Guildford (Con):** My Lords, does my noble friend accept that it is not just with the European Parliament that we need a constructive concord? We need constructive and intensified relations with the Parliaments of the other 27 members, and, indeed, some of the local Parliaments as well. This is a major task, but in this digital age it is very much easier than it would have been in the past. Will she encourage all kinds of contact between our Parliament and the Parliaments of the other member states of the European Union?

**Baroness Goldie:** I thank my noble friend for his observation. It is a positive contribution. It should be made crystal clear that the conduit for the negotiations has to be between the United Kingdom Government and the EU Commission. That is the silo, if you like, for the negotiations. That does not prejudice the normal diplomatic discourse and the desirable conversations that will take place between the United Kingdom and other member states. That is an ongoing and healthy process, but we should be clear that the formal channel for the negotiations is between the UK Government and the EU Commission.

**Lord Soley (Lab):** My Lords, will the Minister agree that one part of the position endorsed by the European Parliament—which is to talk about sequential rather than concurrent negotiations on the new partnership—is thoroughly unhelpful? Will she recognise that there is broad support, I believe, in this House and in the other place for the Government’s view that the negotiation on all these matters should go ahead without further delay? If she does agree, will she tell us what the Government are doing to persuade the members of the European Council and the European Parliament to soften their unfortunate attachment to a sequential approach?

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**Lord Soley (Lab):** My Lords, the Minister—

**Lord Foulkes of Cumnock (Lab):** My Lords, has the Minister had time to consider paragraph 29 of the European Parliament resolution, which calls for the relocation of the European Banking Authority and the European Medicines Agency from the United Kingdom to another country in Europe as quickly as practicable? Have the Government made any assessment of the impact of that?

**Baroness Goldie:** If I can recover from the stereophonic effect of the contributions from the Labour Benches, I thank the noble Lord for raising that issue. It is specific to the negotiations. I am certainly that it will be discussed within the negotiations. It would be quite wrong for me to pre-empt an answer to that, and I am not going to do so.

**Lord Cormack (Con):** My Lords, in order to calm the rhetoric in the European Parliament, will my noble friend think of sending a certain United Kingdom Member of that Parliament a definition of the word “mafia” and a copy of How to Win Friends and Influence People?

**Baroness Goldie:** As ever, my noble friend seeks to pour oil on troubled waters. I am sure his comments will be noted.
Lord Soley: The Minister is right to say that it is for the two Parliaments to decide this matter, but in view of her special knowledge, will she accept a proposal that I have already made to the noble Lord, Lord Bridges, that the Government consider giving support to the idea of a model similar to the British-Irish Parliamentary Assembly, which could be very good for both Parliaments in building a positive relationship between the UK and the EU?

Baroness Goldie: That is among a number of very positive suggestions that have been made. I am sure that the Government are interested in and will listen to such suggestions and will give due consideration to such matters in future.

Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill

Third Reading

11.48 am

Bill passed.

Brexit and the EU Budget (EUC Report)

Motion to Take Note

11.49 am

Moved by Baroness Falkner of Margravine

That this House takes note of the Report from the European Union Committee Brexit and the EU budget (15th Report, HL Paper 125).

Baroness Falkner of Margravine (LD): My Lords, I am delighted to introduce the EU Committee report, Brexit and the EU Budget. I thank all members of the committee, which, along with the other sub-committees, has worked at an extraordinary pace since the referendum to examine all the significant areas of policy that will be impacted by Brexit. I benefit in my chairmanship from an extraordinary level of expertise and talent in the membership of the committee—even by the standards of this House.

We will be losing one member in the next rotation, my noble friend—I was disconcerted because I thought he was behind me—Lord Shutt. It has been a real pleasure to work with him, and I know that he will bring the same level of wisdom and expertise to the next committee that he serves on. On behalf of the committee I express our sadness at losing him.

We are also very ably served by our clerk, John Turner, and our new policy analyst, Dr Holly Snaith, who both produced as good an example of work as any in this House. I know how important our reports are to the policy community in Brussels, and this one is no exception. I understand that it has been carefully examined across capitals.

I am also very grateful that we were able to secure a debate on this topic so soon. As noble Lords will be aware, the issue is highly contentious and, as the Tusk draft guidelines that were issued last Friday indicate, is going to feature as a significant factor in the early negotiations now that Article 50 has been triggered. The guidelines say:

“A single financial settlement should ensure that the Union and the United Kingdom both respect the obligations undertaken before the date of withdrawal. The settlement should cover all legal and budgetary commitments as well as liabilities, including contingent liabilities”.

So this debate is timely.

Our inquiry was undertaken in December and January, and we heard evidence from academics and legal experts. We also visited Brussels to hear from a range of MEPs and prominent think-tanks. We are enormously grateful to all those who contributed to the inquiry. The UK’s possible exit bill from the EU has received a significant amount of attention in the press and elsewhere. In the autumn of 2016, reports started to emerge in the Financial Times, for example, that the UK would face a bill of €20 billion. Shortly after, the FT reported the figure as €60 billion—an unprecedented level of inflation—and further speculation in Brussels suggested that this was the figure the EU actually had in mind. We wanted to investigate the factors behind these numbers and, if possible, determine what the United Kingdom might need to pay.

Noble Lords will be aware that the most newsworthy finding of our report was that, legally, the UK would not be obliged to pay anything at all. This has been seized upon by those who do not believe in honouring their obligations, but it is clear that they have not read our report in full. We considered this matter very carefully before coming to that conclusion, having received differing opinions from our legal witnesses. However, having looked closely at the matter with the assistance of the EU Committee’s then legal adviser, Mr Paul Hardy—to whom I personally extend our thanks, as he has since moved on from the House of Lords—we decided to put that advice into the report itself, so that all could see the analysis behind our judgment. We concluded that the effect of Article 50 was that all EU law ceased to apply to the UK at the moment of departure unless the withdrawal agreement provided otherwise. This means that all legal obligations resulting from budgetary commitments made while the UK was still a member state would also cease to apply.

We heard evidence that Article 70 of the Vienna Convention on the Law of Treaties might provide a legal basis for an enforceable claim against the UK—and enforceability goes to the heart of the argument. The convention states:

“Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty … Releases the parties from any obligation further to perform the treaty”,

but that it:

“Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination”.

On that reading, this appears to mean that the United Kingdom would have a legal obligation to pay its dues—but the key words are:

“Unless the treaty otherwise provides”.

Article 50 of the Treaty on European Union provides a mechanism for a member state to leave the EU without an agreement and with the effect that all EU
law ceases to apply to the member state. Article 50 is unqualified by any condition about ongoing liabilities, and from this we concluded that the UK’s budgetary liabilities would cease in the absence of any withdrawal agreement, as there is no institution to enforce obligations when EU treaties fall.

I am aware that other legal opinions are circulating in Europe—a fact alluded to by the Chancellor in his interview on the “Today” programme on 29 March. On 21 March, there were press reports of a leaked EU document suggesting that the matter would be taken to the International Court of Justice if the UK refused to pay. The EU may go down this route, although we concluded that international law is slow to litigate and hard to enforce. We also noted that Article 344 of the Treaty on the Functioning of the European Union prohibits EU member states from submitting the legal interpretation of the EU treaties to a court other than the Court of Justice of the European Union. I note that the European Council’s draft negotiating guidelines propose establishing an arbitration body to rule on the interpretation of the withdrawal agreement, taking into account the particular status of the CJEU. This would, of course, come into being only if a deal was struck.

We explored the legal position because we wanted to determine the lowest amount the UK might be required to pay as a means of sketching out the parameters of the forthcoming negotiations. I was rather surprised to find that the answer was zero, in terms of the legal position, but I want to be clear that the committee did not recommend that the UK should refuse to pay anything. This legal situation would apply only if it proved impossible to reach a deal, in the sense that the EU’s claim would be unenforceable. The committee hoped that a deal would be reached and acknowledged that this would be impossible without settlement of the budget issue.

Politically, if not legally, the UK has signed up to certain areas of EU expenditure which may persist for some years after Brexit. It will be a matter for negotiation how much any payment proves to be, but the political and moral obligations on the United Kingdom will have to be taken account as part of the process, not least because good will will be essential to achieving a workable withdrawal agreement and a co-operative future relationship.

The Prime Minister, in her letter triggering Article 50 and her Statement to the House of Commons, said that she would pursue a “deep and special partnership” between the United Kingdom and the EU, taking in both economic and security co-operation, and that:

“We will need to discuss how we determine a fair settlement of the UK’s rights and obligations as a departing member state, in accordance with the law and in the spirit of the United Kingdom’s continuing partnership with the EU”.

So far, we do not know what the Government consider to be a fair settlement, and no doubt that will emerge in the negotiations. Rumours that they have calculated a bill of £20 billion have recently been reported, but at this stage that is mere speculation.

The point is that this is a negotiation and the final bill could be calculated in any number of ways. We tried to explore some of the ways a bill could be constructed. It was possible to arrive at wildly differing figures depending on how one calculated the UK’s share of the EU budget, whether one included settlement of the so-called reste à liquider, or RAL, amounts, and whether one included payments in respect of accrued pension rights—which itself would differ depending on whether it was calculated according to the number of UK nationals working for the EU at the moment or in receipt of a pension, or by using a standard percentage. There is also the issue of EU assets and whether the UK is liable to receive a portion of their value.

One further factor in determining any bill would be whether the UK agrees to make contributions to the EU budget under the current multiannual financial framework until it comes to its natural close at the end of 2020. Doing this would reduce uncertainty in the rest of the EU over how it is to fund its spending plans for the 21 months following Brexit. Taking this position may help to secure a transitional arrangement—the implementation agreement, as the Government call it—and the cost, although running to billions, it is likely to be offset by commitments the Government have already made to guarantee EU-derived funding domestically following Brexit. So it would be substantially lower than the headline figure might suggest if that were the case. It is an option that requires serious thought.

Let me conclude with a final thought. This process on which we have embarked—disentangling ourselves from a relationship of nearly 45 years—will be watched around the world, not just in the EU. The measure of the UK’s reputation as a future partner in deals around the world will be dependent on how it behaves in ending this relationship. This country’s culture is synonymous with the concepts of fairness and honour. Having grown up in a former colony, I was raised in the knowledge that an Englishman’s word is his bond. No amount of legal posturing could convince future partners who do deals with us that we would be reliable partners if we left the EU table without paying our due bill. I believe that the Government understand this and intend to fulfil their obligations through the difficult negotiations ahead. I wish them well. I beg to move.

12.01 pm

Lord De Mauley (Con): My Lords, this is a report, of course to Parliament, and in particular to the House of Lords. If a Member of the Committee which prepared it is permitted to say this, it has been produced with considerable skill and care. If I may be forgiven for saying so, it appears to be a singularly significant cross-party House of Lords Select Committee report among many important cross-party House of Lords Select Committee reports. Indeed that fact was recognised by the press, which gave it more coverage than perhaps might ordinarily have been the case.

It is a report on a complex subject and does its best—quite a good best, I would argue, and I pay credit to our chairman, other Members and the clerks—to simplify that subject. However, it is in one sense unusual in that it has the potential to be really quite useful to those responsible for negotiating our departure from the European Union.
[LORD DE MAULEY]

It contains legal advice that, in the event that no agreement has been reached between the United Kingdom and the European Union by the expiry of the two-year period specified under Article 50, the UK will be subject to no enforceable obligation to make any financial contribution at all to the European Union, and that while EU member states may seek to bring a case against us for payment of outstanding debts under principles of public international law, as the noble Baroness, Lady Falkner, said, international law is slow to litigate and hard to enforce, and it is doubtful that any international court or tribunal would have jurisdiction.

It does not say—again, as the noble Baroness said—that in any situation nothing should be paid, and indeed in my view, the Government may be well advised to pay something, if they can get an agreement to secure for the UK their key negotiating objectives. The good relationship the noble Baroness mentioned is important. The real significance of this is that it gives the EU considerable encouragement to reach an agreement, and to extend negotiations—although we must all hope that it will be possible to reach an agreement within the two years—if in due course it becomes apparent that no agreement is likely to be reached within that period, and if indeed it suits us.

I would argue that if this situation did not apply—that if no agreement has been reached by the expiry of the two-year period, the UK need pay nothing to the EU—there would be much less incentive on the EU to agree to anything. This is unlikely to be welcome news to Monsieur Barnier, who has suggested we might have to some €60 billion or even €70 billion.

The key question is how the Government should use this information. I am sure that they recognise the value of it as a negotiating chip—and, indeed, have taken their own legal advice. For me, a key question is going to be how much can be negotiated within the two-year period. It will be a tall order to complete negotiations within that period on a comprehensive trade agreement, encompassing not only tariffs but, of vital importance, non-tariff barriers, including matters such as mutual recognition agreements and conformity assessment. Services, so important to our economy, also need to be addressed. To suggest that the exit terms must be settled before a trade agreement can be considered—this picks up on a point made by the noble Lord, Lord Hannay, in the PNQ earlier this morning, which of course I agree with—misses the point that what we are prepared to accept in exit terms will not be unduly upset if I feel today that I must take issue with their conclusion. We all feel, as a matter of principle, that, if we have pressing views on an important subject that have not otherwise been expressed, it falls on us to stand up and make sure they are not ignored.

We are here in the very imprecise and uncertain realm of international law. So imprecise and uncertain is it that there has been a respectable view for a long time, which I might describe as an extreme positivist view, that there is no such thing as international law, for the simple reason that there is not in existence the essential prerequisite of a system of law: a sovereign body that legislates and is able to enforce its decisions in the area of its claimed jurisdiction. I think there would be general agreement that a form of positive law exists in the world which cannot be contested, in the form of individual contracts or treaties between states—conventional law. That applies only to the parties to those conventions, of course; in other words, only to those who have ratified the conventions. The concept of convention is well established, and I can see that the committee takes it very seriously. It concludes that the Vienna convention applies in this particular case, and I believe it when it says that 26 out of 28 members of the EU have ratified that convention. I suppose you could argue that the matter is anyway now one of customary international law, so it is a reasonable basis on which to proceed, and my argument will be on that basis.

Customary international law is of course a very vague area. The concept has been with us for a very long time, since at least Grotius in the 17th century. It is often quite unclear what customary international law is or, indeed, how it relates to conventional law. I take as an example the law of the sea convention, which fundamentally departed from traditional customary law when it was negotiated in the 1970s. Does it now represent customary law as well as conventional law, or are there two regimes in the world—one for the great majority states that have ratified the law of the sea convention and one for those that still have not done so? I do not know the answer to that question.

Finally, moving away from the positivists as far as you can to the idealist view of international law, there is natural law, which, as the House knows, has been in existence for even longer as a concept. I think that it goes back at least to the view of St Thomas Aquinas that there is an element of divine rationality in all of us by which we are guided, and through which we know the difference between right and wrong. One can substitute for God, if one wants to secularise the process, by introducing some kind of formulaic mechanism such as the utilitarian calculus or perhaps the Kantian categorical imperative. However, we should not neglect that natural law, because it was the basis of the indictments at Nuremberg after the war, which would not have been pursued on any basis of positive law because there was no basis to claim that those appalling crimes had been infractions of any positive law that existed at the relevant time and place. Therefore, we are in a very difficult area here.

12.05 pm

Lord Davies of Stamford (Lab): My Lords, I am not a lawyer, any more than the Lord Chancellor is a lawyer, although I hope that I am not less of a lawyer than she is either—that would be rather a bad position to be in. But all citizens are deemed to know the law, and anybody who sits in a legislature has to have a clear sense of the foundations of the law. Until a few months ago, I was a member of the committee. I enjoyed the role very much; it was a great privilege to serve under the extremely able chairmanship of the noble Baroness. I regard all those who served with me on that committee as personal friends, and I hope they will not be unduly upset if I feel today that I must take issue with their conclusion. We all feel, as a matter of principle, that, if we have pressing views on an important subject that have not otherwise been expressed, it falls on us to stand up and make sure they are not ignored.
As I said, the committee decided that the Vienna convention is the appropriate basis for looking at the international legal aspects of this matter. I agree with that. The committee report quotes the relevant article of the convention—Article 70:

"Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination".

The important phrase here is:

"Unless the treaty otherwise provides".

This is where I part company, I am afraid, with the committee, because it argues—as did the noble Baroness a moment ago—that because of Article 50 of the Treaty on European Union, which does indeed deal with the issue of member states leaving, under the Vienna convention paragraph (a) should apply, not paragraph (b):

"Releases the parties from any obligation further to perform the treaty",

should apply, rather than,

"Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination".

I do not need to quote Article 50: we all know it practically by heart after the events of the last few weeks. However, it is clear to me, on my reading of the treaty, that Article 50 provides no guidance at all on whether or not outstanding obligations and liabilities should be dealt with in any kind of agreement. It provides no rules whatever—there may be substantive rules—for the withdrawal of a member. All it deals with is the timing. It says that the negotiation must take place within two years. Still less does the article provide an actual formula for calculating and distributing assets and liabilities or anything of that kind. Therefore, given that Article 50 in my view does not provide any substantive guidance on this matter at all, it seems to me, contrary to the committee's conclusion, that paragraph (b) and not paragraph (a) applies here. Therefore, it is necessary for us to behave in what we imagine would be a common-sense way anyway once one leaves any kind of venture—namely, that obligations, liabilities and assets on both sides are looked at, evaluated and distributed on a fair basis, which, presumably, means on the basis of the proportionate contribution beforehand of resources to the organisation. That could easily be worked out.

I am afraid that I disagree also with another aspect of the committee's report. Paragraph 133 states:

"The jurisdiction of the CJEU over the UK would also come to an end when the EU Treaties ceased to have effect. Outstanding payments could not, therefore, be enforced against the UK in the CJEU".

There seems to be confusion here. It is quite obvious that it is correct that once we have left the Union, the CJEU no longer has any jurisdiction over us, and the CJEU can say nothing about any subsequent arguments we might have with other former fellow members of the EU. But until the day we leave, clearly the CJEU has such jurisdiction. I have never heard of a court anywhere in the world which, once it had accepted jurisdiction over a case because the acts and the decisions involved were taken at a time when the individuals concerned were under its jurisdiction, subsequently allowed one of those parties to the case retrospectively to remove themselves from its jurisdiction by simply subsequently leaving the organisation. It seems to me that the CJEU, once it has accepted jurisdiction for determining the liabilities attaching to us or any other member state up till the time of our departure, would continue to be able to declare that judgment. Only liabilities accumulated after our departure could not be subject to the jurisdiction of the CJEU, but no one is suggesting that we could accumulate any liabilities after our departure, so that question does not really arise.

The final confusion—or at least the point on which, frankly, I disagree with the committee—relates to the whole issue of enforcement. The committee says at paragraph 136 that,

"international law is slow to litigate and hard to enforce".

I do not know what it means by "hard to enforce". As I have already argued, it seems to me that international law is impossible to enforce—that is one of the salient points about international law. Somebody might say, "Well, you can enforce it through a Chapter 7 resolution of the Security Council", but, apart from the difficulty of getting that, you obviously cannot use that mechanism against a permanent member state with a veto or a group of countries of which one is a permanent member state. Therefore, that does not really arise. Perhaps if the noble Lord, Lord Howard, were in his place, he would suggest that you could always enforce it by sending a gunboat to Brussels or something of that sort.

However, in all seriousness, international law cannot be enforced. I do not know whether the committee accepts that, perhaps taking the positivist view that that means there is no such thing as international law. I do not think so, because the whole argument in the report is based on the assumption that there is such a thing as international law. Whatever the committee might feel about that, I hope that the other explanation does not apply and that what it has in mind—I do not think it does—is that we could always say, "All right, we’ve lost the case, but come and get us. You’ll never get a penny out of us and we won’t acknowledge the judgment of the court". I agree very much with the noble Baroness: it would be horrific if this country took that line, and I am sure that we would not. Therefore, I am very confused about what the committee means by saying that it is hard to enforce, and about the relevance of that comment in this case.

I very much agree with the committee’s pragmatic recommendation—if not its legal analysis—that we as a country should not say that we owe absolutely nothing as a result of our membership of the European Union. That would be completely non-credible. We are clearly liable for that portion of the Union’s liabilities accumulated with our taking part, by consent, in the relevant judgments until the day we leave. We are also, certainly morally, obliged in relation to the costs that will be incurred purely and solely because of our
unilateral decision to leave—such as the need to pay redundancy payments to British subjects employed by the Union’s institutions.

However, whatever happens, we certainly should not do what has been suggested in certain quarters, although very much not by the noble Baroness today, which is simply to walk away from our obligations. I thought that one of her analogies was particularly poignant when she talked about walking away from the table. We can all imagine someone going out to dinner with a group of friends—perhaps 27 friends in this case—then getting up from the table and leaving without paying the bill. No honourable person would like to think of himself or herself behaving in that fashion, and I do not think that anyone in this country would like to think that we would do so. I am very glad that there is unanimity in this Chamber—certainly based on the speeches I have heard so far—that that should not be the way forward.

12.18 pm

Lord Thomas of Gresford (LD): My Lords, it is such a pleasure to follow the noble Lord, Lord Davies of Stamford, because I agree with every word that he has spoken.

I commend the European Union Committee for its hard work in producing the report. However, it is unfortunate that it has been seized upon by the Brexiteers, who have affirmed that the United Kingdom could flounce out of the negotiations without a deal and avoid any obligations or commitments which had been incurred. “We don’t have to pay a penny”, trumpeted the Daily Mail.

I have read the evidence given to the committee by the three legal experts, who were not agreed. Because they were not agreed, the opinion of the legal adviser, Mr Harvey, was sought. No one is an expert in this field, because Article 50 has never before been tested. I find his opinion tortuous and I cannot agree with his view on the effect on our liabilities to the EU should no deal be forthcoming. His view is reflected in paragraph 133 of the report in these terms:

“The rule in Article 70(1)(b) of the Vienna Convention only applies to withdrawal from a treaty which does not have its own withdrawal procedures”.

Then it says in brackets,

“(unless the treaty otherwise provides).”

The report continues:

“Manifestly, the TEU does, in the form of Article 50. Article 50 therefore takes precedence over Article 70(1)(b) of the Vienna Convention”.

I quite fail to understand what that paragraph means.

Paragraph 2 of Article 70 states,

“a State ... withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty”.

Paragraph 1 deals with the rights, obligations and legal situation of the parties prior to the termination. That is what it is about. It says that,

“Unless the treaty otherwise provides”,

those rights and liabilities are not affected. It is very simple and plain language. As the noble Lord has pointed out, Article 50 does not otherwise provide—it is quite silent on the existing rights and obligations at the date of withdrawal from the treaty. It follows that any other state that is a party to the treaty can enforce those rights and obligations in law. That is the legal side.

On the practical side, we are about to have placed before us the great repeal Bill, which is to take the whole of the acquis communautaire into domestic law—to make EU law domestic law. If the United Kingdom were sued for a money sum, would we actually raise a defence that these obligations arose only under EU law, which we have just taken and made part of our own domestic law? Would we deny the jurisdiction of our own High Court of Justice? If we did that, would we then refuse arbitration where, by agreement, any questions of international law could be determined? Would we force another state to raise an issue in the International Court of Justice and spend years locked in conflict with Europe, simply ignoring the rights of other states in Europe that would obviously be affected by our position?

The view that our rights and obligations would come to an end the moment we fall out of the EU would have strange results. For example, money has already been allocated to Wales from the European structural funds to improve the port facilities at Holyhead. Let us assume that the money is paid upfront. The First Minister of Wales might consider, “Should we spend this money on Holyhead, or wouldn’t it be rather nicer to spend it on a marina in Cardiff Bay? We might attract Sir Philip Green and yachts of that sort and improve the character of the place where we work. We have no obligations to the EU: they have given us the money; we do not have to pay it back, and can use it as we like. They cannot sue us”. That would be nonsense, would it not?

Assets are another important issue. I happen to have been a member of the Reform Club for some 45 years, which is about one-quarter of the time that that distinguished club has been in existence—I stayed there last night, as it happens. If I were to cease to be a member tomorrow, I would not go to the secretary or the trustees and say, “Look, I have paid my subscription for 45 years and think I am entitled to a share of the value of this club. I demand my part of it”. That would be nonsense. But at the same time, I would not expect to have to contribute to the liabilities for the pensions of the staff. We did not form the European Union; we became a party to it. We came late to the feast, although many of us were campaigning to become members long before 1972. We were members of a club, and we cannot say that we are entitled to a portion of its facilities wherever they may happen to be.

This country has entered into commitments. The multiannual financial framework for 2014-20 was negotiated and agreed in 2013. There was a problem at that time because the European Parliament was concerned that countries were not paying their dues. There were shortfalls which jeopardised projects such as the Erasmus programme and the Social Fund, which ran out of funds in 2013, and it was said that those countries had to pay up during that year. Since we negotiated and became a party to that multiannual financial framework, the annual budgets of the EU have been calculated on...
the basis that the agreed funding in the MFF was available to carry out those programmes commenced before 2020 within the budget.

We are currently in the period of the 2017 budget, which committed members of the EU to contribute €157 billion, out of which payments of €134 billion would be made. I take it—I ask the question directly of the Minister—that, notwithstanding Brexit, the United Kingdom is engaged in the discussions and negotiations for the 2018 budget within the MFF. I assume further that we will still be a party to the discussions on what the MFF 2019 and 2020 budgets will be. We must continue to participate.

I am concerned from a Welsh point of view, obviously, because Wales is a net recipient of EU funding. It receives funds from the European Agricultural Guarantee Fund, the European Regional Development Fund and the European Social Fund. Indeed, some 60 projects have already been approved, with liabilities that organisations have taken on and put into their programmes which will extend way beyond 2020. Surely those liabilities will have to be met from funds from this country. It is true that the Treasury has issued a guarantee that these matters will be paid up until 2020, but what happens after then when the programmes run on?

The problems that the report highlights and makes it necessary to discuss are complex and difficult. However, we must properly address them and not get involved in the suggestion that we can just walk away from Europe, hold our noses and not have anything more to do with it.

12.28 pm

Lord Butler of Brockwell (CB): My Lords, the members of the sub-committee which produced this report have perhaps been blowing their own trumpets. However, in this case we are justified in doing so because, under the skilful chairmanship of the noble Baroness, Lady Falkner, this report is a good example of the service which your Lordships’ House can perform for Parliament and the country as a whole.

As the exposition of the noble Baroness, Lady Falkner, made clear, the report covers two principal aspects. First, it describes and seeks to quantify the elements of the EU’s budgeting arrangements which may contribute to a claim on the UK for a payment or payments from the UK after we leave the EU. Secondly, it seeks to establish the legal position of the UK’s liability for such payments. Those legal aspects were discussed in the contributions of the noble Lords, Lord Davies of Stamford and Lord Thomas of Gresford, and I am not going to dwell on them.

It is fair to say that it surprised Members of the Committee—it certainly surprised me—to hear the legal advice that, in the absence of an agreement, the EU will have no means of enforcing any financial liability against the United Kingdom. I note that if the advice is correct, however, the phrase “a divorce settlement” is misleading. In a divorce a court determines the liabilities of the parties and has the means to enforce that determination. In this case the legal advice is that in the absence of an agreement to the contrary, the jurisdiction of the ECJ ends on our departure. Again, I do not want to dwell on the legal aspects. I have used the phrase, as have others, “in the absence of an agreement”, and I emphasise it. Of course we want an agreement. We have much to gain by getting one and a great deal to lose by not doing so. It is important to note, as the noble Lord, Lord De Mauley, said, that in the aspect of finance it is the EU which will lose in the absence of an agreement. Since the UK’s gross contribution is currently one-eighth of the EU’s annual budget, there is much at stake here, so no wonder it wants to make progress on this issue before discussing the other aspects of our future relationship.

Both sides should want a reasonable agreement on this issue. What should a reasonable agreement look like from the UK’s point of view? The Government have said, I believe rightly, that the UK would, “continue to honour our international commitments and follow international law”.

The Chancellor of the Exchequer has said something similar about meeting our obligations. Monsieur Barnier is quoted today as emphasising the importance of an agreement to the EU, although he has quoted an exit payment approaching a figure of £60 billion. The report seeks to identify and discuss the main elements, and like the noble Lord, Lord Thomas of Gresford, I should like to take them in turn.

First, as the noble Lord, Lord Thomas, pointed out, the UK will be leaving the EU some 19 months before the end of the current multiannual financial framework. That framework sets a ceiling on the EU’s expenditure. It is not a commitment to expenditure. The UK was a party to it but it does not commit us to spending up to the ceiling which we agreed in that negotiation. If the UK’s gross budget contribution of 12.5% ends in March 2019 it will leave a big hole in the EU’s spending plans, and if instead of ending its contribution on departure the United Kingdom were to continue its budget contribution until the end of the current period of the framework, the committee calculates that that might cost the UK some £15 billion. But as I have pointed out, the MFF sets a ceiling; it is not a commitment to spend, and here I differ from the noble Lord, Lord Thomas.

The commitment to spend is set by the annual budget—

Lord Thomas of Gresford: My Lords, with respect, I suggested not that we were committed to pay under the multiannual financial framework, but that we are committed to spend on the budgets which rely on the MFF in order to come to a conclusion of what can be spent.

Lord Butler of Brockwell: I accept that but the point is, as the noble Lord has said, that the budgets for the periods after we leave have not yet been set so we are not committed to them. The annual budget for 2019 and 2020 has not been set, so I regard any claim on the UK in respect of those years as weak. As paragraph 46 of the report points out, this view seems to be shared by the German Finance Minister, Wolfgang Schäuble, who has said that it will be necessary to negotiate a new MFF on the assumption that the UK contribution ceases in 2019—when we depart from the EU.
Continuation of the UK’s payment under a multilateral financial framework that continues after we have left is not in fairness a strong claim on the UK.

The second element of a possible EU claim is the commitments made in budgets to which the UK has been a party, which will remain to be paid after March 2019—the so-called reste à liquider, or remainder to be liquidated. Like others, I regard this claim as stronger. There is probably no legal obligation to make these payments after the UK has left the EU, but it may be argued that there is a moral obligation since the commitments were entered upon and budgeted for while the UK was a member.

The EU estimate of the commitments that will be outstanding at the end of 2020 is £254 billion. We do not have an estimate for the outstanding commitments at the end of March 2019, but since commitments contracted for but not paid tend to diminish as the MFF wears on, the figure at the end of March 2019 for outstanding commitments may be higher. However, as has been pointed out, some of these may never materialise. Moreover, some commitments are to the UK itself. These should be netted off, after which the UK share of commitments to other partners is unlikely to amount to more than £10 billion. If the UK were to agree to meet these it would be sensible to do so not in a lump sum but over the next few years as the commitments materialise.

It is right to add that the respected Brussels think tank the Bruegel Institute produces a much larger figure for commitment outstanding, including a large element under the heading, “significant legal commitments”. These are commitments pledged in legal terms but not yet budgeted for. Since they are expected to be budgeted only over a long period, they are not included in the EU’s balance sheet nor in the reste à liquider. In this case it seems difficult to argue that the UK has any liability for these unbudgeted items after leaving the EU.

Thirdly, there is the possibility of a claim based on pension liabilities for past or present employees of the EU or its institutions. Here I agree with the noble Lord, Lord Thomas of Gresford, that this is a weak basis for a claim. UK nationals constitute some 4% of EU staff at present and have never been more than 8%. The Commission currently estimates its actuarial liability for future pensions at €63.8 billion. However, pensions are paid out of each year’s budget. Employees make a one-third contribution to them. Like the noble Lord’s, my view is that, on leaving the EU, the UK has no greater liability to contribute to the annual pension bill that someone leaving a club would have to contribute to the pensions of past and present employees. The nationality of these employees is immaterial. Even if the UK were to make an exit contribution based on the proportion of UK nationals employed, and if the EU’s calculation of a total actuarial ability of €63.8 billion is right—the Bruegel Institute puts it much lower than that—it would not amount to more than a handful of billion euros.

Lord Butler of Brockwell: With respect, I do not take that view. These are employees of the EU and its institutions. If they are fired for whatever reason, their redundancy payment and severance terms will be determined by their contract and negotiation with the EU and the EU institutions. That does not seem to me a matter for which the UK has a liability.

I again agree with the noble Lord, Lord Thomas, about the other side of the balance sheet—namely, the EU’s assets. I shall not discuss those in any detail, because I doubt whether the EU would agree to distribution of these to a country departing from the EU any more than it would require a contribution as an entry fee from a country acceding. One exception to that is the UK’s stake in the European Investment Bank which, if it has to be surrendered, could be worth anything from €3.5 billion to €10 billion to the UK.

Unless there are other elements of a claim for an exit payment which neither the EU Committee nor others have thought of, it seems clear to me that any reasonable claim that can be made will not amount to anything like the €60 billion figure attributed to M. Barnier and his team. It follows that, leaving aside the legal aspects, UK negotiators do not have a great deal to fear from a negotiation on this subject. In a reasonable world, it should be possible to make sufficient progress to open the way to negotiations on a future trade relationship.

There is one final piece of advice that I would give—again, this point was made by the noble Lord, Lord Thomas. By all means, let us seek to reach agreement on the principles of an exit payment and a future financial relationship, but it would be unwise to agree the details, the actual figure, until the principles of a trade relationship are also agreed. This is an area where, whatever the sequence of the negotiations, nothing should be agreed until everything is agreed.

Lord Hoffmann of Chiswick (CB): My Lords, I am delighted to follow my noble friend Lord Butler. I am even more delighted that, unlike him, I will address the vexed legal issue, because that avoids a situation in which we might disagree, which we seldom do.

I should begin by declaring an interest: over many years of my professional career, I struggled with the intricacies of the EU budget: during our own accession
negotiations in 1970-72, when this issue was at their heart, and then during the late Lady Thatcher’s five-year-long battle to secure and entrench a two-thirds rebate on our net contribution—that was from 1979 to 1984, when I was her principal Foreign and Commonwealth Office adviser. In the negotiations of what was subsequently called the Delors package, in 1987-88, when for the first time an overall framework for EU spending priorities and policies began to take shape, I was the permanent representative to the European Union. So I bear the scars of these endeavours and I did acquire, I think, some familiarity with the subject of the report we are debating today.

The report before the House is a valuable one, in my view, and I congratulate the noble Baroness, Lady Falkner, on having chaired the committee during its production. It has much useful material and detail about the issues that will confront our negotiators during the negotiations that are about to take place. For the most part, with one exception which I will return to in a minute, I have no hesitation in endorsing it as a genuinely useful background brief on a subject that will inevitably come up before this House again and again as these negotiations progress.

What lessons do I draw from my experience negotiating on budgetary matters in the European Union? First, I suggest that you should never think that you know enough about this subject to allow you to make sweeping assertions about it in advance. Just do not do that. If you do, all too often a black hole will open under your feet as soon as you have done it and you will have to revise everything you have said. When I heard a former Minister of the Crown—a Minister who was actually responsible for the largest spending department in the UK, Mr Iain Duncan Smith—musing that perhaps the European Union would end up owing us money, I could barely avoid grimacing at his woeful ignorance.

Secondly, do not establish in advance, and do not let anyone know, what overall figure you might settle for. Lady Thatcher never did that and she was right not to. You must retain a degree of flexibility. Then, never say that no deal is better than a bad deal. Lady Thatcher also never said that. I had hoped that the Government had stopped saying it when it went missing from the letter to Donald Tusk, but, alas, it then popped up within a week in the White Paper on the repeal Bill. If you want the other side to move their figures, they have to believe that if they do so, you will return to in a minute, I have no hesitation in endorsing it as a genuinely useful background brief on a subject that will inevitably come up before this House again and again as these negotiations progress.

It follows from what I have just said that I believe that the Commission has already made one fundamental and egregious error by allowing an unsubstantiated figure of €60 billion to slip into the public domain. I believe that it will come to regret it, because that will not be the outcome, but also because the only way to reach any agreed settlement is for both parties to the negotiations to work their way, painfully and painstakingly, through the detailed components of any overall figure. That is the work of the coming months; it cannot be done in advance, unilaterally, by one of the parties to the negotiations.

Now for my beef, which is paragraph 135 of the report. I do not believe that the committee should have accepted so uncritically and endorsed the legal opinion that in the absence of any deal the United Kingdom would have no financial obligations to the European Union. To put it mildly, that is only one legal opinion among many. It could only be settled in a court of law and it would be exceptionally unwise, in my view, if the Government went down that road, because the collateral damage to the United Kingdom from doing so—economic damage, trade damage and political damage—would be massive. That is, no doubt, why the Government are so coy about telling us what the consequences of leaving without a deal might possibly be. Unfortunately, this conclusion—the one in the report about the legal liability—is all too likely to encourage those of the Government’s supporters who are, in any case, showing many signs of wishing to leave without a deal to believe that they have a “get out of jail free” card. They do not; this would be a “get out of jail very expensively” card. I am glad that the Government show no signs of being tempted to go down that road. The Tusk letter certainly implied that they do not wish to do so.

We in this House surely need to ensure that that distinctly contentious and dubious legal opinion is not available to be hung around the neck of the Government, like the dead albatross around the neck of the Ancient Mariner, when the Government return one day, as we must hope they will, with an agreement for us to consider and approve. How it can best be done that the House does not continue to support that legal opinion I leave to the noble Baroness, Lady Falkner, who may perhaps take a shot at it—if she tiptoed up to it in her introduction—when she replies at the end of this debate. I do not believe that we should either credit it or allow it to stand.

12.51 pm

The Earl of Lindsay (Con): My Lords, I, too, thank the noble Baroness, Lady Falkner, for introducing the report. In so doing, I should record my appreciation for the engaged and effective style with which she chairs the committee and chaired all our witnesses. I will also take this opportunity to thank the clerks, the policy adviser and our support team.

We have heard that the report looks at the financial issues that will have to be addressed in the negotiations when seeking a Brexit settlement. In particular, as has been explained, the report seeks to explore the certainties and uncertainties that attach to those issues, and how they might be addressed and calculated.

Before I look at one area of uncertainty, I should remind noble Lords that there is a fundamental question which it would sensible for the UK and EU negotiating teams to consider before detailed discussions begin. After the contribution from the noble Lord, Lord Thomas of Gresford, it could perhaps be called the Reform Club question. The question is well articulated in the title of the recent publication by the Bruegel think tank, to which the noble Lord, Lord Butler, referred: Divorce Settlement or Leaving the Club? A Breakdown of the Brexit Bill. At the beginning of its text, the report expands on that question as follows:
The key question is whether one considers Brexit to be a cancellation of a club membership or a divorce. In the former case, the UK would have no claims on any EU assets but would still need to pay its outstanding membership fees. In the latter case, both assets and liabilities would have to be split.

Every pronouncement from leading EC and EU figures since last June’s referendum suggests that they have been determined from the outset to see the Brexit negotiation as a divorce settlement. Their focus appears, from their public utterances, to have been on what share the UK owes in terms of EU liabilities. For whatever reason, they appear to have given no consideration to the possibility that treating the Brexit negotiation more as the cancellation of a club membership than a divorce settlement might avoid many months—possibly years—of detailed wrangling over the complications that come with striking an agreement on the UK’s share of the EU’s assets and liabilities.

It might be a better direction of travel for both the UK and the EU to see this as a cancellation of a club membership—or it might not, but at the very least the option should be considered, in case it has merits and serves both parties’ interests. I would be interested to hear from my noble friend whether Ministers accept that the Brexit settlement will be treated as a divorce settlement or whether alternative approaches could be on the table.

One of the complications that our report considers, which has already been referred to in this debate, is in respect of pensions and how the UK’s share of pension liabilities might be calculated and allocated. As we heard from the noble Lord, Lord Butler, in the EU’s 2015 annual accounts, accrued pension liabilities were shown at a capitalised figure of €63.8 billion. This raises two key questions: first, is the UK under a legal obligation to make a contribution towards accrued pension entitlements thereafter; and, secondly, if it is, how should the UK’s share of this €63.8 billion be calculated?

A number of our witnesses appeared to be very confident that it is an unavoidable and enforceable obligation on the UK that we will have to meet. Their focus was on the different ways in which the UK’s contribution should be calculated. A range of propositions was suggested to us: for instance, that it should be based on the UK’s contribution to the EU budget, either with or without the UK rebate being taken into account; or that it should be based on the past and present numbers of UK nationals employed in EU institutions; or that it should be based on the proportion of those in receipt of an EU pension who are UK nationals; or that it should be based on the UK’s share of the EU’s budget. In other words, among all those witnesses who agreed that there was a binding obligation on the UK to make a contribution to accrued pension liabilities, there was no agreement on the right methodology to calculate that contribution.

Beyond that, there were also differing views on how EU enlargement over the years of the UK’s membership could be overlain on some of those methodologies, and there were queries about the actuarial and accrual accounting methods that had been used to calculate the €63.8 billion capitalisation of the long-term pension commitments.

Other witnesses challenged the assumption that the UK is legally liable for a share of accrued pension liabilities, especially those liabilities not falling due until after the date when the UK ceases to be a member of the EU. They also offered us a range of propositions to support that view. For instance, it was pointed out that pension liabilities, unlike other member state budgetary liabilities, relate to rights that are accrued by individuals through their service in European institutions; that the nationality of employees or pensioners is irrelevant; and that the legal responsibility for meeting those pension entitlements clearly rests, in the first instance, with the employing European institutions and thereafter with the EU, with member states acting as guarantors—but a member state cannot be retrospectively liable as a guarantor after it has ceased to be a member state. We also heard that the UK might claim that it had overcontributed to EU pensions over the years of its membership.

From the conflicting views and evidence that the committee received, it is difficult to conclude that the UK is subject to a clear-cut and unarguable legal obligation to make a contribution either towards accrued long-term pension liabilities as part of a Brexit divorce settlement or to any continuing enforceable post-Brexit liability for accrued pension entitlements thereafter.

It was put to us that, regardless of any uncertainties around the legal position, the UK is none the less under a moral obligation on both counts. Once again, the evidence we heard was conflicting and suggests that this may be one of those moral obligations that is in the eye of the beholder, compelling to some but unseen by others. In other words, if the UK is subject to a moral obligation, like the legal position it is not clear-cut.

However, regardless of the differences of opinion on whether or not a solid legal or moral obligation exists, there was perhaps a greater consensus around the view that the UK will very likely be under a strong political obligation to address expectations around EU pensions. If, as we have heard, the UK wants a Brexit deal that achieves a new strategic partnership, beneficial trade arrangements, future UK participation in EU programmes and, as my right honourable friend the Prime Minister said and the noble Baroness, Lady Falkner, quoted, “a new deep and special partnership”, it is difficult to contemplate those objectives being achieved without the UK being prepared to come to some agreement with the EU on pension liabilities.

At the same time, if the obligation to reach a deal on pensions is largely political and the Brexit negotiations descend into territory that either could be called a bad deal or that raises the prospect of no deal, the UK may indeed be able to disregard the need to reach that agreement on pensions and to avoid any gesture or contribution towards long-term liabilities.

The EU negotiators may disagree with that scenario and claim that they have both the law on their side and access to the jurisdiction and enforcement processes post-Brexit that will enable them to compel the UK to honour its share of accrued pension liabilities. They may be right—but, on the balance of the evidence taken by the committee, there have to be doubts about whether such confidence would be well founded.
This leads me to offer the following conclusions, which are very much in line with what the noble Baroness, Lady Falkner, said in introducing this debate and the comments of the noble Lord, Lord Butler, about the sense of a reasonable agreement being reached and the benefits that will accrue to both sides of the negotiation. If the UK wants a good Brexit deal, it must be ready to contribute to the EU’s pension liabilities, regardless of the fact that the UK may not be under a legal or moral obligation to do so. Equally, if the EU wants the UK to contribute to the EU’s accrued pension liabilities, the EU must be ready to address what the UK is seeking from the rest of the Brexit negotiations. If both parties approach the negotiations with that mindset, I do not see pensions necessarily holding up the Brexit discussions.

There is one other way to avoid pensions becoming a time-consuming blockage in the negotiations—and this goes back to the Reform Club question. It is to treat pensions within the negotiations as being a resignation of membership issue rather than a divorce settlement issue.

1.03 pm

Lord Shutt of Greetland (LD): My Lords, I too pay tribute to my noble friend Lady Falkner of Margarvaine for her leadership and the way in which she has conducted the committee while she has served as our chairman. As she has indicated in her generous comments to me, this is my last contribution as a member of the European Union Financial Affairs Sub-Committee prior to my being rotated off for further service elsewhere. It has been thoroughly brain-taxing work but I have come to the conclusion that perhaps I will miss the weekly thick brown envelope arriving each Saturday morning. Twenty-seven days after the referendum, the sub-committee met and decided to have two inquiries, one into Brexit and financial services and the other on this subject, Brexit and the EU budget. The first one was debated on the last day before the Christmas Recess, and here we are debating this topic on the last day before the Easter Recess. I have a feeling that the members of the sub-committee to speak but for others to speak, and it is not for us to puff up the work. However, on this particular report perhaps it is right for us to speak on this occasion. Four members of the sub-committee have spoken so far and the noble Lord, Lord Haskins, is yet to come. I will try not to repeat too much of what has been said.

The first point is that the EU budget is very complicated. We have looked at the income side and corrections. The expenditure side is based on a gross national income of member states, along with money from customs duties, VAT rebates and corrections. The expenditure side is based on a seven-yearly financial spending plan, the multiannual financial framework, enhanced by an annual budget as amended several times during the course of the year.

One area that we have been trying to get to grips with is where on Brexit the UK’s financial responsibilities would stop, on the basis of a departure in two years’ time. How does that fit with a seven-year budget? Here we are in the seven-year period 2014-20. Certainly before our departure there will be talk of the budget for 2021-27. We have heard about the RAL, which is yet to be paid—in other words, promises. It is committed in 2014-20 but to be paid later, with some of it perhaps coming to the UK. We have even been told that it may be several years beyond 2020 before some of it is actually spent.

The noble Earl, Lord Lindsay, has spoken about pensions. We have discussed that, including the question of whether we are talking about proportions of pensions or entire pensions, and the issue of UK pensioners. We have looked at the share of assets, cash and property loans and what the percentage is that one would put to the UK. I am interested in the Reform Club analogy. I also wonder about the analogy of the building societies, where the clock stopped and the people who were members ran at that point. And what about the inherited wealth of those who started this work in the middle of the century before last? We also looked at the European Investment Bank.

It was trying to tease out what the UK’s liabilities are and seeking legal opinions that led us to what seems to be a very surprising position—or was it in fact surprising that there was this “walk away” option because a deal could not be enforced? We took legal opinion. Three lawyers came before us and then we sought our own legal advice from the legal adviser to our committee here in the House of Lords, which is printed in full. All that evidence was taken on the public record, and other distinguished lawyers who saw that could have come rushing to our committee and said, “We want to give some evidence to you because we think differently”. I do not think that happened. That is what we found, and we would have been criticised if we had said, “We will ignore all that because it doesn’t seem right”. So it is there, it is in the evidence; it had to be.

The one thing I conclude is that Brexit or any other exit was not meant to happen. That is why we are in the pickle that we are. Is it any surprise that no deal is a possibility? No, because unless Article 50 had a substantial annexe detailing how an agreement could be formulated and would be enforceable, how could it be otherwise? With due deference to my noble friend Lord Thomas, Article 50 contains no reference to lawyers or courts. That is amazing, but that is what the document says. As I said, I do not believe it was meant to happen.

Hence, perhaps, Mrs May’s position. On the one hand, she says that she wants a smooth, orderly exit from the EU, but on the other that no deal is better than a bad deal. What is a bad deal in those circumstances? I suspect that she means an expensive one. I do not know, but what other definition would there be? I conclude that no deal and walk away is the bad deal, because to walk away means that the UK could not hold its head high in the international community, nor would it be trusted to honour international agreements ever again. That seems to me a perilous journey.

So the committee is clear: we need to agree. The numbers are not clear: they need to be negotiated. We can see the circumstances in which the numbers may
[Lord Shutt of Greentland]
arise in any deal. On page 29, we indicate how we see that, by agreement, the figure could be as low as £15 billion or as high as £60 billion.

In the last brown envelope to come to my house last Saturday morning was a report by a European think tank, Bruegel. Its numbers are more precise. It has done a similar job to our committee. I do not know its methodology in reaching its numbers—perhaps it has just beavered away—but it comes up with figures between £31.7 billion and £35.1 billion, a much narrower position. It took no account of the European Investment Bank, and I believe that UK involvement in that amounts to £10 billion, so in those circumstances it would narrow down to £21.7 billion to £25.1 billion.

Of course, all these numbers can change because of financial behaviour in the next two years—particularly, for the UK, whether the expenditure budget moves away from us or there are more benefits to the UK.

In conclusion, I cannot believe that there is any solution other than orderly agreement. However the sequencing should be, unless the financial settlement is sorted, I cannot see there being good will for a future beyond it. Therefore, it is very important.

1.14 pm

Lord Haskins (CB): My Lords, the series of House of Lords inquiries about the impact of Brexit in recent months have been illuminating and made a powerful contribution to the national debate on the subject. They have provided balanced analysis and information, which has been seriously lacking elsewhere. This report is no exception, although one of its conclusions is proving rather contentious and raising a head of steam. My comments on the report are those of a business person, rather than a parliamentarian or, indeed, a lawyer.

Four major factors have determined the Brexit vote. All of them are now being subtly reassessed by the Government. The first was to reduce drastically migration from the EU. It is now clear that tackling this in the short term would have serious economic consequences, which Ministers seem to be beginning to recognise, and only the most rabid Brexiteers would ignore. The second was to take back control. It seems that the great repeal Bill will say, “Yes, we will, but not quite yet”, because a substantial quantity of EU regulation which business wants to maintain would have to continue to be subject to some sort of EU supervision. In the short term, the vast majority of EU regulation will be transposed into UK law without amendment. The third was to withdraw from the jurisdiction of the European Court of Justice. Again, it seems that the Government are saying “Yes, but not yet”, because on the first two issues the European Court of Justice has to remain in place.

The fourth, which relates to our report, was to make significant cost savings by not having to contribute to the EU budget. This, too, is becoming a major Brexit will not throw up vast sums which can be put into the NHS, as was suggested during the campaign. On the contrary, if the Government are to honour their promises to the main UK recipients of EU funds—farmers, universities and local authorities—and if, as both the Prime Minister and the Chancellor have already recognised, we are to honour our budgetary obligations triggered by Brexit, in the short and medium term there will be a not insignificant cost.

Our report spells out the range of the UK’s potential financial obligations on withdrawal, if we are at the same time to establish a constructive economic and political arrangement with the EU going forward. The range is enormous, as we know. However, our report says, based on the legal evidence we received from two assertive but also two more ambivalent lawyers, that the UK would not be legally liable for any obligations if we withdrew unconditionally. However, we say in the report that the political and economic consequences of such action would be profound.

These consequences need to be spelled out quite clearly. If the UK refuses point blank to honour any of these obligations based on a legal technicality, two developments are inevitable. First, negotiations would break down almost before they had started and a cliff-edge hard Brexit would be triggered, with a so far incalculable—according to Mr Davis—impact on the economy. The second is that the honour and integrity of the UK would be at risk because, despite what the lawyers told us, you can bet your bottom dollar that the EU would find mountains of lawyers to take Britain to court and argue that there was a legal obligation—good for the lawyers, but not for the rest of us. Our global creditworthiness might be affected. Fortunately, the Government—although not some of the more fervent Brexiteers—show no inclination to go down that route, and our observation will, we hope, remain of only academic interest to lawyers, not to business people such as me.

The real value of the report lies in its spelling out of the huge range of financial obligations which the UK’s exit might trigger following withdrawal. At the highest level, we have heard about £60 billion, which, in my view is far-fetched, as is the zero level. A deal will be done between those two levels. Based on the information that the committee received, my opinion is that the UK’s share of the MFF commitment between March 2019 and December 2020, which happens to be the end of the present MFF 2014-20 commitment, should be honoured. We have different figures, but mine is £12.5 billion. In addition, the Government have promised to match the funds for UK farmers and beneficiaries of EU structural funds for the year to March 2020, which is another £3.5 billion. I am not convinced that there is a pension liability.

UK liabilities under the present MFF which extend beyond 2020 are much more questionable, and very substantial, as we have heard. Much of this commitment is fanciful. Poland, for example, is yet to spend any of its 2014-20 award, and there is some money hanging around that was agreed as far back as 2007 and has not been committed.

Finally, I very much hope that the Government’s approach to these historic negotiations is strategic and not, as in the past, game-playing between the 28 participants. While an all-night, last-minute horse trade might be okay when handing out fish quotas and subsidies to farmers, such an approach would be highly irresponsible in these historic discussions, where so much is at stake for both sides.
1.20 pm

Lord Taylor of Warwick (Non-Afl): My Lords, I add my thanks to the noble Baroness, Lady Falkner, for moving this important debate. My thanks go also to the European Union Committee for producing such a comprehensive report.

For more than 40 years Britain has been a part of the European family. The famous soul music hit “We Are Family” summed up the relationship. But, sadly, wedlock increasingly became seen as padlock. On 23 June last year the British people decided to adopt another tune. This could best be described by the rock supergroup Queen’s anthem “I Want to Break Free”.

Britain is leaving and we have two years in which to exit, and we have triggered Article 50. The big issue now is the terms on which we exit. I would not normally associate the TV personality Noel Edmonds with Britain’s exit from the European Union but for 11 years he presented 3,000 episodes of the popular high-tension TV game show “Deal or No Deal”. That is the situation we are now in—deal or no deal—but we do not have the luxury of 11 years and this is more important than a game show. It is about Britain’s future.

Surely the most important point is that it is in everyone’s interests that harmony be maintained. About 45% of UK exports go to the EU, while 53% of our imports are from the EU. The British-EU trade relationship will still be important post Brexit. As the Prime Minister said in January: “We are leaving the European Union, but we are not leaving Europe”.

It is not in the EU’s interests to punish us by forcing us to resort to the World Trade Organization’s rules. I had the privilege of being a speaker at the WTO in Geneva. I formed the impression of an organisation which, although well-meaning, is actually hindering, not helping, free trade through its punitive rules.

Article 50 is very clear. There are three elements. First:

“Any Member State may decide to withdraw from the Union”.

Secondly, such a member state has to notify the Council—we have done that. Thirdly:

“The Treaty shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement”

I submit that in its very brevity Article 50 points to the departure being a clean break. It also means that trading negotiations should not be put on hold. If we talked about exit terms for the next two years and put off all thoughts of trade deals, imagine the effect on the markets and the jobs that would be lost. Surely these terms need to be negotiated in parallel.

About a decade ago I was a guest speaker at a Nevada business forum in Las Vegas. Just before the start of the dinner the host came over and asked me to give a welcome speech on behalf of the United Kingdom. It took me by surprise since I thought I was only due to speak later. But I took the opportunity as it presented itself then, which is what we should do with these discussions. Let us not forget that 85% of the global economy lies outside Europe. There is a big world waiting for us outside Europe: the Commonwealth, China, India and America.

The European Commission’s chief negotiator, Michel Barnier, has suggested that the UK’s exit bill could be as high as €60 billion. This has not been justified or itemised in any way. What we do know is there will be a €10 billion per year hole in the EU budget as a result of the UK exit. So one can see why Mr Barnier is keen to find ways of making good that loss. But he needs to understand that when a house is on fire, it is too late to take out an insurance policy. There was no mention of a possible exit bill when Britain first joined the EU. Furthermore, there is no mention of an exit bill in Article 50.

It is right to take into account paragraph 135 of the report. The committee did not rely on just one legal opinion; it took a variety. In its submission, we do not owe any money at all. Of course, that needs to be debated and discussed but to ignore paragraph 135 would not be right. When one considers that part of the exit bill would cover the pension costs of retired EU officials, one can see why this could be contentious.

Having said that, it is not just about the legal obligation. There are other factors to take into account. During our 40-year membership of the EU, we have been a net payer to the EU budget, subsidising the poorer EU member countries. This is why we receive a European rebate. In 2015 the UK made the second-largest net contribution to the EU budget in absolute terms: €14 billion. When the UK makes its final contribution as a member state, we should expect the usual rebate payment. That could come to over €7 billion. So the rebate could be used to reduce any final exit bill. In our negotiations we could also call on the EU to hand back €10 billion of UK assets held by the European Investment Bank.

The Chancellor Philip Hammond has said that he does not recognise our liability for the Brexit divorce bill. I think that is wise at this stage. But we have also said that we may wish to pay to continue to take part in some EU programmes, such as Horizon 2020, the EU’s research and innovation programme. I think that is sensible.

It is illuminating that throughout the Bible there is a theme of one empire after another eventually overreaching itself and gradually collapsing. In the Old Testament there were the Egyptians, followed by the Assyrians, the Babylonians and finally the Persian Empire. In the New Testament there were the powerful Roman rulers. But all these empires eventually fell, because national sovereignty proved more sustainable than the politics of imposed empire.

Over the next couple of years and beyond, there will be no shortage of critics scaremongering and predicting disaster for Brexit. But fear is that dark room where only negatives are developed. We must not be like the paranoid patient who visits his doctor, to be told, “Please listen. You’ve got hypochondria”, and the patient replies, “Oh no, not that as well!”

Will our negotiations with the EU be a good-natured “Strictly Come Dancing” duet or a bad tempered “High Noon” duel? Earlier this week the Prime Minister urged “jaw-jaw” not war-war. I was also encouraged by the comment yesterday by the President of the European Commission, Jean-Claude Juncker, who told MEPs:
[LORD TAYLOR OF WARWICK]

“We will of course negotiate in friendship and openness and not in a hostile mood, with a country that has brought so much to our union and will remain close to hearts long after they have left.”

I was further heartened by the EU’s Michel Barnier adding yesterday:

“The ‘no deal’ scenario is not the scenario we are looking for. We are looking for success, not against the United Kingdom but with the United Kingdom”.

I note also that this very lunchtime Donald Tusk is meeting our Prime Minister, and that augurs well.

I am not suggesting that the next two years will be easy. But the British people and both Houses of Parliament have spoken, Article 50 has been triggered, and we must approach these Brexit and trade negotiations with a confident, robust spirit. As Sir Winston Churchill once said:

“Difficulties mastered are opportunities won”.

1.30 pm

Lord Jay of Ewelme (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Taylor. I speak as a member of your Lordships’ European Committee, though not as a member of the sub-committee which produced this report. I congratulate the members of the sub-committee and its chairman, the noble Baroness, Lady Falkner, on the report. The noble Baroness and I were in Berlin yesterday on behalf of the EU Committee talking to the Bundesrat about Brexit and indeed about this report. I very much agree with what was said earlier today about the importance of contacts between this House and your Lordships’ European Union Committee and the Parliaments of other EU states.

This report is timely, since it is clear that negotiations on the withdrawal agreement to which the negotiations on the UK’s financial contribution will be a large and key part will take place towards the beginning of the two-year process now under way with the implementation of Article 50. It is not entirely clear to me when the real negotiations will start. But, if as expected, formal European Council guidelines are to be agreed towards the end of this month, with the negotiating mandate given to Michel Barnier shortly thereafter, we may be engaged in at least preliminary skirmishes among officials by around the middle of May.

Like others who have spoken today, I see no great advantage in trying to guess exactly how much the bill will be. I note that the draft European Council guidelines talk of a single financial settlement of the budget question. That does not seem to me to be the same as a single figure and my guess is that the single financial settlement will consist of a combination of liabilities, contingent liabilities and payments, or potential payments, over a number of years. I do not think that we can sum those up into one single figure. Furthermore, on the UK side, there will be a case for continuing contributions in return for some continuing advantages. European research and co-operation is one area sensibly mentioned in the report we are discussing today. Another possibility would be continued payments for both sides of the border between the Republic of Ireland and Northern Ireland which would otherwise fall away when we leave the European Union. It is encouraging that the need for sensitive and sensible handling of the implications of Brexit for Ireland are recognised both in the Prime Minister’s letter and in the draft Council guidelines.

It should also be said that on the EU side, one effect of the withdrawal of the UK’s net contribution will be the need to cut back on expenditure or shift the pattern of distribution of expenditure with really very difficult decisions, particularly in eastern and central Europe for recipients, and also difficult decisions for contributors, notably Germany. There will, therefore, be a tough and fraught negotiation carried out at least on this side of the channel in the full glare the press. It will not be a pretty sight.

I would, I suppose, be foolish to rule out completely a breakdown in talks leading to the two-year period specified in Article 50 ending without agreement. But, like the noble Lord, Lord Shutt of Greetland, I cannot see that that would be in anybody’s interest. Talk of WTO terms for our trade that in my view would be deeply unsatisfactory ignores the crucial issues that fall outside the trade and economic relations, which would fall away too if there were no agreement at the end of two years. I think of justice and home affairs, foreign and security policy, and the fate of EU citizens in Britain and of British citizens in the EU. To reach the stage of complete collapse would be a colossal failure of negotiators on both sides, and it would be directly contrary to the statement by the Prime Minister in her letter at the end of March to Mr Tusk and the draft European Council negotiating guidelines on the importance of a longer term co-operative relationship between the UK and the EU, which as others have said in this debate, will be so important for our future.

Against that background, I cannot see that the conclusion that the UK will be under no legal obligation to meet the outstanding financial obligations after leaving the EU will, in practice, be particularly relevant to the way in which these crucial negotiations will evolve over the next two years.

1.35 pm

Baroness Ludford (LD): My Lords, I too thank the sub-committee under the chairmanship of my noble friend Lady Falkner for a very interesting report. Before I go any further, I should draw attention to my interests declared in the register. I particularly agree with the contributions of the noble Lord, Lord Davies of Stamford, my noble friend Lord Thomas of Gresford, and the noble Lord, Lord Hannay, and with much of what my noble friend Lord Shutt said. I am sure that the sub-committee will be much the poorer for his contributions sadly having to come to an end.

We mainly all agree that an orderly withdrawal arrangement is needed, free of what the noble Lord, Lord Haskins, called irresponsible game playing. I was glad that the noble Lord, Lord Taylor of Warwick, stressed that these negotiations were more important than a game show. I was getting a bit nervous with all his references to people such as Noel Edmonds.

I am among those who are not really persuaded by the report’s conclusions—indeed I find them quite puzzling in the light of the weight of the evidence from legal witnesses, and the clear reading of Article 50...
of the treaty and Article 70 of the Vienna convention. I find it quite awkward to disagree with the very distinguished former legal adviser to the EU Select Committee whose period of employment ended on the very day that the report was published, so there was no opportunity, even in private, to discuss it with him. I feel rather uncomfortable commenting on that legal advice. I do not know whether there is any precedent for the legal advice of an official being published in a report. I am not sure that it is one I would recommend to be followed.

I found myself much more persuaded by the evidence on the legal situation from Professor Tridimas and Rhodri Thompson QC than by that of Dr Sánchez-Barrueco, and it is surprising that the advice of our former legal adviser does not reflect what I regard as the balance of that evidence.

Of course, the practical situation is that it is not about what the UK might agree to pay for future post-Brexit access. The issue is about the liability for obligations assumed while we were still a member. I find the sort of everyday examples that I can relate to include those invoked by Rhodri Thompson QC that if you have a 10-year lease and give notice to leave the premises after six months you may well still be liable for the full term of the lease. Indeed, in view of my current domestic travails with my telecoms supplier, which I will not bore noble Lords with, it is common for telecoms contracts to commit one to paying money if you want to leave a contract in less than the 12 or 24 months that you signed up to. So that is the kind of situation that we are in. The obligations under the EU treaty that the UK assumed as a member state do not disappear when we decide to denounce that treaty. That is a fairly common-sense conclusion.

The advice from the former legal adviser drew attention to the incontestable fact that Article 50 sets out the provisions on withdrawal from the EU. The rules on withdrawing from a treaty in Article 70 apply only if the treaty in question does not have any provisions on withdrawal. But withdrawal is not the issue: Article 50 clearly governs the process of withdrawal from the EU. What it is silent on is the assumption of rights and obligations, and their discharge, assumed when one was a member of that treaty. So the conclusion of the former legal adviser, that Article 50 does not need to be interpreted in the light of the Vienna convention but on its terms alone, is the one I find the most difficult to accept. It is precisely because Article 50 is silent on the question on the ongoing liabilities that I believe that, if we were to withdraw without an agreement, Article 70 of the Vienna convention would kick in to take up the slack. If we have, as I very much hope we will, an orderly withdrawal agreement, we are all expecting that that would cover the question of negotiated liabilities. I am certainly not desiring that this country should pay a penny more than is reasonable as a result of negotiations undertaken with good will on all sides. There is no reason for us to be overgenerous, but to undertake that in the spirit of all lively negotiations. Of course, there are plenty of other calls on money in this country.

The very fact that there is no express provision in Article 50 on picking up the existing rights and obligations means that Article 70 of the Vienna convention comes into play, because there are no rules in Article 50 to prevail over Article 70 of the Vienna convention. So Article 50 has to be interpreted consistently with Article 70 of the Vienna convention, because Article 50 does not dictate any specific solution.

The question of jurisdiction and enforcement is another matter. As we know, under EU law, the interpretation of EU law is ultimately a matter for the Court of Justice, and the 27 member states will be bound by Article 36 of the TFEU, which states: “Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein”—the Court of Justice of the European Union. The EU institutions, in the draft Council guidelines and the European Parliament resolution of yesterday, are making it very clear that EU enforcement mechanisms apply. It is going to be a very interesting discussion on how you work all that out once the UK is no longer a member state, but we can all see that there will be a very good argument why the Court of Justice may well come into play in the negotiation of a transitional agreement and a future relations treaty.

I am reminded of the fact that the Brexit White Paper not only recognised the established position of the CJEU as the EU’s, “ultimate arbiter on matters of EU law”, but also committed to the fact that the UK will “will of course continue to honour our international commitments and follow international law”.

Whether it ends as a matter of enforcement under EU law by the CJEU or through some international means and tribunal is above my pay grade, but I should have thought that, one way or another, the question of jurisdiction and enforcement will be rather closer to the CJEU than any other solution. The Government will want that jurisdiction enforcement to be worked out and not left hanging in the air, not least because, as all the legal witnesses to the committee stressed, there would be a significant price to pay politically were the UK to refuse to honour obligations under EU law that the CJEU were to find that we owed. It would not leave us in a very comfortable place, if we refused to honour those obligations. There would also be significant international implications if we were not prepared to comply with our obligations on exit from the EU. It would not augur well for all these other international treaties that are being mooted.

I am not sure that it is terribly helpful to the Government to be told that they do not need to pay anything at this part of our process of exit from the EU. I would love to have been a fly on the wall when the Government read this report. Although we have heard various statements in the public domain about how, “Of course, we do not owe a penny—that is absolutely the case”. I am sure that in private they know that that is a long way from the real world and that negotiations will have to converge on some kind of honourable solution all round. The noble Lord, Lord Jay of Ewelme, reminded us that the press is not going to be a pretty sight when told the sum that the UK does agree, and the Government would do well to prepare the press for that day, not for any kind of overpayment but for whatever is agreed in the negotiations to achieve other negotiating objectives over the next
few years. In that context, I look forward to hearing how the Government interpret the report as a guide to their future conduct.

**1.48 pm**

**Lord Tunnicliffe (Lab):** My Lords, I thank the noble Baroness, Lady Falkner, for opening this debate and for the work that she and other members of the committee have done to produce this report. The House has benefited enormously from the broad range of EU Committee reports produced over recent months, each highlighting the complex challenges that we face in dealing with Brexit. Last weekend, I was in the pub relaxing with my neighbour, who said, “How’s life?” I said that my aspiration to die before understanding the structure of the EU budget had been somewhat frustrated by my nomination to this role today. So I thank the noble Baroness, Lady Falkner, and the committee for producing what is an excellent primer to anybody coming to the question for the first time. I have found the report very useful in setting out the structure of the budget and the different dilemmas.

I know that noble Lords on all sides of the House have taken great pleasure in and placed great importance on contributing to these debates. However, today I have been somewhat surprised by the balance of the discussion. The noble Baroness, Lady Falkner, set out the legal issues in a reasonably straightforward way. The best interpretation of that part of the report is that if one fails to agree, one does not need to pay. As most noble Lords who talked about the realities of the situation recognised that no agreement is pretty well unacceptable, I shall focus rather more on what might be reasonable, as I believe that an agreement is essential to the future of our nation and how it lives with Europe.

Of course, this is the first EU Committee report to be debated after invoking Article 50. This only serves to focus our minds on the importance of this issue, and on the need for the negotiations to be conducted in a positive spirit. As we have heard during this debate, the report focuses on the UK’s current role as a net contributor to the EU and outlines some of the potential financial implications of our upcoming withdrawal. As I say, it concludes that there is a technical possibility of our walking away without agreeing a financial settlement. However, as the report acknowledges, there are clearly other forces at play. I was very seized by the noble Lord, Lord Hannay, has particular resonance by the noble Lord, Lord Hannay, who I think all came to the same conclusion from different directions. The description of the negotiations mentioned by the noble Lord, Lord Hannay, has particular resonance for me. I spent part of my career negotiating in fractions of billions rather than multiple billions, but I think the experience is very much the same. He brought out the importance of painfully going through the detail. To that I add the next step of painfully going through the detail to find areas of common interest, and building on that common interest for the future of the United Kingdom and of Europe. Failure to agree a relationship...
with the EU that supports our economy and protects vital social and environmental rights could be “very destructive”. That is not just my view but the view of the Commons Foreign Affairs Committee.

Labour has laid out six tests for the Government, and my noble friend Lady Smith of Basildon has added a seventh: honesty. This test is just as vital for this issue as for any other. While the report stresses the legal point, we will struggle to strike deals with new partners if the UK is viewed as unreliable and untrustworthy. In this sense, the legal reality is secondary to the political and economic reality.

I once again thank the committee for this report. I hope that the Minister has listened carefully to this debate and that the Government will continue to engage as negotiations progress.

1.57 pm

Lord Young of Cookham (Con): My Lords, when the noble Lord, Lord Tunnikliff, returns to the pub and resumes the dialogue with his drinking friend, I hope that he will share with him his deep insight into the mechanics of the EU budget. I am sure that he will be fascinated to learn even more about it.

I thank all those who have taken part in this debate, particularly the noble Baroness, Lady Falkner of Margravine, who not only chaired the committee but also introduced this debate. I particularly welcomed her peroration with its plea for fair play and an amicable settlement—an emotion that was shared by nearly everybody who spoke in the debate. I particularly recall the interventions of the noble Lord, Lord Butler, and my noble friend Lord Lindsay in that respect. Having listened to the noble Lord, Lord Thomas of Gresford, I came to the conclusion that if only those on this side of the negotiating table and those on the European side of it were all members of the Reform Club, our withdrawal could be settled quite quickly after a decanter or two of very good port.

This committee, together with the others under the umbrella of the EU Committee, continues to inform and influence the Government’s approach to the EU negotiations and I welcome the significant contribution this report has made in that respect. I reread earlier this week one of the first reports on this subject, The Process of Withdrawing from the European Union, which came out nearly a year ago, when withdrawal seemed unlikely. Like today’s report, for those of us for whom the EU is not our special subject, it was clear, concise, eminently readable and cogently argued. I was struck by how perceptive that original report was, particularly on the key role of the European Parliament in consenting to any agreement, and on the process of disentangling the UK from EU law, where the report quoted the chilling comment of Sir David Edward, a former judge of the Court of Justice of the EU who said:

“The long-term ghastliness of the legal complications is almost unimaginable”.

On the report, I certainly take on board the advice from the noble Lord, Lord Hannay, who said that sweeping assertions should be avoided. Throughout this report on the EU budget, the committee has successfully identified the legal and technical issues, as set out by the negotiation guidelines recently published by the European Council and the European Parliament. I can confirm, in response to the question posed by the noble Lord, Lord Tunnikliffe, that the headings identified in the report as liabilities are the liabilities identified in the EU’s annual accounts. The Government will publish their formal response to this report in the usual timeframe. But I say from the outset that this is a significant contribution to the EU budget discussion in which, so far, much heat but little light has been generated. We have had a very high-quality debate inspired by this report.

As the Prime Minister made very clear in her Statement to the Commons last week, we will begin our negotiations with the European Union with the ambition to be not just a truly global Britain but the best friend and neighbour to our European partners. We have set ourselves a clear and ambitious plan for the negotiations ahead. During these, we will seek to achieve the best outcome, not just for the UK but for our European partners as well.

The Article 50 letter that was delivered last week by our UK representative in Brussels to Donald Tusk, President of the European Council, formally sets out what we are proposing to our European partners on the forthcoming negotiations. The Council has responded with draft guidelines which say, on the subject we debate today:

“A single financial settlement should ensure that the Union and the United Kingdom both respect the obligations undertaken before the date of withdrawal. The settlement should cover all legal and budgetary commitments as well as liabilities, including contingent liabilities”.

Therefore, the response to another question from the noble Lord, Lord Tunnikliffe, is yes: both the European Union and the European Parliament are looking for a single financial settlement.

The UK Government will now seek a deep and special partnership that covers both security and economic co-operation with a bold and ambitious free trade agreement, greater in scope than any such agreement before. We should begin these negotiations constructively, in a spirit of sincere co-operation, as indeed has been advocated in today’s debate, and we are confident that, at the end of the day, Britain can secure a deal that works both for us and for the EU. I agree with what a number of noble Lords have said—the noble Lord, Lord Butler, for one—that we want an agreement, but so does the EU.

Before I get into the legal arguments about whether we owe the EU a so-called exit bill, I will briefly set out the Government’s ambition in this area. As the Prime Minister made clear in her Lancaster House speech on 17 January, having been a net contributor to the European budget since we joined the Common Market in 1973, “the days of Britain making vast contributions to the European Union every year will end”.

While we remain a member of the EU, the UK will continue to play a full part in EU business, including EU budget negotiations—a matter the noble Lord, Lord Thomas, referred to—and meeting our contributions. We will remain committed to budgetary restraint and ensuring that we live within the current deal on the
multianual financial framework. However, what is important is that, once we have left the EU, control over how our money is spent will reside with the UK Government and Parliament.

Throughout the negotiations on withdrawal, we have to look at the rights and obligations we have as a departing member state, in accordance with the law but also in the spirit of continued partnership with the EU. As the report makes clear, a whole range of issues for the UK and the EU will need to be addressed as we leave the Union. The House will not be surprised, against a background of earlier debates on this subject, if I say little about the Government’s negotiating strategy, not least because the formal negotiations have not started yet. In any case, that was the advice I was given by the noble Lord, Lord Hannay, when he spoke a few moments ago. The guidelines are still being agreed and the debate over UK payments according to the rights and obligations of our membership is just speculation at this stage—speculation that has prompted a range of figures from the other side of the channel, which some noble Lords have referred to in this debate.

As the Prime Minister has said, the UK is a country that meets its international obligations. It is in the interests of both the UK and the European Union to agree a new partnership in a fair and orderly manner, with as little disruption as possible. There is indeed no reason why a new deep and special partnership between the UK and the EU should not be achievable.

On the specific issues raised in the report and in the debate, throughout the report there are a range of different opinions about the legal interpretation of potential obligations which the UK may or may not be legally required to pay. Witnesses to the committee are a testament to the complexity of it, and disagreement and uncertainty over the liabilities of a member state under Article 50 are to be expected in an area that has of course little precedent. The legal nuance is interesting. The report concluded that the wording provided under Article 50—in particular,

“The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification”—was sufficient to clear the UK of any ongoing obligations. My noble friend Lord De Mauley said that this was a useful incentive for the EU to seek agreement, and my noble friend Lord Taylor of Warwick made the case for that side of the argument more forcefully.

Other legal experts argued that Article 50 does not expressly deal with the question of financial consequences as a member state withdraws from the Union. The noble Lord, Lord Davies of Stamford, developed that case, as did the noble Lord, Lord Thomas of Gresford. The noble Lord, Lord Haskins, made the point that, whatever lawyers on one side for the argument might say, lawyers to support the other side of the argument can fairly easily be recruited. They argued the other side of the argument, that rights and obligations upon the termination of a treaty are governed by Article 70 of the Vienna Convention on the Law of Treaties. This states that obligations undertaken when the UK was still bound by the EU treaties would not disappear at the moment of Brexit.

We are far from exhausting the range of opinions that can, and will, be given on this matter over the next few years. Superimposed on the legal uncertainty over what is or is not a survivable obligation on the UK, there is the additional ambiguity over the size of each obligation and how to calculate the UK’s share—a point the noble Lord, Lord Jay, made in his contribution. As the report makes clear,

“if it were to be accepted that the UK had any financial liability on leaving the EU, no single figure can incontrovertibly represent an amount that the UK might be requested to pay”.

Again, for each potential obligation, witnesses before the committee highlighted various ways in which you could calculate its size and various ways in which you could calculate the UK share. At least four different percentages were given with respect to pensions alone. Reading all this as a lay man—indeed, it has been confirmed by this debate—my conclusion was that a solution will be arrived at not by lawyers but by politicians.

A number of noble Lords mentioned the question of the MFF and what would happen when, without UK funding, the EU 27 would face an immediate decision on how to manage the shortfall in the remaining years of the MFF once we have left. Again, the noble Lords, Lord Jay and Lord Butler, raised this issue. Member states will face a difficult choice between increasing contributions or cutting payments. Increasing contributions will be unpopular with member states that are net contributors, but of course cutting payments will be equally painful for those who rely on receipts. The noble Lord, Lord Butler, referred to a comment from the German Deputy Finance Minister, Jens Spahn, who has already said:

“We shouldn’t be talking about more money for the EU budget, but how to make better use of our resources”.

The noble Lord, Lord Thomas of Gresford, asked whether beneficiaries of the UK would continue to receive EU funds. I am sure he is aware of the commitment, given by the Chancellor, that the Government will guarantee funding for projects signed before exit, even if they continue after we leave.

My noble friend Lord De Mauley asked whether it was realistic to try to expect an agreement in two years. We start from the advantage of close regulatory alignment with the institutions of the EU, with an understanding and indeed a trust in each other’s institutions, and with a spirit of co-operation which stretches back some decades. We hope that those attributes will be useful in trying to reach an agreement within that time span.

The noble Lord, Lord Davies of Stamford, asked whether the CJEU jurisdiction would still apply post exit. The UK is leaving the EU, and we have been clear that that means bringing to an end the direct jurisdiction of the CJEU in the UK.

On the question of the European Investment Bank, raised by the noble Lords, Lord Shutt and Lord Butler, we remain a full member of the EIB. The EIB has signed and approved new projects in the UK since the referendum, including £60 million for the purchase of new trains, which will improve passenger services in
East Anglia, and £800 million for the upgrade of the national grid’s gas network. However, as with other items on the table, as part of the UK’s withdrawal from the EU the UK’s long-term relationship with the EU will need to be resolved, and we are currently evaluating a full spectrum of options for the nature of that long-term relationship.

During our debate, there was a discussion on the size of the RAL and the liability relating to pensions. The noble Lord, Lord Butler, with agreement from other noble Lords, said that the liability rested with the EU. My noble friend Lord Lindsay said that that may be the case but that we have a moral obligation to make sure that it is happily resolved. Again, I say to your Lordships that we are approaching discussions on all these issues constructively and respectfully, and we are confident that we can achieve an outcome that works in the interests of both sides.

The noble Lord, Lord Butler, asked, I think, whether nothing is agreed until everything is agreed. I have in front of me the communication from the Council of the European Union. Paragraph 2 says:

“Negotiations under Article 50 TEU will be conducted as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately”.

That was in the communiqué from Brussels that came out on 31 March, and I hope that that answers his question.

My noble friend Lord Lindsay asked a rather binary question: are we talking about a divorce or cancelling club membership? The honest answer is that we see this process as the UK leaving the European Union. We want to negotiate this withdrawal in good faith and with the ambition of being the best friend and neighbour to our European partners.

To sum up, this is a complicated topic whose complexity the committee has done very well to bring out. Equally important is its reflection—less well reported—on the importance of the spirit of the negotiations as much as the legal issues. That has been one of the themes running through this whole debate: we have to get the tone and the spirit of those discussions right. Therefore, I very much agree with the report’s conclusion, which is worth repeating here in full:

“It is also a negotiation about establishing a stable, cooperative and amicable relationship between the UK and the EU, so as to promote the security, safety and well-being of all the peoples of Europe”.

We want to play our part in making sure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats. We want a deep and special partnership, taking in both economic and security co-operation.

This report is a welcome and comprehensive contribution to this debate, as indeed our discussion has been today. It has highlighted critical uncertainties over the legal position with respect to survivable obligations and the approach to exactly what this means for UK finances. Our approach to the budget negotiations is ambitious but grounded in the principle of achieving the best outcome, not just for the UK but for our European partners as a whole.

I hope that the tone of this debate, in which different views have been expressed by Members of different parties and none, is matched by the tone of the negotiations, which are to start shortly.

2.14 pm

Baroness Falkner of Margravine: My Lords, I start by thanking all noble Lords who have spoken in this debate. It has been extremely valuable and we will of course reflect on all the comments that have been made. I particularly thank the members of the committee who have spoken. As my noble friend Lord Shutt pointed out, a debate on the last day of term seems to be the fate of European Union Sub-Committee A, but as a committee we felt that we should take this date as offered, because this is one of the topics that will be addressed at an early stage and it is important to hear all sides of opinion in this House. What a debate it has been and what opinions we have heard. I will go through some of the substantive points and believe that I should address them as this is a debate.

I start with the noble Lord, Lord Davies of Stamford, whose presence on our committee we still miss, and I was delighted that he was able to find the time to speak. I need to address early on an issue which he raised and which it is of fundamental importance to get on the record. I refer to the rights of EU citizens who are working for EU institutions today. The noble Lord inferred that they would be fired at the end of the United Kingdom’s departure from the EU, and I thought it would be useful for the House to reassure them—in case they pick up Hansard—by reading Mr Juncker’s email to staff of 24 June, which particularly addresses this issue. He said:

“I know many of you are concerned about your future after this vote … you are Union officials. You left your national hats at the door when you joined this institution and that door is not closing on you now … our staff regulations will be read and applied in a European spirit”.

So not only do the United Kingdom Government stand by EU citizens, as I understand it, but the European Commission does, too, and that is an important clarification.

The noble Lord, Lord Davies, also led us through an exposé of the origins of jurisprudence which was worthy, if I may say so, of a university seminar. I tend to prefer the science of economics to the discipline of law, and I suggest that the established finding of behavioural economics, which borrows heavily from psychology, might apply here in terms of “confirmation bias”. Confirmation bias, as is defined, “occurs when people filter out potentially useful facts and opinions that don’t coincide with their preconceived notions”.

The noble Lord, Lord Davies, also said that no one is suggesting that we will have liabilities after departure. We caveat our report by referring, as the noble Lord, Lord Turnbull, said, not just to what will happen when we leave. After we leave there will be ongoing commitments, which is why the legal advice is significant. We know—and the report spells out—that there is a rule called n+3, whereby the expenditure continues for three further years after the end of the MFF period. I think it was the noble Lord, Lord Butler, who reminded the House of the comments of the German Finance
Baroness Falkner of Margravine: My Lords, I am pleased to give him some advice: when confronted somehow tiptoeing around some of these issues. Let megive him some advice: when confronted with.

Minister, Wolfgang Schäuble, who thinks that the liabilities could continue till 2030. Therefore, in that sense, this legal advice is absolutely pivotal.

My noble friend Lord Thomas of Gresford joined the noble Lord, Lord Davies of Stamford, on the overarching obligations of the Vienna Convention on the Law of Treaties. I refer noble Lords to page 60 of our report, which takes us back to the intentions of the drafters of the Vienna convention in 1966—the UN’s International Law Commission—which explained the thinking behind what it said in Article 70(1) of the convention. That article contains the words “unless the treaty” in question “otherwise provides”. The commission says:

“Clearly, any such conditions provided for in the treaty or agreed upon by the parties must prevail, and the opening words of paragraph 1 of the article”—

which are, “unless the treaty” in question “otherwise provides”—

“(which are also made applicable to paragraph 2) so provide”.

Therefore, the Vienna convention rules itself out where there are other provisions in treaties.

The committee cannot be faulted for the fact that the treaty in question might not have provisions in it about how to go about an orderly withdrawal, the obligations and liabilities and so on. I suggest that theHouse, which has debated Article 50, might perhaps think about how it may be so carelessly drafted as to leave out these important caveats. I understand from my conversations in Brussels that there is much gnashing of teeth among Commission lawyers about the manner in which Article 50 was drafted.

Let me turn to another point made by my noble friend Lord Thomas of Gresford. He gave the example of an EU project in Wales where the money might, on the whim of someone, be used for a purpose other than that for which it was provided. I agree that that would palpably be illegal. However, I also agree that the receipt of this funding would take place while the EU treaties are extant. Once we have left the European Union, the treaties do not apply. Therefore, neither does the justiciability of the CJEU, unless a withdrawal agreement decided to accept that as a condition.

I turn now to the noble Lord, Lord Hannay of Chiswick. I agree completely with his advice on the manner of negotiations and how one’s perceptions can be confounded as one goes deeper into the negotiation. However, he disagreed specifically with paragraph 135, and said that the committee should not have accepted the legal opinion. Perhaps he thought that we had taken only a single legal opinion into account. We did not. All the lawyers we spoke to knew the EU institutions well. We tested each opinion given by a lawyer and, as time went on and we had a subsequent opinion, we wrote back to the original lawyers asking them to give their opinion again in the light of what we had heard.

I am being encouraged to move on, and I will—I am coming to my final comment.

We exercised our collective judgment and came to our views based on how we saw the evidence. However, the noble Lord, Lord Hannay, suggested that I was somehow tiptoeing around some of these issues. Let me give him some advice: when confronted with counterintuitive situations, I find it better to tiptoe around new evidence rather than dismiss it through confirmation bias.

In conclusion, there is only one way to test whether our judgments in this report have been right or wrong, and that is through a court of law. We have heard from the Minister and from all sides of the House that we will not be going there; that we want an orderly exit and a deep and lasting relationship with our nearest partners, and that is what we should all be seeking to achieve, not least the Government, who speak in our name. I hope the report will be seen as perhaps an important milestone in making us all much more competent in dealing with the pitfalls that lie before us. I hope it will be taken in the best spirit of EU Select Committee reports, which perform such a valuable service to the House and beyond.

Motion agreed.

Local Audit (Public Access to Documents) Bill
Second Reading

2.24 pm

Moved by Baroness Eaton

That the Bill be now read a second time.

Baroness Eaton (Con): My Lords, I am pleased to be supporting this Bill through the House and believe it adds a valuable dimension to existing inspection rights and local accountability for relevant authorities. The complete list of bodies to which the Bill will apply is set out in Schedule 2 to the Local Audit and Accountability Act 2014, which this Bill amends.

The Bill will extend the definition of interested persons to include journalists, which includes citizen journalists, so that they may access a wider range of local audit documents to assist with their investigations and publicise their findings, so that local electors are made aware and thus better able to hold their council to account for its actions through questioning the auditor or making an objection. It is important to emphasise that it will not allow journalists themselves to question the auditor or make an objection. Given that the cost of the auditor investigating a question or objection is met by the local body concerned, and given the cost of such action to the local public purse, this right should be exercised only by an elector in that area, who could be impacted by those costs. As an ex-chairman of the Local Government Association, I firmly believe that openness and transparency should be the default position in local government. In my view, this short and simple Bill will assist in achieving that aim.

In the other place, there was some debate over the merits of extending these rights to all UK registered electors. While the amendment that would have implemented that change was ultimately withdrawn, my strongly held view is that extending this right to all would be wrong for several reasons. While Ministers clearly flagged their intention back in 2014 to extend...
the inspection rights for accounting information to journalists in order to assist them in their investigations, they did not suggest extending such rights to all and sundry. Extending these rights to everyone without any consultation as to the impact would vastly expand the potential for mischief-making without any wider public benefit, as well as potentially placing a cost burden on local public bodies.

Other provisions in the Local Audit and Accountability Act 2014 already require local government to publish a wide range of information, including financial data, through adherence to transparency codes. However, the ability to inspect the financial records of the year just ended for 30 days and before they are signed off by the auditor is a separate right that can be exercised only by interested persons and local government electors for the area concerned. This is because such persons have the right to inspect a wider range of information than just the final accounts, which are required to be published. Electors in the area may also question the auditor or make a formal objection to the accounts, which may require the auditor to investigate and could prevent closure of the accounts until the investigation is complete.

To allow anyone to inspect this wider range of accounting information could result in a greater cost burden on local authorities, as there would be a far greater volume of requests to fulfil, with associated administrative costs in locating the documents requested. Such costs could be regarded as a new burden on the authority, because we would be asking them to do something they have previously not been required to do, and which would therefore need to be funded by the department. Extending an existing right to a defined group of people would not be considered in the same light.

To those who think that by extending this right to citizen journalists, we are in effect opening the floodgates, I say that the wording in the Bill helps to define who might reasonably be expected to fall within that category. By referring to “journalistic material” the focus is on what the person does and would suggest that such a person would be able to provide details of blogs or tweets they had authored and the forums in which they had been published. Furthermore, use of the term “publication” implies a public element. Therefore, while it might include journalistic material tweeted on Twitter, it may not include material circulated to a small invite-only Facebook group. It is also unlikely to include material sent as a direct message on Twitter, Facebook or by email. The onus would be on the citizen journalist to provide proof. Such a person should be able to provide details of articles, blogs or tweets they have authored and where they have been published in order to gain the ability to inspect the accounting documents requested from the local authority.

The other key issue debated in another place last week related to health bodies and why they are excluded from this Bill and, indeed, from the inspection provisions in the 2014 Act. I am going to leave it to my noble friend Lord Bourne of Aberystwyth to set out the Government’s view on how that issue relates to government policy.

Given my attempts to further address the key points raised last week in the other place, I am hopeful that noble Lords present here today will feel able to support this small but important measure. I beg to move.

2.30 pm

Lord Kennedy of Southwark (Lab): My Lords, I refer the House to my entry in the register of Members’ interests. I am an elected councillor of the London Borough of Lewisham and a vice-president of the Local Government Association.

I congratulate the noble Baroness on bringing forward the Bill for debate today, which has the full support of the Opposition. We will not table any amendments to it and urge all noble Lords to do likewise. We wish it a speedy passage through this House and hope it will receive Royal Assent soon afterwards.

The Bill is short and, in effect, makes only one important change. It will allow journalists to inspect accounting records of the public bodies listed in Schedule 2 to the Local Audit and Accountability Act 2014 for one month without being required to have an interest in the authority, as the noble Baroness, Lady Eaton, explained to the House. Those who spend public money should be accountable to the public for how they spend it and what they spend it on. The Bill goes a considerable way towards improving the present position, and that is to be welcomed.

The Bill is necessary because the “interested person” test goes only so far. It goes beyond a registered elector but not as far as to include a journalist. The definition of “journalist” has been written in such a way as to include bloggers and others who may not be seen as conventional members of the media, but perform a valuable function in covering the activities of local public bodies and questioning them. This is to be welcomed as their efforts are of benefit to the local community and local taxpayers.

I do not expect to see a stampede of journalists or bloggers heading down to their local town hall to inspect the invoices and receipts for the coffee machine in the members’ room or anywhere else, because there are provisions in the Act to deal with vexatious requests. This is important because some people go beyond what is reasonable and see conspiracies and corruption where people have acted perfectly properly. Simply not liking a decision does not mean that it was not a perfectly lawful decision to take. It is important that there is a protection for members of local authorities.

Anyone who has been on a council or is a Member of this House or the other House will have had to cope with losing a vote every now and again. That is part of our democracy. I always believe that anything I put forward from this Dispatch Box is worthy of support from the whole House, but that is not always the case. The actions of journalists can alert the local community to some of the decisions taken in its name, raise questions about how the money has been spent and lead others to question whether the actions taken are the most appropriate use of public money—of their money.

The period for allowing inspections is limited to one month. While looking at the documents is free, the local body can make a reasonable charge to cover its
I welcome the Bill and wish it a speedy passage through the House in the next few weeks.

2.34 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords,

I am pleased to speak today on behalf of the Government in support of the Local Audit (Public Access to Documents) Bill, introduced by my noble friend Lady Eaton. I thank her for her sterling efforts on this legislation. She comes to the task with vast experience of local government.

I also thank the noble Lord, Lord Kennedy, for his typically responsible position on scrutinising legislation and for his kind and appropriate words in relation to the efforts of my noble friend Lady Eaton on the Bill.

It is absolutely right that both the Government and the Opposition should seek to provide appropriate accountability, and we both believe that this is a necessary extension of what exists at the moment. Transparency is important. The disinfectant of light on what happens in public proceedings in Parliament, council chambers and other elected bodies is absolutely right.

I also thank my honourable friend Wendy Morton MP, who has taken this legislation through the other place, for her efforts in relation to it.

On the noble Baroness’s earlier comments, this Bill is small in size but important in relation to the Government’s transparency agenda. This is why the Government are happy to support it. We believe that its potential impact in assisting local transparency and accountability will help local electors better to understand their local authority’s spending decisions. If they are unhappy with those decisions and something deserves scrutiny, those electors will then be able to ask a question of the auditor or raise an objection to a particular matter. That action would then empower the auditor to investigate further before the accounts are closed. The 30-day timing before the sign-off will enable the auditor to seek corrective action, where appropriate, from the authority—perhaps by making recommendations for change in the audit report—to comment on value-for-money judgments made by the council, or, in the most serious cases, to issue a public interest report, which the council is required to consider publicly and respond to.

Some have suggested—although not today—that a freedom of information request would have a similar effect. However, that would require the requester to know to some extent what they want before seeking information. Furthermore, unlike these rights, it cannot directly result in preventive action or change in relation to the most recent years’ accounts. That is why we believe that this Bill, though small in size and provisions, will potentially make a considerable difference.

My noble friend Lady Eaton kindly suggested that I pick up the point in relation to health bodies, which are excluded from, among other things, the inspection rights in the Local Audit and Accountability Act 2014 and are, consequently, also excluded from this Bill, which amends that Act. This is because local health bodies are not directly accountable to the local electorate in the same ways as local authorities. The National Health Service Act 2006, as amended by the Health and Social Care Act 2012, enables residents and patients to see the accounts of clinical commissioning groups and NHS trusts. However, the local auditors of health service bodies are required to report unlawful expenditure to NHS England or the NHS Trust Development Authority—which now, since 1 April, forms part of NHS Improvement—of clinical commissioning groups or NHS trusts respectively, and to the Secretary of State.

The accounts of all of the health service bodies covered by the 2014 Act are consolidated into the resource account of the Department of Health, which is presented to Parliament and subject to audit by the National Audit Office. The expenditure of those bodies is also within the scope of the Comptroller and Auditor General’s value-for-money remit under the provisions of the National Audit Act 1983. In general, foundation trusts are not covered by the 2014 Act. They are responsible for appointing their own auditors under paragraph 23 of Schedule 7 and Schedule 10 to the NHS Act 2006. The rules governing audit for these bodies are set out in that Act. In short, that is why the health bodies are not encompassed by the 2014 Act and hence not in the Bill. I hope that that demonstrates why they are excluded.

Unlike health bodies, local authorities are directly accountable to their electorate, and it is therefore only right that local people should be able to inspect their accounts in order to ask questions of the auditor and potentially object to items of expenditure. This Bill, by enabling journalists to inspect accounting records and publicise what they find, has the potential to bring this information to the wider attention of local electors, who will then be empowered to act by asking the auditor questions or by making an objection, thus triggering an investigation.

Points have been made in relation to this legislation that it might potentially result in auditors receiving a large number of questions or objections. I agree with the noble Lord, Lord Kennedy, that it is not foreseen that there will be a stampede of journalists taking up this right. It does not seem that that is going to happen. Currently the number of objections and questions received from local electors is very small—last year only around 65 from more than 11,000 audited bodies. While the publication of articles detailing high or unorthodox expenditure in an area could result in a number of local electors asking questions of the auditor, the number who will take the next step is likely to remain small, especially given the 30-day timeframe.

In closing, I once again thank my noble friend Lady Eaton. I hope that I have been able to reassure noble Lords on the two specific issues of health bodies and the likely number of people who will take up this right. I echo the words of my noble friend and of the noble Lord, Lord Kennedy, by encouraging all noble Lords to support the Bill.
2.40 pm

Baroness Eaton: My Lords, I thank the noble Lord, Lord Kennedy, for his encouragement and support for the Bill and I thank my noble friend Lord Bourne for his clarifications and for stressing its importance.

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

MerchantShipping(Homosexual Conduct) Bill
Second Reading

2.41 pm

Moved by Baroness Scott of Bybrook

That the Bill be now read a second time.

Baroness Scott of Bybrook (Con): My Lords, I am very pleased to bring this Bill to the House. It will bring clarity and certainty to our statute book on the law on discrimination in employment. The Bill was piloted through the House of Commons by John Glen, the Member for Salisbury. It received a very full debate on Second Reading, with 11 Back-Bench speakers.

The Bill is extremely straightforward and consists of a single operative clause. It repeals Sections 146(4) and 147(3) of the Criminal Justice and Public Order Act 1994, now defunct provisions that preserved the right to dismiss a seafarer on a UK merchant ship on the grounds of homosexual conduct. The Bill had a minor amendment made to it at the Commons Committee stage to bring forward commencement to the day on which the Act is passed rather than the standard two months. It went through its Report stage unamended, although not without a rigorous debate. I am proud to bring forward a Bill which signals clearly our opposition to discrimination. We should be absolutely clear: when it comes to employment either in the Merchant Navy or anywhere else, what matters is your ability to do the job, not your gender, age, ethnicity, religion or sexuality.

I will take a moment to outline the background to the Bill. Sections 146 and 147 of the Criminal Justice and Public Order Act 1994 repealed the clauses in the Sexual Offences Act 1967 which made homosexual activity within the Armed Forces and on Merchant Navy vessels a criminal offence. Sections 146(4) and 147(3) of the 1994 Act, the subsections repealed by this Bill, state that nothing in them would prevent a homosexual act from constituting a ground for dismissing a member of the crew of a UK merchant ship from his ship. These sections were added to that Bill following non-government amendments during the Lords Committee stage following concerns about the effect of that Act on the dismissals policy of the Armed Forces and the Merchant Navy. During the passage of the 1994 Act, members of both Houses noted the anomaly that there were no equivalent provisions for heterosexual activity taking place on board a ship, highlighting a concern about employment discrimination even then.

It is important to be clear that the provisions in the 1994 Act are no longer of any legal effect, not least due to the provisions of the Equality Act 2010 and the regulations made under it as well as relevant Northern Ireland regulations. The equivalent provisions for the Armed Forces in the Criminal Justice and Public Order Act were struck down by the ECHR in Smith and Grady v United Kingdom in 2000.

While the provisions of the 1994 Act have now been legally superseded, there are still four good reasons to pass this Bill. First, it is symbolic. These provisions are believed to be among the last remnants of legislation on our statute book which penalise homosexual conduct and include a provision that applies to homosexual individuals but not to heterosexual individuals. In passing this Bill, we have the opportunity to state clearly and unequivocally that what matters in employment is someone’s ability to do the job and nothing else, and that there is no room today for employment discrimination. Secondly, it delivers on the commitment made by the Government during the passage of the Armed Forces Act 2016 to deal with the Merchant Navy provisions in just the same way as the Armed Forces provisions when that legislation was passed. Thirdly, it gives reassurance. An individual could easily look up the Criminal Justice and Public Order Act 1994 online and be concerned or misled by its apparent provisions. By removing these provisions from the statute book, we can provide clarity and prevent any misunderstanding as to the current state of the law. Fourthly, this Bill would tidy up the legislation. Members of the House of Commons described the Bill as “a “useful tidying-up exercise”. It would make the status of our current employment law absolutely clear and give reassurance to anyone who was in doubt about it.

The Bill is supported by the UK Chamber of Shipping, the industry body for the Merchant Navy; the RMT, the industry union; and by long-standing gay rights campaigner Peter Tatchell. It enjoyed cross-party support in the House of Commons and is supported by the Government. I hope that we will be able quickly and easily to pass this short but important Bill into law. I beg to move.

2.47 pm

Lord Lester of Herne Hill (LD): My Lords, like the noble Baroness, Lady Scott of Bybrook, I congratulate John Glen MP on his success in the other place in navigating this Bill through all its stages with government and cross-party support. The Liberal Democrats warmly welcome the Bill and hope that it will rapidly become law. By repealing Sections 146(4) and 147(3) of the Criminal Justice and Public Order Act 1994, it completes the removal of archaic and unjust provisions that penalised homosexual activity.

This year is the 50th anniversary of Leo Abse’s Private Member’s Bill which became the Sexual Offences Act 1967. It came 10 years after the Wolfenden report recommended reform. The Act abolished the crime of sexual love between two men over the age of 21 in private. It had crucial support from the then Home Secretary, Roy Jenkins, but the path of reform has been long and tortuous and has required intervention from the European Court of Human Rights and the European Union.

The 1967 Act did not apply to Northern Ireland. It required a judgment by the Strasbourg Court in Jeffrey Dudgeon’s case to persuade Parliament to abolish the
The Strasbourg court ruled in 2000 in the Smith and Grady case that the provisions of the 1994 Act violated the right to respect for private life under a policy that involved investigating whether personnel were homosexual or had engaged in homosexual activity. If so, they were discharged. EU employment equality directives and the Equality Act 2010 dealt with the problem, but the offending provisions remain, disfiguring the statute book. As the Minister in the other place, Andrew Jones MP, said, the Bill, “addresses a historical wrong and the inadequacy of legislation to keep pace with our culture”. –[Official Report, Commons, 20/1/17; col. 1240.]

When I became a Member of the House in November 1993, it was deeply homophobic. Section 28 of the Local Government Act 1988 was in force. Among other things, it forbade local authorities from, “teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship”. Tony Blair’s Labour Government tried to repeal it, with strong Liberal Democrat support, but the Government were defeated on 7 February 2000 by a campaign led by Baroness Young. I spoke in favour of repeal. The House also rejected lowering the age of consent to that of heterosexual couples. Baroness Young was supported not only by Conservatives and some Labour Peers, but by religious groups, including the Salvation Army, the Christian Institute, the African and Caribbean Evangelical Alliance, the Muslim Council of Britain, the Chief Rabbi Dr Jonathan Sacks—now the noble Lord, Lord Sacks—and Orthodox Jews, groups within the Catholic Church and the Church of England, and several retired Law Lords. She was also supported by the Daily Mail, the Sun, and the Daily Telegraph. They claimed that Section 28 protected children from predatory homosexuals and from advocates seeking to indoctrinate young people into homosexuality.

After the death of Baroness Young and with the appointment of a new liberal generation of life Peers, mainly by Tony Blair, organised opposition in the Lords was weakened. The House finally voted in favour of repeal in 2003, a year after I introduced my Civil Partnerships Bill, which led to the Blair Government’s Civil Partnership Act 2004.

David Cameron’s politically acrobatic record illustrates how times have changed for the better. In 2000, he opposed the repeal of Section 28 and accused Tony Blair of being against family values and of, “moving heaven and earth to allow the promotion of homosexuality in our schools”. In 2003, he voted against the repeal of Section 28. A year later, he supported civil partnerships for same-sex couples. In 2009 he apologised for having supported Section 28. In 2013 he supported same-sex marriage, but it is still not allowed in Northern Ireland.

In her important and timely book, *The Enemy Within*, the noble Baroness, Lady Warsi, recalled how her party had rabble-roused the party faithful at conferences and meetings against gay people and enacted legislation that stigmatised them from birth. She wrote that she was deeply ashamed of having been homophobic at a time when homophobia was a so-called “British value”. The noble Baroness and her colleagues were not alone. Homophobia was not and is not confined to the Conservative Party and it is driven, here and abroad, by the ideology of orthodox clerics and their adherents in the three Abrahamic religions—Judaism, Christianity and Islam. When this Bill becomes law it will rid the statute book of an ugly relic from a bigoted past, but it will not, of course, end the culture of intolerance of gay love.

**Lord Black of Brentwood (Con):** My Lords, this is the second time in recent weeks that we have had the opportunity to consider an extremely short Bill, the significance of which is out of all proportion to its length. Unlike the other one, this is a Bill I can wholeheartedly support.

I congratulate my noble friend Lady Scott on shepherding the Bill through this House and thank my good friend John Glen for introducing this important measure in the first place. My noble friend Lord Lexden, who is a stalwart champion in this House of LGBT+ rights, had hoped to be here to support it, but is detained elsewhere. He has asked me to say how strongly he backs this measure.

Although we are dealing here with the Criminal Justice and Public Order Act 1994, this legislation, as the learned noble Lord, Lord Lester, said, is intimately connected with the Sexual Offences Act 1967. Many LGBT+ people are this year commemorating the passage of that landmark legislation exactly 50 years ago. There can be no better way to mark it than to remove from the statute book what undoubtedly is the very last statutory provision penalising homosexuality. Although the statute book will now be clear, as the noble Lord said, its application across the United Kingdom is not yet complete. We have to remember that gay men and women cannot marry in Northern Ireland. It has been a long journey from Wolfenden, at a time when gay men were criminalised, second-class, often outcast citizens, to the complete removal in law of any form of discrimination. That makes this Bill something of a red-letter day for all those who have campaigned tirelessly for justice and equality for LGBT people and against intolerance.

There is a lot to commend this short Bill. As my noble friend said, it tidies up legislation, which is always a good thing. We should spend more time in this way getting rid of outdated laws that have not kept pace with social change, rather than putting new ones on to the statute book. The Bill will remove any remaining ambiguity in the law. Even though, as we have heard, the provisions of the 1994 Act have no legal force, their policy implications are ambiguous and it is right to get rid of them. It might not affect a great number of individuals, but this measure removes any perception of a threat of legalised persecution,
particular for LGBT seafarers. But above all it is of
totemic importance. By repealing an odious law that
should never have defaced the statute book, it sends
out a powerful signal to all individuals, regardless of
their sexual orientation, that this House is committed
to justice and equality, to tackling prejudice and
tolerance, and to bringing an end to any form of
discrimination.

Even more importantly, and this is the central point
I want to make, I believe it will carry forward a vital
message beyond our shores and act as a continuing
beacon of hope for LGBT+ people around the world
who live in countries that continue to criminalise them
and to discriminate against them, often in the most
barbaric and degrading ways—a human tragedy that
this House has often effectively addressed. Those people,
many of whom are fighting for justice in their own
countries, rightly see this Parliament as a staunch
defender of their rights—indeed, there is no more
stalwart champion of that cause than the noble Lord,
Lord Lester. They look to us for continuing inspiration
in their struggles. After all, it was the UK that bequeathed
the horror of criminalisation to much of the
Commonwealth, along with a number of other odious
laws such as criminal defamation. The significance of
this Parliament continuing to root out discriminatory
legislation and get rid of it cannot be overstated. That
is why the impact of this tiny piece of legislation goes
well beyond the issue of sexual relations between
sailors.

In one of the debates we had about Turing and the
whole issue of posthumous pardons, I mentioned that
I had recently reread EM Forster’s great novel
*Maurice*, which centres largely on the issues of historical
importance raised by the Bill. Forster’s characters, one of whom
was imprisoned for an act of so-called gross indecency,
lived in the shadow of that terrible injustice. All those,
including merchant seamen, who were sentenced to
imprisonment with hard labour around the time that
novel was written died with the shame of a criminal
record, which is why Forster said on the front page of
that masterpiece, “This book is dedicated to happier
times”. For people such as him and those ordinary
people he wrote about, on land and on the high seas,
happier times never arrived. However, they are here
now and the Bill allows us to complete a long, tough
and most noble journey.

3 pm

**Lord Rosser (Lab):** My Lords, this Bill has a
certain Wiltshire flavour, since it was taken through the
Commons by the Member of Parliament for Salisbury and is being taken through this House by
the noble Baroness, Lady Scott of Bybrook, whom I
congratulate on doing so. My connections with
Wiltshire are not exactly remote either.

The Bill is brief and to the point. Indeed, it is one of
those Bills where the Explanatory Notes contain
significantly more words than the Bill, but in this case
it is not because the way that the Bill is worded makes
it difficult to follow or understand. The Bill repeals
Sections 146(4) and 147(3) of the Criminal Justice and
Public Order Act 1994, which states that, while not a
criminal offence, homosexual acts would be sufficient
grounds for dismissal in the Merchant Navy.

The references in the 1994 Act to homosexual acts
in the Armed Forces were removed under the Armed
Forces Act 2016, but as that Act relates to the
Armed Forces it could not also be used as a vehicle for
repealing the references in the 1994 Act to the Merchant
Navy. Consequently, the provisions in the 1994 Act in
relation to the Merchant Navy remain on the statute
book and still need to be repealed despite no longer
having legal effect, hence this Bill. The provisions in
the 1994 Act no longer have legal effect, because while
the sections concerned allow for the dismissal of a
member of the crew of a merchant ship on the grounds
of homosexual acts, more recent legislation, including
the Equality Act 2010, means that such a dismissal
would now be illegal.

The two sections of the Criminal Justice and Public
Order Act 1994 which this Bill repeals are the last such
provisions penalising homosexual activity to be found
on our statute book. I understand, as I think has been
confirmed already today, that they were added to the
1994 Act, initially against the wishes of the then
Government, following a Division during the Committee
stage in this House.

The noble Baroness, Lady Scott of Bybrook, has
set out the reasons why the provisions in the 1994 Act
should be repealed even though they no longer have
legal effect. I do not intend to repeat the reasons, but I
agree with them.

As has been said, the Bill could be regarded as
symbolic because the provisions it repeals have no
legal effect. It is much more than that, though. We
simply should not retain on the statute book provisions
that are the exact opposite of the values, standards
and priorities of our society today; and in this specific
instance, it is that there can be no place for discrimination
on the basis of sexual orientation. I do not intend to
tarnish the House any longer. This House played a big
part in putting these provisions into the 1994 Act. Let
us get on with taking the right and just action now by
repealing them through giving our wholehearted support
to this Bill.

3.03 pm

The Parliamentary Under-Secretary of State, Department
for Transport (Lord Ahmad of Wimbledon) (Con): My
Lords, I thank my noble friend Lady Scott for bringing
forth this Bill on this important issue—the contributions
during this short debate have illustrated that poignantly.
My noble friend set out in detail why it is right that we
should progress. I am grateful also to my noble friend
Lord Black and the noble Lords, Lord Lester and
Lord Rosser, for their contributions.

Although the Bill has limited practical effects, as all
noble Lords have acknowledged, and does not change
the rights and responsibilities of any person today, it
has deeply symbolic importance. As was said by my
ministerial colleague on Second Reading in the other
place,

"the laws that we pass in this place and that form our statute book
represent” —
in a very real sense—

"the established morals and values of our country. It is right
therefore that when the statute book contains wording that is
inconsistent with those values we should change that wording.
Lord Ahmad of Wimbledon: For that reason, the Government are happy to state now, formally, that we support this measure. —[Official Report, Commons, 20/1/17; col. 1236.]

Noble Lords will also understand that when the Government decide to support a Private Member’s Bill, they undertake an analysis of whether it is compatible with the rights enshrined in the Human Rights Act. I am happy to confirm for the record that, in my view, the provisions of this Bill are totally compatible with those rights.

My noble friend Lady Scott has spelled out the proceedings that took the Bill out of the other place and bring it before us today. I do not intend to detain the House further in that respect. However, it is interesting to note in respect of the Wiltshire connection that the Bill was taken through the other place by my honourable friend John Glen, who is the MP for Salisbury, and that it was Viscount Cranborne—now the noble Marquess, Lord Salisbury—who took the Criminal Justice and Public Order Act through this House in 1994. I am glad to see the continuing interest of the good people of Salisbury in this issue.

I want to take a few minutes to explain briefly the history behind the provisions that the Bill seeks to remove. The Criminal Justice and Public Order Act 1994 was a significant milestone in the development of LGBT rights in the United Kingdom. The Act is the last UK Act to have a whole part entitled simply, “Homosexuality”. As the noble Lord recounted earlier, it was responsible for reducing the age of homosexual consent from 21 to 18. It also removed some of the last remaining criminal liability for acts of homosexual sex. Sex between adults of the same sex was generally decriminalised by Section 1 of the Sexual Offences Act 1967, but that Act maintained criminal liability for homosexual sex that was contrary to military discipline or occurred on board a merchant ship. That liability was removed in the 1994 Act by Section 146(1), (2) and (3), for England, Wales and Scotland, and by Section 147(1) and (2) for Northern Ireland. However, the sections that we are dealing with today, Sections 146(4) and 147(3), were added during the passage of the Bill following amendments made by a Member of your Lordships’ House—a point already acknowledged by noble Lords.

Of course, time has moved on. We heard a poignant history of how this House, the other House and society have moved on. The noble Lord, Lord Lester, recounted the history of how the rights of individuals have increasingly been protected. It is right that we move forward in line with history and in line with society today.

As I mentioned earlier, the sections in question are of no current effect. Moreover, any attempt to discharge a member of the UK Merchant Navy from their employment on the basis of their sexuality would now be unlawful by reason of equality legislation. My noble friend Lord Black mentioned Alan Turing. I remember from this very Dispatch Box responding to the Private Member’s Bill in the name of the noble Lord, Lord Sharkey, who is not in his place. I recognise his efforts in that respect as we move forward in the right vein. Today, we shall do so again.

Sections have become shorter as time has gone on. Sections 146(4) and 147(3) of the Act have been progressively repealed, most recently by the Armed Forces Act 2016, which removed all references to Armed Forces. The Government could not do anything about provisions relating to the Merchant Navy in 2016 because, despite the name, the Merchant Navy is not part of the Armed Forces. Such an amendment could not be made out of scope. Nevertheless, the Government committed that they would address this point as soon as possible. At this juncture, I can only congratulate my noble friend on beating the Government to it.

We have reached a stage where the provisions in the 1994 Act refer only to the Merchant Navy and they are in any event defunct. Despite that, the policy behind the current statutory wording is unambiguous. It amounts to a statement that homosexual conduct per se is incompatible with employment on merchant vessels. Getting rid of that statement is a wholly laudable aim and I applaud my noble friend and all noble Lords here for supporting it today. It may be true that this measure is symbolic, but as my noble friend Lady Scott has made clear, there are very good reasons to support symbolic measures, including because they give clarity and tidy up the statute book, but also because, as I said at the start of my speech, the laws that are in force in the United Kingdom in 2017 should reflect the values of our great country in 2017. The Bill will do exactly that, and for that reason I hope that it can make rapid progress today and receive the support that it truly deserves.

Lord Swinen (Con): I quite understand that the Bill will apply to British ships in British waters and elsewhere in the world, but what is the position with foreign-flagged ships that happen to be in British waters when the homosexual act takes place? Their foreign laws may not apply in the same way that ours do.

Lord Ahmad of Wimbledon: I acknowledge my noble friend’s point. Of course, ships are reflective of the flag under which they are registered. In terms of specifics and in terms of territories, when they are in Britain they should reflect the laws of our land, especially laws relating to British territorial waters and British land. I will write to my noble friend on the issue and share that with all noble Lords.

3.10 pm

Baroness Scott of Bybrook: My Lords, I thank all noble Lords across the House who have spoken today and who have shown such great interest in this little Bill and welcomed it so warmly. It is a small Bill but, as has been said a number of times, it is symbolically a very big Bill. Thank you for your support. I ask the House to give the Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.
Missing Persons Guardianship Bill [HL]

Motion to Withdraw

3.11 pm

Moved by Baroness Hamwee

That the Bill be withdrawn.

Motion agreed.

Guardianship (Missing Persons) Bill

Second Reading

3.12 pm

Moved by Baroness Hamwee

That the Bill be now read a second time.

Baroness Hamwee (LD): My Lords, I have made space for this Bill by withdrawing the previous one. The penny dropped for me about the difficulties of a missing person’s property effectively being left ownerless when I heard the father of a woman who was missing explain the problems. He has heard me say this before, but he is a solicitor and must know how to handle bureaucracy, so this is a real problem. Peter Lawrence—that solicitor and father—is listening to today’s debates and he represents not only himself and his daughter Claudia, because the focus of the Bill is the missing person, but also the families of the many adults reported missing. There are more than 80,000 of them a year in Britain, of whom about 1,500 are missing for more than one year.

It is normal at the end of the passage of a Bill to thank those involved. I hope I am not tempting fate, but in the hope that we may find ourselves without further substantive debate I want to thank now all the families and others who have recounted their experiences, which cannot have been easy. I thank the charity Missing People, current and previous staff of which have campaigned on this issue since, I think, 2008. I declare an interest as a member of the charity’s policy and research advisory group. I thank the Minister and his predecessor, the noble Lord, Lord Faulks, and the MoJ officials who have understood the need for legislation, even if they could not do more than keep it warm for a couple of years—I particularly thank Paul Hughes there. I thank Clifford Chance, the pro bono solicitors to the charity Missing People, particularly Patricia Barratt, who drafted the Bill that I have just withdrawn, the effect of which would have been essentially the same as that of this Bill. I also thank Kevin Hollinrake, who took the Bill through the Commons.

I know that there are noble Lords who had hoped to speak today to support the Bill, but the timing has been a little awkward. In particular, I refer to the noble Lord, Lord Kirkhope of Harrogate, and my noble friend Lady Kramer, whose Presumption of Death Act 2013 dealt with another not unrelated provision.

The words of people affected by the problems that the Bill seeks to address are more effective than mine: “When your loved one is missing you fall into a hole. There isn’t an official category for ‘missing’. Organisations don’t know what to do or how to deal with your situation”.

The creation of the new status of guardian of the property and affairs of a missing person is to fill a gap in the law of England and Wales. The guardian will be in a position not unlike a donee of a power of attorney, and the Bill draws on some of the provisions of the Mental Capacity Act. A person is missing for the purposes of the Bill if his or her whereabouts are unknown for more than 90 days—fewer in the case of urgency—or, much more unusually, if he cannot make or communicate decisions, for instance if he is held hostage or kidnapped.

The court will determine whether the applicant for an order of appointment has a sufficient interest to make the application, though certain people, including close family, have an automatic right to apply and interested persons must be notified so they can join in the application. The guardian may be the person applying; it could be an individual, a corporation or a professional person; and the guardian may be remunerated and be repaid expenses. Whoever the guardian is, there must be no conflict of interest. The appointment may be for up to four years, which is expendable, but terminates when the person returns or is declared dead. As one would expect, there are provisions for the guardian to be held to account and supervised, in this case by the Office of the Public Guardian and ultimately by the court.

What can a guardian do? Everything that the missing person has the right and power to do in relation to his property or financial affairs, subject to any limitations in the court order. He cannot make a will for the missing person or act as trustee. Again, as you would expect, it is a fiduciary position. Crucially, the appointment of the guardian must be, as I have said, in the best interests of the missing person. Clause 18 sets out how that is to be determined.

These interests will often coincide with the interests of families and, naturally, it is the experiences of that situation which are related by families. Very often, their experiences are ones which one might not have begun to imagine before beginning to think seriously about the situation. For example, a missing person’s salary is not coming in, but mortgage payments and other standing orders and direct debits go out of that person’s bank account. The bank will not make transfers between accounts to keep up the mortgage when the usual account, the usual source of the payments, is depleted. You are not entitled to sell the family home, but you may be threatened with foreclosure. Rent, if the property is rented, goes into a black hole.

And how do you deal with benefits? A mother maintains her son’s house out of her money to prevent it becoming derelict and says: “I used to put the heating on in the winter, but I can’t afford to do that anymore”.

A sister says: “We were stuck. We couldn’t use any of”, my brother’s, “money to pay his bills and at the same time we could not cancel his bills”.

All the people whose experiences have been related to me by the organisation Missing People have said that guardianship would be an enormous help and would mean that the person’s affairs could be dealt with.
Financial institutions can take instructions only from the signatory to a bank account, and so on. Many will not give families information, of "data protection"—I put that in quotes, because that is how it is put. Some simply do not know what to do; some will not even take phone calls; some will not take phone calls but are rather quick on the draw when the money in the account runs out. One person said: “one day I received a telephone call from the bank to say his account was overdrawn and what did I plan to do about it. I was so angry. I had contacted them so many times to try and sort the situation out but they wouldn’t engage with me”. The Council of Mortgage Lenders and—from memory, so I hope I am not wrong in this—the British Bankers’ Association support the legislation, as it will provide clarity and protection for businesses and institutions which hold the assets of a missing person. The Association of British Insurers has also said that its members would welcome guidance because of data protection issues.

The Government consulted in 2014 on proposals for creating this new legal status. According to the MoJ, the response was “overwhelmingly positive” to the principle and to the proposals for implementation. Because the Government had not found an opportunity to introduce legislation, I introduced a Private Member’s Bill at the start of this Session. We now have this Bill, which has come through the Commons, piloted by Kevin Hollinrake, and I am delighted that a slot has been found as we come towards the end of the Session. The Bill reflects the proposals in the consultation to which I have referred.

Once you see the practical impact of the current legal position, you begin to understand the emotional effect. “I went overnight”, a wife explains, “from being a couple and having two wages to … becoming a single mum who could only work part time, with a mortgage and bills to pay. … my husband was missing, and that in itself was traumatic enough, but there was still the everyday living to do as well”.

We legislators can at least help with the everyday living. I beg to move.

3.22 pm

Baroness Chakrabarti (Lab): My Lords, what a privilege to follow the hard work and moving speech of the noble Baroness, Lady Hamwee. We on these Benches are more than happy to support the Bill at its Second Reading. It provides a much-needed remedy to the sometimes devastating financial and legal problems faced by the families of missing persons as a result of a gap in the law, which has remained unfilled for far too long.

As we have heard, each year more than 80,000 adults are reported missing to British police forces. Mercifully, most are found safe and well within the first week but around 4,000 remain missing for more than seven days and up to 1,500 adults are missing for longer than a year.

For the families left in limbo, the pain of not knowing where their loved one is or what has happened to them is compounded by a range of serious practical, financial and legal difficulties as the result of a disappearance. The vanishing of the individual has no legal impact on the person’s obligations and commitments. As a result, their affairs may be unmanaged and unprotected for the duration of their absence. Without a court mandate, institutions such as banks or insurance agencies are limited in how they can deal with those left behind. This can have disastrous repercussions, particularly for those who have shared assets or liabilities with the missing person, or for those financially dependent on them.

The creation of a new legal status of guardian of the property and affairs of the missing person would mean that families had an alternative and more immediate recourse when seeking to protect the financial and legal interests of their loved one. Under current law, in the Presumption of Death Act 2013, family members must wait a minimum of seven years before application can be made for a declaration that a missing person is presumed dead and their property can pass to others. Under the Bill, applications can be made after 90 days following a disappearance, and the court would be able to tailor the terms of the appointment of a guardian to the circumstances of the missing individual.

The charity Missing People has been campaigning to fill the gap for nearly six years, launching its Missing Rights campaign in 2011. Your Lordships will remember that, following calls for reform, the coalition Government launched a consultation in 2014, and in 2015 confirmed that they would legislate to create a new legal status of “guardian of the property and affairs of a missing person”. Despite a Written Statement from the then Justice Minister, the noble Lord, Lord Faulks, in which he expressed his hope that legislation would be brought forward without delay in the new Parliament, it failed to materialise. Today, however, by means of this Private Member’s Bill and through the admirable hard work of Kevin Hollinrake MP in the House of Commons and the noble Baroness, Lady Hamwee, resolution for families left behind is finally in sight. We owe a substantial debt of gratitude to both parliamentarians.

This much-needed legislation would plug a legal lacuna that has been acknowledged by the previous Government, the present Ministry of Justice and, as of late March, honourable Members in the other place. Support for the Bill in its current form has also been expressed by a variety of stakeholders including the charities Missing People, Prisoners Abroad, Hostage UK and the Council of Mortgage Lenders.

As my colleague in the other place, Richard Burgon, said at the first sitting of Committee on the Bill: “We must not drag our heels” — [Official Report, Commons, Guardianship (Missing Persons) Bill Committee, 21/2/17; col. 5] — when there is political consensus on the need for and appropriateness of this legislation. So I urge your Lordships to lend support to this fine Bill and to help ease at least the practical burdens—if not, unfortunately, the ongoing emotional suffering—of those families who continue to wait for news of a loved one or their return.

Finally, if I may, I thank all of your Lordships for your company and courtesy, and for the enormous contribution that you have made to the life of this country in recent weeks and months. I wish you all a very happy Easter with your own families.
The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I add my congratulations to the noble Baroness, Lady Hamwee, on introducing this Bill. The Bill is similar in content and purpose to the Missing Persons Guardianship Bill, which she introduced in June 2016. I am grateful to her for withdrawing her Bill and taking on the present Bill, introduced in June 2016. I am grateful to her for expressing from several sources over time. First, the All-Party Parliamentary Group for Runaway and Missing Children and Adults called for legislation in 2011, and the Justice Select Committee recommended guardianship legislation in its Presumption of Death report in 2012. These calls were supported during the passage of the Bill that became the Presumption of Death Act 2013. This parliamentary activity was supplemented by a public consultation on proposals for a scheme of guardianship by the Ministry of Justice in 2014. The response to that consultation, as already indicated by the noble Baroness, was overwhelmingly supportive.

Before commenting on the content of the Bill that has emerged from this extended period of development, I too acknowledge the work of the campaigners within and outside Parliament for the introduction of this guardianship Bill. I will not detain your Lordships with a lengthy list but in addition to the noble Baroness, Lady Hamwee, I would mention the noble Baroness, Lady Kramer, who introduced a Bill in similar terms to that of her noble friend Lord Hamwee, and my noble friend Lord Boswell, who promoted a Presumption of Death Bill in 2009 that started the train of legislation that we carry forward today. I also acknowledge the work of the Justice Committee in the other place and, outside Parliament, the campaigning of the charity Missing People, along with the help that it and we have received from Clifford Chance LLP in acting as pro bono lawyers to that charity. Missing People and the charities Hostage UK and Prisoners Abroad, which have also supported the preparation of the Bill, bring together and give voice to the experiences of the individuals and families caught up in disappearances, as referred to by the noble Baroness, Lady Hamwee. I am grateful to all those who have contributed to their work and in particular to Claudia Lawrence’s father, Peter Lawrence, who I understand is here. He has campaigned to create a practical legal remedy for the benefit of all people caught up in the property and financial effects of disappearances.

I now turn briefly to the substance of the Bill. The Bill is necessary because, although the law assumes that a missing person is alive until the contrary is proved, the missing person’s property is effectively left ownerless while he or she is missing. No one has legal authority to protect it or to use it on their behalf. This can lead to practical and financial problems for the missing person, his or her family and others.

At present, people simply have to find ways to get by. Unlike situations where it is thought the missing person has died, there is no legal framework to assist the individuals caught up in the difficult consequences of a disappearance. The experiences of those left behind demonstrate that there is a gap in the law and that suitable advice is difficult to find. Families may be hit hardest, but banks and other institutions have to deal with cases of disappearance on an ad hoc basis, increasing uncertainty and risk.

Other approaches to reform would have been possible, but the creation of a new status of guardian of the property and affairs of a missing person is intended to fill the gap in the law in a way that will provide an accessible and readily understandable legal solution, while still protecting the interests of the missing person.

The first and foremost protection is that guardians will be appointed only by the court. The court must be satisfied that the person to be appointed is suitable to act as guardian and will act in the best interests of the missing person. The court will be either the High Court or the Court of Protection, and the Lord Chancellor will make this choice after consulting the Lord Chief Justice. The court will be able to impose conditions and restrictions in the terms of the appointment, including restricting the length of the appointment to less than the maximum four years permitted by the Bill. The court also has power to vary and revoke appointments.

The Bill also provides that interested parties will be able to hold guardians to account by court action and that guardians will be supervised by the Office of the Public Guardian, which will maintain a register of appointments and deal with complaints about the way a guardian is exercising his or her authority.

In this last respect and in a number of other places, the proposals in the Bill broadly follow the model of the provisions governing the appointment of deputies in the Mental Capacity Act 2005. The guardian will, for example, be the agent of the missing person, in much the same way as the deputy is the agent of the patient under the Mental Capacity Act 2005. Third parties, such as banks and other financial institutions, will be protected in their dealings with guardians in much the same way as they are when they deal with people acting under powers of attorney. Most importantly, they will be able to see the extent of the guardian’s authority to act on the face of the guardianship order made by the court and will be able to rely on it.

Some of the detail of the scheme of guardianship will be set out in rules of court, regulations and statutory guidance. To allow these to be drawn up and for potential users to familiarise themselves with them, the Bill is unlikely to come into force earlier than one year after Royal Assent, but the Government will endeavour to keep any delay to an absolute minimum.

The Government are committed to helping those left behind by the traumatic and disruptive event that is the disappearance of a family member. The number of cases in which the remedy will be used may not be huge, but the effect of each of those disappearances on those caught up in them can be severe and traumatic. The creation of the new legal status of guardian of the property and financial affairs of a missing person will not solve every problem created by a disappearance, but it should provide an effective, practical and relatively straightforward remedy to some at least of the practical
problems that are created in these circumstances. There is, of course, concern about the risk of abuse of authority that can never be completely eliminated, but the Government believe that the provisions in the Bill strike an appropriate balance between giving the guardian the freedom to act to do good on the one hand and protecting the interests of the missing person on the other.

I commend the Bill to the House.

Farriers (Registration) Bill
Second Reading

Moved by The Earl of Caithness

That the Bill be now read a second time.

The Earl of Caithness (Con): My Lords, as we all know, it is extremely difficult to get a Private Member’s Bill through another place, so I am very happy to congratulate my honourable friend for Gower, Byron Davies, on the excellent work he did in getting the Bill through all its stages in the Commons and to congratulate the Government on helping it get this far.

The purpose of the Bill is to:

"Make provision about the constitution of the Farriers Registration Council”—which I will call the FRC—"and its committees". The FRC is the regulatory body for the farrier profession in Great Britain. Its statutory responsibilities are provided for by the Farriers (Registration) Act 1975 and include maintaining a register of farriers, determining who is eligible for registration and regulating farriery training. Further, the FRC investigates and, where necessary, determines disciplinary cases through its statutory investigative committee and disciplinary committee—and there is the rub and the mischief that leads to the Bill.

For those who are following the Bill, I am grateful to the Government for the help they gave me in producing the Explanatory Notes, which go into some detail. I will take the House very briefly through the Bill. At the beginning, I underline that the FRC is not a trade union but a regulating body. As such, it has to have an up-to-date constitution. As we all know, our noble friend Lord Bew reported in September last year. He set out the danger of regulatory capture, where a profession exercises undue influence over a regulator. The whole point of the Bill is to ensure the good name of farriery for the future.

There are three organisations involved. There is the FRC, but there is also the Worshipful Company of Farriers, which sets professional standards and qualifications on a worldwide basis. People from all over the world use its standards. The British Farriers and Blacksmiths Association is the trade association. They all work in harmony for the benefit of the profession, by and large. Inevitably, there are some tensions—but that is good for a regulatory body as it keeps it up to the mark.

The Bill has three clauses. The first introduces the schedule and the second gives power to the Secretary of State for Environment, Food and Rural Affairs to make further changes to the constitution of the council and its committees through regulations. That is a significant change. At the moment, everything has to be done by primary legislation, which is why we have the Bill before us today. The third clause gives the extent, commencement and short title of the Bill. The Bill extends to England, Wales and Scotland.

The schedule is also in three parts. The first part relates to the constitution of the FRC, and the number remains at 16. What is new is that in future the appointment of a member of the council will be for a term of four years, and somebody can serve for only two terms. That is a step forward, bringing the legislation into line with other regulatory bodies. Parts 2 and 3 of the schedule deal with the constitution of the investigating committee and the disciplinary committee. This is where we get the separate powers from where the regulatory body, the FRC, to date has been judge and jury in its own case to where you now have the regulatory body and then separate investigatory and disciplinary bodies. That is normal procedure. It is for the benefit of not only the profession but of everybody who owns a horse, and for public confidence in the profession.

To return to the constitution, it is worth pointing out that the council will consist of three persons appointed by the Worshipful Company of Farriers, one of whom must now be a farrier—and there are lots of farriers within the worshipful company; four of practising farriers, an appointment made in accordance with the scheme made by the council; two registered persons appointed by the National Association of Farriers, Blacksmiths and Agricultural Engineers; two veterinary surgeons appointed by the Royal College of Veterinary Surgeons; and one lay person from each of five outside bodies. I put it to your Lordships that this is hugely important because it includes bodies such as the British Horseracing Authority and the British Equestrian Federation, which are looking at the health of horses as a whole.

I ask noble Lords to give the Bill a Second Reading. This is an important, almost unique opportunity, given what is before us in the next two Sessions of Parliament, for us to get the Bill on to the statute book. I commend the Bill and I beg to move.
3.41 pm

Lord Addington (LD): My Lords, I thank the noble Earl for bringing the Bill forward. I am afraid I must take a bit of the responsibility for it being in front of noble Lords in the first place. A while ago, one of the elected farriers on the existing board came to me and said that there were problems. I will not go into details because I do not think it would add anything to the process, but my advice was, "Go and talk to your MP". He and the other elected farriers on the board—then there were four; as there will be now, but slightly different criteria were used from those in the Bill—went and spoke to their MPs. After a great deal of churn, we have ended up with a new Bill, and I must thank Byron Davies for getting it through the House of Commons. When we initially spoke about this I did not think that would happen, so congratulations to all those involved in piloting the Bill through.

The problems were basically explained to me as being cultural—there had been a breakdown. The solutions that the elected farriers wanted were not exactly those in the Bill, but I appreciate that this is better. Even they would say that half a loaf is a hell of a lot better than no bread, so I hope we get the Bill through. As the noble Earl has pointed out, this will probably be the last opportunity to do so.

I have a few questions for the Minister, and indeed the noble Earl if he cares to chip in. Could we get a working definition in the Bill of what a working farrier actually is? Some of the problems stemmed from the fact that it was felt that some of the committees did not understand the realities of being a farrier—that is, a person who travels around the country, usually in a small vehicle, having to deal with half a tonne of horseflesh that may not be that co-operative. Indeed, it has been said that farriers usually have a girlfriend or boyfriend who is a nurse because frequently that is the only way to keep both ends meeting. It is a hard, dirty, physical job, and having people who understand that would help. I make it at least five farriers on the council specified in the Bill. If the noble Earl or the Minister could give a definition of what exactly the word means, that would help.

The process of appointing the chair has changed, and a description of how that has changed would help to clarify what has gone on here. The noble Earl has remarked on the capacity to change this much more quickly in future. If we get these clarifications in place, we should do everything we can to ensure that the Bill gets through because it will make the situation better. With that, I wish the Bill godspeed, and hope that we do not actually have to take up too much time getting it through.

3.45 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am very grateful to the noble Earl, Lord Caithness, for tabling the Bill, and for so ably taking the baton from his colleague, Byron Davies, who sponsored the Bill in the Commons. I now realise I should also be thankful to the noble Lord, Lord Addington, for his initiative, which led to the Bill in the first place. I think we will discover during the debate that that initiative was well worthwhile.

I make it clear at the outset that we intend to support the Bill without amendment and we very much hope that it can clear the remaining hurdles to become law, although I had some sympathy with the points that the noble Lord was raising, particularly about the definition of a farrier. I certainly had to look up that term before I came into this debate in order to understand completely what it meant. However, I do not want to encourage anything that might mean the Bill does not become law, so I do not know what the logistics of that would be. I am sure the Minister will explain all.

As the noble Earl rightly recognised, regulation in many professional services and welfare sectors has moved on since the introduction of the original Act in 1975. I have personal knowledge of the standards now expected in the regulated sectors, because I sat for many years as a doctors’ fitness to practise panellist, as well as chairing part of the regulatory oversight for the Royal Institution of Chartered Surveyors. Those regulated areas have moved on and are constantly reconsidering and improving their standards of oversight, and it is right that we should do so in this area.

I recognise the importance of modernising the regulation of farriers to ensure that the public can have continued confidence in the quality of the service being provided and have recourse to an independent judgment when things go wrong. That is why we support the proposal to separate the powers of the farriers’ registration committee from those of the investigating committee and the disciplinary committee. It is now common practice in regulatory bodies that those who set the standards are different from those who adjudicate on them, so the changes come into line with good practice elsewhere.

We also support the changed membership of the Farriers Registration Council to increase the number of practising farriers, along with two veterinary surgeons, as well as broadening the involvement of the organisations which have already been mentioned. This should indeed help to strengthen the council’s knowledge of up-to-date, professional, technical and training issues, so that it is better able to set achievable standards and deliver them. We also support the time limits on office and the arrangements for the election of the chair. Again, all these seem to coincide with good practice elsewhere.

These proposals are a sensible balance between the majority of working farriers and those involved in the Worshipful Company of Farriers. Both have a role to play, but our ultimate aim has to be to provide a modern and professional regulator that commands public confidence and operates transparently. The Bill achieves that aim and we are very happy to support it.

3.49 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am most grateful to my noble friend Lord Caithness for introducing the Bill, speaking so powerfully as to its merits and giving us some of the background to this matter. I also acknowledge my honourable friend Byron Davies for his piloting of the Bill through the other place.
That is very important, as the decisions of the investigating committee on possible breaches of those standards. The profession is responsible for investigation of and separation of powers and the removal of possible bias. Currently, the same body which sets the standards for the farriery profession, and the Bill makes changes to these committees is vital to the regulation of the profession. I emphasise that, as set out in Part 1 of the schedule, the farriery profession on the FR C is retained that a person on the disciplinary committee cannot sit on a case if they served time on the investigation committee in respect of the same case. This ensures that full separation of powers is met and that the investigation and disciplinary committees meet the requirements of a modern regulator.

I will address some of the issues that have been raised, including the number of farriers who sit on the council. The council is made up of 16 members. Currently six of those members are practising farriers, and the Worshipful Company of Farriers appoints three more members, who may or may not be practising farriers. The remainder of the council is made up of two veterinary surgeons and five lay representatives appointed by various interested bodies, as set out in the schedule to the Bill.

The proposals have been worked on since 2013. A project team was set up with officials from Defra, the Scottish and Welsh Governments and a working party of members of the Farriers Registration Council and staff. A consultation was jointly held by Defra with the Scottish and Welsh Governments in late 2013, which addressed all the major elements of the proposals. The legislation would extend to England, Wales and Scotland.

The purpose of the Bill is to protect and maintain the public interest and to protect the welfare of equines, by modernising the governance, structure and operation of the Farriers Registration Council and its statutory committees. This will enable the FR C to overcome practical difficulties caused by out-of-date legislation, reduce the risk of legal challenge and modernise the FR C’s structure and operations in line with the Government’s principles of better regulation and the practices of other regulators. Its most crucial aspect is the need to introduce full separation of powers between the council and its investigating and disciplinary committees. I was most grateful for what the noble Baroness, Lady Jones of Whitchurch, said about the importance of such arrangements.

The investigating committee is set up to carry out the preliminary investigation of cases or complaints against farriers that could amount to professional misconduct. If the investigating committee deems this to be the case, it is sent to the disciplinary committee. The disciplinary committee determines whether the charges made are proven, and can where appropriate apply sanctions—in the most serious cases, up to and including the removal of a person from the register of farriers, meaning that the person would no longer legally be able to practise farriery. The function of these committees is vital to the regulation of the farriery profession, and the Bill makes changes to modernise the law and ensure that it is fit and proper for regulation in the 21st century. In particular, as my noble friend Lord Caithness said, it imposes a full separation of powers.

As the law currently stands, the investigating committee and the disciplinary committee are made up of members of the council. This does not fulfil the principle of separation of powers and the removal of possible bias. Currently, the same body which sets the standards for the profession is responsible for investigation of and adjudication on possible breaches of those standards. That is very important, as the decisions of the investigating committee or the disciplinary committee may be subject to legal challenge by those whose cases are being determined on the basis that they did not have the right to a fair trial. Equally, members of the public may view the lack of impartiality as farriers looking after their own.

Consequently, it is vital that changes are made to bring the law up to date, as the noble Baroness, Lady Jones, rightly inferred. The Bill proposes that members of the investigating committee and disciplinary committee must be persons who are not members of the council; nor may they be an “officer or servant” of the council—that is, paid staff of the FR C. The provision is retained that a person on the disciplinary committee cannot sit on a case if they served time on the investigation committee in respect of the same case. This ensures that full separation of powers is met and that the investigation and disciplinary committees meet the requirements of a modern regulator.

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Consequently, it is vital that changes are made to bring the law up to date, as the noble Baroness, Lady Jones, rightly inferred. The Bill proposes that members of the investigating committee and disciplinary committee must be persons who are not members of the council; nor may they be an “officer or servant” of the council—that is, paid staff of the FR C. The provision is retained that a person on the disciplinary committee cannot sit on a case if they served time on the investigation committee in respect of the same case. This ensures that full separation of powers is met and that the investigation and disciplinary committees meet the requirements of a modern regulator.

I will address some of the issues that have been raised, including the number of farriers who sit on the council. The council is made up of 16 members. Currently six of those members are practising farriers, and the Worshipful Company of Farriers appoints three more members, who may or may not be practising farriers. The remainder of the council is made up of two veterinary surgeons and five lay representatives appointed by various interested bodies, as set out in the schedule to the Bill.

Following consultation with the farriery profession regarding representation of practising farriers on the council, the Government have responded to the concerns of the farriers, and the Bill proposes that at least one of the members of the FR C who is appointed by the worshipful company must be a currently practising farrier. This brings the constitution of the council to a minimum of seven currently practising farriers out of 16 members. In response to the noble Lord, Lord Addington, and the noble Baroness, Lady Jones of Whitchurch, I emphasise that, as set out in Part 1 of the schedule, “a practising farrier” means a registered person who carries out farriery;

that is, is actively and currently engaged in the profession. The Government have also decided, following a consultation process, that the chair of the council is to be elected from among the members of the FR C, rather than appointed directly by the Worshipful Company of Farriers, as is the case currently. The noble Lord, Lord Addington, also raised this.

I stress that it is vital that as a regulatory body the FR C should reflect a balance of interests rather than bloc voting, and must also avoid the risk of regulatory capture by the profession it is regulating. It is also government policy that the split between farriers and non-farriers should be approximately rather than specified exactly in statute, and managed by the FR C itself according to the needs and skills requirements of the council at any particular time. I believe that the proposals allow for this flexibility, and for fair representation of the farriery profession on the FR C without risking regulatory capture. I also believe that it would not be in the interests of farriers if there were not a fair representation of third parties on the council to assist them in the regulatory environment of their profession.

Also in response to the noble Lord, Lord Addington, I say that the Government consider that should the FR C require future administrative amendments to its
structure or that of its committees in order to continue to function properly and effectively as a modern regulator; such changes should be able to be made more swiftly than currently; that is, without the need for primary legislation. The use of secondary legislation to secure any further changes would clearly need to be on the basis of maintaining the public interest. This would be in keeping with other regulatory environments. For instance, a similar power exists in paragraph 24(1) of Schedule 1 to the Architects Act 1997, under which the Secretary of State may make an order to amend the provisions of that Act. The proposed power in the Bill includes provision for the Secretary of State to consult fully and, additionally, obtain the consent of Scottish and Welsh Ministers, given that farriery is a devolved matter.

The Government have consulted fully on the proposals, and the nature of the responses suggests widespread support for the Bill. Indeed, it is very much the prevailing view that there is an urgent need for the modernisation and reform that the Bill proposes, and it is vital for the profession that the Bill is passed.

I endorse the importance of the profession of farriery in terms of equine welfare and the need to ensure that the highest professional standards are maintained. The Bill provides a modern regulatory environment for a profession on which all horse owners rely. Again, I thank my noble friend Lord Caithness for introducing it and I, too, wish it a safe passage.

3.58 pm

The Earl of Caithness: My Lords, I am grateful to all noble Lords who have taken part in the debate. It is with sadness that I have to say that my noble friend Lord Shrewsbury, who had his name down to speak, and would have been a great asset to our debate given his knowledge of the horse industry, clearly spread a plate before coming under starter’s orders. But I know that he fully supports the Bill as it stands.

I am grateful to the noble Lord, Lord Addington, but I think he painted a gloomy picture of the real situation. I thought it was a little negative. If we go back to the consultation exercise and look at the question on the mix of registered farriers to lay persons, 67% of the respondents thought that the current mix was right. On another question, 67% of respondents thought that the chairman should continue to be appointed by the WCF. The Government agreed that initially and said that the status quo must remain, but they have moved significantly. I think that they are probably right to have done so; they have shown a willingness to listen.

I thank the noble Baroness, Lady Jones of Whitchurch, for supporting the Bill. It is quite right that such a Bill should go out of this House with unanimous support, as a message to all. To my noble friend the Minister, I thank him for his support and time. He was absolutely right to say no foot, no horse—and don’t I know how difficult it is to get shod when one has poor feet. I can at least say that my feet hurt, but the poor horse cannot. Therefore, we rely very much on the skills of the farriers, to which the noble Lord, Lord Addington, drew our attention.

This Bill does not need any more rasping. I believe that we can clinch it and get it well shod. I wish all noble Lords a very happy Easter and thank the Government for making time for this Bill. I beg to move.

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

House adjourned at 4.01 pm.
Prayers—read by the Lord Bishop of Southwark.

Clerk of the Parliaments

Retirement of Sir David Beamish KCB

Moved by Baroness Evans of Bowes Park

On consideration of the letter from Sir David Beamish KCB announcing his retirement from the office of Clerk of the Parliaments.

That this House has received with sincere regret the announcement of the retirement of Sir David Beamish KCB from the office of Clerk of the Parliaments and thinks it right to record the just sense which it entertains of the zeal, ability, diligence, and integrity with which the said Sir David Beamish has executed the important duties of his office.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, on 1 November last year I informed the House that Sir David Beamish had announced his intention of retiring from the office of Clerk of the Parliaments with effect from 15 April this year, followed by an announcement, just before the Christmas Recess, that Ed Ollard would become his successor. I indicated at the time that there would be an opportunity to pay tribute to Sir David and I am delighted to do that today.

I am sure that noble Lords from all sides of the House will agree that over 42 years Sir David served with great distinction. He held a number of important posts during his time as an officer of this House. Between 1983 and 1986 he was Private Secretary to the Leader of the House and Chief Whip, when those positions were occupied respectively by the late Lord Whitelaw and my noble friend Lord Denham—a period that some noble Lords will recall as a busy one for the management of the Government’s business in the upper House.

Noble Lords who have been in the House since the mid-1990s will be aware of Sir David’s role in enhancing the work of our Select Committees. As Clerk of Committees from 1995 to 2002, he successfully supported a significant increase in activity, improving the House’s capacity to scrutinise the work of government and setting the framework for the House’s present, widely respected Select Committees.

Prior to his appointment as Clerk of the Parliaments in 2011, Sir David served as Reading Clerk and Clerk Assistant. As Reading Clerk, he took the lead in establishing and embedding the office of the Lord Speaker and worked hard to ensure the success of this significant change, helping to define aspects of the role, handling arrangements for the election and personally supporting the first Lord Speaker.

More generally throughout his career, Sir David contributed to the ongoing debates around the role and future of the House—for example, as clerk to the first of the Joint Committees on Lords reform in 2002-03 and, as Clerk of the Parliaments, setting out the options for non-legislative reform of the House in 2012.

Sir David leaves behind a very different House from the one he arrived at in 1974, not least because I was not even born then. It is not only a more visible and influential second Chamber but a more modern and diverse institution. He leaves the House and its administration well equipped to handle the considerable challenges to be faced in the coming years.

Sir David was also an early champion in promoting the work of the House, at home and abroad, overseeing the development of outreach programmes. Under Sir David’s leadership, the administration had its first diversity and inclusion strategy. He led by example, with his efforts helping to secure the House’s status as a living wage employer.

Throughout his time as Clerk of the Parliaments, Sir David sought opportunities for a greater degree of joint working between the two Houses, through close working with three Clerks of the House of Commons and establishing the new digital service and parliamentary security departments.

Beyond Sir David’s professional achievements, many noble Lords will also be aware of his extracurricular activities and achievements. Not content with winning “Mastermind” in 1988, with Nancy Astor as his specialist subject, Sir David has created—and continues to maintain—a website providing a list of all United Kingdom peerage creations, and I trust that his retirement will provide ample time for the continued maintenance of this project.

It simply remains for me to wish Sir David many happy years of retirement. We are greatly indebted to him for his exemplary service. I am pleased that this service was recognised in the other place, as he became the first retiring Clerk of the Parliaments to receive tributes there.

Finally, on behalf of the House, I welcome Ed Ollard, Simon Burton and Jake Vaughan to their new roles. I know that we all look forward to working with them. I beg to move.

Noble Lords: Hear, hear.

2.41 pm

Baroness Smith of Basildon (Lab): My Lords, it is a pleasure to follow the noble Baroness in paying tribute to Sir David Beamish on his retirement. Despite within this House the huge experience and long service of many noble Lords and the staff of our Parliament, there will be few who can boast of having served for over 40 years. I confess that I was born in 1974 but I was not very old. It is a truly remarkable record.

As we have heard, Sir David Beamish has seen considerable change in that time. When he started his parliamentary career in 1974, the Leader of your Lordships’ House and the Lord Privy Seal was the then Labour Peer, the highly regarded Malcolm Shepherd.
[Baroness Smith of Basildon]
At that time, there were about only 30 Labour Peers, despite being the government party. Lord Shepherd was, as one might imagine, pretty keen on House of Lords reform. He argued that only those who attended regularly should be allowed to vote—I hear some supporters of that view here today.

Parliament and politics have changed considerably in the years since Sir David first stepped through the doors of Parliament as a new young clerk. The noble Baroness the Leader of the House has rightly paid tribute to the part he has played in overseeing, managing and leading change. Perhaps he took the advice of his “Mastermind” specialist subject, Nancy Astor, when she said:

“The main dangers in this life are the people who want to change everything ... or nothing”.

The knowledge and experience Sir David has gained during his time here will continue to be put to good use. I welcome that, despite retiring, he will still be giving evidence to the House of Commons Select Committee on Public Administration and Constitutional Affairs on the role of an effective Second Chamber.

Those of us who have already given evidence to this committee are perhaps united in describing it as a “unique” experience, and look forward to Sir David’s contribution. Perhaps being quizzed by Sir Magnus Magnusson in the “Mastermind” chair is good preparation for giving evidence to any Select Committee.

In choosing his “Mastermind” specialist subject of Nancy Astor, the first woman Member of Parliament to take her seat on being elected to the House of Commons, Sir David showed his admiration for the first female parliamentarian. I suspect and hope that he has welcomed the developments in this House that during his time here have seen the first women Leaders, Chief Whips, Opposition Leaders and Opposition Chief Whips, and indeed the first two Lord Speakers, both of whom were female.

It is clear that not only has Sir David enormous knowledge about your Lordships’ House and Parliament but also a deep affection and respect, and he has enjoyed his work. Only recently, when my noble friend Lord Foulkes posed a question following debate about the role of the Speaker, not only did Sir David reply over a weekend but he also supplied a recording of the relevant debate—from 1968. That attention and commitment to detail is recognised by the staff of the House, so much so that the word “Beamish” has now become a noun: a point of detail that would have otherwise been missed is now known as a Beamish point.

I understand that as well as updating his website on British peerages, Sir David is widely thought to be a significant editor on Wikipedia across a range of subjects and I hope that noble Lords are not nervous at the thought that we can look forward to some updating of their profiles. Despite his considerable work for your Lordships’ House, Sir David also has a significant hinterland of interests that he will undoubtedly enjoy throughout what we hope will be a long, happy and fruitful retirement. On behalf of our Labour group, I thank Sir David for his many years of service and wish him well. I know that the whole House will join with me and the noble Baroness in wishing his successor, Ed Ollard, every success in his post, and we welcome and congratulate the new Clerk Assistant, Simon Burton, and the new Reading Clerk, Jake Vaughan.

2.45 pm
Lord Newby (LD): My Lords, I associate myself with the comments of the Leader and the Leader of the Opposition. Everybody in your Lordships’ House knows that Sir David Beamish is a man of many talents. One that he hid from me at least was the one that both speakers have referred to—namely, his ability as a quiz show contestant. Not only did he win “Mastermind”, he also won “Master Brain”, which was an amalgamation of the radio quiz “Brain of Britain” and “Mastermind”. His specialist subject there was the works of Beatrix Potter. I wonder if he thought of himself as Parliament’s equivalent of Mr McGregor. I suspect not because he was far too kindly. He honed his knowledge on that subject, apparently, on car journeys by thinking up questions to ask himself. I am not sure whether he whiled away the long hours of committee meetings in your Lordships’ House by following the same pursuit, but if he did, I doubt whether committee members would have been aware of it.

Sir David began his career in an era when the regulation of banks in the City was allegedly done largely by the raising of the Governor of the Bank of England’s eyebrow. In David’s case, he expressed his displeasure, in committees at least, by knitting his brow and frowning in a manner that implied that he had thought of at least three compelling arguments why the proposal being propounded, no doubt by some relatively new and inexperienced committee member, was not seriously to be entertained. That could have a seriously restraining influence on more experienced members of the committee who, having seen David’s frown, were less inclined to support the proposal because they knew that he was, albeit elegantly, about to shoot it down in flames.

As we have heard, Sir David’s career covered, by House of Lords standards, a period of unparalleled change. His role was often to strike a balance between accommodating change and doing so in a way that was within the overall traditions of the House and therefore likely to command its support. He was extremely adept at doing so. We all know that there is a very considerable gap in the ages at which we are changed in the foreseeable future. We wish him success in his retirement and we wish the new Clerk Assistant and the new Reading Clerk well. We are very fortunate in the calibre of staff in your Lordships’ House and we look forward in particular to working very closely with these three new appointees in the new Parliament.
2.48 pm

Lord Hope of Craighead (CB): My Lords, on behalf of these Benches, I, too, pay tribute to Sir David Beamish and thank him for all that he has done for us. It has been my unique privilege as Convener to observe Sir David at close quarters on many occasions when he was doing his job as Clerk of the Parliament. These observations have been, if I may put it this way, both from the front and from behind. I met him face to face in his office at our regular fortnightly meetings when we would discuss matters of mutual interest and I could watch him from behind each sitting day, he in his place at the Table and me in mine directly behind him on the Cross Benches, especially at Question Time. If there are two words that I think best describe the impression that these observations have made, at least on me, they are “boundless energy”. A conversation with him was always a stimulating experience. If you asked him a question, the words were hardly out of your mouth before he answered it, and his speed of thought was so astonishing that there were times when I wondered whether he had had a chance to think at all, but being David of course he did.

As for his behaviour as seen from behind at Question Time when he had to remain silent, it was his physical agility that impressed me. There was the jump to his feet as he called upon each noble Lord to put the Question. There was the crouching position that he adopted as the seven-minute deadline approached, which became even more pronounced as the Clock moved on towards eight minutes. At that stage his hand would grip the side of the Table to give him increased leverage for the next jump up to call the next Question. There was physical agility on other occasions, too. When the Lord Speaker or a Deputy Chairman of Committees got into difficulties on the Woolsack, those at the Table, so far away, had to resort to sign language. However, in David’s case it was not just sign language that he used; sometimes it was a unique kind of semaphore as he waved his arms around with increasing vigour in an urgent attempt to get his message across. So whether it be mental agility or physical agility, I doubt whether we ever had a more athletic Clerk of the Parliaments.

As has been mentioned already, David entered the service of the House in 1974. In her autobiography, *The World Walks By*, the noble Baroness, Lady Masham of Ilton, paid a generous and unique tribute to the help he gave her when she was in the Clerks’ department in the 1980s. It was he who drafted various amendments for her when she was involved with the Mental Health (Amendment) Bill, and it is remarkable that he is the only person who is named in that chapter, so it was a unique privilege.

As Sir David reminded the Cross-Bench Peers when he came to speak to us at our weekly meeting on the day before his last day in the House before Easter, the reputation of the House at the start of the 1980s was even more fragile than it is today. Today, all the talk is about the size of the House and the need for reform to address that issue. In the 1980s, he said that the talk was all about abolition. A motion that the House should be abolished was carried at one of the party conferences—I leave your Lordships to decide which it was—by 6 million votes to 45,000. Since then, reforms have been made not only to our composition but to the ways in which we work. As a result, as has been said, the House is now a very different place from what it was when he embarked on his career all those years ago.

Sir David has played his full part in the development of better working practices with obvious good humour and efficiency. He has been a great servant of this House, and we on these Benches join all noble Lords in thanking him most warmly for all he has done for us and in wishing him well for the life in the wider world that undoubtedly now lies ahead of him.

Before I close, I, too, join in the words of welcome to his successor, Ed Ollard, and to those who will join him at the Table, and we look forward very much to working with them in the years that lie ahead.

2.54 pm

The Lord Bishop of Southwark: My Lords, I warmly associate myself with the words of tribute already spoken and add my own on behalf of the Lords Spiritual. Sir David Beamish has combined wise counsel, trusty support and firm friendship for all on these Benches, and my colleagues and I have greatly benefited from his guidance. In addition to the impressive list given by the Leader of the Opposition, he has also witnessed as Clerk the first two female Lords Spiritual. As your Lordships’ House knows, there is something of an ecclesiastical revolving door on these Benches. Those of us who arrive here when our time comes for service lean heavily on the clerks and other staff to this House to ensure that we get up to speed quickly with the just requirements of this Chamber. Without the reassurance and gentle steers of the clerk, many of us would have found ourselves floundering.

I should add that I am especially grateful to Sir David for his enthusiastic commitment outside this place to the life of the Church, especially in my own diocease. An active member of St Barnabas, Dulwich, he has also somehow managed to find the time to become both secretary to the Dulwich deanery synod and a very cheerful member of the Southwark diocesan synod. It is my great pleasure to continue to work alongside him in these capacities. I warmly welcome Edward Ollard, our new Clerk, and very much look forward to working with him and the new Clerk Assistant and Reading Clerk.

2.55 pm

Lord Lisvane (CB): My Lords, I have known Sir David Beamish for 42 years. For three years I had the pleasure of being his opposite number in the House of Commons. I pay tribute to him for staying in his job a little longer than I stayed in mine. David’s friendship, courtesy, intellectual horsepower and indomitable cheerful optimism, no matter how adverse the circumstances, made that a delightful and constructive relationship.

As Clerk of the Parliaments, David was always a great advocate of comity—the mutual respect and co-operation between the Houses. This showed itself always in seeking a solution that was best for Parliament without ever losing sight of the interests of your Lordships’ House. More effective shared services between the two Houses was one outcome, but I was especially grateful to David for his partnership in commissioning
2.57 pm

The Lord Speaker (Lord Fowler): My Lords, in reply to the Convenor, the pronounced semaphore that he refers to was so pronounced on one occasion, with a marvellous shake of the hand, that I thought fire had broken out in the House of Lords. Indeed, I was about to adjourn the House when I found out that it was in fact something about a manuscript amendment to an amendment, which I still do not totally understand. In endorsing everything that has been said, the Question is that this Motion be agreed to.

Motion agreed nemine dissentiente.

Clerk of the Parliaments
Introduction of Edward Christopher Ollard

2.58 pm

Moved by Baroness Evans of Bowes Park

The letters of appointment for Mr Edward Christopher Ollard as the next Clerk of the Parliaments were read and he made the prescribed declaration:

“I, Edward Christopher Ollard, do declare that I will be true and faithful and troth I will bear to Our Sovereign Lady the Queen and to Her Heirs and Successors. I will nothing know that shall be prejudicial to Her Highness Her Crown Estate and Dignity Royal, but that I will resist it to my power and with all speed I will advertise Her Grace thereof, or at the least some of Her Counsel in such wise as the same may come to Her knowledge. I will also well and truly serve Her Highness in the Office of Clerk of Her Parliaments making true Entries and Records of the things done and passed in the same. I will keep secret all such matters as shall be treated in Her said Parliaments and not disclose the same before they shall be published, but to such as it ought to be disclosed unto, and generally I will well and truly do and execute all things belonging to me to be done appertaining to the Office of Clerk of the Parliaments”.

After which he took his seat at the Table.

Clerk Assistant
Appointment of Simon Burton

3.01 pm

Moved by The Lord Speaker

That this House do approve the appointment by the Lord Speaker, pursuant to the Clerk of the Parliaments Act 1824, of Simon Burton to be Clerk Assistant of the House in place of Edward Ollard appointed Clerk of the Parliaments.

Motion agreed nemine dissentiente.

Reading Clerk
Appointment of Jake Vaughan

3.02 pm

Moved by The Lord Speaker

That this House do approve the appointment by the Lord Speaker, pursuant to the Clerk of the Parliaments Act 1824, of Jake Vaughan to be Reading Clerk of the House in place of Simon Burton appointed Clerk Assistant.

Motion agreed nemine dissentiente.

Schools: Gardening
Question

3.03 pm

Asked by Baroness Benjamin

To ask Her Majesty’s Government what steps they are taking to encourage school gardening, to ensure that every child understands the environment and has an early connection to nature.

Baroness Benjamin (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as RHS ambassador.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, the science national curriculum requires that children are taught about plants and can identify common wild and garden plants. Guidance encourages schools to use the local environment so that children can investigate plants growing in their habitat. The government-backed 1 million trees for schools campaign gives millions of children the chance to plant saplings in their school grounds and communities, helping them to connect with nature and make their school grounds and neighbourhoods greener.

Baroness Benjamin: My Lords, I thank the Minister for that Answer. Numerous reports have shown that children as young as four suffer from depression and anxiety. Research proves that gardening is not only therapeutic for them but gives them a sense of continuity, responsibility and an understanding of food production. It can help them with subjects across the curriculum, and even with a career in horticulture. Will the Government work with the RHS school gardening campaign to deliver gardening opportunities to schools across the country and urge Ofsted to take such provision into account when inspecting schools?

Lord Nash: The noble Baroness is quite right about the therapeutic benefits of gardening for children. I know that the RHS—I pay tribute to the noble Baroness for her ambassadorship—has a great campaign in schools for this. That campaign now has more than 32,000 schools and organisations engaged, including 68% of primaries and 78% of secondaries, reaching 6 million children. As far as Ofsted is concerned, we do not want to load it up with too many specific, narrow requirements, but school inspectors consider the breadth and depth of the school curriculum and...
its impact on children. Inspectors will note where a school’s use of outdoor space has a positive impact. They also expect schools to provide rich and varied extra-curricular activities, which may well include gardening.

Baroness Fookes (Con): My Lords, while warmly endorsing the RHS campaign, I would make another point to my noble friend. Could he encourage teachers, particularly career teachers, to look favourably upon the many interesting educational developments that come from studying horticulture at a much greater level? There are many of these amazing careers open, but very often we find that teachers downgrade them. That annoys me enormously.

Lord Nash: My noble friend is right that there are many good careers in horticulture, landscape gardening, gardening et cetera. We invested heavily in enhancing the careers provision in schools through our Careers & Enterprise Company. I know that this is something it has looked at, and that many schools take this quite seriously. Indeed, at Cambridge special school in Hammersmith pupils do a BTEC in land-based studies using city farm space attached to the school. This has been very beneficial to many graduates’ careers.

Baroness Nye (Lab): My Lords, research by the Royal Horticultural Society shows that its Campaign for School Gardening can contribute to a sustainable environment, which is important because schoolchildren walk along roads where legal limits on air pollution have already been breached in 16 areas just this year. When will the air quality action plan to cut illegal levels of nitrogen dioxide be published? The election is no excuse, because Cabinet Office guidelines are absolutely clear that purdah rules can be lifted where public health is at risk.

Lord Nash: The noble Baroness has wandered slightly off my brief, but I will take this back. Of course, the Government are developing a 25-year environment plan to achieve our manifesto commitment to be the first generation to leave the natural environment of England in a better state than we found it.

The Countess of Mar (CB): My Lords, there is an amazing pool of ignorance among children and young people as to where their food comes from. I am not talking about vegetables in this case but milk, eggs, cheese and meat. In most cities there are now city farms, and farms are very willing to accommodate children and young people to show them where their food comes from, so would the Minister encourage this practice?

Lord Nash: Most certainly. It is absolutely essential that children are taken out of their environment. I know that there is now Oasis’s city farm in Waterloo. There is also a very good organisation called Jamie’s Farm which a number of schools send children to so that they learn about farming, crop growing and animals and vegetables.

Baroness Butler-Sloss (CB): My Lords, the Ashden charity, of which my daughter-in-law is the chairman, gives awards for sustainable energy across the world, including in England. It gave an award to a primary school which dug up a small amount of the playground and planted vegetables. Does the Minister think that this ought to be encouraged?

Lord Bradshaw (LD): My Lords, I was in York a few days ago, where there was a row of 20 new houses in dark brick, with dark windows, fences and dark pavements. One of them had hanging baskets, pots and window boxes. This completely lifted the appearance of the whole thing. On the therapeutic aspects, this needs real encouragement from not only the RHS but also the National Trust. Would the Minister please also turn the attention of the appropriate part of government to the issue of allotments, which give many city people the opportunity to go out and do some gardening?

Lord Nash: I entirely agree with the noble Lord’s comment about the therapeutic effect—both the British Medical Council and Natural England commented on this—particularly for children with disadvantages of some kind. I have seen this for myself in alternative provision schools and special schools. I will certainly pass on his comments about allotments.

Lord Knight of Weymouth (Lab): Given the educational value of these gardens, now that the Minister has had a windfall of time landing in his diary over the next few weeks, will he find time to dig through the weeds of the school funding formula to see whether head teachers will have enough resources for school gardens? Then perhaps the seeds of doubt will sprout about whether the line he is about to give us about the school funding formula is wearing a little thin.

Lord Nash: I am most impressed with the noble Lord’s ability to weave into this Question something which might appear to be so off-piste, but he will know, from his experience of having done my job, that when all the MPs disappear to try to get re-elected it is the Lords Minister who does all the work. However, I will attempt to come back to him with a more fulsome answer to his question.

Lord Elton (Con): My Lords, there is a great deal of public awareness about the developmental pressure on playing fields, but I do not think there is any about growing space. Gardening takes room—less room than sport—but it is very important. How is the Minister informed of those pressures and how is he protecting those resources?

Lord Nash: The noble Lord makes a very good point. We are very keen to protect school land and school playing field land. There is a legal requirement on anyone holding public land which has been used for a maintained school or academy in the last eight years—or 10 years in the case of some playing field land—to seek consent from the Secretary of State. This will include land used not just for playing fields but for horticultural purposes.
Lord Nash: I certainly do. I have not heard of the charity to which the noble and learned Baroness refers but I know that other schools have been doing that. It is certainly something we would be keen to encourage.

**India: Extremism**

**Question**

3.12 pm

*Asked by Lord Ahmed*

To ask Her Majesty's Government what assessment they have made of the rise of extremism in India following the state elections in Uttar Pradesh.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we are aware of concerns over religious tolerance and community relations following recent state elections in India. Prime Minister Modi has made it clear that every citizen has the right to follow any faith, without coercion, and vowed to protect all religious groups. We welcome this statement. The Indian Government have a range of policies and programmes to support minority groups, and we support India's commitment to the fundamental rights enshrined in its constitution.

Lord Ahmed (Non-Afl): I thank the Minister for her reply. Is she aware of the recent Hindutva vigilante-style attacks on Christians, Muslims, Sikhs and Dalits? According to a senior Indian army general, HS Panag, and the former chief justice of the Delhi High Court, the honourable Mr Shah, right-wing nationalists such as RSS and the Hindutva brigade have targeted all minorities in the name of nationalism. Is the Minister aware of the concerns expressed in the Pew report on religious intolerance in India, and the United States Commission on International Religious Freedom's report on the constitutional and legal challenges faced by religious minorities in India? Will Her Majesty's Government remind the BJP Government of their obligations under international law for the protection of minority communities?

Baroness Anelay of St Johns: My Lords, we share the noble Lord's concern about the importance of ensuring that there is religious freedom, because it is a foundation for economic and public security. I can assure him that the British high commission in New Delhi discusses human rights issues with institutions such as the Indian National Commission for Minorities and state governments. More than that, in direct answer to his question, the British Government work directly with the Indian Government to build capacity and share expertise to tackle challenges, including the promotion and protection of human rights. Next month, that will include working with India on its universal periodic review.

**Baroness Anelay of St Johns**: My Lords, the Prime Minister referred to reports of violent offences when she visited India in the first bilateral overseas visit after she became Prime Minister last summer to show the importance that we ascribe to our relations with India. The reports have also been raised more recently by my honourable friend the Minister for Asia when an Indian Minister visited this country. So we will continue to raise those issues. It is for the benefit of both countries that we develop our trade relationship—but, as I mentioned earlier, it is our firm belief that good relations and strong human rights are the underpinning for successful economic development.

Lord Wallace of Saltaire (LD): My Lords, does the Minister agree that when the UK lea ves the European Union, the focus of the Foreign and Commonwealth Office will be on trade and economic development alone. Will she repeat, again, that there can never be a trade-off between economic trade and human rights and that we will remain committed to raising our concerns with President Modi at every opportunity, because the recorded level of violence against minorities has increased and we must raise it with the Government?

Baroness Anelay of St Johns: My Lords, we are indeed clear friends of India. The UK-India trade relationship is flourishing. The two Prime Ministers agreed that, when the UK leaves the European Union, they will make it a priority for both countries to build the closest possible commercial and economic relationship—but our friendship also goes to the development of human rights.

Baroness Anelay of St Johns: My Lords, does my noble friend the Minister agree that, instead of interfering in the internal democratic processes of the world's largest democracy, the Government should be working closely with Prime Minister Modi's Government to open up and liberalise the Indian economy, and encourage more trade and investment between the UK and India to promote development in both countries? That is what the people of Uttar Pradesh overwhelmingly voted for, and that is the clear message we should send to India—one of our closest friends and allies—from this British Parliament.

Lord Collins of Highbury (Lab): I am grateful for that commitment by the Minister, because many of us will be very concerned that, as a consequence of Brexit, the focus of the Foreign and Commonwealth Office will be on trade and economic development alone. Will she repeat, again, that there can never be a trade-off between economic trade and human rights and that we will remain committed to raising our concerns with President Modi at every opportunity, because the recorded level of violence against minorities has increased and we must raise it with the Government?

Baroness Anelay of St Johns: My Lords, with regards to the diaspora, ensuring that there are good community relations is a serious issue. How could I think otherwise coming from Woking, where such a significant proportion of the community brings with them the strength of their background in the Punjab and enriches our community? It is important that, across the United Kingdom, faith should join us, not break us up.
3.18 pm

**Question**

**Asked by Lord Dykes**

To ask Her Majesty’s Government what assessment they have made of the principal Brexit negotiation issues following the invoking of Article 50.

**The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con):** My Lords, the Prime Minister’s letter to the President of the European Council comprehensively articulates this Government’s assessment of the principal negotiation issues. We are pleased that the indications are that both sides wish to approach these talks constructively and we look forward to negotiations beginning when the time comes.

**Lord Dykes (CB):** I thank the Minister for that Answer. Bearing in mind the importance from now on of very close relations with another leading member state—France—and the importance of trade negotiations, will the Government make an effort to have close relations with it in the context of national member states and their responses to the Brexit negotiations to make sure that, even if the Government cannot go as far as accepting the wise advice of Mr Macron when he came to London last February, they will make every effort to make sure that we have a good outcome?

**Lord Bridges of Headley:** I thank the noble Lord for that question. He will not expect me to comment on individual elections in other European member states, but your Lordships can rest assured that my ministerial colleagues and I are doing all we can to have relationships that are as cordial as possible and to build the atmosphere of trust that we wish to see before the negotiations begin.

**Baroness Smith of Newnham (LD):** My Lords, what assessment have the Government made of the amount of parliamentary time that will be lost thanks to a general election and whether that can be added back in, so that there is adequate parliamentary scrutiny of the negotiations, given that the limit for the negotiations is two years and we are going to lose about two months?

**Lord Bridges of Headley:** I can assure the noble Baroness and all noble Lords that there will be ample time for a debate about the matters before us, not just over the months to come after the general election but in the weeks before it—I am sure everyone is looking forward to it. As regards the time lost, I draw the noble Baroness’s attention to the fact that, as I understand it, the General Affairs Council will not adopt the Commission’s draft negotiating guidelines until 22 May at the earliest. Therefore, political negotiations will not begin before early June. As the Commission has said, those negotiations will begin after the general election on 8 June.

**Baroness Hayter of Kentish Town (Lab):** My Lords, on the election, as TV’s Mrs Merton famously asked Mrs Daniels, “So what first attracted you to the millionaire Paul Daniels?”, perhaps I could ask Mrs May, “So what first attracted you to an election when you were apparently 20 points ahead in the polls?”. However, the Question in front of us is about Europe. We need an exit that assures access to the single market, a continuing relationship with Euratom and the other agencies, and protection of the rights of EU nationals. Some of these might require some involvement with the ECJ. Does the Minister not think that this is something the Government might now look at, so that we can achieve those broader objectives?

**Lord Bridges of Headley:** I am delighted that the noble Baroness is looking forward to 8 June as much as a number of us are. I can absolutely assure the House that we are looking at options as set out in the Government’s White Paper. The Prime Minister, I and other ministerial colleagues have made it clear time and again that we wish to end the primacy of EU law once we have left the EU. As regards the specific issues, I have nothing further to add to what has already been set out in the White Paper.

**Lord Garel-Jones (Con):** My Lords, given the complexity of the negotiation with the 27 other member states, does my noble friend agree that any attempts, from wherever they may come, to push the Government towards revealing their negotiating positions can only weaken those positions?

**Lord Bridges of Headley:** My noble friend speaks with considerable experience of negotiating in Europe, so I absolutely heed his remarks. As I have said time and again at this Dispatch Box, while ensuring that this House and the other place will have the opportunity to scrutinise the Government’s negotiating position, it is of paramount importance, as my noble friend so rightly says, that we protect our negotiating position, as that is clearly in our national interest.

**Lord Pearson of Rannoch (UKIP):** My Lords, is not the deeper problem that the Eurocrats are much more interested in keeping their sinking project of European integration afloat, because it pays them so well, than they are in meeting the needs of the real people of Europe, which are much the same as ours?

**Lord Bridges of Headley:** The noble Lord has his own unique way of saying things and not mincing his words. I think we can be sure about that. It is in all our interests, on this side of the channel and right across Europe, to ensure that the withdrawal negotiations work in both our and Europe’s interests, and to ensure that our exit is smooth and orderly and that we continue to trade with our European partners as we have done for generations in the past. That is the overriding intention, and it is good to see that so many of our European partners are saying similar things as we speak.

**Lord Forsyth of Drumlean (Con):** My Lords, on the subject of making the best use of parliamentary time, would it not be a good start after the general election if every party in this House accepted the results of the referendum?
Lord Bridges of Headley: My Lords, that would be a very good thing. As the Prime Minister has said, this party and this side of the House will be setting forward a clear approach to those negotiations to ensure that we get the very best deal for this country in the months ahead.

Lord Wrigglesworth (LD): My Lords, does the Minister agree with the CBI assessment that we will have to establish the equivalent of 34 domestic agencies to replace EU agencies when we withdraw—if we do—from Europe? Has any assessment been made of that and, in particular, of the cost of funding 34 agencies?

Lord Bridges of Headley: The noble Lord makes a good point. Considerable work is being undertaken by my department and right across Whitehall regarding the impact of our withdrawal on UK regulators and regulatory bodies. I shall not go into detail on that at this precise juncture, but noble Lords should rest assured that in the months ahead, were a Conservative Government to be returned, we would ensure that those plans are set out.

Lord Cormack (Con): My Lords, I thank my noble friend for using the word “partners” so regularly. Would he remind certain Members of your Lordships’ House, including the noble Lord, Lord Pearson, that we are talking not merely to Eurocrats but to companions and friends in 27 other European nations?

Lord Bridges of Headley: My noble friend makes a very good point. As I have said before—indeed, a moment ago—it is absolutely in our interests to ensure that these negotiations are not only in our mutual interests but also smooth and orderly. It is in no one’s interest to see Europe’s prosperity or security diminished as we leave the EU.

Baroness McIntosh of Hudnall (Lab): My Lords, would the Minister care to confirm, as he has in the past, that accepting the result of the referendum does not have to imply not scrutinising what comes after?

Lord Bridges of Headley: I have enjoyed the debates that we have had in this House, and I have said many times that obviously this House and the other place will have a considerable role to play as we leave the EU in scrutinising the Government’s proposals, the way ahead and the significant pieces of legislation, not least the great repeal Bill, that Parliament will be asked to pass.

Nuclear Energy: Small Modular Reactors

Question

3.26 pm

As asked by Viscount Hanworth

To ask Her Majesty’s Government what progress has been made in assessing the submissions to the Small Modular Reactors Competition, and what steps are being taken to dispose of the nation’s stocks of high-grade plutonium.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, last summer officials met with all eligible small modular reactor competition participants to discuss their proposals. We will communicate next steps for the SMR programme in due course. Significant work is already under way to assess the options for the long-term disposition of the UK’s civil plutonium inventory. The different technologies have varying degrees of maturity, and more work is required to enable the UK to assess, select and subsequently implement the preferred option.

Viscount Hanworth (Lab): I thank the Minister for that Answer. I am glad to hear that the second stage of the competition is forthcoming. The competition has been a confusing affair. It has been inhibited by the rules that prevent the Government engaging directly with competitors. The decision on how to handle our stocks of plutonium has been held in abeyance for many years. Is it true that the Government are now disregarding the possibility of using plutonium to fuel a fast reactor such as the PRISM or the CANDU reactors, and that they are favouring subterranean disposal? My essential question is this: when will the Government recognise the need to adopt a strategic plan for our nuclear industry that is supported by the necessary government funds?

Lord Prior of Brampton: My Lords, the Government’s position is clear on how to deal with the plutonium inventory that we have accumulated over many years: the NDA has been set up with the funds to assess the two broad options, which are either to reuse plutonium or to store it safely.

Lord Howell of Guildford (Con): My Lords, I declare an interest as chairman of the Windsor Energy Group. Does my noble friend agree that the SMRs hold out one of the best paths for the development of cheaper but also safe nuclear power, and probably perform better than the existing vast creations and structures that have been built today? Does the competition cover not only the conventional SMRs but the other technologies, including stable salt reactors which offer an even cheaper and safer form of nuclear power? They are now being developed and taken up by the Canadians and may be the way forward for us as well.

Lord Prior of Brampton: My Lords, the honest answer is that we simply do not yet know whether small modular reactors will represent a cheap source of low-carbon energy for the future. We just do not know what the economics are, which is why in due course we will be publishing a technical and economic evaluation, based on assessing the 32 proposals that have been put to us for SMRs. The only truthful answer at the moment is that the jury is still out.

Lord Fox (LD): My Lords, the Minister will be aware that different designs of SMR require different levels of fuel enrichment, and that that brings into play proliferation issues. Can he explain what thoughts and conversations are going on about proliferation and how the UK will continue to pursue non-proliferation issues when we summarily remove ourselves from Euratom?
Lord Prior of Brampton: My Lords, clearly, in any assessment of new SMR technology, safety and non-proliferation will be crucial. The regulatory and policy aspects of developing SMRs are very much at the front of the Government’s mind.

Baroness Brown of Cambridge (CB): My Lords, I speak as a proud former Rolls-Royce engineer and, as a result of my employment, a Rolls-Royce shareholder. Given the news that the EU is now excluding the UK from new collaboration, the growing evidence of the challenge of financing major nuclear power station development and the importance of low-carbon energy technologies to global decarbonisation, does the Minister agree that our exit from the EU provides an excellent opportunity to support UK technology and jobs— including in the steel industry, which we will be talking about tomorrow—and to address a major global export market through government support for the Rolls-Royce-led small modular reactor programme? I suggest that that would be a great feelgood message for after the election.

Lord Prior of Brampton: As the noble Baroness knows, Rolls-Royce is one of the 32 companies which have submitted a proposal. There is no doubt that if we could build SMRs on a modular basis, much of the work could be done in the UK. We may have lost out in the race to build big nuclear plants, but companies such as Rolls-Royce and others in the UK could compete effectively on SMRs and we could then export them around the world. But there is no point embarking on that new technology until we are sure that it can deliver low-carbon energy at an economic cost.

Lord West of Spithead (Lab): My Lords, there seem to be huge benefits in moving down the route of small modular reactors. The Minister will be aware that, notwithstanding the efforts of my leader, the Navy runs a huge number of nuclear reactors. When those nuclear submarines are plugged into the national grid, does the MoD get money back for the electricity being put into the national grid?

Lord Prior of Brampton: I am not quite clear whether the noble Lord is announcing yet another Labour Party policy: that in future, Polaris submarines will, instead of firing Trident missiles, be plugged into the national grid, but it is something to conjure with. In principle, the way that the grid will be supplied in future will enable those supplying it, whether through SMRs or other ways, to be properly remunerated.

Lord Broers (CB): My Lords—

Lord Elis-Thomas (Non-Afl): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, we will take the Cross Benches.

Lord Broers: My Lords, does the Minister realise that this is a very competitive industrial situation? We cannot go on procrastinating. In engineering matters, there is never 100% certainty. We must step forward and take a risk on this, to my mind.

Lord Prior of Brampton: The noble Lord makes the good and strong point that you can never be 100% sure, but you have to assure yourself that there is a route to market before you embark on a major new capital investment.

Arrangement of Business

3.33 pm

Lord Taylor of Holbeach (Con): My Lords, I wish to make a short Statement on this week’s business, which I hope will be of convenience to the House. It will not have escaped noble Lords’ attention that there were several developments last week. On Tuesday morning, my right honourable friend the Prime Minister announced her intention to invite the House of Commons to agree to an early Dissolution of Parliament to allow for a general election on Thursday 8 June. The other place did so emphatically last Wednesday. Following that decision, in consultation with the usual channels, the Whips’ Office issued a revised Forthcoming Business last Thursday, which included a number of changes to this week’s business to reflect the fact that the end of this Parliament is nigh. I am grateful to the usual channels for their constructive co-operation in this matter.

In a moment, my noble friend the Leader of the House will invite the House to agree to the Motion, which is a standard feature of what we know as wash-up at the end of a Parliament, to ensure that the remaining business can be considered this week, in the way indicated in Forthcoming Business. The majority of the remaining business will be the consideration of reasons or amendments from the Commons in the normal way, to the timings indicated in Forthcoming Business. This week’s business includes two Bills that are on their way to us from the Commons—the Finance (No. 2) Bill and the Northern Ireland (Ministerial Appointments and Regional Rates) Bill. It is proposed that both Bills go through their substantive stages in this House on Wednesday. It is also proposed that the Third Reading of the Criminal Finances Bill immediately follows the conclusion of its Report stage tomorrow.

Finally, subject to the progress of the remaining business, we expect to be able to prorogue at the conclusion of this Thursday’s business. I will update the House further as necessary, as the week progresses.

Business of the House

Motion on Standing Orders

3.36 pm

Moved by Baroness Evans of Bowes Park

That Standing Orders 40 (Arrangement of the Order Paper), 42 (Postponement and advancement of business) and 46 (No two stages of a Bill to be taken on one day) be suspended until the end of the Session so far as is necessary to allow Her Majesty’s Government to arrange the order of business.

Motion agreed.
Immigration Act 2016 (Consequential Amendments) (Biometrics and Legal Aid) Regulations 2017

Motion to Approve

3.36 pm

Moved by Baroness Williams of Trafford

That the draft Regulations laid before the House on 13 March be approved.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the statutory instrument before the House makes consequential amendments to two pieces of primary legislation. The first is the Legal Aid, Sentencing and Punishment of Offenders Act 2012, also known as LASPO. The second is the Immigration and Asylum Act 1999. These amendments are necessary for the commencement of the new immigration bail powers under Schedule 10 to the Immigration Act 2016.

LASPO is being amended in respect of access to legal aid for individuals liable to detention. The Immigration and Asylum Act is being amended in respect of the collection of fingerprints from some individuals in connection with the conditions of their immigration bail. The intention behind the amendments is to maintain the status quo for when legal aid may be accessed and when fingerprints may be taken. This statutory instrument is before your Lordships in the context of the commencement of Schedule 10 to the Immigration Act 2016. When commenced, Schedule 10 will create a new status of immigration bail to replace the complex legal framework under the Immigration Act 1971 in respect of individuals liable to immigration detention.

There are currently a total of six legal statuses relating to bail or release for individuals liable to immigration detention under the 1971 Act. It may be useful to noble Lords if I were to list these. They are: temporary admission or release, under paragraph 21 of Schedule 2; bail, under paragraph 22 of Schedule 2; bail, pending appeal, under paragraph 29 of Schedule 2; bail, pending removal, under paragraph 34 of Schedule 2; bail, pending deportation, under paragraph 3 of Schedule 3; and release on restrictions, under paragraphs 2(5) or 4 of Schedule 3.

Under Schedule 10, these six statuses will be simplified to one single status of immigration bail. This statutory instrument makes the necessary amendments to harmonise the legal framework surrounding release from detention, such that it complements the new system that will be introduced upon commencement of Schedule 10. It follows that the reason for this statutory instrument being before the House today is so that commencement of Schedule 10 can progress smoothly. These changes to primary legislation are necessary to enable the new bail regime to function.

The LASPO amendments are being made to ensure that access to legal aid for immigration bail is neither narrowed nor widened following the commencement of Schedule 10. Indeed, when Schedule 10 is commenced, the provisions to which LASPO refers will be repealed. As I have already made clear, this means that changes to LASPO are required. The changes I refer to are in relation to paragraphs 26 and 27 of Schedule 1 and I will provide some further detail in this respect.

Paragraph 26 provides for a person who is temporarily admitted to the UK to be eligible for legal aid. Paragraph 27 provides for a person who has been released on restrictions to be eligible for legal aid. This statutory instrument amends both those paragraphs to reflect the new legal framework under Schedule 10. We are also inserting a new paragraph 27A into the relevant part of LASPO. This does not represent a change of substance, but is a necessary change in order to ensure that those who are currently eligible for legal aid remain so. I ask noble Lords to note that paragraph 25 of Schedule 1 to LASPO does not need to be changed since it relates to people who are being detained. Those in detention are already eligible for legal aid in respect of bail; the move to immigration bail under Schedule 10 does not change this.

This statutory instrument also makes minor changes to the Immigration and Asylum Act 1999 and I will give some context. Schedule 10 will change the reporting conditions that can be attached to what will become immigration bail. Section 141 of the Act provides a power for an authorised person to take fingerprints from an individual in given circumstances. One such circumstance concerns individuals who have been refused leave to enter but who, under current provisions, are temporarily admitted. The power is exercised if an immigration officer reasonably suspects that the individual might break the conditions of temporary admission relating to residence or reporting and must therefore have their fingerprints taken. Section 141 of the Immigration and Asylum Act currently refers only to a condition for reporting to the police or to an immigration officer. However, the new powers under Schedule 10 mean that immigration bail can instead be imposed, subject to a condition requiring a person to report to the Secretary of State or any other such person as may be specified. This statutory instrument makes the necessary amendment to reflect the new provisions.

In conclusion, the consequential amendments made by this statutory instrument are intrinsic to the smooth and orderly commencement of Schedule 10 to the Immigration Act 2016. The amendments ensure that the new power of immigration bail will not adversely impact on anybody. The amendments to LASPO mean that an individual who is subject to the new encompassing status of immigration bail under Schedule 10 will be treated no differently from the way in which they would have been treated had they fallen under one of the six discrete statuses under the Immigration Act 1971. At the same time, this statutory instrument ensures that biometrics will be taken from only the same cohort of individuals as before, in circumstances as outlined in the legislation. I commend this statutory instrument to the House.

3.45 pm

Lord Campbell-Savours (Lab): My Lords, I wish to intervene in a narrow area. As I understand it, Section 141 of the Immigration and Asylum Act 1999 provides a power for “an authorised person” to take fingerprints from an individual in circumstances as set out in that section. One of those circumstances concerns an individual who has been “refused leave to enter ... but has been temporarily admitted under paragraph 21 of Schedule 2”.

The power is engaged, “if an immigration officer reasonably suspects” that the individual might break the conditions of temporary admission relating to residence or reporting. I understand that that group of persons is regarded as high-risk, and that is the justification for taking that action.

However, in the United States of America, under the US-Visit programme run by the Department of Homeland Security, at least 10 fingerprints are taken. A digital photograph is also taken to log and register facial characteristics. That is done for a group of persons entering the United States who are considered a lesser risk than the group referred to in these regulations. To what extent should we widen the amount of information that is held in the United Kingdom, which is described generally in the regulations as simply fingerprints? The regulations do not describe how many fingerprints are taken but refer merely to fingerprints. Should not the regulations be widened to cover a more comprehensive acquisition of information in the way that I have suggested? Will the Minister give us more information on precisely why we are not going down the more comprehensive American route? Are we absolutely convinced that the amount of data we are collecting is satisfactory and adequate in the circumstances?

Lord Kennedy of Southwark (Lab): My Lords, the regulations before us are not in themselves controversial. As the Minister outlined, they make relatively minor changes in respect of provisions contained in the Immigration Act 2016, the Immigration and Asylum Act 1999 and LASPO. I have read the regulations and the Explanatory Notes and am content that the Government have the required powers. As I said, these regulations are relatively minor changes. No concerns have been raised by the Joint Committee on Statutory Instruments. My noble friend Lord Campbell-Savours raised an interesting point. I look forward to the Minister responding to it. Paragraph 7 in the Explanatory Notes is particularly helpful as it sets out the policy background and why these regulations are needed. Therefore, I will detain the House no longer. I am content with the regulations.

Baroness Williams of Trafford: I thank the two noble Lords who have spoken. I say to the noble Lord, Lord Campbell-Savours, that these statutory instruments make consequential amendments to legislation. Legislation is constantly kept under review. As regards widening the scope of the measure, I cannot predict the decisions of a future Government, who may, of course, not be a Conservative Government. However, I am sure that a future Government will consider that measure when keeping legislation under review. At the moment, we have no plans to extend the current practice. Section 141 does not limit the number of digits from which fingerprints may be taken. However, officials who decide to take fingerprints must ensure that their actions are proportionate to the reasons why they are taking them.

Motion agreed.
Vulnerability, Safeguarding and Countering Extremism

accepted the advisory council’s advice that these substances should be subject to the order before you today. It is intended that two further related statutory instruments will be made to come into force at the same time as the order to add these substances to the appropriate schedule to the Misuse of Drugs Regulations 2001 and to the Misuse of Drugs (Designation) Order 2001.

This order, if made, will provide enforcement agencies with the requisite powers to restrict the supply and use of these harmful substances in this country. It will also provide a clear message to the public that the Government consider these substances to be a danger to society. I beg to move.

Lord Kennedy of Southwark (Lab): My Lords, I am supportive of the order before us this afternoon. I will not be attempting to pronounce any of the names in it. I have carefully read the order and the Explanatory Memorandum and am content to agree it. The Explanatory Memorandum is very helpful, particularly section 7, which sets out the policy background.

It is worth noting that the drugs are being permanently listed as controlled substances in each of the classifications today—namely, class A, class B and class C—on the advice of the independent experts who make up the Advisory Council on the Misuse of Drugs. This is being done following a review they carried out, and they are the experts in these matters. It is also worth noting—again, this is in section 7—that in each of these classifications these drugs have led to the loss of life. I suspect that those affected are more likely to be younger people, and of course that is devastating for their families. Losing anyone at any age is terrible, but in circumstances where that could have been avoided it is all the more heartbreaking.

In conclusion, I am content to approve the order and, with the other measures that are in force with the police, the NHS and the community drug projects, I hope that it will go some way towards ensuring that the people responsible for bringing these substances on to the street are caught and punished, and that their operations are shut down. Then the people taking these substances can get the help they need to get off them and deal with the problems they have in their lives. I am very happy to support the order.

The Earl of Sandwich (CB): My Lords, I have to declare an interest in that my son suffered from benzodiazepines for several years and has only recently, mercifully, recovered from them. Therefore, I have been very well aware of this word.

I am delighted to hear the Minister say that the department is much more aware of the harmful effects of these legally prescribed drugs. However, is she also aware that a proposal has been put forward to the department on providing the minimum help of a helpline for people who are afflicted? This has been put on the table and, if she is not aware of it, she might be able to write to me about it.

Baroness Williams of Trafford: I am most grateful to the noble Earl and the noble Lord for their very constructive comments, and I am very glad to hear that the noble Earl’s son is now in recovery. On his point about a helpline, a number of tools are certainly available to people through websites. I am trying to think of the name of the website—

Lord Kennedy of Southwark: FRANK.

Baroness Williams of Trafford: That is it. FRANK is an aid to guide people—particularly young people—away from drugs and the consequences of their use. Helplines are available. I do not know the answer regarding the one to which the noble Earl referred but I can get him some information.

On that note, I thank noble Lords for their comments.

Motion agreed.

Greater Manchester Combined Authority (Functions and Amendment) Order 2017

Motion to Approve

3.57 pm

Moved by Lord Bourne of Aberystwyth

That the draft Order laid before the House on 20 March be approved.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the draft order that we are considering today, if approved and made, will provide further new powers for Greater Manchester, as agreed in the devolution deals, to support its programme of public sector reform.

The Government have of course already made good progress in delivering their manifest commitment to implement the historic devolution deal with Greater Manchester. Since agreeing the first deal with Greater Manchester in November 2014, we have passed the Cities and Local Government Devolution Act 2016, followed by a considerable amount of secondary legislation in relation to Greater Manchester. In March 2016, we passed legislation to establish the position of an elected mayor, who will also take over the role of the Greater Manchester police and crime commissioner. The first mayor will be elected on 4 May this year and will hold a three-year term of office.

In December 2016, we passed legislation giving Greater Manchester new powers on housing, planning, transport, education and skills, some of which are to be undertaken by the mayor individually and others by the members of the combined authority collectively. On 24 March, following parliamentary approval, the Minister for Policing and the Fire Service made two orders which transfer the functions of the Greater Manchester Fire and Rescue Authority to the mayor on 8 May and the fire and rescue assets and liabilities to the combined authority, as well as abolishing the fire and rescue authority. They also set out the detailed operation of the police and crime commissioner function when it transfers to the mayor on 8 May, and they transfer the assets and liabilities of the police and crime commissioner to the combined authority.

The draft order we are considering today provides a further significant step for Greater Manchester. It gives effect to many of the further proposals for devolution on which Greater Manchester has consulted. If approved and made, it will enable the mayor to designate areas
as mayoral development areas, subject to agreement from combined authority members, and require the mayor to prepare local transport policies and plans, subject to agreement from seven of the 10 combined authority members—this is a function currently undertaken by the combined authority collectively. It will enable the mayor to pay grants to local authorities, which is designed to support the mayor’s decisions around the use of the consolidated transport budget, and require the mayor’s vote to be carried in any decision relating to use of the “earn back” infrastructure fund. It will transfer the functions, assets and liabilities of the Greater Manchester Waste Disposal Authority to the combined authority and abolish the waste disposal authority on 1 April 2018. It will also provide the combined authority with the same powers to share information as the constituent authorities have in relation to crime and disorder, education and skills, and environmental issues.

4 pm

The order also provides for funding and constitutional arrangements to support these functions. It requires committee membership to reflect the political balance of the constituent councils, rather than the combined authority itself; that is, as a whole, as it is the constituent councils that make up the combined authority. It requires a chair of any overview and scrutiny committee to be a local councillor who is not a member of the same political party as the mayor. It also enables a single panel to make recommendations on the remuneration levels of the mayor and other combined authority members.

The statutory origin of this draft order is in the governance reviews and schemes prepared by Greater Manchester, in accordance with the requirements in the Local Democracy, Economic Development and Construction Act 2009. Greater Manchester published two schemes, in March and July last year, which included proposals on the powers in this order. As provided for by the 2009 Act, Greater Manchester consulted on the proposals in these schemes. The first consultation ran from March to May and the second ran throughout July and August. The combined authority led the consultations in conjunction with the 10 local authorities. The consultations were primarily conducted digitally, with an online questionnaire and promotion through social media. Posters and consultation leaflets were available in prime locations across Greater Manchester, and respondents were able to respond in writing.

As statute requires, the combined authority provided to the Secretary of State summaries of the responses to each of the consultations. Before laying this draft order before Parliament, the Secretary of State considered the statutory requirements in the 2009 Act. The Secretary of State considers that conferring these functions on the Greater Manchester Combined Authority would be likely to lead to an improvement in the exercise of the statutory functions. In considering it appropriate to confer local authority powers on the combined authority and make constitutional changes, the Secretary of State has had regard to the impact on local government and communities, as he is required to do. Also as required by statute, the 10 constituent councils and the combined authority have consented to the making of this order. In parallel with this order, we have laid a report before Parliament which sets out the details of the public authority powers we are conferring on Greater Manchester through this order, as required by the 2009 Act.

In conclusion, implementation of the devolution agreements made with Greater Manchester is truly under way. The councils in Greater Manchester have been working closely together for decades, and formally as a combined authority since 2011. The draft order we are considering today is a further significant milestone for Greater Manchester. We will continue to work and devolve more powers to Greater Manchester, contributing to greater prosperity and a more balanced economy, and to economic success across Greater Manchester, the northern powerhouse and the country. I commend this draft order to the House.

Lord Beecham (Lab): My Lords, I thought the Minister might have made a glancing reference to the present editor of the Evening Standard for his contribution in a previous life—well, not quite previous life, but shortly to be so—as the author of what is described as the northern powerhouse. Some of us, however, might regard it as something of a northern poorhouse in large parts of the area where there are very significant social problems.

The noble Lord referred to the consultation process, and it is certainly true that there was a process. I am not sure whether he is delighted with the response because, out of the 2.16 million people resident in the area, a grand total of 511 responded to the consultation—that is to say that there were 511 responses, although that does not necessarily mean 511 different people, since some of them may have replied to more than one of the propositions. It is not a matter that has apparently elicited any great enthusiasm in the area, although that does not necessarily disqualify the substance of the regulations from approval.

I would welcome comment on a specific issue. Paragraph 2.6 of the report that accompanies the order states that the Act will be amended to provide that the Secretary of State may by order make provision for any function of a mayoral combined authority to be a function exercisable only by the Mayor and such an order may confer ancillary powers on the Mayor for the purposes of the exercise of general functions”.

On the face of it, that appears to give the Government the right to prescribe extra powers to the mayor without the agreement of the combined authority. Will the Minister say whether that is the case or, if not, assure the House and indeed the local authorities that that power is not to be exercised by the mayor without the consent of the combined authority?

Lord Deben (Con): My Lords, I have raised this question before, but I do so again in the hope that this time the Government will listen. If one investigates these orders, in every case local authorities are being given powers that devolve to them choices and decisions that are more suitable for people living in the area. However, the other characteristic is that they enable local authorities to think in a much more holistic way to bring together housing, transport and planning. Yet as far as I can see the Government themselves are not
[LORD DEBEN]

learning their own lesson about how they do things in the centre. We still do things in the centre in precisely the siloed way that we are trying to avoid when it comes to devolution. We are about to have a general election, and this is an ideal moment for the Conservative Party, as represented by the Minister, to say that in future it will reorganise government so that government thinks in a non-siloed way.

I was rather unhappy with the comments of the noble Lord, Lord Beecham, which were a little curmudgeonly. After all, many of us have been looking for devolution for a long time. We thought that that was the essential way to reconnect politics with people; what they see in their locality matters a great deal. However, when we started to think about it we recognised that there was not much point in doing that if we merely replicated the siloed system at the centre. If in this most recent essay in better democracy we come to the conclusion that holistic thinking is the answer, should we not learn that lesson ourselves at the centre?

I hope that my noble friend will be able to say that he will take from this House the message to those concerned with the production of election manifestos—I hope the party opposite will do the same—that we all ought to be concerned with holistic government. If we have started to think in that way in relation to local authorities, we should do it at the centre was well.

Lord Beecham: Does the noble Lord agree that restoring the regional offices of local government, which the previous Conservative Government instituted, would be a helpful way of achieving the objectives to which he referred and with which I concur?

Lord Deben: I do not really want to politicise what is, I think, a generally accepted view about one successful and agreed part of the devolution proposals that we have at the moment. Let us keep to where we can be united and seek to get this Government and this Opposition in their various forms at least to agree on this simple concept. Let us have holistic government and not divided government.

Baroness Pinnock (LD): We on this side support much of what is in the order. The extension of powers and functions to the mayoral authority in Manchester is to be applauded, especially as it moves some way towards those that are enjoyed in London. However, even in London, the decisions made by the mayor can be called to account by an elected body, the London Assembly. Manchester will have the leaders of the constituent councils, and a scrutiny committee will be formed from those constituent councils—that is all. No specific body will be elected for the purpose of calling the mayor and his decisions to account, but the more powers that are given to the mayoral function the more important that calling to account becomes.

The Minister has listed the significant powers that the mayor of Manchester is to have. They include policing, fire, strategic planning, transport and housing, and waste disposal is now added to that list. The only way in which the constituent members of the combined authority can call the mayor to account on the decisions and choices that he makes is via either the council leaders or a small scrutiny committee. I for one think that is inadequate, and I envisage a point further down the line when the mayor will make a controversial decision and local residents will ask themselves, “How did this happen? Who made the decision and why were we not involved?”

That is the danger, which I would urge the Minister to consider and rectify at some point in the future, particularly as money is now involved. This has already been pointed out, but I will quote from Part 5 of the order, which relates to funding. It states that, “the constituent councils must meet the costs of the expenditure reasonably”—whatever that means—“incurred by the Mayor in, or in connection with, the exercise of the functions specified”.

That, it goes on to describe, is regardless of whether the constituent councils agree, because there only has to be a majority decision among the leaders of those councils, which means of course that local taxpayers in one of the constituent councils could be asked to contribute to a scheme with which their leader does not agree. I find that quite disturbing. There ought to be a mechanism for reaching difficult decisions that enables all local councils to agree to them. That in my view means the kind of set-up that we have in London with the London Assembly.

Obviously there is much in the order about devolution that I agree with and that is right, because we will have a body with a strategic vision for the conurbation of Manchester. What is not acceptable in my view is the lack of democracy that attaches to that, and the dangers of investing all those powers in one person. I hope that the Minister will be able to respond to these concerns.

Lord Kennedy of Southwark (Lab): My Lords, I shall start with my usual declaration and refer the House to my interests in the register. I declare that I am an elected councillor in the London Borough of Lewisham and a vice-president of the Local Government Association. The Greater Manchester Combined Authority order before us brings into force what I hope is the final part of the agreement. I feel that we always seem to be discussing the Greater Manchester Combined Authority in various forms and I hope that this is the last time we will need to consider it before the election itself.

I have no particular issue to raise on the order. My noble friend Lord Beecham raised an important point on consultation. We have now had a number of these orders and I think that it is fair to say that, for each one, the consultation responses, while I will not say they have been derisory, have not been overwhelming coming through the door. At some point the Government might need to look at how we are consulting people. These are quite big changes that are taking place and, if no one is engaging with the discussion on that, it will be something we shall all regret.

The noble Lord, Lord Deben, made some important points on the devolution of power. I support the devolution of power. If the noble Lord and I were agreeing the manifestos of our respective parties we would be absolutely fine and we would probably agree. But I have no role at all in the Labour manifesto this time, so we will have to see what comes up. The noble Lord and I would probably agree on many things.
4.15 pm

The noble Baroness, Lady Pinnock, made some important points on scrutiny. Effective scrutiny is important. I have an example of effective scrutiny. Many Members may know that I support Millwall Football Club and have done since I was a very young lad. It is fair to say that my council got into some difficulties earlier this year over the development there—but, thanks to some very effective scrutiny undertaken by the town hall and the scrutiny committee, we were able to get behind that and show that the proposal was not right. It has now been abandoned. So that was effective scrutiny. When the mayor makes decisions, it is important that there is a mechanism for scrutiny. The noble Baroness was right to make those points.

In conclusion, I pay tribute to Tony Lloyd, who is the police and crime commissioner for Greater Manchester. He served as a Member of Parliament for just short of 30 years, for two Manchester seats. He was elected in 1983 and stood down from Parliament in October 2012. He served his city with great distinction as a Minister. He was also chairman of the Parliamentary Labour Party for six years. It is no mean feat to last six years in that job. He went on to be the police and crime commissioner for Greater Manchester and has been there since November 2012. We owe him a debt of gratitude for all the work that he has done for Manchester and Greater Manchester. With that, I am very happy to agree to the order.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on this order on Greater Manchester. I will pick up first on the fulsome tribute paid by the noble Lord, Lord Beecham, to George Osborne—equalled only by the fulsome tribute made by the noble Lord, Lord Kennedy, to Tony Lloyd. As the noble Lord, Lord Beecham, said, it is absolutely right that George Osborne has been very firmly behind these proposals, particularly in relation to the northern powerhouse.

On the points the noble Lord made in relation to consultation, I appreciate the need for consultation and strongly support it. However, he will be aware that the Secondary Legislation Scrutiny Committee, which looked at this draft order, was content that every effort had been made in relation to consultation. I agree that it is a shame that more people did not respond: nevertheless, it is important to put that in context. Those who did respond, responded favourably in every single area that the consultation looked at, as the noble Lord is very generously indicating.

The noble Lord, Lord Beecham, is right about paragraph 2.6 of the report accompanying the order. It is not anticipated that we will use this power to upset the balance of power within the authority. Perhaps I could write him more fully on that point.

On a general point made by many noble Lords on overview and scrutiny—the noble Baroness, Lady Pinnock, and the noble Lord, Lord Kennedy, stressed the importance of this—it is important to note that, in fairness to the authority here, all the deals are bespoke: each one is somewhat different. Greater Manchester has gone further on independence of members by ensuring that a member represents the constituent authority. The chair of any overview and scrutiny committee has to be of a party different from that of the mayor. That does not necessarily apply to the audit committee. That must have an independent member, but they need not necessarily be the chair. I applaud the authority for pushing for that—and the Government were of course very keen to accept it.

My noble friend Lord Deben spoke graphically and eloquently of the silo system of government. I have much sympathy with him on this point and will take it forward. He may have other avenues open to him—perhaps even further up the food chain than me—where he can perhaps convey that message to ensure that it is taken on board. It is a message that is heard loud and clear.

I thank the noble Baroness, Lady Pinnock, for her general welcome for the draft order and the programme of devolution. I agree with her on the need for balance between the different parts of the devolution deal; that is, the councils represented by individuals on the combined authority, and the mayor. On expenditure, while I appreciate that the phrase “reasonably incurred” perhaps lacks a certain substance, the courts are familiar with dealing with it. However, I take the general point that the noble Baroness makes; it is a very fair one. I also take her point about the need to take everybody with you in so far as you can. I am sure that any mayor of Greater Manchester, whatever their party or whether or not they are independent, will want to ensure that that is the case, so that it is not simply a question of counting heads for majority rule.

I thank the noble Lord, Lord Kennedy, once again for his constructive approach, as always, on this issue and for the vignette on Millwall. No debate is complete without a vignette from the noble Lord’s borough, and I am very pleased to hear the news on that in any event. I agree with him on the importance of scrutiny and look forward, as he does, to the elections and to taking this important step forward in the way that we govern our country. With that, I commend the draft order to the House.

Lord Kennedy of Southwark: I have a final question for the Minister; it is not a problem if he writes to me on it. Police and crime commissioners are limited to two terms. I assume that the mayor is not term-limited. Perhaps he could look at that and write to me, because it would obviously be a slightly different case when it came to looking at mayors of combined authorities, police functions and police and crime commissioners.

Lord Bourne of Aberystwyth: I thank the noble Lord and will gladly write to him on that point.

Motion agreed.

UK Convergence Programme

Motion to Approve

4.22 pm

Moved by Baroness Neville-Rolfe

That this House approves, for the purposes of section 5 of the European Communities (Amendment) Act 1993, HM Government’s assessment as set out
in the Budget Report and Autumn Statement, combined with the Office for Budget Responsibility’s Economic and Fiscal Outlook and Fiscal Sustainability Report, which forms the basis of the United Kingdom’s Convergence Programme.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, the major political events of the past few weeks have been the calling of a general election and the triggering by the UK of Article 50 of the Lisbon treaty, giving notice of our withdrawal from the EU. Given that background, today’s debate, which stems from arrangements and rules in essence designed to ensure economic convergence among EU member states, might at first glance look a little odd. But the oddity, if it exists, is on the surface only, and there is good reason for submitting the 2016-17 convergence programme before us. Most importantly, there is the fact that, until we leave the EU, we have all the rights and obligations of a member state. Of course, we continue to exercise our rights of membership in this period, and the document before us, which explains UK economic policy, especially in relation to maintaining stability and bringing down the deficit, is one such obligation.

In practice, drafting the paper was relatively straightforward, since it is based on the Spring Budget report and the OBR’s most recent Economic and Fiscal Outlook. I am sure that noble Lords who have examined it will have seen much familiar content.

I should draw to the attention of noble Lords one detailed but vital point. It is the Government’s assessment of the UK’s economic and budgetary position, and not the convergence programme itself, that requires the approval of the House. There is one further point which I should stress now. It is that, as the UK is outside the eurozone, we cannot be subject to any sanctions under the EU fiscal rules encompassed in the stability and growth pact of which the convergence programme forms part.

It may be helpful to the House if I provide a brief overview of the information that we have set out in the UK’s convergence programme, even though much of this will be familiar. Perhaps the most pleasing point is that in March 2017 we were in a better position economically than many—indeed, most—had predicted. The IMF recently revised up its 2017 growth forecast for the UK by 0.5 percentage points and growth in the second half of 2016 was stronger than the OBR anticipated in the Autumn Statement. In fact, last year the UK grew faster than most other advanced major economies, with near record employment, too. The deficit has also been reduced. Overall public sector net borrowing as a percentage of GDP is predicted to fall from 3.8% last year to 2.6% this year. It is then forecast to be 2.9% in 2017-18 and to fall thereafter to 0.7% in 2021-22—its lowest level in two decades.

As a consequence of all this, we are forecast to meet the EU’s 3% stability and growth pact target this year, for the first time in almost a decade. Accordingly, the UK will cease to be subject to the EU’s excessive deficit procedure. Although we are leaving the EU, this is good news. We are within sight of bringing to a halt the increase in the national debt as a proportion of GDP. Nevertheless, at nearly 90% of GDP, the Government believe our debt level is too high. That is why they set out fiscal rules that combine the flexibility to support the economy if necessary in the near term with a long-term objective of returning the public finances to a sustainable position.

The OBR forecasts that business investment will remain subdued as we begin the period of negotiation with our EU friends and partners. It continues to judge that, in the medium term, growth will slow due to weaker growth in consumer demand as a consequence of a rise in inflation. Accordingly, putting the public finances in good order will remain vital for the foreseeable future, all the more so given that the deficit remains too high and that there is a range of risks in the global economy. That is why we are getting ourselves into a position of readiness to handle difficulties of any kind that might come our way.

Our fiscal rules, which enable us to do that, strike the right balance between reducing the deficit, maintaining flexibility and investing for the long term. Our Autumn Statement and Spring Budget set out our plans to build on recent economic growth and our strong employment record, and indeed to raise productivity, which has been disappointingly weak over a long period. We are taking action to improve skills, to give more children the chance to go to a good school, to support the care system and the NHS, to drive innovation and to invest in infrastructure and digital. We have consulted on a Green Paper about an industrial strategy aimed at delivering a high-skilled, productive, competitive economy that benefits people in all parts of the UK. Sound public finances are an absolute necessity to make this happen and to provide the level of public services we all wish to see. That is essentially what the convergence process is about.

To conclude, following the House’s approval of the economic and budgetary assessment that forms the basis of the convergence programme, the Government will submit it to the Council of the European Union and to the European Commission. Doing so also provides the EU with a useful framework for co-ordinating fiscal policies. A degree of fiscal policy co-ordination across countries can be beneficial to ensure a stable global economy, which is of course in our own interest. The UK has always taken part in international mechanisms for policy co-ordination, such as the G7, G20 and OECD. Although we are leaving the EU, we will continue to have a deep interest in the economic stability and prosperity of our European friends and neighbours. We will also continue to play our part in this process while we remain an EU member, and we will play our part in other international policy co-ordination processes once we have left the EU. The Government are committed to ensuring that we act in full accordance with Section 5 of the European Communities (Amendment) Act 1993, and I ask this House to approve the economic and budgetary assessment that forms the basis of the convergence programme. I beg to move.

Lord Davies of Oldham (Lab): My Lords, the Minister made the best fist of a pretty thin case. First, it is somewhat absurd that we are debating and seeking to
put through a Motion on the issue of convergence just at the point when the Government have set their sails in the opposite direction, away from any convergence as far as their direct relationship with the European Community is concerned. At least the Minister in the other place, when pressed on this particular obvious sailing point, said, "Well, I don't really think the issues of convergence affected government policy a great deal". It is quite clear that the Government have had their own agenda for the economy and have pursued it with considerable rigour, at particular cost to sections of our population—and, I might add, to the economy as a whole. But the issue of convergence certainly did not rank particularly highly in that agenda and the Government, I imagine, can therefore begin their approach to the question of Brexit untrammelled with any regrets that no British Government will have to face up to this issue in the future.

The Government are making much at this stage of economic growth over the last year and a half, with the prediction that it might last a little longer. That is against economic growth over the last year and a half, with the issue in the future.

Let us turn as well to the question that the Government always emphasise as such a significant achievement: levels of employment. What kind of employment is it? It is no coincidence that when the Minister says that we have made painfully little progress—I am not sure whether she used quite that adverb but she was generous enough to concede that progress on productivity has been limited in recent years—it is a direct reflection of the employment conditions of so many of our people. Far from them being engaged in enterprises alongside employers who are seeking to promote the work, to engage the workers constructively and perhaps even from time to time to listen to them on how work could be done better, we have the exact antithesis. We have people on zero-hours contracts with no commitment to the company at all, apart from the hope that they will be able each week to sustain enough hours in work to keep their living standards.

What employers have been doing is worse. There are appalling examples. They have been saying to such people, "Sling your hook". That phrase comes from dockers in the 19th century who turned up for work with their hook and if not so many were needed or those who were needed were carefully selected, they rest had to sling their hook, go away and receive no remuneration or sustenance of living standards. It is not surprising that the late 19th-century state had to react to that situation in the face of such discontent. The Government may feel that they are not presiding over a period of such discontent at this time. That may partially be because so many of the people who are in that position have no voice. They have no voice because the very vulnerability of the work they do renders them unable to challenge.

What does this all mean? It means that the Government are now engaged upon Brexit, which will dominate all political and economic debate for a considerable period ahead. What is conspicuous about Brexit—I hope the Minister may at least own up to this fact—is that the Government had absolutely no plans to cope with Brexit and had not anticipated that the vote might go that way. If they did anticipate it, they are very culpable for leaving us in this position, where it is quite clear that our negotiating position is a good deal weaker than it ought to be. The Government keep on saying that we are out on a deep, wide ocean and that we can greatly increase our trade with others whom we have neglected in the past. I have not noticed the British economy neglecting markets in the past. Our problem is being able to be sufficiently competitive to win them. We are walking out on the largest market of all. Whenever the Government mention the United States, India or China, do they not realise that trade with those countries adds up to only a fraction of that which we enjoy at present under the framework of the European Community? That is the nature of the risk being taken.

I realise that this is a straightforward Motion today. There is no question of the Opposition not seeing that we make a last gesture towards convergence, which is required of us as long as we are a member of the European Community, which we are at present. Underpinning it all—and this is what this Government have to face up to—is the basic weakness of their economic position. That may not worry Ministers in
The House too much because, although they would probably like to continue in office, it is not quite as serious a threat as that to Ministers at the other end who have to retain not just their office but their seat as well. The confidence of Ministers in the other place may be shaken somewhat, and therefore, although I have indicated that the Opposition support this Motion, I offer some warnings as to the future.

Baroness Neville-Rolfe: First, I thank the noble Lord, Lord Davies of Oldham, for supporting the Motion and for filling the void in a debate with few participants today. I suspect he will not be surprised to learn that I do not agree with his cynicism. We have our own economic policy of course in this country, and as I tried to explain, the work to bring deficits down is important from both a European Union and a UK point of view, and we have made progress. It has been difficult, not least because of the legacy—the mess—that we inherited on the economic side, but since 2010 our economy has grown by 14.6% faster than Germany’s and twice as fast as France’s. As I mentioned in my opening remarks, we have had good news recently from the IMF, and indeed the CBI published strong figures today. The deficit has been cut by almost two-thirds from a post-war peak of 8.8% and, as he acknowledged, employment is up, by nearly 2.8 million. The employment rate is at a record high of 74.6%.

This is, in my experience, the envy of other member states in Europe, alongside the small business creation states in Europe, and the information we present is based entirely on information and documents already published. Our actions have enabled the UK to make significant progress on improving its air quality since 2010. We now have lower emissions of the five key pollutants: volatile organic compounds, sulphur dioxide, ammonia, particulates and nitrogen oxides. However, due to the failure of EU vehicle emission standards to deliver the expected improvements in air quality, the UK is among 17 European countries, including France and Germany, that are not yet meeting EU emission targets for nitrogen dioxide in parts of our towns and cities. We are taking strong action to remedy that. Since November my department has been working jointly with the Department for Transport to update the Government’s national air quality plan for nitrogen dioxide. We have updated the analytical base for the plan to reflect new evidence, following the Volkswagen scandal and the failure of the EU’s regulatory regime to deliver the improvements expected on emissions. The plan adapts to these new circumstances by setting out a framework for action.

Following long-standing precedent, we have now entered the period of pre-election sensitivity that precedes elections. In accordance with the guidance covering both local and general elections, the propriety and ethics team in the Cabinet Office has told us that it would not be appropriate to launch the consultation and publish the air quality plan during this time. The Government have therefore applied to the High Court for a short extension of the deadline to publish the national air quality plan for nitrogen dioxide. We have updated the analytical base for the plan to reflect new evidence, following the Volkswagen scandal and the failure of the EU’s regulatory regime to deliver the improvements expected on emissions. The plan adapts to these new circumstances by setting out a framework for action.

Lord Grantchester (Lab): I thank the Minister for repeating the Answer given earlier in the other place. However, notwithstanding that the Government may wish to absolve themselves by sharing culpability across other EU member states, they were given their final
warning, as was clearly stated in the court case brought recently by ClientEarth, and told that they should publish their proposals to comply with EU law within two months.

Despite the argument that the purdah period on government announcements may start from a vote in the other place to undertake a general election, this announcement of government intentions could be said to be a matter of public health. I am sure the thousands of Britons at risk from diseases caused by air pollutants such as fine particulate matter, nitrogen dioxide and ammonia, and the businesses that will suffer lost working days from pollution-related illnesses, would agree that this is a public health issue and that an announcement is desperately needed. Will the Government not consider that an announcement on public health grounds could be made that would then comply with the court and negate any application for an extension?

It would be futile to ask the Government any further questions, as the Minister may well invoke purdah in all his replies. If I may, however, I will tempt him further by asking whether a new clean air Act would not be required to give citizens new rights to breathe unpolluted air and rectify the situation across all the responsible culprits.

**Lord Gardiner of Kimble:** My Lords, I thank the noble Lord for his questions. On his last question, I can say that we believe the legislative framework exists to deal with these matters, and therefore a separate clean air Act is not necessary because they can already be dealt with.

On the issues at hand, we have been advised that there are very strong requirements vis-à-vis purdah. However, I say to the noble Lord and indeed to all noble Lords that we will ensure that this short delay in the timetable will not result in a delay in the implementation of the plan. It is precisely to deal with the purdah issue, relating to both local government and the general election, that we have given the dates by which we want to publish this report. Obviously it is in everyone’s interests that we publish, and we want to work in partnership. That is why we are working with the devolved Administrations and the Mayor of London, and indeed we are working with many cities that have this acute problem which we need to address.

**Baroness Parminter (LD):** My Lords, this is clearly a public health crisis, with 40,000 people dying prematurely in the UK every year because of air pollution and many more suffering from respiratory and cardiovascular diseases. The reason that the Minister has given why this needs to be delayed does not stand proper scrutiny, because we face a genuine public health crisis, which is a legitimate reason for the purdah rules to be put aside. Given that the department has shilly-shallied about producing its 25-year plan for the environment, it is very good at talking the talk on protecting the environment, but it is not good at walking the walk.

I have two quick questions for the Minister. First, does he accept that after Brexit, when we no longer have the European Union obligations, we need firm air quality targets in UK law to hold the Government to account? Secondly, what comfort can the Minister give to both parliamentarians and the public on the question that, in the absence of the European Union, there is no alternative to costly judicial reviews for the public to hold the Government to account on the crisis of air pollution?

**Lord Gardiner of Kimble:** My Lords I do not think that the facts bear out what the noble Baroness said. In fact, it was during a Government in which her party was in coalition that £2 billion of taxpayers’ money was diverted: £400 million for ultra-low-emission vehicles, £600 million for the local sustainable transport fund, £224 million invested in cycling and more than £27 million since 2013 to retrofit and clean up more than 3,000 of the oldest vehicles. I hope that she would agree that was a success during the time that her party was in coalition with mine. That is why £2 billion was diverted to that important subject.

On the question of how we will proceed, as I said, this is a short delay in the timetable, because we have purdah requirements. That is the advice that I have received. I fully acknowledge that this is a public health issue. That is one reason why considerable sums of money are being invested in it, why we will continue to do so and why we in the department very much want to bring forward these plans after the general election.

**Baroness Finlay of Llandaff (CB):** Has the public health issue been part of the submission to the courts, because as well as adults, there is now strong evidence that atmospheric pollution impairs the development and growth of children’s lungs, which means that you are storing up big problems into the next generation? What have the Government done to ensure that enforcement powers are used when vehicles on the road are belching out pollutants because they have not been properly serviced or there is a fault? Quite a lot of them could be deemed as in the public service, including taxis, buses, and so on. Sometimes they are belching out vast quantities of grey, stinking smoke.

**Lord Gardiner of Kimble:** I thank the noble Baroness because that plays into why retrofitting is so important, why there has been investment since 2013 of £27 million to retrofit and clean up 3,000 of the oldest vehicles and why we have sought to introduce low-emission buses, taxis and alternative fuels. As I said, this is a very important issue which will need a partnership of us all, whether local authorities, the devolved Administrations, the Mayor of London or us, to mitigate. I have found it interesting how small features—the changing of a traffic light or turning engines off—can change pollution levels and create considerable advances.

**Lord Higgins (Con):** Does my noble friend agree that the problem of air pollution is greatest in London, and that the reality is that Transport for London has totally failed to deal with the issue? Indeed, it has made it a great deal worse, in two respects. First, it apparently has no authority to limit the number of minicabs. In fact, the extraordinary position emerges that no one has any authority to limit the number of minicabs. Does my noble friend agree that urgent action needs to be taken in that regard?
Secondly, there is the ludicrous way in which Transport for London has been building bicycle lanes. There is enormous congestion as a result of this, not only when they are being constructed but in the longer term. It is an appalling policy. I spend much of my time in Holland, where they do not have any problem with bicycle lanes operating properly without being blanked off in a way that prevents them being used in off-peak periods.

Lord Gardiner of Kimble: My Lords, I shall ensure that my noble friend’s points are put to officials who meet fortnightly with GLA officials to discuss air quality. I think that that would be the best way forward.

Lord Campbell-Savours (Lab): My Lords, is not the real problem, in London in particular, lorry emissions? Why do we not have a national programme of conversion of diesel trucks to LPG systems, because tests by Millbrook and HORIBA MIRA show that conversion of trucks to LPG leads to substantial reductions in carbon emissions and substantial savings by lorry operators, with a payback period of as little as 18 months? I have identified a firm called Quicksilver-AFI that has a system that is made for truck conversions, which is not too expensive, and which the Government could pump prime with public money, because the emissions from trucks are very much more substantial than from individual motor cars.

Lord Gardiner of Kimble: My Lords, what the noble Lord said is extremely helpful. I have mentioned retrofitting quite a bit during this Question, but that is a point that I would like to take back, and I am most grateful to him.

Race in the Workplace: The McGregor-Smith Review

Question for Short Debate

4.57 pm

Asked by Baroness McGregor-Smith

What action they are taking in response to the recommendations made in the report Race in the Workplace: The McGregor-Smith Review, published in February.

Baroness McGregor-Smith (Con): My Lords, I am delighted today that we have time for this debate. Britain has been an extraordinary place to live and grow up in since I arrived aged two as part of a Muslim Asian family, but that is not to say that I did not face my fair share of challenges to achieve what I have in business because of the colour of my skin and my gender. Sadly, I am still considered the exception to the rule, rather than the norm. I find it appalling that, even today, some of these prejudices still exist, holding people from BME backgrounds back from reaching their full potential in the workplace, as my review clearly shows.

While there is a clear moral case for greater diversity, it is also vital for the continuing strength of the UK economy to have the best available talent in the workplace, whatever their background might be. My review puts forward that economic case for change. The boost to the UK economy is £24 billion a year if workers from BME backgrounds participate and progress at the same rate as their white counterparts.

The review finds that workers from a BME background are still being held back by the colour of their skin and are more likely to end up in lower-paid and lower-skilled jobs than white workers. One in eight of the working population today are from a BME background, yet only 10% of the workforce is BME, they hold only 6% of management positions, and rarely can they be seen at the top of any public or private organisation. Not only is this wholly unacceptable, but the public and the private sector are definitely shooting themselves in the foot by failing to help people from BME backgrounds to progress.

The review clearly demonstrates there is a huge economic benefit to both employers and the whole economy for BME workers to reach their full potential. Many employers are doing their best to harness BME talent, and I applaud those who take it so seriously, but many others are not, because they do not know what to do. That is why I have published a list of 26 recommendations, urging larger employers to lead the way in tackling barriers to BME progression.

First, I call on companies with more than 50 employees to publish breakdowns of their workforces by race and pay band, to draw up aspirational diversity targets and to appoint a board-level member to be held accountable for delivering on these. When I wrote to the FTSE 100 asking for race and pay band information, only 74 responded and only half of those had any meaningful data. That is, in itself, a real issue: if everyone does not publish data, the Government should legislate to ensure that they do. We should not hold out a lot of hope for this happening voluntarily. Companies have many priorities in these somewhat difficult times, and we will not get meaningful change unless this is done by all organisations whose employee numbers exceed 50. I urge that we legislate in this area very quickly.

Secondly, I want all organisations to use their purchasing power to ensure that they use suppliers that take this seriously. The public sector has huge spending power and this can be used far more effectively. We do not need another review to do this; we just need to change how organisations pre-qualify for work with the public sector. When taxpayers’ money is used, it should be done in a way that benefits all citizens in the UK. As the Government decide how best to disentangle themselves from a myriad of European rules on procurement, they must develop simpler processes that drive positive change in this area.

Thirdly, I want senior executives to take accountability for all of this and be the key sponsors for improving diversity in their organisations.

Fourthly, all employers must raise awareness of diversity issues by ensuring unconscious bias training is undertaken by their employees. They also need to have inclusive networks and provide mentoring and sponsorship.

Fifthly, all recruitment practices need to be examined. Non-diverse shortlists need to be rejected: diversity needs to be introduced to interview panels. How many
BME individuals do we see on interview panels today? Work experience and internships need to be offered to everyone, not just the chosen few.

I also discussed a number of other key recommendations, including developing a simple guide on how to discuss race in the workplace—it is still so difficult for many of us to discuss it and I do not even feel comfortable talking about it today—and an annual list of the best 100 BME employers to celebrate success and promote best practice in the business community.

The Government, who asked me to carry out this review, are clearly taking this issue seriously, and I am encouraged that Margot James has created a new Business Diversity and Inclusion Group to bring together business leaders and organisations to co-ordinate action to tackle exclusion in the workplace. Many businesses also take this seriously and I was impressed by many of the case studies and examples of best practice that I saw.

I would now like everyone to adopt and embrace the recommendations and get on with implementing them. I am not keen for any more reports to be written: we just need to get on and change the outcomes for so many people who have great talent. They deserve to be not ignored in the workplace but supported. Let us help them achieve their aspirations and provide a significant boost to the UK economy.

5.03 pm

Baroness Bottomley of Nettlestone (Con): My Lords, I give heartfelt congratulations to my noble friend on the diligence, pragmatism and determination of her report. The evidence is excellently produced; I strongly endorse her conclusions—with minor modifications—and I am delighted that she has not overcomplicated it. As one would expect from an extraordinarily successful businesswoman, she has produced a coherent report that people can follow and take up its relevant practical points.

I have an inkling that race has never been an issue for my noble friend. She is a businesswoman, regardless of her ethnicity. It is interesting that many leaders who have achieved change have begun by avoiding, while not exactly denying, their own characteristics. It was often asked about the first woman Prime Minister, Margaret Thatcher: “What did she do for women?” The noble Lord, Lord Blankett, who is blind, fulfilled an extraordinarily senior Cabinet position. I have never known my noble friend talk previously about ethnicity. I feel the same in my own career; originally, I would wear only a black, blue or grey suit, as one of 22 women in the House of Commons. However, there comes a moment when those of us who have broken through a barrier feel duty bound to stand up and help, support and give a pragmatic way forward, not just an aggressive rant.

With the current environment of Brexit, we need all the man and womanpower we can muster. There remains much too much evidence of underachievement from black and ethnic minorities throughout school, into apprenticeships and sometimes at university. Therefore, if we are to be competitive and fill jobs when migration is more difficult, we have an obligation as a country more than ever before to ensure that every individual is trained and developed to the maximum of their ability. It is still not right that there are so many more exclusions from black and ethnic minorities than there are from white children and that 6% of black school leavers attend a Russell group university, compared with 11% of white school leavers and 12% of mixed or Asian school leavers. As my noble friend said, race and ethnicity are sensitive subjects and much more complex than discussing women’s issues. Different racial groups have different experiences, cultures and backgrounds and are often treated in different ways or survive better in different ways throughout our welfare and national life.

I endorse the response of my honourable friend Margot James, the Minister in another place, where she talks about this being a business-led review. Many of these policies are for business to implement in its own enlightened self-interest. My noble friend has drawn on help from Business in the Community, where Sandra Kerr has been a great force over many years in this area; from the CBI; and from Professor Susan Vinnicombe, who did so much over 20 years to draw attention to the lack of women on boards; again, not by aggressive campaigning but by relentlessly putting the evidence in the face of boards, naming and shaming, and celebrating best practice. I am delighted that my noble friend has taken this approach in her report.

I am equally pleased that in their response the Government have taken up their responsibility to act not as a legislator over business but to demonstrate best practice as an employer. I support the areas where the Government have said that they are reluctant to enforce legislation now but, my goodness, I am pleased about what is happening in the National Health Service. If the National Health Service is the biggest employer in the country, how right it is that it should demonstrate best practice. When we spoke in this House about my noble friend’s report before she commenced it, I spoke about the work that I had done with the NHS in 1993, working with the noble Lord, Lord Ouseley, talking with groups of people from black and ethnic minorities about their experience. I said then:

“I want to stress that taking action to promote equality in employment is not just a matter of moral justice or of fairness to people from minority ethnic groups. It is good, sound common sense, and it makes business sense too”.

It costs £230,000 to train a doctor. We want to be sure that every doctor’s training is well developed and they have the chance to get to the top. But why has it taken so long for those fine words, expressed in a heartfelt, sincere fashion, to translate into action?

That is why my noble friend is so right: this is not about words but action. I believe that those lessons are being learned. I am delighted that the chief executive of the NHS, Simon Stevens, himself chairs the NHS Equality and Diversity Council. A contractual requirement to drive race equality in the employment of NHS staff is written into the standard contract. Workforce data have to be published, as does information on the proportion of trust board members from BME backgrounds, the relative likelihood of BME staff being appointed once shortlisted, and on the importance of non-mandatory training and monitoring contracts. I say that because this is the Government acting as
employer rather than imposing excessive rules and regulations on business. I very much hope that that will deliver a result.

Similarly, in the higher education field, if we are thinking about the pipeline and development, particularly of black and ethnic minority people such that they can fulfil their potential, all the way through we want to see people from black and ethnic minorities getting the best possible and fair opportunities. We know that in higher education there are all too few vice-chancellors from black and ethnic minorities—there are too few women but there are even fewer people from black and ethnic minorities. The noble Baroness, Lady Amos, as the vice-chancellor of SOAS, was the first black vice-chancellor, and I hope that there will be many more. However, we cannot ignore the lessons. The Equality Challenge Unit investigated the subject and came out with its recommendations last year. The House will be familiar with the themes: set up mentoring systems, formal and informal; ensure that there is representation and diversity on interview panels; set up BME networks within individual HEIs; and ensure there is access to relevant training. We hear these themes time and again, and have done for so long that people cannot now imply that they have not heard them.

There will be change only when this is owned at the highest level. Therefore, the connection with Sir John Parker’s report about ethnic diversity on boards last year is another part of the jigsaw puzzle, as my noble friend so rightly says. He points out that of the 14% BME population in this country, “only about 1.5% of all FTSE 100 Board directors”, are from black or minority ethnic groups. Again, we can look at the issues behind the process of recruitment—I declare an interest as somebody who has been involved in recruitment for many years. When we recruit, we tend to look in the mirror and not through the window. Inevitably, people recruit people who they know, like and trust. Many years ago, I kept appointing people to run NHS trusts who used to work for ICI. They were very good people; I did not even know that they had worked for ICI, but I kept doing it. Somebody said, “You know they are all from ICI, Secretary of State”, and I said, “My father worked for ICI in the early part of his career”. We appoint people from our university, from McKinsey, from BP—wherever your stable was, it is inevitable. Therefore, we have to go the extra mile to ensure that we have proper training to remove unconscious bias and ensure that people can genuinely fulfil their potential.

This is a generous-spirited country. We are going through the change of Brexit, and we have had real concern of late over hate crime; this is the moment to go the extra mile. My noble friend has helped to direct us in the right way forward.

5.12 pm

Lord Griffiths of Burry Port (Lab): My Lords, I am delighted to be able to add my own support for and congratulations to those who have brought these issues before us today and that we have been able to squeeze this bit of business in before we all go our separate ways shortly. I therefore thank the noble Baroness for bringing the report here. Business-driven it may be,
In the work that I do locally in the field of education, we have all kinds of experiences, and I will share just one or two of them in the time left to me. In a moment I shall adduce the cases that I want to use for illustrative purposes, but I will preface those examples by saying what astonishingly brilliant young people there are from black and other ethnic minorities. They are people I have had the privilege of working with, and I have seen them develop, blossom and flourish. They are to be found, but I just wish that there was more of a flood of them.

Against that background, I want to talk about one or two things. For example, we have been able to establish a scholarship that gets seven children into a leading public school. A philanthropist has made the money available for that. He did not want people from the inner city to go in ones and twos, to be picked off in a rather self-satisfied environment. Therefore, seven go at any one time and some of them have done extraordinarily well. However, I have to say that on balance I am disappointed that they do not seem to end up in Russell group universities. I could discuss over a cup of coffee all sorts of reasons why that might be the case, but aspiration and the culture from which they come are as much a part of what eventuates as the experience of the education that we find it possible to offer them.

I have some responsibility for a secondary school for girls in east London, where 85% are from a Muslim background, mainly Bangladesh, and wear the hijab to school. Only one girl from the whole of the sixth form ended up in a university that was not in London. Of course, they want to be at home in London and they will do brilliantly in those universities—nobody has anything against that—but somehow the limitation does not seem right: the community we are talking about is itself setting these targets and narrowing its vision, resulting in only one girl from the sixth form applying to a university outside London.

I will take as another example a young man with good A-levels who decided not to go to university. I took him out for a drink and asked him to tell me why. He said, “You will tell me that I could become a journalist or a lawyer or a teacher, that I could build my career and go places and be anybody I wish. I know that discourse—I have heard it. But where I come from there are quicker ways to make money”. He is a rather interesting young man who lives on the streets and he was absolutely serious; he was talking about drugs, crime, football, fame and music. I was told he was absolutely serious; he was talking about drugs, crime, football, fame and music. I was shocked. How could I or any retailer do any other, when the customers who cross the threshold of our stores are a cross-section of British society today—multiethnic, multicultural and multilingual, and with an equal variety in the depths of their pockets and in their tastes? It is basic kindergarten common sense to ensure that our businesses employ the very best management and staff, enabling us magnificently to fulfil our corporate aims. Clearly, having the widest choice of talent by recruiting from the biggest possible pool is an obvious and easy way of achieving this.

The business case and the moral case march hand in hand to say that no one should be overlooked for a job or for promotion because of where they were born or how they look and speak. But we can and should do more to help those from black and minority ethnic communities to present themselves as the best candidates for any job. That is not just a matter of qualifications but of attitude and, in particular, self-belief. My close involvement with charities that work tirelessly to help disadvantaged young people make the most of their life chances—the Duke of Edinburgh’s Award and Outward Bound—have demonstrated to me how much can be achieved by helping the young to gain confidence, resilience and leadership skills. Many youngsters who benefit from these experiences are in fact from minority ethnic communities in our inner cities, and businesses that we work closely with can point to direct and tangible benefits from integrating the Duke of Edinburgh’s Award, for example, into their apprenticeship programmes.

Ultimately, the best way that we can reach the goal of everyone getting the best job that they can, limited only by their own talents and aspirations, is to ensure that they are the best they can be. We can do that through education and training in schools and voluntary organisations such as the Duke of Edinburgh’s Award.
and by changing attitudes permanently and raising ambitions so that no one thinks that any position is above or beyond them.

Positively influencing the developing attitudes of the young is undoubtedly the key to creating better workers without bias who will have the drive and determination to perhaps become tomorrow’s leaders. They will also be better parents and better citizens. But making job applicants better can only be part of the story. As the noble Baroness said in her excellent report, we also need to change attitudes within business. We are all sadly familiar with the sentence that begins, “I’m no racist but”, and the speaker genuinely always believes what they say. But their bias, even if unconscious, is still there. Such attitudes have grown up over generations and it is not realistic to imagine that they can be changed overnight. In changing attitudes rather than simply actions, evolution trumps revolution every time. That has certainly been my experience, which is why the best way to achieve the fine objectives of equal opportunity and equal rewards is one that puts more emphasis on persuasion than on regulation.

I have been a marketeer all my life and I have been mightily impressed by the powerful and effective attitude-changing, long-term heavyweight marketing campaigns mounted by Governments in recent decades. I am going back a bit now, but if we take road safety as an example it was not just changing the law that made people wear seat belts but advertising on TV every night that helped persuade us of the benefits. Now “clunk, click every trip” is a given. Assisted by graphic and emotive advertising, Governments have achieved a huge impact in recent years in making smoking cigarettes socially unacceptable. Drink-driving, long illegal, is similarly becoming beyond the social pale as the closure of thousands of pubs bears witness. That is an outcome massively influenced by the Government’s hard-hitting multimedia marketing.

Those changes in attitudes may have taken time, but that will always be the case where bad habits and prejudice have deep and ancient roots. While we cannot dig out unconscious bias overnight, it is well proven that it can be done over time. I know from my own experience that not only can we enhance the performance of businesses in the UK, we can create a happy and more cohesive society by maximising diversity in both recruitment and promotion. The business and the moral cases could not be better linked or clearer and I urge the Government to push this message hard and relentlessly out there with all the conviction and marketing expertise that I know they have at their disposal. The sooner we start the better. As my noble friend Lady Bottomley said earlier, it is all about action not words.

5.30 pm

Baroness Bertin (Con): My Lords, it is a great pleasure to speak in this debate and I congratulate my noble friend Lady McGregor-Smith on what I think is an important and thorough review. Although much has improved over the past decade, reports like this shine a clear light on the fact that more needs to be done and it serves as a timely reminder to those in power that the foot cannot be taken off the pedal. I welcome many of the recommendations. I should also point noble Lords to my interests as set out in the register and say that my employer, BT, has invested heavily in this area and strives always to do better.

It is absolutely right that a simple guide should be developed on how best to discuss race in the workplace as well as ensuring easy access to an online portal and celebrating success through a list of the top 100 BME employers. The recommendation for further government collaboration with black and minority ethnicity groups, relevant employer representatives and organisations such as Business in the Community is an important one, and I am pleased that the Government will be looking to work with businesses to ensure that they do all they can to fully embed changes within their organisations.

Equally, increased transparency and annual recording of diversity statistics for businesses with more than 50 employees are potentially good ways for companies to monitor what is really going on within their operations and to ensure that they are consciously acting properly in this regard, and just as importantly, making sure that they not operating on the “unconsciously biased” level, which has been referred to in connection with ICI recruitment. The review points out that that can be very common.

For businesses’ own knowledge, it is vital that they know exactly where they are on the spectrum of workforce diversity and where improvements need to be made. If you are serious about success, you have to track progress, and to track progress, you must have the figures.

Of course, social mobility and the inclusion of all in the workplace is first and foremost a moral issue, but the economic figures cannot be ignored. The review identifies the opportunity for an additional £24 billion into our economy each year just by realising the potential of BME workers alone. I hope that noble Lords will forgive me if I use this opportunity to pivot into another section of society that is woefully underrepresented in our workforce. We must ensure that we close the disability work gap and this is an essential piece of work if we are ever to ensure a fair and equal society for all. We must do all we can to make sure that disabled people can lead full and rich lives in the same way as non-disabled people, and even more worryingly, once they are in work, as likely to be unemployed as non-disabled people, as the statistic I find most shocking in this regard is that disabled people in the UK are twice as likely to be unemployed as non-disabled people, and even more worryingly, once they are in work, disabled people are significantly more likely to experience unfair treatment than the non-disabled. I suppose that the statistic I find most shocking in this regard is that only 6% of people with a learning disability are in work, yet 65% would like to be. Here perhaps I may briefly read from a Mencap report: “Employers who overlook employees with learning disabilities miss out on valuable contributions to their businesses”. According to Mencap, “employing people with learning disabilities can improve perceptions of organisations. Employees with learning disabilities are committed to their jobs, which reduces recruitment costs and people
with learning disabilities take fewer sick days than other colleagues’. So this need not be an act of sympathy and it is not about ethics, it is about real productivity and economics.

Can the Minister tell the House how closely his department has been working on a direct basis with disabled and BME people, and how integrated are its views on the problems it faces, as well as its ideas for solutions? As my noble friend points out in her review, possibly the most important piece in this policy puzzle is input from the very people it affects.

The term “work” is so much more than simply employment for any of us. It builds identity, confidence and supports independence. It is clear for both moral and economic reasons that the rate of employment for any of us. It builds identity, confidence and supports independence. It is clear for both moral and economics.

5.34 pm

Baroness Finn (Con): My Lords, I apologise to the Chamber and to my noble friend Lady McGregor-Smith for entering the Chamber just after she had started speaking. I thank her for bringing this important debate here and congratulate her on her excellent and well-researched review. My noble friend has been a champion of diversity for many years and deserves admiration for her dedication to ensuring that talent should flourish by bringing down barriers, rather than by imposing arbitrary quotas. This review looks at the real issues and the recommendations are practical and designed to overcome them. It looks at, among other things, improving transparency and unconscious bias. It considers the leadership and the prevailing culture of organisations. Most important is the title, as my noble friend made clear: *The Time for Talking is Over. Now is the Time to Act*—no more reports.

Understanding why black and minority-ethnic staff are not meeting their full potential and not rising to the top tiers of management is not a new issue. Organisations often demonstrate a desire to confront the challenges that exist to harnessing the talents of BME staff. As the Government’s response makes clear, the opportunity to generate a further £24 billion for the economy is compelling enough. The moral case is unquestionable. My right honourable friend the Prime Minister showed the Government’s commitment to the issue by launching the race disparity audit last August. However, while policy intentions are often clear, their implementation is often inconsistent, uncoordinated and lacking in real drive and commitment. Many BME staff do not feel that they are operating on a level playing field. That is why there is a critical need for action.

This debate asks Her Majesty’s Government for their actions in response to the recommendations made in the report. As the Government’s response made clear, while the majority of the recommendations are for businesses, the Civil Service should lead from the front in taking positive action to make the Civil Service and, where possible, the wider public sector more inclusive. There is, of course, a lot of overlap in the barriers to be overcome. Change takes time, but the previous narrow focus on targets and quotas has failed to change the culture and has sometimes harmed the cause.

I was very involved with the Civil Service’s diversity plan when it was launched in March 2015 as the *Talent Action Plan*. Everybody loved to talk about diversity, yet the first draft of the diversity report submitted to my noble friend Lord Maude, then Minister for the Cabinet Office, was full of a lot of bland platitudes and arbitrary targets. More worryingly, it suggested a discriminatory approach that potentially conflicted with the core principle of recruitment into the Civil Service—that it should be on merit.

Our successful experience of increasing the number of women appointed to public boards had demonstrated that such quotas in isolation had failed to work. They failed to address the key barriers and obstacles that women faced. A key point in this instance was the insistence on track record and proven experience, which meant that the same candidates were constantly recycled from one board to another and did not allow new participants to enter. By replacing such a requirement with an emphasis on ability, we managed to expand the field of female candidates. We made other changes, such as the requirement that job advertisements should be written in intelligible English and make clear what exactly is required. It is not rocket science, but it made an enormous difference. I noted with interest that my noble friend Lady McGregor-Smith made a similar recommendation in her report.

The results of our work on public appointments spoke for themselves. By 2016 the percentage of women being newly appointed to boards of public bodies rose from 34% in 2010 to more than 48%. Even the then Commissioner for Public Appointments Sir David Normington, who did not always rejoice in our reforms, paid tribute in his annual report. We therefore thought it would be sensible to apply a similar practical approach when tackling gender diversity in the Civil Service. In the interests of political impartiality, we commissioned the Hay Group to carry out a proper analysis of women in Whitehall. Its remit was to be brutally honest, to identify real problems and barriers, and to make practical recommendations. The final report was something of an eye-opener. It found that the policies were sound and progressive but that the culture and leadership climate prevented women progressing successfully into senior roles despite the fact that women entering the senior Civil Service possessed exactly the same required leadership qualities as men. Line-manager practice was variable, which meant that women’s experiences of leadership and talent were something of a lottery. Most critically, many women simply did not believe that the rhetoric on policy and promotions matched the reality on skills and behaviours.

I will not go into all the detailed findings but will highlight some of the more revealing. One woman described how she applied for a promotion but failed to get an interview. She was told that it was “because I would have performed better than the preferred candidate and it was his turn for promotion”. The leaders of the Civil Service were described as simply “not leading” and the culture was described as a “bear pit”. The Civil Service leadership was shocked and taken aback
Civil Service. The conclusions were strikingly similar barriers to talented BAME staff progression in the always weighted very heavily towards gender. fairly, thought that the emphasis on diversity was BME staff in particular, and in my opinion quite by the research, but it emboldened us to commission barriers to the progression of talented BAME staff within the Civil Service. Staff complained of a leadership that was not diverse, and of the persistence of unconscious bias and discrimination which blocked the progress of talented BAME staff and meant that there was not always equal access to promotions, projects, senior leaders and secondments. BAME staff were more likely to be marked down in performance appraisals, with little objective feedback as to why.

We published all the reports and used them to inform the senior Talent Action Plan, which was published in March 2015. The top senior leadership in the Civil Service worried that the reports were too critical, but the rank and file loved them. A number of staff felt that it was the first time that the conflict between rhetoric and reality had been properly addressed with practical actions and that they were being listened to. The Permanent Secretaries enthusiastically took ownership of the plan.

I return to my point on implementation. The Talent Action Plan was seen as a two-year plan. After year 1, in March 2016, the Cabinet Office published a progress report that set out which steps had been completed and which were still "in progress". It was pleasing to note that the Civil Service had increased its unconscious bias training and appointed five Permanent Secretaries as diversity and inclusion champions. All Permanent Secretaries now have performance management objectives to improve diversity within their departments. However, the BAME report identified the crucial role of line managers in supporting and developing talented staff. It is too easy to write objectives but far harder to put them into practice. I await the two-year progress report on implementation of the Talent Action Plan, which I presume was due in March. I appreciate that it is a Cabinet Office-led exercise, but I wonder whether my noble friend can find out when we can expect to see it.

Ensuring the commitment to diversity and to BAME staff is hard work and we need to get it right. I commend my noble friend's review and her recommendation of a one-year-on review so that the Government can assess the extent to which the recommendations have been implemented. I hope that both public and private sector can share their experiences to improve inclusivity in the workplace, so that the workforce will be able to deliver the incredible benefits to the UK economy.

Baroness McDonagh (Lab): My Lords, I, too, thank the noble Baroness, Lady McGregor-Smith. It is a great report and a great piece of research. What is better, it is practical and implementable.

I want to tell the House the story of one recent experience and to ask a question of the Minister. Until recently, I was trustee of a charity called Creative Access. It was set up in the wake of the London riots by Michael Foster, who had worked all his life in the creative industries and was a very successful businessman. He was struck for the first time by how few black and Asian people were working in the industry. He established the charity to get more young people in and he went about finding them. For black and young people, it is not just that the door into the creative industries is closed to them; they do not know where the door is. Outside administrative roles, at senior levels the creative industries are populated by more than 90% white, middle-class graduates, mainly men but also some women.

He used his funds to give paid internships. He found companies across the creative industries—we must thank them—to take on these young people. Over time, he got them to fund 50% and the Government funded 50%. The reason for that is that while they started taking these young people out of social conscience, as time went on they found the amazing difference the young people made to their bottom lines. This is an economic issue. We know socially that, if you are black or Asian and young, you are two or three times more likely to be unemployed than your white counterpart. Of course that is a social issue. Yet if you get through the door with the right support and training you can add so much.

Five years on, we had put 720 young people through internships, and 84% of them at the end of that year got a full-time paid job. We were by far the most successful organisation, whether for-profit or not-for-profit, that this country has ever seen in getting disadvantaged kids full-time jobs. We were told that we were loved by the Government and that we would get re-funded. Then something happened called Brexit. The paper was in the box for us to be signed and then things changed. There was a new agenda—a new Prime Minister—and we were told we were no longer to be part of it so we had to shut down. We are now trying to re-establish ourselves as a social enterprise but I tell this story to the House because this report, too, was previously commissioned. So my question for the Minister is: in reality, how many of these recommendations and how much of this report will be implemented?

Baroness Royall of Blaisdon (Lab): My Lords, I too rise to speak in the gap. I apologise for that, but I had not seen this debate on the Order Paper, and hope noble Lords will forgive me. I declare my interests in the register as chair of Drive. I also pay tribute to the noble Baroness, Lady McGregor-Smith, for her excellent report and her superb speech today.

Incidents of racism and continuing prejudice in our society and places of work are indeed appalling. As has been said, the title of the report is absolutely right: The Time for Talking is Over. Now is the Time to Act. In the 21st century, we have a duty to ensure that companies in the private sector, public sector and voluntary sector reflect the communities in which they work. However, the response from the Government to the excellent recommendations in the report is not as
proactive as it should be. For example, I strongly support the call for legislation on the publishing of workforce data on race and payroll, as that would really shine a light on to what is happening in our society.

I will focus my brief comments today on recommendation 16, on the supply chain. When, according to the Hackett Group in 2015, “On average supplier diversity programs add $3.6 million to the bottom line for every $1 million in procurement operation costs”, it is difficult to understand why there has not been more action on this issue to date. Leading organisations have not only an opportunity but, I believe, a responsibility to develop the entrepreneurial capacity and self-reliance of all the diverse communities in which they operate and draw their talent from, and to the communities to which they sell. The report rightly says that the public sector must use its purchasing power to drive change and that the Government should ensure they drive behavioural change in the private sector. It makes practical recommendations to bring this about.

The government response is all about the public sector equality duty, which is part of Labour’s legacy and, yes, that is a useful tool, but it is not enough to bring about the real change that is necessary for diversity and for the economy. Basic equality standards and diversity are two different things. The Government should have endorsed each of the points within the supply chain recommendations. There is a wealth of innovative best practice out there, and I would draw the Government’s attention to some of the extraordinary initiatives taken by HS2 with its inclusive procurement programme, which embeds the use of electronic data interchange throughout the company and the supply chain. It includes board members having a diversity-related pay element. Collaborating and supporting the supply chain is making a huge difference to that company and could make a difference to so many more.

Finally, on a more general point, government, along with the public, private and voluntary sectors, could and should do a lot more in schools—especially primary schools—to broaden the horizons of all pupils, from whatever social or ethnic background, so that they can all see the opportunities out there that they could and should pursue. They can see role models such as the noble Baroness, Lady McGregor-Smith, and my noble friends on these Benches. They need to see so many more role models so that they have the inspiration to develop their own aspirations, so let us go out there and act on this excellent report from the noble Baroness.

5.51 pm

Baroness Berridge (Con): My Lords, my noble friend’s report states that it is now time to act and after spending more than a decade working with many of Britain’s wonderful black and minority ethnic communities, action and even legislation is now needed. It is young people’s lives that are being affected here.

However, just as with women on boards, and just as with the wage gap between men and women, it sometimes takes more than common sense for companies to act in their own best interests. It took a threat such as that made by Business Secretary Vince Cable in the previous
Government about the underrepresentation of women on boards, and it took legislation to tackle the inequality of women’s pay, but the strongest language used in the Government’s response to this excellent report is “encourage”. “Encourage” means nothing, especially if you do not even realise you are discouraging and excluding some of your employees from being promoted or even not selecting them in the first place.

We are all guilty of unconscious bias. We all unconsciously favour people like us—people with the same background, the same skin colour, the same sex and even the same sense of humour. The noble Lord, Lord Griffiths, gave us an eloquent explanation of his exposure to unconscious bias training and of what happens when unconscious bias is not challenged. The noble Baroness, Lady Bottomley, rightly commended the work the Government, as an employer, are doing on racial diversity, but there is nothing to impose what she termed “excessive rules and regulations on business”. I do not think that any of the rules and regulations here are excessive. The noble Lord, Lord Kirkham, wants us to achieve culture change through marketing messages and to use schemes such as the Duke of Edinburgh’s Award to help life chances, but does not want legislation. He cited the example of “Clunk Click Every Trip” on seatbelts, but it is illegal not to wear your seatbelt. I am confused about which he feels should come first: legislation or attitude change—the chicken or the egg? Why not legislate? We will achieve change even faster. The noble Baroness, Lady Bertin, rightly pointed out the contribution that disabled people can make and the shocking loss of the talent they could bring. The noble Baroness, Lady Finn, spoke about the conflict between rhetoric and reality—between warm words and what actually happens in the Civil Service. I commend the work that is being done in the Civil Service. The noble Baroness, Lady McDonagh, talked about a scheme that started out of social conscience but made a fantastic contribution because of the diversity and talent it brought.

I agree with all the recommendations of the noble Baroness’s report but I want particularly to mention those on procurement. I agree entirely with what the noble Baroness, Lady Royall, said. To me, it should be a moral as well as a business imperative for government to procure from people who look like the people we serve, whose money we are spending, but I saw in the Government’s response to my own report on diversity and inclusiveness for women-owned businesses, the Burt report, that there was a reluctance on the part of government to use its most persuasive tool—procurement—to encourage women-owned businesses to pitch for government business and grow, which is just the effect that legislation on procurement from women-owned businesses in America has achieved. We have had the argument over women. We know that women have at least as much talent as men, but they still fail to get promoted, often by men.

You have to act to tackle unconscious bias. “Encouraging” is not enough, and we do not have years to wait. Let us not just “encourage” business to measure its performance and to plan for a more diverse, inclusive and thus successful company. Let us not just “monitor developments”. Let us ensure that companies understand what unconscious bias is. Let us ensure that they measure their performance. Let us applaud the best, most successful companies. In the post-Brexit world, we will need the talents of everyone to make our way and to succeed in the diverse global economy that we will face.

Lord Stevenson of Balmacara (Lab): My Lords, I congratulate the noble Baroness, Lady McGregor-Smith, on her report, which, as my noble friend Lady McDonagh said, is both practical and implementable, which make it a very welcome read. It is easy to see how she could arrive at that arrangement. I mean no disrespect to say this, and I hope the noble Baroness will not take it the wrong way, but the fact that it comes from the Conservative Benches and is written in a very level-headed and logical way makes its impact all the more powerful. We on these Benches, and other colleagues, have raised issues that she raises over a number of years but have not got the sort of response that I have heard today around the Chamber to the recommendations that have been made. I hope it bears also on the Minister when he comes to respond that this is a very well-considered report, which has come from a very interesting area in the political spectrum and has received support all round the House. As many people have picked up, it needs a lot more of a response from the Government than we have seen so far. I hope that when the Minister responds, he can fill in some of the gaps in the Government’s response to this excellent report.

We have had some very good responses from those who have spoken in the debate. I particularly liked the illustrations used by my noble friend—I can call her that, as she was once my Minister—Lady Bottomley and by my noble friend Lord Griffiths. I sympathise with his feeling that he was in the right place on all these matters because he was in an area that seemed to suggest that, as a jolly good chap, he could implement changes—but then discovered to his horror how difficult it was to actually make the transition. I have been there too. The noble Lord, Lord Kirkham, with his direct experience of trying to serve a wide and disparate consumer base, also picked up the point that there are some very obvious lessons to be learned by just looking around us at what we do. For example, looking at the Box to my right, it is very surprising to see a group so representative of the ethnicities in this country, and yet to not make that an issue at all. This is just how it is now in many parts of the Civil Service, and I congratulate it on what it has achieved in that.

It is worth reflecting on the key findings, because they are so startling. One in eight of the working-age population is from a BME background, but only 10% of the workforce and 6% of top management are. The employment rate for ethnic minorities is only 62.8%, compared with 75.6% for white workers. The gap is worse for some ethnic groups; for instance, for those of a Pakistani or Bangladeshi background, the rate drops to something like 54.9%. People from a BME background have an underemployment rate of 15.3%, compared with 11.5% for white workers, and many of them would like to work more hours than they currently do. I found this finding particularly interesting: all BME groups are more likely to be
overqualified than white ethnic groups, but white employees are more likely to be promoted than those from all other groups. The potential benefit to the UK economy, which many noble Lords picked up on, from full representation of BME individuals is estimated to be an improvement to our GDP of £24 billion a year—1.3%. It does not take much to feel anger about that.

A lot of people have also suggested that that will lead to the agenda of change that one would like to see, but what we get from the Government is, I think, a very poor response indeed. As somebody has said, this is largely a voluntary arrangement: the report deals with the private sector and the Government can affect only the public sector. But this leaves completely untouched the areas in which the Government have both a stake and an opportunity to make real change. The points made by the noble Baroness, Lady Berridge, were very salient in this area: if it is true for health and safety, and for other aspects of public life, why is it not true for employment rights, for which the benefits are so clear and the attitude so obvious?

Looking in more detail at the government response, the response from the Minister, Margot James, is good in the sense that it picks up and reflects back to the report’s author the value that is in the report. We should all accept that it is indeed very valuable. The response says:

“It is clear from your report that you have examined the issues around race in the workplace… The findings are stark… it is clear that more has to be done”—so the rhetoric is good so far. The recommendations are then dealt with, but it is quite clear that the Government have taken the strategic view that the only impact this can have is on employment in the Civil Service. They completely ignore the points made by my noble friend Lady Royall and others about the impact that the Government’s procurement system could have in changing the whole way in which people regard race, gender and other aspects relating to ethnic minority issues in relation to the world that we have to inhabit—and I suspect it will get worse after Brexit.

Under the heading “Supporting business”, the Government’s response is basically, “Not us, guy”:

“Businesses are best placed to know what support they need to improve diversity and inclusion and so we will work with them to ensure they have the resources they need to fully embed change within their organisations”.

I will be interested to hear what the Minister has to say about that. As far as I can see, that rather bombastic statement appears to apply only to,

“developing a guide on discussing race in the workplace as well as having a single portal where useful case studies and unconscious bias training packages can be sourced”.

That is pathetic, given the scale of the issue we are talking about. In any case, the Government do far more in making sure that training happens and ensuring that apprenticeships are going to be of a high standard—they will be specifying in future legislation and regulations all sorts of things to do with the quality and content of apprenticeships—so why do they not say in this report, “We will use the opportunities coming up with the Technical and Further Education Bill to ensure that these issues are taught properly and that people understand their responsibilities and the implications of what they do in the workplace”? The next heading is “Improve transparency”. As people have said, daylight is often the best disinfectant, and we should never neglect that—it is often the first response and a good one—but it will never be sufficient to get to where I think the author of this report wishes to go. On this one, again, the Government seem to be incredibly limp, saying,

“we believe that in the first instance, the best method is a business-led, voluntary approach and not legislation as a way of bringing about lasting change”.

Ministers are always taught when they first step into their department that legislation is probably the last resort. I am sure the noble Lord, Lord Prior, will have had that lesson when he first stepped into the Department of Health, his first appointment when he appeared in front of this House. He will have been told, “You can do far more by changing culture and attitudes”. At the end of the day, though, legislation is necessary. I am sure that the noble Baroness, Lady Berridge, would be able to exemplify what she said about the way in which the courts deal with employment and other things have really changed how the culture operates because there is a standard to which employers will be judged.

I want to pick up issues relating to supply chains, which have also been picked up by other noble Lords. It is the case that organisations, particularly in the public sector but not only there, have been able to change attitudes and approaches all through their supply chains by specifying in contractual terms what they will and will not tolerate. Why is it so obvious in the Government’s response that they do not see this as an opportunity? We have found in other areas of government policy over the past few years examples of where the Government could use their power to effect change. I am thinking particularly of a debate that I had with the Minister only recently about how to improve payment practices for small businesses, where the voluntary approach does not work, with something like £64 billion worth of outstanding cash sitting around in big companies’ pockets that should be paid over to small companies but no power that can get that to happen. This has a devastating effect on the economy, on small companies and on the whole process. The Government could do something to sort that out but have chosen not to do so, simply providing someone who will be a postbox for those who wish to complain about it.

The previous Labour Government required that all major projects should make sure that they had a supply of apprenticeships in all the contracts that were signed. Crossrail, which this Government have used a lot as an exemplar of where they want to get to, employs apprenticeships at a high level, and has been very successful in doing so, because the contract specified that those who had benefited from the monies that were being paid for Crossrail should employ apprentices. It can work, and I do not understand why the Government do not do that.

I could go on, but I will not. I will end with some questions for the Minister. The review concluded, in a wonderful phrase:

“There is discrimination and bias at every stage of an individual’s career”.

The figures that I cited reinforced that. The noble Baroness, Lady McGregor-Smith, asked businesses and the Government to act on her recommendations, as the consequences of not doing so would be damaging to the economy and the aspirations of so many, but the Government have decided not to do so. Can they explain why they think a voluntary approach is the right way to do this? As I have tried to exemplify, there are so many ways in which action could be taken, but a simple one, picked up by others earlier in the debate, is that a duty to publish figures in relation to gender pay has been imposed by this Government on all companies of a significant size. Why not extend that to ensure that we get the information necessary for companies to publish data on BME staff?

During the review, as I think was mentioned in the opening address, only 74 FTSE 100 companies replied to the call for data, and only half of those were able to share any meaningful information. Does not more need to be done here? Can the Minister give us an example of how he will put pressure on companies to ensure that at least the information required by one of their own who asks for it should be available? Again, this should be published.

The review highlights the importance of work experience opportunities that companies provide and reiterates a view that we on this side of the House have expressed that unpaid internships can act as a barrier to those without financial support to undertake them. What is the Government's response to that observation in the review, and what action will they be taking to address the barriers of unpaid internships?

One of the review's key recommendations is for the Government to assess the extent to which its recommendations have been implemented and take necessary action when required. Will the Government commit to doing that within the suggested timetable of a year and, if so, can the Minister explain how that will happen?

Finally, the Government's response indicated that they will be setting out to all companies and institutional investors the value of employing a diverse workforce. How do they plan to do that and when will we see it?

My noble friend Lord Kirkham says that it is a no-brainer. I think that everyone who has contributed to this debate would say that: it is a no-brainer. That is the extraordinary thing about this subject: it is a no-brainer. The moral case is obvious. The economic case is a no-brainer. Yet, as my noble friend Lady Bottomley and the noble Lord, Lord Griffiths, asked: why has it taken so long? If it is a no-brainer, why is progress so slow? Why do young black people have lower aspirations? That is the conundrum that we face today.

The Government welcome my noble friend's report and encourage businesses to take forward her recommendations. We will work with employers to support them in improving their diversity and inclusion.

I want to talk a little bit if I can about my own experience in the NHS, where I was chairman of the workforce race equality standard advisory group before I went to the Department of Health. We have heard a lot about institutional racism over the years, especially in relation to the police following the Macpherson inquiry into the tragic murder of Stephen Lawrence. You would think sometimes, when reading about that, that it was only in the police and that it was only the police that were institutionally racist, but let me paint you a story about the NHS. It brings forward the contrast between words and actions, because the NHS constitution is clear that:

"All NHS staff have the right to be treated fairly, equally and to work in an environment that is free from discrimination".

Those are almost the same words as in the constitution of the United States, which talked of liberty, equality and the pursuit of human happiness at a time of slavery and segregation. As we say in Norfolk, "Fine words butter no parsnips". Again, this echoes the title of the McGregor-Smith review: *The Time for Talking is Over. Now is the Time to Act*. How many times and how many people have said that in the past—and here we are?

Some 20% of the NHS workforce are from a BME background, but only 5% of senior managers are from a BME background; 40% of hospital doctors are from a BME background, and only 3% of medical directors are from a BME background. Out of all the hundreds of NHS organisations, only three CEOs and four nursing directors are from BME backgrounds. People from BME backgrounds are twice as likely to enter a disciplinary process than white people. Even where there are very high levels of BME staff or very large BME communities served by a hospital, representation
of BME people in senior leadership positions is far too low. I am sorry that the noble Lord, Lord Patel of Bradford, is not here, because for a short time he was chairman of the Bradford Teaching Hospitals NHS Foundation Trust, and he told me that there was no one from a Pakistani background in a senior position in that trust, despite the fact that the community that the hospital served was largely made up of people from that ethnic background.

These facts have been revealed only recently, in a paper called The “Snowy White Peaks” of the NHS, by Roger Kline. From that, we have developed nine standards—the workforce race equality standards, or WRES. My noble friend Lady McGregor-Smith talked about transparency; every trust has to produce nine standards, in public, going from board representation, training opportunities, promotion, levels of discrimination and the like. They will be published every year, and they have been incorporated not just into the NHS standard contract, which my noble friend Lady Bottomley mentioned, but into the regulatory system in the CQC’s well-led domain.

Research has been published by the King’s Fund’s Michael West, Mandip Kaur and Jeremy Dawson, in a paper called Making the Difference, which makes it absolutely clear that there is a very close correlation between hospital performance, whether it is measured in patient or clinical outcomes, or however you measure it, and diversity. That is supported by work done by McKinsey which shows very clearly that boards with a diverse membership get better corporate results.

We know that black and other minority ethnic people suffer in other ways, not just in the workforce. They die younger. Research done by Professor David Williams, now of Harvard University, estimates that 200 adult black people die prematurely each day in the USA because they are black not white. It is not just about poor housing or less healthcare, because it is true also of college-educated black people in the USA, but because they have to try that much harder and have to be overqualified and put up with all those subconscious slights of day-to-day living: a look of fear in the face of a single white woman; the look of surprise at a moment of success; not getting a good courtesy from other people—all those small slights.

I can recommend to anyone who is interested Professor Williams’s TED talk called “How Racism Makes Us Sick”. In it, he reported on a very broad experiment and noted that black people were associated with words like “violent”, “poor”, “religious” and “lazy”. For whites it was words like “successful”, “wealthy”, “progressive”, “conventional” and “educated”. That is why there is subconscious bias—because there is this stereotype. The noble Lord, Lord Kirkham, said, “I am not a racist, but”. I suspect that applies to everybody. We have a deep, subconscious stereotype of what different people are like and I will come now to why I think that is.

This is my personal view—but it is not just mine. Despite what we have heard from other noble Lords, we have made more progress in removing discrimination against disabled people, women and people with a different sexual orientation. The crucial question is: why has race been so difficult? In part it may be because the roots of the issue are not just cultural but evolutionary. Xenophobia has deep evolutionary roots; suspicion or aggression to outsiders has been an effective strategy for human beings and, more importantly, our forebears for millions of years. Today, interview, selection and promotion processes in the workplace are the modern setting where intrinsic, subconscious bias now most evidently—but, as I have argued, by no means exclusively—plays out. We pick people “like us”; people who will “fit in”; people who will be part of our team: in other words, white, male and who want to play rugby at the weekends.

I have just read a fascinating book called East West Street by Philippe Sands, who writes about the origins of two strands of international criminal law originating from the Nuremberg trials after the war: genocide and crimes against humanity. In the epilogue he concludes powerfully that, for all the disadvantages and unintended consequences of the former law—which focuses on groups rather than individuals—it is necessary because: “I am bound to accept that the sense of group identity is a fact”.

As long ago as 1883, the sociologist Louis Gumplowicz, in his book on the struggle between the races, noted that, “the individual when he comes into the world is a member of a group”.

This view persists. A century later, the biologist Edward O Wilson wrote that: “Our bloody nature … is ingrained because group-versus-group was a principal driving force that made us what we are”.

It seems to him that a basic element of human nature is that, “people feel compelled to belong to groups and, having joined, consider them superior to competing groups”.

Yvonne Coghill is the co-director of the workforce race equality standard programme in the NHS. She is a black woman from the Caribbean who has been a nurse in the NHS for 30 years. Knowing that I was taking part in this debate, she wrote to me last week, saying: “Beliefs about what good looks like, what constitutes beauty and brains, are deeply ingrained in our society … the problem of race is a systemic and structural one … we are fearful and anxious about differences”.

Of course things have got much better. The six race relations and equality Acts between 1965 and 2010 have had an impact. Overt racism is rarely seen. The civil rights legislation in the USA came in from the 1960s onwards, together with affirmative action programmes. Interestingly, Professor Williams, to whom I referred, got his first break with a minority scholarship to the University of Michigan. I believe very much in giving people an extra hand. You have to look at people’s potential rather than their actual achievements. However, subconscious discrimination is still a major factor in the USA.

What is the conclusion from this? I think it is that there are no quick, easy answers. There is no one piece of legislation that we can pass which will solve these problems. The case for greater urgency is made in this review. As the EY case study in the review states:

“We believe that culture change takes time—and we are therefore patient and at the same time impatient”,

to change the status quo.
We are impatient to tackle this issue because it is a moral and economic imperative. However, we will have to be both patient and impatient—patient because we are trying to change deep-rooted behaviour and impatient because racial discrimination is both a moral outrage and a huge economic opportunity. This very important review from my noble friend Lady McGregor-Smith has the full support of the Government. We will not resort to legislation straightaway but will see how things go. If legislation is needed at some time in the future, we will, of course, consider it at that time.

I conclude by again thanking my noble friend for this report. I hope that in two, three, four or five years’ time, we can look back at this as a moment when things started to accelerate. However, I fear that we need some patience.

Lord Stevenson of Balmacara: I congratulate the noble Lord on his interesting speech, which I will read in Hansard and reflect on. He was asked a number of serious questions about policy from not just me and my noble friends but by noble Lords on the other side of the House as well. I would be grateful if he could confirm that he will write to us about these issues.

Lord Prior of Brampton: I should have said that a number of questions were raised that I could not address—for example, on different issues connected with disability and other issues, including one raised by the noble Baroness, Lady McDonagh. I will read Hansard tomorrow and write to noble Lords on those issues.

Technical and Further Education Bill
Returned from the Commons

The Bill was returned from the Commons on Wednesday 19 April with a reason and amendment. The Commons reason and amendment were printed in accordance with Standing Order 50(2).

House adjourned at 6.27 pm.
Death of a Member: Lord Williams of Baglan

Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of Lord Williams of Baglan on 23 April. On behalf of the House, I extend our condolences to the noble Lord’s family and friends.

Leaseholders: Holiday Letting

Question

2.36 pm

Asking Baroness Gardner of Parkes

To ask Her Majesty’s Government what plans they have to prevent leaseholders whose leases do not permit the short-term subletting of their properties from registering those properties with holiday letting firms.

Baroness Gardner of Parkes (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as in the register.

Baroness Gardner of Parkes: One only wishes that was the situation. Too often, these are illegal lets, quite contrary to the tenancy agreement and the lease. Will the Minister consider, as he is still working on regulations, allowing people to have some access through the council whereby they could apply for a certificate indicating that they had the right to a short let? Then people would know that those were legal rather than illegal.

Lord Bourne of Aberystwyth: My Lords, as the Minister will know, the Residential Landlords Association says that there are now 33,000 listings on the Airbnb website for holiday-type and short-term lettings. Alarmingly, 65% were available for more than 90 days a year, which is the point that the noble Baroness, Lady Gardner, is really getting at because that is in breach of planning law. Will the Minister please say whether central Government have made any assessment of what that has done to the housing market? Is it sufficient to leave it to local authorities, which do not enforce this? We make laws and we do not enforce them.

Lord Bourne of Aberystwyth: My Lords, breach of planning regulations is very different from the issue of freedom of contract. In relation to that matter, I have met with Airbnb. It does not now carry anyone who lets their property for more than 90 days at a time unless they have planning permission to do so. That is the company’s rule and it has contacted all those who propose to let property to let them know that. Since then, the Minister for Housing and Planning has written to all the other suppliers indicating that they should do similarly and that if there is a contractual provision they should abide by that as well.

Lord Campbell-Savours (Lab): Why not just reduce the time from 90 days to a lower number?

Lord Bourne of Aberystwyth: My Lords, the 90-day limit was set in the Deregulation Act. Other towns throughout Europe might have different limits. Outside of London, there is no limit. Ninety days was the limit set in the Deregulation Act.

Lord Campbell-Savours: But that does not mean it cannot be reset.

Lord Bourne of Aberystwyth: No, indeed it does not, but we are not going to.

Lord Kennedy of Southwark (Lab): My Lords, I refer noble Lords to my entry in the Register of Lords’ Interests. The noble Baroness, Lady Gardner of Parkes, raised an important issue. Will the Minister say a little more about why they are not prepared to act?

Lord Bourne of Aberystwyth: My Lords, it is very clear that it is up to individual landlords. In the case of Nemcova v Fairfield Rents Ltd in 2016, just a year ago, a landlord enforced a provision in the lease to ensure that the tenant did not act in breach of the lease. It has never been the case that any Government would interfere with freedom of contract where parties are open to go to court in relation to a contractual matter. This is not a planning issue.

Lord West of Spithead (Lab): My Lords, in four years’ time Annington Homes, which controls all of the Ministry of Defence’s married quarters, will be able to reassess the cost for rent and letting these back to the MoD. There is bound to be a huge increase. Does the Minister not think that we need to look at this, because it will impact yet again on the defence boat and there will be even fewer ships?
Lord Bourne of Aberystwyth: My Lords, I am pleased to see that over the Recess the noble Lord has not lost his ability to get questions relating to defence under the radar, as it were. I will of course ensure that he gets a full response.

Baroness Gardner of Parkes: My Lords, is the Minister aware that in some cases people coming in are endangering lives and threatening long-term residents in blocks? Is he also aware—I think I have drawn the House’s attention to this before—that in New York and Berlin blocks that have long-term residents are not allowed to do short lets at all? All the short lets have to be done in places that are designated as such and therefore do not destroy the lives of people. I know personal cases where people have lived in these blocks for more than 50 years and they find that their front door is smashed and they are threatened. It is really quite a terrifying situation.

Lord Bourne of Aberystwyth: My Lords, the whole House will of course sympathise with the situation that the noble Baroness is in if she is suffering from these sorts of situations, but there is a whole panoply of criminal law to deal with these issues. This is nothing to do with Airbnb; it is a breach of the law relating to violence and criminal damage. It is not a matter for Airbnb. I note what she says about other cities, but that is not the provision here. The provision set in the Deregulation Act specifically for London is 90 days. If companies are acting within that, as Airbnb is, we can ask little else of them.

Lord Kennedy of Southwark: My Lords, is the noble Baroness raised a really important issue. Why can the noble Lord not say that he will have a look at those matters?

Lord Bourne of Aberystwyth: My Lords, for any criminal damage, which is admittedly a very serious issue, there is of course a panoply of the law, such as the Criminal Damage Act, to deal with such a situation. Breach of contract is a matter for the landlord and tenant to sort out between them. The Government have no role in enforcing contracts.

Brexit: United Kingdom-Africa Trade and Development

Question

2.42 pm

Asked by Lord Oates

To ask Her Majesty’s Government what measures they intend to take to promote United Kingdom–Africa trade and development co-operation in the transitional and post-Brexit periods.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, unlocking barriers to trade to reduce poverty is an important part of our economic development strategy. As we leave the EU, our priority is to ensure that we do not disrupt vital trading relationships, including with our African partners.

Lord Oates (LD): I thank the Minister for his reply. I hope he is aware of the Africa All-Party Group’s report on UK-Africa trade, which underlines the potentially damaging impact of Brexit on African economies. Will the Government consider carefully the report’s recommendations, in particular the need to prioritise a transitional regime to maintain preferential, non-reciprocal market access to the UK for those African economies?

Lord Bates: I thank the noble Lord for his Question, but I do not accept his pessimistic outlook. We have said that the economic partnership agreements we have in place through the EU are working well and we want them to continue. We set that out in the exiting the EU White Paper. Our intention is to have other measures in place by the time that exiting happens. The great benefit of this is that we will not be bound or limited to the trade preferences currently through the EU. We can have a broad new arrangement that will benefit African countries as well as our own.

Baroness Royall of Blaisdon (Lab): My Lords, I am glad that the Prime Minister has made clear her commitment to the 0.7% figure. That is terribly important. As the House will be aware, while there is global growth, poverty is growing in Africa, where there is increasing inequality. What are the Government doing to ensure that trade and development policies are inclusive and pro-poor? Will the noble Lord agree that, as we step up our trade relationships, we must ensure that they enhance sustainable and inclusive development?

Lord Bates: That is right. All those points were made by the Secretary of State when she launched the economic development strategy in Ethiopia in January. We have taken this matter forward seriously. No country has ever successfully defeated poverty without economic development and economic growth. We want to be at the forefront of ensuring not only that there is FDI but that those countries can have access to our markets on the most preferential terms.

Lord Hannay of Chiswick (CB): My Lords, does the Minister recognise that the relationship with the African, Caribbean and Pacific countries which we have as a member of the EU covers a lot more than just trade and aid? It also covers guaranteeing the export receipts from primary materials and sugar. What plans do the Government have to look after those aspects when we have left the European Union?

Lord Bates: Those are all important points, as the noble Lord will know, which is why we want to make sure that arrangements relating to all matters covered by the EPAs continue not just until the point at which we leave but beyond. We want also to take the opportunity to discuss with our bilateral partners in Africa, the Caribbean and elsewhere how we can improve on the current arrangements so that they might work better for those in poor countries.

Viscount Ridley (Con): My Lords, further to the point that my noble friend the Minister has just made, can he confirm that African exporters to Britain face...
the high EU external tariff and that, after Brexit, there will be an opportunity to review that and therefore to increase trade between the UK and Africa?

Lord Bates: My noble friend is right to raise that point. The lowest-income countries are able to come in duty free and tariff free under the Everything but Arms agreement, but there is more to be done on the middle-income countries. There is now more flexibility: we are leaving the EU, but we are still embracing the world. We want to put free trade at the heart of all our trade. There is now more flexibility: we are leaving the EU, but we are still embracing the world. We want to put free trade at the heart of all our trade.

The Lord Bishop of Southwark: The Minister may know that I am a regular visitor to Zimbabwe, where my diocese has links with four of the five Anglican dioceses there. How do Her Majesty’s Government propose to respond to the preponderance of Chinese investment both there and in other African nations, both in infrastructure and major economic undertakings?

Lord Bates: I do not think that we see investment in Africa by any country as a problem. We see a significant gap in finance and investment, which Africa needs. The gap to meet the global goals is some $2.5 trillion per year whereas aid flows amount to only some $150 billion. The gap has to be filled by private investors. We welcome them from wherever they come. As the right reverend Prelate will know, we are certainly playing our part in Zimbabwe to encourage investment and to identify investment opportunities in both directions.

Lord Chidgey (LD): My Lords, in January this year, Dr Rob Davies, the South Africa Minister of Trade and Industry, reminded the Government that the United Kingdom is the major destination among EU nations for South African investment. It invests more here than in any other EU country. The UK also accounts for 20% of South Africa’s wine exports and 30% of its fruit exports under the current EU economic partnership agreements. What specific actions are the Government taking to allay South African concerns and to maintain the strength of what is a key strategic market post Brexit, when the UK will be excluded from some of those treaties?

Lord Bates: That conversation happened when Liam Fox, the Secretary of State for International Trade, was in South Africa talking about how we could enhance trade co-operation between our two countries. It is important that we do that. We also need to see Africa as a tremendous opportunity—I know that the noble Lord shares my view on this. Africa will be a market of some $30 trillion by 2050 and will have a middle class the size of Europe. It is in our enlightened self-interest to build those strong links and maintain free trade.

Lord Lea of Crondall (Lab): Does the noble Lord accept that the elephant in the room in this debate is a country called China? China is growing very fast in Africa and says quite explicitly that it thinks it very important that the main Chinese relationship will be with the EU. Instead of saying that everything in the garden will be lovely, would not the Minister find it more useful to think how the constructive relationship with EU countries and the EU as such will continue?

Lord Bates: I totally agree but refer to the point I made before that the problem in the crisis we face at the moment, particularly in sub-Saharan Africa, is a shortage of investment rather than too much. All the investments made by other countries and private investors are of course a matter between that particular country and the investor making those decisions. We do not want to get in the middle of that. We want to encourage as much investment as possible in that area so that growth can happen.

Lord Collins of Highbury (Lab): My Lords, the key to what the noble Lord said is that there are opportunities here but principles must govern them. The most important principle is a pro-poor and pro-development policy. Can the Minister assure the House that his department will be heavily involved in future trade negotiations with Africa? I do not have confidence in the Minister responsible for international trade to carry through those principles.

Lord Bates: That is the reason we set up a cross-government programme including the prosperity fund to build economic trade and development. It is why we hosted the Commonwealth Trade Ministers’ meeting here last year. It is the reason the Secretary of State for International Trade is travelling round the world with his other Ministers, trying to put in place the groundwork for these trade agreements in future. We all recognise that free, unfettered trade is one of the best routes out of poverty ever known and we need to do more to encourage it so that people get the opportunity to come off aid dependency and into a self-sustaining economic future.

Baroness Hayman (CB): My Lords, today is World Malaria Day. I do not expect the Minister to have read and digested the report published today, *Global Britain and Ending Malaria: The Bottom Line*, compiled by Malaria No More and Ernst & Young, but it sets out that malaria costs this country £765 million in lost trade opportunities with the most affected countries. Does he agree that investment in malaria control not only saves lives and improves the economies of the affected countries but is a major benefit to this country in terms of life sciences investment and boosting British trade?

Lord Bates: I am very happy to do that on World Malaria Day. I have not seen that particular report but the World Health Organization’s annual report, published in December, pointed to the fact that malaria-related deaths have reduced by some 60%, which means about 6 million lives have been saved as a result. That was why the Secretary of State announced in September that we will invest a further £1.1 billion in the global fund to tackle AIDS, TB and malaria, which is another demonstration of this Government’s commitment to the poor.
Literacy in the Workforce

Question

2.53 pm 

**Asked by Baroness Rebuck**

To ask Her Majesty’s Government what steps they are taking to improve standards of literacy in the workforce.

**Baroness Rebuck (Lab):** My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare my interests as listed in the register.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, we know that strong literacy skills are fundamental to people’s education and employment prospects. That is why we have taken steps to improve literacy standards for people in the workforce by embedding English into our major education and work-based training programmes. We are also providing full funding for adults to access free English courses up to the equivalent level of GCSE, supporting community and workplace programmes, and working to improve the quality of English teaching for adults.

Baroness Rebuck: I thank the Minister for that Answer, but 9 million adults in England suffer from poor literacy and would struggle to send a simple email or fill in a basic job application form. The CBI’s 2015 business survey shockingly showed that the problem was getting worse, not better. Some 50% of businesses reported a workforce literacy deficit, up from 40% in 2009. The Learning and Work Institute and the Joseph Rowntree Foundation estimate that an extra £200 million needs to be spent on adult literacy every year to ensure that by 2030 all adults will have sufficient basic skills. Communication, numeracy and digital skills all depend on literacy, so does the Minister agree that scaling up literacy, so does the Minister agree that scaling up local literacy interventions in the 100 worst-performing constituencies, as identified by the National Literacy Trust and Experian, is a prerequisite to fulfilling the importance of grammar in our curriculum.

Lord Rebuck: A noble Baroness makes a very good point and we are doing this; for instance, the Maynard report was very focused on the issue. There has in fact been a doubling of pupils who did not have their grade C in English at 16 achieving it by 19—the number of pupils who have caught up has doubled since 2010.

**Lord Bird (CB):** My Lords, if the Government are really determined to tackle the question of literacy, can we see a more vigorous defence of our libraries as well as a more vigorous intervention in our prisons, where many of our young men and women are left with deep literacy problems?

Lord Nash: I agree entirely about the importance of books and libraries. We have seen some library closures but this is a responsibility for local authorities, and there are many good libraries. As far as prisons are concerned, the Prison Safety and Reform White Paper has committed to assessing on entry all prisoners’ education needs, including maths and English, in order to create a personalised learning plan and to focus very much on their literacy skills. I agree it is absolutely essential that we educate prisoners so that they can gain employment after their sentence.

**Lord Watts (Lab):** My Lords, the Minister says he accepts that this is a major problem. Does he intend to find £250 million to address it, as was highlighted in the report?

Lord Nash: I think that we have made significant progress. I have talked about the 40% increase in funding over the next five years. We know that the OECD told us that our 2012 school leavers were among the most illiterate and innumerate in the developed world after more than 11 years in education up to 2012. We have made considerable progress on that, which is partly what our apprenticeships and T-level reforms are all about.

Lord Tebbit (Con): Does my noble friend not think that at the root of this problem is the poor performance of teachers in many of our schools? They simply do not seem to be interested in teaching the basic skills of literacy and other subjects. Perhaps while they are at it, they could also, with benefit, teach some of their pupils how to ask a question briefly and succinctly and not stand and read it for hours on end.

Lord Nash: On the last point, I entirely agree with my noble friend about the benefits of précis. I remember spending a lot of time at school studying précis and I am sure that many people, including civil servants, could benefit from some training on that. But I pay tribute to our hard-working teachers who have supported with enthusiasm our phonics programme, which has resulted in many more children being on track to be confident young readers, and of course we now emphasise the importance of grammar in our curriculum.

Lord Storey (LD): My Lords, the Minister will confirm that literacy levels are the highest they have ever been, and that is thanks to the dedication of our teachers. However, a small number of young people
slip through the net and there are some enlightened employers who help their workforces to develop their literacy skills while they are at work. That not only gives them greater employability but helps with their personal confidence. Sainsbury’s is an example of a company which does that. Will the Minister look at how other companies might be involved in similar schemes?

Lord Nash: The noble Lord is quite right and is always well informed on this. We now have a higher proportion of young people than ever leaving compulsory education with a C or equivalent in English. We also work with organisations such as Unionlearn and the Learning and Work Institute to promote literacy training for people in the workplace. But I shall certainly look at the points he has made and I would be delighted to discuss them with him further.

General Election: Voting Rights
Question

3 pm

Asked by Baroness Walmsley

To ask Her Majesty’s Government what plans they have to allow British citizens who have lived outside the United Kingdom for more than 15 years to vote in the forthcoming General Election.

Baroness Walmsley (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and I declare an interest as the mother of an expat of more than 15 years.

Lord Young of Cookham (Con): My Lords, legislation scrapping the 15-year rule will not now be introduced in this Parliament. I understand the disappointment of those affected. However, it is my hope that this will be delivered in the next Parliament, so that those who have lived abroad for more than 15 years will be able to participate in future elections.

Baroness Walmsley: My Lords, I thank the Minister for his reply, but I do not think that hundreds of thousands of disenfranchised British expats will thank him. The Government have been in place for two years now. Why have they not fulfilled their promise in the 2015 manifesto to give votes for life to these people? Is it not because the Government are afraid of how they might vote, given that the Government have ruined the lives of many of them who live in other parts of the EU by choosing a hard Brexit?

Lord Young of Cookham: My Lords, when Members of Parliament, including Liberal Democrat Members, voted overwhelmingly last week that this Parliament should come to a premature close, it was inevitable that certain measures would not be introduced in this Parliament. However, I hope that if this measure is introduced in the next Parliament, it will have the full support of the Liberal Democrats, in view of the interest that the noble Baroness has just shown.

Lord Kennedy of Southwark (Lab): My Lords, I refer noble Lords to my entry in the Register of Lords’ Interests. Can the noble Lord tell the House what additional resources the Government are providing to enable local government to register more citizens to vote? What representations are they making to the Residential Landlords Association and the Association of Residential Letting Agents to encourage them to bring it to the attention of their tenants that they could be eligible to vote—because tenants in the private sector are one of the most underrepresented groups at elections?

Lord Young of Cookham: The noble Lord is quite right that a number of groups are unregistered in the current regime. Over recent years, the Government have devoted resources to trying to increase registration of those groups, particularly students. We have also made it much easier for people to register to vote: you can vote online in about three minutes. A number of initiatives are also being taken by the Electoral Commission, focused on some of the groups that the noble Lord rightly mentioned, to encourage them to vote. Over forthcoming weeks, the Electoral Commission will of course have an additional campaign as part of its responsibility of informing people how and where to register to vote.

Lord Lexden (Con): I have asked the Government on many occasions to expedite this important matter, and the disappointment will be widespread and great among our fellow country men and women living abroad. When will the Government reach decisions on the issues set out in their policy statement relating to this area, which was published last October?

Lord Young of Cookham: My noble friend is quite right to draw the attention of the House to the progress that we have made in this Parliament by publishing the Ministerial Statement on 10 October. That Statement made it clear that our plan was to have the policy implemented before the next scheduled parliamentary election. Discussion is now taking place on how to register and who will be eligible to register. I hope that Ministers, if they are indeed returned after the next election, will be able to take this initiative forward.

Lord Wallace of Saltaire (LD): My Lords, the Government will recall that in the referendum campaign a number of voters living abroad did not receive their postal vote in time to vote. There was much discontent over that. Can the Government make sure that on this occasion, those who wish to vote while living abroad and who are registered are provided with the opportunity to vote in good time?

Lord Young of Cookham: My Lords, I understand that I said earlier that people could vote online; I should have said that they could register online. I am happy to put the record straight.

When people tried to register before the last referendum, there were times when the system could not cope. Since then, steps have been taken not only to increase the capacity of the system but to build in extra safeguards against any attempt at sabotage.
Lord Dubs (Lab): My Lords, would it not be more important to give the vote to 16 and 17 year-olds, whose future is in this country, than to people who have left this country, do not pay taxes and seem to have no interest in us?

Lord Young of Cookham: Since the last election, the issue has been discussed on several occasions in the other place. Each time that it was put to a vote, the proposition that the noble Lord has just referred to was voted down. We are in line with most mature democracies in having a voting age of 18, which is aligned with the age for jury service. I do not detect a huge public demand to lower it.

Lord Hayward (Con): My Lords, what efforts are being made by different agencies and government to ensure not only that there is participation in terms of registration to vote but that those people who will be on holiday on general election day can vote?

Lord Young of Cookham: My noble friend takes a keen interest in matters psephological. He is quite right that a large number of people who have retired will be taking their holiday in June. The Electoral Commission is aware of this propensity and, as part of its campaign to encourage people to register to vote, it will be taking on board the necessity to remind people who are going to be away that they should vote by post. I suspect that the political parties will be taking similar initiatives.

Lord Grocott (Lab): Will the Minister explain what principle he is defending? He seems to be saying that someone who has lived and worked abroad and has not paid taxes or lived in the United Kingdom for, let us say, 50 years, and has not even been on an electoral register in the United Kingdom to tie him or her to a particular part of the United Kingdom should have exactly the same rights in determining who the Government of the United Kingdom should be as a lifetime resident of this country.

Lord Young of Cookham: British citizens living abroad have been entitled to vote ever since I have been a Member of Parliament. Initially, it was 20 years, which was then reduced to 15 years. So the principle that the noble Lord seems to object to has already been conceded; the debate is where you draw the line.

Northern Ireland (Ministerial Appointments and Regional Rates) Bill

First Reading

3.07 pm

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

Technical and Further Education Bill

Commons Reason and Amendment

3.09 pm

Motion A

Moved by Lord Nash

That this House do not insist on its Amendment 1 to which the Commons have disagreed for their Reason 1A.

Commons Reason

1A: Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, this Bill is integral to the Government’s ambitious reforms for creating a world-class technical education system. These reforms will help to ensure that technical education in our country provides everyone with the skills and opportunities they need to succeed and gain skilled employment on a long-term basis, and at the same time they will serve the needs of our economy and reduce our skills gap. The Bill’s further education insolvency regime will also protect students at FE colleges in the event that their college faces financial difficulty.

I am very grateful for the interest and input from noble Lords across the House on the Bill, and in particular how they have helped strengthen the Bill and its related policy areas. It is quite clear that the Bill has strong cross-party support. I am glad that the Bill returns to this House for further debate on two amendments from the other place. I will deal with these amendments in turn. Given the volume of business we need to get through today, I will try to keep this brief, and I hope other noble Lords will join me in that endeavour.

Noble Lords will know that Lords Amendment 1 was rejected in the other place on the basis of financial privilege, and I request that this House respects the decision reached there. However, I would like to acknowledge the sentiment behind the amendment and to address some considerations. First, I understand that a drop in household benefits income and a shift of income from parents to a young person can be difficult to manage. However, we should give parents credit for supporting their children to enter apprenticeships and develop their own financial independence and long-term careers. The numbers testify to this: last year more than 200,000 young people under 19 were in apprenticeships.

Secondly, during the Bill’s passage, the Opposition compared the financial support available to full-time students and that available to apprentices, while giving very little attention to the matter of remuneration. Full-time students are forgoing employment and income opportunities to gain qualifications, often while paying to invest in their future. Apprenticeships are paid jobs, with high-quality free training. The 2016 apprenticeship pay survey showed that the average wage for all level 2 and 3 apprentices was £6.70 an hour. Apprentices are also increasing their future employment prospects and earnings; on average, level 2 and level 3 apprenticeships increase earnings in employment by 11% and 16% respectively.
Finally, we must target resources. The cost of the amendment is estimated at over £200 million per year by 2020. The benefits system quite rightly targets financial support towards greatest need, including for example dependants in low-income families. Benefits awards must take other sources of income into account.

We also target funds carefully to support apprenticeships among key groups. We pay additional amounts to training providers in the most deprived areas. We also steer funding towards providers and employers for the youngest apprentices and for care leavers, as well as for those with learning difficulties and disabilities. As the new funding system beds in, we will continue to review how funding is targeted, including to support access to apprenticeship jobs for those from disadvantaged backgrounds.

Amendment 6A was tabled in the other place in lieu of an amendment tabled on Report by the noble Lords, Lord Storey and Lord Watson, and the noble Baroness, Lady Garden. The amendment proposes a new clause to the Bill which will require Ofsted to consider the quality of careers provision when conducting standard inspections of further education colleges.

I am grateful to noble Lords and the noble Baroness for raising the issue of careers guidance in colleges and giving the Government the opportunity to consider this important matter further.

As the noble Lord, Lord Storey, explained so eloquently on Report, one of the most important things we need to do for young people is provide guidance and knowledge about careers. He rightly pointed out that this is particularly true for young people from disadvantaged backgrounds, who may not have access to networks of support to inform them about options and perhaps provide opportunities for them to do work experience. That is why it is vital that FE colleges—which take many students from areas of educational disadvantage—should make high-quality careers advice available to everyone.

Of course, there are a number of colleges already leading the way in this. Gateshead College embeds careers in all aspects of a student's learning. JobLab provides dedicated support to help their students develop practical employment skills, and Career Coach provides labour-market data and maps out education, training and career options. I also recognise Ofsted's commitment to evaluating the quality of careers advice and guidance in further education. Matters relating to careers provision feature in all four graded judgments that Ofsted makes when judging the overall effectiveness of a college. However, the Government are persuaded of the need to go further to ensure that young people can benefit from the best possible preparation for the workplace and acquire the skills and attributes that employers need. The amendment will send a clear signal that a high-calibre careers programme must be embedded in every college.

I hope I have reassured noble Lords that we agree wholeheartedly with the principle of the original Lords amendment. The drafting changes serve only to ensure that the amendment achieves its intended effect and that the language conforms to current legislation. The amendment now includes an explicit requirement for Ofsted to comment on the quality of the college's careers provision in the inspection report.

I urge noble Lords to accept this amendment in lieu. It is our chance to ensure that all FE students can access the support they need to help them to achieve their full potential. As discussed earlier, I also ask noble Lords to respect the other place's decision to reject Amendment 1 on the grounds of financial privilege.

I beg to move.

Lord Watson of Invergowrie (Lab): My Lords, I acknowledge that the Bill is a better one than when it began its progress through both Houses. We shall not seek to impede its journey to the statute book.

The addition of the amendment promoted by the noble Lord, Lord Baker, and others, represents an important step forward in ensuring that school pupils have explained to them the full range of options, not just those whose choice of an academic route might benefit the school's coffers. It should not have been necessary for an amendment to be passed to secure that, because strong careers guidance is critical to promoting apprenticeships in schools. If the Government's target for apprenticeships starts is to be achieved and sustained, as we all hope, then it is crucial that young people are alerted early enough in their school life to the importance and attraction of technical routes.

However, it is disappointing that the Government have not been willing to accept Amendment 1 passed by your Lordships on Report. The decision to exclude apprenticeships from the category of approved education or training will serve as a deterrent to some young people, particularly those from disadvantaged backgrounds.

The Minister for Apprenticeships and Skills said last week:

"The crucial point is that the vast majority of level 2 and 3 apprentices are paid more than £6.30 an hour, and 90% of them go on to jobs or additional education afterwards"—[Official Report, Commons, 19/4/17; col. 714.]

But that is not the crucial point; in fact, he has missed the point. At least 90% of university graduates go on to jobs or additional education, so there is no difference in that respect. And whether apprentices earn £3.50 an hour—the legal minimum, which, as I said on Report, not all of them get—or £6.50 an hour, their parents are still disqualified from receiving child benefit. That is the nub of the issue. Clearly, though, we have not been successful in convincing Ministers of that point.

It was interesting to read last week of the Minister for Apprenticeships and Skills, in defence of the Government's position, coming up with a figure of some £200 million a year by 2020-21. So apprentices—the young people we need to train in order to fill the skills gaps that we know exist—are to be treated unfavourably compared to their peers who choose full-time study because of the cost. The Government can miraculously find £500 million to create new grammar schools yet cannot find £200 million to ensure that the number of apprentices from the poorest families rises from its current very low level of just 10%. If there is logic in that policy stance, it escapes me. The noble Baroness, Lady Buscombe, said in Committee that she would discuss this issue with ministerial colleagues in the DWP. By Report there had been no such meetings, and we learned from the debate in the other place last week that those meetings have still not taken place. So where did the £200 million figure appear from, if not the DWP?
In passing, I say to the Minister that I submitted a Written Question asking for the Government’s workings that produced the £200 million figure. As I understand that those Questions disappear on Dissolution, I ask him to write to me with the answer so that we can gain an understanding of the foundation on which the Government have erected the barrier to treating apprentices as “approved learners”.

On Amendment 6, initially I was dismayed that the Government were unwilling to accept the will of your Lordships’ House on careers advice in further education colleges, although that was perhaps not too surprising as the Minister told us on Report that it was not necessary. However, the Government’s amendment in lieu actually appears to be stronger than the original amendment. First, it goes further than further education colleges and refers to “FE institutions”, which of course covers all training providers on the register.

Secondly, the original amendment in the name of the noble Lord, Lord Storey, which your Lordships’ House voted for at Report, called on Ofsted to “take into account” the careers advice made available to students by colleges. Government Amendment 6A states that Ofsted must, “comment on the careers guidance provided to relevant students at the institution”.

For that reason, I welcome Amendment 6A, as Ofsted will be obliged to be proactive in reporting what it discovers in FE colleges that it inspects. That is certainly to be welcomed, although it comes with the caveat that it will apply only to those colleges that Ofsted actually inspects. How many will be? Realistically, how many can it be?

At Report, I asked the Minister to give an assurance that Ofsted would be adequately resourced; I fear that he did not reply. Mr Marsden asked the same question of the Minister for Apprenticeships and Skills, and he did not reply, so perhaps the Minister can now tell noble Lords how many additional staff Ofsted will have to enable it to cope with large new demands. I look forward to his response on that. I suggest that he must have one because it is surely inconceivable that he and/or his officials have not met Amanda Spielman or her deputy, Paul Joyce, to discuss the resources that they will require as a direct result of the Bill.

We are now at the end of a process that has produced the Bill, which will strengthen the sector but could have achieved much more. I thank all noble Lords who have participated in our debates, as well as Ministers, who have moved some way, if not as far as we would like, during our deliberations.

Lord Storey (LD): My Lords, I shall speak to Amendment 6A. The Minister has put it better than I could, so I shall be very brief. I have always thought that the key to making the Bill successful was twofold. First, there was breaking the logjam of mainstream schools not allowing for or understanding the important role of technical education, whether it be FE colleges or university technical colleges. The acceptance of the amendment of the noble Lord, Lord Baker, was a crucial step forward. Secondly, there was careers. You can have all the courses in the world, but unless young people get a successful career at the end of it and an understanding of what is available to them, it is all for naught. I am delighted with the amendment. It sends a clear signal not only to the further education sector but to schools themselves. The explicit wording in the amendment means that there is no hiding place.

This is an important Bill, and I congratulate the Minister and his colleagues on carrying it through the Chamber in such a sympathetic way. I also thank the civil servants, who have been exemplary in the support that they have given us all. We could not wish for anything better. Finally, I thank my noble friend Lady Garden—she cannot be here—who led for my party on the Bill, and other colleagues who have supported us.

Lord Baker of Dorking (Con): My Lords, I thank the noble Lord, Lord Watson of Invergowrie, for deciding not to press his amendments on this case. I know how strongly he feels about it, but it will be possible to revisit that after the whole principles of apprenticeships have been set up. I think that it is generally agreed by all sides of the House that this is an important Bill and a beneficial Bill. It is a major step forward in improving the technical education of our country. It has been handled very well by the Minister and his department, and we should speed it to the statute book.

Lord Nash: My Lords, I have discussed the Government’s response to the two amendments that have returned to this House from the other place and asked noble Lords to agree the Motions from the other place on those two amendments. In response to the noble Lord, Lord Watson, about where the £200 million estimate came from, I can say that it is estimated by the DfE, HMRC and HM Treasury, using apprenticeship participation data and HMRC child benefit data—HMRC, not the DWP, pays child benefit—but I will still write to him on the matter he mentioned.

As for Ofsted, I have personally discussed this with it. It is satisfied that it is adequately resourced at the moment, but we will keep this under review. As I said, the Bill has strong cross-party support. Several noble Lords from across the House have mentioned that previous Governments have attempted unsuccessfully to raise the status of technical education—I remember a particularly powerful speech by the noble Baroness, Lady Morris, on this—but I am confident that under the leadership of Minister Halfon, who I am delighted to see is in the House today, we will seize this opportunity to raise the status of technical education in this country.

I thank again all noble Lords for their participation on this Bill. I am absolutely sure that the legislation is in much better shape thanks to their scrutiny, as always. I commend the Bill to the House.

Motion A agreed.
The amendment originally proposed by the noble Lord, Lord Stunell, sought to restrict the Secretary of State from using this power under subsection (1) to prevent a local planning authority imposing a condition that would otherwise conform to the National Planning Policy Framework. At the heart of the amendment sits a test of whether the regulations prevent a local planning authority imposing a condition that meets the National Planning Policy Framework and, in particular, those policy tests in paragraph 206.

It is right that the Government do not intend to use the power to prevent local authorities imposing planning conditions that accord with the National Planning Policy Framework. However, the specific amendment is unnecessary, as subsection (2) has the effect already that any regulations made under these powers must be consistent with the long-standing policy tests for conditions. Indeed, the subsection makes it clear to those reading the legislation that the power seeks to ensure conformity with those tests. The position of the other place during the consideration of the amendment was that it agreed with the Government that the amendment was unnecessary, and there was no Division on this point. Therefore, I ask noble Lords not to insist on the amendment.

On consideration of the other matter, planning protection for pubs, I am sure I need not remind noble Lords of the amendment introduced by the noble Lord, Lord Kennedy of Southwark. I thank him and others who have worked so constructively with me on this issue, in particular, my noble friend Lord Framlingham, Lady Cumberlege and Lord Hodgson and the noble Lords, Lord Shipley, Lord Tope, Lord Scriven, Lord Berkeley and Lord Cameron of Dillington, the noble Baroness, Lady Deech, and the most reverend Primate the Archbishop of York. The Government have carefully reflected on the points raised during the Bill’s passage about the importance local communities place on valued community pubs. I hope noble Lords will agree that we have reflected the will of this House in bringing forward our amendment in lieu, which sets out the detail of the changes we will make to protect and support pubs.

We will amend the Town and Country Planning General Permitted Development (England) Order 2015 to remove all existing permitted development rights for the change of use or demolition of A4 drinking establishments, including pubs. This will include the rights to change to a restaurant or café, financial or professional service, a shop or a temporary office or school. We believe that this is best achieved by retaining the A4 drinking establishments use class for pubs, wine bars and other types of bar. Our intention in doing so is to allow pubs to develop within this use class—for example by opening the pub garden—without facing uncertainty about whether planning permission is required. I hope noble Lords will recognise the benefit of the Government’s approach.

Separately, we have listened to points made in this House about the need for pubs to be able to expand their food offer to meet changing market needs and support their continued viability. Therefore, as part of our support for pubs, we will introduce a new permitted development right to provide them with an additional
[LORD BOURNE OF ABERYSTWYTH]

flexibility. The right will allow the pub to expand its food offer beyond what is ancillary to the pub business without planning permission being required but, importantly, it will not allow the pub to become a restaurant with only a token or ancillary bar.

The changes we are bringing forward address the long-standing call that proposed development which would result in the local pub ceasing to operate should be considered locally, allowing the community to comment on the future of its local pub. It is important that local planning authorities have relevant planning policies in place to support their decision-taking. Noble Lords will be reassured to know that both the Campaign for Real Ale and the British Beer and Pub Association have welcomed our proposed approach and personal commitment to helping our pubs survive and prosper. Noble Lords will be keen to see regulation as soon as possible, to prevent any further loss of pubs without local consideration. I can therefore commit to laying secondary regulation immediately after Royal Assent, to come into force before the end of May.

Noble Lords will be reassured to know that the regulations will contain provision to guard against opportunistic use of the permitted development rights before they are withdrawn. Under the current regulations, a developer must first make a request to confirm whether the pub is nominated or listed as an asset of community value. Where a request has been made fewer than eight weeks before the order comes into force, the order will not allow development to take place. I therefore ask noble Lords not to insist on Amendment 22 and to agree with our amendment in lieu. On that basis, I ask the noble Lords to withdraw the points they made earlier in relation to these two matters and to agree with the two Motions put forward by the Government.

Lord Stunell (LD): I thank the Minister for what he has said. I remind the House that the matters in Clause 12 have been debated at each stage of the Bill. There is widespread understanding that this is a good Bill and it has a lot of support, but to many noble Lords Clause 12 seemed out of place. It either gives new powers to the Secretary of State to regulate, as he has said. I remind the House that the matters in Clause 12 have been debated at each stage of the Bill. It is important that local planning authorities have relevant planning policies in place to support their decision-taking. Noble Lords will be reassured to know that both the Campaign for Real Ale and the British Beer and Pub Association have welcomed our proposed approach and personal commitment to helping our pubs survive and prosper. Noble Lords will be keen to see regulation as soon as possible, to prevent any further loss of pubs without local consideration. I can therefore commit to laying secondary regulation immediately after Royal Assent, to come into force before the end of May.

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Lord Hodgson of Astley Abbotts (Con): My Lords, I rise to say a word or two on the drinking establishments —pubs—amendment. I was very concerned about the direction of the debate in your Lordships’ House because this sector is under pressure and the more legislative restrictions that are placed on it, the less likely it is that people will invest in it. I accept that the will of the House was not with me. However, I am grateful to my noble friend for considering the matter further. We have reached a reasonable compromise that will provide a way forward. It is obviously a very good thing that both CAMRA and the BBPA have accepted and supported it. It is important that we find a point at which those who own and operate pubs can draw a line under the further changes that may be made to the regulatory environment, given that there is already talk of needing to change the Pubs Code regulator as it is not satisfactory. That came in a couple of years ago. For the moment, however, this is a good compromise that will enable both sides to emerge from the discussions with honour.
Lord Framlingham (Con): My Lords, pubs are a vital part of our nation’s life. I am delighted that the Government have decided to take this action, as I am sure are both CAMRA and the British Beer and Pub Association. The Minister has been the essence of competence and courtesy throughout the whole of this debate and I am extremely grateful to him. I trust that in due course glasses will be raised in pubs up and down the land to both the Minister and the Government.

Lord Shipley (LD): My Lords, first, I thank my noble friend Lord Stunell for his work on the amendments in relation to the National Planning Policy Framework and for his contribution today. We shall see in the months ahead whether the solution proposed by the Minister manages to hold up against any challenge.

As we have heard, as the Bill progressed we had several lengthy debates in this Chamber on pubs and permitted development for alternative uses. I, too, am grateful to the Minister and to the Government for listening so carefully to the views from across this House and for this revised amendment from the other place, which will help greatly with the protection of pubs at risk. It has the advantage of introducing a permitted development right where the proposal is to extend the range of food to be offered while maintaining the pub itself. Beyond that, planning permission will be required before a pub can be demolished or face a change of use. That puts powers into the hands of local people and local planning authorities—here, I remind the House of my vice-presidency of the Local Government Association—and that has to be beneficial.

I pay tribute to all those who have campaigned on this issue, including the Campaign for Real Ale and the British Beer and Pub Association, and to those from all parties—including my colleague in the other place, Greg Mulholland—who have spoken and campaigned in support of it. I am very pleased to commend the Commons amendment.

Lord Kennedy of Southwark (Lab): My Lords, as this is my first contribution on these matters, I refer Members to my declaration of interests in the register. I declare that I am an elected councillor in the London Borough of Lewisham, a vice-president of the Local Government Association and the vice-chair of the All-Party Parliamentary Beer Group.

In respect of Motion A, I am disappointed that the other place did not accept the amendment from the noble Lord, Lord Stunell, although I accept the point made by the noble Lord, Lord Bourne, that the other House did not divide on the issue. I hope that the noble Lord, with his colleagues in the department, will keep this matter under review so that, if it turns out that the provision needs to be strengthened, we can return to it at a later date. The noble Lord, Lord Stunell, made a very important point about the primacy of the NPPF.

In respect of Motion B, I am delighted that the Government have listened to the campaign both inside and outside Parliament. I pay tribute to two Members of the other place—Charlotte Leslie, the Conservative Member of Parliament for Bristol North West, and Greg Mulholland, the Liberal Democrat Member for Leeds North West—for their campaigning over a number of years to bring about this change.

I also thank all the Members of your Lordships’ House who supported me in the debate and in the Division Lobbies. I particularly want to thank those Conservative Members who voted with me and those who kindly abstained, as that played an important part in getting a large majority when I tested the opinion of the House. I also thank the noble Lords, Lord Bilimoria, for his generous support in the debate, as well as others, such as the noble Lord, Lord Cameron of Dillington, the noble Baroness, Lady Deech, and the most reverend Primate the Archbishop of York. I am also grateful for the support that I received from the noble Lords, Lord Shipley and Lord Scriven, and others.

The amendment proposed by the noble Lord, Lord Bourne, corrects a loophole that was of great harm to successful pubs, and it protects and helps them. In the previous debate I was very clear that the intention behind what I proposed was never to keep open a pub that was not a successful business but to support successful businesses.

I like pubs and I like a pint. Like the noble Lord, Lord Framlingham, I probably should have bought a few shares in the odd pub or brewery; I have certainly spent enough money on beer over the years.

I also pay tribute to the fantastic work done by Tim Page, the chief executive of CAMRA, Amy O’Callaghan, its senior campaigns officer, and all the members of CAMRA in branches across the country who emailed and phoned us and Members of the other place.

This amendment is important, and I am grateful to the Government and the noble Lord, Lord Bourne, for listening. It is an example of the House of Lords doing its job well. By winning the argument on the original amendment, we created the conditions for the Government to think again and we have a great solution today that I am delighted to support.

Lord Bourne of Aberystwyth: My Lords, I thank all noble Lords who participated in this debate on Motions A and B; I will not detain the House long. I genuinely thank all noble Lords who participated in the discussion on this important piece of legislation. I also thank my right honourable friend in the other place, Sajid Javid, and my honourable friend Gavin Barwell, the Minister for Housing, who have been very supportive and helpful.

Turning first to Motion A, I thank the noble Lord, Lord Stunell, for his generosity of spirit. I agree that there is a difference between us on the way that this is to be interpreted. I believe that the National Planning Policy Framework provides the necessary security, but I am most grateful for his generous words and the very fair summary that he gave.

Turning to Motion B, I first raise a metaphorical glass to my noble friend Lord Hodgson on his birthday. Perhaps there will be an opportunity for people to exhibit support for this new position after the debate. I thank him for what he said about our having harnessed the support of both CAMRA and the British Beer & Pub Association, as well as this House. I also thank my noble friend Lord Framlingham for his extremely kind words and the noble Lord, Lord Shipley, for his support of this amendment. He has been a pleasure to work with throughout this legislation—always fair and always with good advice.
Motion A agreed.

Motion B

Moved by Lord Bourne of Aberystwyth

That this House do not insist on its Amendment 22 and do agree with the Commons in their Amendments 22A and 22B in lieu.

Commons Amendments in lieu

22A: Page 11, line 40, at end insert—

"Permitted development rights relating to drinking establishments

(1) As soon as reasonably practicable after the coming into force of this section, the Secretary of State must make a development order under the Town and Country Planning Act 1990 which—

(a) removes any planning permission which is granted by a development order for development consisting of a change in the use of any building or land in England from a use within Class A4 to a use of a kind specified in the order (subject to paragraph (c));

(b) removes any planning permission which is granted by a development order for a building operation consisting of the demolition of a building in England which is used, or was last used, for a purpose within Class A4 or for a purpose including use within that class, and

(c) grants planning permission for development consisting of a change in the use of a building in England and any land within its curtilage from a use within Class A4 to a mixed use consisting of a use within that Class and a use within Class A3.

(2) Subsection (1) does not require the development order to remove planning permission for development which has been carried out before the coming into force of the order.

(3) Subsection (1) does not prevent—

(a) the inclusion of transitional, transitory or saving provision in the development order, or

(b) the subsequent exercise of the Secretary of State’s powers by development order to grant, remove or otherwise make provision about planning permission for the development of buildings or land used, or last used, for a purpose within Class A4 or for a purpose including use within that class.

(4) A reference in this section to Class A3 or Class A4 is to the class of use of that name listed in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (SI 1987/764).

(5) Expressions used in this section that are defined in the Town and Country Planning Act 1990 have the same meaning as in that Act."

22B: Page 32, line 20, at end insert—

"(1) section (Permitted development rights relating to drinking establishments);"

Lord Bourne of Aberystwyth: My Lords, I omitted to thank my noble friend and co-pilot, who has more air miles than most, for his support on this. I beg to move.

Motion B agreed.
about how improvements are to be achieved. There is a real danger that requiring all new buses used to deliver services as part of a partnership or franchising scheme that come into service after 1 April 2019 to be low emission would simply mean that bus schemes could become prohibitively expensive, with the real risk of authorities being unlikely to pursue these schemes at all. This could lead to less bus use and, with that, worse environmental outcomes than would have been achieved without these provisions. I hope that my further explanation as to why we have taken the approach that we have to these subjects will mean that noble Lords can support the current Motion.

I turn now to Amendments 16 to 18 on the open data provisions. There has been a positive welcome to Clause 18, which will facilitate the provision to passengers of information about timetables, fares, routes and tickets, and live information. Since the Bill was last in this place, my officials have held workshops to develop further the practical delivery of these provisions. Stakeholders have stressed the importance of two existing datasets that are currently maintained by local authorities which accurately and uniquely describe and locate all bus stops in a common format. These datasets are vital to the production of meaningful journey-planning information for passengers. However, they are currently maintained by local authorities on a voluntary basis. These amendments simply ensure that if it becomes necessary, regulations could be made that require local transport authorities to provide information other than in the context of franchising, and information about stopping places to be provided by local transport authorities or operators.

I turn now to those who work for local bus companies. In this House we quite rightly had a great deal of debate about the importance of consultation in relation to bus partnership and franchising schemes and who must be consulted. The Government accepted and were happy to include Transport Focus and the national park authorities as statutory consultees. Special thanks must go to noble Lord, Lord Judd, who is not in his place this afternoon, for his passionate advocacy of the latter’s importance.

We also introduced amendments to require authorities to consult employee representatives about proposed franchising schemes. The noble Lord, Lord Whitty, who has tabled Amendments 19 and 21 to 23, which address housekeeping matters and remove the privilege amendment. The latter is a procedural technicality. I hope noble Lords feel that I have given the variety of topics justice here and will agree to support the Motion to approve these Commons amendments.

Baroness Randerson (LD): My Lords, throughout its passage, the Liberal Democrats have supported the principles behind the Bill and we believe that it is a long overdue response to a fairly chaotic situation with bus services in many parts of the country outside London. Indeed, while we have been debating the Bill, the number of bus services and miles covered by those services throughout England outside London has reduced significantly as the number of local authorities’ subsidised routes has reduced and some bus companies have ceased to function. There is a desperate need to do something and we agree with the general tenor of the Bill.

We would have wished to make the Bill more radical, as I have made clear on a number of occasions. We would have wanted more devolution and powers to local authorities, more action to assist disabled passengers, more measures to protect the environment and the quality of life of our citizens and more consultation. Indeed, some of our amendments were accepted and have remained in the Bill throughout the Commons process, but not all of them. I am disappointed that so many were removed.

However, we are grateful that in this group there are government amendments to clarify the role and independence of auditors. The first amendment in the group was put forward by my noble friend Lord Bradshaw in relation to giving local authorities powers over moving traffic offences. The Minister said just now that the Government feared that local authorities would use that power simply to make money. That is a fairly flimsy excuse for rejecting the idea because it would be so easy for the Government to produce an amendment that restricted local authorities’ ability to do that. That could have been dealt with within the regulations that will flow from the Bill or within the Bill itself.

In relation to the Minister’s comments on emissions and the speed with which we can replace bus fleets, London is of course well under way with the process, as are several other local authorities and cities. The technology is there. The alternative fuels are there. It is the Government’s role to at least push businesses into operating in the most environmentally friendly way. On bus emissions, of course there is the pressing issue of the health of our citizens. The Government are only too aware, despite their failure yesterday to produce a plan to address this issue, of the need for urgent action on this. Not only that, we also pointed out that the Government failed to meet the legal timetable for producing a response on air quality in general, I am disappointed that they have taken the view on this particular Bill that there does not need to be a stronger government steer on the issue of emissions from bus services.

I support the Government’s changes on the provision of data. That is very important. Evidence shows that many people are deterred from becoming bus passengers
because of a lack of knowledge and information about where the bus stops and how they pay for a ticket. How one pays for a ticket can vary from one local authority area to another. That kind of information can be so easily supplied and the Government have rightly emphasised that in the Bill. We support that.

Having said all that, we are grateful for the hearing the Minister gave us and for the way many organisations involved in bus services across Britain engaged in the process of the Bill so we could use and harness their knowledge and expertise, which has helped. My final point is that we shall not seek to oppose the changes made in the Commons, but we accept them with some sadness.

Baroness Scott of Needham Market (LD): My Lords, I thank the Minister for listening to and taking away the concerns I raised with my noble friend Lord Shipley on independent audit. It is an important point. These schemes, however welcome, are potentially extremely expensive. The risk, as always, will fall on local council tax payers and therefore robust independent audit is key. We look forward to seeing the regulations and guidance as they emerge.

Lord Whitty (Lab): My Lords, I remain generally supportive of the thrust of the Bill, but I have been dismayed by some of the measures taken by the Government in the Commons with some of the amendments in this group and others. It is regrettable because during the process of the Bill in this House there has been a high degree of consensus and the Minister has been very helpful in a number of respects. However, in some areas he has been chopped off at the knees by his colleagues steamrolling it through the House of Commons.

I echo what the noble Baroness, Lady Randerson, said on the low emissions provisions. If the Government were concerned about the timescale and the economics, they could have amended the timescale and put in a few qualifications. Instead, they have deleted the requirements in Amendments 2 and 6 that new vehicles should meet new low emissions standards. This is a very poor signal. As the noble Baroness said, it comes a day or two after the Government’s attempt to use the election to defy the previous court injunction that a new air quality strategy should be produced because of the inadequacy of their earlier air quality strategy produced by Defra.

The Government’s record on this is shaky and they are extremely vulnerable. Buses are one of the main diesel-based pollutant vehicles in many of our towns and villages. There was an opportunity to put in the Bill that we would do what a number of local authorities in London and elsewhere are already doing and replace those buses immediately when a new vehicle is brought on with one with high-quality emissions standards. As I said, we could have put in slightly different dates and slightly greater qualifications, but nevertheless that needed to be in the Bill. It undermines the Government’s commitment to do something about air quality on which they have been and will continue to be widely criticised. I regret that and I think the Government will come to regret it too. As was said in this House yesterday by my noble friend Lady Nye, it is a major public health issue. There are provisions for avoiding the purdah prohibitions concerning air quality that were already in the Bill when it reached the Commons. The Government chose, wrongly, to delete those provisions, and I regret that profoundly.

I also regret the deletion or dilution by Amendments 3, 4 and 13 of the provisions we inserted in this House that worker representatives in the bus industry should be clearly consulted on any changes, whether an advanced quality partnership or the new franchising operations. The Minister has continued to make positive noises in that respect, and I appreciated his acceptance of the principle in our earlier proceedings. However, his colleagues seemed to have deleted most of that, which is a mistake. We are talking here, whether the Government like it or not, of a pretty highly unionised sector where by and large there are good relations between the bus companies and their employees. Anything which deletes a continued commitment to those outcomes makes some of these provisions more problematic when they never needed to be. Again, the Government may live to regret that; I hope not. I know that the unions intend to be constructive and by and large welcome the objectives of the Bill, but from a long list of those who are required to be consulted about these changes, the people who are omitted are the ones who actually drive and operate the buses. That seems to me a triumph of ideology over common sense and the Government should not have done it.

The Minister will no doubt be relieved to hear that I intend to intervene only once on this Bill. I have some concerns about the third group of amendments in relation to the reinstatement of the clause which prohibits local authorities from setting up their own companies. That is a restriction on local authority strategic decision-making. I do not intend to belabour that point because we will come on to it in a moment.

I hope that the outcome of the Bill is positive. It is regrettable that these changes have been made by the Government at this relatively late stage because they make it more difficult to achieve what the Minister himself set out as the objectives when he introduced the amendments. Taking the changes together, I hope that in the coming weeks the population will recognise that even in this relatively minor area of legislation the Government have decided, contrary to what was a pretty consensual view in this House, to delete commitments on environmental standards, commitments on the rights to representation of workers, and commitments on flexibility and devolution of powers to local authorities. All of that amounts to an unnecessary and significant reduction in my enthusiasm for what in general is a positive Bill.

Lord Kennedy of Southwark (Lab): My Lords, I intend to speak relatively briefly on this group of amendments. The Opposition have generally supported the overall aims of the Bill. We have welcomed it and see it as an important step towards increasing the number of bus journeys, particularly outside London where there has been a collapse in the number of journeys in recent years. Like the noble Baroness, Lady Randerson, we would have liked the Bill to have gone further, but equally we accept that we have made
welcome progress on it; as I say, we support its overall aims. Like other noble Lords, we generally accept the changes on data. The deletion of provisions in respect of emissions is regrettable. Air quality is now a very big issue in terms of people’s health. The number of deaths which can be attributed to poor air quality is something we should all be concerned about and I think that the Government have taken a retrograde step.

My noble friend Lord Whitty mentioned consultation of employees. That is very important and again it is a shame that the Government have largely deleted or watered down the provisions in that regard. Whether the Government like it or not, the bus industry is heavily unionised, which has generally been of benefit to it. The unions work well with the various bus companies and seek to provide a public service. I do not see any benefit in what the Government have done. As my noble friend suggested, I suspect that other forces in the Commons are at work here who do not quite see it that way. What the Government have done is a mistake. I will come on to other things I regret when we consider further amendments.

Lord Ahmad of Wimbledon: My Lords, first, I thank all noble Lords for participating in this short debate and for the broad support for the Bill. Indeed, that was quite clear during its passage through your Lordships’ House. Particularly on the issue of data sharing, I thank both the noble Lord, Lord Kennedy, and the noble Baroness, Lady Randerson, for their evident welcome for data sharing, which we all believe is a positive step forward. On the issue of emissions, I suggest that this is not a low priority given that the provision reference is made to it in the provisions in the Bill. Indeed, local authorities can specify this element in any proposals they make when procuring bus services.

Finally, the noble Lord, Lord Whitty, talked about me being cut down at the knees. When you stand at only about five feet six you are quite protective of your knees anyway so any further cutting down is not welcome. I assure the noble Lord that the sentiments of your Lordships’ House were fully expressed and I challenge the assumption that employee representatives are not being consulted. On the contrary, they will be. I suggest to the noble Lord that trade unions are an important employee representative. Of course, trade unions fall within the scope of what an employee representative body is, so in that sense I disagree with him. In saying all that, I again welcome the contributions that were made during the passage of the Bill and the broad support for the proposed Commons amendments.

Motion agreed.

Motion on Amendment 5

Moved by Lord Ahmad of Wimbledon

That this House agrees with the Commons in their Amendment 5.

Lord Ahmad of Wimbledon: My Lords, I will also speak to Amendments 7 to 11. Bus franchising has received a great deal of attention both in your Lordships’ House and in the other place, as well as across the country. In particular, there has been discussion about which local authorities in England should be able to access the franchising powers within the Bill.

It was felt in your Lordships’ House that in the spirit of fairness, all local authorities should have automatic access to these powers regardless of whether a local authority is serious in its intent to franchise and without any consideration of its suitability to take franchising forward. Moving to franchising is a serious step and should not be undertaken lightly. That is why Amendments 5 and 7 are so important. During the debate in the other place, there was significant concern that the ability of any local authority to move to franchising at any time would lead to operators across England thinking twice about their investment decisions, thus reducing the quality and attractiveness of local bus services. Given this risk, it was agreed that automatic access to franchising powers should be available only to mayoral combined authorities.

I am sure that noble Lords who wish to see franchising happen want it to be successful, as indeed we all do. We want to ensure that franchising powers can be made available to authorities which have the ability, powers and, most importantly, the financial capacity to make a success of franchising where that franchising will benefit passengers. Combined authorities with mayors, when established, will provide clear, centralised decision-making for transport across a relatively wide local area, such as a city region. However, let me stress that other areas should also be able to access franchising powers where they are well placed to make franchising a success and have a clear plan to benefit passengers. These amendments enable other authorities to apply to the Secretary of State to access the powers.

Let me be clear: the Secretary of State will not take the final decision on whether franchising proceeds in those areas. That will be a local decision. The Bill sets out clearly the process that any authority needs to follow before the mayor or a named individual such as a council leader can take the decision to move to franchising. This refresh of bus franchising powers honours our devolution deal commitments. Included in this process is the development of an assessment of the proposed franchising scheme—essentially a business case. Within this assessment, the authority would need to consider value for money and the affordability of the proposal.

Amendments 8 to 11 clarify further the independence of the auditor—a point we covered briefly in the previous debate—that a franchising authority is required...
to use to produce a report on certain aspects of its proposed scheme. This report must set out whether, in the opinion of the auditor, the authority has relied on information of sufficient quality in its assessment as well as whether its analysis is of sufficient quality.

4.15 pm

There was particular concern in this House about ensuring the independence of the auditor employed to do this important work. Again, I thank the noble Baroness, Lady Scott of Needham Market, and the noble Lord, Lord Shipley. I am pleased that noble Lords’ concerns have led to these amendments. The Bill now makes it explicit that the auditor must be independent, and requires franchising authorities to have regard to guidance issued by the Secretary of State when selecting their auditors. In addition, the amendments made in the other place require appointed auditors to have regard to guidance on the matters to be taken into account when compiling their reports, to assist them in reaching a view on the relevant aspects of the authority’s assessment.

Collectively, Amendments 5 and 7 to 11 will help ensure that franchising is implemented in a way that will deliver better services and outcomes for passengers and that it will be a success. I hope noble Lords will agree to the Motion to agree with the Commons amendments.

Lord Snape (Lab): My Lords, I will say just a few words about this group of amendments. I do not wish to repeat anything I said during the passage of the Bill. My scepticism about franchising without proper funding is on the record. I say in passing—contradicting myself—that if the rest of the country received the sort of money that London receives for its franchising, it might be worth while. Without that sort of financial backing, I do not think it would be.

I thought that the Minister was, for once, less than generous with his comments on Amendments 8 to 11. If it is sensible to ensure that the auditor is independent of the franchising authority—which it is, in my view—and I said so during the passage of the Bill—why did he oppose it at the time? I would like to think that it was my own wise words that swayed the other place to change the Minister’s mind for him, but I fear I would be deluding myself. The fact is that the Minister was against the amendment on independence, which I supported during the passage of the Bill. If I may say so, there have been some comments about his stature. His stature did not diminish—like me, he can ill afford for such a thing to happen. But I am surprised, given his customary fairness, that he did not refer to the fact that he had obviously changed his mind about the amendment.

Like other noble Lords from both sides, I hope the Bill does improve bus services. Again, consulting passengers is something that we do not often do. The latest independent survey of thousands of bus passengers throughout the country indicates that around 80% of them are satisfied with existing bus services. In my view, that does not reflect the sort of discontent with bus service standards that was mentioned during the passage of the Bill. But there was virtual unanimity among those passengers about the problems of congestion, which are countrywide. If the Government are not prepared either to tackle congestion themselves or to give local authorities the proper powers to tackle it, those fears widely expressed by bus passengers are not likely to be allayed. I talk about the war on motorists that this Government’s Ministers have sometimes waged. In my view, this is not helpful so far as improving bus services is concerned.

I repeat that I hope the Bill brings about the improvement in bus services that the Government so obviously desire, and that the amendments that were passed in the other place, as well as the debates that have taken place in your Lordships’ House, have helped improve the Bill from when it was first introduced.

Earl Attlee (Con): My Lords, I too was uncomfortable with the idea that the appointment of the auditor should have rested with the franchising authority. This would have allowed the franchising authority to be judge and jury of its own proposals—to mark its own homework, if you will. Auditing a franchise assessment is perhaps one of the most critical steps on the road to franchising. If the auditor says that the franchise stacks up and meets all the other—let us face it—quite onerous requirements, there is little more to be said. For that reason, the person carrying out the audit should have no ties with the franchising authority and certainly no vested interest in seeing the franchise proceed, or otherwise. On something as important as this proposal, which could see bus operators lose their businesses, surely we must have something that is very transparent and democratic—and, perhaps just as importantly, is seen to be transparent and democratic. In my view, these amendments do just that.

However, I wonder whether I might push my noble friend the Minister a little further to ensure, perhaps through guidance, not only that the auditor is independent of the franchising authority but that he or she has no recent commercial relationship with the authority. That would really cement the concept of a truly independent auditing process.

Lord Kennedy of Southwark: My Lords, as this group of amendments refers to mayoral combined authorities I should probably remind the House of my declaration of interests. I am a locally elected councillor and a vice-president of the Local Government Association.

Generally, these are wider issues in respect of local authorities and combined authorities but we have now brought them into the Bill. I accept that it is through another department, but there is an obsession in government with mayors and it needs to be dealt with. I have never yet had it explained to me clearly why, to get these powers, you have to have such a mayor. I still do not understand why, although we keep asking. I am sure we will get something today, but I am not sure whether the Government are clear why they have to have this: you may be a combined authority, but unless you have a mayor, you cannot have these franchising powers. We are still not clear on that, and they will have to deal with their obsession with mayors at some point.
This makes a wider point about the question of the devolution of local government in England, which is, to say the least, now very confused. I remember that in an earlier debate the noble Lord, Lord Lansley, who is not in his place at the moment—I am sorry, he is in his place—explained that there would now be four tiers of local government in Cambridgeshire. That seems to me at least one or two tiers too many. I accept that that goes wider than the issue of mayors in these authorities today, but it will have to be dealt with.

Franchising is the way forward. It has been enormously successful in London. I am delighted that these authorities with mayors can get these franchising powers and I hope that other authorities, if they come together to apply for them, will be successful. But at some point the Government will have to look at the much wider issue of what bus services they want in England. I think they will have to go further down this route; equally, I accept that they have made a move in the right direction here.

**Lord Ahmad of Wimbledon:** My Lords, I once again thank all noble Lords for their contributions during this brief debate. Perhaps I may briefly pick up on a few points.

First, the noble Lord, Lord Snape, raised the specific issue of congestion and said that the Bill perhaps still does not address this. I disagree with him. The new types of partnership and franchising powers give authorities new ways to work with operators to improve journeys for passengers.

On the issue of the independent auditor, I accept the fact that the Government’s position differs from when we introduced the Bill—that point was made by the noble Baroness, Lady Scott, among others. As a Minister, I feel that it is sometimes odd—I am sure I am not alone in this, whether among Ministers from a previous Administration or the current one—first, that Ministers are told that they do not listen. Then, having listened and reflected, if we make a change which perhaps reflects the feelings of Members, as it did on this occasion in your Lordships’ House, we are told that we are taking a contrary position to what we had originally after we have listened. I suppose there is a lesson for all in that. It is important that what is said, discussed and debated in your Lordships’ House is reflected in the discussions we have in government, and I am pleased to say that the various discussions and debates we had in your Lordships’ House are reflected in the amendments that the Government have made in respect of the independent auditor.

I understand the point my noble friend Lord Attlee makes about the need for the auditor to be independent. As ever, we will fully consider his helpful advice as part of the guidance. I thank noble Lords for their broad agreement on this issue.

My final point is addressed to the noble Lord, Lord Kennedy. This is not an obsession with mayors or mayoral authorities. As I have said before during the passage of the Bill, the route to franchising is open to all authorities which can make a justifiable business case. We have previously detailed the criteria required, and that remains the case.

**Motion on Amendments 6 to 13**

Mover: Lord Ahmad of Wimbledon

That this House agrees with the Commons in their Amendments 6 to 13.

- Clause 4, page 15, leave out lines 41 to 45
- Clause 4, page 16, line 41, at end insert—
  
  “( ) A franchising authority or authorities may not prepare an assessment of a proposed franchising scheme under section 123B unless the Secretary of State consents to their doing so.

  ( ) The Secretary of State’s consent is not required if the proposed scheme relates only to—
  
  (a) the area of a mayoral combined authority, or
  
  (b) the combined area of two or more mayoral combined authorities.

  ( ) The Secretary of State must publish a notice of a consent given under this section.”

- Clause 4, page 17, line 4, after “an” insert “independent”

- Clause 4, page 17, line 13, at end insert—
  
  “( ) The Secretary of State must issue guidance as to the matters to be taken into account by a franchising authority when selecting a person to act as an auditor.

  ( ) Franchising authorities must have regard to any such guidance.

- Clause 4, page 17, line 26, at end insert—
  
  “( ) The Secretary of State must issue guidance concerning the purposes of this section and an auditor is independent, in relation to an assessment of a proposed franchising scheme, if the person would not

- Clause 4, page 17, line 19, leave out from “person” to end of line 20 and insert “eligible for appointment as a local auditor by virtue of Chapter 2 of”

- Clause 4, page 18, leave out line 3

- Clause 4, page 18, leave out lines 12 to 20

Motion agreed.

**Motion on Amendment 14**

Mover: Lord Ahmad of Wimbledon

That this House agrees with the Commons in their Amendment 14.

- Clause 4, page 24, line 41, leave out “21” and insert “(Bus companies: limitation of powers of authorities in England)”

**Lord Ahmad of Wimbledon:** My Lords, Amendments 14 and 20 reinstate the original provisions of the Bill which prohibit local authorities establishing companies for the purpose of operating local bus services. The role of municipal bus companies has received a good deal of debate in your Lordships’ House and the other place. There are a few fundamental points worth making. First, we all agree that there are some very good municipal bus companies, such as Reading Buses and Nottingham City Transport. They deliver a high standard of service, and I expect they will continue to do so. Let me assure noble Lords that their ability to operate will not be affected by this provision.

Motion agreed.
[LORD AHMAD OF WIMBLEDON]
However, very few municipal bus companies remain, with many having been sold to some of our more successful private bus companies—for example, in February, Thamesdown Transport in Swindon was bought by the Go-Ahead Group after many years of making a loss—so I do not think this amendment is likely to impact on the plans of many, if any, local authorities. The Bill is all about improving services for passengers, and authorities should now start thinking about utilising the knowledge and skills of existing bus companies to get the best results. This amendment ensures that we get the balance right between local authority influence and private sector delivery in order to ensure both are incentivised to deliver the best services for the benefit of passengers.

I hope that noble Lords will understand that, because of the importance of this balance to the overall Bill, our view remains that passengers will see most benefit where the commissioning and provision of bus services are kept separate, and we do not think that authorities should be able to set up new bus companies. I hope that noble Lords will agree these amendments will enable the important business of the implementation of the measures contained in this Bill, which we all acknowledge to be important, to begin so benefits to bus services and, more importantly, bus passengers can start to be delivered on the ground. I beg to move.

Baroness Randerson: My Lords, although it is not the subject of the Bill, as it operates in Wales, I shall say a word about Cardiff Bus. It is a municipal bus company with a good record. I still do not understand how it is so important to the Government to remove this power, which has been in the local authority armoury for decades. As the Minister has just pointed out, it has not been used as a general issue at all.

I am also confused as to why these examples of really good bus companies run by local authorities at arm’s length are not a template for possible future development. It is blindingly clear at the moment that local authority finances in Britain are so poor that authorities are not going to be using this power in the near future in some kind of aggrandisement. There is not going to be a mass use of this power by local authorities wanting to build up vast transport empires. It is simply not on the cards.

4.30 pm
So why on earth are the Government removing this power? Purely for dogmatic, political reasons, and I am really disappointed about that. As I and my noble friend Lady Scott pointed out in earlier debates, it is rural areas that we have to be most concerned about, due to the isolation of rural communities and the rapidly declining bus services in many of those areas. This power could have been very useful, particularly in rural areas where there is still no bus service because the local bus company has ceased to operate one and where a local authority might therefore wish to rent some buses and set up a bus company, possibly only for the short term, in order to fill that gap for local people.

This is an own goal by the Government. This is about areas where there are elderly and very often isolated people, who will really feel the problems that will flow from the local authority not having the flexibility to provide this service. I am extremely disappointed that this was removed in the Commons again. However, I was not surprised, because I guessed from the vehemence of the Minister’s response when we debated this earlier that this was an issue of party, not practical, politics.

Lord Kennedy of Southwark: My Lords, I very much agree that, as we have heard, the amendments in this group are just about party-political dogma, and it is a shame that the Government have reversed the decision we made in this House some time ago. I was disappointed but, again, maybe not surprised. There never was going to be a stampede of local authorities charging off to create municipal bus companies. It was never going to happen and I never really understood why the Government were so obsessed with this particular clause in what generally was, and is, a very good Bill—we welcome the Bill but I just never really understood that.

Like the noble Lord, Lord Ahmad, I agree that there are some very good municipal bus companies, such as Nottingham City Transport, Ipswich Buses and many others, and I accept that this amendment will not affect them in any way whatever. The noble Baroness, Lady Randerson, made the point about what a local authority maybe could do to deal with a problem, even if for a very short period of time, and it is disappointing that that will now not be possible. That is a great shame, particularly in rural areas. For that reason, I think the Government have made a terrible mistake here and I wish they were not going to do this, but clearly they will not listen on this occasion. It is most regrettable.

Lord Ahmad of Wimbledon: My Lords, first, I again thank both the noble Baroness and the noble Lord for their contributions. I accept of course that there was great strength of feeling on this issue as it passed through your Lordships’ House, but clearly, when you have a Bill with wide application, there will be areas of disagreement between government and opposition parties.

On this issue, as I have already stated, the Government have acknowledged and indeed accepted the important role that existing municipal bus companies play, and that will continue to be the case. However, this Bill is designed to enable bus operators and authorities to work constructively together to deliver better services for passengers, and it is the Government’s belief that the creation of further municipal bus companies would actually significantly stifle competition, particularly in terms of private sector investment in buses. Although we accept noble Lords’ sentiments on this, the Government maintain their position.

Motion agreed.

Motion on Amendments 15 to 23
Moved by Lord Ahmad of Wimbledon

That this House agrees with the Commons in their Amendments 15 to 23.

15: Clause 9, page 42, leave out lines 15 to 20
16: Clause 18, page 74, leave out lines 7 to 12 and insert “which have one or more stopping places in their areas”
Lord Ahmad of Wimbledon: My Lords, I take this opportunity once again to thank all noble Lords, including the noble Lord, Lord Kennedy, and the noble Baroness, Lady Randerson, alongside my noble friend Lord Younger for their support during the passage of the Bill. I thank other noble Lords too; including the noble Lord, Lord Kennedy, and the noble Baroness, Lady Randerson, alongside my noble friend Lord Younger for their support during the passage of the Bill. Generally we are happy. As I say, I have enjoyed working with the Minister; he has been very courteous at all times during the passage of the Bill.

Motion agreed.
My concern, however, remains how easy it will be for respondents to deal inadequately with a UWO and render ineffective the Bill’s provisions. It has to be accepted that UWO respondents who have invested the proceeds of tax evasion and/or bribery in specific property will be unlikely to want to be frank about their conduct if they can possibly avoid doing so. Why, then, can it not be appropriate for there to be a power to make an order to compel a respondent to give evidence on oath? It would be only a power, and in many circumstances I concede that a court might be satisfied with a statement, but if the statement is inadequate the very existence of the power, which could be exercised only by a High Court judge, would in my view be extremely salutary.

The Bill sets out the requirements that must be met before an unexplained wealth order is made, and allows a respondent a reasonable excuse for failing to comply with any order. I invite my noble friend to explain to the House why she still thinks it is inappropriate for this power to exist. Nothing in the code of practice gives any answer to that.

The remainder of the amendments with which I am concerned in this group—apart from that which relates to property, particularly in central London—are about provisions in respect of non-compliance. My no doubt simplistic view is that you either comply with an order or you do not. The references to purported compliance seem to leave open the possibility that a respondent could simply go through the motions of providing information and say that they have purported to comply with the order. I take the point that the Bill contains the proviso that a misleading or reckless statement can constitute an offence, but it is not so much the deliberately misleading statement that I am worried about; rather more I fear the short, uninformative, heavily lawyered response which will provide no useful information but may still technically be a purported compliance with the order.

I looked for assistance on this point on the recently provided code of practice. Paragraph 20 states that a respondent will be treated as having failed to comply with a UWO if, without reasonable excuse, he fails to comply with all the requirements imposed by the order. The paragraph continues by stating that it is important to note that where a response is provided to a particular requirement in the UWO but that response is considered unsatisfactory, this does not mean that the respondent has failed to comply with the order; this would amount to purported compliance. That was precisely the point that I was making in the original amendment. A footnote states that an example of this would be where an individual provides nothing more than the bare minimum of information necessary to address each requirement in the order and as a result the agency is not satisfied by his explanation as to the derivation of the property. The footnote goes on to state that, in those circumstances, the rebuttable presumption that the property is recoverable does not arise, but the enforcement agency may elect to take further civil recovery action against the property in the light of evidence or lack of evidence provided by the individual. I should be grateful if the Minister could set out why the Government think it so important, in a number of areas identified in the amendments, to have these provisions about purporting.

Amendment 2 in this group and Amendment 24, which we will debate in the next group, concern a substantial problem: in central London, property—often extremely valuable property—is being bought by overseas companies and then left either empty and dark or occupied for only short periods. Parts of central London are entirely dark at night and, although London is the most obvious example, there is plenty of evidence of buying-up of property in other major cities and in some rural areas. Apart from the fact that it cannot be desirable that property is owned by those whose money has often come from illegal activities, there is the knock-on effect that it is having on the property market in general. Noble Lords are only too well aware of the intense difficulty faced by young people in buying property anywhere remotely near where they work, particularly in London, or indeed buying property at all. There are a number of reasons for this, but the situation is hardly helped when, according to the Land Registry figures, 100,000 properties are registered in the name of overseas companies. Unlike some countries, there is no restriction on foreign ownership of real property, and at the moment there is no sign of any decrease in the enthusiasm with which foreign investors are approaching the possibility of buying property here. Because of our respect for the rule of law and the independence of our judiciary, among other reasons, we are an attractive country in which to invest—particularly, I am afraid, to those who have ill-gotten gains for which they want to find a safe haven.

4.45 pm

I asked my noble friend the Minister in Committee and at Second Reading about the envelope tax which, for those who have not taken part in the debate so far, enables those who use what is often dirty money to buy up luxury properties to pay as much as £218,000 a year rather than declare which of the many £20 million-plus mega-mansions they may own. Bringing in this tax was supposed to deter corrupt investment; in fact, it appears that many are perfectly happy to pay the tax. In the last financial year, it brought in some £44 million, up from £25 million the year before. The total tax receipts, according to an article from the Observer on 5 March, on properties worth more than £1 million came to £178 million. I look forward to the Minister saying on the record whether the Government are happy with this tax, which allows billionaires to buy their anonymity in this way.

Lest I should sound too critical of the Government, I should say how much I welcome the recent publication of the call for evidence in relation to setting up a register of beneficial owners of overseas companies and other legal entities, a consultation paper issued by the Department for Business, Energy and Industrial Strategy. I pay tribute to the Home Office for its assistance in bringing forward the publication of this document. The ministerial foreword shows that this is part of a desire to create a new register showing the beneficial owners of overseas companies, consistent with the international anti-corruption summit held in London in May 2016. I look forward to hearing more from the Minister on this when she deals with the second group of amendments later in the debate.
I fear that I have been unable to resist the temptation to take advantage of this ministerial largesse—hence the amendment requiring the Government to set up this register within six months of this Bill coming into force. Having read the call for evidence, I see no doubt that there will and should be such a register, although the precise nature and terms of the register are still up for debate; hence the fact that the amendment does not seek to define in any detail how the register will work. Given, however, the few legislative opportunities that are likely to exist in the next few years, it is important that we should translate aspiration into activity and thus incorporate in this legislation an obligation to set up the register. The published plans have been widely welcomed, but I agree with the comments of Robert Barrington of Transparency International that, “ministers must not give way to vested interests that will be lobbying to keep property ownership secret or allow Brexit to delay measures”.

Finally, I come to Amendment 2, in relation to unexplained wealth orders. The requirements under new Section 362B mean that the High Court has to be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property. For example, if a foreign official’s income is known to be £30,000, how can they afford a £10 million property? Further, the High Court must be satisfied either that the respondent is a politically exposed person or that there are reasonable grounds for suspecting involvement in serious crime. So far, so good—but what I am concerned about is that a respondent who is in effect a gangster may fall outside the definition of a PEP, although my children do not, and that there may not be quite enough to say that there are reasonable grounds for suspecting involvement in serious crime so as to satisfy subsection (4)(b) of the new section.

On the other hand, if you are someone with a beneficial interest in an overseas company that owns UK real property then that should, of itself, be enough to provide the basis of a requirement to make an unexplained wealth order. In case this is thought to be draconian, noble Lords should bear in mind that this is a civil remedy and it is always open to a respondent to provide an explanation of their wealth, or a reasonable excuse for not doing so, before any steps are taken in relation to the property. However, the purpose of adding this provision is to deter what is, in effect, money laundering. There can be no doubt that the involvement of agents and solicitors in these corrupt deals has not been sufficiently marked by money laundering prosecutions, as the House will hear later in the debate. However, having a register, and an additional ground for an unexplained wealth order should, first, deter wealthy foreigners from concealing their identities when investing—often with ill-gotten gains—in London properties. Secondly, it would allow the agency to recover substantial assets acquired through criminal activity.

I do not pretend that this is a perfect solution to what is a real problem. Various attempts have been made around the world to deal with such problems but they have only ever achieved partial success. However, let us not miss this opportunity of doing what we can to deal with the cancer of corruption in our society. This House should send a clear message to the Government about the level of its concern. I beg to move.

Baroness Hamwee (LD): My Lords, like the noble Lord, we want to see the Bill as strong as possible. I have a few questions on the noble Lord’s amendments but I am grateful to him for bringing these matters back to the House. Amendment 1 would require questions to be answered on oath. Like the noble Lord, I felt that the answer from the Dispatch Box at the previous stage did not take us a great deal further. The Minister said: “It would already be a criminal offence for the respondent to knowingly or recklessly provide false or misleading information”.—[Official Report, 28/3/17; col. 496.]

Unexplained wealth orders are court orders, so my question—I am not sure whether it is to the noble Lord or the Minister—is: does contempt of court arise here? That is not to support the amendment or otherwise, but to flesh out understanding of the procedure.

On Amendment 2, has the noble Lord been more timid than necessary by referring to the respondent or others having taken the step of registration as a beneficial owner, rather than using the criterion that he is such an owner? I agree on compliance: one either complies or one does not. Surely purported compliance is not compliance. This is quite a difficult area in legislation and it should be clear, and not raise more questions about whether the criteria are fulfilled.

My final question is on government Amendment 6. Will the Minister explain why, unusually, “a person” does not include a body corporate? I was interested to see that it is apparently necessary to include a definition. The definition itself is interesting; if it is read literally, references include bodies corporate and so on, regardless of whether they hold or obtain property. Does that restrict which bodies corporate are the subject of this new provision? I gave the Minister notice of my question so I hope she will be in a position to assist the House. I reiterate our strong support for getting this Bill through. I have spoken as briefly as I can because I know the House wants to get on with it and do just that.

Lord Mackay of Clashfern (Con): My Lords, I support these amendments. I first came across unexplained wealth orders in Inland Revenue fraud proceedings where people had been accused of not paying their income tax. One of the methods of revealing that is by demonstrating that they suddenly have more wealth than their Revenue account suggests. Therefore, there is a question about whether the assets came from taxable income. That was the presumption at that time. That was before the terrific expansion of other forms of unexplained wealth that could arise. The explanation that someone had done something unlawful would not be a particularly good answer to a tax inquiry but perhaps that was not thought of. Certainly, that was a very useful tool in the armoury of the Inland Revenue in days past and is still so today. It is a very valuable method of dealing with this trouble. I find it very hard, however, to understand what is meant by purported compliance. As has just been said, it seems to me that you either comply or you do not. I must say that the explanation given in the draft practice system does not enlighten me any further. It suggests, indeed,
[LORD MACKAY OF CLASHFERN] that purported compliance covers certain aspects of non-compliance. It is a difficult definition to put in. I would have thought the measure would be better without it.

I raise questions with regard to the register. It is required to be done within six months of the passing of the Act. However, the commencement provisions of the Act allow the Act to come into force in accordance with regulations or orders made by the Secretary of State. I assume that the passing of the Act in this amendment is intended to refer to its getting Royal Assent. Strictly speaking, however, the Act comes into force only in accordance with orders made by the Secretary of State under the commencement provisions except in relation to certain aspects of that.

Lord Judge (CB): I wish to add a few words of my own on purported compliance. I am not quite sure what we are supposed to cover. Obviously, there will be the individual who is potentially made subject to this order who will try his or her best to produce the necessary information. That may not be good enough, in which case the court will allow an adjournment so that a genuine attempt to produce the information can be made. That will then be compliance. On the other hand, some people will obfuscate and deliberately make life difficult to avoid the true facts coming to light. They will say, “That is purported compliance”, but it will not be—it will be a failure. Therefore, the words “purported compliance” simply do not apply and will not help.

Lord Kennedy of Southwark (Lab): My Lords, the noble Lord, Lord Faulks, has raised some very serious issues, expressing the concerns of a number of noble Lords, and he made some of those points at earlier stages. The Government have clearly not satisfied him or many others in the House, and we share their concerns. The noble Baroness, Lady Hamwee, made similar remarks.

The point about “purports to comply” was particularly well made by the noble Lord and others, including the noble and learned Lords, Lord Mackay of Clashfern and Lord Judge. I hope that, in responding, the noble Baroness, Lady Williams of Trafford, will be able to satisfy the noble Lords who have spoken, as well as the rest of the House, that we have got this issue right. We are all very keen to get this legislation on to the statute book as quickly as possible. We certainly support its general aims—it is a good Bill—but the worst thing to do would be to put something on to the statute book that is not very well drafted and would cause more problems or be an aid to people who do not want to comply properly with the orders. This is a very important point and, although we want the Bill to pass quickly, the noble Baroness needs to satisfy the House that we have this measure right.

5 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, before I begin, I want to make a few comments. Following the decision last week to call a general election, this is likely to be the last opportunity for the House to scrutinise this legislation.

As noble Lords have said, it has had cross-party support throughout its parliamentary passage and I am very grateful to noble Lords, through the usual channels, for enabling us to take both Report and Third Reading today. Time is very short, but we all agree that this Bill will deliver valuable powers to fight money laundering, prevent the financing of terrorism and combat corruption. I hope we can maintain consensus on the way forward and return the Bill swiftly to the Commons.

Perhaps I may also take a moment to thank the noble Lord, Lord Empey, who might have brought back an amendment today but, given the shortness of time, has decided not to do so. He would like it placed on the record that this in no way undermines his support for the victims groups that he has supported over many years.

As well as the amendments in the names of my noble friends, this first group is composed primarily of government amendments that seek to fine-tune the Proceeds of Crime Act 2002. These are consequential on matters already in the Bill and should not, I suggest, raise any particular concerns. However, I will address each of them for the benefit of noble Lords.

Amendments 6 and 7 make explicit that unexplained wealth orders can be used in cases where the property of interest is registered in the name of an overseas company. UWOs should be a significant tool to help probe the ownership of UK property with suspected links to illicit funds, and these amendments seek to address the helpful intervention in Committee of my noble friend Lord Faulks about the London property market. Although it is already implicit that UWOs can apply to cases where property is held in the UK but registered overseas, this explicit clarification is helpful. However, it should in no way cast doubt over the other provisions in POCA, or elsewhere in law, where such an explicit clarification is not included. For example, Sections 84 and 414 of POCA define property in respect of confiscation and investigation powers respectively. These have been applied to property registered in the names of overseas companies where persons in the UK hold this property in some way. Those provisions must continue to operate in that way and I fully expect them to do so.

Our amendments clarify that the UWO provisions apply to property held by foreign companies, and our existing provisions already require a respondent to set out, “the nature and extent of his interest”, in a property. It is clear from this that a beneficial interest in property will be captured where a UWO is served on a serious criminal or a non-EEA PEP.

Regarding the specific points about the bodies corporate regardless of whether they hold or obtain property, the amendments provide clarity and certainty that the UWO provisions apply in this circumstance. We introduced the amendment after discussing the point with my noble friend Lord Faulks, to make absolutely clear that UWOs can apply in respect of overseas companies. I made the important point that this clarification does not cast doubt on the normal application of the term “person” elsewhere in POCA or the statute book. I hope that this will address the
concerns of my noble friend Lord Faulks in Amendment 2, which goes to the heart of the category of individuals on whom a UWO can be served. We have already previously clarified the wide scope of what is meant by “holding property”, which includes a person who has effective control over the property.

We have carefully considered the categories of potential respondents to a UWO and I was pleased to have the opportunity to discuss this with my noble friend. The Government do not consider that it is appropriate, or indeed proportionate, to add a third category of potential respondents to a UWO, when inclusion in that category is dependent only on the way in which an individual holds property. Property could, of course, be held in this way perfectly legitimately.

I will now refer to other points that were made. My noble friend asked about the annual tax on enveloped dwellings, which we have homed in on before. The annual tax on enveloped dwellings does not enable corporate or foreign ownership of property; it is a reality of UK law. I sympathise with the concerns raised, but I assure my noble friend that there is no evidence that the tax encourages money laundering. Many legitimate companies own property in holding companies.

On the point about the London property market that we have also touched on previously, I assure both my noble friend and noble Lords generally that the UWO is an important addition to the tools that can be used here. We are doing more: BEIS has launched a consultation on a public register of overseas ownership of UK property. Such a register would help to highlight abuses of this sort and deter investments of this type. We have created a public register of beneficial ownership and the register makes publicly available details of those who have a 25% stake or greater in a company’s shares or voting rights. The forthcoming set of money laundering regulations currently out for consultation will require estate agents to conduct customer due diligence on those purchasing property as well as those selling property. This will likely lead to more suspicious activity reports linked to property purchases and create more opportunities to use UWOS.

A number of noble Lords asked about purported compliance. They made the point that either a person complies or they do not. The term exists to balance against the serious consequence of not complying with a UWO. If you do not comply with one, the property is presumed to be recoverable in any subsequent civil recovery proceedings. This is without the need for the enforcement authority to provide evidence that the property is the proceeds of crime. This is reversing the burden of proof, which is a significant and unusual approach in our law, so purported compliance is to recognise that if a person engages with the process by answering all the points of a UWO, they will be protected from the presumption that their property is automatically recoverable, and issues as to whether they have complied or not will fall away. The onus transfers back to the enforcement authority to prove that the property is a proceed of crime in the usual way, and the term provides certainty as to the circumstances in which the presumption of recoverability will arise—which will be important in respect of any further proceedings against the property.

In addition, when the UWO is obtained the applicant agency has a broad scope to tailor the requests for further information and documents required by the order, meaning that the likelihood of a poor-quality response is reduced. Also, if a person provides a response, the UWO has been successful in flushing out evidence. The enforcement authority can decide whether to further investigate on the basis of that evidence or to launch proceedings.

I turn now to Amendments 15, 16 and 50, which clarify our existing provisions to ensure that in Scotland the ability to obtain vacant possession of a property can be dealt with at the same hearing as civil recovery relating to that property. Related to these provisions, Amendments 25 to 31 correct an inconsistency in the Bill. They will allow Scottish Ministers and Northern Ireland Ministers to make consequential amendments to legislation, including UK legislation, that is within their legislative competence. To ensure that any changes do not create unforeseen issues, they would be required to consult the Secretary of State prior to doing so.

The Bill provides HMRC and the Financial Conduct Authority with the power to pursue civil recovery proceedings and with supporting investigation powers. On further analysis, it was unclear whether their existing information sharing gateway powers would allow them to receive information for the purposes of these new functions. Amendments 45 to 48 make that certain.

The remaining government amendments in this group are a series of minor and technical amendments to POCA, particularly in respect of “free property”—that is, property belonging to a defendant that can be liable for confiscation. They insert correct references, ensure consistency of language and remove ambiguity to ensure that relevant powers work as they should.

Finally, I will address the other amendments tabled by my noble friend. Amendment 1 seeks to introduce a possible requirement for an individual served with a UWO to answer questions “on oath”. As my noble friend will recall from our earlier discussions on the Bill, a UWO is a civil, investigative power, and it is already a criminal offence for a respondent to a UWO to knowingly or recklessly provide false or misleading information. If a person engages with the UWO process by answering all the points of a UWO, we believe that it is right that the presumption should not apply, even if it is arguable that the person has not fully complied. The onus transfers back to the enforcement authority to prove that the property is a proceed of crime and can be recovered.

In Committee, I committed to publishing the draft code of practice in relation to UWOs and disclosure orders. I am pleased to confirm, as my noble friend already has, that I have since written to noble Lords who spoke in Committee and enclosed the draft code for their review. When I wrote I also committed to publishing the code on the GOVUK website. I regret that we have been overtaken by events and that doing so now would not be consistent with pre-election guidance. However, I have placed a copy in the Library of the House to ensure that noble Lords can scrutinise it ahead of the public consultation that will follow in due course.
[Baroness Williams of Trafford]

We will be considering addressing issues such as statements of truth in giving evidence and purported compliance in the POCA investigation code of practice. It will then be open to noble Lords to make any representations relating to that code once a final draft, subject to the required public consultation, and the order bringing the code into force are subject to the affirmative resolution procedure. It will be debated in the House before being introduced.

5.15 pm

The noble Baroness, Lady Hamwee, made a point about UWOs. She asked whether, as they are court orders, answering questions incorrectly or misleadingly could be contempt of court. Contempt of court is absolutely a possibility subject to the facts of a particular case. There is a specific offence in new Section 396E of POCA as inserted by Clause 1 if someone knowingly or,

“recklessly makes a statement that is false or misleading in a material particular”.

On indictment, a person can be subject to two years’ imprisonment and an unlimited fine.

Amendments 4 and 5 relate to the issue of purported compliance. As I explained previously, if a person does not comply with a UWO, their property is presumed to be recoverable under civil recovery proceedings—I think I have slightly hopped about, so I apologise noble Lords. For that reason it is a significant power and it must be used proportionately. If a person engages with a UWO process by answering all of the points of a UWO, the presumption should not apply even if it is arguable that the person has not fully complied. The onus transfers back to the enforcement authority to prove that the property is a proceed of crime and can be recovered.

I hope that my noble—and noble and learned—friends are satisfied and will not be inclined to press their points any further.

Lord Faulks: My Lords, I am grateful to my noble and learned friend and all noble Lords who spoke in those circumstances, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 to 5 not moved.

Amendment 6

Moved by Baroness Williams of Trafford

6: Clause 4, page 21, line 3, at end insert—

“( ) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.”

Amendment 6 agreed.

Clause 4: Unexplained wealth orders: Scotland

Amendment 7

Moved by Baroness Williams of Trafford

7: Clause 4, page 21, line 25, at end insert—

“( ) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.”

Amendment 7 agreed.
Moved by Baroness Williams of Trafford

Amendment 8

Moved by Baroness Williams of Trafford

8: After Clause 8, insert the following new Clause—

"Co-operation: beneficial ownership information

In Part 11 of the Proceeds of Crime Act 2002 (co-operation), after section 445 insert—

"445A Sharing of beneficial ownership information

(1) The relevant Minister must prepare a report about the arrangements in place between—

(a) the government of the United Kingdom, and

(b) the government of each relevant territory,

for the sharing of beneficial ownership information.

(2) The report must include an assessment of the effectiveness of those arrangements, having regard to such international standards as appear to the relevant Minister to be relevant.

(3) The report—

(a) must be prepared before 1 July 2019, and

(b) must relate to the arrangements in place during the period of 18 months from 1 July 2017 to 31 December 2018.

(4) The relevant Minister must—

(a) publish the report, and

(b) lay a copy of it before Parliament.

(5) The reference in subsection (1) to arrangements in place for the sharing of beneficial ownership information between the government of the United Kingdom and the government of a relevant territory is to such arrangements as are set out in an exchange of notes—

(a) for the provision of beneficial ownership information about a person incorporated in a part of the United Kingdom to a law enforcement authority of the relevant territory at the request of the authority, and

(b) for the provision of beneficial ownership information about a person incorporated in a relevant territory to a law enforcement authority of the United Kingdom at the request of the authority.

(6) In this section—

"beneficial ownership information" means information in relation to the beneficial ownership of persons incorporated in a part of the United Kingdom or (as the case may be) in a relevant territory;

"exchange of notes" means written documentation signed on behalf of the government of the United Kingdom and the government of a relevant territory setting out details of the agreement reached in respect of the arrangements for the matters mentioned in subsection (5)(a) and (b);

"relevant Minister" means the Secretary of State or the Minister for the Cabinet Office;

"relevant territory" means any of the Channel Islands, the Isle of Man or any British overseas territory."

Baroness Williams of Trafford: My Lords, I am again grateful to the noble Baroness, Lady Stern, and others for their amendment, which allows us to return to the important issue of company ownership transparency in the British Overseas Territories. As noble Lords will be aware, the Government have tabled their own amendment and I am pleased to have been able to discuss this with colleagues prior to today's debate. The group also contains an amendment in the names of my noble friends Lord Faulks and Lord Hodgson of Astley Abbotts, no doubt prompted by concerns about the abuse of the London property market. I intend to address this in my closing remarks.

Before I turn to the government amendments, I hope I might be allowed to detain noble Lords for a few moments while I reiterate certain important points on company ownership transparency in the British Overseas Territories and Crown dependencies. As part of our international efforts to increase corporate transparency, the Government continue to work closely with our overseas territories with financial centres to tackle money laundering, terrorist financing, corruption and fraud. In Committee, I described the exchanges of notes the UK signed last year with overseas territories with financial centres and with the Crown dependencies, setting out new arrangements on law enforcement access to beneficial ownership data.

These arrangements are due to be implemented by June this year. They will put the UK and the wider “British family” of the OTs and CDs well ahead of most jurisdictions in terms of transparency, including many of our G20 partners and other major corporate and financial centres, including some states in the US, and demonstrate our continued leadership. I reiterate that we should be proud of this fact and of the progress achieved. These arrangements will bring significant benefits in the capacity and information that UK law enforcement authorities will have at their disposal to tackle criminal activity and to investigate bribery and corruption, money laundering and tax evasion. They will prevent criminals hiding behind anonymous shell companies incorporated in the overseas territories and Crown dependencies, ensuring that these jurisdictions are not open to exploitation by those seeking to hide the proceeds of their crimes.

The UK has continued to work closely with the overseas territories on implementing the arrangements. Indeed, we arranged for the London representatives to attend a meeting in the House this morning so that noble Lords could hear about their progress at first hand. I am very pleased to report there have been some further positive developments since I provided an update in Committee which I will briefly share with noble Lords.

The British Virgin Islands will shortly introduce the beneficial ownership secure search Bill, which will be known as the BOSS Act 2017, to its House of Assembly. This will reinforce the existing process for sharing information with UK law enforcement authorities.

The newly elected Premier of the Turks and Caicos Islands has confirmed that legislation will be introduced on an urgent basis to establish a central registry of beneficial ownership information in its existing companies registry, and to determine access to such information. She expects that the register can be established by the June 2017 deadline, albeit that it will take longer to populate the register fully with data on corporate and legal entities incorporated in the jurisdiction.

Montserrat had in fact committed in November 2015 to establish a public register of beneficial ownership. Although Montserrat is therefore not covered by the exchange of notes, we receive regular updates on its progress. Officials advise that a draft companies Bill will shortly be put to its Cabinet for approval.
[Baroness Williams of Trafford]
The NCA has confirmed that it is already seeing enhanced co-operation from some overseas territories, with turnaround times for processing requests for information much shorter than previously. We expect to see this further improved to meet the agreed standards by June this year. This demonstrates what can be achieved by working consensually with the overseas territories and the Crown dependencies. It is reaping benefits and I believe that it will continue to do so.

Rather than imposing new requirements on the overseas territories, the Government believe that we should continue to work with them and to focus our efforts on the implementation of the existing arrangements, including the passage of new primary legislation in the territories and complex technological improvements. I know that noble Lords would like a timetable to be set for public registers. However, the Government respect the constitutional relationship with the overseas territories and the Crown dependencies. As previously noted, legislating for the overseas territories is something that we have done only very rarely, on issues such as abolition of the death penalty which raised issues of compliance with human rights obligations and thus areas for which the UK retains direct responsibility.

While tackling this kind of complex criminality and its consequences is extremely serious, there is a clear constitutional difference in that financial services is an area devolved to territory Governments. In the case of the Crown dependencies, the UK has never legislated for them without their consent. Doing so would be likely to lead to the territories withdrawing their current level of co-operation, jeopardising the progress made and the spirit of working in partnership that we have fostered with them. I hope that noble Lords will see that this is not a course of action we should take.

It is quite right that we should ensure that the territories’ existing commitments are effectively implemented and deliver real benefits for UK law enforcement—this point was emphasised by the noble Lord, Lord Rosser, in Committee. Following careful consideration, I have brought forward Amendments 8 and 32 to address the concerns raised by him and others. The amendments provide for a report to Parliament on the effectiveness of the bilateral arrangements in place between the UK and the Governments of the overseas territories with financial centres and the Crown dependencies on the exchange of beneficial ownership information.

As I noted in Committee, the Government are committed to following up on these arrangements to ensure that they deliver in practice. There is already provision in the exchange of notes agreements with the overseas territories and the Crown dependencies for reviews of the arrangements six months after they come into force—that is, on 31 December this year—and for further reviews annually thereafter. The arrangements also provide for continuous monitoring by both parties. However, placing a review of the first 18 months of operation of the arrangements on a statutory basis will provide further assurance that careful parliamentary scrutiny will be given to their effectiveness and demonstrate that they are being implemented properly, working effectively and meeting our law enforcement objectives.

As I have said previously, the UK is the only G20 country to have established a public register, and it is this Government’s long-term ambition that publicly accessible registers of beneficial ownership will in time become a global standard. At that point, we would expect the overseas territories and Crown dependencies to implement this standard. The government amendment includes provision that, in the review of the effectiveness of the arrangements, we can consider relevant international standards. This further demonstrates our intention to ensure that we and our overseas territories and Crown dependencies remain ahead of the curve on international standards and will continue to consider the bespoke arrangements set out in the exchange of notes in relation to those standards as they evolve.

Given that so many jurisdictions fail even to reach the standards set by the Financial Action Task Force for beneficial ownership transparency, it is right to focus our efforts on persuading others to up their game while ensuring that the overseas territories and the Crown dependencies deliver on what they have promised. We will of course continue to engage with partners through the key international groups such as the FATF and the OECD to increase levels of transparency worldwide.

I pay tribute to all noble Lords who campaigned on this issue. The fight against global corruption is a priority for the Government and we listened carefully to all those who made representations, not least the noble Lord, Lord Rosser, the noble Baronesses, Lady Stern, and the noble and learned Baroness, Lady Butler-Sloss. I hope that the House will recognise the strong rationale for the Government’s proposed approach and that noble Lords will be minded to accept the concessionary amendment we have proposed in light of our debates. I look forward to responding to noble Lords at the conclusion of the debate, when I will also seek to address the amendment in the name of my noble friends Lord Faulks and Lord Hodgson. I beg to move.

5.30 pm

Baroness Stern (CB): My Lords, I will speak to Amendment 14 in my name and those of the noble Baroness, Lady Kramer, and the noble Lords, Lord Rosser and Lord Kirkhope. This amendment has already been discussed in Committee and is unchanged. Since the debate in Committee, I have been fortunate to have had lengthy and very enlightening discussions with the representatives in the United Kingdom of the British Virgin Islands and Bermuda. I also thank the Chief Minister of the Isle of Man and his colleagues for meeting me. I am grateful to the House of Lords Library for its excellent briefings and to Christian Aid and Transparency International for the additional briefings they provided and the work they do in this area.

The background to this amendment is the growing public understanding of how the lack of transparency in offshore financial centres helps the corrupt to find a haven for their ill-gotten wealth and tax evaders to sleep easily in their beds. Those in poor countries feel the effects of this most because they do not have the resources to pursue the money that has been taken from them. The understanding of this need for transparency was considerably enhanced by the publication of the Panama papers in April 2016.
On 8 November, the Chancellor of the Exchequer made a Written Ministerial Statement to Parliament on the work to date of the cross-agency Panama Papers Taskforce, a group of law enforcers set up to pursue the information that related to the United Kingdom about the illegality revealed. He said in his Statement that since the publication of the papers the task force had: opened civil and criminal investigations into 22 individuals for suspected tax evasion; identified a number of leads relevant to a major insider-trading operation; identified nine potential professional enablers of economic crime, all with links to known criminals; placed 43 high net-worth individuals under special review while their links to Panama were further investigated; identified two new UK properties and a number of companies relevant to a National Crime Agency financial sanctions inquiry; established links to eight active Serious Fraud Office investigations; and identified 26 offshore companies whose beneficial ownership of UK property was previously concealed and whose financial activity had been identified to the National Crime Agency as potentially suspicious. In addition to pursuing those 74 individuals, 26 companies, links to eight Serious Fraud Office investigations and other leads on insider trading and sanctions, a number of individuals had come forward to settle their affairs before the task force partners took action against them.

All the law enforcement activity I list is the result in just six months of bringing transparency to the files of just one legal firm in just one country. It gives an indication of the huge extent of illicit activity and illuminates the rationale behind the measures in this very welcome Bill. In passing, with great respect, I ask those noble Lords who oppose public registers whether they feel it is not worth bringing that number of people to justice, or whether they have a proposal other than transparency for achieving that end.

Undoubtedly, government Amendment 8, to which the Minister just spoke so eloquently, is a step forward in trying to curb the criminal activity, tax evasion and laundering of corruptly gained wealth that is illustrated by the work of the Panama Papers Taskforce. It is very welcome and makes clear that the Government look to the overseas territories and Crown dependencies to keep good and accurate information. Let us remember that half the companies disclosed by the Panama papers—some 140,000 of them—were incorporated in the British Virgin Islands.

However, Amendment 14 goes further than the government amendment. In relation to the overseas territories, it aims to bring transparency to their financial operations by allowing public access to registers of beneficial ownership. I note that Montserrat has already agreed to establish such a public register. This amendment would put a timetable in place for the British Overseas Territories to have public registers. It would require the Government to give all reasonable assistance possible to the overseas territories to help with this. If registers have not been made public by the end of 2019, the amendment requires that public registers should be brought in by an Order in Council.

In Committee, the Minister made it clear that she could not accept the amendment. However, in doing so she did not use the argument raised so frequently in discussions on this matter, that requiring the overseas territories to have public registers while other offshore financial centres maintain their secrecy puts them at a competitive disadvantage so that, in the evocative words of the noble Lord, Lord Hodgson, “the malfeasant … will drift away to still murkier regimes”.—[Official Report, 3/4/17; cols. 898-899.]

I welcome very much the noble Baroness’s rejection of that line of argument. She said:

“The overseas territories may face competitive disadvantage in the short term, but in the long term, the transparent and open way in which the territories intend to work, and we with them, will be to their advantage”.—[Official Report, 3/4/17; col. 911.]

In Committee, her main reason for rejecting the amendment was that there would be a constitutional problem in accepting it. She repeated that today. Yet since Committee, I have been sent many documents on this subject, which I studied carefully. They make it clear that ultimately the UK Parliament could legislate for the overseas territories if so wished but I understand completely why the Government would prefer to proceed with consent. So would I and I am sure there is wide agreement on that.

I remind the Minister of what she said in Committee: for the purposes of international law, the overseas territories are British. That Britishness is significant. In my various discussions, it has become clear to me that the attraction of the financial services in the overseas territories is primarily related to British identity and language, access to a common-law legal system, final recourse to the Privy Council and the appeal, as it is seen, of the Union Jack. It is worth repeating the words of the noble Lord, Lord Kirkhope, in Committee. He said:

“It is fair to ask those jurisdictions that while their economy and defence depend on the stability and integrity of the UK, they should also be expected to follow the same rules of business and investment that we follow here”.—[Official Report, 3/4/17; col. 888.]

We in the United Kingdom have a public register. It might not be perfect—I am sure that the noble Lord, Lord Eatwell, would agree with me on that—but it is our policy. We have one because we believe it is right and that it helps to prevent serious crime. I hope that by tabling this amendment we have made it clear that we in the United Kingdom understand the huge impact that secret offshore financial services can have on the poor countries of the world, good governance, democracy and security. We understand that the overseas territories are a United Kingdom responsibility and we hope very much that transparency of their financial operations will come sooner rather than later.

Finally, I thank the Minister for the way she has carried this hugely important Bill through the House, and for her support and helpfulness at all times.

Lord Kirkhope of Harrogate (Con): My Lords, as one of the signatories to Amendment 14—and its predecessor, which we looked at in Committee—I thank the noble Baroness, Lady Stern, and congratulate her on her amazing vigour and courage and, indeed, her intuition in pursuing this matter, which is so important.

When I spoke in Committee, I made it very clear from the beginning that, first of all—and this is important still—the Government deserve enormous praise for the work they have done both here in the UK and
international to tackle corruption and tax evasion and avoidance. I credit that also to the previous Government because one of the reasons I have been interested in this matter is that I followed the right honourable David Cameron’s lead when he put this issue very much at the top of the agenda at the 2013 G8 summit and subsequently, as was referred to in an earlier discussion, at the anti-corruption summit in May last year.

Of course, Mr Cameron and others did not refer just to global standards. Indeed, one of my noble friend the Minister’s responses in Committee was to talk about awaiting global standards before any further pressure was placed on overseas territories to comply with the public register or the enhanced register. But the truth is, of course, that the former Prime Minister referred to the gold standard, which the United Kingdom itself was very much in the vanguard of. This was accepted and understood, and it left this country, as it is now, in an enormously advantageous position in dealing with other countries as we go forward.

For my sins, I was one of those involved in the drafting of the fourth anti-money laundering directive. My friends always introduce me as an expert on money laundering. I do not like that description but undoubtedly we are looking in this enormously important piece of legislation at how we respond to the requirements under that fourth money laundering directive as well.

I maintain that the amendment I have co-signed is the best way forward but I also pay tribute to the Minister for the way she has listened to the concerns of those who hold our views. She listened very carefully in Committee—and not just listened. Often I think our Ministers listen but that is about it. She has in fact acted. Therefore, I will refer quickly to government Amendment 8, which is an enormous stride forward. It also gives us the ability, which is so important, to review the situation actively in two years’ time, when we can have reports to see how the overseas territories are getting on with the introduction of public registers. She has also given us good news this evening about developments even since Committee. We should welcome that and thank the Government for their interest in proceeding in that manner.

I am still of the belief that we need a level playing field and we need an agreement with our overseas territories that is at least compatible with and equivalent to the requirements that we place in the domestic setting. It makes no sense not to have that. I recognise the Government’s position on this and I realise they wish to proceed by consent. Of course, we all agree that consent is always better than enforcement. I wish the Government great success with this. As we proceed, I hope we will be getting regular updates and then, in due course, when the reports come in, we will have the opportunity, if necessary, to return to this matter. But this is a very important Bill in so many other regards as well. I certainly wish us to pass the Bill and allow it to proceed from here.

5.45 pm

**Lord Judd (Lab):** My Lords, I declare an interest: I was Minister for Overseas Development, before moving on to the Foreign Office. I have served both professionally and voluntarily in the development sphere in various non-governmental organisations, including as director of VSO and subsequently Oxfam. To all of us involved in that work, the importance of the Bill, which I very much endorse, and of the amendment that has just been spoken to, cannot be overemphasised. Indeed, I noticed the other day that the Prime Minister, in saying in the Conservatives’ election campaign that they will stand by their commitment on overseas aid, emphasised that what was important was to make sure that the aid was being spent in the most effective way and not wasted.

It is terribly important to recognise that the people of too many developing countries are being robbed by their leaders, and that existing arrangements enable those leaders to get away with it. If we are going to talk about the effective use of aid, it seems to me that where we have the authority to take highly relevant and effective steps, we should do so. Yes, of course, we must put on record that Britain has taken great steps to provide world leadership in this sphere. It is leading the world already. That is why the remaining gaps are very ugly anomalies. I do not like to put it in these crude terms but it always seems to me that people either have some reason for not implementing immediately what is proposed or they do not, and if they do not, let us do it. If they are going to find ways of delaying—having still to work out arrangements and so on—this must raise suspicions that arrangements are going to be made in other respects as well.

From that standpoint, I say simply that, with all my experience in this sphere, this is a crucial matter. I congratulate the noble Baroness and her co-signatories on having stood by their guns. I hope the amendment will be taken seriously because I believe there could be a very important consensus in this House if we are prepared to put ourselves on record.

**Lord Blencathra (Con):** My Lords, I wanted to intervene earlier in this debate following the speech of my noble friend Lord Kirkhope because I, too, wish to refer to Mr Cameron and the G8 summit.

First, I shall say that Amendment 8 is unnecessary but harmless, so I shall support it—but Amendment 14 is wrong and misguided for a number of reasons. First, we have no right, neither legal nor moral, to seek to impose our rules on law-abiding, self-governing British Overseas Territories. When I hear some of the NGOs outside this House talking about our overseas territories, I am appalled at their old-style colonial arrogance. One notorious campaigner against so-called tax havens has even suggested in his book that they should be closed down and the natives made to depend on overseas aid once again—and he calls himself moral. He is also one of the architects behind these proposals. I believe that we have no moral right because the United Kingdom creates more dodgy shell companies than some of the tightly regulated overseas territories and Crown dependencies. We need to come up to their standard, not the other way round.

Secondly, we should not impose these public register rules because the rules themselves are rubbish, as I shall attempt to explain. Not a single other country in the OECD is implementing this—and they have made clear that they never will. This public register wheeze...
questions asked? It was not Panama but individual states in the United States such as Delaware, Montana and Wyoming. They are way down at the bottom of the chart.

There are 2 million new companies created in the United States every single year. If you want to set up a dodgy shell company, you go to the United States—or rather, you go on to email and do it in under half an hour for less than $300. These states have said quite bluntly that they do not care what the President signs up to at federal level or at the OECD; they are in charge of company registrations in their state and will never in a million years go for public or central registers. They will not go for any more scrutiny before setting up companies.

Where does the United Kingdom come into this? Unfortunately, your Lordships can guess who was 13th from the bottom of the heap—below Vietnam, Panama and Ukraine. Yes, the United Kingdom was 13th from the bottom on creating dodgy shell companies, because we do it with insufficient verification of the beneficial owners. So clobbering Cayman, Bermuda and the BVI with rules which only they, not the other 19 countries of the OECD, would follow is misguided and foolish. I agree with my noble friend Lord Hodgson that we do not make the world a better or a more transparent place by hitting the good guys, encouraging the bad and letting all the Mugabes of this world go to the real tax havens to set up accounts.

Neither does the OECD ask for these public registers. The OECD merely wants all legitimate authorities to get speedy access to the relevant information so that the police, security services and financial regulators can check the legality of owners and their transactions. That is the point of access to beneficial information. I know that the Cayman Islands has been providing that information without any objection whatever for the last 10 years and has now implemented a system to give that information to legitimate authorities within 24 hours, seven days a week. That is a far better system than publishing registers.

It is perfectly legitimate for many individuals to create companies and seek to keep the ownership information private. There is no right for the public, nor for anti-capitalist NGOs, to know who owns private companies. But there is a need for legitimate law enforcement authorities to get speedy access to that information—and the overseas territories are in the forefront of providing it. What is more, I know that the information provided by the Cayman Islands, for example, will be verified by the authorities—as opposed to what will be supplied by Companies House, which does not verify the accuracy of anything. It is left to individuals to say to Companies House, “I promise that I’m telling the truth and I am who I say I am”. The overseas territories do not accept that.

So I ask this: will my noble friend the Minister give me an assurance that, in due course, the UK Government will make an attempt to get our beneficial ownership information in Companies House as up to scratch and as good as that in the best of the OTs? Our overseas territories should be lauded, not criticised, for their work on financial services. For these reasons, I oppose Amendment 14 and believe it should be rejected.
Lord Beith (LD): My Lords, I declare a simple interest as a former chairman of the Justice Committee in the House of Commons, where we sought to clarify and underline the constitutional relationship. That probably explains why, while I generally support government Amendment 8, I have some doubts as to whether it is desirable to have included the Crown dependencies and overseas territories in the same amendment when their constitutional relationship has a very different history.

Of course, the amendment as framed does not claim to place any requirements on the jurisdictions to which it refers; it simply requires UK Ministers to report to the UK Parliament on how it is all going, which is obviously a good thing and something that we can very much welcome. Parliament needs to know about the effectiveness of information sharing, not only in respect of the overseas territories and the Crown dependencies but in respect of all the jurisdictions in which business is already carried out or to which it might transfer as a result of the steadily improving regulation in some of the territories that have been referred to in this debate.

A lot of the public concern arises from two things. One of them, which was mentioned by the noble Lord, Lord Judd, is the appalling record of corruption in many developing countries. The other is the revelation of much of that in the Panama papers. The noble Baroness, Lady Stern, deserves credit and tribute for her campaigning on this issue. She referred to the number of proceedings being considered or started. Many of them have arisen not from inadequate public registers but from the useful publication of a great deal of information from one law firm. As it happens, it was the biggest law firm in Panama, Mossack Fonseca, both of whose named partners are currently in detention in relation to matters in Brazil.

6 pm

That notorious partnership created many thousands of shell companies. It did not know, and did not seek to know, the beneficial ownership of the clients for which it was doing this. The incorporation of these companies took place not primarily in Panama but in many other jurisdictions, particularly in Caribbean jurisdictions—not just British overseas territories but, for example, in at least one territory associated with the Netherlands. It was a massive operation stretching over to Singapore and many other places.

In Panama, there has been significant improvement in the criminal law and the requirements of due diligence, with which all firms now have to comply. I had the opportunity to discuss this with lawyers in Panama recently, and I think that the situation will change quite strikingly in that particular country and jurisdiction. But much of this business may have transferred to Nevada, Delaware or Singapore, and Ministers will need to report to Parliament on the effectiveness of the access of law enforcement agencies and tax agencies to ownership information in those jurisdictions.

To serve its purpose, the information shared has to be reliable, up-to-date and verified—and that is the more urgent priority. As several noble Lords pointed out, the UK has work to do at home if it is to match what is already done in, for example, Jersey. There are real benefits to be had from publicly accountable registers, such as are proposed in the amendment tabled by the noble Baroness, Lady Stern, particularly in tackling corruption by national leaders, which would not otherwise come to light. But my worry is that, unless this becomes a much more widespread practice, there will be many jurisdictions in which such persons can engage in those activities.

I think that the phrase “gold standard” is unfortunate because it is something we went off when we realised that we had to do so—so let us find a different analogy for trying to get sufficiently wide respect among jurisdictions for the idea that public access confers real benefits to the populations whose money is involved. Let us recognise that the priority is to get for our law enforcement and tax authorities, and those of other countries, access to information that is reliable, up-to-date and verified.

The Earl of Kinnoull (CB): My Lords, I declare my interests as set out in the register of the House and, in particular, that I was chief executive of a class 1 major reinsurer in Bermuda for a number of years and have very wide experience of financial services in that country and generally.

I pay tribute to the Minister and also to the noble Baroness, Lady Stern, in their respective ways. I am afraid that I can pay tribute to the noble Baroness, Lady Stern, but I disagree with her fundamentally. While I feel that the appalling catalogue of problems that she read out is terrible, worrying, vile and awful, Amendment 14 is not a good way of addressing the issue. She challenged me to try to provide a better way, and I will in the course of my remarks.

People often do not understand how big a jurisdiction Bermuda is. Bermuda overtook London as a centre of reinsurance in 2004. London remains number two in the world. No major insurer in this country would be able to trade without the reinsurance that it purchases from Bermuda. The amount of money, capital and sophistication in Bermuda is enormous. The BMA—the chief regulator there, of which more in a second—is an extremely professional and very tough regulator. Bermuda was not responsible for even one of the revelations in the Panama papers and is a very clean jurisdiction, and it is particularly unfair that it is named in this amendment.

I have four particular points, on two of which I can be very quick. The first is a general point about interference by Westminster in the affairs of these self-governing regimes. I agree with the Minister, and I will say no more. The second is a general point about shifting the problem to another jurisdiction. I agree that shifting a bad thing is a good thing in many ways, but shifting a good company is a bad thing because you are simply damaging the jurisdiction. There are many good companies, and I will explain in a second why this amendment would have the effect of shifting good companies. It would be very wrong for us to impose damage on our loyal overseas territories and possessions.

My third point is about the three things that control and look at naughtiness in financial services, which are the tax authorities, the police authorities and the regulators. As a chief executive of a big company,
of course one is worried by tax authorities and policemen, but the person who can walk into your office and stop you trading immediately is the regulator. He has the most power, and he is the toughest. I regret that in the many debates we have had the power of regulators has not really been discussed, nor has how sophisticated they are and how close they are to what is going on. It is not possible for one of these shell companies to be set up without a regulator being involved because that company will require a bank account. Banks are heavily regulated. If the shell company does not require a bank account, it will require a fund manager to look after its money. They are very heavily regulated. A person running the support business in a high-integrity environment such as Bermuda would not allow someone—one bad client—to come in and kill off their whole business. They would be very careful to make sure that that does not happen. You are scared of regulators. You are of course scared of tax and police authorities, and you are more than willing to give up any information that will protect your business because no one client is worth it. Your business is your business; your staff are your staff. That is how everyone feels—I hope noble Lords can hear a level of emotion in my voice.

A sub-point is that in our society we rely on the forces of law enforcement to deal with naughtiness on our behalf. We do not have vigilante posses running around trying to do things. I worry that if everything were publicly available people would suddenly see themselves as being promoted into some sort of enforcement environment. That is wrong. We should leave these things to the professionals—the tax authorities, the police authorities and the regulators—and trust. If they do not do a good enough job, we should bash them. We should not allow vigilante posses.

I move to my fourth point, which is the most worrying point for me. I have mentioned it to the noble Baroness, Lady Stern. For many years, Hiscox, the group I worked for for so long, looked after the possessions of well-off people all over the world. It is also the leading kidnap and ransom insurer throughout the world. During my time at Hiscox, we logged 40,000 man days of kidnap problems around the world. Hiscox’s market share was more than 50%, so it understood the issues. In this country, we are very lucky to live in an environment where we are safe and secure. I will walk home tonight and think nothing of it. I can get into a smart car and think nothing of it. That is not the case in countries such as Mexico. In Mexico, you cannot keep your company with a local bank or keep your money there. In quite a lot of countries, you need to go to offshore environments, and you are a good client because you have earned your money. Hiscox’s perfect client was someone who owned a beer factory in Mexico or something because it knew they were straight and honest and could see how they had made their money. People were very scared. Part of kidnap and ransom is advising clients. Hiscox advised them to keep quiet about it and to be discreet. That is the chief weapon that will stop nastiness going on. When the nastiness happens, it happens not to the guy running the beer factory but to his daughter. It happens in a nasty way. I worry that the effect of this sort of thinking, without a proper impact assessment being sorted out and thought about very carefully, could be that we would be sentencing some people who have made their money honestly to physical harm and the invasion of their homes.

I finish by saying that of course I do not want any of this naughtiness to go on, but I feel strongly that Amendment 14 is not the way to go about it. We should rely on the police, the tax authorities and the regulators to do it for us. We should look very carefully at their performance in all of these countries and carry on, as the Government have been doing so successfully, getting incremental improvement. This House should make sure we carry on pushing the Government to push the authorities to get that incremental improvement. But I plead with the House not to support Amendment 14.

Lord Eatwell (Non-Afl): My Lords, first, I declare an interest as chairman of the Jersey Financial Services Commission and therefore the person responsible for the beneficial ownership register in Jersey. The question addressed in Amendment 14, of public access to registers of beneficial ownership, is not one for me, and I will not address the value or otherwise of making a register public—that is a political issue. The regulator in Jersey is independent, and I therefore have no role in those political decisions, but I am concerned about whether a register of beneficial ownership is accurate and therefore useful.

A number of speakers have referred to the public availability of the register of beneficial ownership here in the UK—essentially the Companies House register. As I pointed out in Committee, that register is not a useful one, since it is not verified and, because of that, the information in it can be seriously misleading. Indeed, because it is not verified, the people in developing countries and indeed civil society as a whole are on their own with respect to attempting to identify wrongdoing through the structure of the register. The register does not do the job. Regrettably, the UK is not a leader in providing verified, accurate information about beneficial ownership.

I want to address two issues with respect to the amendments. First, what I have just said will make clear why I regard Amendment 14 as seriously defective in not including the word “verified”. The characterisation of the information in proposed new subsection (4) is of a, “publicly accessible register of beneficial ownership”, with information “equivalent” to that under the Companies Act. The word “verified” does not appear. Therefore, the information can be inaccurate and misleading, with nobody required here to check it.

For the second point, I go back to the Minister’s amendment, Amendment 8, which has not been discussed very much up until now, says not only that “relevant” territories will provide information to the UK and we will have a report on how that information is provided but that the UK will provide “beneficial ownership information” to the relevant territories. I presume that includes my registry in Jersey. But I would like to know what information is going to be provided. If it is the Companies House information, we should really not bother; if it is some verified information, I will be very pleased to receive it. I would be grateful if the Minister, when she sums up, could tell us exactly what information is going to be provided by the UK, whether it is going
[Lord Eatwell] to be verified and, if so, by what authority. Only if we have accurate information will the objective of those supporting Amendment 14—the revelation of wrongdoing—be achieved. If information is not verified, that goal is not achieved. Amendment 14 is defective in that respect, and I would be grateful if the Minister, when summing up, would tell me exactly what sort of information will be provided by the UK to my registry in Jersey and by whom it will be verified.

6.15 pm

Lord Naseby (Con): My Lords, the Minister rightly wishes the United Kingdom to be ahead of the curve. In relation to Amendment 8, which is the principal amendment that we are considering, she is absolutely right. If she is saying that the objective is co-operation on beneficial ownership information in order to deal with tax evasion and stamp out corruption, money laundering and terrorist finance, that is greatly to be welcomed and is welcomed, as far as I can see, by those in the overseas territories. I will come back to this in a minute, but the amendment will mean that the overseas territories have, as I understand it, committed themselves to provide real-time, 24-hour information in response to requests from the legal authorities in the United Kingdom. That is a massive step forward in this area of great difficulty and challenges and is to be welcomed.

However, I too am concerned about some of the detail of this new clause. It is unfortunate that a clause of this importance has appeared in the Marshalled List so late in the process. Of course, I recognise that my noble friend on the Front Bench is in some difficulty in that this is a major Bill and here we are at the 11th hour having to look at an absolutely vital amendment, and one has to make some allowance for that. But I share the view of the noble Lord, Lord Eatwell, about exactly what information is going to come from the UK and who on earth will verify that information. The overseas territories have every right to be told exactly what the information is and how it has been verified. In addition, there seems to be a great rush to have this work done in the next period so that it will all be based on one year’s experience. This is a major step forward and I wonder whether 12 months is enough. We have heard this evening from my noble friend that the Turks and Caicos Islands are hoping to get started forward and I wonder whether 12 months is enough. This is a major step forward and I wonder whether 12 months is enough.

I have one other concern. Proposed new subsection (2) states:

“The report must include an assessment of the effectiveness of those arrangements, having regard to such international standards as appear to the relevant Minister to be relevant.”

We do not know who the Minister may be in the next Government or what international standards are to be used. I do not blame my noble friend for this, but I suggest to her that when the report comes forward, we shall want to have great clarity about what international standards are being used and whether they are being consistently used in the analysis of implementation that flows from the new clause in Amendment 8. However, the basic point is that there must be great joy both in the overseas territories and in the law enforcement agencies of the United Kingdom that they are now going to get a first-class service which ought to have a major impact on the areas that I have described.

I have had the privilege of working overseas in Pakistan, India and Sri Lanka, and I spent part of my national service in Canada. Certainly when I was in commerce, with the Reckitt & Colman Overseas group, one of the bugbears about international trade—I am talking about several decades ago, but I am afraid it has not changed—is that it is not a level playing field. Here we are, approaching Brexit and hoping to trade internationally, but the tragedy of the situation is that somehow neither we in the United Kingdom nor other countries have ever managed to persuade the United States, Hong Kong and Singapore to have a central, non-public register. We have not even got that far. Even on the basis of what we are doing now, we have rivals. Make no mistake about it: most of our overseas territories are in the Caribbean, their main competitor is the United States and they do not even have a central beneficial ownership register. Not only will they lose business if we go too far but if the other parties, particularly the US, Singapore and Hong Kong, take business from our overseas territories, the net result will be that where we are getting information out of our overseas territories, if the business goes elsewhere then the co-operation that the UK gets from those territories—which is good and is going to be even better—will be totally undermined. Frankly, we will not get any information from the US, Hong Kong or Singapore.

On Amendment 14, which keeps reappearing, I certainly do not think that Her Majesty’s Government are committed to producing anything on a public register at the end of the review on beneficial ownership. The review should be solely on that subject, and there may well need to be further amendments or extensions to that situation. I remind noble Lords that neither the law enforcement agencies nor the tax authorities support public registers. UK intelligent law enforcement is a key part of our foreign policy, and we look for co-operation from friendly countries across the world. That will be jeopardised still further if there are these public registers.

So I say to my noble friend on the Front Bench that I support very much what she has done on the Bill and the way that she has pushed forward progress with the overseas territories. However, let us be quite clear: beneficial ownership is one thing, and it is very important, but in my view public registers are totally à décours.

Lord Luce (CB): My Lords, I support government Amendment 8. I apologise to the House for the fact that I have not been here for the earlier proceedings because, among other things, I have been visiting one of the overseas territories, Gibraltar, as I am chancellor of the new university there. As a former Governor of Gibraltar I am probably the only person in the Chamber who has been a governor of an overseas territory, so I thought I ought to say something in this very important debate.

The noble Baroness, Lady Stern, and all those who have added their names to the amendment have done a service to the House in ensuring that we debate the vital issue of standards of regulation in overseas territories.
After all, at the end of the day it is our Government who are ultimately accountable to Parliament for the performance in our overseas territories. Therefore the Government must satisfy themselves that the standards both in this country and in the overseas territories meet those required by the OECD and elsewhere, so I congratulate my noble friend on the leadership that she has shown in ensuring that we debate this issue.

However, there is a delicate balance to be struck—from listening to the debate, I think the House understands that—because we are now in a non-colonial era. I remember that after I became Governor of Gibraltar, the late Robin Cook became Foreign Secretary two or three months later and one of the first things he did, very sensibly, was to drop the term “colonial” from our overseas territories so that we have the title we use at present, “British Overseas Territories”. We have to approach these issues in a very non-paternalistic and non-colonial fashion. To my mind, that is essential. The danger with the devolved powers that we have in these overseas territories—quite rightly, in my view—is that if we try to impose in a paternalistic fashion our views and policies upon them, we will be doing them a great disservice. Above all, we want to avoid having to impose direct rule, which could be the implication of taking some of these measures. At the same time, we have to ensure that there is a level playing field, which includes us as well, and that in making progress on this we do not do so at the expense of the overseas territories.

The Government have shown tremendous initiative in responding to the amendment from the noble Baroness, Lady Stern, with their Amendment 8 because it provides a framework with which we can move forward in negotiation and dialogue with the overseas territories over the next two or three years to try to move the whole issue forward. Many of the overseas territories, as we have already heard today, have made good progress. I congratulate the Government on this and strongly support their amendment.

Baroness Butler-Sloss (CB): My Lords, I support very much what the noble Lord, Lord Luce, has just said and respectfully associate myself with it. I strongly support Amendment 8. If I may put it this way, I think the Government, and particularly the Minister, have been extremely shrewd in taking the sting out of the points made by the noble Baroness, Lady Stern, who has very wisely brought these issues to this House. The Government have picked them up and produced a framework with which we can move forward in negotiation and dialogue with the overseas territories. The amendment provides a useful nudge to the overseas territories that the Government are looking at what they are doing, without imposing what is unacceptable upon these independent countries with their own constitutions and parliaments.

I do not agree with Amendment 14. I was at the meeting this morning where representatives from a number of overseas territories explained to us what they were doing. We have already heard about Bermuda and the Cayman Islands, the British Virgin Islands, which are doing very good work, and from Anguilla and Montserrat about the efforts they are making. We have heard from the Minister about the Turks and Caicos Islands, which with their new Government are now working to get this through. So the areas contained within Amendment 14 are already on the way, if not ahead of us in some cases, and it is not necessary that they should be referred to specifically in it. I do not want to hold everyone up. I support Amendment 8 and I do not think Amendment 14 is really necessary now.

Lord Faulks: My Lords, I shall speak to Amendment 24 in my name and that of my noble friend Lord Hodgson of Astley Abbotts in this group. It concerns the setting up of a public register of beneficial ownership of UK property by companies and other legal entities registered outside the UK. Those are more or less the words that are the subject of a call for evidence issued by the Department for Business, Energy and Industrial Strategy in April this year. I do not know but I assume that the Home Office did a great deal to bring forward the publication of that report in the light of the debates which took place in Committee about the concern that was generally expressed about corruption and the acquisition of property in central London by overseas companies hiding behind anonymity.

The establishment of a public register was indeed a commitment made by the Government. Why do we need a register of this sort? I can do no better than quote briefly from the call for evidence, which says, “the government is concerned about the potential for illegal activity to take place through overseas companies investing in the property sector. Some properties are owned through off-shore companies in order to obscure their true owners. This can make it difficult for regulators, legitimate businesses and the general public to know who the true owners are and can make it very difficult for law enforcement agencies to carry out effective investigations ... Greater transparency of property ownership will make the job ... easier and will discourage criminals and the corrupt from choosing the UK to hide or launder their money”.

It is made quite clear that the Government intend to introduce a register of beneficial owners of overseas companies but, as it is a call for evidence, it does not seek to prescribe the nature of that register but calls for advice and information to assist it in formulating the register. It may well be influenced by what the noble Lord, Lord Eatwell, said about verification to make any such register particularly useful.

The amendment in my name and that of my noble friend Lord Hodgson simply asks the Government to do that and make it a part of the Bill. If we do not, there is real feeling that there will not be legislative time even in the Parliament that may start in June. I ask the Minister to reassure us that the register will be set up in short order.

6.30 pm

The Earl of Sandwich (CB): My Lords, I was not here for Committee and I apologise for rising at this late hour. I thank the Minister for her attendance at our meeting this morning, which was very productive. I admitted then that I had not seen government Amendment 8. Now that I have read it—in fairness to the noble Baroness, Lady Stern, I know that people have said that it is very welcome—it is actually quite disappointing for the aid organisations that have been campaigning. That should be on the record. It is really a restatement of existing government policy, and is not a compromise in that sense. I prefer to support my noble friend and others on Amendment 14 because it
is only common sense. If we look back to discussion in Committee, we see that all they are asking is for the Government to complete their own programme of persuading the OTs to adopt public registers. This was a worldwide campaign, which we admire the Government for leading. It is now intended to include the overseas territories, although I fully recognise that there has been a slow take-up and that Orders in Council may be required.

I have worked with Christian Aid and many other organisations, as has the noble Lord, Lord Judd, which support the proposed new clause in Amendment 14. They are, to my mind rightly, concerned that the need for transparency should apply to overseas territories and developing countries just as much as to us. I hope the Minister now recognises that and will see her way to further compromise in future. The aid agencies feel strongly about this—after all, they are thinking of the majority of people living in those countries, not those sitting on the money.

Finally, I quote one informed reaction from Christian Aid to the new amendment. It states:

“The Exchanges of Notes signed between the UK Government and Overseas Territories in April 2016 on sharing beneficial ownership information already provide for a joint review of the operation of the arrangements six months after their coming into force, and thereafter on an annual basis. The report envisaged by amendment 8 is therefore already committed to. All this amendment does is put an existing commitment into law”.

The amendment does not mention transparency; nor does it mention developing countries. I therefore see no reason why we cannot support Amendment 14 and Amendment 8.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have added my name to Amendment 24, which is about the UK register of overseas property. Before I speak to it, as the noble Baroness was kind enough to refer to my remarks in Committee about drifting away from the need to get a grip and some clarity on what is going on. I am extremely relieved that my noble friend Lord Blencathra quoted my remarks in Committee about drifting away from the need to get a grip and some clarity on what is going on.

That makes the urgency of the Government to complete their own programme of persuading the OTs to adopt public registers. This was a worldwide campaign, which we admire the Government for leading. It is now intended to include the overseas territories, although I fully recognise that there has been a slow take-up and that Orders in Council may be required.

I have worked with Christian Aid and many other organisations, as has the noble Lord, Lord Judd, which support the proposed new clause in Amendment 14. They are, to my mind rightly, concerned that the need for transparency should apply to overseas territories and developing countries just as much as to us. I hope the Minister now recognises that and will see her way to further compromise in future. The aid agencies feel strongly about this—after all, they are thinking of the majority of people living in those countries, not those sitting on the money.

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Lord Hodgson of Astley Abbotts (Con): My Lords, I have added my name to Amendment 24, which is about the UK register of overseas property. Before I speak to it, as the noble Baroness, Lady Stern, that it would have been encouraging to which my noble friend referred a moment ago all the more pressing. First, there is a ripple effect on properties in the south-east of the United Kingdom: as the settled population sell their properties closer to the middle of London, they have further money to buy properties elsewhere in the region. A very interesting article in the Financial Times on Monday 3 April pointed out that house prices have increased by 102% since 2002, compared to a 38% increase in earnings; that Londoners now need to pay 12.9 times their earnings, up from 6.9 times in 2002, to buy a London house; and that if you wish to buy a house in Kensington and Chelsea, the heartland of the area that my noble friend has in his gunsights, you now need 31 times the median salary to afford it. There is a real sense that we need to get a grip and some clarity on what is going on.

There is a second impact because, as London has become more expensive, foreign investors have begun to look at other cities. The Times of Friday 7 April pointed out that Number One Cambridge Street in Manchester, a development of 282 flats over 29 storeys, has investment purchasers from Azerbaijan, China, Japan and Zimbabwe—18 nationalities. Only two of the 282 flats are owned by Britons. The developer wrote:

“The generously proportioned apartments ... appeal to owner-occupiers, investors and renters. In other words, the scheme is appealing several sectors of the market, including those looking to make the step towards getting on to the housing ladder and more established owner-occupiers”.

I must say that I think first-time buyers in Manchester might wonder whether 99.2% overseas investors and 0.8% local ownership is a fair reflection. Here I offer my noble friend Lady Stern some comfort: one investor based in the British Virgin Islands has purchased 125 flats. A company called OFY paid £25.7 million for those properties.

Although the amendment is no silver bullet, it sets out an important direction of travel, which is why I support it.

Lord Judge: My Lords, there have been many speeches and I, too, was unable to speak at an earlier stage, so I shall be brief. Amendment 8 is good, but Amendment 14 is better. The reason it is better is simply this: it adds greater certainty to the idea that we and the British Overseas Territories are doing our level best to destroy this scourge of corruption which infects so many countries and does so much damage throughout the whole world. It may be that we are at the start of this process—I think the Bill is the very beginning of a process—but we have to start somewhere, and this is where we should start.

Baroness Kramer (LD): My Lords, I have the privilege of being a name added to the amendment moved by the noble Baroness, Lady Stern. I will use this opportunity to congratulate her not only on raising the issue but on pursuing it with so much energy. We can see from some of the results that the argument has moved; the profile of this issue has been very significantly raised and I think that government will struggle to ignore it going forward. We have had a small concession from the Government. I agree very much with the noble Earl, Lord Sandwich, that it would have been encouraging
to have a stronger response, because this is indeed the encapsulation of existing government policy and existing notes of exchange into statute. It is better to have it in statute than not to have it in statute. There is a little bit of movement forward, but it is extremely small.

What has disappointed me in a lot of the debate today is the range of views expressed opposing transparency. I am very appreciative of those who have spoken out who recognise the importance of transparency. The Panama papers have been an extraordinary illustration of what transparency can do, and does, to engage regulators and enforcement agencies to pursue what is not just naughtiness—it runs far deeper than that. It is real misbehaviour that distorts economies, including our own. Amendment 24, from the noble Lords, Lord Faulks and Lord Hodgson, in many ways illustrates the distortions that have happened in property markets in the UK, with huge consequences for many of our young people and many of those on lower incomes. There is a very big knock-on beyond just the initial misuse of bank accounts and investments.

I made a much longer speech on the issue in Committee, which I shall not repeat, but we have to face the reality that many of the problems that we face across the globe, including civil war in Syria, hunger in Africa, the absence of democracy in countries such as Russia and the impact of withdrawn democracy in places such as Turkey, depend on the capacity of those who are politicians or Governments who abuse their people and who are corrupt—vast criminal networks that exploit in every way—to take advantage by moving illicitly obtained money into the legal financial sector. When we look at anywhere around the world that functions in any way as a haven or portal for that transition from the illicit world to the legal world, we are facing a situation where we have to try to close down the ability of those funds to move. The impact of that would be huge in so many ways across the globe, including for us.

I very much support—and I am sad that not everyone did—the work that the previous Prime Minister, David Cameron, did in this area, and the stand that he took, saying that, first, we have to make the kinds of changes that give us central registers. I am very glad that this Government continue to move to make sure that that extends right across all our overseas territories and Crown dependencies. Many of them are ahead of us, as has been said—but this will now be a universal description of the UK, with its overseas territories and Crown dependencies. But I am sad that the principle of public registers is now being so thoroughly challenged. We all know that if we wait for a global standard we will wait generations. Secrecy provides the kind of cover used extensively by all those whom we would wish to stop. They are the people who will be very pleased today that Amendment 14 is not going to be put to a vote and potentially carried. They will be absolutely delighted, because that is the cover that enables them to continue to make the transfer between the illicit world and the legal world.

This is a path down which I am sure that the noble Baroness, Lady Stern, who has been so vigorous on this issue, is going to continue. There will be many others around this House—we have heard from the noble and learned Lord, Lord Judge, and the noble Earl, Lord Sandwich—who will continue, and I hope that the noble Lord, Lord Rosser, will be in that group as well. We must achieve that transparency. If we do not take leadership, there is no way that we can turn around to the United States or any other location and insist that they carry out those same measures, when we say that we are not willing to do it ourselves or to use our relationship with the overseas territories and Crown dependencies to achieve that goal.

I wish that the Minister could tell us more about a timetable to achieve greater transparency. That would give us a great deal of comfort, but there does not seem to be one with much force or energy behind it, which I find exceedingly sad. But this is a day when we recognise the pressures and needs delivered by wash-up, so I very much accept the need to support government Amendment 8, and recognise with regret that we are very unlikely to have an opportunity to push on Amendment 14.

6.45 pm

Lord Rosser (Lab): First, I start by making a reference to the amendment in the name of the noble Lords, Lord Faulks and Lord Hodgson of Astley Abbots. We certainly support the objectives of the amendment; it is a matter that we, as well as the two noble Lords, have raised in Committee. Unless I have misunderstood its intention, the amendment says that action should be taken within a certain period of time, which I think is described as within six months of the day on which the Bill is passed.

When the matter was discussed in Committee, the Minister referred to the fact that the Government had announced at the London anti-corruption summit last year that the Government’s intention was to create a register of overseas company beneficial ownership information where the company owned UK property. On behalf of the Government, the Minister also said that the Government intended to publish a call for evidence that would set out the policy proposals in full in the coming weeks, and would also introduce legislation to implement the register as soon as parliamentary time allowed.

As the noble Lord, Lord Faulks, said, the call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK Government procurement has now been issued; it has come from the Department for Business, Energy and Industrial Strategy. But I imagine that the key concern, from what the noble Lord said, is about how long it may take for anything to happen with regard to setting up the register. I assume that the Minister will probably not be in a position to say very much about that. She could, of course, tell us what the intentions would have been of this Government—but they will not be around for very much longer. There will be a new Government after the election, and it will be an issue for that Government to decide what priority they are going to give to it.

Certainly, the omens do not necessarily seem very good, since there seems to be a general view that much of the legislative time that any Government have after the next election will be taken up with the issue of the implications of our withdrawal from Europe. I hope
[LORD ROSSER]

that the Minister will at least be able to say what the intentions would have been of this Government when she comes to respond to the specific point raised in the amendment spoken to by the noble Baroness, Lady Stern, about putting a time limit on when something is actually going to happen and not leaving it as something that may well drift well into the future.

I thank the Minister for moving government Amendment 8, which is clearly—at least in part—a response to Amendment 14, spoken to by the noble Baroness, Lady Stern, and to which my name is attached. I do not intend to reiterate the arguments and points made by the noble Baroness, with which I fully concur. I will concentrate my comments on government Amendment 8. As the noble Baroness, Lady Stern, has already said, this does not go as far as Amendment 14, since it contains no reference to the Government having to bring forward an Order in Council by the end of 2019—or, indeed, by any other time—and then taking all reasonable steps to ensure its implementation, requiring any overseas territories listed in Amendment 14 that have not introduced a publicly accessible register by the end of 2019 to do so. The government amendment provides for a report to be prepared before 1 July 2019 with an assessment of the effectiveness of the arrangements in place between the UK Government and the Government of any of the Channel Islands, the Isle of Man or any relevant overseas territory for the sharing of beneficial ownership information, having regard to such international standards as appear to the relevant Minister to be relevant.

Will the Minister give more information on the criteria against which the Government will assess the effectiveness of the current arrangements? I ask that in the context of what the view would have been of this Government on that issue. We are presumably all seeking to reduce the incidence of money laundering and corruption in particular, as well as the avoidance of paying tax, either by illegal means or through elaborate schemes that have not been cleared by the tax authorities. Will the level of such reduction achieved, or not achieved, in these areas be a key part of the assessment of the effectiveness of the arrangements in place, and will that be reported on in specific terms in the report to be placed before Parliament, to which reference is made in the government amendment?

Further, is it this Government’s intention that there should be a debate on the report in both Houses of Parliament in government time? What does the reference to, “having regard to such international standards as appear to the relevant Minister to be relevant”, actually mean? What do the Government consider the relevant international standards are at present, and how would those standards at the end of 2018 be determined? Are international standards internationally binding agreements, and is an international standard what is being achieved by the country with the best record of effectiveness and transparency in this area or by the one with the worst? I believe that the Minister said that the regard to international standards would be to the highest standards, but I would be grateful if she would confirm that when she responds.

A concern that has been expressed during the course of our discussions on this issue has been the potential or actual use of overseas territories and Crown dependencies by corrupt individuals, organisations or people in positions of real power in other countries to cream off money for themselves that was intended to be used for the benefit of a nation as a whole, or a significant part of a nation. An advantage of a publicly accessible register of beneficial ownership is that people and organisations in such countries would have access to such a register, which would help them identify where, and by whom, corruption and money laundering may be taking place and thus be better able to expose what is going on—the prospect of which would, in itself, also act as a potentially significant deterrent.

The Government’s amendment refers to an exchange of information between the Government of the UK and the Government of each relevant territory. How will this government amendment address the issue of the use of overseas territories and Crown dependencies for corruption and money laundering purposes by individuals, organisations or people in positions of real power in countries other than the United Kingdom? Does the amendment mean that the UK Government would seek information on beneficial ownership from a relevant Crown dependency or overseas territory in respect of individuals, organisations or people in positions of power in countries other than the United Kingdom? Where a credible request for such information comes from individuals, organisations or Governments within those other countries, is it the intention of this Government that the information on beneficial ownership obtained would be passed on unless there were overriding reasons why to do so would jeopardise life or security?

There is a basic difference between ourselves and the Government. The Government believe that a process of persuasion will lead to publicly accessible registers of beneficial ownership in line with what is to be UK practice—albeit I note the trenchant comments of the noble Lord, Lord Eatwell, about the lack of verification of the register in the UK. However, the Government do not want to set any time limit for when the voluntary approach has to have delivered, following which legislative action would be taken. We are not convinced that this approach will deliver the required outcome, particularly in light of the Government’s change of stance from the days of the previous Prime Minister, so the commitment now appears to be to expect overseas territories and Crown dependencies to follow suit only if publicly accessible registers of beneficial ownership become the international standard.

In other words, it appears as though the United Kingdom will not be taking the lead as far as the overseas territories and Crown dependencies are concerned. This Government expect them only to “follow suit”. Can the Minister at least indicate that, while there are no time limits in the government amendment within which the voluntary approach to the introduction of publicly accessible registers of beneficial ownership should be implemented, the Government will nevertheless not resile from taking legislative action to achieve that objective at some undefined point in the future if that were shown to be necessary?
We are now in a situation where this Parliament is about to end, pending the general election in June. As has been said, the Bill has received widespread support, in both this House and the Commons, where the areas of difference of view have been over what the Bill does not include rather than over what it does. In this situation, a judgment has to be made. The Government have been persuaded to move further with Amendment 8, providing for a report to Parliament to be prepared by the middle of 2019. This will enable the issue to be kept alive, and for the case for, and objective of, publicly accessible registers of beneficial ownership in both overseas territories and Crown dependencies to continue to be pursued. This is assuming that the Government of the day do not come to the conclusion themselves that firm action needs to be taken to deliver that objective in the light of the progress—or lack of it—being made by the voluntary approach and the effectiveness—or lack of it—of the arrangements in place for the sharing of beneficial ownership information. The amendment does represent progress, albeit not as much as we would have liked.

Nobody wants to see this Bill, or even significant parts of it, actually bite the dust. We do not believe that, an election having now been called, government MPs are going to do anything other than support their own Government’s Amendment 8 at the expense of Amendment 14—assuming that that amendment could still have been carried in this House in the light of the Government’s amendment. For the reasons I have given, we will support Amendment 8. It does not go as far as we would wish—that position is reflected in Amendment 14—but it does represent progress and we thank the Minister for her work in that regard.

7 pm

Baroness Williams of Trafford: My Lords, I thank all noble Lords who have spoken so passionately on Amendments 8 and 14. I particularly thank the noble Baroness, Lady Stern, for all the work that she has done in promoting her Amendment 14. I also thank all noble Lords who attended the meeting with the overseas territory this morning. I hope they found it useful and that they can see that progress is already being made.

I begin with Amendment 24 in the name of my noble friends Lord Faulks and Lord Hodgson of Astley Abbots, which would provide for the creation of a public register of beneficial ownership of foreign companies that own property in the UK. I am pleased to have the opportunity to return to this issue. The clear abuse of the London property market and high-value properties across the country—I was particularly interested to hear about the properties in Manchester—to launder money, including the proceeds of corruption, has to be stopped. We must not allow this city to be a haven for kleptocrats hiding their ill-gotten gains. That is why the Government share the ambition of creating such a register. As my noble friend Lord Faulks told us, on 5 April, the Department for Business, Energy and Industrial Strategy published a call for evidence on our proposed register and how it will work. In the call for evidence, the Government sought views on the design of the register and how it will interact with the UK property market to ensure that it is effective.

This policy enshrines the UK’s position as world leader in corporate transparency policy. However, as this register is novel and ambitious, its development should not be rushed. The UK will be considered world leading in this agenda only if the register works. The Government have therefore taken time to develop effective proposals and ensure that they deliver full transparency without creating undue burdens on business or adversely impact commercial property transactions. Publishing the call for evidence earlier this month demonstrated the Government’s ongoing commitment to this agenda. Subject to the outcome of the general election, it remains our intention to introduce legislation to create the register as soon as parliamentary time allows. I hope this provides my noble friends with the reassurances that they seek.

Moving back to the overseas territories and Crown dependencies, I welcome noble Lords’ recognition of the value of the Government’s amendments. They will help us to ensure that the jurisdictions successfully implement their commitments and that the UK law enforcement agencies can pursue investigations into money laundering and corruption as a result. As I have previously noted, a key feature of the Government’s approach is that it creates a level playing field between all the overseas territories with financial centres and the Crown dependencies. By taking a different approach to the Crown dependencies and overseas territories, the noble Baroness’s Amendment 14 would risk disrupting this level playing field, creating weaknesses in certain jurisdictions that could be exploited and damaging the spirit of co-operation we have been able to create between them. The Government’s amendment has the merit of treating all relevant overseas territories and the Crown dependencies on an equal basis, ensuring that they are held to the same standard and are subject to a level playing field.

The noble Lord, Lord Rosser, asked whether the information provided to UK law enforcement agencies can then be shared with operational partners in other countries, including those where grand corruption is rife. The exchange of notes are bilateral agreements with the overseas territories and Crown dependencies to enable the exchange of accurate and timely beneficial ownership information. On an operational case-by-case basis, and subject to each agency’s legal position, the UK agencies may share this information with operational partners in other countries. If a subsequent UK law enforcement investigation recovers property that relates to criminal activity or corruption in another country, we may also seek to return it to such a country under the terms of existing agreements or memoranda of understanding.

Noble Lords should also note that, if we were to impose legislation in a field of activity that is devolved to the overseas territories, we would need to ask ourselves to what degree we could ensure that such legislation would be implemented successfully in practice. Although Westminster has the legal power to legislate, enforcing practical implementation of legislation in this case would be fraught with difficulty. We could, in fact, significantly undermine the progress that we are making in return for little or no real benefit.
Clause 9 permits extensions to the moratorium period for suspicious activity reports, and Clause 11 allows the National Crime Agency to apply for a further information order. These powers will be available in all the UK jurisdictions. However, we have consulted the Scottish Government, who have confirmed that the wording in the Bill does not accurately reflect the common-law position in Scotland, which recognises the role of the Procurator Fiscal in directing criminal investigations. Amendments 9, 11 and 12 reflect that principle in Scotland so that the moratorium extension and further information orders should be applied for only by the Procurator Fiscal.

Clause 10 permits, on a voluntary basis, the sharing of information between regulated-sector entities for the purpose of tackling money laundering. This currently allows those entities up to 28 days to share information following an initial notification and to provide a report to the NCA. Following further discussions with the regulated sector, we have concluded that more time is needed to ensure more effective sharing in complex cases, where numerous banks, for example, may hold relevant information. Amendment 10 increases this time limit to 84 days, which will still maintain a proportionate limit on how long these companies have to share information.

Finally, Amendment 49 amends POCA to ensure that extensions to the moratorium period and further information orders that are issued in one jurisdiction in the UK, such as Scotland or Northern Ireland, will be recognised in the others. I beg to move.

Lord Mackay of Clashfern: My Lords, I am glad that the Government have taken account of the special situation in Scotland.

Amendment 9 agreed.

**Clause 10: Sharing of information within the regulated sector**

Amendment 10

Moved by Baroness Williams of Trafford

10: Clause 10, page 37, line 34, leave out “28 days” and insert “84 days”

Amendment 10 agreed.

**Clause 11: Further information orders**

Amendments 11 and 12

Moved by Baroness Williams of Trafford

11: Clause 11, page 42, line 6, leave out “a senior National Crime Agency officer,” and insert “the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.”

12: Clause 11, page 42, leave out lines 10 to 15

Amendments 11 and 12 agreed.
### Clause 19: Financial Conduct Authority

**Amendment 13**  

**Moved by Lord Sharkey**

### Lord Sharkey (LD): My Lords, I should start by thanking the Minister and her officials for being so generous with their time over the last couple of days. I am extremely grateful for her courtesy and patience. I also want to acknowledge that this is not the ideal timing for debating an issue that has so many complex aspects. We had all expected to have more time to do this.

Amendment 13, which stands in my name and that of the noble Lord, Lord Mendelsohn, sets out to help the FCA. A key part of the FCA’s job is the detection and punishment of misconduct. Another key part of its job is instilling and incentivising a culture of fair treatment of clients and a respect for the regulations in both spirit and letter—in other words, trying to prevent cultures in which financial misconduct is winked at or incentivised. The amendment aims to help with both those tasks.

The FCA has certainly been very busy with the business of the detection and punishment of misconduct since it took on its current form and mandate in 2012. In the four years from 2013 to 2017, it has imposed penalties on 82 occasions. The fines on firms in this short period amounted to over £3 billion. The latest fine was £163 million, imposed in January on Deutsche Bank. In fact, the headline fine was £230 million, but the FCA awarded a discount of 30% for prompt settlement of its action against the bank, and that is an entirely typical arrangement. Sixty-six out of the 82 enforcement actions brought by the FCA were settled at the first stage of the enforcement process and received a 30% discount. Eight were settled at the second stage and received a 20% discount. Eight were contested and received no discount at all. In all, the FCA in four years has given firms early settlement discounts of almost £1 billion and the amendment simply proposes to put this gigantic sum of money to the FCA. This mechanism will free the FCA from the cost and use of resource that any follow-up investigation of non-compliance would require. In any case, it is not clear whether substantive follow-up investigations are routinely undertaken.

The FCA mission statement, published last week, talks about revisiting cases. On page 15, under the heading “Evaluation”, it says that, “post-implementation analysis is not cost free. Additionally, the dynamism and complexity of the market means it is often difficult to isolate the impact of our actions against other factors”.

It goes on to say, “Where it is less cost-effective to conduct detailed analysis, we will monitor and publish key indicators that help to demonstrate the impact of our interventions”.

I entirely sympathise with that sensible and realistic approach. I have spoken in this Chamber before about my concerns that the FCA is underresourced, underpaid, undervalued and overburdened, and the amendment helps in that kind of situation. It effectively automates, or nearly automates, the process of compliance with settlement conditions. It removes the need for substantive reinvestigation by the FCA and, instead, places a burden on the offending firm to demonstrate compliance. It offers a powerful financial incentive for doing so at no additional cost to the FCA or to the taxpayer.

### 7.15 pm

Our amendment has a further advantage. It creates a powerful incentive for real cultural change in offending firms. If you know that your firm has a powerful financial incentive to identify and punish wrongdoers at any level, that is a powerful incentive to proper behaviour by individuals at all levels. If you know that your firm will have to demonstrate to the satisfaction of the FCA that it has in fact identified and punished those responsible for the misconduct, then misconduct and tolerance of misconduct will be less likely. The FCA mission statement, published last week, outlined. I beg to move.

**Lord Mendelsohn (Lab):** My Lords, I rise briefly to speak in support of Amendment 13, proposed by the noble Lord, Lord Sharkey, and to which I have added...
[LORD MENDELSOHN]

my name. He has raised a very important point in relation to how the discount is applied and we are all very grateful to him. He has made a compelling case, and I should like to make a couple of comments in this context.

Since the financial crisis, $321 billion has been paid out globally in fines, compensation and legal costs, and the UK has contributed some $60 billion of that. KPMG reported in 2015 that, between 2011 and 2015, 60% of bank profits had been paid in fines, compensation and legal costs. Since the financial crisis in general, payouts in legal fees, fines, compensation and bonuses are basically equivalent to the entire profits generated, with all the consequences for shareholders, corporate governance, the reputation of the financial sector and losses to the taxpayer. At its very core, the attempt to deal with culture, conduct and, in some cases, apparent contempt for customers has lacked one key element: accountability. Using the discount to emphasise this element of accountability is one of the compelling parts of this proposal.

We on this side do not agree with the argument that the FCA is not up to the job; nor do I believe that it has not used its powers or that its procedures are flawed. The noble Lord, Lord Sharkey, has found a very important gap, which needs to be plugged: there is an incentive that does not work because there has been no downside. Even the FCA has moved towards the senior management regime to support the noble Lord’s central argument.

I, too, am grateful to the Minister for her openness and engagement and for the provision of officials—a quite copious amount of officials—to try to help address these sorts of matters. We have enjoyed those discussions and are looking forward to them continuing. Further openness on the cases where the discount has been applied would be extremely beneficial. As the FCA moves towards pursuing less significant fines, and has limited resources to both police and investigate, the approach of the noble Lord, Lord Sharkey, is helpful in ensuring compliance, and places a sensible responsibility on the financial sector. It can mean that we can feel confident—and I hope that I am not tempting fate—that when the most egregious fines and compensation sums are probably now behind us, the lower aggregate level of cost does not allow us to believe that the industry is properly policed. Only the accountability and responsibility in this amendment will do so.

Baroness Williams of Trafford: My Lords, I start by thanking the noble Lords, Lord Mendelsohn and Lord Sharkey, for the time that they have taken in entering into discussions with me and officials and representatives of the FCA, both today and yesterday. The discussions were very helpful but, as the noble Lord said, we have more to go.

Amendment 13 basically requires the FCA, as the noble Lord has said, to withhold a proportion of the discount to a penalty applied to a financial firm until that firm has completed any internal disciplinary actions agreed in the settlement. I really welcome the noble Lord’s objective of improving compliance and the culture across the financial services sector. The Government share this objective and we have made significant progress in the area in recent years. We have, for example, introduced the senior managers and certification regime, to which the noble Lord referred. This will, where appropriate, ensure that the FCA can take action against individuals where they are at fault. I know that the culture at firms is also a priority for the FCA, which has observed that it is both a key driver and a potential way of mitigating risk, and therefore plays a role in the achievement of its statutory objectives. The senior managers and certification regime is a key workstream in the FCA’s work programme on culture, as is the FCA’s focus on those aspects of remuneration policy that drive individual behaviour and culture.

Noble Lords spoke about disciplinary action to be taken against individuals working for firms. At the outset, I want to emphasise that if the FCA thinks that a disciplinary action should be taken against individuals, it can and does take action itself, as opposed to leaving it to the companies to do so. The FCA and other enforcement agencies have powers to fine individuals, or to take other action such as prohibiting them from continuing to operate in the financial services industry. This approach can be seen in a number of high-profile cases, including those involving LIBOR manipulation.

The FCA settled eight cases with firms totalling £758 million. It is also conducting a number of separate enforcement actions against individuals. There have been seven completed actions against individuals in cases that involved settlements with firms in relation to LIBOR or Euribor, but others are still ongoing. More generally, the FCA issued fines against 64 individuals between 1 April 2013 and 24 March 2017 totalling £15.5 million. They might be the cases that the noble Lord was referring to. Many of these were connected to previously settled cases against firms, although I am afraid that I am unable to provide noble Lords with an exact number.

That said, the FCA also expects firms to consider what action they themselves should take. If a firm has not taken appropriate action by the time the FCA imposes a penalty on it, the FCA can increase the penalty as a result. We went through a lot of that today. I am saying that not for the benefit of the noble Lord, but mainly for the benefit of the House, because we have been through this. Of course, in appropriate circumstances, the FCA can impose a requirement that a firm consider further whether it needs to take any additional action to remedy the breaches identified.

The noble Lord asked me today whether it would be a better arrangement to have an automatic system of withholding a proportion of the discount, so as to make it directly in the interests of the firms to take the action that they are supposed to take, rather than the FCA having to make an assessment later of whether it ought to impose an additional penalty. I commend him on his ingenuity, but having consulted with operational partners and Treasury officials, the Government’s view is that the existing regime gives the FCA the flexibility to apply penalties and impose requirements on a case-by-case basis. It allows it to leverage those requirements wherever needed in order to ensure that the firm acts appropriately. While there might be options to enhance this approach and better achieve the outcomes that we
all seek, we should be clear about the potential benefits before pursuing any such options. That is kind of where we left it today.

I trust that noble Lords will agree that we should not seek to reform or amend without exploring the implications, both the advantages and any unintended or undesirable consequences. For instance, we are concerned that this amendment would weaken the incentives for firms to settle early with the FCA, given that the settlement would not be final, subject to the full discount being granted. As a result, they might instead choose to engage the FCA in costly and protracted action rather than all being involved in focusing on remedying the underlying issues.

Moreover, further detailed consideration would need to be given as to how this amendment would interact with established principles of employment law. In particular, when a firm disciplines an individual, it needs to follow due process rather than agreeing in advance a predetermined course of action. For the amendment to work effectively, consideration would need to be given as to whether the FCA would need to be given a power to require firms to take such action against their employees; otherwise the amendment would put the FCA at risk of liability when undertaking the duty the amendment creates. Moreover, appropriate amendments would also need to be made to the Employment Rights Act 1996 to ensure that such action does not give rise to unfair dismissal claims by relevant employees against their firms. It is also not clear whether the proposed approach would be the best way of achieving the aim of improving the culture of firms.

In summary, we can all agree that this an extremely complex issue, which seemed to be made even more complex as discussions went on today. We share the same objectives of improving compliance and the culture in the banking sector. Ultimately, the FCA already has significant powers to address the issues underlying the noble Lords’ amendment, not least the power to sanction relevant employees in appropriate circumstances. I trust that the House will see that it is far from clear that the amendment would deliver the positive outcomes that have been described. That being said, I found the discussions today to be very interesting, as did the relevant officials, and hope this has been an equally insightful discussion to the two noble Lords. There might be ways of enhancing the existing regulatory system; the FCA is, in fact, conducting a review of its systemic; the FCA is, in fact, conducting a review of its

Moreover, the FCA and the Treasury have very generously expressed an interest in joining those discussions, and we would welcome the Treasury’s presence. Under those circumstances, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendment 14 not moved.

Clause 28: Recovery orders relating to heritable property

Amendments 15 and 16

Moved by Baroness Williams of Trafford

15: Clause 28, page 87, line 29, at end insert—

“( ) After section 245 insert—

“245ZA Notice to local authority: Scotland

(1) This section applies if, in proceedings under this Chapter for a recovery order, the enforcement authority applies under section 266(8ZA) for decree of removing and warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse.

(2) The enforcement authority must give notice of the application to the local authority in whose area the dwellinghouse is situated.

(3) Notice under subsection (2) must be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

(4) In this section—

“dwellinghouse” has the meaning given by section 11(8) of the Homelessness etc. (Scotland) Act 2003;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and “area”, in relation to a local authority, means the local government area for which the authority is constituted.””

16: Clause 28, page 87, line 41, at end insert—

“( ) After section 269 insert—

“269A Leases and occupancy rights: Scotland

(1) This section applies where, in making a recovery order, the Court of Session also grants decree of removing and warrant for ejection under section 266(8ZA) in relation to any persons occupying the heritable property.

(2) Any lease under which a person has the right to occupy the heritable property (or part of it) for residential or commercial purposes is terminated on the granting of decree of removing and warrant for ejection.

(3) Any other right to occupy the heritable property (or part of it) which subsists immediately before the granting of decree of removing and warrant for ejection is extinguished on the granting of the decree and warrant.

(4) Subsection (3) does not apply in relation to a right under a lease to occupy or use the property other than those mentioned in subsection (2).
Amendments 15 and 16 agreed.

Clause 33: Confiscation orders and civil recovery: minor amendments

Moved by Baroness Williams of Trafford

Amendments 17 to 19

Moved by Lord Hodgson of Astley Abbotts

Amendment 20

Lord Hodgson of Astley Abbotts: My Lords, in moving Amendment 20, I will speak also to Amendments 21 and 22. With these amendments we return to an issue we discussed in Committee in a somewhat different format, but the underlying purpose this evening is the same: to increase the effectiveness and value for money of the current money laundering regime. Let me make it clear again, as I did in Committee, that this is not an attack on the utility of money laundering regulation in the fight against financial crime. However, I argue strongly that the present regime encourages mindless compliance, whereas it should be encouraging principled behaviour. As a consequence of this, the money laundering regime enjoys a very low level of public support and is too often regarded as a form-filling joke. That is a bad place for a regulatory regime to find itself. Its efficacy would be greatly improved if it were able to win over the hearts and minds of people, as opposed to earning their solemn acceptance.

Why do I think the present regime is ineffective? It is based very largely on the SAR regime—the suspicious activity report regime. Last year, just under 400,000 SARs were delivered. In the years since the present regulations were introduced in 2007, probably over 2 million SARs have been recorded. Consider the cost of their preparation and analysis. According to a freedom of information request, the outcome was that there were no convictions at all under the regulations in the first five years, from 2007 to 2012, and only four convictions and five more proceedings in the five years since. The National Crime Agency managed to recover assets totalling only £25 million last year, but claims that there are billions passing through London illegally all the time. If that represents success, I find it hard to think what failure would look like.

There is a Faustian pact between, first, the regulators, who are pressed to gather even little scraps of information, no matter how irrelevant; secondly, the compliance departments of the regulated firms, which are enjoying the opportunity for untrammeled growth in their activities and personnel; and thirdly, the professional firms that enjoy the fees earned from checking these ever-increasing compliance activities. No one ever steps back to get perspective and to see how this undoubtedly important activity could be done more effectively.

In Committee, I argued that to break into the cycle the National Crime Agency should be required to follow the principles of best regulatory practice, as laid out in Amendment 21, which we are discussing tonight. My noble friend would not, I am afraid, accept this line of argument, saying that:

“The NCA can and will act where there is criminal activity relating to money laundering. However, it does not have a regulatory remit, and to require it to have one would deflect it from its purpose of tackling serious and organised crime”.—[Official Report, 28/3/17; col. 532.]”

I am not sure that I follow exactly that line of argument, but never mind—we have moved on from there. Now, we have the new body: the Office for Professional Body Anti-Money Laundering Supervision, with responsibility for improving standards of supervision and law enforcement in respect of money laundering. I strongly argue, therefore, that the present regime encourages mindless compliance, whereas it should be encouraging principled behaviour. The NCA is going to be more effective at the margins of things, but it is not going to change the culture. The Secretary of State should be given powers to ensure that we have a more focused approach in civil recovery. As I said in Committee, this is going to be a difficult area, and I am glad that the Government have now seen the light on this. What I do argue for is that there should be a continuing review of the complex areas of civil recovery, which is why I am bringing forward Amendment 20.
Amendment 22 lays down the principles that the body must follow. It must be proportionate, accountable, consistent, transparent and, most importantly, targeted at cases in which action is needed. Amendment 22 also lays down a series of processes by which the new body will ensure that the bodies it is responsible for regulating follow these principles. There is a series of ways of doing that, including publishing advice and guidance, and carrying out investigations to ensure that the operation is working effectively.

Before I conclude, to underline the seriousness of the situation we now find ourselves in, let me give the House a couple of examples of the mindlessness and the consequent drawbacks of the present regime. My most recent money laundering inquiry included a couple of dozen questions. Among them was the following: “We see you have links with a company called NS&I. Please explain these”. Since the inquirer had access to my bank account, they could see that it was an entry of £25 alongside NS&I. NS&I is, of course, National Savings & Investments. It was a premium bond winning; sadly, not £1 million, but never mind—every little helps. Does the NCA really think that the Government’s own saving authority is involved in money laundering?

A second question was: “We see that you worked in North America in the 1960s. What were your earnings?” That was half a century ago. It is hard to think that I started money laundering the year after I left university and have so far carried on for more than 50 years, undetected. I was sufficiently irritated to answer this second question with the words, “I haven’t a clue”. Patently, that was an inadequate response, but comeback there was none. Perhaps the form was not read and just filed and the box ticked, or it was read and it was concluded that this was not an important or relevant question. Either way, it was an awful waste of the bank’s and my time. This is going on thousands and thousands of times around the country.

One can laugh about my case, but for many people triggering a money laundering inquiry catapults them into a Kafkaesque world where no one can discover who is accusing them or what they are being accused of. Since we last met in Committee, I have been sent various examples but will give only one this evening. A 43 year-old ex-soldier with a 16-year good-service record built up a capital sum of about £69,000 from his Army redundancy and other sources. On 14 February it was paid into his account at the bank where he had banked for 20 years. On 27 March, when he tried to withdraw part of the money to make his annual ISA subscription and to buy a car, he was told that the account had been frozen. Now, a month later, it still is. He has missed the opportunity to make his ISA investment because the tax year has ended. The bank will not—perhaps cannot because of the regulations—tell him what the problem is, and the Financial Ombudsman appears unable to intervene. He is also concerned that this incident will damage his future credit rating and he will have no way of obtaining redress. So there are very serious cases where this money laundering regime is not working effectively to catch the individuals it should really be aiming at.

In Committee, I referred to the increasing prevalence of de-risking by regulated entities. Under pressure from the money laundering authorities, they close down whole categories of accounts irrespective of their behaviour and performance because they might be risky from a money laundering point of view. I referred to a long-standing friend of mine who lives in Pakistan—a British citizen—who has had his account unilaterally closed. Since Committee, I have heard more examples of smaller charities about how they are finding it difficult to operate overseas because of money laundering regulations. Most recently, the Gurkha Welfare Trust is having difficulty obtaining banking facilities to transmit money to ex-Gurkha soldiers living in Nepal who have fallen on hard times. They live in Nepal and that is a red flag.

In the event that my noble friend cannot accept my amendments, although I am sure she is going to—

**Baroness Butler-Sloss:** I am extremely interested to hear—I fear that I did not hear it in Committee—about the proposal in Amendments 21 and 22. But how does the noble Lord see this office of professional body anti-money laundering supervision working, for instance in the case of the man whose money has been frozen? It is an interesting idea but I just wonder, as a former lawyer, how it would work in practice.

**Lord Hodgson of Astley Abbotts:** I am grateful to the noble and learned Baroness for that intervention, but I can glide this down to third man, if I may use a cricketing analogy, because this is a government proposal. The Government are proposing to set up this new body, so I am sure my noble friend, when she comes to wind up, will have all the detail of how this body will work. I merely wish to ensure that it is sent down the right channels. I know that my noble friend, with her usual aplomb and ability, will deal with that by stroking it effortlessly to the boundary, if I may continue the cricketing analogy.

It is important to do some serious re-engineering of the general approach to money laundering to increase its effectiveness and public confidence in it. That the National Crime Agency can, in its annual report, trumpet the fact that SARs went up by 7.82% over the last year as a badge of success without any reference to the impact it is having, shows that there is much to do. I beg to move.
in the Bill to enable us to have a discussion about it. It was only in a government document issued around the time of the Bill that the Government declared their intention to set up this body.

A briefing that no doubt we have all received from the Solicitors Regulation Authority refers to the amendment from the noble Lord, Lord Hodgson of Astley Abbotts, as “proposing” the creation of an office for professional body anti-money laundering supervision—which could, perhaps wrongly, be interpreted as meaning that the Solicitors Regulation Authority was unaware that that is what the Government were already proposing, albeit keeping rather quiet about it as far as proper parliamentary scrutiny is concerned.

7.45 pm

As the Minister will know, following Committee I wrote to her asking if the Government could indicate other cases where a new body with powers had been set up purely through a statutory instrument and without any reference to the new body in primary legislation. That was quite genuine, because I did not know the answer to the question that I had asked. I was half expecting to receive a reply setting out examples of where my party in government had done precisely that. I have now received a reply from the Government. It is a gem—without, I stress, misleading anybody—in how to try to say that you are not doing something that you clearly are.

It starts off by thanking me for my letter regarding legislation, “for the new Office for Professional Body Anti-Money-Laundering Supervision (OPBAS)”. It goes on to say that the Government are committed, “to helping and ensuring professional body Anti-Money Laundering (AML) supervisors comply with their obligations under the Money Laundering Regulations”. The letter goes on to say:

“As part of this, the Financial Conduct Authority ... will create a new team, OPBAS, who will support this objective by overseeing professional body AML supervisors”.

So in the course of the same one-page letter, the Government’s proposal has changed from being a new office for professional body anti-money laundering supervision, in respect of which the Government have previously told us they are in consultation over the detail of its new powers and role, to being nothing more than the creation of a new team within the FCA. In so doing, they seek to give the impression that this is little more than an internal office reorganisation, when it is clearly far more than that.

In Committee, the Government referred to, “their proposals for the new office for professional body anti-money-laundering supervision”, and said that, “it would not be right for the Government simply to legislate without proper public consultation on the detail of this proposal”. The Government also referred in Committee to the intended regulations as being ones, “that will underpin the office”. The Government referred to the new office working, “with professional bodies to help, and ensure, compliance with the regulations”.

This is not, in reality, little more than an internal reorganisation setting up a new team within the FCA.

On the issue of previous examples of setting up a new body with powers by statutory instrument without any reference to it in primary legislation, the Government’s reply states that,

“in line with the precedent set by previous regulations to grant similar powers—such as the Money Laundering Regulations and the Payment Services Regulations, it will be subject to the negative procedure”.

Apart from the fact that the claimed precedent for what the Government are now doing does not stand up, since the regulations referred to were not setting up a new body or office with powers, we now find that the intention is that the statutory instrument setting up the new body and defining its powers and role will be through the negative procedure and not even require the affirmative procedure. That really is seeking to diminish the role of Parliament and parliamentary scrutiny and challenge. If a future Government think that they can take this as a precedent for minimising the role of Parliament, if changes including deletions or additions are made to legislation in the light of negotiations on leaving the EU, I am sure that there will be the strongest of challenges to such action.

I have reiterated the concerns that we expressed in Committee about the Government’s whole approach to the specific issue, with the lack of proper parliamentary scrutiny, but I accept that it is now too late in reality to do anything about it.

Another key point made in Committee was on the need for the independence of anti-money laundering supervisors and on addressing the issue of the same body having both a representative and regulatory function, with the potential, if not the reality, for conflicts of interest. I simply ask: is that an issue that the Government are seeking to address by removing any perception there could be of such conflicts of interest? I will listen with interest to the Government’s response to the amendments we are discussing—albeit I accept that I have come from a very different direction from that of the noble Lord, Lord Hodgson of Astley Abbotts.

Baroness Williams of Trafford: My Lords, I congratulate my noble friend Lord Hodgson of Astley Abbotts on neatly batting off the question asked by the noble and learned Baroness, Lady Butler-Sloss—I could not resist; we have all made cricket jokes. I thank noble Lords for their interest in the outcomes of the Government’s recent review of the anti-money laundering supervisory regime. As a result of this review, the FCA has agreed to create a new team—the office for professional body anti-money laundering supervision, otherwise known as OPBAS—to strengthen the regime and help to ensure that professional body AML supervisors, such as the Law Society and the Institute for Chartered Accountants in England and Wales, comply with their obligations in the money laundering regulations. It is important to note that OPBAS will be a new team hosted in the FCA and is not in itself a new regulatory body.

Amendment 22 would require that the FCA would have powers to directly monitor and advise all practitioners subject to criminal finances legislation. This would be a significant extension of the FCA’s responsibilities. Rather, our intention is that the FCA’s new objective will be carefully targeted to address weaknesses identified.
through last year’s call for information, while preserving the existing strengths of the regime by focusing on helping to ensure that professional body AML supervisors comply with their obligations in the money laundering regulations. The noble Lords’ proposals would duplicate the role that existing AML supervisors play in safeguarding the UK’s financial system and would increase unnecessary burdens on businesses.

Amendment 21 would also require the FCA to have regard to regulatory best practice principles in delivering its new objective. However, I assure the House that the FCA will comply with its existing governance and safeguards as it goes about delivering its objective. As such, this amendment would be redundant and duplicate existing requirements on the FCA.

Lastly, Amendment 20 would require the powers the Government will pass to the FCA to fulfil this objective to be subject to an affirmative statutory instrument. It is our intention that this will instead be achieved in line with existing precedent; previous regulations to grant similar powers to the FCA have been subject to the negative procedure. I hope colleagues agree that we should follow that precedent on this occasion. Subject to the outcome of the general election, the Government intend to publish draft regulations for consultation over the summer before laying the relevant secondary legislation to underpin OPBAS later in the year.

To pick up on some specific points noble Lords have raised, my noble friend Lord Hodgson talked about de-risking being excessive and impacting disproportionately on normal people, as he has previously. He gave some compelling examples. The Government encourage the financial sector to take a proportionate approach based on the risks faced. Guidance for the financial sector, which is written by industry, is being updated for the latest money laundering regulations and is open for consultation until the end of this week. It is of course open to my noble friend to make his views known through this process.

The noble Lord, Lord Rosser, asked why the Government are not splitting the supervisory and advocacy functions of professional body supervisors. I can advise him that the 2017 money laundering regulations, which transpose the fourth money laundering directive, will require all professional body anti-money laundering supervisors to ensure that their supervisory functions are exercised independently of the advocacy functions, including, for example, the Law Society and the Solicitors Regulation Authority.

The noble Lord also made the point that the Government are subverting scrutiny by using the negative procedure. As I have mentioned, providing the FCA with new powers via the negative procedure is not new. It is in line with the wider transposition of the fourth anti-money laundering directive. There are a number of other powers that have been conferred to the FCA by the negative procedure. For example, the Money Laundering Regulations 2007 and the Money Laundering (Amendment) Regulations 2012 provide the FCA with powers to oversee financial institutions’ compliance with the money laundering regulations. The current set of MLRs provide the FCA with supervisory powers to oversee financial institutions’ compliance with the money laundering regulations. These include enforcement powers and supervision powers.

I am very grateful to the noble Lords for allowing me to address their points, which I hope I have. I hope, on that note, they will feel happy not to press their amendments.

**Lord Hodgson of Astley Abbotts:** My Lords, I thank the noble and learned Baroness, Lady Butler-Sloss, for her helpful intervention and my noble friend for her very full response. There is a really serious issue here that needs to be tackled. It is not just about bureaucracy and cost, but about unnecessary interference with people’s lives. Increasingly, it is also about damage to this country’s reputation as a place where you can get clarity. The question will be whether the new body can bring focus. The proof of that pudding will be in the eating. We shall have to wait to see whether it happens. My noble friend encouraged me to make my views known to the review. She need not worry. I have not missed that opportunity. I have written a letter already, so it has my views. We will have to see how it develops, but it will require vigilance, focus and care by the FCA to improve the regime, which is currently not working as well as it should. With that, to continue the cricket analogy, I will return to the pavilion and withdraw the amendment.

Amendment 20 withdrawn.

Amendments 21 and 22 not moved.

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**Amendment 23**

**Moved by Baroness Kramer**

23: After Clause 33, insert the following new Clause—

“Whistleblowing

(1) The Secretary of State must by regulations made by statutory instrument provide for the Financial Conduct Authority to undertake the administration of arrangements to facilitate whistleblowing in respect of corrupt or suspected corrupt practices in systematically important financial institutions including in particular with regard to fraud, tax evasion, money laundering or mis-selling.

(2) The Authority shall have powers—

(a) to give directions as to the records kept by each institution and to check compliance with its directions including by audit;

(b) to award financial compensation to any person voluntarily providing information to—

(i) the Authority;

(ii) the Prudential Regulation Committee of the Bank of England;

(iii) the Serious Fraud Office; or

(iv) any other organisation designated by the Secretary of State;

leading to enforcement action against the institution sanctioned by way of penalty of not less than £500,000; and

(c) to set the level of compensation awarded in each case between 10% and 30% of the total collected.

(3) The Secretary of State must by regulations made by statutory instrument make provision with regard to retaliatory action against whistleblowers.

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

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Baroness Kramer: My Lords, I recognise that the hour is very late. I will try to be brief. Noble Lords will also be delighted that my knowledge of cricket is so limited that I shall have to abandon that theme.

This amendment is on whistleblowing. I tabled it in Committee. Essentially, this is a very similar amendment that does two things. It would provide for the regulator to give additional protection to whistleblowers in the financial services industry and require the regulator, as part of those powers, to provide mandatory compensation to whistleblowers who provide original information that leads to prosecution or sanction with financial consequences for the institution. This is very much modelled on Dodd–Frank and a much longer tradition of mandatory compensation for whistleblowers in the United States, which underpins its very successful culture of whistleblowing and tackling financial crime by financial institutions.

When I brought this amendment forward in Committee, the objection was to creating an office of the whistleblower, so under this revised version the powers would go to the FCA, which may decide how it would like to set up that arrangement. I recognise that this has no future in this Bill because we are in wash-up, but this is another of those issues that will carry over to future pieces of legislation, essentially for three reasons that I will touch on quickly.

First, the way we have dealt with whistleblowers in the financial industry is, frankly, an utter disgrace. Since I moved the amendment in Committee, I have been put in contact with more people in the industry who have been whistleblowers whose lives have been completely destroyed. People have lost all employment and had to rely on spending their savings and assets. They have faced serious attack from the highly skilled, very capable and aggressive lawyers of the financial institutions and have, frankly, been let down by the regulator. In many cases, I think no one would question that kind of description of the experience that whistleblowers have had to deal with in the industry.

8 pm

There have been changes. The FCA has strengthened protection for whistleblowers in the industry, but only at the margins. I want to make two points about why it is so important that we go further. First, it is extremely rare in the UK for there to be a whistleblower. When you look for an example of another situation where no whistleblower has come forward, I am afraid that the financial industry constantly provides a new example—so the one that I am about to cite is a new one since we last had this discussion in this House. The House will be aware that, last February, a number of employees of HBOS were convicted of what the judge described not just as fraud but as a “grotesque” crime that had “ripped apart” some 200 small companies, many of which then went into bankruptcy, with some £1 billion involved in the scam. The interesting aspect was disclosure of an internal report by Lloyds, obtained by the media, that demonstrated not only that the fraud had begun in 2003 but that it was known to senior executives, including the chief executive of HBOS, as early as 2008, that that information was available to Lloyds when it took over HBOS and that it was not until 2014 that Lloyds brought it to the attention of the regulators and the police. There was no whistleblowing to expose this kind of issue, or at least not successfully to do so. We have case after case in the UK where we do not see that insider information coming forward and being made available to the regulator and the authorities. That culture must be changed. We have a culture that regards whistleblowers either as people who are required to be extraordinary saints and martyrs or as people who have gone and left the side down, and they do not carry the kind of respect that they would in the United States.

My second example is slightly different. Members of this House will be aware that the chief executive of Barclays in April apologised for attempting to use Barclays’s internal security team to track down the authors of anonymous letters that were sent to the board and a senior executive making allegations about a colleague whom the chief executive, Jes Staley, had recruited. The search entailed two major investigations which involved not only investigators from within the institution but bringing in security services from the United States to hunt down and expose the whistleblower. The good part of the story is that the institution eventually recognised the offence and Jes Staley will apparently pay a significant financial penalty as a consequence of his behaviour. What struck me most was his letter of what is typically called “apology”, in which he defended the culture that sat behind his behaviour. It stated:

“One of our colleagues was the subject of an unfair personal attack sent via anonymous letters addressed to members of the board and a senior executive”.

He felt that the allegations were designed,

“to maliciously smear this person … In my desire to protect our colleague, however, I got too personally involved in this matter”.

It is the idea that protecting your colleague, protecting your friends, protecting other senior managers and protecting your institution is the approach that you take when allegations are made, instead of treating those allegations as serious and a crucial part of keeping a clean institution.

That is the culture that we have to tackle. It is one of the few times when I say that we need to move from the British-gentleman’s-club attitude that we have so often had in this industry towards the much more aggressive questioning and cynical attitude that is present in the United States. With that goes mandatory compensation, because it is crucial to recognise that when people whistleblow, particularly when it impacts on senior management in an organisation, the chances that they will have the life and career that they would otherwise have had are minimal. Our experience in the UK is that they find that they lose all opportunity to work. They are required to work their way through their assets, they depend on the charity of friends and there is huge damage to their families. It is time that we confronted this, recognised best practice and adopted best practice. I know that it cannot happen today, but I am concerned, as I think are others in this House, that we do not let this issue rest.
Lord Rosser: I support what the noble Baroness, Lady Kramer, has said in setting out the case for her amendment. She has already made reference to recent further examples of serious concern over the approach to whistleblowing and whistleblowers—she referred specifically to the situation at Barclays Bank in the light of apparent actions by its chief executive in seeking to unmask a whistleblower. There are meant to be strict regulations in the financial services industry for encouraging and protecting whistleblowers, but it does not look as though they are very effective.

It is difficult to believe that the apparent attitude at the top of Barclays Bank is an exceptional one-off, as opposed to being indicative of a rather more widespread culture, to which the noble Baroness referred, in the financial services sector. The reality is that whistleblowers will not come forward if they think that the reaction of the people at the top will be to try to find out who they are rather than investigate the issue to which they have drawn attention. Neither will people come forward if they think that being identified as a whistleblower will jeopardise their future employment prospects in the financial services sector, which is alleged to be the reality in that sector in particular. I hope that the Government in response will be able to offer something more than claims that existing arrangements and procedures address the concerns raised by this amendment, when it is clear that it is not the case.

Baroness Williams of Trafford: My Lords, I thank the noble Baroness for bringing forward this amendment, which would introduce new regulations so that the FCA could undertake the administration of arrangements to facilitate whistleblowing in the financial sector.

The FCA is already a prescribed person in relation to the financial sector. It actively promotes the whistleblowing framework to employees and employers in the sector so that prospective whistleblowers know where to turn and firms have appropriate internal whistleblowing policies in place. Other prescribed persons related to financial services include the Bank of England, the Serious Fraud Office, the Financial Reporting Council and the Prudential Regulation Authority. To each of them, whistleblowers will be one of several sources of information and intelligence about potential malpractice in support of their regulatory activities.

The Government believe that the right body to investigate the concerns of a whistleblower is the body that regulates the issue about which concerns are raised—I know I have said that before. That body is in the best position to see the disclosure in context; for example, to judge the seriousness of the allegations, to make connections with any related investigations under way and to consider whether some regulatory action is appropriate to prevent occurrence.

The amendment that the noble Baroness proposes would introduce a power to award compensation to any worker voluntarily providing information on wrongdoing to organisations in the financial sector. As I set out in Committee, we do not think that money is the main motivator for genuine whistleblowers. I do not think the noble Baroness thinks so either, but she expressed views on how a financial incentive system to encourage whistleblowing works well in the US. I can advise noble Lords that the FCA and Prudential Regulation Authority whistleblowing management teams visited the US in late 2013. At the time, there was limited empirical evidence of incentives leading to an increase in the number or quality of disclosures received by regulators. Introducing incentives would require a complex and costly governance structure.

Incentives could also undermine effective internal whistleblowing mechanisms, a requirement the FCA introduced in September 2016 for banks, insurers and deposit takers. If the FCA were to incentivise whistleblowers to report to the regulator, it could discourage them from reporting internally within their firms. It would risk delivering mixed messages by encouraging firms to set up costly systems which it then undermines by incentivising whistleblowers to disclose directly to the FCA. However, the FCA is considering reviewing the case for incentivisation again in financial year 2017-18. I would be happy to provide an update following that review.

The amendment also contains a provision with regard to retaliatory action against whistleblowers. I reiterate and reassure noble Lords that such a provision is unnecessary. Workers who have evidence that their employer has provided a negative reference, have been unfairly dismissed or have otherwise suffered detriment for making a public interest disclosure already have a route to seek compensation against their employer through an employment tribunal.

Some concerns were raised that we have seen a decline in the number of whistleblowing cases for the second year in a row, from 1,340 in 2014-15, to 1,014 in 2015-16 and 900 in 2016-17. The FCA does not have a target for the numbers of whistleblowing reports. Its aim is simply to ensure that those who prefer to report to an independent body know about its role and that, if they need to take the often difficult step of reporting on an employer, then their information will be treated sensitively and professionally. New rules came into force in September 2016 that require banks, building societies and insurers to have internal whistleblowing arrangements in place and to appoint an internal champion. We understand many firms began to implement these measures earlier than the commencement date, so we believe that this has affected the numbers going directly to the FCA. This is a positive message as many complaints are resolved earlier and without regulatory intervention, or lead to self-reports by firms themselves.

I want to address one point made by the noble Baroness: how we became aware of the issue regarding the investigation of the whistleblower’s identity by the CEO of Barclays and what action the FCA is taking. I recognise the concern that the noble Baroness raised about the Barclays example and I agree that behaviour of the kind she described does not serve the reputation of the industry nor the interests of the country. We must do all we can to prevent this type of behaviour. As the noble Baroness said, I realise that time is short but this issue is not going away. I ask whether she would be amenable to withdrawing her amendment, fully aware that I will hear more about the subject after the general election, should the outcome return a Conservative Government.
Baroness Kramer: I am delighted that the noble Baroness seems to take a personal interest in this issue. While 1,000 sounds a big number, the substantive cases have dropped to below 100. Given the size of the industry in the UK, that is a worryingly low number; I suspect that even the FCA is significantly worried about it. I am very glad that the noble Baroness said that the Government would look at this issue again. I hope to pursue that but it is good news that we did not have before, frankly. On that basis, and with thanks to the noble Lord, Lord Rosser, for his comments on this issue, I will obviously withdraw.

Amendment 23 withdrawn.

Amendment 24 not moved.

Clause 53: Power to make consequential provision

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25: Clause 53, page 119, line 1, at end insert “section 28 or” and insert “subsections (1) to (3)”
26: Clause 53, page 119, line 8, leave out “subsection (1)” and insert “subsections (1) to (3)”
27: Clause 53, page 119, line 11, leave out subsections (6) and (7) and insert—

“) Regulations under subsection (2) or (3) may not include provision of the kind mentioned in subsection (5) unless the provision is within legislative competence.

( ) For this purpose, a provision of regulations is within legislative competence if—

(a) in the case of regulations made by the Scottish Ministers, it would fall within the legislative competence of the Scottish Parliament if included in an Act of that Parliament;

(b) in the case of regulations made by the Department of Justice in Northern Ireland, it deals with a transferred matter.”

Amendments 25 to 27 agreed.

Clause 54: Section 53: procedural requirements

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28: Clause 54, page 119, line 3, leave out from “that” to “consult” in line 45 and insert “deals with a transferred matter”
29: Clause 54, page 120, line 16, after “repeal” insert “or, revoke”
30: Clause 54, page 120, line 17, leave out “an Act of the Scottish Parliament” and insert “primary legislation”
31: Clause 54, page 120, line 23, leave out “Northern Ireland legislation” and insert “primary legislation”

Amendments 28 to 31 agreed.

Clause 57: Commencement

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32: Clause 57, page 122, line 11, at end insert—

“( ) section (Sharing of beneficial ownership information)”

Amendment 32 agreed.

Schedule 5: Minor and consequential amendments

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33: Schedule 5, page 165, line 18, after “303O(3)” insert “, 303R(3)”
34: Schedule 5, page 165, leave out lines 20 and 21 and insert—

“(d) any property which is the forfeitable property in relation to an order under section 303Q(1).”
35: Schedule 5, page 165, line 28, at end insert “303R(3).”
36: Schedule 5, page 165, leave out lines 36 and 37 and insert—

“(c) it is the forfeitable property in relation to an order under section 303Q(1).”
37: Schedule 5, page 165, line 43, after “303O(3)” insert “, 303R(3)”
38: Schedule 5, page 166, leave out lines 2 and 3 and insert—

“(d) any property which is the forfeitable property in relation to an order under section 303Q(1).”
39: Schedule 5, page 166, line 6, at end insert “303R(3).”
40: Schedule 5, page 166, leave out lines 14 and 15 and insert—

“(c) it is the forfeitable property in relation to an order under section 303Q(1).”
41: Schedule 5, page 166, line 21, after “303O(3)” insert “, 303R(3)”
42: Schedule 5, page 166, leave out lines 23 and 24 and insert—

“(d) any property which is the forfeitable property in relation to an order under section 303Q(1).”
43: Schedule 5, page 166, line 31, at end insert “303R(3).”
44: Schedule 5, page 166, leave out lines 39 and 40 and insert—

“(c) it is the forfeitable property in relation to an order under section 303Q(1).”
45: Schedule 5, page 179, line 10, at end insert—

“76A(1) Section 435 (use of information by certain Directors) is amended as follows.

(2) In the heading for “Directors” substitute “authorities”.

(3) In subsection (1)—

(a) for “the Director” substitute “a relevant authority”;

(b) for “his”, in each place, substitute “the authority’s”;

(c) for “him” substitute “the authority”.

(4) In subsection (2)—

(a) for “the Director” substitute “a relevant authority”;

(b) for “his”, in each place, substitute “the authority’s”;

(c) for “him” substitute “the authority”.

(5) In subsection (4)—

(a) in the words before paragraph (a), for “the Director” substitute “relevant authority”;

(b) omit “or” at the end of paragraph (b);

(c) after paragraph (c) insert—

“(d) Her Majesty’s Revenue and Customs; or

(e) the Financial Conduct Authority.”

(6) The amendments made by this paragraph apply to information obtained before, as well as to information obtained after, the coming into force of this paragraph.

76B(1) Section 436 (disclosure of information to certain Directors) is amended as follows.

(2) In the heading for “Directors” substitute “authorities”.

(3) In subsection (1)—

(a) for “the Director”, in the first place it occurs, substitute “a relevant authority”;
(b) for “the Director”, in the second place it occurs, substitute “the authority”;
(c) for “his” substitute “the authority’s”.

(4) In subsection (5), after paragraph (b) insert—
“(i) the Financial Conduct Authority.”

(5) In subsection (10) for “the Director” substitute “relevant authority”.

(6) The amendments made by this paragraph apply to information obtained before, as well as to information obtained after, the coming into force of this paragraph.

Schedule 5, page 179, line 18, at end insert—
“(i) the Financial Conduct Authority.”

(14) For “the Director” substitute “relevant authority.”

(15) The amendments made by this paragraph apply to information obtained before, as well as to information obtained after, the coming into force of this paragraph.

48: Schedule 5, page 179, line 18, at end insert—
“( ) in paragraph (fa), for the words from “functions” to “Ireland” substitute “functions of a relevant authority, as defined by section 435(4);”;
( ) in paragraph (g)—
(i) omit “a customs officer or”;
(ii) after “Chapter 3” insert “, 3A or 3B.”

49: Schedule 5, page 179, line 18, at end insert—
“(ca) for an order made by a court under Part 7 in one part of the United Kingdom to be enforced in another part;”.

50: Schedule 5, page 180, line 20, at end insert—
“Homelessness etc.(Scotland) Act 2003 (asp 10)
In section 11 of the Homelessness etc.(Scotland) Act 2003 (notice to local authority of proceedings for possession etc.), in subsection (5), after paragraph (f) insert—
“(fa) section 245ZA(2) of the Proceeds of Crime Act 2002 (notice to local authority of application for decree of removing and warrant for ejection).”
Bankruptcy and Diligence etc.(Scotland) Act 2007 (asp 3)
The Bankruptcy and Diligence etc.(Scotland) Act 2007 is amended as follows.

_(1) Section 214 (expressions used in Part 15) is amended as follows.

(2) In subsection (1)—
(a) omit “and” after the definition of “a decree for removing from heritable property”;
(b) after the definition of “an action for removing from heritable property” insert—
““defender”, in relation to a decree for removing from heritable property of the type mentioned in subsection (2)(l), means any person against whom the decree is enforceable.”

(3) In subsection (2)—
(a) omit “and” at the end of paragraph (j), and
(b) after paragraph (k) insert “; and
(l) a decree of removing and warrant for ejection granted under section 266(8ZA) of the Proceeds of Crime Act 2002.”

In section 216 (service of charge before removing)—
(a) in subsection (1), in paragraph (a), for “14 days” substitute “the appropriate period”, and
(b) after that subsection insert—
“(1A) In subsection (1)(a), “the appropriate period” means—
(a) in the case of a decree for removing from heritable property of the type mentioned in paragraph (l) of section 214(2), 28 days,
(b) in the case of a decree for removing from heritable property of the type mentioned in any other paragraph of that section, 14 days.”
In section 218 (preservation of property left in premises), after subsection (2) insert—
“(3) In the application of this section to the granting of a decree for removing from heritable property of the type mentioned in section 214(2)(l), “pursuer” means the trustee for civil recovery who is responsible by virtue of section 267(3)(ba) of the Proceeds of Crime Act 2002 for enforcing the decree.”

Amendments 33 to 50 agreed.
Lord Rossler: I am not sure whether I should come in now but I just take this opportunity to thank the Minister and her ministerial colleagues in the Bill team for their willingness to meet and engage in what have been constructive and helpful discussions on not only provisions that are in the Bill but also provisions that are not, since it is with the latter that most differences of view or approach have centred. I also thank my Front-Bench colleagues for their hard work, not least—although he is not in his place—my noble friend Lord Kennedy of Southwark, who has not been exactly short of commitments in respect of other Bills as well. Finally, I thank the staff in our own office, not least Grace Wright, for their help and advice in navigating our way through this Bill.

Baroness Hamwee: My Lords, I echo those thanks to the Minister and the Bill team. As several people have said—most frequently the noble Lord, Lord Rossler—it is what is not in the Bill that has exercised us most. I can see an enormous amount of material for Private Members’ Bill in the next Session if we do not have the luxury of hope she gets five minutes to have a bit of a rest before the Minister has done an absolutely sterling job and I would be the wrong word—concerns on to. But the government Bills that we can tack our—“demands” Members’ Bill in the next Session if we do not have been constructive and helpful discussions on not least Grace Wright, for their help and advice in navigating our way through this Bill.

Baroness Williams of Trafford: As always with Bills such as this, it is what is not in the Bill. Also, sometimes we should have gone further. But we have had a challenge in this Bill and in the main the challenge has been lack of time, not of consensus. I place on record my thanks to the Front Benches—the noble Lords, Lord Rossler and Lord Kennedy, and the noble Baronesses, Lady Kramer and Lady Hamwee—and my noble friends behind me, who have kept me on my toes. I thank noble Lords for being so accommodating about having so little time to get through the business of the past 24 hours.

Motion agreed.

Bill passed and returned to the Commons with amendments.

Finance (No. 2) Bill
First Reading

8.19 pm

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

Steel Industry
Question for Short Debate

8.19 pm

Asked by Lord Mendelsohn

To ask Her Majesty’s Government what steps they are taking to support the steel industry; and what role it will have in the Government’s industrial strategy.
a strategic necessity for our economy can be achieved, with the right policy framework. It still acts as a vital foundation industry for our world-class automotive, defence and construction sectors, and many others. It is an important part of our innovation and research base and it remains a crucial provider of highly skilled, quality and fulfilling work for more than 30,000 people, with an estimated four times that number in the supply chain.

It is notable that while other European steel industries have also suffered in the face of global headwinds, the UK has fallen furthest and fastest. We have gone from the second-biggest European producer in the 1960s to the fifth-biggest now, behind Germany, Italy, France and Spain. There remains a range of domestic barriers holding back our industry. As the BIS Select Committee in the other place pointed out, “other European countries have both better valued their domestic basic industry and have been able to withstand global competition more effectively than… the UK”.

Put simply, the cost of doing business here is higher than in most of the rest of the continent.

The UK steel industry has suffered from a series of pressures relating to overcapacity, unfair trade and a competitive disadvantage with European competitors. There is broad agreement among everyone that we have to do a number of things to help: we have to promote UK steel’s use by government and business; we have to tackle unfair trade to ensure free and fair trading practices; we have to provide funding mechanisms for energy-efficient projects; and we have to work on what investment and support is needed in the long term, including skills and education in local communities. Most importantly, and the industry has been right to frame the problem in this way, the unilateral costs that are a direct result of historic UK government policy around electricity costs and business rates are utterly crucial. I believe that the recent initiatives which the Government have undertaken to compensate producers for high energy costs and to encourage government departments to procure UK steel are welcome steps in addressing the fundamental barriers facing UK producers.

However, this is about the fundamental business model. UK steel makes money, but not enough. There is a return on capital gap which is required in order to sustain this industry. For the sort of investment required in new plant, we need to ensure that it has the right level of profitability. It is well established that energy prices and business rates are two areas where we have an uneven playing field. Even after the Energy Intensive Industries compensation package, a 2016 analysis by UK Steel showed that British producers pay an extra £50 million per year in energy costs when compared to their EU competitors. The differential between the UK and Germany has been calculated as an extra £17 per megawatt hour. According to UK Steel, if that differential was removed, British firms would have increased their EBITDA by 70% in the period 2012-14, protecting jobs and enabling crucial investment.

UK steel-makers face business rates of up to 10 times those in France and Germany. We should not be in a situation where building a new blast furnace attracts a six or seven figure hike in rates. The current regime acts as a tax on investment that is not borne by European competitors. For example, in 2010 France reformed its new equivalent of business rates to remove plant and machinery from calculations to deal with exactly this problem; it has worked very well.

I am sorry that it took the steel crisis of 2015-16 to act as a trigger to focus attention. The Government have made some progress but it is too limited at this stage. This is not particularly partial criticism of the Government. There are certainly some matters which are not easy and straightforward. This will take a lot of political will and some careful thought but there is a pressure on whoever comes into government after the election—we can guess who might or might not—to show some renewed effort. There was some previous criticism of the industry’s managers and owners, but since the crisis it is clear that that has changed. New entrants have emerged and the existing quality management has been liberated. The workers in the industry and its trade union have shown not just capability but adaptability and a willingness, as they always have, to be part of a team accepting sacrifices and giving of their labour nothing but sheer excellence.

The industry is in good shape but the policy and regulatory environment is not, and this is where we must focus. We are in times where we can make changes. There have been changes which show that we can take a different approach. It is not just about leaving Europe; there is the opportunity of the industrial strategy. It is not just about the adoption by the Conservative Party of a price cap on energy markets or about progress in energy demand measures. All of these things suggest why doing more on the supply-side measures can be doable and timely.

The steel industry is the epitome of a modern, technologically-driven industry. I would argue that there are more high-tech, highly paid jobs in steel than in the IT sector in general. In business, the achievement is more important than the announcement. In government, it sometimes feels that the announcement is more important than the achievement. We have to set the course straight for what we are going to do to help steel. Others deserve our gratitude for keeping the industry alive and fit for purpose. It is the role and duty of those who make policy decisions on the regulatory environment to take the next steps. I am sure that all Members of the House will work with the new Government to that end.

8.29 pm

Lord Jones (Lab): My Lords, I support my noble friend Lord Mendelsohn’s approach to the steel industry. He has put a coherent and positive challenge to the steel industry. He has put a coherent and positive challenge to the steel industry. For Britain to retain her national greatness, we will always need a steel industry. A great nation must have the capability to defend itself in a time of war. The summation of that is the “defence of the realm”. It is hard to envisage a Britain without a steel industry being capable of defending itself from a hostile nation or nations.

I see that steel is a foundation industry. It is the basic industry and all else flows from steel, even in a digital age of global influences. For our armaments, our manufacturing and our services, steel must always be there. Last year, there was a serious question mark over the British steel industry’s future. Port Talbot,
a mighty and productive steel plant, was at risk. Port Talbot has had a great steel record in modern times. It has met every challenge concerning productivity, including the challenges of demanning. Today, Port Talbot is a manufacturing linchpin in Wales, and it must remain so. It is a British manufacturing priority and it deserves to remain a respected steel producer worldwide for its workforce to have secure employment and decent pensions.

I pay tribute to my noble and learned friend Lord Morris of Aberavon, who has been a most successful, long-standing advocate for Port Talbot steel, and I see that my noble friend Lord Brookman is in his place. I humbly say that he was a fine leader of the steel workers’ union for many years. Indeed, he was the lion of the Ebbw Vale steel plant, and at the steel plant in north-east Wales he was highly regarded when a general secretary. He faced up to massive changes in Britain’s steel industry and to many tens of thousands of steel redundancies—a great cascade, almost all at once. He faced up to it, like the workforce he led, in a most noble way.

Britain has four nuclear-armed submarines at the heart of our defence strategy. The Ministry of Defence is currently considering the next nuclear-armed submarine defence strategy. For the life of me, I cannot see Britain backing this core defence strategy without a viable, confident, productive steel industry. Surely Her Majesty’s Government will confirm their commitment to a long-term British steel future, especially emphasising the centrality of Port Talbot in British and Welsh steel production. This is surely a strategic requirement.

In the time remaining, I must praise the north-east Wales steel plant of Shotton, which is my homeland. It is a hugely efficient and most profitable plant. The Shotton team is collaborative and co-operative and always delivers on time. It has won recent significant investment, even at a time of great insecurity for steel both in Wales and globally. It deserves its recent vote of confidence. As a finishing plant employing hundreds, it is, of its kind, the jewel in the British steel crown. Whatever the challenge, the Shotton steel team never falters. We remember when in a previous era it employed some 13,000 steel-workers. Historically, ours has been an industrial steel culture.

I see that the Minister, the noble Lord, Lord Prior of Brampton, is in his place. In another place, quite some time ago, I recollect a Cabinet Minister bearing the same name. The then Secretary of State James Prior was a good Minister in the early 1980s. I faced him across the Dispatch Box, and in those days he was facing the challenge of retraining and employing tens of thousands of redundant steelworkers. He did his best, always, but surely a viable steel industry is now a matter of national security and a priority.

8.35 pm

Baroness Redfern (Con): My Lords, I am grateful for the opportunity to take part in this debate in support of the future of our UK steel industry. I thank the noble Lord, Lord Mendelsohn, for initiating the debate and for his supportive words this evening and acknowledge the Government’s industrial strategy, which gives us cause for optimism—not having one would be a missed opportunity.

I declare that I am an elected councillor on North Lincolnshire Council and chair of the Scunthorpe task group overseeing the Government’s commitment of up to £9 million to support Scunthorpe steel-workers and the local economy through retraining and support for companies in the local area to grow and create new jobs.

Through the good times and the challenging times there is always a sense of spirit and community togetherness—I speak from personal knowledge, as my father worked all his life in the steel industry. Community spirit broadens a determination always to rise to the many challenges that have come along over the years, and I look forward to steel-making continuing in Scunthorpe for generations to come, creating many job opportunities and prosperity for the small and medium-sized enterprises in the supply chain.

Revitalising the steel industry is needed not simply to avert a crisis but because it also represents a great opportunity for steel, which is embedded at the heart of the UK’s high-tech future and is critical to the success of any modern manufacturing renaissance, which the UK requires to compete in a post-Brexit world.

Greybull Capital took over the Scunthorpe steel plant last year after many months of great uncertainty, and a new name emerged: British Steel. The business has developed rapidly, as the noble Lord, Lord Mendelsohn, alluded to earlier, employing hundreds of new people and securing a series of significant new contracts and capital investment of nearly £40 million.

The Business Secretary, Sajid Javid, visited British Steel for the launch on 1 June, and I am pleased to say that during the year there has been regular dialogue with government departments, including the Department for Business, Energy and Industrial Strategy and the Department for International Trade, with British Steel actively contributing to the Government’s industrial strategy.

A key strand of that transformation has seen the company placing great emphasis on engaging with stakeholders. The Scunthorpe plant employs more than 4,000 people in the UK, but it is estimated that more than 16,000 people are employed in the supply chain, working together for all to share the future successes.

Times are changing in the steel industry. Steel has been fundamental in creating iconic awe-inspiring structures around the world. Continuing that means planning for the future for our young men and women, so I am pleased to see the emphasis on training over the past year: already 140 trainees, including 57 apprentices, have been engaged. British Steel Scunthorpe has come a long way in a short space of time and has been buoyed by the pace of change. However, this is the beginning of that journey, and there are areas in which support could be looked at.

Steel is an energy-intensive industry. There is no doubt that energy is a key area and therefore continual dialogue is needed with the Government. Energy remains a major cost: the oft-quoted figure is that the industry pays £17 per megawatt hour more for electricity than some of our European counterparts, so I am pleased that North Lincolnshire Council has secured a government grant to explore ways for the steelworks to become...
more energy efficient. With new procurement rules, it is vital that we see regular transparent evidence that the public sector is following the new guidance.

New data published for the first time show how the Government plan to use 3 million tonnes of steel in infrastructure projects by 2020, with an emphasis on ensuring that social, environmental and economic factors are taken into account within the procurement procedure. Looking at the capacity and capability, given the fragmentation of the UK steel industry, we think it is also important that the benefits of a partnership approach, rather than having a sole supplier, are embraced. British Steel Scunthorpe wants to work together with its fellow manufacturers and thinks this should be encouraged.

As I have alluded to, times are changing in the steel industry. Steel has been fundamental not only in creating iconic awe-inspiring structures around the world but in research and development. Innovation is key to steel’s future. A great example is Zinoco, the first product of its kind to be manufactured in the world, which creates a premium coated rail product that is 108 metres in length—an excellent example of the ability of the steel plant in Scunthorpe to meet its customers’ needs. Some two-thirds of the steel produced in the UK is in forms that were not invented 20 years ago. However, more support is needed to ensure that British steel provides value to customers that imports cannot.

Business rates, too, have had a significant impact on capital-intensive industries, particularly as many of their competitors abroad pay little or no business rates, so I am pleased with the Government’s response of granting transitional relief to the Scunthorpe plant, which will save it circa £4.8 million over the next four years. Thankfully, measures have also been taken to reduce the dumping of steel.

With the implementation of a bold industrial strategy driving the UK economy forward, we must ensure that the opportunities arising in the next few years are captured as much as possible by our steel industry and that the barriers preventing a fair playing field are addressed and, importantly, resolved to bring further confidence to the business sector.

Steel-making began 127 years ago. British steel has a future. Not only that, it has to have a future. It is a strategic industry, a key foundation industry for construction, automotive, aerospace, defence, rail, oil and gas, renewables and nuclear. Steel is all around us and something we rely on every day and every hour. I wish to see “Made in Britain” stamped on steel used around the world. To those highly skilled, dedicated steel-workers I say: carry on doing what you do well for our strategic industry here in the UK—particularly in Scunthorpe, of course—now and for the future generations to come.

8.42 pm

Lord Bhattacharyya (Lab): My Lords, I declare my interest as chairman of WMG at the University of Warwick. When I started my engineering career back in the 1960s, British steel was respected around the globe. From Bessemer’s processes to Goodeve’s BISRA stainless steel, Britain was the home of global steel innovation.

However, no other nation has treated its steel industry the way that we have since. We did not just throw the baby out with the bath-water; we threw away the bath, the taps, the pipes and sewers. First, we had three decades of contradictory, inconsistent and underfinanced industrial strategies, then three decades of no strategy at all. That left us exposed so that the steel crisis hurt British producers more than our competitors. It is a global crisis. There are over 200 anti-dumping measures listed at the WTO against one country alone. We are at 30% global overcapacity and flat demand, yet steel capacity is increasing by more than 5% a year.

The world steel market is clearly distorted. So local action to ensure a level playing field for British producers is essential. I quote a former steel-worker on what must be done. He said that the Government needed to take “three tangible steps”: first, “ensure low exchange and interest rates”; secondly, reduce the “excess costs” that British steel faced versus its European competitors; and, thirdly, take, “urgent, quick action to bring in anti-dumping measures”.—[Official Report, Commons, 21/10/1998; col. 1201.]

Perhaps President Trump has been listening. The insightful former steel-worker was the Minister, speaking in 2001.

More than 15 years later, we still need urgent action. Ministers described their own business rates policy as “bizarre” two whole years ago, but we still have not heard what will change. The Government said before the previous election that British steel-makers pay twice as much in energy costs as German firms, yet last month, we heard that action on the renewables obligation still needs European approval. In strategic industries, when times are tough, the Government need to offer fast relief. If European agreement is needed, why is steel a low priority in our Brexit negotiations?

I hope that I did not embarrass the Minister by citing his speech. I am delighted that he has been appointed to his job: we need Ministers with passion for their brief. Perhaps I may make amends by telling him that he has an ally in No. 10. The Prime Minister’s chief of staff wrote last year:

“We do not have to accept ‘dumping’”, and has called our energy policy, “a monstrous act of self-harm”. He seems keen to deliver the urgent action that the Minister wanted.

If we are to do more than just slow steel’s decline, our industrial strategy must look well past the current crisis. Since the end of the war, British steel has suffered from underinvestment and instability. We have created a short-term, inward-looking industry. In the 1970s, we spent about the same on R&D as France and Germany, but we did not implement the results. By 1980, we had the lowest proportion of continuous casting of any major steel producer. Under Governments of all parties, steel was left exposed and uncompetitive.

Even now, producers struggle with that legacy, whether on pensions—although we hope that that is now sorted out—or on business rates, energy costs or weak infrastructure. Tata Steel invested more than £1.5 billion since buying Corus. I was heavily instrumental in that.
Much of it has gone to correcting the errors of the past. When Tata felt that it had to close last year, it was because it was losing £1 million a day. It knew that much more investment was needed. All it was offered by the Treasury was tea and sympathy. However, there has been some change in attitude in the past year.

That is why our steel industry has declined to the point where Canada, Poland and Belgium all produced more than us last year. This is not a case of a productivity gap—British steel workers are productive and flexible. It is very seldom that they have gone on strike. It is a lack of long-termism, investment and innovation which fetters them.

To put that right, we need to do three things. First, we need to focus on future market requirements. Total steel demand is stagnant, but demand for specialised and advanced, lightweight, high-strength steel will only increase. Further, as a mature market, we can anticipate future trends in reuse, recycling and steel waste. Excellence here will encourage foreign investment as carbon emissions come under greater pressure.

Secondly, we need better infrastructure and procurement. Port Talbot’s lack of proper port facilities hampers its exports, but there is little help for steel producers on future procurement by the Government. Finally, we need to do more to make our innovations impactful. We are doing globally significant materials research in the UK, and we need to reach the market. The promised steel sector strategy should support investment in steel recycling, advanced materials and improved production processes. The research being done now shows that there are opportunities.

At WMG last month, one of our PhD students won the American Association for Iron & Steel Technology prize for best metallurgy paper by a student, for a paper given on peritectic steel. I would explain what peritectic steel is, but I am sure there is no need. The Economist noted last month that WMG’s research on belt casting and advanced materials could reduce energy used in steel production by one-third. We rightly hear of the need for more diversity in British science and technology; both the research projects that I mention are by women. As the Economist says, this kind of innovation is why producers are considering a new steel plant in the UK.

We need immediate action on this crisis. We also need to support long-term investment, anticipate future needs, increase the commercial impact of our material innovation, and protect our steel market against dumping. That is a huge problem, not just here but anywhere in the world. That is why Trump has just introduced anti-dumping measures. We have had enough White Papers; perhaps it is time for a little bit of white heat.

To put this right, we must look at the future market requirements: steel demand is stagnant, but demand for specialised and advanced, lightweight, high-strength steel will only increase. Further, as a mature market we can anticipate future trends in reuse, recycling and steel waste. Excellence here will encourage foreign investment as carbon emissions come under greater pressure. Furthermore, we need better infrastructure and procurement. Now that the problem at Port Talbot has been solved, with the unions and owners agreeing on a 10-year strategy, the lack of Port Talbot’s facilities hampers exports, while there is little help to steel producers on future procurement by government.

Finally, we have to do more to make our innovation impactful. We rightly hear of the need for more diversity in British science and technology, so it is worth saying that both research projects that I mentioned are by women. That is the kind of innovation that we need, and perhaps that is why the Government should spend more time not on talking but on white heat.

8.51 pm

Lord Bilimoria (CB): My Lords, when the Government published their steel pipeline and new procurement guidance, my university contemporary, the Business and Energy Secretary Greg Clark, said that the Government were,

“absolutely clear that we want to do all we can to support our world-class steel industry… This strategy will ensure we make the right investments in science, research, skills and infrastructure so that British industry wins contracts by producing the best goods and services”.

The Minister at the Cabinet Office, Ben Gummer, said:

“By updating our procurement approach on these major infrastructure projects we are creating a level playing field for UK steel”.

I thank the noble Lord, Lord Mendelsohn, for initiating this important debate. The history is there: employment in the steel industry was at 320,000 in 1971 and has now plummeted to 31,000. We export £4.7 billion-worth of steel from the UK and import £5 billion-worth—so there is a small trade deficit there—and 52% of UK steel exports are to the EU, while 69% of UK steel imports are from the EU. So the implications of Brexit for the industry are enormous, and there is uncertainty over future trade relationships with the EU, which will be absolutely crucial.

The All-Party Parliamentary Group for the Steel and Metal Related Industries produced a report this year in which it talked about an “existential crisis”, as the noble Lord, Lord Bhattacharyya, said. The APPG recognised,

“the vital role that the UK steel industry plays in the UK defence, aerospace, automotive industries, and supporting key infrastructure investments in the UK economy”.

It referred to an industrial strategy for steel and said:

“Our economy is unbalanced, tipped in favour of financial services and London and the South East. Essential to building an economy of purpose and resilience will be a renaissance for manufacturing, and for that steel is a key foundation industry”.

In the UK Steel Manifesto in 2016, it was noted again that there was a reduction of almost 60% in the number of people employed in steel since 1995, a 10% drop in manufacturing, and for that steel is a key foundation industry.

The Minister at the Cabinet Office, Ben Gummer, said:

“The result of the EU Referendum was a blow to the steel industry”. In the UK. The disparity in energy costs, as mentioned by the noble Lords, Lord Mendelsohn and Lord Bhattacharyya, between the UK and our competitors is shackleing the steel industry and preventing it being competitive. The Government must eliminate that price differential in the short term if we are to have a future.
They must ensure that major procurement projects use British steel as much as possible, giving the industry confidence, and bring business rates for capital-intensive firms in line with their competitors by removing plant and machinery from the calculation. Does the Minister agree with that? There are barriers to this industry growing—cap ex, new investment and skills. Do we have the necessary skills and R&D, which I will come to later?

The British Government have been accused of disgraceful behaviour for labelling certain industries, including the struggling steel sector, as low-priority before detailed talks about leaving the EU. Can the Minister confirm that? I am a proud manufacturer of Cobra beer, with my joint venture partners, Molson Coors. We are one of the largest brewers in the world. We manufacture in Burton upon Trent in the largest brewery in Britain. Yet the 10 pillars of the Government’s industrial strategy make no mention of manufacturing. Manufacturing was 30% of our GDP in the 1970s; today it is 10%. India has a target to increase manufacturing from 16% to 25% of GDP. We have no such target. Will the Minister say why we do not?

As to the nature of the challenge, according to the Government’s industrial strategy:

“The UK has grown strongly in recent years—by over 14 per cent since 2010, second only to the United States”,

and yet the Government admit that,

“the UK needs to address the productivity gap with other leading countries”.

The Government proudly announce that they are increasing R&D investment by £2 billion a year. We invest 1.75% of our GDP in R&D and innovation, yet the United States and Germany invest 2.7% and 2.8%. If we were to just catch up with them we would have to invest £20 billion a year, not £2 billion. Does the Minister agree? The industrial strategy talks about the impact of universities. Once again, we underinvest in our universities as a proportion of GDP, compared to the OECD and EU average—forget America, which is way ahead of us—yet our universities are the best in the world. Just imagine if we invested the same amount. The industrial strategy mentions encouraging trade, yet the last Budget made no mention of the word “export”.

We know that the steel industry has halved and that China has quadrupled its production since 2000. Yet, as the noble Lord, Lord Bhattacharyya, said, there is a global capacity that exceeds demand by 600 million tonnes per year. The noble Lord, Lord Bhattacharyya, mentioned Tata Steel. Britain should be grateful to Tata for its billions of pounds of investment in British steel over the years. It is one of the largest manufacturers in Europe and has strong links with universities. It has endowed a chair at the University of Cambridge. I declare my interest as chair of the advisory board of the Cambridge Judge Business School. Some 60% of Tata Steel’s sales are to UK manufacturers and 25% are to the EU. The most important thing about the company is that it tries to be innovative. It has said that you must continue to drive innovation, but it pleads for a level playing field on energy costs, anti-dumping and business rates. Does the Minister agree with that? Tata Steel says that the success and future of the steel industry depend on innovation and skills and that the Government need to support periods of transition when the steel industry goes through ups and downs. In the past, the Government have said they would support this industry, yet when the Prime Minister went to India in November she did not even meet anyone from Tata.

The University of Cambridge produced a paper entitled A Bright Future for UK Steel. Once again, this talked about innovation but it also mentioned that half the steel used in this country is in construction. This sector, which has a plan for building lots more homes, employs 250,000 people from the European Union. What are we to do when Brexit happens? I am delighted by the recent news that:

“The UK steel industry has welcomed anti-dumping duties announced by the European Commission on some Chinese products”.

Can the Minister expand on that?

In conclusion, an article in the Financial Times asked:

“Is UK steel really a strategic industry”? It said that it is to a town such as Port Talbot, but asked how strategic it is when it represents a small proportion of our economic output. Paul Forrest, head of economic research at the West Midlands Economic Forum—I am chancellor of the University of Birmingham—said that 260,000 jobs in his region are part of the steel supply chain. Local sources of steel production are helpful to the UK’s manufacturing ambitions. Nissan’s factory in Sunderland, which is the largest car plant in the UK, buys 45% of its sheet steel from Port Talbot.

Professor Andy Neely, a fellow of Sidney Sussex College and head of the Institute for Manufacturing at the University of Cambridge, said:

“Steel is undoubtedly foundational for so many products—but so is cement or plastics. You can … make the case that steel is a strategic material”.

But what if you can get the supplies from elsewhere? The reality is that the steel for Trident nuclear submarines is supplied from France and the latest generation of Ajax armoured vehicles will use Swedish steel. According to Philip Dunne, the Defence Procurement Minister at the time, no UK steel manufacturer could meet the requirements. There are some implications for sectors such as automotive, which require just-in-time availability, and, where it is available, UK steel plays a role in equipping our Armed Forces. Our latest Queen Elizabeth-class aircraft carriers are built by Tata Steel.

John Louth of RUSI said:

“The quality of British steel has made a big difference to the UK defence industry”, including for our aircraft carriers. Close to 60% of steel used in the UK is imported, while two-thirds of UK output in the past couple of years has been exported.

I conclude with the words of Professor Andy Neely of the Institute for Manufacturing in Cambridge, who said that while steel may no longer be a vital input, it is part of the strategic argument over the shape of the UK economy. He said:

“If the UK says it cannot compete on steel, where does that process stop? The danger is that you end up saying the same in other sectors and we end up with a hollowing out of the British economy”. 
9.01 pm

Lord Brookman (Lab): My Lords, I was a steel-worker from Ebbw Vale in south Wales. My first Member of Parliament was Aneurin Bevan. Growing up as a young kid, I listened to him in the Palace cinema. He was a wonderful man. The works is no longer there. Many people became unemployed, including many of my relatives, so I know a little bit about the difficulties that steel-workers have had in the United Kingdom. I thank the noble Lord, Lord Jones, for his comments about our relationship during my stewardship of the then named Iron and Steel Trades Confederation.

The Question in the name of the noble Lord, Lord Mendelsohn, is relevant. What will be the future of steel? What will be its role in relation to the industrial strategy that we will consider in due course, whoever forms the next Government? I recall a debate in this House on the future of the steel industry. That debate in June 2003 lasted three and a half hours. Therefore, it was much longer than today’s debate and many more noble Lords were present to listen to what was said. It was an interesting debate on the future of steel and manufacturing in general. Some people—not people I can name publicly—believe that we were, and are, living in a post-industrial society, and that steel is not a key issue for the British Government of the day. I am not reading from notes but saying what I feel about the future of steel and manufacturing in general.

The Steel 2020 report of the All-Party Parliamentary Group on Steel and Metal Related Industries has been referred to. I was impressed by that first-class report, which was researched and drawn up by Dr Ian Greenwood. It would be worth the while of everyone who is interested in the future of manufacturing and the steel industry to read it carefully. Dr Ian Greenwood’s work is first class and I am proud to be associated with the all-party group’s efforts to support the steel industry. A group of MPs associated with the APPG—Tom Blenkinsop from Middlesbrough, Jessica Morden, Tom Pugslove, Anna Turley, Angela Smith and Stephen Kinnock—are working night and day to try to ensure that we have a powerful, strong steel industry to support manufacturing.

The facts are pretty clear, and the previous speaker mentioned some of them. The UK steel industry directly employed 320,000 people in 1971, compared with 21,000 in 2015. The report that I referred to points out that the figure is now about 18,000. So let us be honest with ourselves. Are we, and have we been, fighting a losing battle? Are the British people concerned, as noble Lords this evening seem to have been, about our relationship during my stewardship of the then named Iron and Steel Trades Confederation.

The primary benefit of this strategy, rather than subsidies, or trying to grow industries from scratch, is that it puts relatively little pressure on the Exchequer.
A few guarantees like additional export finance may be put in place, but are tiny to heavily subsidised industry. If the market sees fit for an industry to survive, it will step in with the necessary investment, as ArcelorMittal is showing with Welsh steel plants. Supporting industries with large subsidies when they may not even be close to returning to profitability is an expensive folly. If other countries choose to pursue that policy and then let us benefit from cheap exports, that subsidy has been passed to us and need not be retaliated to. Inefficient industries supported well beyond their time create huge issues. It is not just that they soak up capital that could be used more efficiently, but that the planning is never put in place for their eventual demise.

We should take the lesson of the 1980s and make strong plans for industries in a declining phase. Workers must have strong support and meaningful alternative career options. In this post-Brexit world with lower immigration, there is plenty to do.

9.12 pm

Lord Morris of Aberavon (Lab): My Lords, I have given notice to the Minister that I intend to raise questions on the future of Port Talbot steel. I hope that the Minister will reply either tonight or in writing. I have no present interest to declare, but I was the Member of Parliament for the area for more than 41 years. My first job as a young Minister in 1964 was to supervise the drafting of the steel White Paper on bringing the industry into public ownership. One of the driving forces was the cyclical pattern of world markets and the need to protect the national interest. Have we not seen many cycles since then?

It was my privilege to look after the interests of my constituents working in that part of the steel industry. The lion’s share of my political life was dominated by the steel industry. Steel has been a very full debate and we have all appreciated the personal experiences we have heard from the noble Lords, Lord Jones and Lord Brookman, the noble Baroness, Lady Redfern, and the noble and learned Lord, Lord Morris. There are a couple of themes that I would like to pick up in contributing to the debate. The noble Lord, Lord Bhattacharyya, said that we had wasted three decades for this industry through poor decision-making and a lack of long-term thinking. The noble Lord, Lord Bilimoria, spoke very much about the dangers of the distraction of Brexit and the impact it will have on this industry by damaging the whole sector. I would like to deal with both those points.

In the general election, the Government will promise the country strong government and stability. I would agree with that if it was being applied in the steel industry. The only problem is that the Government promised that at the last election and, within a year, we no longer had an economic plan and we have had all the uncertainty that followed the referendum, which will continue over the next couple of years. What we want in this debate—what everybody has spoken about—is a commitment to a modern, innovative manufacturing sector in which steel will play a full part and where we can genuinely compete with Germany. Steel should be an important component of that future. As we know, currently, our whole automotive industry depends on a huge output of steel from the Port Talbot works.

The other area where we have to look at our competitive advantage is that of specialised steels, which the noble Lord, Lord Bhattacharyya, mentioned. But that needs
a long-term plan and long-term commitment. I give some credit to the Government for identifying the problems and raising the questions, but will they address those? They have looked at energy costs, but we know that there are huge problems with energy costs in the sector. They are looking at business rates. I do not know whether the Minister will say anything on that and what help they will provide for manufacturing. To be fair, the Government have also published various documents on improving procurement planning, which are all important. But as we go forward, like every other industrial sector in this country, improving R&D investment and getting a return from that, raising productivity and concentrating on skills development will see this sector prosper.

But what will we get in the next two to five years? We will get complete uncertainty. We have seen that just in the last year with the devaluation of the pound. That creates further uncertainty in the steel sector. Okay, it improves its competitiveness on pricing, but it also adds to its costs. We have no idea what will emerge from the single market free-trade negotiations. As we know, steel components cross borders repeatedly as they find their way into the final manufactured goods.

When the European Community was first set up, I thought that steel was at the heart of it, and so was coal. One of the reasons for that was overcapacity and unproductive resources in both those sectors. To actually get rationalisation was going to be difficult unless there was co-operation and partnership. We know in this sector particularly that if we do not have some form of international co-operation and understanding, the owners, who are huge international combines, will simply pick off individual Governments. Some 52% of steel exports go to Europe. What will happen when we start negotiations on our access to the single market in the Brexit negotiations? The Germans, Spanish, Italians and French will defend their interests. We will lose the co-operation that we have built up over the past few years in Europe trying to address some of these problems.

Those in favour of Brexit will argue that we can take action ourselves against uncompetitive practices and we can get involved in dealing with dumping. But the reality of that is a myth, frankly. If we look at Chinese dumping, China’s total exports exceed the total production of the top five European steel-producing countries. We know that the British Government themselves resisted supporting protection orders in those countries. We know that the Chinese Government themselves resisted supporting protection orders in those countries. We know that the Chinese Government themselves resisted supporting protection orders in those countries.

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Greg Clark has done some good work on the industrial strategy, continuing the work done by the coalition, but unless we actually get involved in the detail and deliver the answers to some of the questions and problems that that work is raising, we will not make the progress industrially that this country and particularly the steel industry want. The major problem going forward will be that the Government themselves will be totally distracted by the Brexit negotiations when they should be dealing with some of the problems in this sector.

9.24 pm

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Bromyard) (Con): My Lords, I begin by thanking the noble Lord, Lord Mendelsohn, for bringing this debate to the House. It is extremely important. Steel is very close to many of our hearts in this Chamber. It is very good to have the chance to debate it.

I have not yet visited Scunthorpe under the management of Greybull, but I very much look forward to doing so and meeting the team that the noble Lord met when he was there a few months ago—although I do not imagine he got his new suntan when he was in Scunthorpe. I also mention my noble friend Lady Redfern, who lives very close to Scunthorpe. She mentioned the community spirit and the importance of the supply chain. She mentioned that the jobs of 16,000 people were dependent on the supply chain of the Scunthorpe steelworks, so when we talk about steel we are talking about many other industries as well.

The noble Lord, Lord Jones, referred to steel as a foundation industry. He is absolutely right. He spoke about Shotton. I visited Shotton only a month ago. It is wonderful to see the coatings plant there, but it is pretty sad to see where once there was a great integrated steelworks.

The noble Lord, Lord Bhattacharyya, mentioned that when he was growing up as a young engineer in the 1960s Britain was seen as the home of steel. He said that for many years, really since the war, the British steel industry has suffered from underinvestment for all that time. I think he said that in 1980, despite having invented continuous casting in this country, which was a fundamental technological breakthrough for the steel industry, we had the lowest percentage of steel made through continuous casting—a pretty damning condemnation of our industry at the time. I think of how much investment went into two steel plants, Llanwern and Ravenscraig: both were undersized, in the wrong place and underinvested. However wonderful and flexible the labour force is, if the strategy is fundamentally wrong, as those two plants were, in the long run nothing can save them.

Listening to the noble Lord, Lord Brookman, I could almost see in my mind two people that I am sure he remembers from those days: Bill Sirs, who was general-secretary of the ISTC; and Hector Smith, who was general-secretary of the National Union of Blastfurnacemen at the time. He spoke with great passion about Ebbw Vale.

I did not agree with many of the words of the noble Lord, Lord Bilimoria. I did not recognise his characterisation of our industrial strategy Green Paper; I did not see where he was coming from. We are absolutely committed to a strong and competitive manufacturing sector in this country. I reassure the
The noble and learned Lord, Lord Morris, raised pensions. I have to declare an interest as a member of the British Steel pension scheme, so I cannot address his particular issues. If the officials can write to him after this debate, I will arrange for that to happen.

For me this is Groundhog Day. When I joined British Steel in 1980 we were producing 15 million tonnes of steel a year. We had five integrated sites. About 200,000 people worked in the industry. Since then, 30 years have passed. What makes it Groundhog Day is this: the problem in 1980 was fundamentally one of overcapacity, which led to low prices. In the trading year 1979, British Steel lost £309 million. I could not find the figure, but my recollection is that in 1980 it lost £700 million. In today’s money, that is £3 billion to £4 billion.

In those days, new capacity was coming on, largely from Japan, closely followed by South Korea. Japan installed 100 million tonnes of capacity. It was low-cost capacity; it was all on deep water. It was all highly productive; it was new technology. It was all continuous casting and of great quality. To our shame, most of the steel that went into the pipelines in the North Sea to bring ashore oil and gas was made in Japan and not by British mills. Much of the steel going into the Ford Motor Company at the time had to come from abroad because we could not meet the quality requirements.

Today, we have a similar problem but from a different country: it is of course China. Its steel production capacity is hard to measure, but it is probably around 1 billion tonnes. If we put that against our total UK production in 2016 of a little over 7 million tonnes, it sets our industry in some kind of context. Chinese steel production has increased sixfold since 2000.

As China has exported into other Asian markets so they, too, have exported in return into the western European markets. In a high fixed-cost industry such as steel, the temptation to marginally price is hard to resist, so we have had extremely low prices for a long time.

As has been pointed out by noble Lords this evening, particularly the noble Lord, Lord Bhattacharyya, we had an extraordinary inheritance. The Industrial Revolution started here. The iron and steel industry started here. There was the open hearth process and continuous casting. We invented stainless steel. British-made steel products are seen in iconic buildings and structures all over the world.

Despite that, since the war, with the uncertainties of nationalisation and denationalisation, we suffered from persistently low levels of investment. Where we did invest, I am afraid that the involvement of politicians was not a happy one. We would not have had Ravenscraig here and Llanwern there had it not been for, with hindsight, mad political interference. At Redcar, we had a one-blast-furnace operation. That is not a viable strategy for the long run. The whole concept of producing on Teesside low-value, semi-finished slabs from iron ore and coal coming in from Australia and Brazil, and then re-exporting those slabs back to Thailand, was hardly a strategic decision of great genius. Even today—if we are honest—although the configuration with two integrated sites is where we need to be, those two sites are not ideal. It is not ideal to have coating plants at Scunthorpe and hot rolled coil being made at Port Talbot. It is not ideal to be making blooms and billets at Scunthorpe and to have the finishing section mills on Teesside. While those plants are not ideal, they can be competitive, but we must be realistic that they will not be as competitive as those fully integrated plants that we see on deep water, with modern equipment and modern investment, in other parts of the world.

Nevertheless, we have reached the point where we have two integrated plants in the UK and not five, which is a huge improvement. We also have a very important scrap-based electric arc business in Sheffield and south Wales. Again, given the right investment, these should be competitive given the availability of scrap. We export 7 million tonnes of scrap a year from this country. Surely we can do better by melting more of that in the UK.

The overall numbers for the UK are grounds for encouragement. UK steel demand is around 10 million tonnes a year, which is roughly in line with our capacity. If we add in the steel of imported manufactures, we see that we consume 22 million tonnes a year. If some of that manufacturing can be reshored to this country over the next five to 10 years, then that gives even bigger opportunities for our domestic producers.

Much has changed since this House was last formally updated in April 2016. As noble Lords mentioned, Greybull Capital acquired Tata’s long products business based in Scunthorpe. In September, the two Scottish plate mills, at Dalzell and Clydebridge, re-opened under Liberty Steel’s ownership, following their acquisition from Tata. More recently, Liberty Steel announced it had agreed a sale and purchase agreement with Tata for the speciality steel business in South Yorkshire. At the same time, Tata Steel Europe remains in negotiations with regard to a possible joint venture with thyssenkrupp. So much is going on in the ownership of the steel industry but in a sense having a clear separation of special steels, long products and strip mill products is no bad thing. They are three very different businesses with different markets and different manufacturing processes.

I also acknowledge the efficiency savings and productivity improvements realised at Port Talbot by the Tata workforce. The noble Lord, Lord Bhattacharyya, and others referred to the flexibility and spirit of the workforce both at Port Talbot and in Scunthorpe.

I then turn briefly to the actions the Government have taken. We are compensating energy-intensive manufacturers such as steel for the costs of renewables and climate change policy. To date, we have paid over £151 million to the steel sector. We secured flexibility over the implementation of EU emissions regulations. The Government introduced revised steel procurement guidance, as has already been noted, to ensure that...
[LORD PRIOR OF BRAMPTON]

UK steel producers have the best possible chances of competing for public sector work. We provided a procurement pipeline for steel to ensure that the UK sector has every opportunity to prepare to meet this future demand. We also successfully pressed for the introduction of trade defence instruments to protect UK steel producers from unfair steel dumping. There are now 41 in place in the EU. Yet in my experience of anti-dumping, it is always too little, too late—it always takes too long because the damage is done before the actions can take place.

I have not got much time and it is late in the evening. We are open to a sector deal for steel. Anyone who thinks that steel is a low priority has misread the runes. We put it to the UK steel industry that it is in its hands to come forward with a proposal for a sector deal. Of course, it is entirely up to the industry what is in that sector deal but I would certainly expect it to focus on: technology; investment, clearly; training; how we can go further up the value chain; how we can look at new products—the new rails at Scunthorpe were mentioned and that is exactly the kind of thing we should do—lower energy uses; and how we can make better use of the surplus scrap available in the UK.

There can never be a guarantee about the future of any industry at a time of such extraordinary technological disruption as is going on in our markets. However, this industry in the UK has been resized. I must believe that there is a long and profitable future for the UK steel industry. We are committed to a strong manufacturing base in this country and steel is a vital part of a long-term supply chain for many industries. You cannot build a manufacturing base buying on a spot basis from overseas. That is not a viable way of securing that. So I am optimistic about the future. It has been a long and traumatic journey and struggle for this industry. Many lives have been ruined along the way because of poor strategic decisions taken in the past. However, now the structure of the steel industry and the commitment of companies such as Tata to it give me great hope for the future.

Health Service Medical Supplies (Costs) Bill

Returned from the Commons

The Bill was returned from the Commons with amendments. The Commons amendments were ordered to be printed.

House adjourned at 9.39 pm.
House of Lords

Wednesday 26 April 2017

3 pm

Prayers—read by the Lord Bishop of Southwark.

Education: Design Subjects

Question

3.06 pm

Asked by The Earl of Clancarty

To ask Her Majesty’s Government what steps they intend to take to encourage the study of design subjects in schools.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash): My Lords, the Government believe that all pupils should have access to an excellent and well-rounded education. Art and design and design and technology are essential to that, and they are compulsory subjects in the national curriculum at key stages 1 to 3. We have reformed the D&T and art and design GCSEs and A-levels in response to feedback from experts such as the Royal Academy of Engineering and the James Dyson Foundation to make them more rigorous, contemporary and of greater appeal to students.

The Earl of Clancarty (CB): My Lords, does the Minister agree that skilled design is essential for our technical trades and creative industries? As the Government are correctly putting an emphasis on technical education, are they not concerned about the significant fall in take-up of GCSE and A-level design subjects, with a recent Association of School and College Leaders survey showing a drop of 44% over the past year alone in the number of schools offering GCSE design and technology? Will the Government address these concerns, and if so, how?

Lord Nash: My Lords, the figures for pupil number decline in D&T GCSE have fallen less in the past six academic years than in the four previous academic years up until 2010, so we have arrested the decline. We have introduced computer science for the first time. The number interested in that subject last year was half the number of new trainee teachers that are taking it. Added to that, there will be some 2,000 fewer teachers for the subject by this coming September and half the number of new trainee teachers that are needed for it. This is a real crisis. I agree with the noble Lord about the importance of this subject, but we need to fix these problems and make design part of a celebration in our education service.

Lord Nash: I agree entirely on the importance of design, and of course we have a number of free schools that are particularly focused on this area. We offer a £12,000 bursary for new teachers coming into the sector to teach design and technology; and as I have said, we are making our D&T courses much more contemporary. Previously, they were very material focused, but now they are more context driven. We are particularly keen to reform them so that we can address the gender imbalance in D&T and attract more girls to study the appropriate STEM subjects. For instance, under the existing D&T syllabus, 96% of the participants in textiles are girls whereas only 7% are studying electronic products. We are keen to address this.

Lord Watson of Invergowrie (Lab): My Lords, there is a bigger picture here because design is one of the subjects that some head teachers will be unable to afford to provide if a Tory Government are re-elected and cuts to the schools budget are given free rein. The Minister and his department like to repeat the meaningless soundbite that more money than ever is going into schools. Of course it is, because there are more pupils than ever in our schools; the point is the funding per pupil. Last month the Education Policy Institute reported that by 2020 not a single school in England would be able to report that they had had no real cuts in funding per pupil. That is in direct contradiction of the 2015 Tory manifesto. Can the Minister assure the House that this year’s version of the manifesto will tell parents the truth about education funding plans?

Lord Nash: I know that the noble Lord always likes to look at the bigger picture, but as we all know, and as the National Audit Office and the IFS have told us, the increase in funding per pupil between 2000 and 2020 is 50%. As I have said previously, particularly when I answered a Question and invited the noble Lord to visit the government website, it is quite clear that many of our best-performing schools are also the most efficient schools financially. We have a great deal of advice, toolkits and benchmarks available to advise schools on how to manage their finances more effectively.

Lord Baker of Dorking (Con): My Lords, last July take-up of design and technology fell by 10% for the seventh year. That subject and others are being squeezed out of the curriculum as a result of the EBacc. Yet, the artistic, creative and technical side of our economy is worth £500 billion a year. Many companies are finding it quite impossible to employ youngsters leaving school at the age of 16 or 18 because they do not have the skills the industries want. This will get much worse after Brexit. There must be fundamental change to the EBacc to allow a broader curriculum to serve the British economy.
Lord Nash: I pay tribute to my noble friend’s support for technical education. In fact, there is no evidence that the EBacc has had a direct effect on the number of pupils taking arts subjects. In fact, the number of pupils taking at least one arts subject has increased since the introduction of the EBacc. As I have already mentioned, it is quite clear that modern pupils, in addition to being interested in design, are also interested in things such as coding.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister admit that it is shameful that the Government are wasting money on creating new free schools where school places are not needed and cutting the funding for pupils in adjacent schools where the money is needed? The Minister is presiding over a system that is depriving pupils in general because of his and his colleagues’ pet theory about independence.

Lord Nash: I am delighted that the noble Baroness has given me the opportunity to answer that question. Since I have been a Minister for the last four and a half years, 93% of free schools have been created in areas where there is a recognised need for new places. We are spending our money far more efficiently than the previous Labour Government. Despite inflation, we are building schools at least a third more cheaply than Labour’s profligate Building Schools for the Future programme. I constantly face bills from schools built quite recently under that programme, where I have to spend millions rectifying their very poor design.

Lord Cormack (Con): My Lords, drawing attention to my interest as chairman of the William Morris craft fellowships, can I ask what my noble friend can do to encourage young people in our schools to follow the traditional crafts and to have more, proper apprenticeships available to them thereafter?

Lord Nash: My noble friend makes a very good point. We have a wide range of new apprenticeships. Employers will be at the heart of our design of these apprenticeships. We are keen that these lead to jobs. I will certainly take his point back and discuss what we are doing in this area.

Baroness Whitaker (Lab): My Lords—

Terrorism: Domestic Extremism

3.14 pm

Asked by Baroness Jones of Moulsecoomb

To ask Her Majesty’s Government whether they intend to refine the definition of domestic extremism, in order to enable the police to focus on those involved in terrorism and serious crime.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the definition of domestic extremism used by the police is not statutory. Questions about the police definition and their work on domestic extremism are matters for the police.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for that evasive Answer. Quite honestly, of course it is a matter for the Home Office whether the police misuse their time. There is now a huge amount of incontrovertible evidence showing that the police watch peaceful, non-violent environmental campaigners. They are utterly wasting their time and not concentrating on people who can actually cause terrorism—terrorism, not tourism—in this country or commit violent crime. Will the Home Office take its responsibilities seriously about preventing such crime and make sure that the police follow some reasonable guidelines on what a domestic extremist is?

Baroness Williams of Trafford: My Lords, I do not agree with the point on the police misusing their time. On whether the Answer was misleading, the Question read:

“To ask Her Majesty’s Government whether they intend to refine the definition of domestic extremism.”

It is not our definition.

Lord Harris of Haringey (Lab): My Lords, I refer to my interests in the register. I appreciate that we are towards the end of this parliamentary Session so the opportunity to do something about what was in the last Queen’s speech is diminishing, but in the last Queen’s speech the Government promised a Bill to look at preventing extremism. I understand that that has been festering in the long grass ever since because of the difficulty in defining extremism. Will it carry on festering in the long grass or are the Government planning, if they manage to be re-elected, to bring forward proposals that will define extremism and that might then define whether the noble Baroness is an extremist? Quite a number of us might be deemed by other colleagues in your Lordships’ House to be extremists. How will the Government address that question, as they told us in the Queen’s speech they would?

Baroness Williams of Trafford: My Lords, clearly events have overtaken us. Tomorrow we will prorogue and this will be in the hands of the next Government—it might be a Labour one—to decide whether to bring forward such legislation. Yes, at the time of the last Queen’s speech that was our intention.

Lord Singh of Wimbledon (CB): My Lords, I emphasise the concern over definitions. In the 1980s, when Sikhs were persecuted throughout India, when they were blamed and called terrorists and extremists, I was asked by the BBC whether I was a moderate or an extremist. I replied, “I am extremely moderate”. Such words have no meaning. We must get beyond these smear definitions and look to what actually concerns us.

Baroness Williams of Trafford: As someone who is extremely moderate as well, I do not disagree with the noble Lord. The point I was making in my Answer to the Question is that this definition was made by the police.
Lord Paddick (LD): My Lords, last week the Minister for Prisons said:

"Any form of extremism must be defeated wherever it is found". Can the Minister remind us of the Government's definition of extremism, as used by that Minister last week? Does it include Jehovah's Witnesses?

Baroness Williams of Trafford: My Lords, a Jehovah's Witness may or may not be an extremist depending on their activity. Extremists seek to justify behaviour that contradicts and undermines our shared values. If that is left unchallenged, those values that bind our society together start to fall apart: women's rights are eroded, intolerance and bigotry become normalised, minorities are targeted and communities become separated from the mainstream. That sort of behaviour cannot go uncontested.

Lord Morris of Aberavon (Lab): My Lords, can extremism ever really be legally defined?

Baroness Williams of Trafford: It will be legally defined when it is defined in law.

Lord Pearson of Rannoch (UKIP): My Lords, does the Minister recall the recent report from the National Police Chiefs' Council, which found that less than 10% of tip-offs about potential terrorists came from within our Muslim communities? Does that not suggest that our peaceful Muslim friends may not be doing enough to expose and stand up against their violent co-religionists? If so, what can the Government do to help them?

Baroness Williams of Trafford: My Lords, I think such blanket presumptions are unhelpful at this stage. The vast majority of Muslims in this country share our values and our aspirations as parents and members of society. Prevent, the programme that this and previous Governments have run, has helped support people and protect them from those who would wish to poison their minds.

Lord Rosser (Lab): The Government announced at the beginning of this month that a 100-strong task force of counterterrorism experts was to be established. The ONS has come up with a consultation document. Initially it was delayed from October to 9 May; that was its own decision. Now, unfortunately, that 9 May announcement has been delayed by the purdah rules because, as the noble Lord suggests, data will be critical to ensuring that the goals are monitored and delivered.

Lord Bates: First, I pay tribute to the work of the noble Lord in his chairmanship of the all-party parliamentary group on the SDGs. Certainly, he is right to acknowledge that we have been at the forefront of the negotiating of the global goals and that we will be at the forefront of their implementation. On his specific point about data, we have passed that across to the Office for National Statistics. There are 17 goals and 240 measures. It is quite a big task to undertake. The ONS has come up with a consultation document. Initially it was delayed from October to 9 May; that was its own decision. Now, unfortunately, that 9 May announcement has been delayed by the purdah rules of the general election, so I would expect it go ahead soon after. It is very important that civil society organisations and business groups participate in that because, as the noble Lord suggests, data will be critical to ensuring that the goals are monitored and delivered.

Baroness Sheehan (LD): My Lords, SDG 16 commits the Government to tackling illicit financial flows, which lose developing countries an estimated $100 billion a year. That is why it is all the more disappointing that the Government have blocked any talk of transparency in our overseas territories as part of the Criminal Finances Bill. Following the Panama papers leak, does the Minister agree with me that the Government

United Nations Sustainable Development Goals

Question

3.22 pm

Asked by Lord McConnell of Glenscorrodale

To ask Her Majesty’s Government what action they plan to take to deliver the United Nations Global Goals for Sustainable Development by 2030.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government are firmly committed to delivering the global goals, both at home and internationally. Our public report, Agenda 2030, of 28 March this year outlines our approach and provides examples of how we are contributing to the global goals.

Lord McConnell of Glenscorrodale (Lab): My Lords, the UK and indeed this Government led internationally on the establishment of the global goals, and in particular on the fact that they should be universal and that their implementation should be monitored with accurate, up-to-date data. It is therefore disturbing that today's report by the House of Commons Environmental Audit Committee highlights that there is a suggestion that the Government will stop the Office for National Statistics establishing the data on which the implementation could be measured inside the United Kingdom. Will the Minister assure us that that is not the case and that the UK will continue to show global leadership, both abroad and at home, and practise what we preach?

Lord Bates: First, I pay tribute to the work of the noble Lord in his chairmanship of the all-party parliamentary group on the SDGs. Certainly, he is right to acknowledge that we have been at the forefront of the negotiating of the global goals and that we will be at the forefront of their implementation. On his specific point about data, we have passed that across to the Office for National Statistics. There are 17 goals and 240 measures. It is quite a big task to undertake. The ONS has come up with a consultation document. Initially it was delayed from October to 9 May; that was its own decision. Now, unfortunately, that 9 May announcement has been delayed by the purdah rules of the general election, so I would expect it go ahead soon after. It is very important that civil society organisations and business groups participate in that because, as the noble Lord suggests, data will be critical to ensuring that the goals are monitored and delivered.
[Baroness Sheehan] must get a grip and set up public central registers of beneficial ownership, ensuring the same transparency in our overseas territories as we have in the UK?

Lord Bates: I do not know whether the noble Baroness was present last night, as I was, when we had the debate on this issue. The Government brought forward an amendment which commanded the support of this House—including the Liberal Democrat spokesman. I am sure that the noble Baroness will be very happy to speak with her colleague about that if she has any disagreement.

Lord Alton of Liverpool (CB): My Lords, does the Minister agree that one of the things that jeopardises sustainable development is a combination of conflict, where there is the need to bring conflict resolution, and corruption? In the light of the Government’s welcome announcement that they will sustain development programmes and funding for development overseas, will he tell us what priority a new Government are likely to give to combating conflict in situations such as South Sudan, where famine has come as a direct result of it, and dealing with corruption, where aid money can be embezzled and misused?

Lord Bates: The noble Lord is absolutely right. We have said that the 0.7% commitment stands, but we are also absolutely resolute that there needs to be reform of the international aid system to ensure that that hard-earned money, provided by British taxpayers and other taxpayers from around the world, gets to where it is most intended. That is why we are behind arguing for global goal 16 on peace and security—because, without peace and security, there can be no development or growth. That is also why we have committed the large sum of money—£100 million—to South Sudan and to the other areas which are touched by famine at present.

Lord Collins of Highbury (Lab): The Minister mentioned the recent DfID report setting out the priorities, which gave examples of all the targets and goals. I am really disappointed that, on goal 8, “Decent work”, and goal 10, “Reduced inequalities”, no mention is made of civil society. In particular, no mention is made of trade unions, nor the work of the ILO in addressing the appalling labour standards in our supply chain. Can the Minister explain this omission?

Lord Bates: I can—or will certainly attempt to. What is happening with the SDGs is that they not only apply internationally—we are bound to them internationally as collective goals; 193 nations signed up to them—but are very much targeted at what we will do domestically to implement them. One recognition we made through that on goal 8, which is crucially important, is that employment is now at record levels in the UK. It is at the highest level since records began in 1971. One thing we are saying is that is a good example of where UK labour market reforms have brought about changes that can increase growth and achieve the target of global goal 8, to which the noble Lord referred.

The Lord Bishop of Southwark: My Lords, like the noble Lord, Lord Alton, I welcome the Prime Minister’s pledge to maintain the commitment of 0.7% of GDP for overseas aid. But I would be glad to know the Minister’s views on the usefulness of targeting aid in support of the goals not solely through large organisations but through more local partners such as those highlighted in the West Bank and Gaza by the right reverend Prelate the Bishop of Leeds on 21 March.

Lord Bates: We are absolutely of the opinion that we should work closely with civil society organisations and that we are part of a global partnership to leave no one behind, which applies and cuts across all the goals. We will engage with local partners, who are in the best position to deliver the improvements and the targets that we seek on the ground. We will continue to do that and I know that many religious organisations, including church organisations, also have a crucial role to play in that around the Middle East and in Africa.

Lord Foulkes of Cumnock (Lab): My Lords, some of us are a little more sceptical about what the Prime Minister said about the 0.7%. Can the Minister clarify whether that 0.7% will be spent according to ODA principles by a separate department that is not linked to any other department in Whitehall?

Lord Bates: The 0.7% was a commitment made in 1970 and it was first brought in under a Conservative-led Government—and it has been sustained under a Conservative Government. What we have said is that the 0.7% commitment was never in doubt and will remain continuously. But we are absolutely committed to saying that we want to look very carefully at where and how that money is spent, to ensure that every single penny given goes to the people who are most in need. That is our commitment and we will stand by it.

Lord Low of Dalston (CB): My Lords—

Chechnya: LGBT Citizens

Question

3.30 pm

Asked by Baroness Barker

To ask Her Majesty’s Government what action they are planning to take in response to reports of the persecution and detention of LGBT citizens in Chechnya.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the Government are extremely concerned by reports of the detention and ill treatment of more than 10 gay men in Chechnya. I issued a statement on 7 April which was publicly supported by the Foreign Secretary. Officials in our embassy in Moscow raised our concerns with the Russian Government on 13 April. The EU made a statement on behalf of all member states at the OSCE, and the UK delivered a national statement at the Council of Europe.
Baroness Barker (LD): I thank the Minister for her Answer. We now have clear evidence that gay people are being detained in camps in Chechnya and hunted in Russia. In circumstances where people are in fear for their lives, will the UK Government consider a form of leave to enter in order that people can seek international protection in the UK?

Baroness Anelay of St Johns: My Lords, the noble Baroness raises the critical issue of the safety of individuals who are facing not just persecution: the Chechen leader Kadyrov wants their elimination before the start of Ramadan on 26 May. In the light of that, it is important for the whole of the international community to work together to resolve these issues, and that is what we shall certainly do. With regard to our asylum procedures, we are in the process of carrying out a commitment to improve the asylum processes for those claiming asylum on the basis of their sexual or gender identity. Decision-makers are provided with dedicated guidance on the management of such claims. We are working closely with NGOs and the UN High Commissioner for Refugees to develop this guidance and training and make it work better.

The Lord Bishop of Newcastle: My Lords, what support have Her Majesty’s Government provided and what support do they intend to provide to the Russian LGBT Network, which is helping gay men flee Chechnya?

Baroness Anelay of St Johns: My Lords, the right reverend Prelate raises an issue that was partly addressed by the noble Baroness, Lady Barker. I assure her that we are working on this. That work has to be sensitive because I do not wish to expose anybody to real personal danger. Let us not underestimate the gravity of the situation in Chechnya. The threats that have been made both by the leaders and by people in the community are abhorrent. We will do our best to achieve international agreement on the safety of people who are threatened.

Lord Cashman (Lab): My Lords—

Lord Alli (Lab): My Lords—

Lord Lexden (Con): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): It is the turn of the Conservative Benches.

Lord Lexden: My Lords, is it not the case that the Russian Government actively support laws that encourage the oppression of LGBT people throughout their territories?

Baroness Anelay of St Johns: My Lords, the Chechen Republic is a federal subject of the Russian Federation and comes under the authority of the Russian Government in Moscow, so with regard to issues in Chechnya the buck stops with President Putin. With regard to wider issues across Russia, we believe that the situation for LGBT people has deteriorated since the law banning the promotion of non-traditional sexual relations among minors was passed in June 2013. It is a very worrying situation.

Lord Alli: My Lords, first, I thank the Minister for all the work she has done and the support she has given to this cause, in particular her statement of 7 April. In that statement, she made clear that she was calling on the Russian Government to investigate these allegations promptly. The Minister quite rightly says that since then the Chechen President has threatened to “eliminate”—eliminate—all gay men and members of the LGBT community by the start of Ramadan, on 26 May. The Russian LGBT Network has been on the front line of trying to protect gay men in Chechnya, but so far the Russian authorities have refused to launch any formal investigation into the testimonies they have collected. May I ask the Minister to continue to put pressure on the Russian authorities to start the investigation into those testimonies? If they will not do so, will the UK, EU or UN do more to highlight the testimonies from those who are being persecuted?

Baroness Anelay of St Johns: My Lords, the noble Lord makes extremely valid points. I commit us to continuing to work on these matters throughout purdah, during which we can still do things, wholly within the rules, to uphold existing policy. I give him an assurance on that. It will be for a new Government to look at how they wish to act through co-operation across the international community, in both the Human Rights Council and the United Nations Security Council, but I would hope that any Government would wish to follow that course.

Baroness Northover (LD): My Lords, I also welcome what the noble Baroness has said, but she will be aware that these very vulnerable men are vulnerable not only due to the actions of their Government but now from honour killings. Can she expedite what she has said she will do in terms of visas?

Baroness Anelay of St Johns: My Lords, the Answer I gave was with regard to asylum, and I want to make that absolutely clear. The noble Baroness raises a critical issue when she refers to the so-called honour killings of gay men by family members. To put this into context, detainees who have been held are being sent back home, which is tantamount to a death sentence, because police are using families to lure gay men back to the region to be arrested and they are then reportedly either tortured or killed. We are told that families are hunting down escapees and handing them over to the authorities. This situation needs international co-operation. I believe, from what has been said in this House today, that we have all-party co-operation.

Local Audit (Public Access to Documents) Bill

Order of Commitment Discharged

3.37 pm

Moved by Baroness Eaton

That the order of commitment be discharged.
Baroness Eaton (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Merchant Shipping (Homosexual Conduct) Bill
Order of Commitment Discharged

3.38 pm
Moved by Baroness Scott of Bybrook

That the order of commitment be discharged.

Baroness Scott of Bybrook (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Guardianship (Missing Persons) Bill
Order of Commitment Discharged

3.38 pm
Moved by Baroness Hamwee

That the order of commitment be discharged.

Baroness Hamwee (LD): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Farriers (Registration) Bill
Order of Commitment Discharged

3.39 pm
Moved by The Earl of Caithness

That the order of commitment be discharged.

The Earl of Caithness (Con): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Lord Tyler (LD): My Lords, I wonder whether it would be appropriate for me to ask a question of the noble Earl, and indeed of the Minister. I wonder whether either of them have seen the report—published today, as I understand it—by the Delegated Powers and Regulatory Reform Committee, referring to some important aspects of this particular Bill, which of course has been looked at literally only today by that committee, on which I serve. There are aspects that raise the controversial issues of the Henry VIII clause. The Government originally supported the Bill and produced a Memorandum for the Committee about these matters on behalf of the noble Earl and the Bill’s promoters in the other House.

These questions raise important issues about executive expediency. We all recognise that at this stage of a Parliament it is extremely important to complete the business that is before both Houses, but I believe, and I think Members of your Lordships’ House will agree with me, that we should not do it simply for the expediency of the Executive. If there are matters that are of concern to this House about the way in which secondary legislation following from the Bill is to be handled by Parliament, we in this House are duty-bound to ask those questions. It would be wrong, simply because we are faced with an early general election or indeed the end of a Session, simply to fast-track legislation without proper regard to these issues of scrutiny. I am sure the noble Earl would agree with me, as he is a strong protagonist for the responsibilities of this House.

I wonder whether the noble Earl and the Minister will now be in a position to comment on the important qualifications that have been brought forward by the Delegated Powers and Regulatory Reform Committee to your Lordships’ House today on the issue of secondary legislation. It is not immediately apparent why the promoters of the Bill, and indeed the Government, did not use the LRO procedure, which would have been more appropriate. It would have meant that we had proper scrutiny of the secondary legislation that follows from the Bill.

I am sure other Members of your Lordships’ House will agree with me that we should not simply be accelerating procedures for the convenience of the Executive. If there are matters that we are of concern to this House about the way in which secondary legislation following from the Bill is to be handled by Parliament, we in this House are duty-bound to ask those questions. It would be wrong, simply because we are faced with an early general election or indeed the end of a Session, simply to fast-track legislation without proper regard to these issues of scrutiny. I am sure the noble Earl would agree with me, as he is a strong protagonist for the responsibilities of this House.

The Earl of Caithness: My Lords, I am grateful for the intervention from the noble Lord, Lord Tyler. This Bill is not for the benefit of the Government; it is for the benefit of the farriers and updating the law.

I am aware of the report. I have not had time to discuss it with the Minister, but I plan to do so immediately this Motion has been agreed because I think it right and proper that I should do so. Had we had sight of the report earlier, I would have been able to see the Minister before now, and I apologise to the House for not having been able to. However, I shall do so immediately after this.

Lord Grocott (Lab): Bearing in mind that the noble Earl is now looking to an accelerated Committee stage for his Private Member’s Bill, I remind him of the
Committee stage of the abolition of by-elections for hereditary Peers Bill at whose Committee stage, where it was supported widely across the House, he and one of his noble colleagues decided to table some 30 amendments in order to prevent the further passage of that Bill. I wonder whether, when I introduce a similar Bill in the next Session of Parliament, he will afford the same courtesy of a rapid passage of the Committee stage to the hereditary Peers abolition of by-elections Bill as appears to be being afforded to him today.

**Noble Lords:** Answer!

**The Earl of Caithness:** My Lords, I am grateful to the noble Lord for not tabling amendments to this Bill.

**Motion agreed.**

**Health Service Medical Supplies (Costs) Bill**

**Commons Amendments**

**3.44 pm**

**Motion A**

*Moved by Lord O'Shaughnessy*

That this House do not insist on its Amendment 3B and do agree with the Commons in their Amendments 3C and 3D in lieu.

**Commons Amendments in lieu**

3C: Page 2, line 19, at end insert—

“( ) after “body” insert “and any other person the Secretary of State thinks appropriate”.”

3D: Page 2, line 27, at end insert—

“( ) After subsection (1) insert—

“(1A) Consultation about the proposed exercise of a power under subsection (1) must include consultation about the following—

(a) the economic consequences for the life sciences industry in the United Kingdom;
(b) the consequences for the economy of the United Kingdom;
(c) the consequences for patients to whom any health service medicines are to be supplied and for other health service patients.”

**The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con):** My Lords, I beg to move Motion A. In doing so, I apologise to the House for the late change to the running order. Noble Lords who were expecting—or indeed hoping—that my noble friend Lord Nash would be taking the Bill through will have to make do with me.

We are here again to consider whether and how the Government can take into account the impact that exercising the powers in the Bill will have on the life sciences industry and on access to new medicines for patients who may benefit from them.

When we last debated these issues, I set out clearly the Government’s reasons for disagreeing with Amendment 3B. As I explained at the time, it would undermine one of the core purposes of the Bill by undermining the Government’s ability to put effective cost controls in place. This could encourage companies to bring legal challenges where cost controls have not in themselves promoted growth in the life sciences industry, seriously hindering the Government’s ability to exercise their powers effectively to control costs. This would have a detrimental effect if the Government were to take action to control the price of an unbranded generic medicine where it is clear that the company is exploiting the NHS, because the Government might be challenged on the basis that the action does not promote the life sciences sector. Nevertheless, as I am sure that all noble Lords agree, in such an instance it would of course be the right thing to do for the NHS, for patients and for taxpayers. The powers in the Bill that enable such action have received universal support in both Houses throughout the Bill’s passage.

Through our previous debates on this issue, we clarified that there was no intention to undermine the core purposes of the Bill; rather, the intention is to ensure that a mechanism is laid out in the Bill to ensure that the Government pause to reflect on the impact of any proposed statutory price control scheme on the life sciences industry, and on access to cost-effective medicines. With this clarity, the Government have now put forward their own amendment in lieu which will achieve just that, without undermining the Bill’s core purpose.

Consultation requirements are already set out in Section 263 of the NHS Act, prior to the implementation of any statutory price control scheme for medicines. Our amendment, which received support from all parties in the other place, would mean that the Bill would amend the NHS Act to include particular additional factors that must be consulted on. These are: first, the economic consequences for the life sciences industry in the United Kingdom; secondly, the consequences for the economy of the United Kingdom; and, thirdly, the consequences for patients to whom any health service medicines are to be supplied and for other health service patients.

The requirements are framed in this way in order not only to consider the economic consequences for the life sciences industry and for patients who may benefit from new medicines but to balance these factors against wider considerations. I am sure that we can all agree that, although a thriving life sciences industry and access to new medicines are highly desirable, it must not come at any cost and it is the Government’s responsibility to achieve the right balance and to be held to account for it. As with all consultations, the Government must give all responses due consideration before finalising policy. Setting these requirements out in the Bill does not limit the scope of any consultation on a statutory pricing scheme, offering both the Government and consultees the opportunity to give all relevant issues proper consideration.

The amendment is specific to Section 263 of the NHS Act—that is to say, the powers to put a statutory scheme in place for medicines. Where action is being taken against a specific instance of high prices, it would not be appropriate for it to be subject to such a wide-ranging consultation. In such cases, the NHS Act requires consultation with the appropriate industry body or bodies prior to the exercise of the powers.
[LORD O’SHAUGHNESSY]

With this amendment, the Government have therefore addressed the real intent behind Peers’ concerns, giving assurance of proper, balanced consideration of the effects of any statutory pricing scheme on the life sciences industry and patient access to medicine without undermining the Government’s ability to operate such a scheme. I hope that it will meet with the approval of the House.

Before closing, I thank the many noble Lords who have contributed not only to the development of the amendment but to the Bill as a whole. I thank the noble Lords, Lord Warner and Lord Hunt, and the noble Baroness, Lady Walmsley, as well as my noble friend Lord Lansley and the noble Baroness, Lady Finlay, for their contributions to improving the Bill. Finally, I also thank other noble Lords who have made important contributions to the debate, including the noble Lord, Lord Patel, and the noble Baronesses, Lady Mash and Lady Wheeler. I believe that we have worked in a constructive and open spirit and, as a result, the Bill is better and stronger than when we found it. I beg to move.

Lord Warner (CB): My Lords, I am grateful to the Minister for the further thought that he has given to the amendment that your Lordships passed at an earlier stage. I am also grateful to him for his courtesy in showing me the amendments before he went forward with them; I very much appreciate that. I accept the Government’s arguments for the new approach that they have provided on the set of concerns that we had across the House about the adequacy of the provisions in the Bill on the life sciences industry and on speedy access to NICE-approved drugs. I accept their arguments that the original amendment was to some extent too restrictive on their freedom of manoeuvre when they need to act on unreasonable high prices. The Government have skilfully met the concerns of your Lordships’ House and I am very pleased to be able to support the amendment.

While I am on my feet, I will also thank the Minister for the courteous way in which he has listened to concerns throughout this Bill and taken the issues away, considered them with his officials and come back and tried to respond to many of the concerns. Across the Benches of this House, we are grateful for the way in which he has conducted the discussions during the passage of the Bill.

Lord Lansley (Con): My Lords, I am glad that my noble friend is on the Front Bench to see this Bill safely through. I share with colleagues an appreciation of how he and officials from the department have worked consensually, carefully and considerably to try to make the Bill as good as we can make it. I welcome the amendments in lieu; they point to a sensible way forward in relation to the consultation on the statutory scheme. I would ask that my noble friend is equally clear that, in the negotiations leading to any voluntary scheme, Ministers will have regard not only to their statutory duties, as we have discussed, but to these considerations reflected in this amendment. One purpose of the Bill is to make a voluntary and a statutory scheme entirely consonant, one with the other.

The only other point that I would make is that, of course, when one passes legislation it is about not just the law but the administration that follows and accompanies it. In that context, it is important that Ministers take these powers, but it is equally important that in the administration of those powers, not least in working with NHS England and NICE, they work in the same constructive fashion to see that the impact on the life sciences industry and the accessibility of the best available treatments for patients, at a price representing value for money, are integral to the purposes of the legislation. I hope that they will equally be part of the further action that the Government take with NHS England and NICE to ensure that, however they manage the budgetary impacts as they must, they do so in a way that has the interests of patients and the country at heart.

Baroness Masham of Ilton (CB): My Lords, I congratulate the Minister on his hard work on the Bill and his helpfulness. I have one question. As this is a global matter, how can the Government assure us that the prices of drugs will come down?

Lord Hunt of Kings Heath (Lab): My Lords, I look forward to the Minister’s answer to that last question. From the opposition Benches, I very much welcome the agreed amendment that has come forward from the Government today. It is good to see how wash-up can concentrate minds no end, and we have reached a very satisfactory outcome. I am very grateful to the Minister and his officials for their co-operation on this.

The Opposition have been in no doubt whatever that it is absolutely right to take action against those companies that have clearly been abusing the system. We should also pay tribute to the Times newspaper for its campaign, which has opened up some transparency in a pretty murky area.

There are two key issues that need to be taken forward. First, the key message of debates in your Lordships’ House is that, in seeking to deal with this particular problem, we must not underestimate the contribution of the pharmaceutical industry to this country, to the economy and to the life sciences sector.

We have a problem in that we are incredibly innovative in the number of new drugs that are developed in this country, but the NHS is finding it increasingly difficult to invest in them and patients are not getting the benefit.

The second is the whole question of balance between the statutory and voluntary schemes—the noble Lord, Lord Lansley, referred to this. I have reached the conclusion that the current arrangements are simply not up to scratch in relation to how government should negotiate with the industry in the future. The patent lack of transparency about the real price paid by the NHS for individual drugs means, in my view, that the arrangements are no longer fit for purpose. I hope that the Government—whichever Government are in power post election—will look afresh at the need for new arrangements in negotiation which get a fair price and also lead to the adoption of innovative new drugs for NHS patients.
Can the Minister say when he thinks the Government will be in a position to implement the key provisions in this Bill in relation to prices?

**Lord O’Shaughnessy:** My Lords, I thank all noble Lords for their warm words and I reciprocate those feelings: it has been a very interesting, challenging and enjoyable experience working with noble Lords on this Bill on what is—as the noble Lord, Lord Hunt, has pointed out—a critical matter. It is critical not just that we get the best possible prices for drugs and that we crack down on those who are trying to rip off the system, but that we make sure we are also supporting the life sciences industry and are improving access for patients.

I am particularly grateful for the work done by the noble Lord, Lord Warner, and I appreciate his support for this amendment. My noble friend Lord Lansley and the noble Lord, Lord Hunt, made the point about the equivalence between the voluntary schemes and statutory schemes. There is equivalence in law and equivalence in spirit. It is in the nature of voluntary schemes that they take into account issues around access and life sciences, because that is, in a way, why they come about. You would not have one if you could not have some agreement on that. By making this amendment today we have provided something that was taken into account by the voluntary schemes by moving it into the statutory schemes and providing that equivalence.

My noble friend is quite right about the need to work in a constructive manner. It is possible to create a system in which the interests of patients, industry and the NHS align. There is no necessary reason for them to be in conflict and, indeed, we all want a system where we have improved access and keen prices that raise the standard of care available on the NHS.

I join the noble Lord, Lord Hunt, in congratulating the Times on its investigations, which continue. Indeed, I think that there was a story at the beginning of the week or the end of last week about that. It has put a turbo boost under this, but clearly there is more to do. This Bill will allow us to get up stream and not have to wait until things get to the Competition and Markets Authority many years down the track; it will allow us to improve things up front.

As to whether the current arrangements are up to scratch and what might happen in the future, noble Lords will understand if I resist making a comment on that last remark. The key clause is Clause 5. Can I take it that once the Bill receives Royal Assent the Government can implement that straightaway?

**Lord O’Shaughnessy:** I believe that would be the case. Of course, there is a difference between what officials can do and what Ministers can give instructions to do in a period of purdah. However, as soon as the measure is in law, it is enforceable.

Motion A agreed.

**Northern Ireland (Ministerial Appointments and Regional Rates) Bill**

**Second Reading (and remaining stages)**

4.01 pm

Moved by Lord Dunlop

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, the context for this short and simple Bill is very clear. Northern Ireland has enjoyed the longest unbroken period of devolved government since the old Stormont Parliament was dissolved in 1972. It is now nearly 10 years since full power was restored to the devolved institutions in Northern Ireland following a prolonged period of suspension. In these years Northern Ireland has taken important and positive steps forward. Northern Ireland is today a more peaceful and prosperous place than it was. Of course, there are still too many acts of wanton violence. Paramilitary activity and terrorism have not yet been eradicated from the streets of Northern Ireland, as we saw all too clearly with the placing of a significant bomb over the weekend by dissident republican terrorists next to a primary school in north Belfast. This is an outrage, putting innocent lives at risk. I pay tribute to the work of the police and other emergency services who work so hard to keep us all safe.

It is clear also that significant economic and social challenges remain to be overcome, so we are all united in this House and beyond in our desire to see the momentum of the peace process maintained. Momentum is what the people of Northern Ireland want their political leaders to deliver, whether here at Westminster or in Stormont. The continuation of strong and stable devolved government is what people voted for in large numbers in the recent Assembly elections. It is what they expect. It is what they deserve. We must not let them down, so protecting the interests of the people of
Northern Ireland is at the heart of this simple, three-clause Bill—a Bill designed to ensure that every opportunity is given for an Executive to be formed so that the ratepayers of Northern Ireland do not suffer greater difficulty in managing their bills or that a gap does not open up in funding for essential public services.

It is ultimately the UK Government who have responsibility for maintaining political stability in Northern Ireland, and the Government take that responsibility very seriously. My right honourable friend the Northern Ireland Secretary has updated Parliament regularly in recent weeks. In doing so, he set out his intention to bring forward legislation with two aims in mind: to provide the legal basis for an Executive to form and to set a regional rate to enable that important source of revenue to be collected. In the final full week of this Parliament, the time is right to deal with both those matters, providing greater certainty for the people of Northern Ireland and creating the opportunity for the parties to come together to secure the resumption of devolved government. The way in which this Bill deals with the latter issue takes into account the reality of the forthcoming general election.

I know that the House understands very well the background leading up to today’s Bill. The collapse of the previous Executive in January placed a duty on the Northern Ireland Secretary to set a date for a further election. He did so in January, with the election held on 2 March. Since then, the Secretary of State has been engaged in talks with the political parties and, as appropriate, the Irish Government, in accordance with the well-established three-stranded approach. These talks have had one clear purpose: to re-establish an inclusive devolved Administration in line with the 1998 Belfast agreement and its successors.

When the new Assembly sat for the first time on 13 March, it set in train a 14-day deadline under the Northern Ireland Act 1998 for an Executive to be formed. That deadline, however, came and went on 27 March. The failure to form an Executive within the prescribed period meant that my right honourable friend was placed under a further duty to set a date for another election. At that point, it was no longer possible for an Executive to form without either another election or new legislation specifically enabling Ministers to be appointed to an Executive.

With talks under way and a realistic prospect of an agreement being reached, to have called another Assembly election would not have been appropriate—a view widely shared, not least by many in this House. Therefore, following consultation with the parties and the Irish Government, the Secretary of State convened a further phase of intensive round tables in the 10 days before Easter.

Progress was made on several fronts during that phase on the formation of an Executive, on the budget and on the programme for government. There was progress too in terms of legacy. Constructive discussions took place with all the parties on the detail of the legacy institutions set out in the Stormont House agreement and the need to reform legacy inquests. As my right honourable friend said on Monday in the other place:

“Although no one will underestimate the challenge of addressing the legacy of the past, the proposals are now sufficiently developed that the next step should be to publish them for consultation”.

In that way, we can listen to the views of victims and survivors and all those who will be most affected by the proposed new institutions.

However, looking at the talks as a whole, it was clear that outstanding issues remained to be resolved and that a period of reflection was necessary to give the impetus for discussions to reach a successful conclusion. As a result, the talks were paused over Easter and, since then, meetings have continued between the parties.

The Government are clear that the restoration of devolved government remains achievable and the absolute priority. However, that will require more time and more focused engagement by the parties on the critical issues that remain, building on the discussions over the course of the past eight weeks. The Government’s hope, and wish, is that the parties can use this period to build on the progress made so far. This is particularly important given that, with an election on 8 June, if a deal is not reached now, the people of Northern Ireland will be faced with nearly six months without an Executive.

The Bill before this House today would provide the space, and the opportunity, for the parties to do just that. The Government consider this to be the most practical way forward for the people of Northern Ireland in the current circumstances. It is an approach that recognises the current focus on the general election and provides the scope for the parties to continue discussions and to resolve outstanding issues, while providing time for an incoming Government to consider their options if a deal does not prove possible before the election. This gives the best possible opportunity for restoring a strong, stable and inclusive devolved Government. I take this opportunity to place on record my gratitude to the parties opposite for their constructive and positive engagement during the process leading up to this point, and for their support for the measures we are proposing today.

Moving to the substance of the Bill, as I have said, Clause 1 would remove the present legal barrier to an Executive being able to form to enable any deal reached to be implemented. It would retrospectively reset the 14-day clock in the Northern Ireland Act 1998, which expired on 27 March, with a 108-day period, removing the present duty that the Northern Ireland Secretary is under to set a date for an election, with this arising again at 4 pm on Thursday 29 June. After that time, as now, an Executive would no longer be able to form. To be clear, this extension applies to the specific circumstances following the last Assembly elections and does not represent a more fundamental change to the Northern Ireland Act 1998. It will provide the space in the current circumstances for an Executive to form, making clear that the parties are not absolved of their responsibility to make progress.

Let me reiterate the point that if a deal was not already in place, it would provide a period for further talks in the new Parliament, allowing the parties to take stock and move forward. It would mean also that if a deal is not struck, there is a period for the new
Government to properly consider the way forward. That is important. In the absence of a deal there will be significant decisions to be made in the new Parliament to provide political stability in Northern Ireland. None of us hopes to face that situation, and this Bill is intended to provide the framework to avoid that outcome. I hope, as I am sure the whole House does, that the parties will seize the opportunity, whether in the coming weeks or soon after, to deliver the Executive for which they have such a clear mandate to secure.

I turn now to Clause 2 on the regional rates. Two acute issues of financial uncertainty are caused by the lack of an Executive. The first is the absence of a 2017-18 regional rate, which represents more than 5% of the total revenue available to the Northern Ireland Executive. Normally this would have been set by the Department of Finance earlier this year via an affirmative rates order in the Assembly. This would have enabled bills to be issued in 10 instalments, giving certainty to ratepayers and allowing various payment reliefs to be applied. However, time has nearly run out for that course. If no rate is set in the next few days, there will be fewer bill instalments of higher amounts, and the longer it takes to set a rate, the worse that situation would become. The only outcome would be bad debt, lost revenue, uncertainty and hardship. Therefore, while we are clear that this is a devolved matter, we are clear also that in the current circumstances only the UK Government can take action to secure the interests of individuals, businesses and indeed the Executive.

Clause 2 addresses this issue by setting a 2017-18 regional rate in Northern Ireland. It does so by setting “pence per pound” rates for both domestic and non-domestic properties. These rates represent a 1.6% inflationary increase, the same approach as was taken by the Executive in setting a rate the year before. As we make clear in Clause 2(4) and (5), it would not cut across the continuing right of the Executive to set a rate by order in the usual way. This would be the most limited step available to us, taken at a point beyond which we cannot delay.

The second financial matter is the lack of a 2017-18 budget. Its absence has meant that since the beginning of this month, civil servants alone have been in charge of allocating cash, which is by no means a solution for the longer term. Before Easter, therefore, the Secretary of State made it clear that he would provide further assurance in this regard if an Executive were not in place, reflecting the UK Government’s ultimate responsibility for political stability in Northern Ireland. The Secretary of State has now provided that assurance in the other place.

First, he has indicated that the Government would be prepared, as a last resort, to pass an appropriation Act in the next Session to provide legislative authority for the expenditure of Northern Ireland departments. Secondly, the Secretary of State has published a Written Ministerial Statement, following the advice of the Northern Ireland Civil Service, setting out indicative departmental allocations. These reflect the budget priorities and decisions of the previous Executive and provide a basis for allocations in the absence of an Executive. These totals would not constrain the future freedom of an incoming Executive to amend expenditure allocations.

These are not steps any Government would take lightly. However, they reflect the duty Parliament owes to the people of Northern Ireland and the Government’s ultimate responsibility, as I say, for political stability and good governance. By passing this Bill we can provide the scope and space for a deal to be done by the parties. The Government will continue to work intensively to secure that outcome in the critical weeks to come. That is what the people of Northern Ireland want for and it is what businesses, community groups and individuals across Northern Ireland want to see. It is what this Bill seeks to deliver and I beg to move.

4.16 pm

Lord McAvoy (Lab): My Lords, I thank the Minister for his speech and for his recent Written Statement to keep the House updated on the situation in Northern Ireland. He has explained very clearly the intent behind the Bill and that is much appreciated. Before I start, I put on record our thanks to the Police Service of Northern Ireland and the emergency services who were called out to deal with the appalling terrorist incident outside Holy Cross School in the Ardoyne on Sunday morning. It was an act that showed total disregard for the lives of children and the local community and actively targeted serving police officers. We pay tribute to the bravery and professionalism of the police and emergency service staff.

All noble Lords will agree that it is regrettable that this legislation has to be before us today. This is not where any of us wanted to be. Our priority, shared across the House, is the restoration of the inclusive, devolved Administration that the people of Northern Ireland voted for. Your Lordships’ House is familiar with the recent events which form the background to the Bill. We make it plain from these Benches that we will support the measures that the Government have brought forward in the Bill while negotiations on the formation of an Executive are ongoing. As the Minister explained, the Bill makes provision to extend the period for filling ministerial offices in the Northern Ireland Assembly, so that this remains an option throughout and immediately after the general election campaign. We accept and support this approach, which is measured and will give space for progress to be made and for an Executive to be formed.

The provisions to urgently set regional domestic and non-domestic rates for this financial year go some way to addressing, as the Minister has said, the acute financial uncertainty facing Northern Ireland. Businesses and communities in Northern Ireland need far greater financial security than this measure alone provides. It is imperative that negotiating parties reach agreement and form an Executive so that the elected Assembly can be returned to take urgent decisions and serve the people of Northern Ireland who elected it.

I have a small number of questions for the Minister, particularly with regard to the time that will be available for negotiations during the coming weeks. Is he able to tell the House what talks are scheduled to take place during the general election period? What continued support will current Ministers and government officials be able to provide to the negotiation process before a new Government are elected? What arrangements are in place so that talks can continue, as I am sure they
have been going on until now, with the Irish Government? The Secretary of State made the welcome statement that constructive discussions have taken place on legacy issues—such an important base to move forward from. Is the Minister able to tell us more about what point the legacy proposals have reached? I think he said that they are ready to be put out for consultation. What preparations are being made and has a timescale been discussed for that consultation? The Troubles touched victims in every part and every community of Northern Ireland. It is the victims, their families and their loved ones who must have their voices heard as we pave the way for dealing with that legacy.

I do not need to remind your Lordships’ House of the range of issues that face Northern Ireland in the months to come. At a local level, communities need decisions and funding for key public services. Northern Ireland is also uniquely placed for discussions, under whichever Government is returned, for the UK’s future relationship with the European Union. As I have said, we lend our support to the interim provisions introduced in the Bill, but the situation we find ourselves in is not desirable and not sustainable.

It is not what the people of Northern Ireland voted for. We are dedicated to the return of an inclusive devolved Administration in Northern Ireland. We must not have a return to direct rule in any form, and we must be honest and vigilant in ensuring that we do not allow each step of this process to make it harder to go back to inclusive, devolved government. After the enormity of what has been achieved, not least through the efforts of many Members of your Lordships’ House, we have achieved far too much to move backwards now. We look to all negotiating parties to meet in the spirit of compromise and agreement, and to do their duty in returning a working Government to Northern Ireland.

4.21 pm

Baroness Suttie (LD): My Lords, I thank the Minister for being in touch with my noble friend Lord Alderdice and me about the Bill last week. I shall keep my remarks extremely brief as we consider the Bill a sensible and necessary approach to the circumstances in which we find ourselves, and we hope to see its swift and unamended passage through your Lordships’ House today.

I begin by paying tribute to the police officers and those from the other emergency services who worked on Sunday to keep the whole community in north Belfast safe, following the discovery of a dissident republican bomb. Those who placed this bomb, not only in the heart of the community but outside the gates of a primary school, do not represent the vast majority of people in the area. Such actions have no place in a democratic society.

It is unfortunate that this election has been called without regard to the sensitive negotiations in Northern Ireland, and that, instead of working with the political parties to secure devolution so that Northern Ireland can have a strong voice in the Brexit negotiations, the Prime Minister has concentrated more on securing her own political future. Given that the general election has now been called, however, we believe that extending the period for forming an Executive in Northern Ireland to 29 June is necessary as further progress on the talks is unlikely during the election period.

We also recognise, as has been pointed out by the honourable Member for Foyle, Mark Durkan, in the other place, that the Government may not be in a position to give undertakings or commitments in the negotiations in Northern Ireland as we move into a period of purdah. So in reality it may not be possible to achieve a comprehensive agreement before the election. I would be grateful if the Minister could confirm whether that is indeed the case.

The general election comes at a crucial time for Northern Ireland. The current vacuum is not sustainable; it is already doing damage to the Northern Irish economy and its public services, so we are also supportive of the second provision of the Bill, which sets the regional rates for domestic and non-domestic property in Northern Ireland for the current financial year. Will the Minister assure us that, in the short but critical three weeks between the election on 8 June and this revised deadline of 29 June, if the Prime Minister is returned to office, she will make securing a stable Executive in Northern Ireland one of her top priorities?

Perception is extremely important in politics. Does the Minister agree that clear leadership must be shown at the highest level of government to help secure the devolution settlement, including prime ministerial visits to Belfast? While we recognise that it is unlikely that much progress will be made in the forthcoming weeks, will the Minister also reassure us that he will continue to consult and work with all political parties in Northern Ireland and confirm that the political parties in Northern Ireland were consulted on, and are content with, the inflationary increase of 1.6% provided for in the Bill?

I give assurances from these Benches that we will not oppose either of the provisions before us in the Bill today. However, I urge the Minister not to let any progress deteriorate in the coming weeks, and ensure that talks in Northern Ireland are resumed as a matter of urgency following the election on 8 June.

4.24 pm

Lord Browne of Belmont (DUP): My Lords, I should like to join other noble Lords in strongly supporting the Bill before us and I fully appreciate that its fast-tracking is unavoidable in the circumstances. I would also like to associate myself with the comments made by other speakers regarding the security services and the very difficult job that they have to do in Northern Ireland.

We all recognise that the achievement of consensus among Northern Ireland politicians is sometimes intrinsically difficult, but nevertheless we should be encouraged by the achievements of the devolved Administration in recent years and by the agreement reached in the Stormont House talks. In the circumstances, the irresponsible actions of Sinn Fein over the past few months are very regrettable and the decision of that party’s Deputy First Minister, the late Martin McGuinness, to resign led inevitably to the collapse of the Northern Ireland Executive and the subsequent Northern Ireland Assembly elections. After the election, Sinn Fein again refused to nominate a Deputy First Minister and thereby again prevented the establishment of a devolved Administration. In contrast, the Democratic
Unionist Party did not lay down any preconditions for the re-establishment of devolved government and continued to seek agreement among all parties on the relevant issues.

The Secretary of State, who has to be congratulated along with his team on the way they have conducted the negotiations under extremely difficult circumstances, remains positive regarding the progress of the talks and believes that there is the will and the commitment among the parties to find a way forward, and therefore the extension of the period for filling ministerial offices provided for in this Bill is very much to be welcomed. Can the Minister give an assurance that 29 June is the final cut-off date and will be the last deadline to be set? I feel that if this is made clear, it will focus the minds of the negotiators on reaching an agreement.

We must all hope that a successful conclusion to the talks will be arrived at by that date. Moreover, it is clear beyond doubt that unless the provisions of the Bill related to the setting of the regional rate are also passed into law as soon as possible, the administration of Northern Ireland will cease to function effectively.

In concluding, I should like to take a broader perspective on the future of Northern Ireland. The decisions which must be taken in the next few years on the subject of the United Kingdom’s withdrawal from the European Union and on the constitutional status of the constituent countries of the United Kingdom are probably more important than any taken, certainly in my lifetime. Personally, I strongly favour the retention of a strong United Kingdom comprising England, Scotland, Wales and Northern Ireland, and I fully support the decision of the people of the United Kingdom to leave the European Union as expressed in the recent referendum. It is essential that the representatives of Northern Ireland are fully consulted during these important discussions, but this will be possible only if the devolved institutions are in place. Can the Minister inform the House about what steps will be taken to ensure that Northern Ireland interests are fully represented in the unfortunate event that the talks fail?

I have listened to the Minister and I understand that the proposals dealing with the legacy of our troubled past are on the table. I am pleased that he has informed the House that the Government are willing to publish them so that wider consultation can take place in the next few weeks.

We must all hope earnestly that the talks will reach a successful conclusion before 29 June so that a functioning Executive can be established which will deliver peace and prosperity for all the people of Northern Ireland. I can assure the House that my party is totally committed to reaching out and securing a lasting agreement. The message coming from the Province right across the board is that people want devolution up and running, and I support the Bill.

4.29 pm

Lord Trimble (Con): My Lords, as has in effect been said, this Bill is necessary. Consequently, it will be supported and will proceed in this House. It also comes at the last minute. I understand why the Government have waited until the last minute before bringing forward these proposals, because they will want to proceed with the talks that have been going on as though that is the key thing where they want success. It is then natural to leave the Bill to the last minute before bringing forward necessary provisions if there has not been agreement.

We also have to consider what will be done in the future. When we look to that future we are dealing with a very significant anomaly where one party with less than a third of the seats in the Northern Ireland Assembly is in a position to collapse the Assembly, has done so and shows no sign of taking a different approach. I know the Government will hope that they can find an agreement between now and the new cut-off date in June, but the auguries are not good. We have to consider where we are.

I note that the noble Lord, Lord Browne of Belmont, wants the new deadline to be final—that is what I understood him to say. If it is to be final, the question is: what will happen when that comes if things have not succeeded? In that sense, to come to what the noble Lord, Lord McAvoy, said, we do not want a return to direct rule—I agree with him on that—but if we have a final cut-off date in June, we do not have success and we do not have direct rule, what do we have? We have to give careful consideration to this.

The problem at present is the inability to form an Executive. Are an Executive absolutely necessary? There may be other ways to deal with this. I apologise to the noble Lord, Lord Murphy of Torfaen, for not having consulted him on what I am about to say—he would be in a position to give a very interesting response—because I look to what happened with the first phase of devolution in Wales, where there was a corporate Assembly without an Executive that functioned reasonably effectively. As I understand it, that operated for some six or seven years, then the Welsh Assembly wanted to move to having an Executive, but that shows what could be done in this situation.

If, come the cut-off date in June, we are in a position to bring forward a little bit of legislation that vested the administrative powers in a corporate Assembly, that Assembly could continue to function and it would be able to move to have an Executive the moment that the party that presently will not nominate for an Executive shows a willingness to do so. We would have an arrangement that could be flexible and would not prevent an Executive being formed at a later stage, but would mean that the Northern Ireland Assembly would continue, that there would not be direct rule and that the administration can be carried forward by the corporate Assembly.

That is a suggestion. There may be others, but while the Government will not want at this stage to make any formal consideration of plan B, thought needs to be given to this. This is a modest suggestion that I would like to put out there. It might help to make some parties a bit more amenable when they realise that there is a plan B. I am well aware of the attitude that Sinn Fein can take to deadlines when they are there; it seems to regard a deadline as an insult and wait until it breaks the deadline before it does anything. That is the way it used to operate in the past. Maybe it has learned something in the interval, but I would not want to count too much on that. I leave those thoughts for people to consider.
Lord Morrow (DUP): My Lords, at the outset of my comments, I, too, pay tribute to the Police Service of Northern Ireland for the work it has done and been called on to do in recent times. Of course, it should not have to do that. Unfortunately, there are those in our society who seem to think that the planting of a bomb at the gateway of a primary school is something to be proud of. It is a downright disgrace that such an incident should happen. I roundly condemn those who did that and I commend the police on their swift action and for preserving life. Too often in the past, their predecessors, the RUC, got simply nothing but criticism when they stood in the way of those who would destroy life. I pay tribute to the PSNI today.

In this debate today, I do not want to either overestimate or underestimate the situation that Northern Ireland finds itself in. There are those who seek to blame the Government here at Westminster, but I make it very clear that I attribute no blame whatever to this Government for the situation in Northern Ireland. The blame can be traced much closer to home and certainly not here in London. It must be said that, given the type and style of government that operates in Northern Ireland, it can be difficult and trying to provide smooth and progressive government. I hope that lessons will be learned from the latest experience. Regrettably, I am extremely doubtful that the form of government we have is sustainable in future. I would like to be proved wrong—and would be happy enough if I am—but I say that most sincerely.

The Bill before the House is, as has been stated, to set a regional rate for Northern Ireland for 2017-18 and allow a new Executive to be formed. It provides an extension of time to the period when an Executive can be formed. Of course, this should have been the function of the Northern Ireland Executive and the Northern Ireland Assembly, but the refusal of the Sinn Fein Finance Minister to bring forward a Budget forced the Government's hand; hence the debate today and the situation we find ourselves in.

I welcome the Government's decision. I and my colleagues will support it. My only criticism is that, slightly contrary to what we have heard, I think it should have happened sooner. Some would say that it is what Northern Ireland voted for: that is, for their own Government, to make their own decisions and to strike their own budgets and rates. That is, of course, correct. Some say that was voted for on 2 March and that is correct, too. However, it was also voted for in May 2015, but the democratic wish of the people was denied. Today, we are at a standstill. Sinn Fein apparently sees the merits of democracy only when it suits them and works for their agenda.

We all know that Sinn Fein do not like making difficult decisions. We were told that the election held on 2 March was because there were issues regarding the renewable heating initiative. Strange to relate, since 2 March we seldom if ever hear of RHI. It has somehow disappeared and is no longer an issue. Let me say very clearly: RHI was never the reason for the election, simply the excuse.

We are told that there is a lack of respect and this must be addressed. Of course, this is Sinn Fein speak. Where was the respect when Gerry Adams referred to unionists as “B—s”? I will not complete the word. He stated very clearly that equality was a means of breaking unionists. Well, 30 years of murder and mayhem, of bombing and destruction, did not achieve this, and I assure the House that the new tactics of Sinn Fein will not achieve it either. When Sinn Fein speak about respect, it has a very hollow ring to it.

Then we had the dreadful, insulting remarks of Martina Anderson, Sinn Fein Member of the European Parliament. When, referring to the Brexit vote—irrespective of the position you take on that—she screamed out where the Prime Minister could put her borders, it was the most disgraceful, disrespectful and insulting remark I think I have ever heard a politician come out with. To put it mildly, it was quite outrageous. Of course, we also had the recent appointment by Gerry Adams of Michelle O'Neill. She travelled to Coalisland to eulogise IRA murderers, and today has announced that she will be paying homage to the eight IRA terrorists who were intercepted by the security forces as they went on a mission to murder, bomb and destroy.

What does respect mean? It seems to mean different things to different people. My understanding of it seems somewhat different from that of those who tell us we do not show them respect.

We will give the Bill our full support. I think it is necessary, but it is most unfortunate that it has to be this way.

Lord Empey (UUP): My Lords, like for many other Members, it is a matter of deep regret for me that this piece of legislation is before the House. We thought, perhaps naively, that the days when such legislation was required were over, but that is not the case and I have very little confidence that this is necessarily the last piece of legislation that we will see in the next few months.

A number of noble Lords have mentioned the actions of the PSNI at the weekend, but one should not be surprised. Whenever there is a political vacuum, these types of people will fill that vacuum. Nature abhors a vacuum. As a former Minister, the noble Lord, Lord Murphy, knows what I mean. This is what they do. The incident at Holy Cross, however awful, is merely one of a series of similar incidents that perhaps noble Lords have not picked up on—successive attempts to kill members of the security forces or the prison service. This is not a new tactic. It has been ongoing for quite a long time. Not only should we pay tribute to the PSNI and what they have done, but I have to say that the co-operation between the PSNI and the Garda Siochana is at one of the highest levels it has ever been. They are working very closely together and have managed to prevent a very substantial number of attacks. We must never forget that that level of co-operation is the one thing that is preventing further attacks being successful.

Turning to the Bill, as the Minister said in his opening remarks, it is the most minimalist position he can take. Noble Lords may or may not be aware that rates in Northern Ireland are still levied. We never had the council tax, which was perhaps a good thing.
But one advantage with the rates is that you can collect them because properties do not tend to move overnight—although I am sure it is possible to find a way of doing that. The rates are divided into two parts: the district councils set a district council rate and Stormont sets a regional rate. They are roughly 50/50, but councils do not collect rates in Northern Ireland. It is done by an agency of the Department of Finance and they are already a month late. I suppose I am not the only person in the Room who will have to declare an interest, because there are those of us who are going to have to pay them.

The delay has already cost a lot of money, as we had to mail every property in Northern Ireland to tell them that their rates were not going to be collected on time, and so forth. So the cash flow that local councils depend upon—bearing in mind that they still raise in excess of 80% of their money out of the rates—will, I suspect, already have been interrupted. Whether that will be dealt with by borrowing or using reserves, it will be balanced out in due course. The point is that this leads to gross inefficiency in budgeting and planning, and has already added costs. If things come out late, then people get into trouble or debt and their whole planning goes out of the window, so we need to take care. There is no alternative to what the Government are proposing in the Bill.

Similarly, when we turn to the clause dealing with ministerial appointments, had the Bill not been brought forward I have no doubt that somebody could have judicially reviewed the Secretary of State because, by the far side of the general election, the argument might be that his not calling a general election there within a specified time was not reasonable. We therefore had to proceed with this legislation to ensure that the Secretary of State is protected from that and that another opportunity is created for the formation of an Executive. The noble Lord, Lord Trimble, put forward an alternative idea that should not be possible. Without going into the merits or demerits of that proposal, I ask the Minister to assure the House that, should he find himself in difficulty at the end of June, he and his colleagues, including his right honourable friend in the other place, will look flexibly and creatively at alternatives to direct rule and a collapse of the institutions.

Having been down the Stormont steps a few times myself, I can assure your Lordships that it is much easier to get down them than to get back up them again. We must not forget that we have North-South institutions, some of which I played some part in creating, along with the noble Lord, Lord Trimble, and others. They obviously lack direction because that direction has to come from the Administration in the Republic and the Executive in Northern Ireland, and of course one half of that equation is missing. So all those bodies spending taxpayers’ money are left rudderless and without proper direction. This can be carried forward for quite some time, and those of your Lordships who have been in situations such as ministerial positions will know that you can do this only for so long, but we have to remember that Stormont has been out to lunch since before Christmas and we are now talking about the end of June. Who knows whether that will be the finish of it?

Mention has been made of the budget. There should be a properly fixed budget. I would hope that the departments would be looking at their budgets for 2018-19 and beyond now, but they do not even have a properly agreed budget for this year, other than the fact that a civil servant has taken a decision under the rules. The Secretary of State may issue a statement, but of course that statement has no legal power. It merely raises the issue, but the civil servant is setting the rates—the departmental budgets.

We know that Northern Ireland has the longest waiting lists in the health service and huge problems over education. We fought for the ability to impose our own rate of corporation tax and were ultimately granted the ability to do so, but that has gone down the drain now. It was supposed to come in in April next year, but there is no possibility of that happening now, so there is another lost opportunity.

In the last Stormont Administration, there was a high level of incompetence. We have to be honest about that and about other things. It was not a good Administration. It stayed, it was there, it served that purpose and that was good, but it was not a good Administration.

Mention was made of the United Kingdom leaving the European Union. The total contribution so far from Stormont to Whitehall has been a two-page letter last August, which set out the very obvious, but we have not had any meaningful input. I join other noble Lords in asking the Minister, as I asked his colleague from the Department for Exiting the European Union, how, precisely, Northern Ireland’s views are going to be put forward. We have the most critical and difficult situation developing with the border and we are not even at the races. We are making no input of any submission. Stormont is silent. There has been one letter in the past nine months. That is most unfortunate.

All we are doing is showing contempt for ordinary people who are on long waiting lists. We have hundreds of people on protective notice in the voluntary and community sector because they do not know whether the money is going to be coming in or not.

This brings me back to a point I have made in this Chamber on a number of occasions about parliamentary oversight of the devolved institutions. There is none. That is a major mistake. We have to be continuously watching. Vast amounts of taxpayers’ money is going not only to Northern Ireland but to Scotland and Wales. The heating scandal that was ostensibly the issue that brought the Executive to their knees has been mentioned. I agree with the noble Lord, Lord Morrow, that it was a passing vehicle that was used, not the main cause of the Sinn Fein decision, but the scandal is still there, the bills are still to be paid, it should never have happened, and nobody is looking at that. We are again talking about huge sums of money. I totally oppose the concept of devolve and forget. It is a rotten policy. It does not apply only to Northern Ireland. It is a mistake. There must be a level of parliamentary oversight, particularly when the vast amount of money spent by these Administrations is coming from here. I will leave that for another day. I do not expect the Minister to respond on that, but I hope he will clearly indicate that he will keep his options open.
[LORD EMPEY]
As to Mr Adams and Sinn Fein, whatever people have to say about Martin McGuinness, and there is lots that people could say about him, he was more involved in the institutions in Stormont and more committed to them. I do not think Mr Adams is in the same position. The negotiations after the election are going to be extremely difficult, but I hope that the Minister and his colleagues will be prepared to keep an open mind and look at creative options because to close the place down and abandon the institutions with all the problems that arise is the worst option. I hope it is not necessary to restore direct rule. If it is, we will have to deal with it, but I sincerely hope that we can avoid it, and that may require a lot of creative thinking.

4.54 pm

Lord Lexden (Con): My Lords, I have worked closely and most enjoyably with my noble friend Lord Empey throughout this Parliament, and indeed for years before, and it is a great pleasure to follow a speech into which he injected so much of his characteristic wisdom and humour.

The Bill is clearly essential and the Government deserve the full support of the House for it. The rates in Northern Ireland must be set and paid in the usual way, so that vital local services can continue to be provided and those who deliver them can continue to receive their pay. It is right, too, that the time available for talks on the formation of the new devolved Executive should be extended. The Government tell us that progress has been made—that being so, they must persist in their endeavours.

Their persistence commands the deepest admiration. It would be interesting to tot up the total number of hours that have been spent in recent years in talks, first to produce the Stormont House agreement in 2014, then to try and arrange for its implementation in 2015 and now, in 2017, to restore devolution itself to life in this wonderful Province—an integral part of our country. How do they fill the time during all these long hours of talks? The sheer extent of the talking should at least demonstrate unequivocally to everyone at home and abroad that absolutely nothing is being left undone in these valiant efforts to restore power-sharing between the Democratic Unionist Party and Sinn Fein. They are perhaps the most unlikely partners in government in this country that the wit of man could contrive, given that their fundamental constitutional objectives are diametrically opposed.

Everyone wants devolution to be restored successfully in Ulster. How reassuring it would be if the two parties on which success wholly depends could find it possible to issue some form of joint statement pledging themselves to work together constructively in the years between one Assembly election and the next, for the good of all the people of Northern Ireland, regardless of their conflicting constitutional objectives. Such a statement, and an agreed programme of work founded on it, would provide a really firm basis for the stable, enduring and fruitful power-sharing for which so many have yearned for so long. Without such some such joint approach, will not devolution, if and when it is restored, be conducted once again largely through separate departmental fiefdoms without serious regard to collective responsibility, further entrenching the deep party—and thus communal—divide in this part of our country? How could such a state of affairs serve the true interests of our fellow country men and women in Northern Ireland?

In the circumstances that we confront today, we may very well need to give the most careful consideration to the ideas put before us this afternoon by my noble friend Lord Trimble and the noble Lord, Lord Empey. The Conservative and Unionist manifesto at the election two years ago stated:

“The Conservative Party is the party of the Union—and we will always do our utmost to keep our family of nations together”.

In its manifesto specifically for the elections in Northern Ireland, the party emphasised:

“We will never be neutral in expressing our support for the Union”.

Today, those commitments are more important than ever before.

4.58 pm

Lord Rogan (UUP): My Lords, first, I apologise to the noble Lord, Lord Dunlop, as I missed the first minute of his statement. I wish also to associate myself with the remarks of the noble Lord, Lord McAvoy, the noble Baroness, Lady Suttie, and other noble Lords regarding the actions of the PSNI at Ardoyne last Sunday. But as my noble friend Lord Empey said, members of the PSNI face murderous violence from republicans daily. The people of Northern Ireland, and indeed we in this House, owe a debt of gratitude to the PSNI and its bravery. My noble friend Lord Empey talked about declaring an interest, and I have to declare an interest in that my cash flow has been extremely improved by the late collection of the rates.

Establishing an Assembly and Executive in Northern Ireland is absolutely vital, as the United Kingdom is about to embark on formal negotiations with the European Union. We need strong voices arguing for Northern Ireland here in Parliament and in Stormont. Likewise, with the upcoming Westminster election, it is vital that we elect for Northern Ireland 18 MPs who are willing to take their places in this Parliament. What we do not need is the abstention of Sinn Feiners, receiving a salary and drawing maximum expenses without any meaningful way of contributing to the Parliament in London. We need a strong voice for Northern Ireland to ensure that we get the best possible deal for our farmers, universities, businesses, communities and voluntary sector.

The legislation brought forward yesterday by the Secretary of State provides some certainty by striking a regional rate so that the rates will be collected and public finances and local government services can still continue to function in Northern Ireland. However, it is somewhat embarrassing that something as clearly a devolved issue as Northern Ireland regional rates has been legislated here in Westminster. It is a sad indictment of the current state of affairs in Northern Ireland politics and in particular the conduct of DUP and Sinn Fein, currently the two largest parties in Ulster.

The Bill seeks to extend the date for a formal Executive, which will give some breathing space after the general election on 8 June. However, devolution in
Northern Ireland cannot simply be put on ice without consequences. With no Government in place, key strategic decisions are not being taken regarding the health service, our education system, our economy and many other factors. Indeed, as the noble Lord, Lord Empey, has alluded to, one casualty of the current political crisis is the devolution of corporation tax. It now appears extremely unlikely that we will see a rate of 12.5% by April 2018, as was previously agreed. This represents a very great missed opportunity.

The indicative budget and departmental allocations brought forward yesterday by the Secretary of State have no statutory footing or ministerial oversight. It is a civil servant’s budget, and that position is simply not sustainable. Decisions regarding the public finances should be taken by responsible Northern Ireland Ministers who are accountable for their actions, not simply drawn up by Permanent Secretaries.

In March, 90 MLAs were elected by the people of Northern Ireland to a local Assembly in the expectation of their forming an Executive at Stormont where local decisions could be taken and Northern Ireland Ministers could be held to account. The steps taken this week by the Secretary of State should be an exception. We need devolved government back up and running as soon as possible so that the Secretary of State does not have to legislate for us again in the near future. In the meantime, though, my party supports the Bill.

5.03 pm

Lord Alderdice (LD): My Lords, I too identify myself with the comments made by my noble friend Lady Suttie about the horrible events in north Belfast and, indeed, about the Bill itself. At this late stage of the Parliament, and at this late stage of a debate on this emergency legislation, it would be quite inappropriate for me to make a lengthy speech or one that simply repeated things that had already been said in the debate. However, there are one or two things that are worth saying.

No one ever thought that the peace process would be a sprint. Some realised it would be a marathon; others realised it would be a steeplechase with plenty of hurdles. The truth is that in many ways it is a relay race, with Governments passing the baton from one to the next. This generation of Northern Ireland politicians has dropped the baton. A previous generation learned, through painful experience of violence, trouble and many political talks, that there had to be some better way of organising things for ourselves in Northern Ireland. Of the many lessons we learned, the crucial one was that addressing our problem was about addressing disturbed relationships between our communities. The noble Lord, Lord Dunlop, mentioned the three-stranded process. It was three-stranded because we were dealing with three sets of relationships.

What has been forgotten by the current generation of politicians is that it is all about relationships. As I listen to what has been going on prior to and during the early days of this election campaign, I do not hear people speaking of others as though they recognise that they must have a working relationship with them. To some extent, the noble Lord, Lord Morrow, if not others, demonstrated to the House something of the kind of problem that one might find. If we were to have members of the nationalist community or republicans in this Chamber—which we do not—the noble Lord, Lord Lexden, and others would not have to wonder what they were talking about over such long periods. They would find that the disagreements have no difficulty finding momentum and continuing for many days, weeks and, indeed, years. Without establishing some kind of better working relationship with each other, there is little point in saying that we must have devolution, we must have an Executive and we must get on with working together when there is no sign of that being done.

That brings me to the proposition laid out by the noble Lord, Lord Trimble. On the last occasion on which we debated the issues, he and I both indicated that some creativity of thinking was important, and he has taken that forward. I support what he said about creative thinking and the specific measure that he suggested: between now and the end of June, we hope that there will be agreement, but we will not be hanging on by our fingernails waiting for it. On the part of the officials of the noble Lord, Lord Dunlop, serious work needs to be done on the option of the Northern Ireland Assembly operating much as the Welsh Assembly did during its first years: taking responsibility, not only because it is difficult to form an Executive but because in local councils in Northern Ireland, for many years, Sinn Fein, unionists, Alliance and others have been working effectively as corporate bodies and making decisions. Sometimes it takes a long time to get the decision, and the decisions are not necessarily always the best, but they are better than no decision and they are better than people in Northern Ireland not being directly represented by the Assembly. I give way to the noble Lord.

Lord Elystan-Morgan (CB): I am most grateful to the noble Lord and, like everyone here, I appreciate that he is casting around, as is the noble Lord, Lord Trimble, for any solution to this most difficult situation, but the Welsh Assembly is a very limited parallel in this case. Why? Because what were transferred were not legislative rights but executive functions. Those functions were transferred from Ministers of the Crown here in Westminster to an elected Assembly in Cardiff. The legislative transfers were very limited. Therefore, it is not a precedent for Northern Ireland, unless one takes the view that it is possible to have a legislature dealing without an Executive. That may be possible.

Lord Alderdice: I thank the noble Lord. I have to say that I am pretty familiar with the fact that it was different because, when the Presiding Officers of the Welsh Assembly and the Scottish Parliament were appointed, all three Presiding Officers were, as is well known in your Lordships’ House, Members of your Lordships’ House. We were also all sons of the Presbyterian manse, as it happened. We spent a lot of time talking to each other about these issues, and there were many things that we did not agree to do.

For example, I suspect that my noble friends on the Benches opposite would appreciate the fact that when we were discussing the question of language in the Northern Ireland Assembly, the people in Dublin suggested that we should not go as far on the Irish
The noble Lord is absolutely right to point out that the Assemblies are not identical, but it would be a mistake to think that one is merely casting around for any possibility.

We have to make changes to the way the Assembly is run, but we also have to ensure that we do not wipe out a generation of Northern Ireland politicians who will have to find some way to build relationships. They will not do that if there is no elected Chamber in which to meet and no elected responsibilities for them to take. They will go back to their own communities, snipe at each other and not try to build a relationship. It is crucial that there are ways for that to be done at the level of the Northern Ireland Assembly, not just at the level of local government.

It is also crucial that we find ways in which elected representatives at a senior level can be involved in the negotiations on Brexit, as has already been said. That requires a Northern Ireland Assembly, but it requires one that is taking responsibility because, quite rightly, the people of Northern Ireland will not support the idea that politicians are paid to be Assembly Members without any serious responsibilities to undertake. What the noble Lord, Lord Trimble, has said is thoughtful; it needs to be worked on by officials at the Northern Ireland Office. We cannot simply wait until 5.30 pm on 28 June, when people suddenly begin to think, “My goodness, what can we do at this point?”.

I do not imagine that they are doing that—nor do I imagine or even expect that the Minister will comment on this issue in his speech. I do not table this to ask him a question to which he should respond, because he should not; he should be working as he is doing, and as his right honourable friend in the other place is doing, to try to get an outcome. However, it is very important for us to think about what might happen in the other circumstances.

I appreciate that the implication of this legislation is that we will not have an Assembly election on the same day as the Westminster election. There are those who would have liked that to happen. I do not think that the majority of people in Northern Ireland wanted it, but for other reasons—I think it will be a very polarised Westminster election in Northern Ireland—the last thing we want to do is create out of that Assembly even more polarised than the one before it.

So it is the right decision by the Secretary of State and his colleagues, and I support it, but I raise the concern that we must not feel that, by passing this, we have put the problem to bed. As other noble Lords have said, we are simply putting on a piece of sticking plaster that takes us through the next couple of months. Then we will have some seriously difficult problems that will undoubtedly come back to your Lordships’ House one way or another.

5.11 pm

Lord Cormack (Con): My Lords, I shall speak briefly in the gap to commend the Minister’s words when he said that the legislation represented the duty that Parliament owes to the people of Northern Ireland. I agree strongly, but I have one reservation about this legislation. A regional rate must be set; the rationale given in the papers that we have seen associated with this Bill is a little too coy.

The fact of the matter is that the United Kingdom’s subvention to Northern Ireland—which I fully support; it is what the union means—is the equivalent of £20,000 a year to every family of two. In such a context, not to set a regional rate would be absolutely outrageous, and I think that this should be stated absolutely explicitly. For this deeper reason, the tradition has grown up—it exists on the unionist side, the Northern Irish side and the London side—of not talking about the financial realities in Northern Ireland and the scale of that subvention. I am now convinced that we will not get a settlement or a deal on devolution unless people come to terms with the reality of the United Kingdom and the profound economic benefits that it brings to Northern Ireland.
As I have said, both for reasons that are very understandable, the Westminster Government have not talked much about this in public and the people of Northern Ireland and their parties have talked remarkably little about it. But it is part of the way in which we can shift the discourse on to greater realism. I strongly support this legislation, but I think the argumentation for it is just a little too coy.

5.15 pm

Lord Eames (CB): My Lords, I, too, will be brief in using the gap. I think that what noble Lords have heard this afternoon from those of us who come from Northern Ireland, if they needed any conviction or encouragement, will have left them in no doubt as to the sheer frustration and disappointment which is felt right across our community. It is not easy at this stage to stand back and point the finger of accusation. It is, I believe—in the words of the noble Lords, Lord Trimble and Lord Empey—a time for us, in the positions that we occupy in this House, to encourage positive, creative thinking about the whole nature of the theory of devolution. What we are seeing in Northern Ireland is not just the reaction or the failure of the political machine, after years of violence and suffering and filling a vacuum, rather it is fundamental questions about what devolution means in a post-conflict society. I regret that, having tried to play a role in the reconciliation process as Primate of All Ireland for over 20 years, I have learned the hard way how difficult the whole question of the legacy issue is.

I simply caution the Minister that to talk about the publication of a White Paper on ways of dealing with the legacy issue is the right step but it takes us into a minefield. As co-chairmen of the Consultative Group on the Past, way back over the years, Denis Bradley and I discovered how difficult that minefield was. The minefield has not altered; it has deepened. We are not finding new mines, but ways of discovering the old ones and putting a different colour on them, putting a different emphasis on them, and hearing other voices talk about the same mines. This is one of the worst lessons about the situation we are in, and we ignore it at our peril.

The question is: what is devolution and what is the best form of devolution for the people of Northern Ireland? The mother of one of our security forces who was murdered during our Troubles said to me the other day, “We have simply answered the violence of the IRA and the loyalist groups by saying, “Let’s see how we can split the political process and make it another way of fighting the war”. That is a devastating indictment of where we are: “another way of fighting the war”. In God’s name, can we not have the ingenuity and wisdom to find a way of increasing the responsibility that local politicians can have, not just encouraging them to use it but educating them on how to use it? That, I believe, is what the people of Northern Ireland are saying at this time as I—with regret—support this legislation.

5.19 pm

Lord Murphy of Torfaen (Lab): My Lords, the remarks of the noble and right reverend Lord, Lord Eames, sum up a great deal of this very important debate. He referred to the men and women of evil who we thought had been overcome following the peace process. Clearly, they still exist, as we know, given the incident in the Ardoyne at the weekend referred to by noble Lords.

What is so good about this debate, short though it is, is, that your Lordships have brought enormous wisdom and experience to it. I hope that the Minister, when he winds up, and, indeed, his right honourable friend the Secretary of State, will take great heed of the points that were made. My noble friend Lord McAvo have already said that these Benches totally support the Bill. We support the fact that it is important to raise the regional rates. When I was Finance Minister, one of the most unpopular things I had to do was to impose rates on the people of Northern Ireland, but it had to happen, so obviously we agree with that.

Obviously, there is a need to ensure that we keep on trying to restore the institutions. A large number of your Lordships have referred in this debate to direct rule. Some in Northern Ireland—none in this Chamber. I am sure—would like direct rule to come back, because if there is direct rule—I was a direct rule Minister for five years—it means that you avoid taking difficult and nasty decisions. You ask British Ministers to do it for you and then you castigate them for doing it. At the same time, all you are as political parties are supplicants to whoever is in power—a Labour or Conservative Government. That is a wholly unsatisfactory way to run any country, let alone Northern Ireland.

The noble Lord, Lord Empey, made a very important point when he said that it is so much easier to decide not to have an Assembly and to bring down the institutions than to restore them. That is at the heart of what has happened over the last couple of months. It is easy to bring down those institutions but very difficult to raise them up again.

The noble Lord, Lord Alderdice, referred to the importance of having a political generation. Certainly, over the years since the signing of the Good Friday agreement, a political generation has grown up in Northern Ireland who are used to government and to doing things. It would be a tragedy if the talents of those men and women across the community in Northern Ireland were wasted.

A very interesting comparison with the Welsh Assembly was made by the noble Lords, Lord Trimble, Lord Alderdice and Lord Empey. Indeed, my noble friend Lord Elystan-Morgan referred to it as well. When the Welsh Assembly was first established in 1999, it was a body corporate—a bit like a big local authority, if you like, although, of course, it always had Ministers. However, in the early days, the Assembly had a choice. It could, if it so wished, abandon that idea and go back to the committee system of a large council. I do not advocate that as necessarily the best thing to do in Northern Ireland. However, we have to seek out the most imaginative possibilities we can find so long as they retain the principle that all members of the community in Northern Ireland support them. Such possibilities are worth a try if there is support for them. Indeed, anything that will restore devolution is worth a try.

Some of the issues under discussion can be resolved—for example, that of the Irish language. We have experience in Wales of the Welsh Language Act and of Welsh
[LORD MURPHY OF TORFAEN]

medium schools. We now have, although this was not the case originally, a consensus on the Welsh language. For many years it caused a hugely difficult political situation in Wales. People took very different views on the issue of the language and it was heavily politicised. I do not think that that is now the case in Wales because of what has happened over the last 20 years. I know, for example, that Alun Davies, a Minister in the Welsh Government, is very willing—indeed, he recently wrote an article in the Western Mail—to give advice to Ministers and others in Northern Ireland on how proposals for the Irish language can work alongside those for the Welsh language. The idea is to compare them and look at best practice to ensure that the arrangement is consensual rather than causing confrontation.

I take the point that the noble and right reverend Lord, Lord Eames, made about legacy, but I think that there is a worthwhile proposition in the consultation. Anything that means that people continue to talk about how to deal with the past must, in itself, be a good thing.

Another contentious issue in the Assembly is petitions of concern, whereby everybody has a sort of mutual veto. It was never meant to be like that following the Good Friday agreement, but it needs to be addressed.

Your Lordships are not really working on these issues with a very promising back-cloth. There is no doubt that Brexit divides people in Northern Ireland and that the border and the relationship with the Republic of Ireland are hugely significant. Those things are bound to play a part in the forthcoming general election in Northern Ireland. They cannot be avoided—what is there is there. Nor can the general election be avoided. It is not the best thing to happen in the middle of talks in Northern Ireland but it is there. All I would say from these Benches is that the Government should keep the show on the road.

I understand that the Secretary of State and his Minister in the House of Commons will be fighting their own elections. Happily, like all of us, the Minister in your Lordships’ House will have no election to fight, so I hope he will be able to ensure that some talking continues during the election period and that people keep their eyes on the issues before them. All of us who know Northern Ireland realise that whenever there is an election, there is polarisation, and I do not think that the general election will be any exception. However, that does not mean that behind the scenes work cannot still go on.

The Irish Government is an important issue. They do not have an election and they have a role to play. They could continue to have discussions with the different political parties in Northern Ireland and I hope that they will. After the election, there will be three weeks to resolve this issue. Again, the noble Lord, Lord Alderdice, made a very important point. This is all about relationships, trust and confidence between people and between members of the Government. I hope and pray that between now and 29 June there will be a resolution. If there is not, I think there will be a case for the Prime Minister—whoever that might be—to go to Northern Ireland with the Taoiseach to ensure that the talks are put up a step. That might not be necessary but I know that every Member of this House wishes the Government and the political parties well in resolving these extremely difficult issues.

5.28 pm

Lord Dunlop: My Lords, first, I thank all noble Lords who have contributed to today’s proceedings, providing valuable and important exchanges on the Bill. I very much agree with what the noble Lord, Lord Murphy, said. Today, we have heard great wisdom from noble Lords across the House, as I think is always the case when we have debates about Northern Ireland.

A theme of the debate has been that this is not where any of us wanted to be but it is where we are, frustrating though that is, as the noble and right reverend Lord, Lord Eames, rightly said. I think that there is broad agreement across the House on the steps that the Government are taking today. Another theme that has come across very strongly is that, in searching for solutions to restore devolved government in Northern Ireland, there is a need to show imagination and creativity. That was mentioned by, among others, my noble friend Lord Trimble, the noble Lords, Lord Empey and Lord Alderdice, and my noble friend Lord Cormack.

I extend my thanks once again to the parties opposite and to all others for their support for the Bill and agreeing to its faster than usual passage through this House. As we have heard, the Bill is short and modest in scope, but it provides the framework within which the parties may come together, reach agreement and form an Executive. That is what the people of Northern Ireland voted for on 2 March, and it must remain the focus. This Government will always uphold their responsibilities on political stability and good governance in Northern Ireland. That is why the Bill provides the flexibility for an incoming Government to act in the best interests of Northern Ireland and the space for the parties to conclude a deal. I am very appreciative of the support of the House for this approach.

I was grateful too for the support there was for the Government taking the exceptional step of having this Parliament set a regional rate for Northern Ireland for this year. Although very much a step we had hoped to avoid, it is an essential move for securing greater financial certainty for individuals and businesses in Northern Ireland.

I turn now to some of the specific points raised during the debate. Obviously, one important theme was the question of where the talks go from here and what that will mean for deadlines and creative solutions. These issues were raised by the noble Lords, Lord McAvoy, Lord Browne, Lord Empey, Lord Trimble and Lord Lexden, and the noble Baroness, Lady Suttie. It is very important that we do not absolve the parties in Northern Ireland of their responsibilities to resolve their differences. The Secretary of State will be meeting the parties tomorrow to consider the way forward. That is the right moment to consider how best to proceed.

Of course the UK and Irish Governments will continue to maintain contact during the election period in line with the three-strand approach, and of course the Northern Ireland Office will continue to be prepared
to uphold the UK Government’s responsibilities during the pre-election period. As I have said, the Bill provides the necessary space for agreement to be reached, and that is where the focus should rightly be.

However, this process cannot drag on indefinitely. Clearly, if no agreement is reached then an incoming Government would have to look at the full range of options available. I am sure that any Government coming in after the election would want to examine any creative solutions that are on the table. As has been said by others in this debate, nobody wants a return to direct rule. We want a return to strong and stable devolved government in Northern Ireland.

Brexit has been mentioned, as has the priority that the Government attach to Northern Ireland issues. As we have debated in the past in this Chamber, Northern Ireland clearly has unique interests and those interests are an absolute priority for the Government and the Prime Minister. That was reflected in the Prime Minister’s Article 50 letter, and the Government are encouraged by the priority that has been shown in the draft EU negotiating guidelines, which reciprocate the priority that the Government themselves attach to Northern Ireland issues. As we have discussed and debated many times before, no one wants a return to hard borders, and we want to maintain the momentum of the peace process.

Mention was made of the general election—how could we avoid it? The Prime Minister is seeking a strong mandate to deliver the best possible deal, not just for Northern Ireland but for the UK as a whole.

Representing the interests of Northern Ireland is absolutely why we need the Northern Ireland Executive to be re-formed and get up and running again. In the meantime, the Northern Ireland Office will continue to champion the interests of Northern Ireland in discussions in Whitehall. We have been actively engaging with stakeholders across Northern Ireland to make sure that we understand and represent those interests effectively.

Legacy was mentioned by the noble Lord, Lord McCavoy, and the noble and right reverend Lord, Lord Eames. The Secretary of State for Northern Ireland is absolutely clear that we should move to a period of public consultation. Clearly, the timing of this will be a matter for an incoming Government after 8 June, but there is widespread agreement that the current situation is unsatisfactory and we must find a better way—and better outcomes—for victims and survivors that is fair, balanced and proportionate.

On the issue of rates, I can confirm that all the parties were consulted on the approach to the rate and the Government’s approach has been informed by advice from the Northern Ireland Civil Service, in line with scenarios that were provided by officials in the Northern Ireland Civil Service to the political parties. On the resources available to local councils, I reassure the House that any delay in setting a rate has not interrupted the income of local councils.

In conclusion, I am grateful to all noble Lords for their support for the passage of the Bill and I thank my officials for the support they have provided. I am also grateful for the support of the Northern Ireland Civil Service. As I have said, the Bill provides the scope and space for a deal to be done, which is what businesses, community groups and individuals across Northern Ireland want. I am sure that I speak for the whole House when I express my sincere hope that all sides use the opportunity that the Bill provides to secure the resumption of devolved government in Northern Ireland at the earliest opportunity. I ask the House to give this short and simple Bill a Second Reading.

**Bill read a second time. Committee Bill a Second Reading.**

**Finance (No. 2) Bill**

Second Reading (and remaining stages)

5.37 pm

Moved by Baroness Neville-Rolfe

That the Bill be now read a second time.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, this Government have long demonstrated that we can deliver a stronger, more secure economy. The economy continues to grow robustly, employment is at a record high and the deficit has been brought down by almost two-thirds. Following discussions, the Bill before us is shorter than on its introduction in the other place. None the less, the changes it will make take significant steps in helping to create a fairer and more sustainable tax system.

Following the parliamentary vote on the general election, the Finance Bill is proceeding on the basis of consensus. At the request of the Opposition, the Bill has been amended to take out a number of measures originally included. There has been no policy change. The provisions before the House will make a significant contribution to the public finances and the Government will legislate for the remaining provisions at the earliest opportunity at the start of the new Parliament. These include: corporation tax restrictions on interest expense and on loss relief; the reduction in the dividends allowance; changes to the tax treatment of the non-domiciled; anti-avoidance changes, such as the new penalty for enablers of tax avoidance; and the primary legislation for the Making Tax Digital programme. The Government remain committed to the digital future of the tax system, a principle which has been widely accepted in extensive consultation. I want, in passing, to acknowledge the work that the Economic Affairs Finance Bill Sub-Committee has done on the tax administration aspects of the programme. The Government have decided to pursue this measure in a Finance Bill in the next Parliament, in the light of the restrictions on time which now apply.

I now turn briefly to the main provisions included in the Bill before us. The UK has one of the highest rates of obesity among developed countries. Soft drinks are a major source of sugar in children’s diets. Obesity drives disease and it costs our economy. The NHS incurs direct costs of over £6 billion each year from treating ill health related to obesity. The Bill legislates
off-payroll working rules, also known as IR35, are £6 billion. Part of this arises from people choosing to by 2021-22 the cost to the Exchequer from people incorporations. Indeed, the Government estimate that Autumn Statement and in the Spring Budget, the are working. As the Chancellor set out in both the to keep pace with the different ways in which people annually to the public finances.

1 June and is expected to contribute over £800 million provides for this increase, which will take effect from 1 June and is expected to contribute over £800 million annually to the public finances.

The Finance Bill also legislates for increases in duty rates as announced in the Spring Budget and that took effect shortly afterwards. These increase tobacco duty rates by 2% above RPI inflation for all tobacco products, which also makes an important contribution to the Government’s wider health agenda to reduce smoking prevalence. A minimum excise tax on cigarettes ensures that the cheapest cigarettes will pay a minimum level of duty, making it less profitable to sell cigarette packs below this level. Alcohol duties will be uprated in line with RPI inflation, while producers will continue to benefit from the effect of freezes and reductions in recent years.

The Finance Bill makes an important contribution to securing the nation’s public finances, reducing the deficit while allowing the Government to support our critical public services. For that reason, we announced in the Autumn Statement an increase in the rate of insurance premium tax from 10% to 12%. The Bill provides for this increase, which will take effect from 1 June and is expected to contribute over £800 million annually to the public finances.

Turning now to personal tax, the tax system needs to keep pace with the different ways in which people are working. As the Chancellor set out in both the Autumn Statement and in the Spring Budget, the public finances face a growing risk from the cost of incorporations. Indeed, the Government estimate that by 2021-22 the cost to the Exchequer from people choosing to work through a company will be over £6 billion. Part of this arises from people choosing to work through their own personal services company who would otherwise be classed as employees. The off-payroll working rules, also known as IR35, are designed to ensure that, where individuals work in a similar way to employees, they pay broadly the same taxes. However, non-compliance is high, costing an estimated £700 million each year. The Finance Bill therefore addresses this by transferring the liability for compliance with the rules in the public sector to the body for which the individual is working. We expect it to improve compliance significantly, raising revenue, while simply ensuring that the correct amount of tax is paid under the existing rules.

Finally, while some changes to address tax avoidance and evasion originally included in the Bill have been omitted and will be legislated for at the next available opportunity, the Bill includes a number of changes that advance the Government’s aims in this area. This Government are committed to tackling tax avoidance and evasion at all levels in order to ensure that everyone, no matter who they are, pays the right amount of tax at the right time. Since 2010, we have invested more than £1.8 billion in HMRC to tackle evasion, avoidance and non-compliance, helping to secure more than £140 billion in additional tax revenues. This includes more than £45 billion from large businesses and more than £2.5 billion from the very wealthiest. The UK also has one of the lowest tax gaps in the world, and the Government have announced more than 35 policies in this Parliament which are forecast to raise more than £18.5 billion by 2021-22. The Finance Bill extends that record by making changes to ensure that those who promote tax avoidance schemes cannot circumvent the rules by reorganising their business while continuing to use high-risk tactics in promoting avoidance schemes. It tackles abuse of the VAT relief for adapted motor vehicles and introduces a new charge on loans from disguised remuneration schemes that have allowed beneficiaries to avoid paying the tax that should have been due on their employment. The Government’s record on tackling avoidance, evasion and making sure that tax is paid fairly is one of which I am proud.

So to conclude, this Finance Bill supports our commitment to a fair and sustainable tax system, one that can support our critical public services and gets the country back to living within its means. I beg to move.

5.45 pm

Lord Haskel (Lab): My Lords, I cannot remember speaking in such a select debate. It may be that other noble Lords were deterred by the 762 pages of the original Finance Bill, which I think made it probably the largest Bill ever. Fortunately it was cut down yesterday and it is hard to know what is left, so I thank the noble Baroness for telling us.

We debated the Budget Statement on 14 March, and since then we have learned two important things. First, Brexit is going to be a lot more difficult than we thought, and secondly, we are going to have an election. The election means that the social aspects of the Finance Bill have to take priority. It is a Bill that, as well as trying to grow the economic pie, has to be accompanied by the politics that divide it up fairly. Does that happen with what is left here? I do not think so.

From what the Minister has said, the Bill avoids some awkward choices on things such as social care and national insurance for the self-employed. Indeed,
since our debate last month, we have had more proof that the proliferation of low-paid and insecure work is strongly aided by the way the Government are still allowing companies to differentiate between people who work off a bricks-and-mortar platform and those who work off a digital platform. We now also know more about how this contributes to the lack of investment in raising productivity. In his Budget speech, the Chancellor called this our “number one priority”. Yes, the number of people in work is rising, but the disappointing growth in productivity continues. This indicates that much more attention should be paid in a Budget such as this one to the quality of jobs and whether they enable people to achieve an acceptable and rising standard of living. This is the social necessity that needs to be incorporated into the Bill, but it misses an opportunity to put that right.

We now know even better that the Bill’s indecision on adult social care is putting more of a burden on NHS finances. This Finance Bill is a lost opportunity to take the tough decisions on where public care ends and private care begins—an opportunity, perhaps, to introduce an insurance scheme whereby we all pay in and those who do not need care help to fund those who do. This is what would take pressure off NHS finances. This is a solution for those who are still at work, but for people who need care now, perhaps the Bill should have introduced some kind of loan scheme that would be repayable on death, but it is silent on that.

Since 14 March, when we last debated this, we have had further proof that the growth in the economy is not fuelled by investment, but by consumption—consumption with diminishing investment. That investment has been financed by borrowing. This private debt is approaching record levels. We all know that the housing market is being fuelled by the thin margins that brought Northern Rock down, yet the Bill still encourages this reckless lending. As long as this private debt remains there will be stagnation in growth and productivity. It is a pity that the Bill did not take up the opportunity to do something about this.

Since the Budget Statement, we now know that Brexit will cost us a lot more than we thought. The Minister told us about taxation in the shortened Bill, but what a pity it was not reflected that, especially since our debate, we have learned that our economic prospects are less rosy and that spending cuts will make it even more difficult for many people. The Minister outlined the tax changes but not how we could civilise our society even more, perhaps by broadening the tax base with heavier taxes on activities that damage the environment, extending VAT to financial services, revaluing residential property, or fairly taxing inherited wealth. All this could go towards achieving the civilised society we seem to agree we want.

If the purpose of the Bill is to raise our standard of living and public services through economic and social growth working together, from what the Minister said it will need a lot more work by a new Government to achieve that. Perhaps another 762-page Bill is needed from the next Government.

5.55 pm

**Lord Kerr of Kinlochard (CB):** My Lords, I rise briefly in the gap to congratulate the Minister on her magisterial exegesis of what is still 148 pages and a dozen schedules. However, her reference to the plan to proceed—in due course after the election if returned—with the proposals for making tax digital slightly worries me.

I think everybody would agree that making tax digital for business is a good idea. However, both the Treasury Committee in the other place under the leadership of the admirable Mr Tyrie and your Lordships’ Economic Affairs Committee under the leadership of the admirable noble Lord, Lord Hollick, made rather serious criticisms of some of the details of the proposals. They are very big proposals. If the 780 pages were in front of us today, we would be debating a proposal that 2.5 million self-employed people, 1.5 million companies and 1 million landlords, even if their annual turnover was as low as £10,000, should be required to
go online and make their tax returns quarterly—every three months—not annually. That would be for all these companies, including very small ones.

Both committees support the principle but your Lordships’ committee recommended that this should be phased in and made optional for small companies and the Treasury Committee in the other place proposed that the threshold should be raised to be in line with that for VAT. That seems reasonable to me. I hope that, back in the Treasury and in the Revenue, people will not be idle in the next few weeks and months, and will take careful account of the reports from the two committees. Both support the principle that the Government propose to follow but find serious fault with some of the details of implementation and particularly phasing.

5.58 pm

Lord Davies of Oldham (Lab): My Lords, I, too, thank the Minister for describing so fully the remaining sections of the Finance Bill to be considered today. We all recognise the constraint in terms of the general election’s imminence. She will anticipate that, as what is before us is an agreed position in the famous wash-up procedure, I am unlikely to add too much controversy to this debate. Well, we shall see. I appreciate the fact that she explained accurately what is in the measures. Of course, I have no debate with the measures at present.

I very much appreciate the contribution by my noble friend Lord Haskel. As ever, he has the ability both to identify the minutiae of a problem and to draw some general principles from it. It is a facility I wish I had to the same degree because it is important in economic debates that we understand the full implications of what is going on with discrete pieces of legislation.

I am also grateful to the noble Lord, Lord Kerr, who took from me the responsibility of analysing in particular the problems with regard to the controversial digital tax proposals. These are controversial, of course, because quite clearly a lot of people considered that their interests had not been taken sufficiently—if at all—into account. Both the committees to which the noble Lord referred indicated their views that the Government had made a pretty poor show of this.

In principle, we are in favour of the digitalisation of the taxation system but, pursued under a Labour Government, it will be after due consideration of the needs of business, particularly the categories to which the noble Lord, Lord Kerr, referred: businesses with limited resources being put under very substantial demands indeed. Meanwhile, of course, the Government have to wrestle with the fact that the intended taxation is not necessarily coming in at the rate they would have wished.

The Government have not been too lucky with Budgets in recent years. We all recall the rather embarrassing business of the pasty tax. We recall that the tax credit cuts were reversed by wiser counsel in this House. We remember the cuts to personal independence payments, which the Government had to rethink. Of course, we remember that in his Budget the Chancellor introduced a national insurance contribution proposal that turned out to be something of a fiasco. All the key features of recent Budget proposals have had more than their fair share of difficulty, to the extent that one can wonder whether one can trust a Conservative Chancellor these days to get the fundamentals of the Budget right.

It is the job of the Opposition to point out when the Government have got things wrong and we will continue to pursue that role, even under the constraints of this Bill. We are now considering a gutted Bill left with those parts which both the Government and Opposition agreed should become law.

Of course, the Government tend to avoid tough choices while at the same time pursuing tax cuts for the multinationals and the super-rich, to be paid for by the mass of our people, who have rather more limited resources. So we take it with more than a pinch of salt when the Government put their proposals before us and suggest that they have some concept of fairness.

The Government fail to realise the need for additional fiscal resources, even when the NHS is in crisis. There is not a person in this country who is not aware of the current privations of the National Health Service. The one that is often cited is that the NHS has been obliged to jettison its target of dealing with people requiring hip or knee operations within an 18-week period. This is evidence of the considerable difficulties that the health service is in, and it is not at all clear that the Government have shown the political will to resolve the issue.

Of course, the health service has also been acting as a proxy for the problems of the social care service. Hard-pressed local authorities have not been able to sustain their share of the resources in social care. The fundamental responsibility for this crisis in two absolutely critical public services rests with the Government, and there is nothing in this Bill which indicates that the Government are prepared to face up to these issues effectively.

The Government’s fiscal policy shows a ruinous performance on the public finances, as their target period for clearing the deficit has now been surpassed. It has gone from five years originally on to a further five years. It is now suggested that it will be a further seven years before the Chancellor can see his way to hitting the target, which between 2010 and 2015 dominated the then Chancellor’s objectives. There was never really a recognition of the extent to which failure was enjoined in that period.

The weakness is not helped by cuts in HMRC staffing. In 2011, when I first addressed this issue in the House, I could not understand how the Government could be serious about indicating that they wanted to improve their taxation collection capacities—they had that as a major issue on the agenda—while pursuing their clear ideological objective of reducing the size of the state. The HMRC began to suffer its significant cuts at that time. How can a Government be so committed to a philosophy that they cannot recognise that cutting the efficiency of a government department, which does not just pay for itself but brings in huge resources far in excess of the cost of that department, is surely a nonsensical position to take up? But of course the Government did not accept that argument in 2011 and
are not accepting it in 2017. I have not the slightest
doubt that if they were to continue in power, they
would not accept the argument beyond 2017—but of
course the electorate might have some say in that.

This weakness is not helped by the fact that over
this period, the Government have misdirected their
taxation targets in any case. The work of cutting staff
resources in these terms is just emblematic of the fact
that the Government are prepared to reduce their
services, even when it is quite clear that the costs borne
by the community are very significant. That is true not
just in our health service and in social care but certainly
in education. How can the Government waste resources
on private schools when the state school system as a
whole is crying out? The obvious fact is that every
school is facing a reduction in the resources available
to it.

The Government have a lot to answer to. They have
at times paid lip service to one important feature of
improving the economy: improvement in productivity.
I well remember, and I welcomed, the appointment of
a Minister who specialised in productivity and I regretted
his departure after a very short time—too short for
him to make any real impact on the issue. From what I
can see, the Government have largely given up on this
matter. They talk about certain areas in which there
will be expenditure for contribution but the simple
fact is that under their period in office since 2010, we
have slipped crucially against the G7 criteria of
productivity. We now have the largest gap since 1991
with the G7. How do the Government expect us to be
successful in our trade negotiations with other countries
if our productivity stays so low that our comparative
costs are high, and we are not in a sufficiently competitive
position with other countries?

This would be bad enough if we were in a relatively
steady state, but of course Brexit has occasioned a
complete convulsion in the country’s prospects with
regard to international trade and earnings. That means
that the Government are going into this election with
a great question mark over whether they have the will
and the capacity to tackle the fundamental issues of
our economy that ought to have been addressed long
since.

This Budget is consistent with the performance of
the Government since the Conservative Party became
the dominant force in politics in 2010. There has been
a conspicuous failure to hit economic and fiscal targets,
backed up by taxation and social strategies which on
the whole reward those who are already well off and
hit the average working family and those on lower incomes
hardest. So much for fairness. What we are actually
seeing is the ever-growing inequality in our society
which is prompting a response which the Government
would not accept the argument beyond 2017—but of

6.12 pm

Baroness Neville-Rolfe: My Lords, I thank noble
Lords for their valuable contributions to this select
debate. In his wide-ranging speech, the noble Lord,
Lord Haskel, mentioned the importance of social
measures and, as usual, made a number of interesting
suggestions, including the point he often rightly makes
about the importance of digital. On this occasion he
not only referenced the workplace generally but the
importance of getting it right in Whitehall.

On care and the NHS, to which he referred and
which was also tackled by the noble Lord, Lord Davies
of Oldham, we announced at the spring Budget an
additional £2 billion for social care. This will help to
ease pressures on the NHS by supporting more people
to be discharged from hospital and into care as soon
as they are ready. We are giving the NHS the funding
that it needs. The Five Year Forward View plan asked
for annual funding to rise by a minimum of £8 billion
above inflation by 2020-21 and for investment to be
frontloaded. The Government have delivered what the
NHS asked for on both counts: the NHS’s annual
funding will increase by £10 billion above inflation by
2020-21 and £6 billion of this £10 billion will be
delivered by the end of 2016-17, which is particularly
important. I was pleased that to help manage demand
on A&E we have committed to provide £100 million of
new capital investment in A&E departments because
that will help to ensure that patients access the most
appropriate care as quickly as possible by improving
the space for assessing patients and providing on-site
GP facilities. This can help with bed blockers and is a
good example of how things can be improved through
management and efficiency, which I always regard as
extremely important.

The noble Lord, Lord Haskel, talked about business
investment and growing consumer debt. The OBR
forecast business investment to grow by 15% over the
forecast horizon period to 2021 and to rise as a share
of GDP. Households’ financial positions are certainly
stronger than they were before the financial crisis, and
debt interest as a proportion of income is at a record
low.

The noble Lord also talked about productivity, a
subject that we have often debated here. At the Autumn
Statement, we announced £23 billion of extra investment
through the national productivity investment fund,
and tackling the UK’s productivity challenge is a
priority. To respond to the noble Lord, Lord Davies:
The Chancellor mentions it often, it has pride of place
in the Prime Minister’s industrial strategy Whitehall
and I agree that it is important. The Government are
taking targeted action to invest in important things
such as innovation, infrastructure and digital, to promote
skills, to improve management and—I see my noble
friend the Minister for Trade here—to encourage firms
to export, which always tends to be associated with strong productivity growth. There is work to do, as has been said, but productivity as measured by output per hour grew by 0.4% in Q3 of 2016 and by 0.4% in Q4 of 2016.

The noble Lord, Lord Haskel, asked about Brexit resourcing. The Treasury is working with all departments to understand the work required to prepare for a successful exit from the EU. Although aggregate spending plans for this review period remain in place, I can assure the noble Lord that the Treasury continues to engage with departments to ensure the right resources are allocated to the right places. I would add that I know from my own experience in dealing with Brexit for financial services that there is very high-quality Civil Service and external support, both in the Treasury and in DExEU.

The noble Lord, Lord Davies, asked about HMRC resourcing. The Government have always ensured that HMRC has the resources it needs. It makes sense to do so, and since 2010 we have invested over £1.8 billion in HMRC, and steps have again been taken to improve its effectiveness and efficiency.

I, too, was grateful to the noble Lord, Lord Kerr of Kinlochard, for joining us in the gap to share his view on making tax digital and for referring to the two recent parliamentary reports on the subject—particularly the one that was done in this House by the Finance Bill Sub-Committee, which I mentioned in my opening remarks. I am always very grateful for the work that is done on Treasury areas in the House. It really helps us to improve policy formation. Although there has been no change of policy, I entirely accept that time is needed for proper debate and scrutiny of the provisions for making tax digital. The Government remain committed to the digital future of the tax system—it was good to hear support for that from the Opposition Benches—and it was of course, in principle, accepted in the extensive consultation we held. But more time is needed for parliamentary scrutiny, and that will be made available at the earliest opportunity in the next Parliament.

I am grateful to noble colleagues for their contributions. We will debate some of the wider issues in the country, when we will demonstrate that we have a programme for a stronger, more secure and more productive economy under a Prime Minister who is also determined to lead a country which works for all people and for all regions.

I have this evening outlined the benefits that the finance Bill, in this form, will bring in advancing our aims for a fair and sustainable tax system. I take this opportunity to thank Treasury officials for their high-quality support on the Bill and for getting it quickly into a state in which it could be considered today. On that basis, I invite the House to give the Bill a second reading.

Bill read a second time. Committee negatived. Standing Order 46 having been suspended, the Bill was read a third time and passed.

Digital Economy Bill
Returned from the Commons

The Bill was returned from the Commons with a reason and amendments. The Commons reason and amendments were ordered to be printed.

Criminal Finances Bill
Returned from the Commons

The Bill was returned from the Commons with the Lords amendments agreed to.

Higher Education and Research Bill
Returned from the Commons

The Bill was returned from the Commons with a reason and amendments. The Commons reason and amendments were ordered to be printed.

House adjourned at 6.21 pm.
House of Lords

Thursday 27 April 2017

11 am

Prayers—read by the Lord Bishop of Southwark.

Retirement of a Member:

Lord Macdonald of Tradeston

Announcement

11.05 am

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Macdonald of Tradeston, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much valued service.

Transport: Pedicabs

Question

11.06 am

Asked by Baroness Couttie

To ask Her Majesty’s Government, in the light of the commitment made by the Secretary of State for Transport on 26 May 2016 to regulate pedicab drivers, when the necessary legislation will be brought forward.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, the Government agree that the Mayor of London should have the power to regulate pedicabs, and have been working with Westminster City Council and Transport for London over the detail of a proposed regulatory system. Of course, it will be for a future Government to determine if and when the necessary legislation could be introduced.

Baroness Couttie (Con): I thank my noble friend the Minister for his response and am encouraged by his words. Pedicabs in London are not subject to any safety checks and not covered by insurance. Drivers do not have criminal record checks and do not even need driving licences. Pedicabs regularly flout traffic regulations; for example, driving up one-way streets the wrong way or congregating in large numbers outside theatres and other tourist attractions, blocking bus lanes and access for emergency vehicles, and creating tremendous congestion. Their fares are unregulated and we have had some highly publicised examples of extortionate fares levied on unwary passengers. There are a lot of examples of antisocial behaviour as well. Would the Minister agree that regulation needs to be brought in as soon as is practical when a new Parliament comes in?

Lord Ahmad of Wimbledon: My noble friend articulated the reasons why regulation is required in this area. Of course, she speaks from great local experience in this respect. As I already said, while this is a matter for a future Government to determine, I and the current Government have said on record that we would look towards the earliest opportunity to legislate in this respect. It remains my personal view that we should seek to regulate this industry for the reasons my noble friend stated.

Baroness Randerson (LD): My Lords, as well as the safety issues involved, there are a number of reported cases where tourists in particular have been charged extortionate amounts of money. Does the Minister accept that this is bad for the reputation of London and of Britain, and can he give us a categorical assurance that, if this Government are returned after the general election, there will be legislation in the coming year—as promised last year but that promise was broken?

Lord Ahmad of Wimbledon: It would perhaps be presumptuous of me at the Dispatch Box to say what Government will be returned on 8 June. I have already made my position and that of the current Government clear: we would look to legislate at the earliest opportunity. The noble Baroness raises an important point about the image of London in the view of tourists who are not aware, perhaps, whether they are getting into a regulated vehicle or of the price that will be charged. I am acutely aware of the challenges the noble Baroness poses. As I said, I am certainly keen to see this area regulated at the earliest opportunity, but it is a matter for a future Government.

Lord Rosser (Lab): I would like to explore this a little more with the Minister. I agree with the comments made so far about the problem that needs to be addressed. However, my recollection is that in May last year the Government announced that they would regulate the industry. Unless the Minister tells me I have this wrong, I thought they said then that legislation would come forward later in the year—2016. Clearly, it did not. Is this a particularly complex area to deal with? Is that why legislation did not come forward in 2016? Is it proving more difficult than thought, or is there some other reason why nothing was done within the timescale that, as far as I know, the Government originally suggested?

Lord Ahmad of Wimbledon: The Government explored various legislative vehicles, such as the opportunity for a sponsored Private Member’s Bill. As I said earlier, without pre-empting what may have happened or will happen in coming months, it is important to recognise that there were opportunities. Certain legislative vehicles in the current timetable could have been used to legislate in this respect. It remains the case—I have given a personal commitment and that of the current Government to this—that this is an important area to legislate in. We will continue to do so at the earliest opportunity if a Conservative Government are re-elected on 8 June.

Lord Kennedy of Southwark (Lab): My Lords, coming from a family of black cab drivers, I endorse every single word said by the noble Baroness, Lady Couttie. I press this Government or whichever Government are elected in a few weeks’ time that this should be top of the agenda for the new Transport Secretary to deal with on day one.
Lord Ahmad of Wimbledon: I am sure that those who aspire to hold that position have taken note of the noble Lord’s comments.

Lord Leigh of Hurley (Con): Can my noble friend the Minister advise us whether the Government plan to make any economic assessment of the impact of the imposition of bicycle lanes on London businesses, particularly small businesses and mobile tradesmen such as stonemasons, who effectively have had to stop serving London businesses?

Lord Ahmad of Wimbledon: As my noble friend is aware, cycle lanes are primarily a responsibility of the Mayor of London. I know that views have been expressed in this House and elsewhere, and I am sure those will be taken into account if reviews are carried out of cycle lanes and their operation in London.

Lord Hamilton of Epsom (Con): Can my noble friend assure the House that the pledge he has made to legislate on this matter will not become a manifesto commitment?

Lord Ahmad of Wimbledon: Again, I am not going to pre-judge the commitments in a manifesto. I have made as clear as I can at this juncture the intention of the current Government and my personal view in this respect, as someone who oversees legislation and indeed the operation and co-ordination of such activity in London with the Mayor of London. Whoever the Government are, I am sure they will continue to work with the Mayor of London in ensuring that we regulate this industry in the years to come.

Lord West of Spithead (Lab): My Lords, the confusion and despair that are seen as a result of this makes one think of mutinies. Of course, there was a mutiny 228 years ago tomorrow on the “Bounty”. The Royal Navy sent out 40 ships to find the mutineers. I think today we would have difficulty doing that—would they have to be pedalled to get there? Does the Minister agree that we need more ships—ideally, driven?

Lord Ahmad of Wimbledon: Pedalling in boats—that is something we have all done, perhaps, on the Serpentine in Hyde Park and elsewhere. My day would not be complete without a history lesson from the noble Lord. As ever, I greatly appreciate that.

Health: Electronic Patient Records

Question

11.13 am

As asked by Baroness Manzoor

To ask Her Majesty’s Government what plans they have to ensure that electronic patient records are available to healthcare professionals on a national basis, with appropriate safeguards and patient consent.

Baroness Manzoor (Con): My Lords, in asking the Question standing in my name on the Order Paper, I draw the House’s attention to my entry on the register of interests.

The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, the Government are committed to making patient and care records digital, real-time and interoperable by 2020. Ahead of that, summary care records, which provide essential information about a patient, such as their medication, allergies and adverse reactions, are now available in many parts of the country in key areas of the NHS, such as ambulance and A&E services. Healthcare professionals can view these, with patient consent, to inform decisions about care.

Baroness Manzoor: I thank my noble friend for that comprehensive Answer. I am rather concerned that the National Data Guardian’s third report, which was out last year, does not fully address the issue of who those electronic patient data belong to. Do they belong to the GP? Do they belong to NHS England? Do they belong to NHS Digital? This is particularly important because some GPs are moving towards only localised electronic patient record-sharing, which will have an adverse effect on the efficiency of the NHS. Can my noble friend the Minister assure the House and me that electronic patient data records will be kept nationally and that it is the patient’s choice over who has access to those records?

Lord O’Shaughnessy: My noble friend makes an important point about the use of data. There is a balance to be struck. The first point to be made about the use of data is that patients need to be part of any decision about sharing them. In 2012, the NHS Future Forum published an independent report on this issue and used the phrase, “No decision about me without me”, to describe the role of patients. There is of course a need to share data among clinicians, particularly when they treat a patient themselves. There can also be wider concerns: for example, in a public health pandemic or some such incident data would need to be shared more widely. But that can be done only with patients being informed and offering their consent.

Lord Hunt of Kings Heath (Lab): My Lords, is there not a problem here? If all the focus is at national level, that usually takes a long time and it inhibits local progress. Does the Minister agree that one of the great challenges is being able to share information between the health service and social care if integrated care, particularly for older people who are discharged from hospital, is to be delivered? Is any progress being made in getting full integration at local level, which is clearly a challenging area?

Lord O’Shaughnessy: The truth is that there is patchy use of data within the health service. Practically all GPs now offer electronic patient records and something like 9 million people have registered to make appointments online. But it is not at the same level in acute trusts, mental health trusts and so on; there is still paper usage. The intention has been to have a paperless NHS by 2020. This means that with patient consent based around clinical need we would have the ability to share data around the patient pathway, whatever part of the health service they were in.
Baroness Walmsley (LD): My Lords, given the continued revelations of data security breaches, along with the absence of a response to last year’s report from Dame Fiona Caldicott, how do the Government intend to avoid a repeat of the fiasco several years ago over care.data? Does the Minister agree that it is vital that patients are given confidence in the security of their data so that they do not withdraw from allowing their data to be used for vital medical research?

Lord O'Shaughnessy: The noble Baroness is quite right that the National Data Guardian produced her report last summer. There has been the intention to reply to that report but purdah has had an inevitable impact, unfortunately. She made points in that report about the simplified process for opting out but was also clear that vital uses can be made of suitably anonymised data which benefit patients directly, particularly through medical and clinical research, and about making sure that patients know about that so that they can choose to have their data shared. It is encouraging that at the moment, only around 2% of all patients have opted to have their summary care records not shared. This suggests that when it is explained properly and there are suitable safeguards, people are happy to share their data.

Lord Marlesford (Con): My Lords, on the subject of records, my noble friend on the Front Bench will have studied the February House of Commons Public Accounts Committee report, _NHS Treatment for Overseas Patients_. The PAC is chaired by the Labour Party at present. It identified a leakage of up to £2 billion a year in the treatment of patients who are either not entitled to NHS treatment free in Britain or whose treatment should be reimbursed by the countries from which they come. The target which the Government have for this leakage is only £500 million a year, or 25%. Will the Minister undertake that in the event of the Government being successful in the election they will make a real effort to stem this leakage, which is diluting the impact of the health service on the British people?

Lord O'Shaughnessy: I am obviously not going to make any commitments for any future Government but I can tell my noble friend about the work that the Government have been doing on this issue. We are making sure that there are identity checks for overseas patients in hospitals to ensure that those people who are not entitled to free care, either through reciprocal arrangements or by some other means, pay for the care that is provided for them, while making sure that at all times anybody who is in need of urgent care has that care given to them, even if they then have to pay later.

Lord Maxton (Lab): My Lords, will the Minister make it clear to the House that there are four health services in the United Kingdom, not one? What negotiations are taking place with his equivalent colleagues in the other Administrations in the United Kingdom to ensure that there is one common computer system across the whole of the United Kingdom? Electronic patient records depend upon there being one computer system not a variety of computer systems across the whole of the country.

Lord O'Shaughnessy: The noble Lord is quite right that the UK Government speak only for the English health system. There is a difference between having a single ICT system—we have been down that road and billions have been wasted—and having systems that can speak to one another and a common code of usage around data security, robustness, sharing patient opt-outs and so on to make sure that there is the ongoing access to information that the noble Lord is talking about, particularly for people who live in border areas who move between the different health systems.

Baroness Greengross (CB): My Lords, while of course patient confidentiality must always be respected, in the recent _Next Steps on the NHS Five Year Forward View_ there was a very concerning item on urgent treatment centres. I find it worrying that personalised care plans for patients in mental health crisis or at the end of life would be available in only 40% of emergency care settings, assuming that the target of the report is met. Are the Government prepared to look at these figures and consider them carefully?

Lord O'Shaughnessy: The picture that the noble Baroness paints starts from a position of not a great amount of sharing, particularly outside primary healthcare. That is what the Government have been trying to address. The primary route for doing that has been through the global digital exemplars which are enabling data sharing with all the appropriate safeguards in acute trusts and mental health trusts. The intention has been to continue to increase that over time.

Transport: Disabled Parking in London

Question

11.22 am

 Asked by Lord Shinkwin

To ask Her Majesty's Government what discussions they have held with central London boroughs about disseminating best practice in the provision of parking spaces, specifically for disabled people who live and work in central London.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, no such discussions have taken place. It is the role of local authorities to manage their networks efficiently and determine their own policies for balancing the specific needs of their particular communities. However, local authorities are required to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations under Section 149(1) of the Equality Act 2010.

Lord Shinkwin (Con): My Lords, I thank my noble friend for his Answer. Exactly a month ago, I mentioned the problems I was having with parking in Lambeth, as recorded at column 446 of _Hansard_ for 27 March. Since then the car that was being left in the disabled bay near where I live, sometimes for three weeks in a row and always with a blue badge on display, has been moved. So clearly someone at Lambeth Council is reading Lords _Hansard_ because the young man I saw, who walked away from the car in question without any apparent disability, had clearly been tipped off by
**Lord Shinkwin:** someone in the council not to park in the disabled bay. Blue badge misuse is a serious offence, yet Lambeth Council says that in this case there is no evidence—even though I have been advised that the blue badge in question was issued by Lambeth Council not to a young man but to a 59 year-old woman. On behalf of all those disabled people who genuinely rely on their blue badge and do not have the privilege of standing up and asking a Question in your Lordships' House, will the Minister urge all local authorities to prioritise tackling blue badge fraud, including when it involves their own staff?

**Lord Ahmad of Wimbledon:** I thank my noble friend. First, I am sure all your Lordships are very pleased to learn that Camden Council is following our proceedings very closely.

**Noble Lords:** Lambeth!

**Lord Ahmad of Wimbledon:** I apologise—Lambeth. I am sure Camden is as well. The issue which the noble Lord raised specifically about Lambeth is an important and serious one. Abuse of the blue badge scheme is taken very seriously, and although enforcement is a matter for local authorities, as noble Lords may well be aware, it is a criminal offence to misuse a blue badge when parking, and offenders may be prosecuted and fined up to £1,000. I would also say to my noble friend that in 2013, the Department for Transport introduced new legislation to enable on-street civil enforcement officers to seize badges that are being misused. Previously, only the police could do this. On the point he makes about sharing good practice, I understand that there are a series of roadshows, in which the department is involved with local authorities, intended precisely to share best practice and to end this abuse.

**Baroness Thomas of Winchester (LD):** My Lords, the powers of local authorities were clarified just a few years ago, as the noble Lord mentioned, in a Bill that I had the honour of taking through your Lordships' House. Is that bearing fruit? Does the noble Lord have any figures to say whether it has produced more prosecutions of fraudulent blue badge holders?

**Lord Ahmad of Wimbledon:** The noble Baroness is right to raise this. The number of prosecutions is still low compared to the reports that are received, partly because of the need to produce evidence. I was involved in local government for 10 years and had responsibility at a local level for this. Part of it is education: a lot of people sometimes park inadvertently and think it is okay for a few minutes. The other, more serious, issue is the blatant abuse of parking places by fraudulent blue badge holders, an area where there also needs to be greater education. The roadshows, which are sharing best practice, will help to address the issue of enforcement more effectively.

**Lord Geddes (Con):** Can my noble friend advise the House how often checks are made of the abuse of blue badges?

**Lord Ahmad of Wimbledon:** As my noble friend will know, blue badges and disabled parking bays are assessed as part of any traffic enforcement that takes place in a local authority. To my knowledge, no specific initiatives have been undertaken to check on this, but general enforcement of traffic management rules at a local level is conducted regularly as part of traffic enforcement in each local area.

**Lord Dubs (Lab):** My Lords, the Minister referred to the responsibility of local authorities to enforce the blue badge scheme. Is there not a difficulty when blue badges issued by one local authority are used incorrectly in another local authority? Do we not have to have better enforcement procedures to make sure that blue badges are not abused?

**Lord Ahmad of Wimbledon:** I agree with the noble Lord, who raises a vital point. That is why looking at how we work across the board and sharing good practice will address some of the issues. Again, I stress the point that part of this is about education, information and dissemination, but those involved in traffic enforcement should know what the specific rules are in order to ensure that effective enforcement can be carried out.

**Lord Laming (CB):** My Lords, could I invite the Minister to extend his comments to another aspect that affects people with disabilities of all kinds, which is parking on or obstructing pavements? This has become an increasing problem for people with mobility problems of one kind or another. When looking at this problem, could the Minister also bear in mind the need to keep pavements clear for people?

**Lord Ahmad of Wimbledon:** Again, the noble Lord raises an important point. Outside London, and indeed in certain boroughs of London, pavement parking is permitted. It causes a big issue in terms of access—and not just, dare I say it, for the disabled. I still have reasonably young children, one still in a pushchair, and this is a problem for young families attempting to get through. The noble Lord makes a very valid suggestion and we will certainly ensure that it is part of the discussion.

**North Korea**

**Question**

11.29 am

*Asked by Lord Alton of Liverpool*

To ask Her Majesty’s Government what evaluation they have made of the risks to world peace posed by the situation in North Korea.

**Lord Alton of Liverpool (CB):** My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I should mention that I co-chair the All-Party Parliamentary Group on North Korea.

**The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con):** My Lords, we have made it clear that North Korea must stop its destabilising behaviour. Its nuclear and ballistic missile programmes are a violation of multiple United Nations
Security Council resolutions and a threat to regional and international security. We fully support action at the United Nations Security Council to counter this threat and maintain pressure on the regime. The Foreign Secretary will shortly be discussing North Korea's illegal activity at the Security Council.

Lord Alton of Liverpool: My Lords, yesterday's presidential invitation to the White House of all 100 Members of the United States Senate for a briefing on the unfolding and dangerous crisis on the Korean peninsula underscores its gravity, as does the recollection that the last Korean war cost nearly 3 million lives, including those of 1,000 British servicemen. With one-quarter of North Korea's gross domestic product used on armaments and over 1 million men under arms, how are we using our own diplomatic presence in Pyongyang and Beijing and at the Security Council to engage China, to avert North Korea's present and long-term threat, and to forestall a catastrophic outcome? Closer to home, why was the Korea National Insurance Corporation able to use London—an issue that I raised with the Government last January—to generate over £113 million to support both the regime and its nuclear weapons programme?

Baroness Anelay of St Johns: I will turn to the specific point before I answer the more general and important point that the noble Lord first made: the EU designated the London office of the Korea National Insurance Corporation on 28 April 2016. Since that date the UK has taken the appropriate actions to sanction the firm and has absolutely followed that through; we take sanctions policy extremely seriously, which is why we issued a White Paper on sanctions just last week. On the general point, we have worked and will continue to work not only through our critical engagement with the North Korean Government in Pyongyang through our embassy there but also at the United Nations, because it is only by work with the United Nations Security Council co-operating and with China exerting influence that there can be any change to North Korean behaviour.

Lord Howell of Guildford (Con): My Lords, I reinforce the point made by the noble Lord, Lord Alton, that the key to this incredibly dangerous situation is the full engagement and support of the Chinese Government and the sharing of their concerns with ours and those of the rest of the world. Is it not possible that HMG might be able to play a particularly useful intermediary role in this area?

Baroness Anelay of St Johns: As always, my noble friend makes a most important point. I can give him an assurance that the Foreign Secretary is meeting the Chinese representatives when he travels later today to New York. He has already had very fruitful discussions with China. It is notable that the whole of the United Nations Security Council, including China, agreed that sanctions should be exerted on the DPRK, and China has shown good faith in that this year in its sanctions on coal.

Baroness Liddell of Coatdyke (Lab): My Lords—

Lord Campbell of Pittenweem (LD): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with brief questions we can hear from the Liberal Democrats and then the Labour Benches.

Lord Campbell of Pittenweem: My Lords, what is the response of Her Majesty's Government to the opinion expressed today by Mr Paul Wolfowitz, who was a member of the Administration of George W Bush and is no shrinking violet in these matters, that the solution to the crisis with North Korea will not rest in military action, not least because of the dangers that would present to the citizens of South Korea?

Baroness Anelay of St Johns: My Lords, my right honourable friend the Foreign Secretary made it clear that he sees military action as undesirable. We, along with our allies in America, have not taken offensive action. It is of course North Korea that has been offensive in its actions. Clearly the position of Seoul on the border means that any military action would be absolutely disastrous. That is why we are all working together as allies in the United Nations to ensure that there are stronger sanctions and, in particular, that there is a stronger will on the part of China to exert its influence on North Korea, to avoid an escalation of what we have seen over the last few weeks.

Baroness Liddell of Coatdyke: My Lords, given the uncertainty that exists about North Korea, not least after President Trump's discussions yesterday with the Senate, if there is the possibility of military engagement by the United States against North Korea, would there be a situation similar to what the Foreign Secretary suggested this morning in relation to Syria, which would engage British troops? If that is the case, what attempts will be made to consult Parliament, given that the elected House will cease to exist in a very few hours' time?

Baroness Anelay of St Johns: My Lords, it is a straightforward fact that the United States has made it clear that it is not seeking military action. It is installing a defensive missile system and working with allies in the area such as South Korea. What came across very strongly in the announcement by the Secretary of State in America yesterday is that the United States is seeking a peaceful resolution. It made it clear that it wants to bring North Korea to its senses, not to its knees.

Lord Collins of Highbury (Lab): I welcome the Minister's response about the Security Council, but will she reassure us that when the Foreign Secretary is in New York, he will be in communication with his counterpart in the United States to ensure that these two great allies act in concert to ensure effective sanctions?

Baroness Anelay of St Johns: Yes, my Lords: in New York but also on a more regular basis.

Lord Spicer (Con): My Lords—

Noble Lords: Dubs! Time!
Child Refugees
Private Notice Question

11.36 am

Asked by Lord Dubs

To ask Her Majesty’s Government what assessment they have made of the situation regarding child refugees in the Calais and Dunkirk areas, and whether they will take immediate steps to allow a significant number to enter the UK.

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

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in 2016, the UK transferred more than 750 children from France as part of comprehensive support for the Calais camp clearance. The UK also offered support to France following the recent fire at Dunkirk. We continue to work closely with the French to transfer eligible children under Section 67 of the Immigration Act and the Dublin regulation. The fastest route to safety is to claim asylum in France.

Lord Dubs: My Lords, I welcome the fact that the Government announced in a Written Ministerial Statement today that a further 130 children would be taken into this country under Section 67 of the Immigration Act, even if the reason is the Home Office having to hang its head in shame because it made an administrative error as part of collating the figures. That comes out of “Yes Minister”. Will the Government now reconsult local authorities, because many local authorities, not just in England but in Scotland, Wales and Northern Ireland, have expressed a willingness to take more child refugees? Is not the Minister aware that many representations have been made recently about the availability of local authority places?

Baroness Williams of Trafford: The administrative error is most unfortunate, and for that I apologise. I would not want that to happen. The good news is that we have an additional 130 places, and I think we should all be very pleased about that. The important thing here is that no child has been disfranchised. Any eligible child has been taken thus far, and 200 children have been taken so far, so we have not even got to the figure of 350. I would not want noble Lords to think that any child had been disfranchised because of this administrative error, which is, as I said, most regrettable.

On the consultation, we have consulted local authorities. For the record, I can tell noble Lords that there are 4,000 unaccompanied children in local authority care as we speak. Some local authorities, such as Kent and Croydon, host a disproportionate number of children. We are always very glad to hear from local authorities coming forward to take children through the national transfer scheme or to take refugee children, but it is not as though we have not consulted properly. I know that the Immigration Minister wrote to all local authorities, a national launch event was held, and more than 10 regional events were held in every part of England, as well as one in Scotland and one in Wales.

Lord Wigley (PC): My Lords, the Minister will be aware of reports last week in the context of child refugees that an assumption was being made that, if such a child was disabled, they would be debarred because they would be regarded as too burdensome. Will she take the opportunity to deny with all possible strength that that could be the Government’s policy?

Baroness Williams of Trafford: My Lords, it would never be the Government’s policy—I do not think any Government’s policy—to disfranchise a disabled child because they were too burdensome. A child would be assessed under the criteria of either Dubs, Dublin or the vulnerable children’s resettlement scheme. No child would ever be disenfranchised because they were disabled. I can very strongly confirm that.

Baroness Sheehan (LD): I have two questions for the Minister. Is she aware that Help Refugees will press ahead with its pending court case, as freedom of information data show that further clerical errors exist? Secondly, will the Government accept that we have a moral and legal duty to these children to reopen the Dubs scheme to ensure that these errors are ironed out once and for all and that we act with utmost haste in bringing these unfortunate children to the UK? The Government have been far too slow in actioning those points.

Baroness Williams of Trafford: My Lords, as my first Answer explained, we have not closed the Dubs scheme. We have 200 children here and there is potential for another 280 to arrive under the additional numbers. I look forward to the outcome of the court case and would not want to comment on it at this stage.

Baroness Manzoor (Con): My Lords, France or Europe are not some war-torn country, so I am delighted that refugees are able to get to a place of safety, whether in France or here. My concern is that the most vulnerable children and women are still in Syria and on the borders of Syria. What support have the Government given in that vital work?

Baroness Williams of Trafford: I am very pleased to be able to do that. My noble friend is absolutely right that the most vulnerable are still in the regions. Last year, the former Prime Minister made an announcement to double the amount of assistance going to the region to £2.4 billion—double the amount that it had been previously. My noble friend makes exactly the right point that we should be sending help to the regions where it is most needed.

Lord Rosser (Lab): First, I think it would have been better if the Government had come with an Oral Statement to the House on this issue rather than putting it in a Written Statement just before we are about to cease sitting, as this is an issue of considerable interest to the House. We discussed this in the House on 9 February, after the Government said a Written Statement in the Commons:

“Local authorities told us they have capacity for around 400 unaccompanied asylum-seeking children until the end of this financial year.”—[Official Report, Commons, 8/2/17; col. 10WS]
That would have been 2016-17. I asked the Minister:

“What capacity have local authorities told the Government they have for unaccompanied asylum-seeking children in the 1917-18 financial year on the basis that the current level of government funding is continued?”.—[Official Report, 9/2/17; col. 1861.]

I did not get a direct reply to that question. The Minister said that the Government were in constant touch with local authorities. Can she give us the figure? What capacity have local authorities told the Government that they have for unaccompanied asylum-seeking children in the next financial year, 2017-18, on the basis that the current level of government funding is continued?

Baroness Williams of Trafford: My Lords, as my honourable friend in the other place outlined in the Written Ministerial Statement yesterday, the capacity for Section 67 children is 480. As for future commitments, obviously we are hours from Prorogation and I cannot make any future declarations at the Dispatch Box, much as I would want to. Those figures will be forthcoming should we be successful in the general election.

Lord Roberts of Llandudno (LD): My Lords, the Minister said that there are 4,000 children in foster care. Are these 4,000 asylum-seeking, unaccompanied youngsters, as we voted on in the recent Act, and is she aware that of the children dispersed in France, 600 have made their way back to Calais because they have not been accepted in a very friendly way? Can she answer those two questions?

Baroness Williams of Trafford: I am not sure why children who had been accepted for local authority accommodation here would want to go back to Calais. I am sure that there are various reasons for that.

Noble Lords: In France.

Baroness Williams of Trafford: Sorry, I have slightly misheard the noble Lord’s question. He asked me, first, whether there are 4,000 unaccompanied children in local authority care in this country. Yes, there are. Other children who were not eligible for either Dubs or Dublin have been dispersed within France.

Lord Roberts of Llandudno: My Lords—

Noble Lords: Order.

Lord Elton (Con): My Lords, the debates that we have from time to time on this issue focus almost exclusively on local authorities, suggesting that they are the only and the best providers. Is that the case? If so, what is the arrangement by which other providers can link into the system in order to increase the number of places available?

Baroness Williams of Trafford: I am glad that my noble friend asked that question, because one thing that the Government have been very keen to promote is the community sponsorship scheme, which the most reverend Primate the Archbishop of Canterbury has taken part in, taking in Syrian families in Lambeth Palace. In fact, in my own local authority in Trafford we also have a community sponsorship scheme. I never let the time pass up without encouraging noble Lords to tell of any community sponsors they know who might be willing to take families.

Arrangement of Business
Announcement

11.48 am

Lord Taylor of Holbeach (Con): My Lords, on Monday I advised the House that, subject to the progress of business, we hoped to prorogue once today’s business was completed. The timing of Prorogation today will depend on the time that this House will take to complete its business, which is of course in the hands of the House itself. We will adjourn during pleasure after we have considered the Motion in the name of the noble Lord, Lord Clark of Windermere, and then resume for the Royal Commission. I anticipate that this will not be before the middle of the afternoon, but when timings are more certain we will indicate them on the annunciators.

I should alert the House to some breaking news: we now have the date for State Opening, which will be Monday 19 June. The first meeting of Parliament will be Tuesday 13 and Wednesday 14 June, when the House will meet for the purposes of swearing in. I understand that the House authorities will shortly issue a Lords Notice, confirming the arrangements for State Opening and Dissolution, including the use of the facilities of the House.

Local Audit (Public Access to Documents) Bill
Third Reading

Bill passed.

Merchant Shipping (Homosexual Conduct) Bill
Third Reading

Bill passed.

Guardianship (Missing Persons) Bill
Third Reading

Bill passed.

Farriers (Registration) Bill
Third Reading

Bill passed.

Higher Education and Research Bill Commons Reason and Amendments

Motion A
Moved by Viscount Younger of Leckie

That this House do not insist on its Amendment 1 and do agree with the Commons in their Amendments 1A, 1B, 1C and 1D in lieu.
 Commons Amendments in lieu

IA: Page 32, line 18, at end insert—
“( ) After subsection (3) insert—
“(3A) In exercising its power to give consent under subsection (A1), the Office for Students must have regard to factors set out in guidance given by the Secretary of State.

(3B) Before giving guidance under subsection (3A), the Secretary of State must consult—
(a) bodies representing the interests of English higher education providers,
(b) bodies representing the interests of students on higher education courses provided by English higher education providers,
and
c) such other persons as the Secretary of State considers appropriate.”

IB: Page 32, line 21, leave out from beginning to end of line 23 and insert—
“(5) In this section, “English higher education provider”, “higher education course” and “registered higher education provider” have the same meanings as in Part 1 of the Higher Education and Research Act 2017 (see sections 77 and 79 of that Act).”

IC: Page 33, line 7, at end insert—
“(ZA) In exercising its power to give approval under subsection (A1) or (2), the Office for Students must have regard to factors set out in guidance given by the Secretary of State.

(ZSB) Before giving guidance under subsection (ZA), the Secretary of State must consult—
(a) bodies representing the interests of English higher education providers,
(b) bodies representing the interests of students on higher education courses provided by English higher education providers,
and
c) such other persons as the Secretary of State considers appropriate.”

ID: Page 33, line 18, at end insert—
“( ) In subsection (7), before the definition of “relevant institution” insert—
“English higher education provider” and “higher education course” have the same meaning as in Part 1 of the Higher Education and Research Act 2017 (see section 77 of that Act).”

Viscount Younger of Leckie (Con): My Lords, I say at the outset that I am pleased to return to the Higher Education and Research Bill, which has been strengthened in this House by the attention and expertise shown by noble Lords.

I turn first to Amendments 1A, 1B, 1C and 1D. There has been much debate and discussion in your Lordships’ House about the importance of continuing to protect both institutional autonomy and use of the term “university”. In particular, the noble Lords, Lord Stevenson and Lord Kerslake, and the noble Baronesses, Lady Wolf, Lady Brown and Lady Garden, spoke eloquently at the Bill’s Committee stage about the importance of ensuring that there is proper protection in place. As a result, your Lordships agreed Amendment 1. We agree with many of the sentiments behind that amendment. To continue to protect institutional autonomy, we responded with a significant package of amendments at Lords Report stage designed to provide robust and meaningful protection of this important principle, so vital to the success of our higher education sector. Today, the Government propose further amendments in lieu of Amendment 1 to continue to protect the value and reputation of university title. I am pleased to report that these amendments were agreed yesterday in the other place.

Our amendments in lieu ensure that before permitting the use of university title, the Office for Students must have regard to factors set out in guidance given by the Secretary of State. Further to that, before giving the guidance, the Secretary of State must consult bodies that represent higher education providers and students, and any other appropriate person. This will ensure that the guidance is correctly focused. I reassure noble Lords that this consultation will be full and broad. It will reference processes and practice overseas—for example, in Australia—and provide an opportunity to look at a broad range of factors to consider before granting university title. This may include factors such as: track record in excellent teaching; sustained scholarship; cohesive academic communities; interdisciplinary approaches; supportive learning infrastructures; dissemination of knowledge; the public-facing role of universities; academic freedom and freedom of speech; and wider support for students and pastoral care.

These factors chime with the comments on the definition of a university made by my honourable friend the Minister in the other place. He has said previously that,

“in a limited sense a university can be described as predominantly a degree-level provider with awarding powers. If we want a broader definition, we can say that a university is also expected to be an institution that brings together a body of scholars to form a cohesive and self-critical academic community to provide excellent learning opportunities for people”; the majority of whom are studying to degree level or above. He said also that:

“We expect teaching at such an institution to be informed by a combination of research, scholarship and professional practice. To distinguish it from what we conventionally understand a school’s role to be, we can say that a university is a place where students are developing higher analytical capacities: critical thinking, curiosity about the world and higher levels of abstract capacity in their analysis”.—[Official Report, 26/4/17; col. 1139.]

Further, the strength of the university sector is based on its diversity and we should continue to recognise that a one-size-fits-all approach is not in the interests of students or wider society. In particular, for example, small and specialist providers that support the creative arts, theology and agriculture have allowed more students with highly specialised career aims the opportunity to study at a university. As we said in our White Paper and throughout the passage of the Bill, the diversity of the sector and opportunities for students have grown as a result of the important changes introduced by the Labour Government in 2004; namely, the lifting of the requirement for universities to have students in five subject areas and award research degrees. We would not expect to go back on the specific changes that the party opposite made.

I thank noble Lords again for their constructive engagement and consideration of the teaching excellence framework. In particular, I pay tribute to the noble Lords, Lord Kerslake and Lord Blunkett, for the time and energy that they have personally put into this issue. We all agree that students deserve high-quality teaching and need access to clear and comparable information as they make one of the most important decisions of their lives so far.

The crux of our debate has always focused on the operation of the TEF. A TEF that has no reputational or financial incentives would not focus university attention...
on teaching or help students to make better choices. That is why we are proposing to remove the two amendments that this House previously voted in, which would render the TEF unworkable. Nevertheless, it was clear from our previous debate that noble Lords remained concerned about the operation of the TEF and the link between the TEF and fees. The Government have listened to and reflected on the concerns raised in this House. I am delighted to be able to put before the House a set of amendments which, I believe, directly address the most fundamental concerns raised during our previous debates.

I am pleased to endorse Amendment 23C in lieu of Lords Amendment 23, which requires the Secretary of State to commission an independent review of the TEF within one year of the TEF clause commencing. Crucially, the amendment requires the Secretary of State to lay this report before Parliament. This will ensure greater parliamentary accountability for the framework as it moves forward. The report itself must cover many of the aspects that have concerned Members of this House and the other place, including: whether the metrics used are fit for use in the TEF; whether the names of the ratings are appropriate for use in the TEF; the impact of the TEF on the ability of providers to carry out their research and teaching and other functions; and an assessment of whether the scheme is, all things considered, in the public interest.

I am happy to repeat the commitment made in the other place that the Secretary of State will take account of the review and, if he or she considers it appropriate, will provide guidance to the OfS accordingly, including on any changes to the scheme that the review suggests are needed, whether this be in relation to the metrics or any of the other items that the review will look at.

Noon

We have also heard concerns about the impact of the link between the TEF and fees. We recognise the important role of Parliament in setting fee caps. That is why I am also pleased to seek the House's support for our Amendments 12A, 12B, 12F and 12G, which amend the parliamentary procedure required to alter fee limit amounts to ensure that any regulations that raise fees are subject, as a minimum, to the affirmative procedure. This provides a greater level of parliamentary oversight than the legislation currently in place. Furthermore, these amendments demonstrate our commitment to a considered rollout of differentiated fees.

Amendments 12C and 12D in lieu will delay the link between differentiated TEF ratings and tuition fee caps so that this will not be introduced for over three years, with the first year of differentiated fees as a result of TEF ratings being no earlier than the academic year beginning in the autumn of 2020. I should like to clarify that point as I know that it is slightly complex. Until August 2020, there will be no differentiation of fee uplift based on performance in the TEF—in other words, a provider's fee cap will not differ according to the different ratings they might be awarded. These amendments mean that, until that point, all English providers participating in the TEF will receive the full inflationary uplift regardless of their rating. As before, it will be up to the devolved Administrations to determine whether they are content for their institutions to participate in the TEF and what impact participation might have on their fees. In practice, that means that differentiated fees will not be introduced until after the independent review has reported to the Secretary of State and Parliament.

I would like to reassure this House today by repeating the commitment made yesterday in the other place by the Minister for Universities that the ratings awarded this year will not be used to determine differentiated fees unless a provider actively chooses not to re-enter the TEF after the independent review. Therefore, this year’s ratings will count towards differentiated fees only if, after the review, a provider does not ask for a fresh assessment before their next one is due—an opportunity that will be open to all participants.

Before moving to our other amendments, I reiterate to the House that we remain committed to ensuring that the TEF will evolve to assess the quality of teaching at subject level, as well as at institutional level. I know that many noble Lords feel very strongly, as we do, that the move to subject level needs to happen as soon as possible. However, we recognise that subject-level assessments are more challenging, and that is why the Government have previously announced an extension to the rollout of subject-level TEF, with an additional year of piloting. This follows the best practice demonstrated in the research excellence framework and means that the first subject-level assessments will not take place until spring 2020. I beg to move.

Baroness Brown of Cambridge (CB): My Lords, I rise to speak to the government amendments to the Bill in lieu of Lords Amendment 1, which defined the functions of a university, essentially protecting the use of university title by describing the characteristics of an organisation which could be granted such title.

The several purposes of that amendment included protecting university autonomy; ensuring that institutions able to call themselves universities are engaged in scholarship that both informs and forms an important part of student learning; ensuring that learning takes place in an environment where disciplines meet and meld; and ensuring that universities recognise the special place they hold in society by contributing to our society not only by teaching and disseminating knowledge but by, for example, partnering with charities, schools, colleges and local and regional initiatives to deliver a benefit well beyond their immediate staff and students. International research clearly demonstrates the impact that engaged universities can have on local communities and economic growth. Many other countries—including, for example, Australia, New Zealand, Switzerland, the Canadian provinces, Germany, Spain and India—have a definition of a university, or its functions and activities, in legislation. So an overarching objective of the Lords amendment was to protect the reputation of universities in this country: going beyond the situation in the Bill where the OfS might consent to the institution's use of university title if that institution were a registered higher education provider. That would communicate to the world, which is particularly important at a time when we are leaving the EU, that our higher education system is open for expansion and innovation, but that
[Baroness Brown of Cambridge]

University title in England is not given easily. It would tell potential students about the sort of institution and learning environment they should expect from a university, and it will encourage new entrants to the sector to see that obtaining university title is an important and aspirational achievement.

I appreciate that the Government has worked with my noble friend Lord Kerslake and others to ensure that university autonomy is now a strong and positive feature of the Bill, but I am disappointed that the Government have not accepted the argument for a definition of the key functions of a university in the Bill. However, I am reassured that the government amendments in the other place, in lieu of the Lords amendment, require the OfS to have regard to factors set out in guidance by the Secretary of State when awarding university title and I am pleased that the Secretary of State will consult on those factors.

Indeed, I strongly welcome the comments by the Minister for Universities, Science, Research and Innovation in the other place yesterday, which the noble Viscount repeated, about the consultation being “full and broad” and about the type of factors that would be included in that consultation. I agree that this approach can deliver both widely supported and strong guidance for the OfS on the criteria for the award for university title, so I record my thanks to the Ministers and their team and I put one final question to the noble Viscount today.

In the week that we have heard that China has sent senior government officials into its leading universities because of concerns over government criticism and westernisation, does he not think it would have sent a great message for us to have been positively encouraging, if not insisting, that our universities act as, “critics of government and the conscience of society”, as the Lords amendment also suggested?

Lord Kerslake (CB): My Lords, I declare my interest as chair of the board of governors of Sheffield Hallam University. I also record that the vice-chancellor of Sheffield Hallam, Chris Husbands, has been leading work on the implementation of the teaching excellence framework on behalf of the Government.

It falls to me to lead the response on this set of government amendments in Motions B and D, but it is important to say that this part of the Bill has been subject to many contributions during our debates. From the start, it has been clear that there is general support for the Government’s desire to raise the profile and importance accorded to teaching in our universities. That has not been a point of issue. There has also been a general understanding that fees will, over time, need to rise with inflation.

The concerns have been with the Government’s approach to introducing the TEF and the link being made between the TEF and increases in fees—in particular, that the TEF was being introduced with undue haste, that the gold, silver and bronze rankings being put forward were both inappropriate and potentially damaging to the sector, and that the TEF was not the right basis for allowing differential fee increases. The amendments now put forward by the Government in place of our amendments go a considerable way to addressing those strong concerns.

As the noble Viscount said, the review will be independently led and must cover: the process by which the ratings are determined; whether the metrics are fit for purpose; whether the classifications awarded are appropriate; the impact of the scheme on higher education providers; and whether the TEF is in the public interest. By any measure, that is a comprehensive review. We will all await the outcome with interest. It is essential that any future Secretary of State takes full account of its findings and recommendations.

All of the above tests are important, but I place particular emphasis on the review of the rankings and the public interest test. In this context, there is one point I should like the Minister to clarify—I have notified his office in advance of the question I wish to raise. I will be grateful if the Minister can confirm that it will be open to the review to say that we shall either stay within the current rankings, propose an alternative set of rankings, or conclude that ranking of universities of any sort is simply not appropriate in what is a very diverse sector. I look forward to the Minister’s response.

The ability to differentiate fee increases linked to the TEF has not been removed from the Bill, as we proposed, but the Government’s amendment will delay any differentiation until at least the academic year 2020-21. As the Minister said, this will allow time for the review to be completed and its conclusions properly considered. In the meantime, existing universities involved in the process will get the full inflationary uplift—something all sides of the House supported. This is a significant and welcome movement by the Government and I know it has not been lightly conceded.

There remains the issue of publication of the results of the trial TEF assessment process. I understand, although it would be helpful if the Minister confirmed, that these results will not now be published until after the election and a new ministerial team is in place. I hope that that new ministerial team will consider very carefully how publication should be handled, particularly given that the TEF will be subject to a wide-ranging review.

I said in Committee that I could not think of anyone better placed to lead the work on the TEF than Chris Husbands. That firmly remains my view. He and his fellow assessors have applied themselves diligently and fairly to the task they were given. The fault here, I fear, lay in the way they were commissioned by the Government to undertake their task. The independent review and the delay will provide an opportunity to get this right. In particular, I think the gold, silver and bronze rankings are not long for this world. I hope that what comes out will be a much more sophisticated and evidence-based approach linked to subjects, as proposed by the noble Lord, Lord Blunkett—there is a Sheffield theme here today.

Finally, as I am unlikely to speak again in the debate, I pay tribute to Peers on this side of the House for their valiant work in reviewing and amending this Bill: to the noble Lord, Lord Stevenson, and the noble Baroness, Lady Garden, for their terrific work; and to Jo Johnson and the Minister in this House for being
willing to listen and to respond to our concerns. That is what this House should be about. This is still not the Bill that we might have wanted, but it is considerably improved from when it came into this House. I hope that there will be no further Bills on higher education for a considerable period and that the sector will be given the chance to have the stability it needs to do what it does best: to represent the interests of this country.

12.15 pm

Baroness Deech (CB): My Lords, I share some of the disappointment expressed by my noble friend Lady Brown about the definition of a university, but I take great comfort from a significant step forward which may have escaped the attention of some members of the public. I am extremely grateful to both the Minister in the other place, Jo Johnson, and the noble Viscount, Lord Younger, for having listened to those who have expressed significant concern about the inroads into freedom of speech in our universities and the growth of the most unpleasant racism expressed in the widespread extent of anti-Semitic activity.

I am sure that all Members of the House will support me in expressing gratitude to the two Ministers for having understood that and addressed it, albeit off the face of the Bill. Universities’ obligations relating to freedom of speech have been extended and all universities have been reminded by Jo Johnson of the definition of anti-Semitism that has been adopted internationally. That is a great step forward towards repairing the reputation of our universities, which has suffered internally if not internationally.

I also take some comfort from the fact that the last president of the National Union of Students, Malia Bouattia, has not been re-elected—in part, I believe, because some consider that some of her remarks have been racist. I believe that we are moving into a new era as far as that is concerned.

I also take this opportunity to salute Sir Eric Pickles, the Government’s envoy for post-Holocaust issues, who joined in the fight to preserve freedom of speech and to stop anti-Semitism. This is very good news. We will miss him sorely.

Finally, it has been evident in the discussions about this Bill just how much expertise there is in this House, especially on these Benches, on higher education. Chancellors, vice-chancellors, administrators and professors have all joined in and we have eventually been listened to. That goes to establish the value of the expertise accumulated in this House. Some of it may be very elderly, but there is a great deal of expertise in higher education, and it has in the end shone through.

Lord Blunkett (Lab): My Lords, I draw attention to my declaration of interests in the register. It is not my intention to repeat the excellent contributions that have already been made, but I want to put on record my commendation for Chris Husbands, the vice-chancellor of what some unwisely call the university in which I am involved “the other university in Sheffield”. Chris Husbands’ work is of an excellent quality and I hope that we will be able to build on it in the years to come.

However, I will repeat what the noble Lord, Lord Kerslake, said in relation to what happens after the general election and ensuring that nothing is done, particularly in relation to the evaluation and the ratings, that damages in any way the enormous contribution of the higher education sector in this country both to the well-being of students and to our economy and our standing in the world. There can be no doubt after the considerable debates that we have had that there is a deep commitment on the part of the Minister in this House to improving teaching and to recognising the critical role of the teaching excellence framework in ensuring that comparator with the research excellence framework.

It is worth putting on the record at this very late stage that there is still a major tendency to value what will pull in major grants for research, even when the research may be of doubtful value, rather than to balance the commitment to high-quality teaching and learning with the REF. That is why I have expressed to Jo Johnson, the Minister in the Commons, what I repeat today, which is my support for the endeavour to put teaching very much at the top of the agenda.

I commend the Government on having listened. This Bill has been an exemplar of how we can work across the political divide both in this House and beyond. I will refer now to speculation in the more reliable media. I hope that no one will be punished in any way for having been prepared to listen and to debate. The idea that a Minister should not be able to express a view internally within the Government is a disgrace. I do not wish to bring in party-political matters, but I know that some MPs are thought to call the Prime Minister “Mummy”. I remember Mummy telling me that she had heard me once, heard me twice and did not want to hear me again—but you cannot conduct government on that basis. Therefore, whatever happens on 8 June, I hope that we will move forward on the understanding that a spirit of co-operation creates better legislation that is more easily implementable and receives a wider welcome than would otherwise be the case, and thus achieves its objective.

I thank the noble Viscount the Minister for repeating the words of Jo Johnson in relation to the move as rapidly as possible to subject rather than institutional comparators. This is an important part of what we were debating on what was Amendment 72, which morphed into Amendment 23 and is back with us in a different form today.

I also want to say, as a new Member of this House, how impressed I have been by the Cross-Bench contributions. I will echo the commendations made by the noble Lord, Lord Kerslake, rather than go through them again. Ministers and civil servants on this Bill have shown that they are of the highest possible calibre by being prepared to listen and respond, and I thank them for that.

Baroness Garden of Frognal (LD): My Lords, perhaps I may associate these Benches with the eloquent words we have already heard. It is inevitable that there will be a measure of disappointment that not all of your Lordships’ wisdom has been accepted unequivocally by the other House, but I think we can all agree that we have made immense strides in this Bill, and we are
[Baroness Garden of Frognal]
deeply appreciative of the way in which Ministers have listened and come forward with proposals. Perhaps I may pick up one thing about which we are particularly pleased, which is that there will be a delay in implementing this while a review is carried out. Some really key measures set out in the Bill need more reflection to see whether they are actually the right path to tread, so we appreciate the fact that the delay has been built in. Again, we appreciate the measures that the Government have taken to come towards us on these issues.

Baroness Wolf of Dulwich (CB): My Lords, first, I should declare an interest as a full-time Academic Council member of King’s College, London. I had not expected to speak in this part of the debate and I am afraid that I will be speaking again later. But, since I am on my feet, I would like to say that I agree with all noble Lords who have expressed their appreciation of how the Government have listened to opinions and to the House generally. I, too, feel that we have come a long way, well beyond the context, I will say, of points that were made in the earlier debates by the noble Duke, the Duke of Wellington, and by me in the context of amendments that we had tabled. Since the noble Duke is unable to be here today, I will make them briefly on behalf of us both.

Along with almost all noble Lords here, we strongly welcome the delay in implementing the link with fees—here I endorse the remarks of my noble friend Lord Kerslake. I am delighted to hear that we are moving quickly towards a position where we will have subject-level rather than institution-level assessments. However, one reason we became so concerned about the TEF is that putting a label on an institution is potentially very damaging to it.

One thing that has been rather an eye-opener for me is the extent to which—perhaps inevitably and as someone who teaches public management I should not be surprised—the “sector” is, in the view of the Government, the organised universities and Universities UK, and how few good mechanisms there are for the Bill team and the department to get the voices of students, as opposed to occasionally that of the National Union of Students. Students have been desperately concerned about this, because they are in a world where they pay fees and where the reputation of their institutions is so important. They have been worried about and deeply opposed to anything that puts a single label on them. This single national ranking caused many of us concern.

I will say a couple of things that I hope the incoming Secretary of State will bear in mind. First, as others have alluded to, we have a pilot going on and a system of grades that is out there. I fully understand that that is under way and there are enormous lessons to be learned from it. However, I hope very much that, after the election, whoever the Government may be will think hard about how they use that information, how they publish it, and whether they are in any sense obliged to come forward with the type of single-rank national league table that has caused so much anxiety to students. That is of great concern and it is hard to see how it serves the purpose, also expressed in the current Conservative manifesto, of preserving the reputation of our great university sector.

The other thing, on which I do not have any particular inspiration but about which I would love the incoming Government to think, is how to widen out their contacts with not just the organised sector and Universities UK but the academics and students who are really what the sector is about. We have great universities not because we have activist managerial vice-chancellors but because they are autonomous in large measure internally as well as vis-à-vis the state. That has been of real concern to me. Since we are going to have an Office for Students, it would be very good if, post the election, we could make it genuinely an office for students.

Lord Stevenson of Balmacara (Lab): My Lords, this is a very big Bill. I share the feeling of the noble Lord, Lord Kerslake, that perhaps this subject is one we will not see again for some time to come and so ought to enjoy what we are seeing now. The train passes slowly, but it is a very important one and we should pay regard to it.

We should also bear in mind that the Bill attracted more than 700 amendments and resulted in, at our last count this morning, 31 major concessions made by the Government to the voices raised, in the other place and particularly in here, in relation to some of the issues we heard about today. The noble Baroness, Lady Deech, was right to reflect on the fact that what we have in front of us today, although really important, is the end of the process, not the whole of it. We should not forget that within the list of concessions—“concessions” gives the wrong sense; I mean the things that moved in the Bill—there are important aspects. There is not just freedom of speech, which she mentioned and which is of course tremendously important, but also measures that will improve collaboration within the sector, that will help reverse the decline in part-time students, that will assist mature students who wish to come back, and that pave the way for more work to be done on credit transfer and flexible courses. These are all really important changes to the infrastructure of our higher education system and will make it better. They have not been picked up today because they were dealt with earlier in the process, but they should not be forgotten as they are important.

We have also heard nothing today about UKRI and the developments made in that whole area, which are to change radically the consensus on operating within science and research more generally that has gone on for nearly 30 years in one form or another. It is important that we also reflect that those changes went through after debate and discussion—and some minor adjustments but not many—primarily because there was an effort to make sure that the words used to describe the change were understood properly. A lot of time was spent in going round talking to people and making sure they were happy with that. That was a good thing. Indeed, this whole process, as has been touched on already by a number of noble Lords, is an example of what this House is good at but should be more widely developed within our political debates and discussions: that there is room for civilised debate and discussion about every issue. It does not have to be party political, as my noble friend Lord Blunkett said. It can be small-p political. It can be aimed at
trying to arrive at a better overall solution, and I am sure that what we are achieving today has ticked the box in all these areas.

12.30 pm

I am grateful to the Minister for spending time introducing the four Motions, having been warned earlier not to spend so much time on his feet at the Dispatch Box and to write to us. But the time for letters has ended and therefore it was necessary for him to go through that process. We have all benefited from that because these words are important. As far as I could tell, they were exactly the same as those used in the other place. A close reading of Hansard will probably be required, but I am pretty confident that the sensibility there is enough to make sure that we are in the right place on this.

On the definition of a university, I have confidence that what is now in the statute will get us to a point, as the noble Baroness, Lady Brown, said, which will allow us to have a better understanding of what constitutes a university, which will be of benefit to us, both internally in the UK but also, importantly, abroad.

The TEF has been the main concern, and the issues were well brought out by the noble Lord, Lord Kerslake. It is important that we pick out of the flurry of amendments we have here that the net effect is that Parliament retains a lock on how the TEF will be developed, and on the design and implementation of the processes that will accompany it. That is really important. That is partly because of the way in which the review will work and will report back on that, and partly because of the change to affirmative resolution for the regulations necessary for this. That is good and I welcome it.

A number of noble Lords have mentioned the focus that may be behind the changes to come in TEF in relation to subject and course-level issues. I ask the Minister to reflect a little bit on that, if he is able to. I do not think this is an either/or. At least, I do not suppose that is the intention behind it, although I think the consensus view here is that the less that can be said about what is actually going on in the courses and subjects that are taught in universities, the better that will be. Perhaps he would like to confirm that that is, at least in part, where the Government are trying to get to. I think that would take a lot of heat out of some of the issues that remain in this area.

On the publication of the pilot results, which the noble Baroness, Lady Wolf, raised, and was also touched on by my noble friend Lord Blunkett and the noble Lord, Lord Kerslake, there are questions about that and I look forward to hearing the Minister’s response. It seems to me, reflecting on the issues that we have in front of us, that when you are committing, under statute to carry out a review of this whole issue—digging up the drains, examining how these things are put together, what the structure and the architecture are, and reflecting on how it is presented and how it appears in public—it would be injudicious to make too much of an issue about the publication of the pilots, which are only pilots, which we all know are done on imperfect information and will not be the way that this thing runs in the long run. It would be helpful if there was anything that the Minister could say on this point.

There is a fourth Motion before us, which I think is a technical one. It was not referred to very much by the Minister but it is consequential to amendments to change to affirmative resolution and affects the rather narrow issue of accelerated degrees, where an institution wishes to complete in a shorter period of time than is conventionally the case the course or degree that it is teaching, and it will be possible for it to raise fees to compensate for that. This is probably a good thing, but perhaps the Minister could confirm that these consequential amendments do not affect the good, although limited, progress we are making on trying to make a more flexible system available in higher education, which will encourage people to come in and take parts of courses, go out and do some work, and come back again. All the flexibility that goes with credit transfer and flexible courses should not be debarred simply because the course fee structures are inflexible.

Viscount Younger of Leckie: My Lords, I would like to make a few brief comments in response to the contributors to this short debate. I agree with the comments made by the noble Lord, Lord Stevenson, about the spirit in which the Bill has been taken through this House and with pretty well everything he said about that.

I start by addressing some points made by the noble Baroness, Lady Brown, particularly about protecting university title. I thank noble Lords once again for their active engagement in new Clause 1, and particularly the noble Baroness for making strong arguments for the need to protect the value of university title. We recognise the need for strong protections, which is reflected in our amendment in lieu. She also asked about universities acting as critics, by giving critiques of government. I think there was a mention of China in her question. I agree that universities and their staff must have proper freedoms to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, which is why we have ensured that these continue to be enshrined in legislation under the public interest governance conditions, which the OfS will be empowered to impose on any registered providers as it considers appropriate. This is an important point to re-emphasise at this late stage in the Bill, and I thank the noble Baroness for that.

I also thank the noble Lord, Lord Kerslake, for his warm words on the progress that has been made by this House on the TEF. To respond directly to him and to reassure the noble Lord, Lord Blunkett, the noble Lord, Lord Kerslake, asked whether I could confirm that the independent review will be open to recommending the existing rankings, a completely different set of rankings or no system of ranking at all. I am pleased to give noble Lords and this House the categorical answer that, yes, the independent reviewer is required by our amendment to consider the names of the ratings as part of its review and whether those names are appropriate. The reviewer is also required to consider...
[Viscount Younger of Leckie]

whether the scheme is in the public interest and any other matters which he or she thinks are relevant. The independent reviewer would therefore indeed be free to recommend the matters the noble Lords described. I hope that that categorical reassurance answers their question.

The noble Lords, Lord Kerslake and Lord Blunkett, asked me to confirm that the trial results of the TEF will not be published until after the election. Yes, I can again confirm that the Higher Education Funding Council for England will publish this year’s TEF results after the general election on 8 June.

I say thanks to the noble Baroness, Lady Deech, for her kind comments about the very important issue of freedom of speech and, more generally, for the considerable personal contribution that she has made on these issues.

Moving on to courses, which I think were raised by the noble Lord, Lord Stevenson, I would like to say that it is absolutely desirable to move towards the assessment of courses. As we know, when students look at which universities to go to, they look—or perhaps, thinking about my own children, they should look—at which courses are most suitable for them rather than necessarily which institutions are. That is a very desirable way forward. It is necessary to have the full spotlight on the institutions themselves, which I think was the gist of the noble Lord’s question. That is very much in the spirit of what we aim to do.

The noble Lord, Lord Blunkett, praised Chris Husbands, and I agree that he has made a significant contribution towards the TEF, and continues to do so. I thank the noble Lord as well for his contribution to this debate and for his praise for the TEF chair.

The noble Baroness, Lady Wolf, raised some points about not publishing the results of this year’s ratings. I point out to her that the first TEF assessments are well under way and that almost 300 providers—I think it is actually 299—have opted to participate, fully aware that by participating they would receive a rating. I should just make it clear that they will be published, given the point that she raised.

I would like to cover one final point, which was raised by the noble Lord, Lord Stevenson. He asked that the changes should not affect the ability for flexible learning and I can confirm to him that they do not. We agree with him about the importance of flexible learning. With that, I beg to move.

Motion A agreed.

Motion B

Moved by Viscount Younger of Leckie

That this House do not insist on its Amendment 15 and do agree with the Commons in their Amendments 15A and 15B in lieu.

Commons Amendments in lieu

15A Page 8, line 26, at end insert—

“(f) a condition requiring the governing body of the provider to take such steps as the OfS considers appropriate for facilitating cooperation between the provider and one or more electoral registration officers in England for the purpose of enabling the electoral registration of students who are on higher education courses provided by the provider.”

15B: Page 8, line 32, at end insert—

“( ) For the purposes of subsection (1)(f)—

“electoral registration officer in England” means a registration officer appointed under section 8(2) of the Representation of the People Act 1983;

“the electoral registration of students” means the registration of students on a register of electors maintained by such an officer under section 9 of that Act.”

Viscount Younger of Leckie: My Lords, turning to appeals against revocation of degree-awarding powers and university title, we introduced amendments during the passage of the Bill in this House which provide additional safeguards around the revocation of degree-awarding powers and university title by clearly setting
out when the OfS can use these powers. This was in recognition that these are last-resort powers. Amendments were also passed relating to appeals against such decisions.

On Report in this House, the noble Lord, Lord Lisvane, the noble and learned Lord, Lord Judge, and others advanced compelling arguments about the need for strong appeals provisions in cases where the OfS decides to revoke a provider’s degree-awarding powers or university title, including permitting the First-tier Tribunal to retake the decision.

We agree that the OfS’s powers in this respect need to be subject to the right safeguards. I am therefore pleased to say that the other place has agreed our amendments in lieu, Amendments 78A to 78H. They achieve the same aims as Lords Amendments 78 and 106 but align the wording more closely with that used elsewhere in legislation. The amendments allow an appeal on unlimited grounds and permit the First-tier Tribunal to retake any decision of the OfS to revoke degree-awarding powers or university title. I thank the noble Lord, Lord Lisvane, the noble and learned Lord, Lord Judge, the noble Baroness, Lady Fookes, and all the members of the Delegated Powers and Regulatory Reform Committee for the time, energy and expertise they have put into the scrutiny of this Bill.

In both this House and the other place we have heard powerful and convincing arguments about the importance of student electoral registration. I commend the noble Baronesses, Lady Royall and Lady Garden, and other noble Lords who have spoken eloquently and persuasively on this issue. We all agree that participation in the democratic process by all parts of society is vital for a healthy democracy.

We have thought carefully about the issues raised in this House and in the other place. As a consequence, in place of the amendment passed on this issue on Report, I am pleased to invite this House to agree Amendments 15A and 15B in lieu, which will improve the electoral registration of students. The amendments do this by permitting the OfS to impose a condition of registration upon higher education providers which will require their governing bodies to take steps specified by the OfS to facilitate co-operation with electoral registration officers—ER Os—in England. The amendment places this requirement firmly within the new higher education regulatory framework while, equally importantly, maintaining unaltered the statutory roles and responsibilities of EROs to ensure the accuracy of the electoral register. These amendments will complement the existing powers of EROs.

In implementing this condition, the OfS will be obliged to have regard to ministerial guidance issued under the general duties clause of the Bill. This will lay out what the Government expect in relation to the electoral registration condition alongside expectations about other functions of the OfS. In using the term ‘co-operation’ in the amendment, we anticipated that the ministerial guidance will state that, as part of this co-operation, the OfS should require providers to facilitate student electoral registration. We also anticipate that the guidance will state that providers are to co-operate with EROs who make requests for information under the existing powers they possess for the purposes of maintaining the accuracy of electoral registers.

There are many excellent examples across the sector of methods to encourage students to join the electoral register, including models put in place by the University of Sheffield and Cardiff University which provide examples of good practice. I take this opportunity to thank the noble Baroness, Lady Royall, for championing this issue and to recognise the work that she, and others, have taken forward on registration at the University of Bath.

12.45 pm

Through our amendments, the OfS will have a specific power to impose an electoral registration condition to deal with higher education providers that are not doing enough to co-operate with electoral administrators. Where imposed, a condition takes effect as a requirement: it will oblige action to be taken. The clear aim is for the OfS to look across the sector and, where needed, ensure that necessary action is taken. The condition can then require particular steps to be taken so that higher education providers work with EROs to facilitate registration. Non-compliance, as with any registration condition, is enforceable, including through OfS sanctions. I reiterate our commitment that the ability for students to register to vote should be as broad and strong as possible.

To conclude, the Government fully share the aim of increasing the number of students and young people registered to vote. We agree with noble Lords that it is vital that we have a healthy democracy that works for everyone, and that the views of students and young people are reflected in a democratic process. I firmly believe that these amendments will help achieve this goal and I beg to move the Motion.

Lord Judge (CB): My Lords, I will speak very briefly to Motion F. The original Bill produced an appeal system that was far too narrow, and the amendment that I and my noble friend Lord Lisvane proposed suggested that it should be wider. We used words which were reflective of advocacy rather than law, and argued that the ground of appeal should be on the basis that the decision was wrong. That view appealed to this House. We have reconsidered it and discussed it with the Secretary of State and the Minister. The amendment now proposed by the Government makes much better law and, given that, I support it.

Baroness Royall of Blaisdon (Lab): My Lords, I declare my interests as in the register. I am very grateful to the Government for tabling Commons Amendments 15A and 15B and put on record my specific thanks to the Ministers—the honourable Jo Johnson and Chris Skidmore—along with their officials, for their time and willingness to find a compromise following the adoption by the House of my amendment on Report. This issue has been the subject of powerful advocacy by my honourable friend Paul Blomfield MP, who has done much work on the registration of students to vote, and by organisations such as Bite The Ballot and by the APPG on Democratic Participation.

The voice and views of the Association of Electoral Administrators was extremely helpful in supporting my case, and I have to say that the chief executive
[BARONESS ROYALL OF BLAISDON]

John Turner expressed some surprise that the Minister suggested on Report that the association did not take a positive view. UK has been helpful to me personally, although it is divided on the issue. I trust that it will now do everything possible to ensure that all universities comply with this new obligation at the earliest opportunity.

I well understand that we all have the same aim: to enable the greatest number of students to register to vote and thus shape the future of this country so that it works for young people. It will probably not be possible for ministerial guidance to be published before the enrolment of students this autumn, so I hope that the Minister in office, whoever it is, will draw the attention of higher education institutions to the numerous examples of best practice that exist, including those cited by the Minister today. I am very proud of what Bath has done in these endeavours. I am grateful to the Minister for suggesting what will be in the guidance, which is very welcome, but could he say when the guidance is likely to be published and when the Government, if they are a Conservative Government, might expect higher education institutions to comply with the new obligation? Although we might not have another general election for perhaps five years, there will be local government elections in England in May 2018 and my fervent hope is that all HE institutions will have a system in place by then.

I reiterate my thanks and look forward to working with the next Government to ensure that the maximum number of students register to vote so that not only their voices are heard but their views are expressed in the ballot box, thus enabling them to exert maximum influence, as they should, in the democratic life of this country.

As I will not speak again on this Bill, I wish to say that I too think the way in which all Benches have co-operated and collaborated on it has been extraordinary and very welcome. To be partisan for a moment, great thanks go to my noble friend Lord Stevenson and the support he has received from Molly Critchley. I understand that my noble friend is shortly to step down from the Front Bench. He has done the most superb job, not just for the Labour Benches but for the House as a whole, and I look forward to working with him on the Back Benches.

Baroness Garden of Frognal: Having been a staunch supporter of the amendment from the noble Baroness, Lady Royall, and indeed of trying to engage young people in the importance of voting in elections—I think this is a valuable step in enabling them to get involved at university level—I am grateful for the amendment that has come in from the Government. As we are trying to involve young people in voting, would it not be wonderful if we could now think of lowering the voting age to 16 to enable more of them to do so?

Lord Mackay of Clashfern (Con): My Lords, the amendment in this Motion regarding the appeals system is greatly improved, as my noble and learned friend Lord Judge has said. I am delighted that this has happened because it is of vital importance in relation to the very serious matters that the Office for Students has the power to deal with. I thank the Ministers who have been involved. I include in this particular thanks to my noble friend Lord Young of Cookham, for reasons that I shall explain in a moment, and the Minister in the Commons for the very kind way in which various reactions of mine to this extremely important Bill have been handled.

I want to mention a particular matter that does not arise especially under this Motion but, from my point of view, is rather important. When the noble Baroness, Lady Brown, raised the issue of the new power to search the headquarters of higher education providers, she indicated that it was something that the higher education providers anticipated with a degree of apprehension. In response to that, my noble friend Lord Younger of Leckie read out from Schedule 5 the statutory requirements before such a warrant could be granted. I have listened to a lot of the Bill without particularly talking myself, but on that occasion it occurred to me that one of the assurances the academic community was entitled to get was that those restrictions, which are quite powerful and important, would definitely be the subject of consideration by the magistrate. I suggested that the magistrate should sign a document to that effect. I got a letter almost immediately, which is still on the website, to say that such a thing was unheard of.

It is 20 years since I handed over with confidence my responsibilities for this part of what is now the Ministry of Justice to my successor, the noble and learned Lord, Lord Irvine of Lairg, so it is a very long time since I dealt with this particular matter directly. Still, when I got that response, I thought, “Well, in that case the thing to do is to alter the words of the warrant to make it clear that the warrant’s signature carries that with it”.

That was objected to for all sorts of reasons, as your Lordships may remember, and some of them were addressed by my noble friend Lord Young of Cookham on Report. I felt rather strongly about it, as he recognised, and he kindly said the Government would consider it further before Report, giving me an opportunity, which otherwise I would not have had, to raise the matter on Report.

I was still very insistent on this, because I could not see any objection to it. I am particularly obliged to the Minister in the Commons, Mr Johnson, for arranging at the last minute for me to have a chance to deal directly with the Ministry of Justice, from which the objections to my amendments were coming. That afternoon, I was able to meet the official in that part of the Ministry of Justice for which, as I said, long ago I had responsibility. He eventually told me that in fact, the procedure for dealing with warrants had now been altered by order of the Lord Chief Justice, particularly in criminal cases so that, at the end of the application for the warrant—strangely enough—there is a place for the magistrate to indicate whether he or she agrees that the warrant should be granted and, if so, what the reasons are for that decision. He said that he thought that this was probably general practice in relation to warrants in the magistrates’ court—because this is not a criminal warrant under the Bill. My
noble friend Lord Younger of Leckie said that that was the position when the Motion was moved on Third Reading.

I therefore express my gratitude to the Minister and the Bill team from the Department for Education for their kind treatment of me in connection with this and other matters. It is important that where a Ministry other than that directly responsible for a Bill gives advice to block an amendment from someone who, after all, was thought of as a government supporter, it should be blocked in a way that depends on Ministers' expertise. With respect to Mr Johnson's great variety of eminence, he would not be particularly interested in the magistrates' courts procedure for warrants, so it is really nothing to do with him. Similarly, for my noble friends Lord Young of Cookham and Lord Younger of Leckie, it is a damaging way of damaging your colleagues without much apparent responsibility. I therefore qualify my thanks for the interest of my noble friends Lord Young of Cookham and Lord Younger of Leckie said that that was the position when the Motion was moved on Third Reading.

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Lord Stevenson of Balmacara: My Lords, I was not going to intervene on this point because the case for accepting the amendments in lieu has been made very strongly by both the noble and learned Lord, Lord Judge, and my noble friend Lady Royall, but that little vignette from the noble and learned Lord, Lord Mackay, put me in mind of two things that I thought it might be useful to share with the House. First, the noble Lord, Lord Lisvane, has been very active on the Bill on a particular narrow issue. As a result, I have got to know him a bit better. He kindly shared with me a speech that he gave recently at a meeting of a rather arcane group of people who seem to be interested in administrative law—the noble and learned Lord probably goes to their meetings every week, but it is the first time I had ever heard of it. They obviously debate serious and important issues. His address was about the quality of legislation going through your Lordships’ House. I recommend it to all noble Lords who have been involved in this process, because I observe a little of what the noble and learned Lord described. When the annals of this Parliament are written up, I hope that there will be space for this little vignette of persistence over every other aspect of life, which has resulted in a terrific result. He did not quite give the nuance that I thought that he was going to end up with—and I wanted to share that with the House. There were not many of us there late at night at Third Reading when this matter was finally resolved, but it is worth bearing in mind.

The noble Lord, Lord Lisvane, makes the point that, very often in considering legislation, a mentality sets in in the Bill team that is called the “tyranny of the Bill”—an article of faith that the Bill must be right, because the people who have put it together have spent most of their professional lives working on this piece of legislation. In the case of higher education, they have probably waited a generation to get a higher education Bill together. They are not going to give up a comma, let alone a word or a phrase, without considerable resistance. He praised avidly legislators in both Houses getting round that. I mention that point only because, as we have found a lot of times, the results that we are seeing today were not always there; it did not always feel as if we were working in a spirit of co-operation, trying to get the best legislation. Perhaps I should not have said it, but I meant it at the time. It certainly did not feel like that on day 1 in Committee, when there was every opportunity to compromise on a particular issue and the Minister, when offered the chance to take away an issue and look at it again, spent about three-quarters of an hour, it seemed to me, finding every conceivable reason for saying no. I do not think that that was to the benefit of the Bill in the long run—but we have got over that.

I pm

The point that the noble and learned Lord was making was that he was blocked at every attempt to get this very sensible measure through—a measure on which, although he was too kind to say it, he knew a lot more than anybody else on the planet. They still said that he was wrong, but he persisted and got it to the point when it was finally agreed, but agreed in a slightly craven way—that is the point that I want to make. The Front Bench still resisted the need to amend the Bill to reflect the noble and learned Lord's position, but it found an administrative convenience that allowed it to happen anyway. I am not sure that that is the best way to make legislation, but I shall leave that thought with noble Lords.

Viscount Younger of Leckie: My Lords, I want to make a few brief comments in response to the contributions to this debate. I thank the noble and learned Lord, Lord Judge, for his kind comments in supporting the government amendments. We welcome his support and thank him and the noble Lord, Lord Lisvane, for his work and engagement on this issue. I also thank the noble Baroness, Lady Royall, for her persistence and passionate commitment to the cause of student electoral registration, including at her own university, the University of Bath. She asked me when the guidance on student electoral registration would be published. I reassure her that ministerial guidance to the OfS will be issued alongside or shortly after the OfS is established. The OfS’s guidance to providers will be issued in mid-2018, in preparation for the move to the new regulatory framework. The sector will have the opportunity to express its views on the regulatory framework during the public consultation in the autumn of this year.

I listened carefully to the comments of my noble and learned friend Lord Mackay. I thank him for his time and expertise and his engagement in the Bill. He referred specifically to the matter of the warrants. I apologise for any misunderstandings that arose through the process. Rather than being drawn into a further debate on the matter, I hope that he understands that, although it was somewhat protracted, we got there in the end, as they say.
Motion D

Moved by Viscount Younger of Leckie

That this House do not insist on its Amendment 23 and do agree with the Commons in their Amendments 23A, 23B and 23C in lieu.

Commons Amendments in lieu

23A: Page 16, line 14, leave out subsection (5)
23B: Page 16, line 15, leave out subsection (6)
23C: Page 16, line 23, at end insert the following new Clause—

“Report on operation of section 25 schemes

(1) Before the end of the initial period, the Secretary of State must appoint a suitable independent person for the purpose of preparing a report under this section.

(2) A person is “independent” for this purpose if the person—

(a) is not, and has never been, a member or employee of the OfS, and

(b) is not a servant or agent of the Crown.

(3) A person is “suitable” for this purpose if the person—

(a) is not, and has never been, a member or employee of the OfS, and

(b) appears to the Secretary of State to be a person who would command the confidence of registered higher education providers.

(4) As soon as possible after the end of the initial period, the appointed person—

(a) must prepare a report about the operation during that period of the section 25 scheme or schemes which were in operation for the whole or a part of that period, and

(b) must send the report to the Secretary of State.

(5) The report must cover the following in the case of each scheme—

(a) the process by which ratings are determined under the scheme and the sources of statistical information used in that process,

(b) whether that process, and those sources of statistical information, are fit for use for the purpose of determining ratings under the scheme,

(c) the names of the ratings under the scheme and whether those names are appropriate,

(d) the impact of the scheme on the ability of higher education providers to which the scheme applies to carry out their functions (including in particular their functions relating to teaching and research),

(e) an assessment of whether the scheme is in the public interest, and

(f) any other matters that the appointed person considers relevant.

(6) The Secretary of State must lay the report before Parliament.

(7) In this section—

“the initial period” means the period of one year beginning with the date on which section 25 comes into force; and

“section 25 scheme” means a scheme to give ratings in accordance with arrangements made under that section.”

Motion D agreed.

Motion E

Moved by Viscount Younger of Leckie

That this House do not insist on its Amendment 71 and do agree with the Commons in their Amendment 71A in lieu.

Commons Amendment in lieu

71A: Page 25, line 39, at end insert the following new Clauses—

“Grant, variation or revocation of authorisation: advice on quality etc

(1) The OfS must request advice from the relevant body regarding the quality of, and the standards applied to, higher education provided by a provider before making—

(a) an order under section 40(1) authorising the provider to grant taught awards or research awards,

(b) a further order under section 40(1)—

(i) varying an authorisation given to the provider by a previous order under section 40(1), or

(ii) revoking such an authorisation on the ground that condition B in section 42(4) is satisfied, or

(c) an order under section 43(1)—

(i) varying an authorisation given to the provider, as described in that provision, to grant taught awards or research awards, or

(ii) revoking such an authorisation on the ground that condition B in section 43(4A) is satisfied.

(2) Where the OfS requests advice under subsection (1), the relevant body must provide it.

(3) The advice provided under subsection (2) must include the relevant body’s view as to whether the provider has the ability—

(a) to provide, and maintain the provision of, higher education of an appropriate quality, and

(b) to apply, and maintain the application of, appropriate standards to that higher education.

(4) The advice provided by the relevant body under subsection (2) must be informed by the views of persons who (between them) have experience of—

(a) providing higher education on behalf of, or being responsible for the provision of higher education by—

(i) an English higher education provider which is neither authorised to grant taught awards nor authorised to grant research awards,

(ii) an English further education provider, and

(iii) an English higher education provider which is within neither sub-paragraph (i) nor sub-paragraph (ii),

(b) representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers,

(c) employing graduates of higher education courses provided by higher education providers,

(d) research into science, technology, humanities or new ideas, and

(e) encouraging competition in industry or another sector of society.

(5) Where the order authorises the provider to grant research awards or varies or revokes such an authorisation, the advice provided by the relevant body under subsection (2) must also be informed by the views of UKRI.

(6) Subsections (4) and (5) do not prevent the advice given by the relevant body under subsection (2) also being informed by the views of others.

(7) The OfS must have regard to advice provided to it by the relevant body under subsection (2) in deciding whether to make the order.

(8) But that does not prevent the OfS having regard to advice from others regarding quality or standards.

(9) Where the order varies or revokes an authorisation, the advice under subsection (1) may be requested before or after the governing body of the provider is notified under section 44 of the OfS’s intention to make the order.

(10) Where there are one or more sector-recognised standards—

(a) for the purposes of subsections (1) and (8)—
At Report in this House, we tabled an amendment, based on a proposal from the noble Baroness, Lady Wolf, requiring the OfS to request expert advice from a “relevant body” on quality and standards before granting or varying degree-awarding powers, or revoking them on grounds of the quality or standard of provision. The role of the “relevant body” would be similar to that of the QAA’s ACDAP, and the system that we are putting in place will build on the valuable work that the QAA has been doing over the years. Our amendments further strengthen this requirement for expert advice. In particular, this amendment makes clear that if there is not a designated quality body to carry out the role, the committee that the OfS must establish to carry it out must feature a majority of members who are not members of the OfS. Additionally, in appointing those members, the OfS must consider the requirement that advice be informed by the interests listed in the clause. This will ensure that the advice is impartial and well informed. This amendment also makes it clear that the advice must include a view on whether the provider under consideration can maintain quality and standards. In line with the arguments put forward by the noble Baroness, Lady Wolf, it requires the OfS to notify the Secretary of State as soon as possible after it grants degree-awarding powers to a provider who has not previously delivered a degree course under a validation arrangement.

Let me be clear that, as is already the case, I expect the Secretary of State’s guidance to the OfS on degree-awarding powers to continue to require that a provider’s eligibility be reviewed if there is any change in its circumstances, such as a merger or a change of ownership. The OfS has powers under the Bill to remove degree-awarding powers from a provider when there are concerns as to the quality or standards of its higher education provision following such a change. I can confirm that we expect the OfS to seek advice from the relevant body on any such quality concerns before taking the step of revocation. I beg to move.

Baroness Wolf of Dulwich: First, I take the opportunity to thank the Minister in this House and the Minister for Higher Education very sincerely for listening so carefully and patiently to the arguments that I and many others put forward on these issues. I follow other noble Lords in saying that, while this has been a grind, it has also been something on which all parts of the House have found a great deal to discuss and agree. In that sense, it has been perhaps not enjoyable but certainly an educational and ultimately a positive process. I repeat that I appreciate the time that everybody in the Lords has put into this, and I very much appreciate the time put in by Ministers and the enormous work put in by the Bill team.

I am very happy to see the clause moving towards the statute book, but it seems to be slightly ill understood perhaps outside this Chamber and certainly outside this building. It might be worth my while reiterating what I think is important about it, and I would be grateful if the Minister would let me and the House know if he disagrees with anything that I am just about to say.

One of the major reasons why the Bill is so important is that it sets out what is happening in the sector, quite possibly for decades to come. That is why we have to
take account of both whether it can provide innovation and new ideas and allow the sector to move and whether it can provide guarantees of quality and standards and protect students, many of whom take out large loans, and the whole country against what is always possible: that some institutions and people will not have the interests of the country and the sector at heart. Innovation is a very important part of it. I also take this opportunity to welcome in this House the fact that the Government have recently given some money to the new model university that is being established in Herefordshire, which is enormously important because of the role it will play in helping to develop engineering skills and in working with small businesses and supply chains. It is the sort of institution that we need many more of, and I am really pleased that the Government have given their support.

It is worth remembering that one thing that has bothered us very much in thinking about how this Bill should go forward is our knowledge that it is only too easy to create a situation in which institutions arise and gain access to public funds but whose existence is very hard to justify and that can do enormous harm. It is not just this country—the United States has given us the largest and most catastrophic bankruptcies, leaving students stranded—but it is, after all, not very long ago that the Home Office moved to investigate and shut down higher education institutions in this country that were, not to put too fine a point on it, fraudulent.

This part of the Bill has always been enormously important. I am extremely happy, because it seems that this new clause will institute a quality assurance process that focuses the attention of the Office for Students on a number of critical issues when it is granting or varying awarding powers, and clarifies the importance of independent advice from outside an institution. This is always important, because an institution creates its own understandings and inevitably becomes defensive against the world. The potential strengthening and improvement of the advice that the QAA will get from outside, which will build on the QAA but will potentially be more independent and therefore both add an additional safeguard and add substantively to the process, is very welcome.

This clause also clarifies for the general public the way in which the Government envisage new institutions coming through. They clearly envisage two pathways. Many people will come through validation, a process that itself has grown up over the years with remarkably little scrutiny, but if an institution is to get degree-awarding powers from day 1, this is something of which the Secretary of State must be aware. The noble Lord, Lord Willetts, pointed out in earlier debates that anything that goes wrong tends to land on the Secretary of State’s desk anyway. What seems to be important here is that we have an extra element not just of formal accountability but one that will bring into the process both a clear ability for the Secretary of State to create a new institution that has degree-awarding powers, because that is seen as something of which they are capable from day 1, and something to make the process public and one that cannot slide through unobserved.

This is an area in which we have made enormous progress. Perhaps all this would have happened anyway, but I am extremely happy to see it in the Bill. I finish by expressing my gratitude once again to everybody who has worked on the Bill and listened to our concerns and my appreciation of all the comments, information and hard work that colleagues on all Benches of the House have put into it. I welcome this amendment.

Baroness Blackstone (Lab): My Lords, I speak very briefly just to endorse everything that the noble Baroness, Lady Wolf, has said. On behalf of the House generally I want to thank her for all the hard work and effort that she has put into securing these changes. It is fair to say that this part of the Bill, in its original form, was the one that gave cause to a great deal of worry, and for me personally the most worry of all because in my view it threatened the reputation of higher education not only in this country but overseas. With this amendment, we are now in a much better place.

The only thing that I ask is that there be some monitoring of how it works in practice. It is very important that there should be some evaluation to make absolutely clear to the higher education sector as a whole, and to those who might want to enter it, that there will be rigorous tests of both quality and standards before any institution can have degree-awarding powers and access to grants and loans through the system of financial support that we have. Having said that, however, I am really grateful to the Government and to the Minister for bringing forward this amendment. It is a huge improvement to the Bill compared to what we had originally.

Lord Willetts (Con): My Lords, I intervene very briefly to say that, at the end of the deliberations on this Bill, and on this important aspect of the Bill, we have ended up with a more rigorous, more transparent and more demanding regime for alternative providers in higher education than we have ever had before. I regretted that it was not possible to get legislation during the previous Parliament that would have gone alongside the initiatives that we took on alternative providers, but we certainly have a very significant regulatory regime in place now.

1.15 pm

The noble Baroness, Lady Wolf, has been one of the people pressing for this, but I just question one point that she made in her otherwise admirable remarks. She said that the Home Office had closed down lots of higher education institutions because they were bogus and did not meet proper standards. I think they were colleges, which is an unregistered name—you can call yourself a college—and there were people who were getting into Britain saying that they were going to study at colleges. There has always been a regime for validating degree-awarding powers and, of course, for getting the university title. I think it would be very dangerous in this House if we were to get the idea that there had been lots of bogus higher education institutions, which I do not think has been case; the problem was colleges. Even there, the Home Office occasionally got overexuberant—at least one college that had won the
Queen’s award for export was subsequently closed down—but it was essentially trying to stop people coming to study for a vocational qualification in a college environment.

Setting that specific point aside, we now have a very rigorous regime and I hope that we will now see practised the spirit of what the noble Baroness, Lady Wolf, said: we need innovation in higher education in this country. Although it is great when existing providers innovate, we know that in many sectors the best way to get innovation is for new people to come in and do things differently. I hope we can all agree that, especially with this regime in place, we can give a very warm welcome to new higher education institutions and new universities in this country.

**Lord Storey (LD):** My Lords, we agree on these Benches that as a result of the work that has been done we have a much better regulatory framework. Rigorous tests for degree-awarding powers are important. I was very much taken with the Minister’s comment that there should be no lowering of quality in protecting the value of university degrees. There are private providers, and the majority of private colleges do a fantastic job, but let us not kid ourselves: there are still some private colleges—and I would use the term “bogus colleges”—that with these new powers and regulations will not carry on letting down the quality of our university degrees and will not let down university students. It cannot be right, for example, that a student is enrolled to do a degree course that is validated by one of our universities but for which the only requirement is one GCSE. That cannot be right in our higher education system. These new powers will, as a result of what the Minister said, ensure that we can be proud of all our private providers.

**Lord Stevenson of Balmacara:** My Lords, I echo much of what has been said already, particularly by the noble Baroness, Lady Wolf, who has been a stalwart in fighting this corner. We have supported her all the way on it and I am very glad that we have reached the point where I think we are all happy with where we have got to.

The main focus of the amendments that were laid in Committee and on Report, and those that have now been presented in lieu by the Government, are about the ongoing arrangements in universities and higher-education providers in order to provide degree-level qualifications. The particularly narrow issue of what happens when an existing provider is taken over, whether by merger, purchase or otherwise, still needs a bit of care and concern, because there is fear within the sector that this might well become a feature, perhaps an unwelcome feature, of what we are doing. We are not against new institutions; we have always said that we will support those, but we want them to be proper institutions that are properly validated, with good procedures and processes in place. We would welcome that. However, where there may be a commercial imperative rather than an academic imperative to acquire a body, could the Minister comment on what he anticipates the arrangement will be should that merger or takeover be in play?

**Viscount Younger of Leckie:** My Lords, I echo the comments of the noble Baroness, Lady Blackstone. I thank the noble Baroness, Lady Wolf, for making such strong and passionate arguments on the need to safeguard the quality of English degrees, and for her engagement in the Bill’s passage overall, which I may not have said so far. I agree with her on the importance of diversity and innovation in the sector. I agree that new providers such as the New Model in Technology and Engineering will serve the interests of students and wider society well.

The noble Baroness, Lady Blackstone, and the noble Lord, Lord Storey, made an important point about quality of standards, which has been a theme throughout the Bill. I agree with them that we must maintain quality and standards in the sector. The Bill is designed to do just that. Our amendment further strengthens the Bill’s provisions in that respect, and I hope the House is now behind it.

The noble Lord, Lord Stevenson, at the very end of his brief comments, asked about change of circumstances—in other words, what would happen if a degree-awarding power’s holder was sold to someone with no experience, and whether there would be a full review. If the degree-awarding power’s holder was sold to a body with no track record, we would expect the eligibility to hold degree-awarding powers to continue, but it would be subject to a full review. Therefore, that review would be implicit.

I finish by thanking my noble friend Lord Willetts for his expert contributions and engagement throughout the Bill’s passage. The Bill builds on his work as Minister and the proposals in his original 2011 White Paper, *Students at the Heart of the System.*

**Motion E agreed.**

**Motion F**

Moved by Viscount Younger of Leckie

That this House do not insist on its Amendments 78 and 106 and do agree with the Commons in their Amendments 78A, 78B, 78C, 78D, 78E, 78F, 78G and 78H in lieu.

**Commons Amendments in lieu**

**78A:** Page 26, line 33, at end insert—

“(1A) On an appeal under subsection (1)(a) against a decision to revoke an authorisation, the Tribunal—

(a) must consider afresh the decision appealed against, and

(b) may take into account evidence that was not available to the OfS.”

**78B:** Page 26, line 34, after “appeal” insert “under subsection (1),

other than an appeal against a decision to revoke an authorisation,”

**78C:** Page 26, line 38, after “appeal” insert “under subsection (1)”

**78D:** Page 26, line 42, at end insert—

“(4) In the case of an appeal under subsection (1)(a) against a decision to revoke an authorisation, the Tribunal also has power to substitute for the decision any other decision that the OfS could have made.

(5) An appeal under subsection (1)(a) against a decision to revoke an authorisation may include an appeal against the decision mentioned in subsection (1)(b) regarding the date when the revocation takes effect; and in the case of such an appeal, references in subsections (1A), (3) and (4) to the decision appealed against are to be read accordingly.”
78E: Page 35, line 5, at end insert—
“(1A) On an appeal under subsection (1)(a), the Tribunal—
(a) must consider afresh the decision appealed against, and
(b) may take into account evidence that was not available to
the OfS.”

78F: Page 35, line 6, after “appeal” insert “under subsection (1)(b)”

78G: Page 35, line 10, after “appeal” insert “under subsection (1)“

78H: Page 35, line 14, at end insert—
“(4) In the case of an appeal under subsection (1)(a), the
Tribunal also has power to substitute for the decision any other
decision that the OfS could have made.

(5) An appeal under subsection (1)(a) against a decision to
revoke an approval may include an appeal against the decision
mentioned in subsection (1)(b) regarding the date when the
revocation takes effect; and in the case of such an appeal references
mentioned in subsections (1A), (3) and (4) to the decision appealed against
are to be read accordingly.”

Motion F agreed.

Motion G

Moved by Viscount Younger of Leckie

That this House do not insist on its Amendment 156
and do agree with the Commons in their
Amendments 156A, 156B and 156C in lieu.

Commons Amendments in lieu

156A: Page 37, line 20, at end insert—
“(SA) The consideration under subsection (5) of what would
be helpful to those described in paragraphs (a) to (c) of that
subsection must include a consideration of what would be helpful to—
(a) international students on higher education courses provided by
registered higher education providers;
(b) people thinking about undertaking such courses who
would be international students on such courses;
(c) registered higher education providers who recruit, or are
thinking about recruiting, people who would be international
students on such courses.

(5B) When the designated body or the OfS determines what is
appropriate for the purposes of subsection (1), it must, in particular,
consider whether information about the numbers of international
students on higher education courses provided by registered
higher education providers would be appropriate information.”

156B: Page 37, line 22, leave out “subsection (5)” and insert
“subsections (5) to (5B)”

156C: Page 37, line 44, after “provider” insert “; “international
student” means a person—
(a) who is not within any description of persons prescribed
under section 1 of the Education (Fees and Awards) Act
1983 (charging of higher fees in case of students without
prescribed connection with the UK) for the purposes of subsection
(1) or (2) of that section, and
(b) whose presence in the United Kingdom, and undertaking
of the higher education course in question, are not in breach of
primary or secondary legislation relating to immigration.”

Viscount Younger of Leckie: My Lords, I welcome
this chance to discuss once more international students,
an issue on which we have heard some of the most
passionate debates in this House. I begin by saying,
unequivocally, that the Government welcome genuine
international students who come to study in the United
Kingdom. They enhance our educational institutions
both financially and culturally, they enrich the experience
of domestic students and they become important
ambassadors for the United Kingdom in later life. For
these reasons, we have no plans to target or reduce the
scale of student migration to the United Kingdom. As
I have said before—and as the House will have heard—we
have no plans to cap the number of genuine students
who can come to the UK to study or to limit an
institution’s ability to recruit genuine international
students, based on its TEF rating or any other basis.
That being so, I do not believe that the amendment
tabled by the noble Lord, Lord Hannay, is desirable.

None the less, the discussion in this House on this
issue has provided us with an important opportunity
to reflect on the message we send out to the world
about the welcome that international students receive
when they apply to study in the UK. We want to
promote this offer and ensure that it is understood and
communicated. I should like to set out what the new
duty is. First, the duty will extend the information
publication duty on the designated data body or the
Office for Students so that it explicitly covers consideration
of what information would be helpful to current or
prospective international students and the registered
higher education providers that recruit them, or are
thinking of doing so.

Secondly, the new duty will also specifically require
consideration of publication of information on
international student numbers. This goes further than
ever before to ensure that international students get
the information they need about our offer. Alongside
this, we believe that we need a campaign to raise
awareness. That is why, in tandem, we are refreshing
our international engagement strategy. We will seek
sector representatives’ views on a draft narrative, which
we will be disseminating through the FCO’s Global
Britain channels, our embassies overseas and through
the British Council, as well as universities themselves.
This will ensure that the right messages get to the right
places. We have a good story to tell, and we are keen
that it is told. Not only that but we are committed to
ensuring that the UK remains one of the best places in
the world for research and innovation. I assure noble
Lords that UK Research and Innovation will continue
to fund an extensive range of international collaborations,
directly facilitating partnerships between UK research
establishments and their international counterparts.
We expect the UKRI board members, and UKRI
itself, to take a clear role in promoting UK science and
fostering collaboration internationally, and we have
already included the need to take an international
perspective in the job specification of the UKRI board,
which is currently being recruited. To underline this, I
confirm that we will ask UKRI to set out in its annual
report what work it has undertaken to foster and
support such collaborations. I beg to move.

Lord Hannay of Chiswick (CB): My Lords, first, I
respond to the Minister’s opening statement on this
Motion. I thank him for some of the things he said
that picked up one or two of the themes in the amendment
which he proposes should be rejected. It is a great pity
that they are not in the Bill but he made some helpful
remarks.

The Government’s amendment that is being moved
shows yet again that we are slightly at cross purposes
over this issue. This is not a statistical matter. Of
course, statistics enter into it but it is not basically a
statistical matter. It is about the public policy purposes we take with regard to overseas students. Therefore, even the suggested improved ways of statistically analysing overseas students do not address what my amendment was meant to address. I hope the Minister will forgive me for not saying anything more about his amendment, to which I have no objection at all, but which I do not think answers the problems addressed by my amendment and the amendment tabled by the noble Baronesses, Lady Royall and Lady Garden, and the noble Lord, Lord Patten of Barnes, the main thrust of which would have been to bring to an end what I regard as an aberrant practice of treating overseas higher education students for public policy purposes as long-term migrants. That, alas, will continue. That amendment was carried in this House last month by a majority of 94 drawn from all groups in this House. Therefore, I am afraid that I speak with deep regret, tinged with some bitterness, at the summary rejection of that amendment.

If the Bill before us had followed a normal course, I believe, although of course I cannot prove it, that a reasonable compromise would have been reached either in the other place, where there was substantial support for the amendment, or through a negotiation between the two Houses. The wash-up process, which we are busy completing, brought to a premature end any such possibilities. The fact that the Government felt it necessary to state that if this amendment was not dropped they would kill the whole Bill, sheds a pretty odd light on their priorities and their intransigence. Altogether, this is a rather shabby business.

Ceasing to treat overseas higher education students for public policy purposes as long-term migrants is not only a rational choice, and one which the chief competitors of this country in the market for overseas students—namely, the US, Australia and Canada—have already adopted, it also has a wide degree of cross-party support from a whole series of parliamentary Select Committees in both Houses, most recently just this week from the Education Committee in the other place. A recent survey by Universities UK shows that a large majority of those polled do not regard overseas students as economic migrants and do not consider that they contribute to the immigration problems which are the focus of so much public debate at this stage in this country. The fall in the number of overseas applications we are seeing at the moment amply demonstrates how we are already losing market share and undermining the future validity of a crucial part of our society and our economy—our universities. This morning I listened with great interest to the Foreign Secretary replying to a question on this on the “Tomorrow” programme. He made most of the points I have just made, so I have no quarrel with what he said, merely with what the Government are doing. A bad choice has been made, and no convincing rationale for making that choice has been forthcoming from the Government.

1.30 pm

The problem will not go away, and the rejection will not mean the end of the story. This system of treating students as economic migrants will continue to inflict damage on our universities and on our future soft power assets in the decades ahead. We will certainly need to return to this issue when the Government bring forward, as they have stated they will in their White Paper on the great repeal Bill, post-Brexit immigration legislation. I conclude with the hope that a period of reflection will bring wise counsel as well as the realisation that pyrrhic victories, of which this is one, are of a kind that we in this country could do well without.

Lord Willetts: My Lords, I congratulate the noble Lord, Lord Hannay, on the energy he has put into this issue during the process of scrutinising the Bill. The debates we have had on it have made it absolutely clear that on all sides of the House we strongly support legitimate overseas students coming to Britain to study, because it enhances the academic experience of British students, it is good for the overseas students, and it is a great British export.

What the Minister said in signalling again that the policy remains to attract legitimate overseas students was rather more welcome than the noble Lord, Lord Hannay, accepted, although I fully realise why he made the observations that he did. He says that statistics are not the crucial issue and statistics are less important than policy. However, the point we heard a moment ago from the Minister about this new exercise on statistics has considerable potential value. Aside from all the general arguments, one of the frustrations about this debate is a genuine empirical disagreement about how many students from abroad overstay in this country. A lot of the debate and attitudes in Whitehall are shaped by a view that we have a problem of a lot of overstayers. If there is such a problem, we need to tighten the regime. If, however, there is not a problem of overstayers, and it can be established authoritatively that there is not, that would be a significant contribution to the debate.

The statistics at the moment are very unreliable. If someone comes here to study and tells someone doing one of the surveys that they are here to study, stays on and works for a time, then leaves, answering the question, “What have you been doing?”, with, “I’ve been working”, they count as a leaving worker, not as a leaving student. If someone comes here to study, thinking that they will be here for more than a year, but end up leaving Britain after being here for 11 months—many master’s courses are advertised as a year long but you can complete them in 11 months—they do not count as one of those one-year students departing. There are lots of problems like this in the statistics, which have proved a bane in the debate about overseas students and their numbers. I very much hope that the important initiative which the Minister announced today, which was discussed in the other House yesterday, will enable us to get to the bottom of those types of empirical questions. That would be an important contribution to the debate, and I hope that the Minister will be able to confirm that those type of questions will be within the scope of this exercise and that we will learn more about it.

I also hope, thinking of all the time that we have spent on attracting overseas students to this country, that we might briefly remind the Government of the importance of encouraging British students to study abroad. Of course, dare one say it, if they were to
study abroad for more than a year, it would reduce net migration—not that that is the most important reason for promoting it. However, when one looks at half a million students coming from abroad to study in Britain and 30,000 British students going to study abroad, especially if we are to be a dynamic global presence, even post-Brexit, we need to do better at promoting and encouraging British students to go abroad. One way to do that is to make it easier for them to take out loans to finance their study abroad. I hope that we will look at that.

Finally, as this will be my last intervention on the Bill, I congratulate the ministerial team that has successfully brought the Bill to a conclusion. My noble friend Lord Younger has been courteous throughout this debate, and Jo Johnson has been extraordinarily diligent in spending time in this Chamber observing our debates. This is a substantial piece of legislation. We legislate on higher education only once a generation, and this legislation finally puts in place a regulatory regime that matches the realities of higher education in Britain. We could not have carried on with the old grant-giving body being a kind of informal regulator, using its power of the purse to regulate the sector. This is a much better, more lucid, more transparent and more rule-based system.

In our debates in this House, on all sides, it has been clear that we care passionately about the autonomy of higher education institutions and universities, and the provisions, including the new ones we have debated today, enhance that autonomy. Looking back on this debate, one of my regrets is that while we have tended to look at this from an English perspective. From the conversations I have with vice-chancellors, it is clear to me where the biggest threats to autonomy in our universities lie, and it is not in England. The relationship between the Scottish Government and their universities is far more intrusive and overbearing than anything that would be acceptable in England. We have sometimes had an English Minister with English teaching responsibilities facing challenges about autonomy for which he is not responsible. I hope that in the future we will be avid in securing, scrutinising and protecting the autonomy of Scottish universities, which matters enormously in Scotland and more widely. Therefore, we have a better regulatory regime, we have spoken up for autonomy, and, significantly, the focus on teaching has reminded us of the importance of the educational experience in university. After so much attention has been given to research over the years, it is excellent that we have spent so much of our time focusing on teaching.

I therefore thank the Ministers, and I thank their Bill team for the way in which it has engaged with many of us as we have had questions to make sense of specific proposals and try to engage with them. Indeed, this has been a cross-party debate. We have had excellent interventions from experts on the Cross Benches, people who work in and understand higher education, which has enormously enhanced our debate. We have heard from the Opposition Benches—I agree that the noble Lord, Lord Stevenson, made an important contribution from the Opposition Front Bench—and from the Lib Dem Benches. Occasionally I had to remind myself that we had worked on this together in coalition and that some of the measures that were now proving so controversial could trace their origins to a Government in whom there was even a Secretary of State I worked with who belonged to a certain party opposite. However, all parties have worked together on this, and we can be proud of the Bill that is now going forward.

**Lord Bilimoria (CB):** My Lords, I echo much of what the noble Lord, Lord Willetts, said, but I want to start with the reference that the Prime Minister made to the “unelected House of Lords” when she announced the election. This unelected House is at its best when it does what it has done with this Bill. It is probably one of the most amended Bills in the history of Parliament, with more than 500 amendments, and that is because of the expertise that exists across the board in this House—a breadth and depth of expertise that no other Chamber in the world comes anywhere close to by a factor of maybe 10. A former Universities Minister has just spoken and we have heard from chancellors and vice-chancellors of universities, former vice-chancellors of universities such as Cambridge and the heads of Oxbridge colleges—and I could go on. Where in the world would you get that? We have had it with this Bill.

I thank the Minister, the noble Viscount, Lord Younger, for having always been polite and decent, and for having listened. We may not be where a lot of us want to be, but the Government have listened and there has been a lot of movement. I, too, acknowledge the commitment of the Minister, Jo Johnson. I have never seen a Minister so assiduous in attending the stages of a Bill in the way that he has with this one, and it shows visibly that he is listening. I also thank the noble Lord, Lord Hannay, for the initiative that he has taken on this amendment. He is a former pro-chancellor of the University of Birmingham, where today I am proud to be chancellor.

Normally, you are not meant to repeat things at various stages of a Bill—you cannot make another Second Reading speech later on. However, in this case new information and new reports have been coming out at every stage. For example, the UUK report suddenly revealed that the contribution of international students is much higher than we had ever thought. Figures of £13 billion or £14 billion were quoted, but the figure is actually £26 billion a year. That is new information to add to what the noble Lord, Lord Hannay, was trying to do with this amendment. On top of that, we have had, hot off the press, the Education Committee’s report entitled *Exiting the EU: Challenges and Opportunities for Higher Education*, dated 25 April.

Before I go any further, there is a unanimous consensus around the country—let alone in this House, where we won this amendment by close to 100 votes—that international students should not be included in the net migration figures. The National Union of Students has stated:

> “We are concerned that—as long as international students are included within net migration statistics—policies that adversely impact international students owing to the Government’s desire to reduce levels of immigration will only exacerbate”.

It also said:

> “The Government’s abject failure to offer anything substantial on removing international students from net migration targets is”,

**Lord Willetts**
in its words, “outrageous. There is immense support for doing so, from cross-party parliamentarians, from UK students and from the general public. It is unacceptable that the government continues to ignore this support”.

I come to the House of Commons Education Committee’s report, which no one has spoken about and which has just been published—on 25 April. It contains a whole section on international students and the migration target. It says very clearly that the 100,000 target still exists, yet we all know that the latest figure for overall net migration is 273,000. The excuse that the Government give every time we challenge them to remove international students from the net migration figures is that the UN rules mean that we have to include them and treat them as immigrants—and those are indeed the UN rules.

The Government’s other answer is always, “There is no cap on the number of international students. Any number is welcome”. However, the danger lies in the perception that is created by continuing to include them in the figure and treat them as immigrants. The Home Secretary at the Conservative Party conference spoke about possibly reducing the number of international students. That is scary—and it is a message that goes to the outside world. The Commons Education Committee said the majority of its written evidence and witnesses at its meetings were very clear that international students should be removed from the net migration target, which would, “help offset risks to higher education from leaving the EU”. It continued: “Our evidence was unanimous in saying that international students were a positive force”, for education, contributing £25.8 billion a year and creating more than 200,000 jobs, and contributing to the richness of our universities, as well as to the UK’s soft power.

1.45 pm

There has been poll after poll on this issue. After the referendum, a ComRes poll said that only 24% of the public thought that international students were immigrants, and there was only a 2% difference between those who voted to leave, at 25%, and those who voted to remain, at 23%. So whether they are Brexiteers or remainers, people do not think that international students are immigrants. The report points out: “71% said they would support policies to boost growth by increasing overseas students”.

Our competitor countries have targets to increase the number of international students. The demand from countries such as India for studying abroad is increasing by 8% a year, yet an NUS poll found that slightly over half of overseas students thought that the British Government were either not welcoming or not welcoming at all to international students. There are half as many Indian students in 2015 compared with the number in 2010. Yet in countries such as Australia, Canada and Germany the number is growing by 8% a year.

Can the Minister please answer this question? When the UK’s main competitors for international students—the United States, Canada and Australia—all categorise international students as temporary migrants rather than permanent immigrants, why can we not do the same? What are we scared of? The noble Lords, Lord Willetts and Lord Hannay, and the Minister spoke of statistics. What statistics? The statistics are bogus because they are based on the International Passenger Survey. Some estimates suggest that 90,000 international students overstay; others put the figure at 40,000. Yet the Times has reported that there is a Home Office-commissioned report that shows that only 1% of international students overstay their visas—only 1,500. But this report has not been released. Can the Minister tell us why?

The figures in the report are supposedly based on the Government’s new exit checks. I have been a lone voice in this Parliament and I feel like a lone voice in this country in asking the Government to bring back physical, visible exit checks at all our ports, airports and borders. Tony Blair, when he was Prime Minister, took them away in 1998. That was negligent from a security point of view, negligent from an illegal immigration point of view, and negligent from the point of view of being able to count the number of international students coming in and out of this country. Every passport, EU and non-EU, should be scanned when people enter the country, and every passport, EU and non-EU, should be scanned when people leave the country. If that happened, we would know the correct statistics. Why can the Government not implement this straightaway?

In conclusion, the committee said: “Over the last few years, six parliamentary committees have recommended the removal of students from the net migration target”, and opinions have been expressed at the highest level. The noble Lord, Lord Hannay, spoke about Boris Johnson. I believe that even the International Trade Secretary, Liam Fox, agrees that international students should not be treated as immigrants and should be removed from the net migration figures.

Margaret Thatcher was famous as the lady who was “not for turning”. The Prime Minister, by continually saying that there would be no election until 2020, is, I think, “for turning”. So why is she not listening to us? It is such a disappointment. It is ruining the reputation of our country, our universities and our economy—and perception becomes reality. This provision did not need to be in the Bill. The Government and the Prime Minister can still act unilaterally and remove international students from the net migration figures. I remind the Prime Minister and the Government of the maxim that it is better to fail doing the right thing than to succeed doing the wrong thing.

Lord Cormack (Con): My Lords, I will not attempt to emulate the noble Lord, Lord Bilimoria, by making a Fourth Reading speech, but I will make a couple of brief points. I strongly supported the noble Lord, Lord Hannay, when he introduced his amendment and have spoken many times on this subject in your Lordships’ House. I deeply regret that the Government have not felt able to accept the amendment and commend it to the other place. I echo everything that has been said about the understanding and capacity for listening both of my noble friend Lord Younger, the Minister in your Lordships’ House, and of Mr Jo Johnson, but it is a pity that an opportunity has been lost. I am sure that we will return to this subject, as the noble Lord, Lord Hannay, said, possibly in a future immigration Bill.
[Lord Cormack]

Although I welcome what the Minister said today and what is in the Commons amendment before us, it does not go far enough. There will be real interest in how the Government are able to produce good statistics. It is 35 years ago almost to the day when a famous BBC reporter in the Falklands said, “I counted them all out, and I counted them all back”. We must start doing that with students, and indeed with all immigrants. However, we must not do anything that damages our reputation—however gently—as a place where students at undergraduate and postgraduate level from all over the world can feel welcome. The more we can do to achieve that welcome the better, and we must do everything we possibly can to make sure that there are no implicit deterrents. I am sorry that after a very good morning where the Government have made some very real concessions, for which we are all extremely grateful, the concession on this particular subject is not as great as it should be. I hope my noble friend on the Front Bench will take note of that and that we will come back before too long with a reinforced Government Front Bench and a new determination to accept the logic of the Hannay amendment.

Baroness Garden of Frognal: My Lords, from these Benches we strongly support the amendment of the noble Lord, Lord Hannay, and endorse everything that the noble Lord, Lord Cormack, just said. The noble Lord, Lord Willetts, reminded us of the heady days of coalition when I was his opposite number in this House. I remember the debates that went on between the Secretary of State for BIS and the Home Secretary on this topic: the noble Lord could never get any movement on seeing the illogicality.

What baffles many of us is that the Government reiterate that there is no cap on genuine international students, but then they say, “But we will count them as migrants and we are determined to reduce the number of migrants”. It is incomprehensible that the Government cannot see how very unwelcoming it is to put those words in the Bill. The amendments that have come through today, and what is in the Commons amendment before us, it does not go far enough. There will be real interest in how the Government are able to produce good statistics.

This is probably the last time that I shall speak on the Bill, so I reiterate the very sincere thanks to the Minister, the noble Viscount, Lord Younger, and Minister Jo Johnson, to the Bill team and to other colleagues who have been so helpful to us on what has turned out to be a very long and drawn-out discussion on the Bill. The amendments that have come through today have already improved it again. As I said before, it would obviously have been lovely if all our amendments had been accepted, but we recognise that we have actually done a very good job in making this Bill a whole lot better than it was before.

I echo the thanks to the noble Lord, Lord Stevenson, who led a collaboration of the engaged on these issues, made up of Members from these Benches, his Benches, the Cross Benches and occasionally some noble Lords on the Conservative Benches, to try to ensure that we could get the very best possible out of this Bill. I also thank my noble friend Lord Storey, who has been a tower of strength throughout. We have made this Bill much better than when it reached us and I am grateful to the Minister for helping that to happen.

Lord Mackay of Clashfern: My Lords, in relation to what the noble Lord, Lord Bilimoria, said about the Prime Minister’s remarks on calling the election, I am relying only on my memory but I do not think that she said “the unelected House of Lords”. She referred to unelected Lords who had made it clear that everything they could do to stop Brexit would be done—it was something like that. I do not think that she was referring to the House of Lords as a whole, because apart from anything else it would not fit the description.

I also support what my noble friend Lord Willetts said. He knows much more about the atmosphere in Whitehall now than I do, and he said he hoped that the research promoted in this might well have a good effect in that direction.

Finally, I agree with what has been said about the noble Lord, Lord Stevenson of Balmacara. I hope that he will enjoy the freedom of not being on the Front Bench. I want to thank all his colleagues on the Front Bench and those on the Front Bench of the liberal party and on the Cross Benches for their help with some of my efforts. I have enjoyed their co-operation and for that I am very grateful.

Lord Stevenson of Balmacara: My Lords, the Prime Minister referred to us all as saboteurs more than anything else, which might be a compliment in some ways. We might reflect on that as we go forward.

We must accept that we have made no progress at all on this section of the Bill. It would probably be wrong of me to give too much detail about what happens in a wash-up session. Very few people are privileged to attend them, and I was there only for a small part of it. The rest of the time I was left hanging on a mobile phone in a remote area in which it did not work very well, and I got more and more frustrated about my inability to have any influence in some of the debates. However, one would have hoped that a majority of 94, and the arguments that we have heard rehearsed again today, would have led at least to a discussion about the way forward on this complex and rather annoying area that we seem unable to bring into focus.

In fact, I understand that it was made clear at the very start that the Minister concerned was unable to discuss any concessions in this area: it was ruled off the table from the beginning. In that sense, it plays a little into the conversation that we had earlier: that there is something dysfunctional about Whitehall on cross-cutting issues. We all know the wicket issues that are difficult and that nobody wants to play on. No Minister will take full responsibility for them and unless they get prime ministerial push—and a lot more besides, because Prime Ministers are not always as powerful as public misconceptions would have it—they will not make the progress necessary to achieve something that is genuinely about the whole of government. A hole has been created in this area and we have, I am
afraid, fallen into it. Added to that is what appears to be an uncanny ability of the current Prime Minister to exercise control in a fairly remote part of the Government.

I have two other things to say before we hear from the Minister as he winds this Bill up. The first concerns a little of what the noble Lord, Lord Willetts, said and what was said around the House. We need to use the fact that we have been rebuffed again on this issue to try to get the case right. That would be a good thing to do. Although the statistics are important, I will focus not just on them, because it might be a little a bit of a mistake to think that we will get a counting-in and counting-out method just because there is a problem in this area.

The real issue is: who actually controls the entry of students to our universities? The noble Lord, Lord Willetts, said that at the end of the Bill we would probably have the best-regulated sector in the UK and possibly in the world. But should we not be trusting our higher education institutions to get on with the job and to recruit the best people they think can benefit from an education here?

The truth is that this is all second-guessed by the Home Office, which has its own teams of people who interview the students nominated by the institutions. They set the quota levels, which are said to be unlimited but are in practice set and increased only on application, and they change the quotas available to every institution if they feel that an institution is making mistakes in the people it recruits. This is not just about the point of entry. What happens to these students after they have left the responsibility of the institutions? When they go out into the wider world if they are able to get a job, or even if they disappear from the statistics, somehow the original institution that brought them in is responsible for them. That seems a double penalty, both for what they are doing and for future recruitment issues. All this has to be picked up and looked at. It is not a good system.

A pilot scheme is ongoing that affects masters courses, not undergraduate courses—deliberately chosen so that the results will be available earlier. Therefore, there is some hope that we might use that system to drive through a different approach to this, so that trusted institutions that are well regulated under a new system that has the support of both Houses can make the decisions necessary to recruit the right students. Those students will benefit from our system and can then fulfil their soft power responsibilities, duties and activities before going back, creating economic activity before they do so and being good citizens here and in the world. Currently, we have failed completely. I really regret that. I have bitterness and regret as much as the noble Lord, Lord Hannay, and I share his pain, but we must move on from here. The issue must not go away; it is too important for the economic future of our country, for the institutions concerned which need these students if they are to be successful and make progress, and for the individuals who are getting the benefit of the education here. I hope we will make progress urgently on the disaster that we now face.

2 pm

Viscount Younger of Leckie: My Lords, the noble Lord, Lord Hannay, spoke after my initial remarks. I understand that the noble Lord and others continue to hold strong views on this matter of international students. I am very aware of that, but I also appreciate his understanding of the current rapid process that is necessary and needed to move forward with cross-party agreement on this Bill, which he and the noble Lord, Lord Stevenson, alluded to.

To give some brief concluding remarks on the Bill, we have had an extremely rich and detailed debate on it over the last weeks and months. As the Minister in the other place noted, this House has contributed immeasurably to the Bill. Noble Lords’ deep interest and expertise in these matters has been very clear through not just the record number of amendments tabled, as mentioned by the noble Lord, Lord Stevenson, and others, but the quality of the debate. The Government have reflected deeply on these points throughout the process. I hope the House understands that now, including on the most recent amendments. The voice of the sector has also been heard loud and clear throughout the process, and I am glad that Universities UK and GuildHE were able to give their support to the package of amendments tabled in the other place at the start of this week.

I recommend without reservation that noble Lords support this Bill. As my noble friend Lord Willetts said, it represents the most important legislation for the sector in 25 years and will set the framework for our world-class higher education sector and globally leading research base to continue to thrive in the 21st century.

Motion G agreed.

Motion H

Moved by Viscount Younger of Leckie

That this House do not insist on its Amendment 183, 184 and 185, to which the Commons have disagreed for their Reason 183A.

Commons Reason

183A: Because Lords Amendments 183, 184 and 185 are unnecessary in light of Amendments 12A and 12B.

Motion H agreed.

Digital Economy Bill

Commons Reason and Amendments

2.03 pm

Motion A

Moved by Lord Ashton of Hyde

That this House do not insist on its Amendment I and do agree with the Commons in their Amendments 1A, 1B and 1C in lieu.

Commons Amendments in lieu

1A: Page 1, line 12, at end insert “; but may not do so unless—
(a) it specifies the minimum download speed that must be provided by those connections and services, and
(b) the speed so specified is at least 10 megabits per second.”

1B: Page 2, line 3, after “as or” insert “, except in the case of the minimum download speed.”

1C: Page 2, line 23, at end insert—
“72B Broadband download speeds: duty to give direction under section 72A

(1) The Secretary of State must give Ofcom a direction under section 72A if—

(a) the universal service order specifies a minimum download speed for broadband connections and services and the speed so specified is less than 30 megabits per second, and

(b) it appears to the Secretary of State, on the basis of information published by Ofcom, that broadband connections or services that provide a minimum download speed of at least 30 megabits per second are subscribed to for use in at least 75% of premises in the United Kingdom.

(2) The direction—

(a) must require Ofcom to review and report to the Secretary of State on whether it would be appropriate for the universal service order to specify a higher minimum download speed, and

(b) may also require Ofcom to review and report to the Secretary of State on any other matter falling within section 72A(1).”

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, this Motion covers two areas where the other place has offered amendments in lieu of your Lordships’ amendments. Lords Amendment 1 on the universal service obligation challenged the Government to be more ambitious on universal digital connectivity. A broadband USO, set initially at 10 megabits per second, forms part of our plans to make sure nobody is digitally excluded. Lords Amendment 1 would have disrupted those plans. In our view, it would make the USO unworkable and, because of the risk of legal challenge, would lead to delays in implementation.

The USO can work only if it is legally robust and enforceable. EU law requires it to take into account technologies used by the majority of subscribers. Today, 30 megabits per second is enjoyed by fewer than 30%. Two gigabits per second is enjoyed by fewer than 1%. While we may have a majority taking up 30 megabits per second in a few years’ time, the Government want to ensure that customers can contact the emergency services, including fixed line, broadband and pay TV, not just mobile phones. I beg to move.

Lord Fox (LD): My Lords, as someone who has renovated a Victorian house, I know one thing to be true. It is all very well stripping off the anaglypta and the woodchip, slapping on some Farrow & Ball, improving the coving and putting up a dado rail, but if you do not tackle the fundamentals you are pretty soon raising the floorboards again. It is the roof, the electricals and the plumbing that call you out. I had hoped that the Bill would tackle the fundamentals of the nation’s digital plumbing.

I hoped that it would put in train a really revolutionary revolution for our digital network and enable the whole country to participate in the digital economy. I believe the Bill sets out to achieve. I still hope that is true, but I have my doubts.

Without a requirement for a fast digital delivery and a date for the arrival of that fast digital network, we will struggle. The notion of having a 75% threshold of subscription is a tricky way of going about this. We will have to use the reporting requirements that Ofcom is now obliged to follow—that is a move forward—to get it to report on how it is driving broadband usage.

We are using the commercial arms of the same companies being asked to deliver broadband to promote the use of broadband itself. We have a closed loop that does not necessarily have an incentive to drive up to the 75% threshold. I would be more confident in the progress of this country in delivering this network if there was not a dominant player that sits on a Victorian asset of copper wire which it wants to sweat, and quite understandably. It has to be up to the Government and Ofcom to drive their desire to really move forward.

We are closing the door on a fresh, shiny new Bill which still smells of new paint, but, just as with my house, I cannot help thinking that we will be raising the floorboards on this issue time and again in Parliaments to come.

Lord Stevenson of Balmacara (Lab): My Lords, we welcome the amendments in lieu in the Motion moved by the Minister. Having said that, I think we are at liberty also to regret that they do not go further.

The issue that we are dealing with here, which I think has been well picked up by the noble Lord who has just spoken, is that 59% of rural Britain has no proper access to the internet and large parts of the country have not-spots. It is a cause for major concern. The root of the problem is that, unless there are sanctions to make sure that it happens and an incentive in terms of investment to make sure that the funding is available for it to take place at an appropriate time, it will never happen. It is therefore only part of the story.

The narrative that we are unfortunately locked into appears to be one where the Government were initially unwilling even to have anything in statute which provided a floor for the activity here—we now have that with this amendment, although it is a very low floor—but they do not yet have the aspiration, embodied in amendments that this House agreed, to get the speeds up and widen the coverage as quickly as they can.
We are stuck in a situation where the spirit may be willing but the flesh is certainly very weak. We are not in a position where we can say that we will be able to look forward to this in an immediate future.

The root of the problem has another source, which is the reliance on the European Commission’s requirements in this area. The Government have made great play of this, but the only legislative framework under which Europe is operating here, which will fall away in 2019 if the new Government get their way, is that there should be non-binding guidance on what constitutes a universal service, yet the Government have chosen to interpret that as a limit on what they do rather than an opportunity to go further. While we welcome what is here, we do not think that the mechanics chosen will do the trick, particularly when Ofcom has recommended a faster basic speed and a cheaper way of doing it, which would be at 30 megabits per second. As we have just heard, we may be back looking at this in very short order.

On mobile bill capping, which will help consumers who get themselves in trouble with their bills, we are delighted that the Government have accepted the amendment made by the Lords at an earlier stage.

Lord Ashton of Hyde: My Lords, I am grateful for those remarks by noble Lords. The noble Lord, Lord Fox, talked about the fundamentals. They are what we have tried to address in this Bill to increase digital connectivity in the country. Measures in the Bill which have been accepted, on the Electronic Communications Code and those relating to spectrum, are part of that. The USO is slightly different. It was never intended to drive increased speeds. We have said separately that we share the ambition of the noble Lord to increase those and stated that we see fibre to the premises as the way forward, but the USO is there to tackle to social exclusion. I can reassure noble Lords that the response to Lords Amendment 1 is not about delaying superfast connectivity or pandering to the communications providers. To the contrary, it is because we do not want to be involved in protracted legal disputes. The fact is that the House can legislate for whatever speed it likes, but it will make a difference to people up and down the country only if it is implemented properly. That means that the Bill must be legally watertight and realistic.

Government Amendment 1A will put our money where our mouth is. As the noble Lord, Lord Stevenson, mentioned, we have now put in legislation that the broadband USO will be set at a minimum of 10 megabits per second and we will ensure that if the minimum has not already been raised to 30 megabits per second by the time take-up of superfast broadband has reached 75% of premises a review must be triggered. That is practical and, interestingly, will give this country the fastest USO in Europe. I hope we concentrate on the benefits we receive from this.

Motion A agreed.

Motion B

Moved by Lord Ashton of Hyde

That this House do not insist on its Amendment 2 and do agree with the Commons in their Amendment 2A in lieu.

Commons Amendment in lieu

2A: Page 88, line 10, at end insert the following new Clause—

“Billing limits for mobile phones

Billing limits for mobile phones

In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services) after section 124R insert—

“Billing limits for mobile phones

124S Mobile phone providers’ duty to enable billing limits to be applied

(1) The provider of a mobile phone service must not enter into a contract to provide the service unless the customer has been given an opportunity to specify a billing limit in the contract.

(2) In relation to a contract to provide a mobile phone service—

(a) a billing limit is a limit on the amount the customer may be charged for provision of the service in respect of each billing period, and

(b) a billing period is one of successive periods specified in the contract and together making up the period for which the contract remains in force.

(3) A contract to provide a mobile phone service must provide for the customer on reasonable notice at any time—

(a) to specify a billing limit if none is specified for the time being,

(b) to amend or remove a limit in respect of all billing periods or a specified billing period.

(4) In any billing period the provider must—

(a) so far as practicable, notify the customer in reasonable time if a limit is likely to be reached before the end of the period, and

(b) notify the customer as soon as practicable if a limit is reached before the end of the period.

(5) A limit may be exceeded in relation to a billing period only if the customer agrees after a notification under subsection (4)(a) or (b).

(6) If the provider continues to provide the service after a limit is reached, the customer’s use of the service does not constitute agreement to the limit being exceeded.

(7) The provider must give the customer confirmation in writing of—

(a) the decision made by the customer in accordance with subsection (1),

(b) any decision of the customer under provision made in accordance with subsection (3), and

(c) any agreement by the customer in accordance with subsection (5).

(8) This section applies to agreeing to extend a contract as it applies to entering into a contract, and in that case the reference in subsection (2)(b) to the period for which the contract remains in force is a reference to the period of the extension.

(9) Nothing in this section affects a provider’s duty to comply with requirements to enable calls to emergency services.

(10) In this section—

“customer” does not include a person who is a customer as a communications provider;

“mobile phone service” means an electronic communications service which is provided in the course of a business wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

124T Enforcement of duty to enable billing limits to be applied

(1) Sections 96A to 96C apply in relation to a contravention of a requirement under section 124S as they apply in relation to a contravention of a condition set under section 45, with the following modifications.

(2) Section 96A(2)(f) and (g) (OFCOM directions) do not apply.
(3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.

(4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OFCOM determine to be—
(a) appropriate; and
(b) proportionate to the contravention in respect of which it is imposed."

Motion B agreed.

2.15 pm

Motion C

Moved by Lord Ashton of Hyde

That this House do not insist on its Amendment 40 and do agree with the Commons in their Amendments 40A and 40B in lieu.

Commons Amendments in lieu

40A: Page 88, line 10, at end insert the following new Clause—

"Code of practice for providers of online social media platforms

(1) The Secretary of State must issue a code of practice giving guidance to persons who provide online social media platforms for use by persons in the United Kingdom ("social media providers").

(2) The guidance to be given is guidance about action it may be appropriate for providers to take against the use of the platforms they provide for conduct to which subsection (3) applies.

(3) This subsection applies to conduct which—
(a) is engaged in by a person online,
(b) is directed at an individual, and
(c) involves bullying or insulting the individual, or other behaviour likely to intimidate or humiliate the individual.

(4) But guidance under this section is not to affect how unlawful conduct is dealt with.

(5) A code of practice under this section must (subject to subsection (4)) include guidance to social media providers about the following action—
(a) maintaining arrangements to enable individuals to notify providers of the use of their platforms for conduct to which subsection (3) applies;
(b) maintaining processes for dealing with notifications;
(c) including provision on matters within paragraphs (a) and (b) in terms and conditions for using platforms;
(d) giving information to the public about action providers take against the use of their platforms for conduct to which subsection (3) applies.

(6) Before issuing a code of practice under this section, the Secretary of State must consult—
(a) those social media providers to whom the code is intended to give guidance, and
(b) such other persons as the Secretary of State considers it appropriate to consult.

(7) The Secretary of State must publish any code of practice issued under this section.

(8) A code of practice issued under this section may be revised from time to time by the Secretary of State, and references in this section to a code of practice include such a revised code."

40B: Page 90, line 12, at end insert—

"( ) section (code of practice for providers of online social media platforms)."

Lord Ashton of Hyde: My Lords, I want again to start by saying that the Government accept and agree with the spirit of Lords Amendment 40, but, as drafted, it poses difficulties and risks unintended consequences. For example, it is not clear who would notify social media providers that content contravened existing legislation. The requirement to inform the police if notified that content contravenes any existing legislation could lead to unmanageable volumes of referrals to law enforcement. This would do little to increase public protection, making the code of practice unworkable.

The other place has offered Amendment 40A, which we believe will achieve a similar outcome by setting out the behaviour expected of social media companies while protecting users. As explained in the other place by my right honourable friend the Minister of State for Digital and Culture, good work is being done by some companies to prevent the use of platforms for illegal purposes, but we agree that more can be done by social media to tackle harmful conduct online, particularly bullying behaviour, which can have serious consequences.

Our intention is that the code will set out guidance on what social media providers should do in relation to conduct that is lawful but that is none the less distressing or upsetting. The intention is that the guidance in the legislation addresses companies proportionately. We believe that this code, together with the internet safety strategy, will result in a properly considered, comprehensive approach to online safety and deliver the long-lasting protections that this amendment seeks to secure. I beg to move.

Lord Clement-Jones (LD): My Lords, I have no doubt that the noble Lord, Lord Stevenson, will want to give a more substantive response since this was fundamentally an opposition amendment, but it was supported strongly on these Benches. I accept that the Minister has tried to incorporate the spirit of the original amendment in this amendment coming from the Commons. He made a number of detailed points about objections to the drafting of the original amendment, but there is one thundering great hole in the amendment as brought forward by him, which is that there is no obligation on providers to comply with the code of practice once it comes into force. It is nakedly a voluntary code rather than any code that is able to be enforced by the Secretary of State. That is the major difference between the amendment that this House passed and that which has now come forward.

The Minister mentioned the internet safety strategy and the work being done on it. Many of us are convinced that when the work on that is done the need for an enforcement power in such a code of conduct will become clear. Will the Minister assure us that enforcement will be considered as part of the internet safety strategy and that, if the overwhelming body of evidence is that such a form of compliance is needed, the Government will come forward with amendments?

Lord Collins of Highbury (Lab): My Lords, I will not delay the House but I want to repeat what the noble Lord, Lord Clement-Jones, has just said because the point about no enforcement and no sanctions is important. I recognise the words of the Minister in terms of reflecting the spirit and intent of our original amendment, and I think that that is what the government now seek to do. It will give notice to the social networks that failure to comply will result in further government action. Like the noble Lord, Lord Clement-Jones, I hope that the Minister will be able to respond positively, in particular on the internet strategy review.
In conclusion, our examination of these issues has been extremely good in the Lords both in Committee and on Report. We now have a clear policy which gives notice to the social networks that we want to ensure that proper standards are maintained and that action will be taken when evidence of abuse is found. It should not be a matter of days or weeks, which has been the case, before offensive material is taken down. We have seen evidence of the horrendous things that have been put up on social networks in the US and Thailand, so we want to ensure that the networks understand fully the gravity of the situation.

**Lord Ashton of Hyde:** My Lords, I am grateful for the remarks of noble Lords and I shall start by responding to the last comments made by the noble Lord, Lord Collins. I think that the social media companies are in absolutely no doubt about the Government’s determination to review what they do and make sure that they live up to their responsibilities. We are all agreed on that and we realise that even when something is technically lawful, it can be very damaging and unpleasant. Anything that sets out to humiliate people has no place in our society. I of course understand why some noble Lords are disappointed that the code of practice is not mandatory, but we should have confidence that it will make a difference if, as I have suggested, both we and the social media companies take it seriously. The code of practice will clearly set out our expectations of social media providers and it is in the interests of a site to be responsible with regard to online safety. It is critical for the future of sites that their users should trust them and that they protect the health of their brand.

I accept that there has been a lot of talk about the internet safety strategy. We have not ruled anything out of the strategy and we have heard the clear views of the House. I can say that we will consider carefully the points which have been raised in the development of the strategy and we will welcome contributions from noble Lords and other interested parties. I shall repeat: my department has absolutely taken on board the points which have been raised in the development of the strategy and we have heard the clear views of the House along with those of many other stakeholders in relation to social media companies. The code of practice will clearly set out our expectations of social media providers and it is in the interests of a site to be responsible with regard to online safety. It is critical for the future of sites that their users should trust them and that they protect the health of their brand.

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Motion **C** agreed.

**Motion D**

*Moved by Lord Ashton of Hyde*

That this House do not insist on its Amendments 237, 238 and 239, to which the Commons have disagreed for their Reason 237A.

**Commons Reason 237A:** Because the processes in place for determining the appropriate funding for the BBC are sufficient.

**Lord Ashton of Hyde:** My Lords, we return yet again to the issue of BBC funding, having debated it at length in Committee and on Report. Honourable Members in the other place have disagreed with the amendments that noble Lords inserted into the Bill at Report stage which sought to establish a BBC licence fee commission. The Government remain clear that they must have a free hand in determining the BBC’s overall funding deals and the level of the licence fee following negotiation with the BBC itself.

Noble Lords will appreciate that decisions on the level of the licence fee are a matter for the elected Government. Similarly, we are not convinced that consulting the public on the level of BBC funding is the right approach to determining its funding settlements. The BBC’s funding needs are a complicated and technical issue, and not one that lends itself easily to public consultation. Although the Government have persuaded honourable Members in the other place, we have listened to the concerns expressed by noble Lords about the process for setting the BBC’s funding settlement and about ensuring that the BBC has an appropriate level of funding. The new charter endorses the BBC’s mission and reaffirms the role and independence of the BBC in a much-changed and fast-changing media landscape.

The specific provisions in the BBC charter for setting the next funding settlement should also give some comfort to noble Lords who have concerns. We know exactly when the next funding period will commence. The Government will allow the BBC to make its case and will consider taking independent advice before reaching a final decision. Therefore in moving this Motion, I hope that those noble Lords who supported the noble Lord, Lord Best, at earlier stages will recognise that decisions on the level of the licence fee are a matter for the elected Government. The Government remain clear that they must have a free hand in determining the BBC’s overall funding deals and the level of the licence fee following negotiation with the BBC itself.

I turn now to Motion **E**, relating to public service broadcasting prominence on the electronic programme guide, an issue which was much debated both in this House and in the other place. The Government have heard the strength of feeling on this issue. Although we have concluded that we can see no compelling evidence of harm to the PSBs, we recognise that this is a fast-moving technological landscape which needs to be kept under review; a point made clearly by the noble Lord, Lord Wood of Anfield, at Report stage. Amendment 242A will therefore place a new requirement on Ofcom to publish a report which looks at the ease of accessing and finding PSB content across all television platforms on both the linear and on-demand basis. The report will focus consumer pressure on the platform providers and TV manufacturers to improve the prominence of PSB on-demand services where this has been identified as an issue. We know that platform providers and TV manufacturers respond most strongly to consumer needs in developing their products and therefore developments in the EPG should be customer-driven.

The new duty will also impose an ongoing obligation on Ofcom to report and require it to review its EPG code by 1 December 2020, and to publish its first report on the ease of accessing and finding PSB content before then. As my right honourable friend the Minister of State for Digital and Culture made clear yesterday,
[LORD ASHTON OF HYDE]
if Ofcom’s report makes it clear that there is a problem in this area, one that can be fixed only by legislation, and assuming that the Government are returned in June, we will bring forward that legislation as soon as possible. That, I think, is why the Labour Front-Bench spokesman said that she was happy to support the government amendment. I beg to move.

Lord Best (CB): My Lords, the three amendments which are the subject of Motion D came before your Lordships in the names of myself, the noble Baroness, Lady Bonham-Carter, and the noble Lords, Lord Inglewood and Lord Stevenson. They were passed by noble Lords with a thumping majority but they are now to be rejected with no alternative amendments in lieu.

The issue here concerns the process by which the BBC licence fee is determined. There has been extensive condemnation of the current process from the right honourable John Whittingdale when chairing the CMS Select Committee in the other place and Rona Fairhead, the chair of the BBC Trust, as well as from a range of organisations including the Voice of the Listener and Viewer, the NUJ, and of course our own Select Committee on Communications, which I have the honour of chairing, at least until the Dissolution of Parliament.

What everyone agrees is that the current process has meant the Secretary of State deciding on this vital matter in a most unsatisfactory way, behind locked doors and in secret, on a basis that has on the last two occasions involved freezing the fee for many years and the allocation of portions of it to a range of other purposes—so-called midnight raids—from broadband rollout to free licences for the over-75s. The amendments now to be rejected would not tie the hands of the Secretary of State, who would still make the determination, but the revised process would involve public and parliamentary consultation and expert advice from a specialist BBC licence fee commission.

2.30 pm
On the decision over the licence fee hangs the future of the BBC. It is vital to ensure that that decision is based on both an understanding of what the public want and hard evidence of what expenditure the BBC needs to fulfil its public purposes. I conclude this expression of disappointment with rather limited thanks to the Minister for acknowledging that this is a technical and complicated matter, one on which the Government will consider taking advice. They would be well advised to do so. We have five years until the licence fee is reset. During that time, it may be worth your Lordships returning to this matter.

Lord Lester of Herne Hill (LD): My Lords, about a year ago I introduced a Private Member’s Bill that was too low in the ballot to have any chance of being debated or passed. When that became evident, I decided instead to use this Bill as a vehicle to protect the independence and funding of the BBC. As the Minister will, I am afraid, recall painfully, we debated these issues as a result throughout most of the last year.

The first problem that we debated was whether it was proper to have legislation and a charter. The Government originally took the position that they were inconsistent. I am grateful that eventually, having listened to the authority of the noble Lords, Lord Inglewood, Lord Fowler—while he was a free man—and Lord Best, about how a charter is nothing more than what Ministers desire and is not like legislation, the Government eventually concluded that there was nothing incompatible between having a charter and statutory underpinning, too.

The next question was why any statutory underpinning is needed. The answer, if you read the current charter, is that there is no obligation in it upon the Government to provide sufficient funding or even to respect the independence of the BBC. I made it clear before the Bill left the House for the other place that I was not wedded to any particular solution to the problem of ensuring that the Government would provide sufficient funding and respect the independence of the BBC, and would do anything in their power to secure that. As the noble Lord, Lord Best, indicated, one way this House expressed our view was by adopting his rather more moderate approach than mine. His commission would not bind the Government to anything in particular other than to consider the outcome of the review commission. My approach would create an obligation upon the Government as regards funding and a prohibition against top-slicing, the transfer to the BBC of matters that were the obligation of the Department for Work and Pensions, to ensure that that never happened again.

As I understand it, we are now in a position, before we finally approve this Motion, where the Government do not accept any obligations on them with regard to the sufficiency of funding or respecting the independence of the BBC. I asked this of the Minister the last time and he could not answer. I ask him this time please to assure the House that the Government accept that there is an obligation to provide sufficient funds to the BBC, whether through the licence fee or otherwise, to ensure that it can fulfil the public purposes as an independent public service broadcaster that are enunciated in the charter. Do they also accept the obligation to ensure that the independence of the BBC is guaranteed and that there will be no further raids upon it through top-slicing? If the Minister can give those assurances today, I will not feel that I have wasted the best part of the last year in these debates. If he cannot do so—I very much hope that he will—I am afraid that I will have to bring in another Private Member’s Bill at the ballot.

Viscount Colville of Culross (CB): I regret that the Government decided not to accept Lords Amendment 242. The Minister in the other place said in his speech yesterday that the technology of broadcasting and internet-based on-demand viewing are completely different. I am afraid that is not right. These two technologies are merging as television sets become multipurpose computers. We are seeing convergence between television and the internet increasing at a massively rapid pace. It is crucial that the prominence regime should keep pace with changing viewing habits.

However, the response from the other place gives me some heart. At least there is to be an Ofcom review of the PSB prominence guidelines in the internet age. I urge the Minister to ensure that Ofcom starts that
review as soon as possible and not allow it to put that off until 2020. Every month, we see PSB on demand and digital services become more important for broadcasters. I am sure that your Lordships would like viewers to have easy access to programmes that in the broadcasters. I am sure that your Lordships would like to have easy access to programmes that in the BBC’s case are funded by public money and in Channel Four’s case are publicly owned.

Lord Clement-Jones: My Lords, I very much hope that the Minister will take the threat from my noble friend Lord Lester extremely seriously and will rise to the challenges that he put to the Minister on the questions of funding, independence and carrying out the activities of the BBC.

I agree in particular with the noble Lord, Lord Best, in his disappointment with the Minister’s Motion today. As the noble Lord mentioned, my noble friend Lady Bonham-Carter added her name to what we saw as a very important amendment in this House. That was the product of the report of the Communications Select Committee, *Retelh Not Revolution*, which urged a much greater level of transparency and independent oversight in the setting of the licence fee. Of course, the Minister pushed back in Committee, on Report and at Third Reading by talking about the licence fee being a tax. However, it is a rather exceptional one: a hypothecated tax paid by the public to fund the BBC. So it is entirely correct that there should be a different mechanism for the setting of that licence fee. This arises because of the midnight raids—the hijacking—by the Treasury of the licence fee process on at least two occasions recently. One of the worrying phrases that the Minister used was that the Government want a free hand following negotiations with the BBC. That is exactly what the original amendment was designed to prevent.

The nub of the concern is about assurances. The Minister gave assurances and used new language on this. However, we have seen what assurances given by the Government are worth when it comes to snap elections. Assurances can be given by government one minute and broken the next. However carefully we scrutinise the Minister’s wording today, if his Government are in a position in future to negotiate the licence fee, we have no absolute assurance that those words will be followed. I share the deep disappointment that I am sure is felt all around the House.

In many ways, Motion E is even more disappointing. It was perfectly valid for the noble Viscount, Lord Colville, to express some support for the Ofcom review, but given that the Government could say that whether or not to have a BBC licence fee commission is a political decision, this is much more a question of the facts and perception. On at least two occasions we have had Secretaries of State for Culture, Media and Sport—Jeremy Hunt and Maria Miller—saying that the position of the public service broadcasters is very important and EPG position is a very important way of safeguarding it. The Minister has said that a review will be undertaken by Ofcom, but Ofcom already knows that there is a problem. It recommended in its 2015 PSB review that policymakers should reform the rules for on-demand. Why are we asking Ofcom to do the work all over again? That does not seem a particularly constructive way forward, despite appearances.

A number of questions arise from Motion E. Can the Minister confirm that statutory change will be necessary to bring on-demand PSB content and the connected EPGs, where they are found, into the scope of Ofcom’s EPG code? In conversations, the Minister has claimed that it is not possible to have a Henry VIII power that would implement Ofcom’s recommendations for on-demand, so I assume that there is no current statutory power and that therefore we would be talking about primary legislation in that respect, but it would be helpful to have that confirmation.

Will the Minister give us an assurance that the Government will act on those Ofcom recommendations? We would not have tabled amendments on EPGs unless we thought that this was a real and present issue that needed to be tackled. This was not a frivolous amendment, but the Government seem to have a completely different view. The earnest of their intentions on this provision is rather important. The amendment sets a 1 December 2020 statutory deadline for the review and the revision of the EPG code, but does the Minister agree that actually it would be desirable to commence work rather earlier, given the need for statutory changes beforehand, probably, to bring on-demand content into scope?

Finally, it appears that there is a statutory power to ensure the prominence of PSB children’s channels on EPGs. Does the Minister agree with that? Does he agree that if Ofcom so recommends, that could be brought in at a much earlier date than the on-demand provision? I very much hope that the Minister can answer those questions.

Lord Stevenson of Balmacara: My Lords, taken together, these two amendments were traps for the Government and, with predictable certainty, they have fallen into both of them.

The amendment that has just been spoken to by the noble Lord, Lord Clement-Jones, on the need for Ofcom to have powers to make sure there is a proper rule about prominence that applies not only to the linear but to the offline world of iPlayer and others, was a test of whether or not the Government believed in public sector broadcasting, in that if they believed in public sector broadcasting they needed to come forward with proposals that allowed the channels that were funded by the public or in a not-for-profit way to have access on a fair and equal basis to commercial channels. By tabling an amendment that is for just a report, without the requirement that there should be legislation in three primary legislative areas, which I think we agree needs to happen, I think they have failed this test.

However, we welcome where they have got to. I support the idea of a further review. I hope it will bring out the complexity of this issue—the changing technology and the difficulties of assessing this—in a way that will make it easier for the Government to honour their commitment given in the other place and repeated here today that if the report does make it clear that there is a problem in this area and it can be fixed only by legislation, the Government will bring that legislation forward as soon as possible. I give the commitment from this side of the House that, if elected, we will do the same.
2.45 pm

On the BBC licence fee, the issue, again, is one of trust. The operations of a royal charter have been gradually devalued over the years. There is a real danger that institutions that seek protection in royal charters from what might be overwhelming behaviour by a Government of the day will not be able to rely on that as we go forward. The smoke-and-mirrors effect that was always there with royal charters has now gone. Therefore, there is a real problem about the BBC and the Government—any Government—will be convincing only to the extent to which they can show by their actions that they genuinely believe in the independence of the organisations for which royal charter protection was so important. We have already seen attacks in higher education, where it is no longer possible for those who have guardianship of the funds that we put into research to have royal charters; they are being removed. There is a threat to universities, which will no longer be able to have or to change their existing royal charters. We have to be careful about where we are going on this. The Government have not been very successful in convincing us how they will do both the charter and the fee renewal for the BBC.

I had some hope during discussions on the charter renewal this time round, with the care and consideration the Government gave to the question of how the renewal of the BBC’s charter and the settlement of the licence fee would be protected from the electoral cycle, that we would get somewhere with this and that we could continue to trust them. But they have just changed the electoral cycle. We have an election in 2017, which means that the next election will be in 2022, the year the BBC’s licence fee is settled. The election after that will be in 2027, the year the charter renewal will take place. Do your Lordships really believe that we have the best system of protection in place if we do not seek more information on transparency about how the Government deal with such an important institution as the BBC?

The noble Lord, Lord Lester, is right that the time has come to think again about how we might want to protect in statute the organisations for which we have a great care. The first step on that might have protected us against the need to move in the direction of a BBC licence fee commission, which after all is not a new idea; it operated in 2005-06. It was successful, so successful in fact that it annoyed the Government of the day because it recommended too high a licence fee, but it did exactly what we wanted: it offered advice on a detailed examination of the case for what the BBC needed to fulfil its charter obligations. That is exactly what we were trying to do with that amendment, and I supported the one that came out of the Communications Committee. It was right at the time it was proposed. It was supported here—in the absence of the trump card, which is the change in the electoral cycle. If we do not get a commitment from the Government today that the whole question of timing will need to be looked at again, we are in a very bad place.

Lord Ashton of Hyde: My Lords, I am grateful for all noble Lords’ contributions. I will start with the noble Lord, Lord Best. I am grateful for the limited thanks he gave me. I give him unqualified thanks in return. We have talked about this for a long time, both in and out of the Chamber. The one thing I can say about the Government’s view on the BBC licence fee is that we have been entirely consistent.

I say to the noble Lord, Lord Lester, that in conversations over a period of time, both in and out of the Chamber, I have never given him any reason to expect that we would change our view on this. He said he was pathetically optimistic. I hope he remains optimistic in other things but we have been entirely consistent on this matter. As I explained at length, we do not believe that it is right for a tax to be consulted on.

I understand the issues and the strength of feeling in this House. That is why we have made some changes during the charter renewal process. We have outlined, as I said, that we have protected the funding for five years so that we will not have any so-called midnight raids. It is also protected from inflation, which it was not before. We have agreed that we will take in information and expert advice before the process goes ahead in five years’ time. I of course take the threat from the noble Lord, Lord Lester, about a Private Member’s Bill extremely seriously. I must assume that there is a possibility it will be forthcoming and I look forward to debating it with him. At the moment, I do not believe that our situation is likely to change but of course in 11 years’ time, it might. I do not think I will be involved in it at that time.

The noble Lord asked a number of questions about whether the Government will guarantee the independence of the BBC, agree not to top-slice the licence fee and adequately fund the BBC. The new charter endorses the role and independence of the BBC—and increases that independence in a number of ways—and this Government will of course live by the provisions of the royal charter, as far as the independence of the BBC is concerned. On funding, we have agreed to give it a five-year period and will ensure that it is properly funded for the future but a negotiation will take place at that time.

As for the point made by the noble Viscount, Lord Colville, about timing, Ofcom will get going when it feels it necessary. What we have done is to put an end date on that in our amendment, so that it will have to produce its report in about two and a half years’ time. That is a great advantage.

Lord Lester of Herne Hill: Did I understand the Minister to have given an assurance to the House just now that the Government regard themselves as under a duty to respect the independence of the BBC; and to provide sufficient funding to pursue its purposes as an independent public service broadcaster? If the answer to those questions is yes, I am extremely grateful and if the answer is no then I say to the Minister: power is delightful and absolute power is absolutely delightful but that should not be his motto.

Lord Ashton of Hyde: What I said was that we of course abide by what we have put in the royal charter, which mentions the independence of the BBC and enhances that independence from what came before. As far as funding is concerned, we have a five-year deal and the funding negotiation will go on
but it is clearly not the Government’s desire to prevent the BBC carrying out its purposes. There will be a negotiation—this is a tax to provide for the BBC—and each five-year period will be taken on a separate basis.

The noble Lord, Lord Stevenson, referred to the next funding period and the election cycle. An 11-year cycle was carefully chosen to remove funding from the electoral cycle. I think at the suggestion of this House among others, and it is of course unfortunate that it has been changed by the absence of the fixed term. But the Fixed-term Parliaments Act is not a guarantee of a five-year Parliament—the provisions were written into the Act to make sure that that was the case. The new five-year settlement will be reached before the next election while the funding settlement is based on an 18-month to 24-month negotiation so, assuming the Parliament goes to the full five-year term, it would be in place before the election.

Fundamentally, a long charter allows the BBC to operate with greater certainty and with the freedom and confidence to deliver its objectives. It is also worth remembering that in the course of the BBC’s 100-year history, the charter renewal process has coincided with the electoral cycle on a number of occasions. Yet the process has always managed to conclude successfully, to ensure that the BBC can continue to thrive.

Moving on to the EPG, there was a suggestion that we should take a broad Henry VIII power. I think that the noble Lords, Lord Clement-Jones and Lord Stevenson, both mentioned this. It is an unusual situation where both Opposition Front Benches are asking—almost demanding—the Government to take a broad Henry VIII power. I would normally say that I probably agreed but in this case, the problem is that the power would have to be very broad and wide-ranging. Amendments could be necessary to the Communications Act 2003 and the Broadcasting Acts of 1990 and 1996. Depending on what Ofcom recommended, a wider amendment might be needed beyond traditional broadcasting legislation to other areas which we would not necessarily wish to capture, such as other online services. We think this is the best way forward.

The noble Lord, Lord Stevenson, also asked about our belief in public sector broadcasting. We have accepted the arguments from your Lordships’ House on listed events, to maintain them on our free-to-air channels, and from the noble Baroness, Lady Benjamin, on children’s TV to ensure the adequacy of provision.

These are evidence of our support for PSBs.

I know that noble Lords were disappointed about the BBC licence fee. As I said, we were entirely consistent on this. The commitment that we and the Minister in the other place have made on EPG should be some comfort to those who were disappointed with our answers on this. As a result, I hope that they will be able to accept this amendment.

Motion D agreed.

Motion E

Moved by Lord Ashton of Hyde

That this House do not insist on its Amendment 242 and do agree with the Commons in their Amendment 242A in lieu.

Commons Amendment in lieu

242A: Page 83, line 38, at end insert the following new Clause—

“Electronic programme guides and public service channels

(1) After section 311 of the Communications Act 2003 insert—

“311A Report on electronic programme guides and public service channels

(1) It is the duty of Ofcom from time to time to prepare and publish a report dealing with—

(a) the provision by electronic programme guides of information about programmes—

(i) included in public service channels, or

(ii) provided by means of on-demand programme services by persons who also provide public service channels, and

(b) the facilities provided by such guides for the selection of, and access to, such programmes.

(2) When preparing the report Ofcom must consult such persons as appear to them appropriate.

(3) In this section “electronic programme guide” and “public service channel” have the same meanings as in section 310.”

(2) After publishing the first report under section 311A of the Communications Act 2003 Ofcom must review and revise the code drawn up by them under section 310 of that Act (code of practice for electronic programme guides).

(3) The revision of the code must be completed before 1 December 2020.

(4) Subsections (2) and (3) do not affect Ofcom’s duty under section 310 of that Act to review and revise the code from time to time.

(5) In this section “Ofcom” means the Office of Communications.”

Motion E agreed.

Motion F

Moved by Lord Ashton of Hyde

That this House do agree with the Commons in their Amendment 246A.

Lords Amendment 246

246: After Clause 84, insert the following new Clause—

“Duty to provide information about tickets

Duty to provide information about tickets

In section 90 of the Consumer Rights Act 2015 (duty to provide information about tickets), after subsection (4)(d) insert—

“(e) the ticket reference or booking number;

(f) any specific condition attached to the resale of the ticket.”

Commons Amendment to the Lords Amendment

246A: Line 5, leave out from “tickets),” to end of line 7 and insert “in subsection (4) omit “and” at the end of paragraph (c), and at the end of paragraph (d) insert “, and” and (e) any unique ticket number that may help the buyer to identify the seat or standing area or its location.”

Lord Ashton of Hyde: My Lords, we recognise the good intentions behind the original amendment of the noble Lord, Lord Moynihan, and have accepted it, but we need to make some technical amendments. That is the purpose of Amendment 246A. The Government’s amendment clarifies that the reference number provided should refer to the unique ticket put up for resale and enable the buyer to identify the location of the ticket within the venue.

Our amendment also removes the provision requiring ticket sellers to provide,

“any specific condition attached to the resale of the ticket”.

Many noble Lords have asked me about this, so I want to put on record why. The Government are firmly of the view that, when a secondary ticket seller offers a
ticket for sale, they must already give the buyer clear information about certain conditions attached to the ticket concerning resale. This provision is in Section 90(3)(b) of the Consumer Rights Act 2015. Duplication can add only confusion, whereas we want secondary ticket sellers to be absolutely clear on this point. This amendment is of course in addition to the government amendment which made buying tickets in excess of the maximum amount, using an automated bot, illegal. I beg to move.

3 pm

Lord Moynihan (Con): My Lords, I begin by declaring an interest as co-chair of the All-Party Parliamentary Group on Ticket Abuse and paying tribute to my co-chair Sharon Hodgson in another place for the outstanding work she has done on this subject.

In brief, I welcome the Government’s amendment in lieu and the response by the Government to the Waterson review and their acceptance of the recommendations in full, including introducing a criminal offence to stop the use of bots to purchase tickets and the provision of funding to the National Trading Standards Board for enforcement action. Enforcement is weak, and I hope a future Government will work diligently to strengthen enforcement. I also look forward to the outcome of the Competition and Markets Authority’s enforcement investigation into suspected breaches of consumer protection law in the online secondary ticketing market. That is very important because the evidence of the secondary ticketing market consistently flouting the law on a daily basis is clear for all to see on many of the online sites.

I welcome the Minister’s comment that a ticket should have a unique reference number that people can see on the ticket when they purchase it. That will make it easier to identify the reseller. That has all-party support in this House and is an important step forward.

However, I would like further assurance from the Minister. He said that the original amendment I put forward was not necessary in whole because it included the addition of a requirement for the seller to list any terms and conditions associated with the resale of a ticket. The Government have deleted that provision, contending that it is already covered under Section 90(3)(b) of the Consumer Rights Act. It is important to have absolute clarity on this issue. The Government have argued that Section 90(3)(b) of the Consumer Rights Act 2015, which requires online secondary ticketing websites to provide, “information about any restriction which limits use of the ticket to persons of a particular description”, effectively means that my amendment was unnecessary and duplicative. Many people understand that Section 90(3)(b) was designed to ensure transparency about any ticket which was for a child or a disabled person or had a restricted view or other similar restrictions and was not about resale terms and conditions, which were not subject to debate in this context when the Consumer Rights Bill was before Parliament.

It may assist the House if I briefly give an example of why the scope of the Consumer Rights Act to require secondary ticketing websites to be obligated beyond doubt to provide information about any specific conditions attached to the resale of a ticket is necessary. Metallica are obviously well known to many Members of your Lordships’ House. There are strict conditions in place to mitigate ticket touting. Names are printed on tickets to prevent their resale, the photo ID of the lead booker must be presented to gain entry to the venue, accompanying guests must enter at the same time and tickets are limited to four per credit card. This is all made clear when you buy a ticket, and authorised primary ticket sellers have made that clear on their websites.

Do I understand absolutely categorically and without doubt that the Minister is saying that making those terms and conditions clear is mandatory on secondary ticketing market sites and is fully covered by the existing law? I think that is exactly what he said, but it would be very useful if he could confirm that, not least because it would be of assistance to the CMA in its inquiry and to trading standards because it would support and protect the interests of fans of Metallica and of “Hamilton”, which will face the same challenges when that show comes on this autumn. With that requirement for a final assurance from the Minister, I conclude by thanking noble Lords on all sides of the House for their support on this and thanking the Minister for the hard work he has undertaken to ensure that we have made progress.

Lord Clement-Jones: My Lords, I join the noble Lord, Lord Moynihan, in welcoming the government amendment. I want to make only a very brief intervention to congratulate the noble Lord, Lord Moynihan, and Sharon Hodgson on their persistence in achieving what we have achieved so far, which is considerable. A great deal of progress has been made in restricting the activities of secondary ticketing sites. We all look forward to the Competition and Market Authority’s report, which may well suggest further changes to legislation and will certainly give us a very good idea of whether the provisions of the Consumer Rights Act are being properly enforced. That will be extremely illuminating. I hope the Minister will be able to answer the question asked by the noble Lord, Lord Moynihan, about whether it is really duplication or whether we have thrown something out with the Commons amendment.

Let me end by saying that in the Digital Economy Bill we have not, in the words of my noble friend, taken up the floorboards today, but we have certainly given it a decent lick of paint in the process. It is not a very ambitious Bill, and many of us could argue at length about what other aspects it should have covered, but I thank the Minister for his unfailing helpfulness throughout the course of the Bill and I thank the Bill team. I very much welcome not only the movement today, which is perceptible—that is not always the case with wash-up or ping-pong—but some of the movement that was made in the course of the Bill. The noble Lord, Lord Moynihan, talked about the outlawing of mass online purchasing with bots, which is a very significant change, as are the site-blocking appeals, the new Ofcom powers in respect of children’s programmes, which are particularly welcome to my noble friend.
Lady Benjamin, remote e-book lending and the amendment on listed events. There has been movement in this House as a result of amendments in this House and the discussions we have had. I am grateful, and I look forward to a new digital economy Bill before too long.

Lord Stevenson of Balmacara: My Lords, this marks another stage in the campaign led by the noble Lord, Lord Moynihan. It was led until her death by Lady Heyhoe Flint whom we all want to recognise because she played a huge part in this and her memory is still fresh today. Wherever she is playing cricket, I am sure she is scoring a hundred as we speak.

The noble Lord, Lord Clement-Jones, and the Minister mentioned bots. We should not ignore the fact that that will make a huge change to the secondary ticketing market. The solution the Bill team came up with is very creative, and I hope it works as well as they intend it to. A first step has been taken, and this will crack down on the worst excesses of secondary ticketing.

I hope the Minister will answer directly the question asked by the noble Lord, Lord Moynihan, about whether the conditions apply because they are not drafted quite like that in the original legislation.

In its original formulation, Amendment 246 simply inserted the words, "and any unique ticket number". The final version before us states, "any unique ticket number that may help the buyer to identify the seat or standing area or its location".

That raises the question of what "may" means. Does it in some sense imply a voluntary obligation? If it does, it would be very unfortunate. Could somebody argue that they did not include the unique ticket number specified because in their view it did not help the buyer identify a seat or a standing area or its location? Or is it a variation on the word "must" so that it is a requirement that a ticket number that could help a buyer identify seats or standing areas or their location must be included? I will be grateful if when the Minister responds he will mention that.

Lord Ashton of Hyde: My Lords, I am very grateful to, especially, my noble friend Lord Moynihan and other noble Lords. We have to some extent overcome the great disappointment of the noble Lord, Lord Clement-Jones, on the previous group.

Noble Lords have been very clear in this debate that they want to see tougher action to deal with the serious problems in the secondary ticketing market, and the Government are taking action. That is why we have provided funding for National Trading Standards to take further enforcement action, as the noble Lord, Lord Clement-Jones, mentioned. We have facilitated the ticketing industry's participation in joint industry-government cybersecurity networks, and the CMA has launched an enforcement investigation into suspected breaches of consumer protection law in the online secondary ticketing market. I am sure that the noble Lord, Lord Moynihan, and other noble Lords will continue to keep this issue under the spotlight, and we will make progress together on protecting consumers and supporting our national sporting and cultural assets.

The noble Lord, Lord Moynihan, asked a specific question about that. As my right honourable friend the Minister in the other place made clear, the Government are firmly of the view that, under the Consumer Rights Act, when a secondary ticket seller offers a ticket for sale they must give the buyer clear information about certain conditions attached to the ticket. We said the proposal was duplicative because that is what our advice told us. I would say in particular to my noble friend Lord Moynihan that the Explanatory Notes to the Consumer Rights Act 2015, referring to Section 90(3)(b), make clear that, "the buyer must be given information about any restrictions that apply to the ticket".

In respect of the following wording in the amendment, "any unique ticket number that may help the buyer to identify the seat or standing area or its location", the noble Lord, Lord Stevenson, asked whether the "may" makes this voluntary. The answer is no, it is mandatory. This is technical language to link this to the previous subsection in Section 90 of the Consumer Rights Act. We have merely used the same language that was in there before. I hope that answers the question.

I reiterate what the noble Lord, Lord Clement-Jones, said about some of the advantages and gains that the Bill has had from your Lordships' House and indeed from the opposition amendments and suggestions in the other place as well. I say this to acknowledge their input into it but also to show that we have been flexible in many things. We have made progress in areas suggested by the Opposition in both Houses: on the extension of public lending rights to e-books; on children's television, as the noble Lord mentioned and as was proposed by the noble Baroness, Lady Benjamin; on the accessibility of on-demand services, including subtitles; on maintaining the capability to retain listed events, which was first tabled in the Commons; on bill limits for mobile phones, as we talked about earlier; on the code of practice for social media; on supporting the separation of BT from Openreach with the Crown guarantee amendment; on internet filters, which protect children; and on the review of the electronic programme guide, although not quite to the extent that some noble Lords wanted.

The Opposition have also supported things that will allow great advances in the digital economy, such as: the Electronic Communications Code, which is very technical but a crucial change; age verification for online pornography, where we listened and adjusted the regime to address the concerns of the Opposition; the extension of age verification for pornography on on-demand television, so that 18-certificate material is kept away from children; government data sharing, which will enable us to deliver better services to the vulnerable; and the repeal of Section 73 of the Copyright, Designs and Patents Act, which I think was accepted all round the House as a very good thing.

I mentioned my thanks to many noble Lords at Third Reading, and I repeat those, especially to the noble Lords, Lord Stevenson and Lord Clement-Jones, who headed their various and quite large teams in the House. I am very grateful to all those noble Lords.

Motion F agreed.
Specified Agreement on Driving Disqualifications Regulations 2017
Motion to Approve

3.15 pm

Moved by Lord Ahmad of Wimbledon

That the draft Regulations laid before the House on 9 March be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, this statutory instrument is being made to reintroduce an agreement to allow for the mutual recognition of driving disqualifications between the United Kingdom and the Republic of Ireland. Noble Lords may recall that our previous arrangement on this matter under the 1998 European Convention on Driving Disqualifications ceased to apply in the UK from 1 December 2014, when the UK exercised its right to opt out of various EU police and criminal justice matters under the treaty of Lisbon.

The United Kingdom has one of the best road safety records in the world, and this co-operation between the Administrations of Great Britain, Northern Ireland and the Republic of Ireland will improve it further. This measure is particularly important for the people of Northern Ireland, who share a 310 mile-long border with Ireland, where around 15,000 people cross at 300 crossing points on a daily basis, travelling between the two. Last year, traffic accidents caused 68 people to needlessly lose their lives in Northern Ireland.

In summary, if a British or Northern Irish driver receives an instant disqualification from driving while travelling in the Republic of Ireland—say, for example, for drink-driving or for causing a serious injury to another road user—the disqualification can follow the individual back home. The same is true for Irish drivers disqualified here in Britain or in Northern Ireland.

The treaty that my officials have negotiated with the Irish is almost identical to the now defunct European Convention on Driving Disqualifications—but with one important difference. The convention gave rise to a loophole in its wording, whereby some drivers could escape a ban following them home by falsely claiming normal residence in the country where the offence occurred. We have amended the wording accordingly, to close this loophole. This will ensure that those unscrupulous individuals trying to escape punishment can no longer do so.

The mutual recognition process is straightforward. When a British or Northern Irish court determines that a driver is to be disqualified, and that driver is normally resident in Ireland—the driver can be the holder of any particular driving licence, whether Irish, EU or another—the driver will be able to appeal the decision. If an appeal is either heard and rejected, or not filed, the DVLA will write to the Road Safety Authority in Ireland and inform it that a driver resident in Ireland has been disqualified. It is then that the case is referred to the Irish courts, and judges there can elect to uphold the ban. Again, the same is true of British and Northern Irish drivers disqualified in Ireland.

These measures are not to be considered as a double punishment. Drivers have the right of appeal against the initial ban, and indeed against the ban applying in the country of normal residence. But a driver who commits an offence serious enough to merit instant disqualification needs to be taken off the road both in the UK and Ireland for the appropriate duration. If the Irish court imposes the additional punishment of being forced to resit a driving test or taking an extended driving test, we in Great Britain and Northern Ireland will similarly impose such additional punishments. Any driving disqualifications arising from the totting up of penalty points are not covered in this series of measures. However, Ireland and Northern Ireland are continuing to engage on a bilateral basis, through discussions in the North/South Ministerial Council, for the mutual recognition of penalty points.

The agreement on the mutual recognition of driving disqualifications between the UK and Ireland will not be affected by the United Kingdom’s decision to leave the European Union. Indeed, as the Prime Minister herself stated on 30 January following a meeting with the Taoiseach, for the people of Ireland and Northern Ireland the ability to move freely across the border is an essential part of daily life. That is why the Taoiseach and the Prime Minister have both been clear that there will be no return to the borders of the past. Maintaining the common travel area and excellent economic links with Ireland will be important priorities for the UK in the talks ahead. I look forward to the brief debate this afternoon.

Lord Rosser (Lab): I note that the Minister referred to the “brief debate” this afternoon. I take it that that is a statement of hope on his part—although, judging by the numbers in the Chamber at the moment, perhaps we have both misjudged the situation and the debate on the Specified Agreement on Driving Disqualifications Regulations 2011 really is packing in noble Lords. I thank the Minister for his explanation of the purpose of these regulations, which we support, and the background to them—but I have one or two queries that I would like to raise.

The Explanatory Note indicates that mutual recognition of driving disqualification between the UK and Ireland was previously in operation between January 2010 and December 2014, pursuant to the European Convention on Driving Disqualifications. It indicates that, following the Lisbon treaty, we opted out of the convention from December 2014 as part of a block opt-out under the treaty. It states that the purpose of this instrument is to specify a bilateral agreement dated 30 October 2015 between the UK and Ireland on the mutual recognition of driving disqualifications imposed by either state for certain specified road traffic offences, which, as I understand it, and indeed as the Minister has confirmed, do not include disqualifications arising from the totting-up process. Now that the Minister has confirmed that that is the case in relation to the totting-up process, I invite him to say a little more about why.

In the Commons the government Minister said that Northern Ireland and Ireland were engaged in bilateral discussions through the North/South Ministerial Council...
about the mutual recognition of penalty points, but added that it was still work in progress. Is this such a big problem that it still cannot be resolved some 18 months after the bilateral agreement dated 3 October 2015, even accepting that penalty points are assessed in a different way in Ireland? Frankly, how much longer is it going to take?

However, the main point I want to clarify is the length of time for which there has been no mutual recognition of driving disqualification between the UK and Ireland. On the understanding that the previous arrangements ceased on 1 December 2014, I simply want to clarify—although I think I know the answer—that they were not then reinstated through the signing of the bilateral agreement dated 30 October 2015, and that the impact of that agreement is being brought into effect by these regulations only some 18 months later and some two and half years after they ceased to apply. That appears to be the situation, and I think it is what the Minister has indicated.

If indeed these arrangements have not applied for that lengthy two-and-a-half-year period, why has it taken so long? Presumably, the Government had decided well in advance of the 1 December 2014 opt-out that they would be making the block opt-out from the Lisbon treaty, and surely steps that would at least have reduced this apparently lengthy gap could have been put in train much earlier. I would like an explanation from the Government of why this whole process could not have been expedited more quickly. It does not look as though it has been given very high priority even though it relates to road safety, and even though the opt-out led to a weakening of legislative powers on road safety for which there was no supporting evidence or justification on road safety grounds.

What happened to the mutual recognitions on disqualifications then in force under the convention when we opted out? Did they remain in force, or did they then no longer have any legal standing? What is the Government’s estimate of the number of people who could have been disqualified under the mutual recognition arrangements had these not apparently been brought to an end in 2014 with the opt-out, in respect of whom it has not been possible since then to apply the mutual recognition arrangements because they have no longer been applicable since the opt-out? In particular, how many people to date have we had who have been able to drive in the United Kingdom who would not have been able to do so if we had not opted out of the convention on the mutual recognition of driving disqualifications? How many of those people have subsequently committed road traffic offences in the United Kingdom?

If the Minister thinks that I am asking for somewhat obscure information, I am certainly not; this is about road safety and potentially about people who should not be driving around on the roads in the United Kingdom. I ask for this specific information particularly in the light of paragraph 7.2 of the Government’s own Explanatory Memorandum, which accepts that it, “is important to the UK for reasons of road safety to ensure that drivers so disqualified in Ireland cannot drive on UK roads”.

It appears that they have been able to drive on UK roads for the last two and a half years.

Lord Ahmad of Wimbledon: My Lords, maybe I was a bit presumptuous in my opening remarks, but from the response from your Lordships’ Chamber perhaps I was right that this would be a short debate. I thank the noble Lord, Lord Rosser, for his support for this measure. He has raised a number of important points. I would not for a moment suggest that his points at this time, or indeed any that he raises with me at the Dispatch Box, are not important. I of course align myself totally with his sentiments about the importance of road safety.

I shall take some of the issues that the noble Lord has raised in turn. First, on the question of why it has taken since 2014 to do this, and with regard to the European convention itself, the 1998 convention ceased to apply in the EU in December 2016. With regard to the mutual recognition between ourselves and Ireland, the only way that we could introduce these arrangements was via the treaty. The Irish constitution itself forbids agreements of this nature to be made by items such as an MoU, for example, or similar informal instruments. Such matters therefore take time to be agreed. I believe the provisions from the Irish side were carried within a wider Bill that was subsequently passed by the Irish Parliament.

On the issue of penalty points not being included, there are different methods of calculating points between the UK and Ireland. To give some practical examples, they are legally incompatible, and the UK counts one way and the Irish count the other. As to actual enforcement, different points are applied to different defences. If I may, I will get the Northern Ireland Office to write further about specific arrangements between Northern Ireland and Ireland.

On the numbers of drivers, I can tell the noble Lord that about a hundred people per year from Ireland were banned under these measures in Great Britain and Northern Ireland, and about an equal number were banned under these measures in Ireland.

I think I have answered most if not all the questions that the noble Lord asked. I emphasise to him once again, as he raised the importance of this issue, that here we are on the last day of term, so to speak, and the Government are putting this forward again. That underlines the importance that we attach to ensuring these provisions can be made and translated into statute.

Lord Rosser: Did the disqualifications in force under the mutual recognition arrangements at the time of the opt-out in December 2014 continue to apply, or did they no longer have any legal status following the opt-out? Could the Minister, whatever the reasons may be, confirm that it has been a two-and-a-half year period during which people have been driving around on the roads in the UK who would not have been able to do so if that opt-out had not been made in 2014?

Lord Ahmad of Wimbledon: As I said, the convention continued and ceased to apply in the EU in December 2016. On the specific issue raised by the noble Lord about the number of people who may or may not have been driving through any intervening period, I will get that information to him in writing. I emphasise once again that the reason why there has been a delay, as he sees it, between 2014 and the date that we are now
[LORD AHMAD OF WIMBORNE]

Putting forward is that we were respecting the other side of the discussion, the Irish side, in ensuring that it could go through its appropriate due process to ensure that it could implement this legislation.

Motion agreed.

Education (Student Fees, Awards and Support)(Amendment) Regulations 2017

Motion to Regret

3.29 pm

Moved by Lord Clark of Windermere

That this House regrets that the Education (Student Fees, Awards and Support) (Amendment) Regulations 2017, which pave the way for students of nursing, midwifery and allied health professionals to receive loans rather than bursaries, have already been seen to discourage degree applications by a quarter, at the same time as Brexit has already reduced European Union migrant nursing and midwifery registrations by over 90 per cent; and that these factors risk turning an increasing problem in the National Health Service into a chronic one that potentially puts at risk safe levels of staffing (SI 2017/114).

Relevant document: 26th Report from the Secondary Legislation Scrutiny Committee

Lord Clark of Windermere (Lab): My Lords, it is particularly appropriate that the final debate of the Parliament in this House is on a matter of such concern to the British people: our National Health Service. If there is one group of people who always top the approval ratings among the British people, it is nurses. I will not say where we politicians are.

It is widely accepted that the National Health Service provides real value for money. In fact, we get health on the cheap in this country. We spend less on health than any other member bar one of the G7 nations, and I am not sure that that can continue for much longer. I think we will have to spend more on health, with our ageing population and the growth of what is technologically possible.

In a sense, we have been helped in this debate by the report of a Select Committee of this House on The Long-term Sustainability of the NHS and Adult Social Care. It draws to our attention how we have failed over the years to have long-term planning for organising staff. We must remember that approximately 150,000 people work for the health service. It is a fascinating organisation. It is a labour-intensive organisation—which applies in one way to nursing—married to and working alongside cutting-edge technology and science. It works, and we must continue to ensure that it works. The key is the staff at every level.

Anyone who follows the press or talks to doctors, nurses or the other health professionals knows that our National Health Service is in deep trouble and is functioning safely only due to the work level of the staff and their intense dedication to the service in which they work. That cannot continue indefinitely. Repeatedly, the royal colleges of nursing, midwifery and all the other medical disciplines tell us that we are getting towards breaking point. The strain is intense; the morale is low.

Let us take just nursing. Currently, we are about 24,000 nurses short—I think there is no disagreement with that. That affects not only our National Health Service but another big issue at the moment, the after-care service. A number of care providers, nursing providers and Care England have contacted me to say that they have had to close beds because they cannot get nurses to staff them. We tend to neglect that, and I mention it only in passing today because I want to concentrate on the health service.

I gather that the Government have had a report available to them in March which is not yet public which suggested, on a worst figure scenario—I emphasise that—that by the early 2020s we would be not 24,000 but 42,000 nurses short. Morale is not helped by the fact that nurses were not well paid to start with. They are highly qualified. All nurses are now graduates. They have to do professional work. Increasingly, they are doing work traditionally done by doctors. They are able and skilled to do it, and we benefit greatly from that. The 1% annual pay increase which they have had to accept since 2010 is having a massive effect on morale, especially when people are having to work so hard.

We get by only because we import nurses from overseas. We have traditionally done that—I am not just blaming the Government in this case—but the problem is now acute. Of those nurses from overseas, 20,000 originate from European Union countries. Despite effort and pleading by me and others, we cannot get the Government to commit to those 20,000 people who work so hard in our National Health Service being allowed to stay in Britain. That will be easy to do: we need only to tweak the residency rules. That could be done without causing any problem, yet it would be of great benefit in retaining those nurses. I believe that we should offer them permanent residency in this country, as they have dedicated so much effort to providing healthcare for our population but, at the end of the day, we must train more home-grown nurses. The supply is there, because for every person who is accepted on to a nursing course at university, twice as many people apply. There is the quality and quantity of individuals who want to train nurses. The reason why they are not is because the Government have insisted on a cap on the numbers. Universities are not allowed to accept more nurses than has been agreed with the Government. By imposing this cap, we are exacerbating the problem.

I challenge the Minister that we are only really talking about saving money. That is what is dominating the Government’s approach to the training of nurses.

To recap a little, the bursary system that has been developed meant that nurses who went into training did not pay fees. The quid pro quo was that most of them went on to work in the care services or the National Health Service. That system worked well and was fully subscribed. Under the proposals we are debating today, those individuals will have to pay £9,000 per year in fees for three years which, with their
living costs, will mean that nurses enter their profession not well paid and with £50,000 minimum hanging on their shoulders. I doubt that that is a sensible approach.

We must accept that nursing students’ courses at universities are very different from most courses. It is not just lectures and library work. At least half the time of nurses in training is spent on the job, on clinical training. In most hospitals, most patients could not determine who is a student nurse and who is a qualified nurse, because student nurses are doing the work of trained nurses, except in a few technical, specialist areas.

Lord Forsyth of Drumlean (Con): I am most grateful to the noble Lord. On his point about the number of nurses who previously got bursaries and about financial controls on the bursaries, what proportion of those applying were unable to get bursaries and, therefore, unable to get training places?

Lord Clark of Windermere: As I understand the question, anyone accepted on to the course got a bursary—so they all got the bursary. I am pretty sure that I am right on that. But the point I was making about the course being different was not only that it is more intensive and about working on the job—the course is also longer. The average course length at universities for nursing, midwives and allied health professionals is 39 weeks a year, much longer than the average student course. So it is a different course; they have no opportunity, or little opportunity, to do any extra-curricular work, because of the nature of the job. Yet while they are working on wards, they work as a team.

In essence, the Government are insisting—for, I think, the first time in decades—that nurses pay for working in the health service. They are paying £9,000 a year to work as unpaid nurses. That is absolutely scandalous. Even before the new system came in, going back 50 years, you were accepted on a nursing course and went to the hospitals where you were trained. There was a mixture of blocks in the hospital and working on wards; that is how it traditionally went, but the nurses did not have to pay to perform those tasks. It is outrageous that this Government are insisting that nurses should pay for their own training.

The Government’s justification for this change is to increase the number of nurses being trained, which we all welcome—we all want the number of nurses to be increased. It would help in so many ways. Virtually every hospital now survives by using agency nurses, paying far more by the hour than the NHS staff nurses get paid. We could save billions of pounds if we had sufficient nurses to staff our NHS and aftercare services. So what I am arguing for makes financial sense. The Government say that they are prepared, if nurses pay for their own education—and this is perhaps the point that the noble Lord was making—to lift the cap, so the universities could train as many students as they want. I hope that works; I want the system the Government are proposing to work. But then we come to the problem that it is easy enough for the universities to expand their lectures and provide library facilities; the difficulty comes when the National Health Service has to provide mentors, tutors and practical oversight of students when they work on wards and in clinical situations. There is no provision, as far as I can see, by the Government to provide extra money to hospital trusts to perform that critical part, which is at least half the cost of nurse training.

I want the proposal to work but it is highly risky. We are dependent on nurses from the European Union—and the latest figures are that there was a 90% fall in the registration of nurses from European Union countries since last December, which is an ominous sign. Then we have the figures from the Government, which show that the number of applicants to health courses was down by 23%. I accept the Government’s point that those were applicants, not people who had actually been accepted on to a course. What worries me is that, if it follows through, and if the Government do not get students prepared to enrol at universities, we will find that we make no inroads at all into the shortage of 24,000 nurses.

3.45 pm

I believe that the Government’s approach is a high-risk one; when you have such a large shortage, there must be other ways to deal with it. Why can we not for a number of years lift the cap on universities and say, “Look, train as many as you possibly can.”? If the Government are not prepared to drop the scheme, why do they not say to nursing students who go on to spend a number of years working in the NHS, low paid as it is, that they will write off their tuition fees? That would be one way around it; it is belt and braces, I accept, but I do not believe we can risk what the Government are proposing. It is high-risk indeed, and that is why it should be debated; as it is now. It is interesting and important that we have a full debate on this issue.

Baroness Watkins of Tavistock (CB): My Lords, I declare my interests as outlined in the register and I believe that this afternoon I am the only registered nurse in the House. Nursing is the largest profession in the UK, with some 500,000 people on the professional register. It is vital that the international shortage of nurses and allied health professionals is recognised and that more investment is given to meet the demands for healthcare in the future. I agree with the noble Lord, Lord Clark of Windermere, about the need to spend more on health and social care—but not necessarily with his solutions.

There is a need for at least three pathways to becoming a registered nurse. As a profession, we have supported the introduction of an associate nurse route, which should enable people to be paid while learning and working and to proceed ultimately, if they wish, to train for the register through a sophisticated apprenticeship-style route. We have the pilots in progress at the moment. The second important development in the NHS’s recent five-year plan is support in principle for a graduate entry route similar to Teach First, to be known as Nurse First. This is likely to be piloted in mental health and learning disability branches this autumn and would provide an alternative route into nursing.

The third route, which the majority of students follow, is a three-year university programme with clinical placements within both the NHS and other health...
Baroness Watkins of Tavistock: Care providers. The emphasis on hospital placements is not nearly as important at the moment as the need to ensure that students have experience in community settings and care homes — many of which are in the independent sector — because that is where a lot of people are cared for now, as well as at home. I therefore do not believe that we should reinstate the bursary, as we know that a lot of people applied to go to university because the bursary was there and we had a very high drop-out rate in year 1 — I was a dean when that was happening, so I speak from experience. There were also some who completed the course but never had any intention of going into clinical nursing. They wanted to go into HR or to become an air stewardess — neither of which I think is a bad thing — but they used the bursary structure to get their degree as an entry into those programmes rather than with the intention to spend a lifetime caring.

It would be preferable to invest in the three methods of education leading to registration and to seriously consider giving a bursary for the third year of training when — I agree with the noble Lord, Lord Clark — most students give a huge amount to the NHS and are often pretty indistinguishable in their final six months from a registered nurse. I also fully support consideration of the concept of forgivable student loans following a period of employment in the NHS on qualifying, rather like those granted to some nurses and medics sponsored by the forces during their education provision.

The other thing I want to draw the House’s attention to is that there are 500,000 nurses in the four countries that make up the United Kingdom and that we have invested very little in return-to-nursing programmes and in encouraging them back to work. That action might be the fastest route to getting more registered nurses back into practice.

Finally, I support the concept that the noble Lord has just addressed. Public sector salaries have been significantly tightened in the last few years and there is a definite case that initial starting salaries in the NHS for nurses and allied health professionals should be increased to recognise that they will be expected to repay their student loans from 2020. As a woman, I get very fed up with hearing both in this House and in independent sector — because that is where a lot of people are cared for now, as well as at home. I therefore do not believe that we should reinstate the bursary, as we know that a lot of people applied to go to university because the bursary was there and we had a very high drop-out rate in year 1 — I was a dean when that was happening, so I speak from experience. There were also some who completed the course but never had any intention of going into clinical nursing. They wanted to go into HR or to become an air stewardess — neither of which I think is a bad thing — but they used the bursary structure to get their degree as an entry into those programmes rather than with the intention to spend a lifetime caring.

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I urge any future Government to invest further in health and social care in order to recruit and retain healthcare professionals. Currently, the ratio of women to men in nursing is nine to one and has remained unchanged for many years. We spend significant time and money on recruiting female engineers; perhaps we should do similarly to encourage more men into nursing and the allied health professions — but I accept that this will be possible only if there is fair remuneration for nurses’ work and funding for continued professional development, as currently happens in medicine. I believe that what I have outlined would be a more strategic approach to the challenges that we face than the straightforward reintroduction of bursaries in the first two years of university programmes leading to registration.

Lord Forsyth of Drumlean: My Lords, I rise briefly as I realise that Members opposite are anxious to get away to campaign for their leader in the forthcoming general election. Thirty years ago, as a junior Minister responsible for health in the Scottish Office, I was asked to support something called Project 2000 and the move that all nurses should be graduates. As a junior Minister, I thought it was a rather silly idea. I could see that there might be a case for having some health professionals with degrees, but getting rid of the old state registered nurse system seemed to me a huge mistake.

However, the chief nurse was a particularly formidable person and my Secretary of State did not agree with me. Over the last 30 years, some people have argued that we needed people who would do not the less important — these are some of the most important tasks — but the more menial tasks, such as emptying bedpans, spending time with patients and providing the general care that was so much a part of the health service, and that you did not have to have a university degree to achieve that. I very much hope that the Government will think about that again. The noble Baroness, Lady Watkins, has almost got there — I do not mean that in a rude sense — in terms of offering a path forward which might address this problem, but I do not believe that everyone needs to be a graduate.

The reason that I interrupted the noble Lord to ask him how many of the people who applied to become nurses ended up doing a degree and becoming a nurse was because I knew the answer to my own question, which is that it is a small proportion. The noble Lord’s speech contained a number of very important points with which I agreed. We will have to train more nurses as a result of leaving the European Union. That is clearly important. We will have to train more nurses because of the demands upon the health service. However, it seems to me that what the Government are proposing in these regulations, which is to remove the cap and to provide the funding through a loans scheme, will provide for that and address the problem.

Whether the Government are prepared to consider the admirable suggestion of the noble Baroness, Lady Watkins, that there may be a case at a stage in a nurse’s career when they have served the health service for a longer period for forgiving the loans is another question. The Economic Affairs Committee has looked at the representations we have received on student loans and I would not be surprised if that did not represent a better deal for the taxpayer than continuing with the repayment where people are not receiving substantial salaries. So, while I think that the noble Lord has identified some real issues, I very much hope that noble Lords will not vote for this Motion, which would set us backwards and not provide the opportunity for more nurses to be trained and brought into our health service. I also hope that the Government will consider whether it is absolutely necessary for people to have university degrees in order to perform nursing duties in our health service.

Lord Willetts (Con): My Lords, in the absence of a voice from the Opposition Benches I will briefly intervene in the debate. I declare an interest as a visiting professor...
at King’s College London, which has a major role in medical education through Guy’s and St Thomas’.

The noble Lord, Lord Clark, is of course right about the importance of nurses and about the lack of a suitable supply of nurses in the old regime. We heard a very constructive intervention from the noble Baroness, Lady Watkins. I say to the noble Lord, Lord Clark, that nurses should not be worried about a model of fees and loans with graduate repayment. We went through all these concerns when we shifted mainstream higher education into fees and loans. In the first year, there was a decline in applications—but that stopped as soon as the students understood that they were not paying up front, and that it was a repayment scheme where they would pay back only if they started to earn more than £21,000 a year, and through PAYE. In other words, the so-called debt was nothing like a bank overdraft or a credit card debt; it was repayment through the income tax system if they were earning enough. That tackled their concerns, and since then we have seen an increase in the number of students applying to university.

My second point very much follows on from the excellent intervention of my noble friend Lord Forsyth. The reason we are short of nurses is that successive Governments have rationed the number of nurses. They have done that because nursing places have been financed out of public expenditure and the way to control public spending was to control the number of nurses. Back in 2004-05, we funded 25,000 nurse places a year. That has been in steady decline under successive Governments for a decade and is now down to around 17,000.

If we look at the evidence of what has happened in the past decade, there is no prospect under any Government of having more nurse places under the old system. A crucial part of these reforms is to remove the cap on places so that we will have more nurse places under the new system. The new system delivers more cash to cover nurses’ living costs during their nursing education. It delivers more money per nurse through the fees and loans system for universities providing nurse education and it removes the cap, thus providing the NHS with more trained nurses in total. That is a constructive reform of the NHS. It is progress providing nurse education and it removes the cap, thus delivering more cash to cover nurses’ living costs during their training.

The excellent speech by the noble Baroness, Lady Watkins, clearly demonstrates that there are many different ways of doing that, and I am not convinced that the Government have taken all those proposals into account. They ought to stop in their tracks and look at all those alternatives before going ahead with this regulation. We are still waiting for information about how or whether the practice placements will be funded, wherever that is—in the NHS or in the care services. As we have heard, nurses have to do 2,300 hours in a clinical placement. This requires considerable resource input from the hospitals or care placements, and most hospitals are already in deficit. Without proper resources there is no way that the system can accommodate 10,000 extra student nurses, even if, as we all hope, the Government are right and universities do offer that many additional places.

I understand where the noble Lord, Lord Willetts, is coming from. Clearly, the tuition fees and loans system has not put off students on most university courses. However, nurses are different from other students, so it is not a given that they would respond like students on other courses to the need to take out loans and pay fees. They are more predominantly from lower socioeconomic groups and have a higher proportion of mature students with family commitments. They spend nearly half their course time in supernumerary placements in hospitals and have a higher number of contact hours and weeks than other students. That makes it more difficult for them to get a part-time job to fund their living expenses, as other students can do. Indeed, because they are not highly paid, it has been calculated that the vast majority of them—I apologise to the noble Baroness, Lady Watkins—will not have paid off their student loans over 30 years, so they will be written off. It makes me sad to have to say that but it is a fact. Some even have other student loans from other courses that they have previously undertaken. So this strategy of the Government will not necessarily save much money in total but will simply shift the debt off the books, which I suppose was the objective of the exercise.

The Government have been very hasty. Instead of arbitrarily removing the bursaries we need a thoroughgoing investigation into the factors affecting nurse recruitment and retention, because the latter is a very important factor. It is no use filling up the bucket if there is a great big hole in the bottom—and in this case there is. Retention of student nurses to the end of their course is poor, and retention of nurses and midwives beyond the first two years after qualification is also poor. Therefore, not for the first time I ask the Minister whether he will ensure that attrition data is collected in a consistent way so that we can identify those settings that are good at keeping their students, nurses and midwives and those that are not. We can then learn from the best practice and spread it.

The impact of the Government’s plans on admissions, student numbers and quality and on the stability of the qualified workforce is yet unclear, and the Government have not said how they intend to monitor the impact on the workforce. Without a solid evidence base this policy should not go ahead. I therefore support the regret Motion in the name of the noble Lord, Lord Clark, and call on the Government to think again.
**Lord Watson of Invergowrie (Lab):** My Lords, when, in February, I was granted a topical Question on this subject—which, incidentally, I very much appreciate my noble friend Lord Clark raising—the Minister, the noble Lord, Lord Layard, chose to characterise my opposition to the Government’s damaging proposal as a sign that I did not support the policy of student loans. He was being disingenuous because, when student loans were first introduced by a Labour Government in 1988, those studying for nursing, midwifery and allied health professions were specifically excluded.

As tuition fees rose and student loans followed, successive Governments—Labour, coalition and, until now, Conservative—maintained that exclusion. We do not need to ask why. My noble friend Lord Clark and other speakers in this debate have made it quite clear that students building a career in those professions are quite unlike the wider student population. Perhaps the most revealing statistic on that—I will not repeat the others—is that 41% in those categories are over the age of 25, compared with 18% of the total student population. That sets them apart. As the noble Baroness, Lady Walmsley, has just said, they are unable to support themselves as other students can do, and often need to do, during their studies because of the hours required of students in nursing, midwifery and allied health professions.

However, none of that was taken into account by the Government—a Government anxious to make only “savings”. Worse, despite having those facts set out before them, they have declined to alter the course on which they are so dogmatically set. As my noble friend Lord Clark said, the nursing workforce already has severe shortages—up to 25,000 and rising—and already we know that fewer nurses from the EU are coming to work here and that by 2020 nearly half the workforce will be eligible for retirement.

So what do the Government do? They end the established practice of providing nursing students with bursaries and tell them to take out loans that will leave them with debts of at least £50,000 by the time they qualify. I heard what the noble Lord, Lord Willetts, said about loans—it is an argument that he repeated as a sign that I did not support the policy of student loans. He was being disingenuous because, when student loans were first introduced by a Labour Government in 1988, loans were first introduced by a Labour Government in 1988, those studying for nursing, midwifery and allied health professions were specifically excluded.

If the student numbers are not there, higher education institutions will be worse off because of the decline in student places by that time, cutting NHS bursaries will discourage students or those with children”.

Staff in England...
altogether if they are deemed to be unsustainable. That is related to another government objective—to widen access to nursing training. I want to make clear that we are not opposed to that, but not at the expense of the traditional route through university.

The Government have also said that scrapping NHS bursaries will save the Treasury money. But there will in fact be no cost savings to the Exchequer because most nurses will not earn enough to repay the entire loan and the decline in numbers entering nursing will increase agency nursing staffing costs to cover shortfalls. London Economics also estimated that, with those increased agency costs to cover staffing shortfalls, there will be more than an additional £100 million cost by trusts per cohort wiping out any potential cost savings.

These proposals should not be proceeded with, at least until the Government have published the results of the second stage of their consultation on these measures—a point made and expanded on by the noble Baroness, Lady Walmsley. That consultation has been delayed and of course we will not see it now until the other side of the election, if we see it at all. That is entirely unsatisfactory. It is confirmation of what is no more than a leap into the dark. That is no way to treat the career development of some of our most valuable public servants. These changes are high risk at a time when the NHS is ill-equipped to manage such risk. We support the Motion in the name of my noble friend Lord Clark because it is a risk that should not be taken.

I end by responding to the rather dismissive jibe by the noble Lord, Lord Forsyth. Yes, we are keen to get on with campaigning for the leader of the Opposition. That is what we will do to encourage the people of the UK to elect a Government who will properly fund the NHS and properly value its dedicated staff. Bring it on.

The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, I thank all noble Lords who have contributed to this debate and congratulate the noble Lord, Lord Clark of Windermere, on his prescience in scheduling this debate several weeks ago. He clearly has admirers in the Leader of the Opposition’s office if they have taken his proposal and put it in their manifesto. I leave it to others to judge whether having a policy adopted by Jeremy Corbyn is a good thing or not.

**Noble Lords: Oh!**

**Lord O’Shaughnessy:** While the noble Lord may have been prescient and influential, I fear that on this issue he, the Labour Party and the Liberal Democrat party are wrong. They are wrong because the system that we are introducing for student nurses matches the expectations of other undergraduate students—a system that has been the primary driver of the big expansion of higher education and improved participation among disadvantaged young people—and wrong because of the fears of the impact of Brexit that he has evoked. I thought that the Labour Party was in favour of leaving the European Union, although having heard the tortured exposition of Labour’s policy earlier this week that is anyone’s guess. But I reassure the House that this Government not only understand the difficult choices that need to be made to ensure that our NHS has the resources and personnel that it needs to thrive, but, if we are fortunate enough to be re-elected, intend to make a success of Brexit and, as immigration is reduced, to bring more of our domestic workers into the NHS to meet the challenges ahead.

I join other noble Lords in paying tribute to the amazing work that more than 2.5 million people working in the NHS and care systems do every day, often in challenging conditions. They represent values to which we all aspire—service, hard work, compassion—and are an inspiration to us all. There can be no person in this country who does not have cause to give them thanks for their expertise and commitment.

The Government are taking action on several fronts to support that workforce so that it can deliver excellent patient care through flexible working, good leadership, expanded routes into practice and new career structures. As part of these changes, from August 2017 new full-time students studying pre-registration nursing, midwifery or one of the allied health subjects will have access to the standard student support system for tuition fee loans and maintenance loans.

These reforms will enable more money to go into front-line services—around £1 billion a year to be reinvested in the NHS. Additionally, they will help to secure the future supply of nurses and other health professionals in several ways, such as by removing the cap, identified by my noble friend Lord Willetts as being a feature of the current system, so that more applicants can gain a place. Universities will be able to deliver up to 10,000 additional training places. The changes also enable a typical provision of a 25% increase in living-cost support for healthcare students and put universities in a stronger financial and competitive position so they can invest sustainably for the long term. The noble Baroness, Lady Watkins, in her excellent and of course, expert and well-informed speech, also pointed out that they remove a perverse incentive of the current system where it is the sole degree that is subsidised in that way. That brings with it a number of benefits, including addressing the issue identified by the noble Baroness, Lady Walmsley, of the retention on courses of people who are fully committed to taking part in a nursing career.

Successive Governments’ reforms to student finance have put a system in place that is designed to make higher education accessible to all, as my noble friend Lord Willetts pointed out in his excellent intervention. This has allowed more people than ever to benefit from a university education and has spread more fairly the burden of costs between society at large via the taxpayer and the individuals who benefit financially from the degree course. As a consequence, disadvantaged people are now 43% more likely to go to university than in 2009, and for the last application cycle the entry rate for 18-year-olds from disadvantaged backgrounds is at a record high: 19.5% in 2016, compared with 13.6% in the last year of the Labour Government in 2009. That is what we mean by a country that works for everyone. It is precisely because of these positive effects that moves towards a loan-based system have been supported by political parties across the House.
[LORD O’SHAUGHNESSY]
They were introduced by a Labour Government, extended by a Conservative and Liberal Democrat Government and taken on by this Conservative Government.

Turning to the applications for nursing and midwifery courses, the latest data published by UCAS on 6 April show around a 22% fall in the number of applicants to nursing and midwifery courses in England compared with the same point in the 2016 application cycle. However, as my noble friend Lord Willetts pointed out, in previous cases when fees have been introduced application numbers have gone down but rebounded in future years. The same UCAS data also show that since January there have been more than 3,000 additional applicants for nursing and midwifery places, taking the current total to more than 40,000 applicants for around 23,000 places in England. The chair of the Council of Deans of Health, Dame Jessica Corner, has commented on the situation, saying:

“It is to be expected that there would be fewer applications in the first year following the changes to the funding system, but we would expect this to pick up in future years”.

The Chief Nursing Officer, Jane Cummings, said:

“Despite the drop, the level of applications received suggest that at a national level, we are still on track to meet this target in England although we need to monitor this very carefully. We are also introducing a number of opportunities to support future applicants including additional routes to become a graduate nurse”.

Based on all of the information available, Health Education England is confident that it will still fill the required number of training places for the NHS in England.

On the issues raised around Brexit, future arrangements for student support after the UK leaves the EU will need to be considered as part of wider discussions about the UK’s relationship with the EU. However, the Government have confirmed that EU students starting their courses in 2017-18 or before will continue to be eligible for student loans and home fee status for the duration of their course.

On numbers of non-UK nurses, it is correct that the Nursing and Midwifery Council has seen a reduction in the number of registration applications from nurses in the European Union. At the moment, it is unclear whether the drop is attributable to the introduction of more robust language testing by the NMC, rather than as a result of the decision for the UK to leave the EU. The drop in the number of applications is balanced by a reduction in outflows from the profession, meaning that, while monthly fluctuations continue, the number of EU-born nurses is broadly the same. Indeed, slightly more nurses from the EU are working in NHS trusts and CCGs than in June 2016, the time of the referendum.

Lord Watson of Invergowrie: Will not the figure that the Minister has just cited be significantly skewed by the immigration skills charge, where, for every overseas person coming in on a type 2 visa, the NHS will have to pay £1,000? Will that not have an effect on nursing figures?

Lord O’Shaughnessy: I am not going to speculate on the impact of that. What I can tell the noble Lord is that, despite the scare stories that numbers will have been affected, there have been more EU-based nurses in the past year. That is the point that I wish to get across.

The real issue at stake is whether the number of staff in the NHS is increasing to meet the growing demands on it, and here the Government have a strong record. Over the past year, the NHS has seen record numbers of staff working in it. The most recent monthly workforce statistics show that, since May 2010, there are now over 33,000 more professionally qualified full-time equivalent staff in NHS trusts and clinical commissioning groups, including over 4,000 more nurses.

Health Education England’s Return to Practice campaign has resulted in 2,000 nurses ready to enter employment and more than 900 nurses back on the front line since 2014. There has been a 15% increase in the number of nurse training places since 2013, plus the introduction of up to 1,000 new nursing apprenticeships and the creation of nursing associate roles—the kind of non-graduate nursing roles that my noble friend Lord Forsyth pointed out as being such a crucial part of the mix. These all form part of our plan to provide an additional 40,000 domestically trained nurses for the NHS. These new and additional routes into the nursing profession will allow thousands of people from all backgrounds to pursue careers in the health and care sectors and, critically, allow NHS employers to grow their own workforce.

I will end as I began. I believe that this regret Motion is misguided. The extension of the loan-based system to nursing and midwifery training is a natural development of reforms that have received cross-party support, successfully expanded higher education, dramatically improved the participation of disadvantaged groups and provided a fairer distribution of the costs of funding higher education.

Despite the pessimism of some, the decision by the British people to leave the European Union, which this party respects, has not had a material impact on the workforce. Furthermore, and paid for in part by the resources freed up by our changes to student finance, this Government have put in place a series of programmes that have successfully increased the number of staff in the NHS and provided more training places than ever, allowing us better to grow our own workforce among UK residents.

The true source of regret is that the Opposition have used this opportunity to run scare stories about both the impact of sensible funding changes we have made and the impact of leaving the European Union on the NHS workforce. I urge all Members of this House to vote against the Motion.

Lord Clark of Windermere: My Lords, I have listened very carefully to the Minister. I wanted to be persuaded; I am not persuaded. I believe that the Government are taking a big risk. They have gambled before. It may not be known, but in 2011, 2012 and 2013, they reduced the number of nurses in training because they thought we had sufficient. As a result, several thousand nurses were short-trained in those three years, because the Government got the figures wrong. I believe that they have got the figures wrong again. It is a big risk that we do not need to take. It is unfair on the nurse’s
career, but, most of all, it is unfair to potential patients in the National Health Service. I want to test the opinion of the House.

4.22 pm

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Thurley, L.
Tomlinson, L.
Turnbull, L.
[Teller]
Turk, L.
Tyler of Enfield, B.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watts, L.
Wheeler, L.
Whicker, B.
Worthington, B.
Young of Norwood Green, L.
Ahmad of Wimbledon, L.
Altman, B.
Aneley of St Johns, B.
Aston of Hyde, L.
Astor of Hever, L.
Attlee, E.
Barker of Battle, L.
Bates, L.
Bell, L.
Berridge, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgemana, V.
 Bridges of Headley, L.
Brougham and Vaux, L.
Browning, B.
Buscombe, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Byford, B.
Caithness, E.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Colgrain, L.
Colwyn, L.
Cork and Orrery, E.
Cormack, L.
Courtown, E. [Teller]
Couttie, B.
Crathorne, L.
Curry of Kirkharle, L.
De Mauley, L.
Deben, L.
Dixon-Smith, B.
Dobbs, L.
Dunlop, L.
Eccles, V.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fall, B.
Faulks, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finn, B.
Flight, L.
Fookes, B.
Forsey of Drumlean, L.
Framlingham, L.
Fraser of Corrarghe, L.
Freeman, L.
Freud, L.
Gadhia, L.
Gardiner of Kibble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Glenarthur, L.
Glendonbrook, L.
Goldie, B.
Goodlad, L.
Grade of Yarmouth, L.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Hayward, L.
Henley, L.
Higgins, L.
Hill of Oareford, L.
Hodgson of Astley Abbots, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Hornam, L.
Howard of Lympne, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Kals, L.
King of Bridgewater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lingfield, L.
Liverpool, E.
Lothian, M.
Lucas, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
Mackay of Clashfern, L.
Mancroft, L.
Manzoor, B.
Maude of Horsham, L.
Mobarak, B.
Morris of Bolton, B.
Moyinihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Noakes, B.
Norton of Louth, L.
O’Callahan, B.
O’Shaughnessy, L.
Pannick, L.
Patten, L.
Pidding, B.
Polak, L.
Plop, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Prior of Brampton, L.
Redfern, B.
Ribeiro, L.
Risby, L.
Robathan, L.
Rock, B.
Ryder of Wensum, L.
St John of Bletso, L.
Seccombe, B.
Selborne, E.
Selsdon, L.
Sharpeles, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Skelmersdale, L.
Smith of Hindhead, L.
Sterling of Plaistow, B.
Stowell of Beeston, L.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
The following Acts were given Royal Assent:

- Finance Act
- Parking Places (Variation of Charges) Act
- Broadcasting (Radio Multiplex Services) Act
- Homelessness Reduction Act
- Intellectual Property (Unjustified Threats) Act
- Bus Services Act
- National Citizen Service Act
- Children and Social Work Act
- Pension Schemes Act
- Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act
- Technical and Further Education Act
- Neighbourhood Planning Act
- Bus Services Act
- Criminal Finances Act
- Health Service Medical Supplies (Costs) Act
- Northern Ireland (Ministerial Appointments and Regional Rates) Act
- Local Audit (Public Access to Documents) Act
- Merchant Shipping (Homosexual Conduct) Act
- Guardianship (Missing Persons) Act
- Farriers (Registration) Act
- Higher Education and Research Act
- Digital Economy Act
- Faversham Oyster Fishery Company Act

The following Acts were given Royal Assent:

- Intellectual Property (Unjustified Threats) Act
- Homelessness Reduction Act
- Broadcasting (Radio Multiplex Services) Act
- Parking Places (Variation of Charges) Act
- Finance Act

The Lords Commissioners were: Baroness Evans of Bowes Park, Lord Hope of Craighead, Lord Fowler, Lord Newby and Baroness Smith of Basildon.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it not being convenient for Her Majesty personally to be present here this day, she has been pleased to cause a Commission under the Great Seal to be prepared for proroguing this present Parliament.

When the Commons were present at the Bar, the Lord Privy Seal continued:

My Lords and Members of the House of Commons, Her Majesty, not thinking fit to be personally present here at this time, has been pleased to cause a Commission to be issued under the Great Seal, and thereby given Her Royal Assent to divers Acts which have been agreed upon by both Houses of Parliament, the Titles whereof are particularly mentioned, and by the said Commission has commanded us to declare and notify Her Royal Assent to the said several Acts, in the presence of you the Lords and Commons assembled for that purpose; and has also assigned to us and other Lords directed full power and authority in Her Majesty's name to prorogue this Parliament. Which commission you will now hear read.

A Commission for Royal Assent and Prorogation was read, after which the Lord Privy Seal continued:

My Lords, in obedience to Her Majesty's Commands, and by virtue of the Commission which has been now read, we do declare and notify to you, the Lords Spiritual and Temporal and Commons in Parliament assembled, that Her Majesty has given Her Royal Assent to the Acts in the Commission mentioned; and the Clerks are required to pass the same in the usual Form and Words.

Royal Assent

5.30 pm

The following Acts were given Royal Assent:

- Finance Act
- Parking Places (Variation of Charges) Act
- Broadcasting (Radio Multiplex Services) Act
- Homelessness Reduction Act
- Intellectual Property (Unjustified Threats) Act

Royal Commission

5.15 pm

The Lords Commissioners were: Baroness Evans of Bowes Park, Lord Hope of Craighead, Lord Fowler, Lord Newby and Baroness Smith of Basildon.

Prorogation: Her Majesty’s Speech

5.34 pm

Her Majesty’s most gracious Speech was then delivered to both Houses of Parliament by the Lord Privy Seal, in pursuance of Her Majesty’s Command, as follows.

My Lords and Members of the House of Commons, my Government have pursued a programme that has delivered stability, security and strong leadership, and begun the task of making Britain a country that works for everyone. My Ministers have brought forward measures to build a stronger economy, a fairer society, and a more united nation, while also acting to counter threats to national security and to build a more outward-looking global Britain.

The defence of the Realm has remained an utmost priority for my Government. Legislation was passed to ensure that law enforcement, security and intelligence agencies have the necessary powers to disrupt terrorist attacks within a framework of robust oversight.

My Government have continued with a programme to reform the criminal justice system. New legislation passed in this Session will help to make the police and fire services still more capable, efficient and locally accountable.

Building on the success of last year’s London Anti-Corruption Summit, legislation was introduced to strengthen powers to tackle money laundering, seize criminal assets and combat terrorist financing.

To build a stronger economy, my Government have taken forward a range of measures as part of their plan for a stronger Britain, so the country is well placed to exploit new opportunities in the global economy and to ensure the benefits are spread throughout the entire country.

To ensure that the United Kingdom remains a leader in developing new technologies, draft legislation was published setting out a new framework to support
the growing commercial spaceflight industry. To foster innovation and to support the creative industries, legislation was enacted to reform the law on intellectual property.

My Ministers have continued to prioritise investment in infrastructure projects to ensure that the economy and local communities can continue to grow and prosper. Legislation has been passed to support the building of a high-speed railway from London to Birmingham and to allow for better local bus services in England.

My Government has also legislated to ensure that all households can access fast broadband and allow new telecommunications infrastructure to be rolled out across the nation. Legislation has been passed to give communities more control over housing developments in their area.

To build a fairer society, my Government has brought forward measures to protect the most vulnerable and to drive greater social reform so that every child has the chance to make the most of their talents. To this end, legislation has been passed to enable a world-class technical education system that will provide opportunities for all young people.

Legislation has been passed to improve children's social care in England and to put the National Citizen Service on a permanent footing. My Government also supported legislation to tackle the scourge of homelessness and domestic violence.

Provision has been made to help the lowest-income families save for the future with a new Help to Save scheme, to help young people save for the long term with a Lifetime ISA, and to protect pension schemes. In recognition of the important role charities play, legislation has been enacted to help charities and community amateur sports clubs by simplifying the Gift Aid Small Donations Scheme.

A new Act will enable the National Health Service, and the taxpayer, to secure better value for money from the growing cost of medicines.

To build a more united nation, my Government has made it a priority to strengthen the union between all parts of the United Kingdom. Legislation was passed to establish a long-term devolution settlement in Wales and, in England, significant new powers have been devolved to directly elected mayors. My Government has taken steps to enable the resumption of devolved government in Northern Ireland when an agreement is reached between political parties to form an executive.

To deliver the result of the 2016 referendum, Parliament approved legislation allowing the United Kingdom formally to signal its intent to withdraw from the European Union.

My Government has worked to ensure that a global Britain plays a leading role in world affairs and provided assistance to British citizens overseas.

In order to bolster the United Kingdom’s role in developing countries, new legislation will allow further investment to create more jobs and boost economic growth in the poorest countries in Africa and south Asia. Legislation was also enacted to protect cultural property in times of war.

The Duke of Edinburgh and I were pleased to welcome His Excellency the President of the Republic of Colombia in November, strengthening the United Kingdom’s friendship with an important partner in Latin America.

My Ministers have established a close relationship with the new Administration in the United States of America.

My Government has continued to play a leading role in the global coalition against Daesh and deployed British forces in Estonia and Poland as part of NATO’s Enhanced Forward Presence, while maintaining the European Union consensus in favour of sanctions against Russia.

My Ministers have pursued a campaign against modern slavery and helped to secure pledges of £4.6 billion for the humanitarian crisis in Syria during a conference in Brussels in April.

Members of the House of Commons, I thank you for the provisions which you have made for the work and dignity of the Crown and for the public services.

My Lords and Members of the House of Commons, I pray that the blessing of Almighty God may rest upon your counsels.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords and Members of the House of Commons, by virtue of Her Majesty’s Commission which has now been read, we do, in Her Majesty’s name, and in obedience to Her Majesty’s Commands, prorogue this Parliament to the 2nd day of May, to be then here holden, and this Parliament is accordingly prorogued to Tuesday, the 2nd day of May.

Parliament was prorogued at 5.42 pm.
Grand Committee

Tuesday 21 March 2017

3.30 pm

Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017

Motion to Consider

Moved by Baroness Williams of Trafford

That the Grand Committee do consider the Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I shall speak also to the Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017. These orders give effect to the policing and fire elements of the devolution agreements between the Government and the Greater Manchester Combined Authority.

With the Committee’s permission, I will turn first to the Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017. The purpose of this order is to make detailed provision in relation to the transfer of responsibility for police and crime commissioner functions in Greater Manchester from the Greater Manchester police and crime commissioner to the directly elected mayor of Greater Manchester.

The transfer of these functions to the elected mayor will preserve the democratic accountability already established under the police and crime commissioner model. It will also join up oversight of a range of local services, including fire and rescue, opening up opportunities for broader collaboration. This is a chance to build on the strengths of the PCC model. The order requires that the elected mayor must personally exercise the core strategic functions of setting the police and crime plan, take decisions on chief constable appointments and set the policing component of the combined authority precept.

To provide additional leadership capacity, the order enables the elected mayor to appoint a deputy mayor for policing and crime, to whom certain police and crime commissioner responsibilities may be delegated. The order also requires that a new police and crime panel be set up. This panel will scrutinise the decisions of the mayor in respect of the exercise of their PCC functions in much the same way as the current panel does in relation to the police and crime commissioner. This order has been developed in consultation with the Greater Manchester Combined Authority and the Greater Manchester police and crime commissioner, and the combined authority and its constituent councils have given their consent.

I will now turn to the Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017. The purpose of this order is to transfer the responsibility for oversight of fire and rescue functions from the Greater Manchester Fire and Rescue Authority to the Greater Manchester Combined Authority, with these functions to be exercised by the directly elected mayor. Transferring oversight of fire and rescue functions to the mayor will provide direct electoral accountability for the provision of this key public service. It should also facilitate closer working with other local partners, including the police. This is obviously consistent with our desire to encourage greater collaboration between the emergency services.

The order permits the mayor to delegate certain responsibilities to a fire committee, to be formed of members from the constituent councils of the Greater Manchester Combined Authority. The committee is intended to assist the mayor in carrying out their fire and rescue functions. At the same time, the order identifies a number of fire and rescue functions as strategic to the delivery of fire and rescue. These functions must be personally exercised by the mayor and shall not be delegated. These strategic functions include approving the local risk plan and fire and rescue declaration in accordance with the fire and rescue national framework, and approving contingency plans under the Civil Contingencies Act 2004. The elected mayor will also remain personally responsible for decisions relating to the appointment of the chief fire officer. Scrutiny of the mayor’s exercise of fire and rescue functions will be undertaken in line with the arrangements for non-PCC functions.

The changes to be made by this order have been endorsed by the people of Greater Manchester in a public consultation conducted by the combined authority. The order was developed in close consultation with the Greater Manchester Combined Authority and has been formally consented to by the combined authority and its constituent councils. I commend these orders to the Committee.

Lord Stunell (LD): First, I thank the Minister for her introduction to these orders. I agree with her that there has been wide consultation and that it is appropriate for this Committee to bear that in mind when reaching its decision in what I hope will be only a few minutes’ time. I should declare a residency qualification, in that I live in Greater Manchester and for 18 years I was an MP for one of the 27 constituencies. For eight years, I was a member of one of the 10 constituent borough councils—and, to complete the full set, I was a Minister in the Department for Communities and Local Government when the combined authority order was set up in 2011. I know that the city deal that flowed from that was widely welcomed across Greater Manchester, along with the steps that have been taken since to ensure that additional resources—funding what has traditionally been central government, Whitehall-directed services—will be put into the hands of the combined authority from the start of the new regime in May.

The progress made so far has been much envied and imitated around England, where a steady stream of visitors from other cities and for that matter rural and shire areas have been received by the combined authority, asking it how the model has been developed and how it can be copied. All that is positive and very much a direction of travel that my parliamentary colleagues and I believe is right, with more decision-making and
discretion over the delivery of public services in a given area in the hands of those who live there and are elected from there.

I have a concern about the mayoral model, but that particular ship has left port. A loss in cross-authority representation and accountability flows from that, but these orders do something to combat or respond to that. Certainly, to replace the police and crime commissioner—somebody who, for all his qualities, was elected on a 14% turnout across Greater Manchester—would somebody elected to be mayor of the combined authority, and with a much more significant and wider role in the delivery of public services, is almost bound to increase the visibility and accountability of the person carrying out that role. I welcome that, as do the constituent authorities.

The police and crime panel, to which the Minister referred, is seen as a way of maintaining or improving the police service’s accountability. There is a way to go in that regard; it is to be hoped that a more visible mayor’s being in charge of the police service may lead to the panel having more visibility and capacity to keep control, or a proper oversight of that service. Nevertheless, it is a good thing to see that incorporated in the proposals.

As for the Greater Manchester Fire and Rescue Authority, there is no equivalent commissioner but rather control by representatives of the 10 local authorities, and there is no doubt that the new arrangements will give more visibility to the leadership of that service. In the longer term, bringing the police and fire services under common management must be a better way to provide a coherent and integrated service. Indeed, my one question to the Minister relates to that. Today, the Care Quality Commission has produced a report on independent ambulance services. The ambulance service in Greater Manchester is provided by an independent body based in Blackpool. Bearing in mind that these orders bring together two of the blue light services in Greater Manchester—and particularly in view of the critical nature of that report, but more generally in any case—have the Government looked at ways the blue light services in Greater Manchester could be brought together? Again, I remind the Minister that the combined authority in Greater Manchester will be taking over a significant amount of NHS commissioning for future years—a step that I very much favour.

With that sole question to the Minister—I dare say she is not equipped to answer it off the top of her head; perhaps she would like to write to us about bringing together the three blue light services—I am certainly happy to support these orders.

Lord Smith of Leigh (Lab): My Lords, I declare my interest not merely as a member of the combined authority and leader of Wigan Council; I am in a position to answer the question asked by the noble Lord, Lord Stunell, on ambulance services because I chair the Greater Manchester health partnership board. The orders are very interesting. I have yet to see in the manifestos of either of the two main mayoral candidates what their policies are on the docking of working dogs’ tails. That obviously is an important consideration.

I not only thank the Minister for introducing the orders, but welcome the fact that the Government have put them together. To add to the points she raised, it is not just about bringing together the blue light services, which is important. We need to see police and fire as part of general public service reform. Many of the issues the services face are related to the fact that people have problems across their lives. We need to get the police and fire services engaged in the work we are doing in Greater Manchester across a wider range of public services, not just in blue light services.

The answer to the question asked by the noble Lord, Lord Stunell, is that the arrangements are currently handled through Blackpool but they are coming back to Greater Manchester. We asked for ambulance service commissioning to come back to Greater Manchester because, as we are now a devolved health area, we need to do this rather than working through CCGs in Blackpool, for example.

There are actually two panels that look after the PCC in Greater Manchester: the scrutiny panel, made up of members of the authorities, and the combined authority itself. We will need to find a mechanism to continue that work, because it is important that the work of the police and crime commissioner, whether exercised by the mayor or anybody else, has consent across the whole of Greater Manchester on major issues.

It may be my ignorance, but the documentation does not make clear the deputy’s role. I would hope that the mayor would appoint a deputy. He or she will have a lot to do generally and we need to supervise what is going on in the police service. A day-to-day role in running the police service would be too much for anybody, and the same is true for the fire service. I hope we will set up the committee to run that, but we need to understand the role of the deputy and how answerable they will be to various public bodies.

As the Minister is probably aware, I regret that the PCC can implement the Greater Manchester precept without really consulting the 10 authorities. That needs to be changed. Unfortunately these orders do not do that; they roll it on. It is also not clear in the fire order whether the fire precept will need to go to the combined authority for approval, or the mayor will simply make a recommendation and we will not have any control over it. There has been a little dispute this year about how much the fire precept should go up by. With the representative of Trafford, I was on the losing side of that argument but we need to do that.

As the Minister said, we consulted on this across Greater Manchester. We welcome the changes. It will be an interesting challenge to have a mayor with the combined authority but I am sure we can all make it work to ensure proper devolution across Greater Manchester.

3.45 pm

Lord Beecham (Lab): My Lords, I am sure the mayoral system will be interesting—possibly in the Chinese sense—but if it is likely to work anywhere, it will undoubtedly be Manchester. I want to raise a couple of issues with the Minister.

First, of course the Government would like to see combined police and fire authorities. There are places where that might be suitable. But I take it that where
there is a different view locally—as there would be in the north-east, for example, where we have different boundaries for the different services—there will not be any compulsion on authorities to go in that direction. I am sorry to say that, having been spending my time on the next statutory instrument, I have forgotten what my second point was. Perhaps I will approach the Minister afterwards.

**Lord Kennedy of Southwark (Lab):** My Lords, first, I make my usual declaration of interests as in the register; specifically that I am a local councillor and a vice-president of the Local Government Association. The two orders before us I have no issue with, and my comments will be correspondingly brief. The Minister, the noble Lord, Lord Stunell, and my noble friend Lord Smith of Leigh, who is a member of the authority, are the experts here.

As we have heard, the orders transfer fire and rescue functions and police and crime commissioner functions to the mayor for Greater Manchester. I am pleased that we are having an election for this position on the first Thursday in May. These functions will then be transferred to this new elected person to be accountable for the delivery of these very important services to people living in the Greater Manchester area. At the same time, the office of police and crime commissioner and the Greater Manchester Fire and Rescue Authority will both be abolished.

I record my thanks to Tony Lloyd, who has been the PCC for Greater Manchester since 2012. Before that he was a Member of the other place for 29 years, for both Stretford and Manchester Central. In that time, he also served as the chair of the Parliamentary Labour Party, which is an interesting job to hold time, he also served as the chair of the Parliamentary Labour Party, which is an interesting job to hold for both Stretford and Manchester Central. In that time, he also served as the chair of the Parliamentary Labour Party, which is an interesting job to hold for both Stretford and Manchester Central. In that time, he also served as the chair of the Parliamentary Labour Party, which is an interesting job to hold for both Stretford and Manchester Central. In that time, he also served as the chair of the Parliamentary Labour Party, which is an interesting job to hold for both Stretford and Manchester Central. 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In that time, he also served as the chair of the Parliamentary Labour Party, which is an interesting job to hold for both Stretford and Manchester Central. In th...
[Baroness Williams of Trafford]
The noble Lord, Lord Beecham, asked about the compulsion to combine police and fire authority areas, particularly where they are not contiguous. There is absolutely no compulsion to do that. If they are not contiguous, such a move would require structural change anyway.

I think I have answered all the questions, but if not I will certainly come back to noble Lords.

Lord Kennedy of Southwark: I accept entirely that different areas have different needs and may want to tackle this issue in different ways. The point I was making is that the Government have not made it clear where we are going. That is not to say that different areas cannot tackle this issue in different ways; of course they can; they have different needs. However, the Government have never set out clearly in a document where they are going with this, which is why the situation is confusing. The West Midlands is a similar conurbation to others, with similar problems and similar areas, but the deal that was arrived at and the powers that were transferred are vastly different from those in other similar areas. Why? That information is missing. There is no difficulty with having different arrangements, but we need to know how the Government have arrived at the present position.

Baroness Williams of Trafford: As the noble Lord, Lord Smith, mentioned, we left it up to local areas to say what their version of public service reform looked like—what did public service efficiency look like going forward and what was their plan for growth? Therefore, that might look slightly different in different areas, which is why I explained it in the way I did. However, there will be similarities: transport is a huge issue in Greater Manchester and the solution to that will be huge in terms of growth, as it will be for other areas.

Motion agreed.

Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017
Motion to Consider

3.55 pm
Moved by Baroness Williams of Trafford
That the Grand Committee do consider the Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017.

Motion agreed.

Electricity Supplier Payments (Amendment) Regulations 2017
Motion to Consider

3.56 pm
Moved by Lord Prior of Brampton
That the Grand Committee do consider the Electricity Supplier Payments (Amendment) Regulations 2017.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, I beg to move that the Committee approves the draft Electricity Supplier Payments (Amendments) Regulations 2017. This instrument amends regulations concerning the contracts for difference scheme and the capacity market. Before diving into the specifics of the amendments we are discussing today, I will briefly explain these two schemes.

Contracts for difference, or CFDs, provide long-term price stabilisation to low-carbon generators, allowing investment to come forward at a lower cost of capital and therefore at a lower cost to consumers. The scheme ensures greater certainty and stability of revenues to electricity generators by reducing their exposure to volatile wholesale prices, while protecting consumers from paying higher support costs when electricity prices are high. The capacity market provides regular payments to reliable forms of generation in return for such capacity being available when needed, thus ensuring that enough capacity is always in place to maintain security of supply. A fundamental aspect of both schemes is the competitive auction process for awarding contracts, which drives down costs to consumers.

The next CFD auction, with a budget of £290 million for less established renewables technologies, is on track to open in April. This will result in enough renewable electricity to power 1 million homes and reduce carbon emissions by around 2.5 million tonnes per year from 2021-22 onwards. It will also allow developers of innovative renewable technologies to deliver the best deal for bill payers. Three main capacity market auctions have been held each December from 2014 to 2016 to secure capacity four years ahead from 2018-19 to 2020-21. The latest of these secured 52.4 gigawatts of capacity at a price of £22.50 per kilowatt per year. In January 2017, an early capacity auction was also held to secure capacity for winter 2017-18. The auction secured 54.4 gigawatts of capacity at a clearing price of £6.95 per kilowatt per year.

The regulations we are considering today will implement a second tranche of minor and technical amendments to improve the efficiency and transparency of the CFD supplier obligation, the levy on suppliers that pays for the costs of CFDs. They build on a first tranche of changes approved by Parliament last year, which became law in April 2016. These further changes are being implemented later to allow time for necessary changes to be made to the settlement system, which determines the way that CFD payments are calculated and paid. Both the changes under consideration today, and those implemented last year, were the subject of a public consultation and received a largely favourable response. These regulations also amend the levies that fund the companies established to deliver the CFD and capacity market schemes.

4pm
I will now summarise how the supplier obligation works and describe the amendments that are being made. The supplier obligation is a compulsory levy on all GB electricity suppliers to meet the costs of clean electricity generation under contracts for difference. The levy is collected by a private company, the Low Carbon Contracts Company, of which the Government...
are the sole shareholder. The levied funds are paid to CFD generators for the electricity that they produce. The levy rates are set on a quarterly basis and consist of two payments.

The first is paid daily, based on every unit of supply, and the second is a quarterly reserve amount that ensures that the Low Carbon Contracts Company faces little risk as possible in covering payments to generators. Both rates are set based on forecasts of payments to the CFD generators, and levied on suppliers based on their market share. At the end of each quarter, the supplier payments are reconciled with actual payments to generators.

The changes being made through these regulations will further improve the efficiency of the supplier obligation mechanism. The most significant of the changes will speed up reconciliation payments to allow overcollected funds to be returned more quickly after the end of a quarter so that suppliers face less cash-flow risk. Secondly, they will allow the Low Carbon Contracts Company to reduce the reserve amount without notice when it has been overestimated, to ensure that suppliers do not overpay unnecessarily for renewable generation. This reduces their cash-flow risk. Thirdly, they will enable the Low Carbon Contracts Company to recover funds from suppliers when a compensation payment to generators is due in respect of generation that happened more than 10 quarters ago. Finally, they will prevent double counting of the green import export and the energy intensive industry exemption to avoid suppliers demonstrating a negative market share and thereby avoiding payment of levies.

Taking these changes together with those introduced last year, we estimate that the cost of CFDs to consumers will be reduced by £38 million over five years—a small reduction of some 40p to 60p in consumer bills. This set of changes alone was estimated to reduce bills by £22 million over the same period.

The second objective to be delivered through this instrument is to set a revised operational cost levy for the Low Carbon Contracts Company and a revised settlement costs levy for the Electricity Settlements Company, the company responsible for collecting and making payments to capacity providers under the capacity market. The companies play a critical role in delivering the contracts for difference and capacity market. Both rates are set based on forecasts of payments to the CFD generators, and levied on suppliers based on their market share. At the end of each quarter, the supplier payments are reconciled with actual payments to generators.

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Taking these changes together with those introduced last year, we estimate that the cost of CFDs to consumers will be reduced by £38 million over five years—a small reduction of some 40p to 60p in consumer bills. This set of changes alone was estimated to reduce bills by £22 million over the same period.

The second objective to be delivered through this instrument is to set a revised operational cost levy for the Low Carbon Contracts Company and a revised settlement costs levy for the Electricity Settlements Company, the company responsible for collecting and making payments to capacity providers under the capacity market. The companies play a critical role in delivering the contracts for difference and capacity market schemes and it is essential that they are sufficiently funded to perform their roles effectively. The Government scrutinise their operational cost budgets closely to ensure that they reflect the operational requirements and objectives of the companies and deliver value for money.

The companies have performed well and the cost of their core activities is slightly down from 2016-17. The increase in both budgets is due to the cost of upgrading settlement system software. The software upgrades are necessary to reflect a number of policy changes that simplify and improve the overall effectiveness of the capacity market and the CFD scheme. For example, the changes to the supplier obligation being discussed today will need to be reflected in the settlement system.

The software upgrades are being treated as operational costs rather than funded via capital. This means that they will be charged in full to the levy in 2017-18, rather than being recovered over the lifetime of the asset through depreciation charges on the levy. Overall there is no difference in costs to suppliers. The operational costs were subject to consultation, giving stakeholders the opportunity to comment, and remain unchanged following the consultation. The regulations revise the levies currently in place to reflect the operational cost requirements in 2017-18. Subject to the will of Parliament, the settlement costs levy for the Electricity Settlements Company is due to come into force by 28 March 2017, the operational cost levy for the Low Carbon Contracts Company by 1 April and the changes to the CFD supplier obligation later this year.

As a final point, I assure noble Lords that the Government will continue to evaluate and monitor the reforms following implementation to ensure that the measures put in place remain effective and continue to represent value for money for the consumer.

Lord Deben (Con): I shall intervene for just a short moment. Whenever we talk about these things there is always a kind of reticence—a fear somewhat or other that the customer will be charged in an unsatisfactory way for Britain to move to the low-carbon economy that we all seek. I remind the Committee of my interest as chairman of the Climate Change Committee.

I will say three quick things. First, this is inevitably a complex matter. Inevitably, anyone listening to the Minister describing what was changing might have some difficulty in following, were they not absolutely up to date with what it was changing from. That is one of our problems: when we deal with these matters it is difficult to get them right and to get them simple. The Committee must accept that the Minister did a great job in explaining what is to happen. The regulations’ purpose is to do what I imagine we will go on doing almost every year to make sure that we learn from the lessons of the past and discover mechanisms whereby we can make the system work as cost effectively as possible. I emphasise that all of us wish to support that process. Whereas we want some stability in the overall system, we will be concerned if the basics are changed more than is absolutely necessary. We are perfectly happy if on each occasion we seek to tighten some things and loosen others to make the system manifestly more effective.

Secondly, however, I hope the Minister, in all the times that he speaks on these matters, will refer people to the work recently done by the Climate Change Committee, which shows that the overall effect of our low-carbon policy has been to reduce bills, not increase them. Roughly speaking it costs us about £9 a month more to pay for the costs of moving towards a low-carbon economy, but the bills are £20 a month less than they would have been because of the effects of those policies. As people exchange old white goods and other electrical goods for new ones, because of our policies, the latter are much more efficient. We have pressed the technology.

I remember going to buy a freezer at the beginning of the European Union process of warning people about the amount of energy used by new products—when the little notices came in for the first time. The freezers on offer ranged from those with an A rating to those with a G rating. As a matter of fact, I did not buy a
[Lord Deben]

freezer in that sale. I waited a year for the next January sales. I went around again and discovered that all the freezers were now between an A++ rating and a B rating. In one year we had changed: people were told about the value of low-carbon, low-emission products at a time when they could do something about it. They were not just generally told about it, but told at the moment when they could save so much a year by making that choice. Manufacturers discovered that they would not sell their products unless they made those technological changes.

I raise these issues because the constant talk in the press is very trying—not just for those of us who are concerned with them daily but for the Government and Opposition too—as if all this has made bills heavier, when it has not. Had we not done this, bills would be £20 a month more. That is not an imaginary figure, but shows how the reduction in domestic use of electricity affects the bills of the majority of people—some 85% of the population—who use both gas and electricity. In those circumstances, we have to go on talking about this, otherwise we lead people astray into thinking they are paying £9 a month extra, instead of saving some £11 a month in total. If they take a personal decision to improve their energy efficiency, they can make even more savings, but we never take that into account, of course, because it is a personal decision. However, the other two factors are a result of government policy playing back into how people pay their bills.

I want the Government constantly to quote this fact, because we have spent a lot of time on it, and it is very objective indeed. I know how objective it is, because our opponents have attacked it and said that it is outrageous, but have been unable to find a single item that they can show to be outrageous, being unable to find a single fact with which they can argue. It is outrageous to them, of course, because it undermines their whole attitude and the campaigning they have done—I am afraid—through a number of our popular newspapers. I hope that the Government will in future speeches include this simple matter to remind people, so that they always know.

My third point is that we hear from the press that the Government are very keen on keeping down energy bills and will make significant investigations and possibly take draconian measures to do so. I point out to the Minister that the report we have just produced shows how the reduction in domestic use of electricity affects the bills of the majority of people—some 85% of the population—who use both gas and electricity. The amendments address the cost of the necessary adjustment in how the market works and operating, as far as possible, a free market as we move towards a zero-carbon electricity supply. In that context, I hope he will spend a good deal of time concentrating on the two factors that are independently assessed as the reason for higher prices in the business sector. Otherwise, I am afraid that he may be led down the line that it is all about green taxes, when the opposite is true.

4.15 pm

Therefore, the big issue here is the welcome way the Minister has introduced these changes, which suggests that we should do the same in all the other things we do. In other words, given the reality of the costs, we should find where money can genuinely be saved by the mechanisms provided. If we can do that, we shall show that this united effort of government and opposition—this issue is not party political—can lead the world and show other people how to do it.

Baroness Maddock (LD): My Lords, it is always a pleasure to follow the noble Lord, Lord Deben, on these issues. I agree with much of what he has said. I had not intended to speak, but he reminded me, as did the Minister in his opening comments, of how complicated the Bill that put all of this into place was. To this day, some of us still find it quite difficult to get to grips with. I thank the Minister for trying to explain it as well as he did. I miss Lord Jenkin who saw us through that Bill. I was saying to my noble friend Lady Featherstone, who was not here at the time, that Lord Jenkin was the man who really understood what was going on and helped us all through a difficult Bill. I put that on the record.

Lord Grantchester (Lab): I thank the Minister for explaining the amendments to these regulations. They seem eminently sensible, drawn from the experiences of operating the regulations, which are vital to reforming the electricity market and encouraging low-carbon electricity generation to ensure the UK’s security of supply. I also express my gratitude to the noble Lord, Lord Deben, for his helpful remarks as background to the regulations, and for underlining the importance of the progress we have made.

The amendments to the regulations should increase the cost-effectiveness of the two main measures, the CFD scheme and the capacity market, since they reduce the heavy-handedness of the belt-and-braces approach of the CFD counterparty, the Low Carbon Contracts Company, and that of the Electricity Settlements Company for the capacity market. The Minister’s introduction eloquently explained the improvements. These companies exist only to make payments for low-carbon generation or demand-side responses, and to collect these payments from suppliers. The companies must also cover their costs. The regulations set up the system to do this in as transparent, equitable and cost-effective a way as possible, allowing for a sensible
amount of reserves as some guarantee. One would hope and expect these payments to balance out through the reconciliation process.

Much of the debate on these regulations in the other place focused on the probability of error. I could join in and tease the Minister by asking him about 20 scenarios, any one of which could be the one occurrence that could not be reconciled. However, that would be facetious. The modelling looks robust, indicating that the companies have the ability to raise the funding necessary in a modern, technologically efficient manner and make the payments required.

The regulations merely deal with the process of funding. The bigger question is the accuracy of the strike price, which is relevant to the setting up of this compulsory regime. Noble Lords will know that that is contained in the contracts agreements and is not part of these regulations. The two most controversial applications relate to nuclear power and the Hinkley Point C plant, and onshore wind.

The Government have shown how quickly they can alter their assessments and mechanisms for adjustment through Part 2 of the Energy Act 2016 in relation to onshore wind and the compensation payments in the FIT regime. On the prevention of double-counting of exemptions in the measure, exemptions from payments are available to suppliers which import renewable electricity from EU member states. This green excluded electricity—GEE—will not count towards electricity suppliers’ market share for calculating their CFD liabilities. This raises questions about security of supply; whether government policy is blind, whether British-based or not; the relative pricing of renewable energy in the UK and in the EU; and whether security-of-supply policy should seek to encourage import substitution. It also begs questions relating to Brexit. I could ask the Minister various hypothetical questions about the internal energy market and any likely scenarios of tariff applications. I imagine he would say that further amendments can be made as circumstances change.

I am grateful for the clarity provided regarding the operational budgets of the two companies and the professional fees increase, brought about by the inquiries of your Lordships’ Secondary Legislation Scrutiny Committee. I very much agree with the Government’s financial policy to expense rather than capitalise software upgrade costs.

I have a few questions about the regulations. First, on the amendment to allow CFD reconciliation determination after the 10th quarter to be classified as non-generation payments, is a longstop provision of time envisaged, or is that included in the general retrospective provisions? Could this be one of those 20 unknown unknowns? Secondly, following the onshore wind provisions in last year’s Energy Act and given that onshore wind is now so much cheaper, are the Government any closer to allowing onshore wind to participate in future CFD auctions now that the threat of UKIP has receded? Can the Minister update the Committee on the position following the consultation on onshore wind in November 2016? Thirdly and lastly, I understand that the net savings to be passed on to electricity consumers are not a cash item and cannot therefore be shown or guaranteed in some way. However, the memorandum states that the operational costs budget of the two companies will increase, resulting in an increase, albeit minimal, in household electricity bills. Will these two features balance out and the net effect on consumers be neutral?

Having said that, I am content to approve the regulations.

Lord Prior of Brampton: My Lords, I begin by echoing the comments of the noble Baroness, Lady Maddock, about Lord Jenkin. I was reminded of the Schleswig-Holstein question, to which the Duke of Wellington said that only three people knew the answer—and one was dead, one had gone insane and the other one had forgotten it. Fortunately, my noble friend Lord Deben has not forgotten it and spoke very eloquently about broader issues than those raised by the statutory instrument before us.

It was interesting to hear my noble friend’s story about how shopping for a freezer had changed in the space of a year—from being able to buy one rated from A to G, to one now rated A++ to B. That is just one small illustration of how technology has helped hugely in reducing the use of electricity. He is absolutely right that technology has significantly reduced bills.

Lord Deben: I am sorry but it is not just that the technology has changed; we have now shown people that it is not worth selling bad products. You have to use the technology and it is we politicians who have made that technology actually go into the marketplace, because it has been worth while. The Government should take credit for what they have done.

Lord Prior of Brampton: That is true. The incentives need to be there, but the fact is that technology is remarkable. Technology is going to do it. If we are going to solve the problem of carbon emissions, technology and incentives to use new technology—which is what the CFD programme is all about, as I understand it—are crucial.

My noble friend also spoke about the cost of electricity for business. It is an issue I take a particular interest in, given that it affects very energy-intensive industries, such as the steel industry, the glass and ceramics industries and other industries, including the potteries in places such as Stoke. It is difficult to know why our costs are higher. It is partly because of distribution and transmission, we are told, and partly because of the wholesale market, but I do not think we have a full answer to that. I have not read my noble friend’s report on this. It may suggest an answer. I will read it with interest. It is certainly a question that we need to answer. It is always very easy to blame the green lobby for the extra costs falling on high-energy consumers. My noble friend raises a question that needs to be answered.

I thank the noble Lord, Lord Grantchester, for supporting these regulations. He asked three questions. I shall write to him on them. I have been given the answer, but I cannot absorb it and give it to the noble Lord at the same time without just reading it out without thinking about it. He raised the more general issue of the impact of Brexit on the internal energy market and what tariffs there might be. I will have to
Motion agreed.

I thank the noble Lord for his support for this measure?

has driven prices down. The market is very powerful.

down in the last auction and how the capacity auction

into consideration the cost of offshore wind has come

play a crucial role in delivering the CFD scheme and

Settlements Company. As I read this, I do realise that

Carbon Contracts Company and the Electricity

to improve the efficiency of the CFD supplier obligation

through making some fairly minor technical amendments

amend through this instrument affect the CFD scheme

negotiations turn out.

answer that we will have to wait to see how the

households in Britain—hard-working families, who,

In the Prime Minister’s first speech of her term in

worry about the cost of living”.

As part of the response to that dilemma, the Government

are committed to helping households in fuel poverty

or on lower incomes living in homes which are expensive
to heat. That is why this order is before the Committee
today. It will also make an important contribution to

the Government’s clean growth plan and to reducing
carbon emissions.

We are making amendments to the existing ECO

order, which covers the period from 1 April 2015 to

31 March 2017. The amendments extend the current

scheme from 1 April 2017 to 30 September 2018 to

enable reforms to be introduced, while also allowing

industry time before further improvements are made

through a new longer-term scheme from 2018 to 2022.

Planning ahead to 2022, beyond the life of this Parliament,

reflects announcements on funding made in the 2015

spending review. This longer-term confirmation of

funding is designed to give greater certainty to energy

suppliers, installers, local authorities and other energy

stakeholders.

This Government are facing up to the enormous

energy challenges our country faces over the coming

years. With the overhaul of the electricity market and

continued investment in renewable technologies, we

are well on the way to making sure that the UK’s

energy is secure, low carbon and affordable. Improving

the energy efficiency of the UK’s homes is central to

this challenge and to addressing fuel poverty.

The energy company obligation scheme helps occupants

keep warm, reduce their energy bills and protect their

health and well-being. It does this by obligating energy

suppliers to reduce carbon emissions and energy costs

through installing energy-efficient measures in households

across Great Britain. The supply chains involved in

this endeavour also provide economic benefits across

the country. Since the introduction of the ECO in

2013, the scheme has proved remarkably reliable and

cost-effective in upgrading our housing stock. Altogether,

more than 2 million energy-efficiency measures had

been installed in more than 1.6 million homes by the

end of December 2016, with around 1.2 million of

those measures going to 900,000 low-income and vulnerable

households or households in deprived areas. This is a

significant investment in addressing energy efficiency

and fuel poverty. Thanks to the amendment order we

are introducing today, we forecast that over half a

million more insulation measures and around 45,000

more heating measures will be delivered through the

ECO by 2018.

The changes implemented by the order before the

Committee were consulted on in the summer of 2016.
The consultation received 236 formal responses, which

were broadly supportive of the proposals. The government

response was published at the end of January 2017.
The order will reduce the overall spend of the scheme

from £860 million per annum currently to £640 million

per annum. This is done to constrain the impact of

government policies on all consumer bills. Although

the ECO provides the recipients of energy-efficiency

measures with long-term bill savings, it is important to

recognise that the upfront costs of the measures installed

are spread across all bill payers. As such, it is right that

we have sought to ensure that the ECO support is

focused more on those most in need, while reducing

the overall cost from £860 million per annum currently to

£25 per bill from April onwards. At the same time, it

will still allow around 545,000 homes to be improved

across the 18 months of the extension.

We have increased the period of the obligation extension

from 12 months in the consultation to 18 months. This

is in response to the views of stakeholders and is

designed to make the transition as smooth as possible.

It will avoid costs associated with industry implementing

changes within constrained timelines, and will allow

lessons from the operation of the extended period to

be fed into the design of the longer-term scheme from

2018.

The separate carbon-saving community obligation

element of the ECO, part of which currently delivers

energy-efficiency improvements in rural areas, will be

brought to an end for reasons of simplification, but

there will be a safeguard guaranteeing a minimum

level of rural delivery under the remaining carbon

reduction obligation.
The affordable warmth element of the scheme, which places the greatest focus on targeting low-income and fuel-poor households, is increased from 34% to 70% of the overall estimated spend. This means that the carbon emissions reduction obligation element, which allows delivery to any home for carbon-saving purposes, will be decreased to approximately 30% of the overall spend. Changes are also being introduced to better target the affordable warmth obligation towards low-income and fuel-poor households.

First, income thresholds will be used to determine eligibility under affordable warmth. The process will be simple, while recognising differences in household size. Secondly, eligibility for the affordable warmth element has also been extended to allow the installation of particular measures to social housing occupants in the least efficient homes—those with an EPC band of E, F or G. Thirdly, a new voluntary provision will allow local authorities to use their local knowledge to determine eligible fuel-poor or vulnerable households for up to 10% of a supplier’s affordable warmth obligation. In particular, they will have opportunities to help people with health problems living in cold homes.

Fourthly, mains gas boiler replacements delivered under affordable warmth have been limited to the equivalent of approximately 25,000 per year. Our analysis suggests that other measures, such as insulation and first-time central heating, are more beneficial and cost effective. We will also require a minimum delivery of the more expensive solid wall insulation, equivalent to 21,000 homes a year, to protect the development of that sector and improve some of the least efficient homes. A key focus of the changes made by this order has been simplification to reduce the administrative burdens and complexities associated with the scheme. This may allow more measures to be delivered under a given amount of supplier spend.

These are important changes to the existing ECO order but they will continue to drive large-scale investment in energy efficiency across the country. Support will be targeted more at those who need it most: those living in fuel poverty or on lower incomes and struggling with bills. The order will promote measures that bring reductions to energy bills, simplify scheme delivery, and better target energy-efficiency funding to vulnerable and low-income households. I commend this draft order to the Committee.

Lord O’Neill of Clackmannan (Lab): My Lords, this order is something of a curate’s egg. There are a number of aspects that one would be quite happy with were it not for the fact that one player in this whole scheme is absent: the Government. They are changing some of the regulations and arrangements but they are providing no money themselves, unlike the Administrations in Belfast, Cardiff or Edinburgh. Therefore, we have to say in the first instance, on the objective of moving the starting time by six months, from 12 to 18 months, if we are to get a better scheme, that might be very well. However, it is a delay, in fact from 2015, when the opportunity to introduce an improved scheme first arose.

It begs the question: why is there a delay? If it is because the Government are wrestling with the complexity of it, I submit that they have had plenty of time to do that. I know from the briefing I received from National Energy Action—of which I happen to be the honorary president, and therefore declare a limited, non-pecuniary interest—that this estimable charity has somewhat mixed feelings, which reflect my own. The Government seem to be doing a little bit with one hand, and then taking it away with the other. When we see the reduction in boiler replacement, it is not because the job is nearly ending—that we have completed the replacement of inefficient boilers—but simply because the Government take the view that it costs too much.

There is also the fact that if you want to make households more conscious of the benefits of energy efficiency, a dramatic change such as the replacement or introduction of a boiler is of critical significance in this change of thought process. We know that in many respects the households that are most disadvantaged are those which have so many problems that trying to be energy efficient is very much a kind of finger-in-the-dyke operation, and they need assistance. Very often, when we are able to secure the replacement boilers, we get a change of step and a greater willingness to help.

It is also fair to say that we have insufficient sums to meet even the most modest of home improvements. We are told by a number of bodies—including, for example, the Committee on Fuel Poverty, the Committee on Climate Change, and Policy Exchange—that even to meet the very modest target of getting households to EPC E level by 2020 will require £1.9 billion. To get households to EPC D level by 2025 will cost £5.6 billion. To get all households up to EPC C level by 2030 will require £12.3 billion. These are large sums. However, what the Minister is talking about seems to be nowhere near what is required to reach these households. Indeed, it has been suggested that a baby born today into inadequate housing would probably be about 75 before their home was properly heated.

A number of the changes are sensible and not unwelcome. However, the Government cannot get away with the platitudeous nonsense the Minister spoke at the beginning of his speech when he quoted the Prime Minister. If the Prime Minister really wants to help hard-working families and do something about this kind of household, the Government will have to use central taxation as a mechanism to do it. It is not enough just to express pious hopes and, on occasion, go for cheaper options. That seems to be at least part of the thinking behind a number of the changes in this measure.

Therefore, as I say, this is a curate’s egg. This Committee does not have the opportunity to overturn or amend it. I know that it has been the subject of fairly wide consultation but I do not think that all the organisations that were consulted would necessarily embrace everything in the order. Therefore, as I say, my welcome of it is highly qualified and I am somewhat disappointed. An opportunity has been missed here—and not because the Government have rushed into this. They have had since 2015 to get something done and the best that they can come up with is this rather feeble list of changes and a further six-month delay in bringing about many measures that would be regarded as improvements. We cannot take any consolation as some of the less desirable aspects of this measure will continue for some time.
[Lord O'Neill of Clackmannan]

As I say, I think that this is a missed opportunity for the Minister. He and I are old friends from Select Committee days in the Commons. I am trying to chastise him as gently as I can as I know that he is new to the job and I expect that his influence over the drafting of this order was probably minimal. However, I would like to think that in the months and years that he may still be in the job he will be able to come up with something better before too long.

Baroness Maddock (LD): My Lords, something is better than nothing. We on these Benches, at least, welcome this measure, although there are many “buts”. There is no doubt that improving the quality of existing homes can play a very important part in increasing warmth and comfort and help to make fuel bills far more affordable, particularly for vulnerable occupants. However—I think the Minister recognises this—it is also a highly cost-effective way of reducing carbon emissions and saving energy. In addition, ambitious energy efficiency savings programmes can capture substantial macroeconomic benefits.

I remember taking through the House of Commons a Private Member’s Bill that became the Home Energy Conservation Act 1995, and saying that the job creation potential in making homes energy efficient was enormous. I regret that some 20-plus years later, we are still grappling with this issue and people are still living in fuel poverty. As the noble Lord said, people born into fuel poverty today will probably still be in fuel poverty at the end of their lives. That is very sad.

4.45 pm

Like the noble Lord, Lord O’Neill, I am a vice-president of National Energy Action, a fuel poverty charity that has been campaigning on this issue for a long time. I have been associated with it for my whole time in Parliament, so it has been campaigning for probably 25 years now. In all that time, the mission—we are still trying to do it—has been to ensure that fuel poverty is eradicated and that nobody lives in a cold home. We have never managed to target that effectively. The poor targeting of existing schemes and the lack of investment in energy-efficiency programmes mean that we are still in a bad position today. The noble Lord, Lord O’Neill, gave us some of the figures.

The UK Government have in many ways been slow to respond to the scale of this challenge, but during the coalition years, when my then right honourable friend Ed Davey was the Minister, we managed to get a fuel poverty strategy in an energy Bill. I and others pushed very hard to get it—I think the noble Lord, Lord O’Neill, backed us—against the Conservative elements in the Government who were not very interested in having it. That is why we have this order today, which we welcome. I know that my colleagues at National Energy Action welcome it and are trying to work with the Minister and his department to see that we make a success of it, and perhaps get something even better in future.

At the moment, this mechanism is the only deliverer of energy efficiency nationally. The noble Lord, Lord O’Neill, touched on this. The scheme will be shifted away from all citizens and focused on those at risk of fuel poverty. As the noble Lord said, other parts of the British Isles have additional schemes to help ensure that more homes are better insulated. As the Minister said, one of the good things about this measure is that it will increase by 70% the number of places that will get affordable warmth, but it will take longer. We have heard of the change from 12 months to 18 months, which, I am advised, means a shortfall in activity of around £1 billion in lifetime savings for the poorest households with the highest energy costs.

It is important to point out—as did the noble Lord, Lord O’Neill—that there are clearly limits to the extent to which levy-funded polices and those delivered by energy suppliers can exclusively be relied upon. As he said—I apologise for repeating myself—in the rest of the British Isles there are other schemes, as well as ECO, to deal with energy efficiency in homes. It is very disappointing that we cannot find more money from the Government to do that. Various reports have pointed that out, and what it means for those living in fuel poverty.

I end where I began: I am disappointed that here I am, 20-odd years in Parliament later, in one of the richest countries in the world and we are talking about fuel poverty. We can find lots of money for all sorts of things, but somehow we seem to find it impossible to find the money to help those who live in cold homes.

Lord Grantham (Lab): I thank the Minister for his comprehensive introduction and explanation of the order. The ECO is now the only government instrument to increase overall carbon emissions reductions targets for households and overall home heating cost reduction targets by a statutory obligation on the largest energy suppliers to install energy-efficiency measures for households in Great Britain. I approve of the order today and support the measures, as far as they go, to promote energy efficiency and the reduction of fuel poverty. Improving the quality of the housing stock is a highly cost-effective way in which to reduce carbon emissions, save energy, improve the lives of the fuel poor and capture substantial national economic benefits. However, I cannot disguise the widespread disappointment in the Government for their inability to meet their legal target to end fuel poverty by 2017. Comments around the Committee today have reflected that view.

The Government are now extending the ECO scheme in this intermediary fashion for a further 18 months, to September 2018, before introducing further measures to end fuel poverty by the end of the scheme in 2022. The increasing focus on fuel poverty is to be encouraged, but reducing the annual spend by 25% from £860 million to £640 million reveals a lack of political will and the required proper funding. The Committee on Fuel Poverty has estimated an investment requirement of £20 billion to improve fuel-poor homes in England to at least EPC rating C by 2030. The Committee on Climate Change considers that the current funding is less than half that which is required to meet these now delayed commitments.

The Green Deal has been a failure, improving only 15,000 homes. Last year, the Conservative Government scrapped the 2016 zero-carbon homes policy. The UK ranks bottom, 16 out of 16, in western Europe for the
proportion of people who cannot afford to heat their homes adequately. While welcoming the change on balance towards better funding of energy efficiency measures, the cap on the installation of mains gas quality boilers under the affordable warmth arrangements leaves a big gap in the provision needed to replace or repair existing gas boilers.

A big factor for being in fuel poverty is living in a home off the gas grid. The worst properties are located off the grid and are more likely to be located in rural areas. Over the last Parliament, the number of major energy-efficiency measures installed in homes fell by 76% as total investment fell by 53% between 2010 and 2015. The implications have been particularly crucial to the NHS. Of the 43,900 excess winter deaths calculated for 2014-15, at least 14,000 deaths can be attributable to the cold homes crisis.

Are the Government confident that electricity companies can access the necessary data to target expenditure effectively? The data-sharing powers need critical assessment. Hospitals need to join up outpatient care with fuel poverty initiatives for patients at risk of recurrent visits. Local authorities must act on their duties to enforce and monitor housing standards, and basic energy-efficiency standards should form a critical part of existing licensing requirements. Additional national energy-efficiency programmes are urgently needed to support the upgrading of lower rated properties, notably for the installation of first-time central heating. My noble friend Lord O’Neill and the noble Baroness, Lady Maddock, have highlighted how the Government are alone among UK Administrations in not providing additional funding towards this important policy. The National Infrastructure Commission and the Government must respond and act on the strong case for domestic energy efficiency to be regarded as a nationally important infrastructure policy.

I shall ask only one or two important questions on this order. These amendments are an extension to the present scheme and delays to meeting targets have been recognised. Will the Minister make clear how the statutory fuel poverty commitment will be met, with milestones along the way? Lastly, what additional energy-efficiency programmes are under consideration by the Government? What is the timing of any policy plan development between April 2017 and the end of this intermediary period in September 2018? In approving the order, I urge the Government to recognise their shortfall in ambition in tackling fuel poverty and the energy efficiency of homes.

Lord Prior of Brampton: My Lords, I accept that noble Lords who have spoken regard this order as a curate’s egg and that it does not go as far as they would like. I will try to address the more general questions raised by all three noble Lords. The Government feel that the supplier obligations have proven to be remarkably successful, but we have probably pushed them, as far as they can go. That is why we have decided to cap the supplier obligation at £640 million. The noble Baroness, Lady Maddock, and the noble Lord, Lord O’Neill, think that we should go further. If I might slightly oversimplify it, I think I am right that the noble Lord, Lord O’Neill, feels that we should consider raising taxation more generally to solve this issue, whereas the noble Baroness, Lady Maddock, thinks that we could take money from other areas that we are spending money on to put more money into this area.

To start with the noble Lord’s point, our response is not to increase central taxation. He mentioned a figure of £12 billion, and the noble Lord, Lord Grantchester, came up with a figure of £20 billion to 2030. That level of increased taxation is simply not an option—at least not for our Government. Our response to the issues that the Prime Minister has focused on is not to raise general taxation, but to try to address the issue by improving the productivity of the country, which is why we have an industrial strategy. Frankly, to load a lot more general taxation on to our economy cannot be a way to improve productivity. I do not know whether that view will be shared by the leader of the Opposition—who knows these days?—But it is certainly not an option for us to raise central taxation. The noble Baroness, Lady Maddock, said that there must be other areas that we could take money from.

Baroness Maddock: For example, we know that people who live in cold or damp homes, particularly elderly people, cost us a huge amount in the health service. Over the years, NEA has run various schemes and has looked carefully at this. That is one area where we could look to see whether we could get some money because it will save money in the long run.

Lord Prior of Brampton: I understand that argument, but it would take five minutes to have a whole list of other parts of the population, whether it is people who have mental health problems or learning difficulties or old people who are lonely. There are lots of people we would like to do more for and from whom there will be knock-on benefits to the NHS, social services and the like. As the noble Baroness will know well, the trouble with politics is that choices have to be made. It is very easy to say that we should take more money from this group and give it to that, but if only life was so simple.

Lord O’Neill of Clackmannan: I am almost reluctant to make this point because it is a wee bit unkind and it is not the Minister’s fault. We know that the Government have problems with raising taxes. We have seen that in the past two weeks in the context of national insurance contributions. There was a willingness to raise taxes, but they discovered that they were raising the wrong ones as far as their supporters were concerned. Perhaps between now and next November the Minister can look afresh at what sources of revenue could be secured to help the fuel poor and to meet the Prime Minister’s pious words about helping hard-working families who are unfortunate enough to be living in hard-to-heat homes.

Lord Prior of Brampton: I understand where the noble Lord is coming from. I repeat, our approach is diametrically opposite to his. We do not want to raise taxes from any group of citizens in this country when the alternative is to try to improve productivity. He will know from the time when he was chairing the Trade and Industry Select Committee in the other place that productivity has been, and is still, a huge
Motion agreed.

Collection of Fines etc. (Northern Ireland Consequential Amendments) Order 2017

Motion to Consider

5.03 pm

Moved by Lord Keen of Elie

That the Grand Committee do consider the Collection of Fines etc. (Northern Ireland Consequential Amendments) Order 2017.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the draft order, which was laid before the House on 6 February and which was approved in the other place on 14 March, is made under Section 84(2) of the Northern Ireland Act 1998. The Northern Ireland Act allows changes to be made to legislation that are necessary because of an Act of the Northern Ireland Assembly. This order is made in consequence of the Justice Act (Northern Ireland) 2016, which was passed by the Northern Ireland Assembly on 14 March 2016 and received Her Majesty's Assent on 12 May 2016.

Part 1 of the 2016 Act fundamentally reforms arrangements for the collection and enforcement of fines in Northern Ireland by creating a new regime that provides additional ways for offenders to pay their fines. It includes powers for collection officers to secure payment through an attachment of earnings order, which is a court order made in Northern Ireland that requires a debtor's employer to deduct specified amounts from wages and pay them to the court to discharge the outstanding amount.

The order will amend Schedule 5 to the Courts Act 2003 to enable fine collection officers and courts in Northern Ireland to obtain or verify certain information from HM Revenue & Customs, including the name and address of any employer the individual may have and details of any earnings or other income that the individual receives. This information will allow fine collection officers in Northern Ireland to determine whether an attachment of earnings order is an appropriate enforcement option to be pursued in respect of the debtor.

Schedule 5 to the 2003 Act already enables Her Majesty's Revenue & Customs to make such disclosures in England and Wales, and the amendments made under the order will allow it to do so in Northern Ireland as well. Such amendments could not be made by the Department of Justice in Northern Ireland through the 2016 Act because Section 18 of the Commissioners for Revenue and Customs Act 2005 stipulates that conferring such powers on HMRC cannot be carried in Northern Ireland legislation and can be done only through Westminster. However, Section 84(2) of the 1998 Act allows for such amendments to be made by an Order in Council, such as this order, if "necessary or expedient" and I consider that the proposed amendments are necessary to facilitate the effective operation of the attachment of earnings provisions of the 2016 Act.

I am happy to confirm to noble Lords that Ministers and officials of the United Kingdom Government and the Northern Ireland Department of Justice have worked closely together on this draft order, which I commend to the Committee.

Lord Browne of Belmont (DUP): My Lords, I thank the noble and learned Lord for his very comprehensive explanation of the order, and I very much welcome the order, which will provide the courts in Northern Ireland with additional sentencing, collecting and enforcement options. It will go a long way in helping to reduce the number of people—I believe 2,000—who are jailed each year for non-payment of fines by increasing the availability of community-based options in place of custody, by deducting money from their benefits each week. I believe that the vehicles of habitual offenders can be seized.

Can the Minister say how much money in unpaid fines is owed to the Stormont Government, going back over the last number of years, and how much money in police time is spent in enforcing fines? Is the Minister confident that there are enough safeguards with regard to the policy of possible seizure of vehicles? However, these amendments will go a long way and will prove effective in saving money.

Lord Beecham (Lab): My Lords, this order—one of five we are discussing today—is the only one so far to have been taken in the Commons. In that place a very brief explanation was given by the Minister—the noble and learned Lord has given a rather fuller explanation
than was given then—and my honourable friend David Anderson replied with a sentence only. I do not propose to add to that except to say that the noble Lord who has just spoken has raised some salient points and I was interested to hear what he said. We certainly have no objection to the order.

**Lord Keen of Elie:** I am obliged to noble Lords. I will address the points raised by the noble Lord, Lord Browne of Belmont. I do not have precise figures for outstanding fines, but if those figures can be collated I undertake to write to the noble Lord, although I am not sure that they can be collated in the manner he indicated. However, perhaps at a higher level of generality, I can say that at present we are dealing with about 20,000 cases a year where there is a financial imposition. Of those, more than 16,000 currently result in a default hearing, and the default hearing itself is an extremely time-consuming exercise, taking up manpower and, in particular, police time. It is anticipated that with these measures we will be able to reduce the number of default hearings to something of the order of 4,000 cases. That in itself will bring about a significant saving in time and money. I hope that goes some way to satisfy the points raised by the noble Lord. With that, I invite agreement to the order.

**Motion agreed.**

**Public Guardian (Fees, etc.) (Amendment) Regulations 2017**

5.10 pm

**Moved by Lord Keen of Elie**

That the Grand Committee do consider the Public Guardian (Fees, etc.) (Amendment) Regulations 2017.

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, these regulations apply to England and Wales and reduce the fee for registering enduring and lasting powers of attorney. The current fee of £110 will be reduced to £82. The resubmission fee, paid when an application has to be resubmitted because of an error with the original application, will be reduced from £41 to £55. If Parliament agrees, we intend these changes to take effect on 1 April this year.

The new fee will be an enhanced fee, allowing us to cover the full cost of registering a power of attorney as well as to ensure the efficient and effective discharge of the public guardian’s functions. The power to charge an enhanced fee is contained in Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014.

There are currently more than 2 million powers of attorney registered. These comprise lasting powers of attorney and their predecessor enduring powers of attorney, which remain valid and may still be registered. In October 2017, we will celebrate 10 years since lasting powers of attorney were introduced. In that time, the Office of the Public Guardian, the body responsible for maintaining a register of powers of attorney, has registered nearly 2.5 million powers.

The high uptake of lasting powers of attorney is an indication of the success of the Mental Capacity Act. They allow individuals to plan ahead for a time when they may lack capacity to make decisions for themselves and to appoint someone they trust to make those decisions for them. It is, of course, positive that so many more people are now making powers of attorney, but it has led to a position where the income we receive from fees charged is exceeding the cost of delivering the service. A detailed review of power of attorney fees, together with an improved forecasting model for volumes of applications, taking into account the ageing demographic and the rise in dementia, has enabled us to take decisive action to reduce fees and bring them closer to the cost of providing the service.

As many more people have been registering LPAs in recent years, increased volumes coupled with greater efficiencies in processing applications have resulted in fees being charged above the operational cost of delivering the service without us having exercised the power provided by legislation to allow us to do this. Clearly this situation must be remedied, which is what these draft regulations seek to do. Furthermore, alongside the reduction in fee, we will also introduce a scheme for refunding a portion of the fee to customers who may have paid more than they should. Full details of the scheme will be announced in due course. We will take such steps as are necessary to make sure that people are made aware of, and receive, the refunds to which they are entitled.

The Government’s aim is to ensure that the public guardian’s functions are properly resourced. We consider that an enhanced fee will go towards funding vital wider functions carried out by the Office of the Public Guardian. The enhanced fee will allow the public guardian to ensure that those who cannot afford to pay still have access to the key services offered by the Office of the Public Guardian; there is a remission scheme in that regard. The fee will also contribute to costs of the public guardian’s safeguarding activities, including the annual costs of supervising deputies appointed by the court to manage the affairs of people who have lost capacity to do so for themselves. I therefore commend these draft regulations to the Committee, and I beg to move.

**Lord Beecham (Lab):** My Lords, I am not sure whether I need to declare an interest in this matter as having registered an enduring power of attorney myself, which might entitle me, I suppose, to a rebate. It is pretty unlikely, I suspect, but it is a possibility and I shall have my old firm explore it.

Obviously, therefore, I welcome the main thrust of the order, which is to reduce the fees from their current level. The Government have acted perfectly properly in that respect. However, it is interesting that the Explanatory Memorandum confirms what the Minister has described as the Government’s policy—namely, that they have decided, ‘in view of the financial circumstances and given the reductions in public spending, that a fee above full cost is necessary in order to ensure that the Public Guardian is adequately funded and that safeguarding the vulnerable is protected in the long term’.

That does not seem to be a logical explanation for retaining, albeit now reduced, a fee that is above the
full cost. It is a philosophy which I hope will not be applied elsewhere in public services—namely, that you contribute not just to the cost but to an excess of the cost. Have the Government made any estimate of how much they will benefit by this device over time? How do they justify charging more than it actually costs to provide the service? They have been doing so, as it were, unconsciously for some time; now they will do so consciously. That strikes me as a very odd way of proceeding.

5.15 pm

Lord Keen of Elie: The fees charged in respect of a power of attorney in 2007, when the scheme came in, were £150. They have reduced steadily since then, although they increased between 2009 and 2011, while transitional measures were being taken to upgrade IT for the Office of the Public Guardian. When they were reviewed in 2013, they were brought down. Subsequently, audit has indicated that they are still above a necessary and appropriate level.

However, with regard to the question about the enhanced fee, that allows for the fact that over and above the actual cost of dealing with a power of attorney, the Office of the Public Guardian also has to deal with other costs and demands—namely, those involving the application of parties who get a fee exemption and therefore the cost of their application has to be covered, as well as the cost of appointing deputy supervisors by the court. I did not use the correct term. It is not deputy supervisors but supervising deputies.

Lord Beecham: Not that it matters.

Lord Keen of Elie: I am sure it does—to somebody. Therefore, the limits in Section 180 of the 2014 Act are there to ensure that although we can recover more than the actual costs of the operation itself, it is for the purposes of funding the wider demands on the Ministry of Justice.

Lord Beecham: Is there any report of how that actually works in practice? I do not expect the Minister to have the answer today but what is the amount that has been raised in that way and where has it been spent?

Lord Keen of Elie: So far as the additional funding is concerned, I should have made it clear that it is funding for the Office of the Public Guardian and not wider than that. As to the precise sum, no, I do not have the figure to hand.

Lord Beecham: I am sure the Minister will write to me in due course.

Lord Keen of Elie: I will do that.

Lord Beecham: I am obliged.

Motion agreed.
regulations to make a number of other changes; to amend a drafting error in Regulation 1 of the 2015 regulations; to enable the Lord Chancellor to determine the eligibility of particular Scottish fee-paid judicial officeholders to join the pension scheme created by the 2015 regulations; to remove negligence as a basis for forfeiture or set-off; to make a correction to the definition of index adjustment for revaluation purposes; and to apply full and tapering protection for those judges who were in fee-paid office on 31 March 2012 but who have subsequently been appointed to salaried office.

The 2015 regulations were made under the Public Service Pensions Act 2013 to create a career average pension scheme for judicial officeholders as part of the Government’s wider reform of public service pensions. This is the first time the 2015 regulations have been amended.

Thirdly, I turn to the additional voluntary contributions regulations, the purpose of which is to make provision to establish a judicial additional voluntary contributions scheme. This is a money purchase scheme that enables scheme members to make contributions within a range of investment options. This is in addition to their contributions to the 2015 scheme. The AVC scheme is to be managed by the Lord Chancellor and the Judicial Pensions Board will oversee the governance. The 2015 judicial pension scheme was established on 1 April 2015 in response to the Public Service Pensions Act 2013. The 2015 scheme applies to fee-paid and salaried judicial officeholders.

The existing judicial pension schemes provided a facility to contribute to a money purchase pension scheme and the same facility is provided for members of the 2015 scheme through these AVC regulations. This includes the pension flexibilities contained in the Taxation of Pensions Act 2014 and the Pension Schemes Act 2015. Amendments to the additional voluntary contribution scheme established under the older judicial pension scheme, made by the Judicial Pensions and Retirement Act 1993, are being made in separate instruments containing similar regulations, which also give effect to the pension flexibilities.

To summarise, the fee-paid regulations are necessary as the remedy to provide eligible fee-paid judges with pension benefits that are equivalent to their salaried comparators. The amendment regulations are necessary as they introduce a range of amendments required to the 2015 judicial pension scheme. The additional voluntary contributions regulations are necessary to honour the department’s commitment to provide such a facility to members of the 2015 judicial pensions scheme. I hope that noble Lords will welcome these three sets of regulations as necessary to make important provision for judicial pensions. This is in terms of the Government’s legal obligations and to meet outstanding commitments, and to ensure that all the necessary arrangements are in place for a consistent approach relating to the relevant provisions across the judicial pension schemes. I therefore commend these draft regulations to the Committee.

Lord Beecham (Lab): My Lords, I must declare a paternal interest since my daughter is a part-time, fee-paid district judge. The noble and learned Lord will, no doubt, be particularly pleased with the Judicial Pensions (Amendment) Regulations 2017 inasmuch as they contain a rather rare provision for the Scottish Government to request permission to join a national UK scheme, which is a remarkable volte face from the present Administration in Edinburgh. No doubt the noble and learned Lord will make that point on his next return to that city, and I wish him well in such an approach.

The three regulations dealing with judicial pensions are, of course, welcome so far as they go, but they come at a time when we face a shortage of judges and apparent difficulty in finding sufficient numbers of suitable applicants to fill a rising number of retirements. The Lord Chief Justice’s report of 2016 referred to, “serious concerns about recruitment to the judiciary, in particular the ability to attract well-qualified candidates for positions in the higher levels”.

He pointed out that this created an impact both on the administration of justice and the position of the UK as a forum for international business litigation, where we are already facing growing competition from other jurisdictions.

The degree of unhappiness with the situation is reflected by results of a recent survey which shows that nearly half of High Court judges plan to retire early. Respondents to that survey alluded to resentment over loss of earnings, deteriorating working conditions and even fear for their personal safety in court. The latter will not have been helped by the scurrilous campaign against the judges by sections of the media and the further reaches of the Conservative Party and of UKIP, which were roundly denounced by the Minister, much to his credit.

A survey of judicial attitudes last year showed that 42% of all judges would leave if they had a viable option, nearly double the number of the previous survey in 2014. A more recent survey suggests that 47% of High Court judges and 36% of all judges indicated they would consider early retirement from the Bench over the next five years. Their attitude is partly coloured by the large number—78%—who suffered a loss of net earnings over the past two years and the 62% who were affected by pension changes. The Lord Chief Justice warned in 2016 that a new High Court judge would have a pension less than that of a District Judge, which is hardly conducive, one might think, to retention or recruitment to the High Court. He also felt that the situation was likely to have a considerable inhibiting effect on promoting gender and ethnic diversity, which the survey disclosed. Significantly 43% of judges felt unappreciated by the public but, tellingly, only 3% felt they were esteemed by the media, and, shockingly, only 2% felt they were esteemed by the public.

If this were not bad enough, one-third complained of the quality of court buildings and two-thirds referred to the low morale of court staff. Just over half the judges expressed concerns for their safety in court, partly due to the number of unrepresented litigants, especially in somewhat fraught cases in the family side of the courts’ work. The same proportion said that out-of-hours work was affecting them—a rise from 29% in 2014.

Currently there is a shortage of 25 High Court judges and between 120 and 140 circuit judges. Lord Justice Burnett, who is vice-chairman of the Judicial Appointment Commission, has complained that suitable
applicants for the High Court have been insufficient in the past two years, while the demands on the judiciary continue to grow across the whole system. It would appear that only 55 applications were made last year for 25 vacancies and only eight were filled.

5.30 pm

This is also exemplified by the shortages in the tribunal system. In 2012 there were 347 fee-paid and 132 salaried judges in the First-tier Immigration Tribunal. Last year the numbers had fallen to 242 fee-paid and only 77 salaried, while in the Upper Tribunal numbers had fallen from 40 fee-paid to 35. Unsurprisingly, this has led to an increase in outstanding cases of 20% to just under 63,000, with a nearly 50%, or 15 week, increase in the time for disposal of a case to a total of 48 weeks.

There are clearly serious difficulties in attracting and retaining sufficient judges at most levels of our judicial system. The Lord Chancellor recently stated that she appreciated, “concerns raised around pay and pension”, and acknowledged that: “Having a fair and effective remuneration scheme in place is critical to the continued attraction and retention of high-calibre judges”. She went on to affirm that she was, “working with the Lord Chief Justice and senior judiciary to address wider judicial concerns by providing judges with greater support in the courtroom, opportunities for development and progression, and improving the environment in which they operate”. These are welcome words, but they are at odds with the current position, even after these regulations take effect.

The noble Lord, Lord Kakkar, the recently appointed chair of the Judicial Appointments Commission—who is, ironically in the circumstances, a distinguished surgeon not a lawyer—has warned that there, “could be a serious shortfall”, in the pending appointments of 25 High Court judges. He went on to say that there is a serious issue here, that these trends “are very worrying” and that, “it is becoming more difficult to appoint to the judiciary”. What steps will the Government take, and when, to fulfil the Lord Chancellor’s pledge? Today’s regulations are unlikely to make a significant contribution to the growing crisis in our courts. The noble and learned Lord is unlikely to be able to give us a clear indication of what the Government have in mind, but he could at least give us a timescale as to when conclusions will be reached. What is happening so far is not making any significant impression on a serious backlog and a serious prospect for the future.

Lord Keen of Elie: I thank the noble Lord for his observations. I appreciate that these regulations may be only a small step in trying to ensure that we are in a position to maintain what is still a world-class judiciary that is respected around the globe, not just in this country.

Recruitment to the Bench has often been an issue in circumstances where we seek to appoint only the best. There are competing issues when it comes to appointment to the High Court Bench. It is not simply a matter of salary, nor of pension, although I readily acknowledge that these matters have to be addressed. That is not what drives people towards the higher ranks of the judiciary at a later point in their career. Rather, I would suggest it is the desire to put something back into a system of which they have been a part for many years. We are succeeding there.

The noble Lord referred to the chair of the Judicial Appointments Commission, the noble Lord, Lord Kakkar, who is taking steps to broaden the pool of talent that can be attracted to the upper reaches of the judiciary, including to the solicitor branch of the profession, which has often been, if not ignored, perhaps overlooked to a greater or lesser extent when it comes to judicial appointment. They also address direct appointment to try to ensure that people do not feel that they have to go into a judicial career part time for many years before they can find themselves eligible for appointment to the High Court Bench. Steps are therefore being taken.

I infer from the noble Lord’s comments that he will welcome the Prison and Courts Bill that we recently introduced in the other place and the developments that that will bring about in court reform, in particular digitisation of the court process. That will ensure that a greater degree of judicial time can be made over to matters that should truly engage the requirements for our higher judiciary. I look forward to his assisting with that Bill as it progresses through our House. I am obliged to the noble Lord.

Motion agreed.

Judicial Pensions (Fee-Paid Judges) Regulations 2017

5.35 pm

Moved by Lord Keen of Elie

That the Grand Committee do consider the Judicial Pensions (Fee-Paid Judges) Regulations 2017.

Motion agreed.

Judicial Pensions (Amendment) Regulations 2017

5.36 pm

Moved by Lord Keen of Elie

That the Grand Committee do consider the Judicial Pensions (Amendment) Regulations 2017.

Motion agreed.

Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017

5.37 pm

Moved by Viscount Younger of Leckie

That the Grand Committee do consider the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017.
Viscount Younger of Leckie (Con): My Lords, I start by setting the scene. The Government are committed to delivering a bold, long-term industry strategy. We start from a position of strength, as the fifth biggest economy in the world with an employment rate that has never been higher and world-leading industries, from car manufacturing and satellite engineering to financial services and the creative arts. Engineering construction is at the forefront of that industrial strategy. To support delivery of this industrial strategy we are building a high-quality technical education system to improve basic skills, address shortages in STEM skills and ensure that people have the skills that employers are looking for, now and in the future. It is integral that through this system we provide opportunities for lifelong technical education learning.

There are several ways in which we are doing this. The first is through the establishment of 48 university technical colleges, with a further six in the pipeline to provide high-quality technical education to 14 to 19 year-olds. Secondly, there is the implementation of the Sainsbury panel’s 15 new technical routes and wide-reaching reforms to improve the apprenticeship offer. We are committed to raising the prestige of further education and apprenticeships. Thirdly, the Engineering Construction Industry Training Board plays a key role in helping delivery of this programme. The engineering construction industry encompasses much of the nation’s key national infrastructure work. We must ensure that skills exist in the engineering construction workforce to deliver such critical new infrastructure projects as Hinkley Point C and HS2. Much like mainstream construction, engineering construction is characterised by significant levels of project working, where demand can be unpredictable. Workers in the sector are often highly skilled, and in high demand both domestically and internationally.

The Engineering Construction Industry Training Board works to help retain these vital skills within the UK economy and to drive innovative working practices within the industry, such as the development of drone technology. The order enables the ECITB to raise and collect a levy on employers in the engineering construction industry. The board has been providing vital industry support since its creation in 1991. Established under the Industrial Training Act, its core activity is to invest in helping delivery of this programme. The engineering construction industry encompasses much of the nation’s key national infrastructure work. We must ensure that skills exist in the engineering construction workforce to deliver such critical new infrastructure projects as Hinkley Point C and HS2. Much like mainstream construction, engineering construction is characterised by significant levels of project working, where demand can be unpredictable. Workers in the sector are often highly skilled, and in high demand both domestically and internationally.

The Engineering Construction Industry Training Board was looking for, now and in the future. It is integral that through this system we provide opportunities for lifelong technical education learning.

There are several ways in which we are doing this. The first is through the establishment of 48 university technical colleges, with a further six in the pipeline to provide high-quality technical education to 14 to 19 year-olds. Secondly, there is the implementation of the Sainsbury panel’s 15 new technical routes and wide-reaching reforms to improve the apprenticeship offer. We are committed to raising the prestige of further education and apprenticeships. Thirdly, the Engineering Construction Industry Training Board plays a key role in helping delivery of this programme. The engineering construction industry encompasses much of the nation’s key national infrastructure work. We must ensure that skills exist in the engineering construction workforce to deliver such critical new infrastructure projects as Hinkley Point C and HS2. Much like mainstream construction, engineering construction is characterised by significant levels of project working, where demand can be unpredictable. Workers in the sector are often highly skilled, and in high demand both domestically and internationally.

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The Engineering Construction Industry Training Board was looking for, now and in the future. It is integral that through this system we provide opportunities for lifelong technical education learning.

Viscount Younger of Leckie (Con): My Lords, I start by setting the scene. The Government are committed to delivering a bold, long-term industry strategy. We start from a position of strength, as the fifth biggest economy in the world with an employment rate that has never been higher and world-leading industries, from car manufacturing and satellite engineering to financial services and the creative arts. Engineering construction is at the forefront of that industrial strategy. To support delivery of this industrial strategy we are building a high-quality technical education system to improve basic skills, address shortages in STEM skills and ensure that people have the skills that employers are looking for, now and in the future. It is integral that through this system we provide opportunities for lifelong technical education learning.

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Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for his introduction to this order, which I think it fair to say is not particularly controversial and need not detain us for too long.

Preparing for this took me back some time. In a previous guise, I was the full-time official of a trade union in the engineering sector, and I well remember dealing with many industry training boards on a number of different issues. When the Department for Business, Innovation and Skills published its final report in December 2015 on the combined triennial review of the industry training boards, it mentioned the background to the industrial training levy itself, which was introduced as part of the Industrial Training Act 1964. That is of course where the industry training boards can be traced back to as well.

It is to be regretted that there are now only three industry training boards left. I certainly remember that there were more than 20 in the 1980s, and they were significantly reduced by the Industrial Training Act 1982. Apart from the film sector, only the Construction Industry Training Board and the Engineering Construction Industry Training Board are still in place today, both of which are of course accountable to Parliament. They raise most of their funds through training levies and various commercial activities. In 2016, the ECITB raised £32 million in levy and returned £28 million to the industry. It is interesting that the ECITB itself made the proposal to reduce the industrial training levy rate for employers, which appears to be a direct result of the impending introduction of the apprenticeship levy. That is reasonable and I understand the thinking behind it.

I made notes but if I read them out I would largely repeat what the noble Viscount said in his introduction, and I see little purpose in doing that. However, the listed exemptions seem reasonable and are set at reasonable levels with regard to the overall pay bill of establishments. I was interested to hear the noble Viscount say that a total of 275 establishments would qualify for the levy, with 120 exemptions. I will not mention the details of the exemptions, but they meet the needs of the industry. It is instructive that the consultation carried out by the ECITB found that 78% of levy payers were in favour of the proposals, and together they will pay a total of 87% of the value of the forecast levy. There is fairly broad support, therefore; I certainly have not been made aware of any opposition.

As the noble Viscount himself pointed out, and I thank him for doing so, less than 10% of the engineering workforce is female. Again, going back to my days as a trade union negotiator, I remember the attempts that were made to get more women into the union, particularly in the predominantly engineering-based union that I looked after. It was very difficult, and I pay tribute to WISE—Women into Science and Engineering, which is backed by my union, Unite. We want as many women as possible to come forward and fill jobs in the manufacturing sector, particularly in engineering.

This issue goes back to the requirement for qualifications, particularly STEM qualifications, and will impact on what I am going to say about the next set of regulations for consideration. The pressure on schools to find enough teachers to make sure they can deliver teaching in these subjects cannot be ignored. A lot more work has to be done on that, because they provide the building blocks to get the initial qualifications to get women into university, or through the technical routes into engineering. It is important that the Minister highlighted that, and it is to be welcomed.

The order is not controversial and is to be welcomed. It has been welcomed in the industry, and on that basis I can only hope it will achieve what it sets out to achieve and assists the development of the industry.

Viscount Younger of Leckie: My Lords, I thank the noble Lord, Lord Watson, for his comments and for his contribution today. I was particularly interested to hear of his background, which I did not know about. I appreciate his general support for the order.

Before I make some very brief concluding remarks, I shall pick up on his very important point about the need to encourage more females into engineering. I am delighted that my noble friend Lord Nash is in Committee today because I am sure he agrees with me that this is a very important part of what the Department for Education is doing. It is starting from the very early years to encourage more women to study STEM subjects and then, through proper career guidance, to encourage them to take roles in science and engineering. It is one of the major priorities and major thrusts—the noble Lord is right about that.

Noble Lords will be aware from previous debates that the ECITB exists because of the support it receives from employers and employer interest groups in the sector. There is a firm belief that without this levy, there would be a serious deterioration in the quality and quantity of training in the engineering construction industry, leading to a deficiency in skill levels. It continues to be the collective view of employers in the engineering construction industry that training should be funded through the statutory levy system in order to secure a sufficient pool of skilled labour. I commend this order to the Committee.

Motion agreed.
Immigration Skills Charge Regulations 2017

Motion to Consider

5.52 pm

Moved by Lord Nash

That the Grand Committee do consider the Immigration Skills Charge Regulations 2017.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, this Government are committed to a strong skills system that can drive increases in productivity and improvements in social mobility and help make a success of Brexit. We need to do more to support people into high-quality jobs and help them gain world-class skills that meet employers' needs. Lack of investment in skills is damaging our productivity and our economy. Employer investment in training has been declining for 20 years. On average, UK workers undertake 20% less continuous vocational training than those in the EU. According to the latest available international comparison, the UK spends 55% less than Germany and just over 70% less than France per employee on vocational training. We are forecast to fall from 24th to 28th out of 33 OECD countries for intermediate skills by 2020. We need urgently to address this underinvestment, and the immigration skills charge is one way we are doing so.

The charge was first announced in May 2015. The Immigration Act 2014, as amended last year, provides for Education (Lord Nash) (Con): My Lords, this Government are committed to a strong skills system that can drive increases in productivity and improvements in social mobility and help make a success of Brexit. We need to do more to support people into high-quality jobs and help them gain world-class skills that meet employers' needs. Lack of investment in skills is damaging our productivity and our economy. Employer investment in training has been declining for 20 years. On average, UK workers undertake 20% less continuous vocational training than those in the EU. According to the latest available international comparison, the UK spends 55% less than Germany and just over 70% less than France per employee on vocational training. We are forecast to fall from 24th to 28th out of 33 OECD countries for intermediate skills by 2020. We need urgently to address this underinvestment, and the immigration skills charge is one way we are doing so.

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The income raised from the charge will be used to address skills gaps in the workforce. It will make a contribution to the department’s skills budget, ensuring that we can continue to make a significant investment in developing the skills the country needs. The charge will raise income but it is also designed to change employer behaviour, and that applies across all sectors.

I recognise the concerns about the impact of the charge on health and education in particular. The MAC was clear in its recommendation that the public sector should not be exempt. As an employer like any other, it should be incentivised to consider the UK labour market first. This is in line with government policy. It is not sustainable to rely on recruiting overseas staff. We are committed to building homegrown skills, to recruit from the domestic labour market and to invest in training.

We recognise that immigration has a role to play in the supply of workers where there are genuine skills shortages, but that should not come at the expense of investment in skills in our country. The immigration skills charge is designed to incentivise employers to invest in training and upskilling the resident workforce. It will also raise funding to support ongoing investment by the Government in their skills programmes. I hope that the Committee will support these regulations. I beg to move.

**6 pm**

**Lord Lucas (Con):** My Lords, I welcome these regulations. They are well targeted, have a good concept, good execution, with a sensible set of exemptions and remission for small businesses. I am disappointed that they do not extend to hospitality and construction, both areas where we have a substantial tendency for employers to bring in people from overseas rather than concentrate on training our own people. However, I entirely understand, given that most of that migration is from the EU, why we do not wish to complicate our Brexit negotiations by trying this on the continent just yet. However, when you talk to hospitality employers, they say, “We have to employ these overseas people because the Brits just don’t know how to treat customers”. I say let us bring back the British Airways charm, which is what I grew up with. We can do this; we just need to train people properly. I do not think we just need to train people properly. I do not think that we should accept the excuses of our hospitality industry. We should apply this principle to it to get it to bring our own people up to speed.

However, within the industries this measure is aimed at, it is an excellent idea. It is largely, I think, aimed in practice at IT and industries round that. I would be very grateful if the Minister or his colleagues would agree to meet me and representatives of the tech industry to discuss how to craft training which will meet the needs of employers who are hit by this levy so that the incentive which is provided by it can be directed at the provision of training which will ensure that the objectives of the levy are realised.

**Baroness Hamwee (LD):** We are all being so polite. Perhaps we have learned from the charm school with which the noble Lord, Lord Lucas, grew up. We, of course, support investment in skills and training but it is appropriate to put these proposals in the context of the very tight brief which the MAC, as always, was given. It was required to advise on, “significantly reducing the level of economic migration from outside the EU”.

To balance that, PwC said: “The levy will not impact the way that companies recruit as they require the skills they require”.

It raised the spectre of, in the long term, “parts of businesses moving overseas, if mounting costs become prohibitive and companies risk damaging their brands by providing substandard products or services”.

I recall that during the passage of the Bill an argument used against this, partly in the higher education sector, was that some industries will pay the charge but would not see any benefits because their sectors are not apprenticeship-appropriate. That applied in particular to the health sector. I will leave it to my noble friend Lady Walmsley to deal in detail with the health sector. I know that I will support everything that she says.

During the passage of the Bill we also expressed concern about the costs of the bureaucracy of this exercise. Given the investment that the sectors in question already make in training, there seemed to be a danger of a charge being levied, having administration costs deducted and the balance then returned to them. I have been assured that the deduction will be small because the Home Office visa system will be used, but there will be a deduction. We can add to that the unquantified cost of the loading on to the Home Office, which is overloaded. It probably feels that the light at the end of the tunnel is that ever-present oncoming train.
The MAC also said that, “it is impossible to conclude, ex ante, whether the benefit arising to employers … will outweigh the costs imposed on Tier 2 sponsors”.

because the Government have not yet determined how the revenue will be reinvested. That is clearly a significant point. It is clear that the health sector has come to a conclusion, and it is not the positive conclusion that the Government want to see. Robert Halfon, in his letter to the Secondary Legislation Scrutiny Committee, said:

“The cost to the healthcare sector and to the NHS in particular has not been estimated”.

That is quite an astonishing statement.

One other area is that of intercompany transfers. The Minister has referred to the exemption in the regulations, but the exemption is limited to trainees. Why is it so limited? Is it simply because they are trainees? That fits in with the thrust of the proposals. I ask that question and make the implied point because we need to do all that we can to attract, retain and not deter international companies basing themselves in the UK. I do not think that I need to fill in the gaps between the lines there.

There are steps that the Government can take after taking through these regulations, particularly by way of exemptions and by working with different sectors, which would make them more palatable to those who find them unpalatable, and more effective, and might help to avoid unintended consequences, as these charges are clearly going to be significant for some sectors.

Baroness Walmsley (LD): My Lords, as my noble friend Lady Hamwee said, I would like to say a few words about health and social care. Report after report shows the dire financial straits in which NHS employers find themselves, with 75% of hospitals already in deficit and A&E departments struggling to meet the four-hour target for attending to patients. There is a shortage of nurses, and retention is terrible. Doctors’ rosters are not filled, resulting in cancelled patient treatments, which puts a greater burden on existing staff who are acting as the shock absorber for the system. GP practices cannot fill vacancies. Care homes are handing back local authority contracts because they cannot provide a decent service within the amount of fees that they are paid. The number of care beds is falling while demand is rising, and 1.2 million elderly and disabled people are not receiving the care that they need.

It is in this climate that the Government have decided to tax health and care employers for every worker from outside the EEA who is on a tier 2 visa. You could not make it up. On top of this, they choose to do it at a time when they have removed the nurse training bursary and have no idea of the effect that it will have on the number of nurses in training. It is no wonder that the BMA and the RCN have written to the Home Secretary, laying out the damaging effects of the charge on health and care. The Government may not have calculated how much it is going to cost them, but they have—it is £7.2 million per year, which will deter cash-strapped employers from filling rosters with essential staff, thereby putting patients at risk. I ask myself why the Government could not make those calculations. Perhaps it is because it is so politically embarrassing.

It is little wonder that the Secondary Legislation Scrutiny Committee had serious concerns about the measure, with particular regard to the fact that the memorandum laid with the instrument said nothing about the opposition to the measure voiced by those who were consulted. It was also provided with no information about the impact of the measure, particularly on health and care employers, who are the sector fourth most affected by the charge. It is no wonder that it was not provided with that information since, in reply to its questions, as my noble friend has just said, Robert Halfon MP confessed that the cost of the charge to the NHS has not been estimated because it is classified as a tax. His letter also shows complete ignorance of the nature of the modern nursing workforce, saying:

“There is no direct impact on employers of care workers as they do not qualify for entry to the UK under the Tier 2 route. Tier 2 has been reserved for graduate occupations since 2011”.

Yes, nursing has been a graduate occupation for a similar length of time. Does the Minister think that care employers do not employ graduate nurses any longer?

The ISC was intended to deter employers recruiting from abroad, but health and care employers have no option, and they have no need for this. As the BMA letter says:

“Checks and balances are already in place to ensure posts are first offered to UK and EU nationals through the resident labour market test.”

Although we are going to introduce apprentice nurses later this year, doctors undergo long and rigorous training, and it is impossible to upskill UK citizens overnight.

6.15 pm

Where is the money going? I understand that it will go into the Consolidated Fund, as the Minister said, and some will then be sent out to the Department for Education and the devolved Administrations to help fill the skills gap. Will the amount raised from health and care employers be added up and go to Health Education England to ensure it is used to train more UK doctors and nurses? According to the BMA, the Government have suggested that some of it will be reinvested in the health workforce but, as I understand it, there is no guarantee, nor, as far as I can see, any mechanism to ensure that it goes to training health professionals.

The only solution to this mess is to add health and care workers to the list of exemptions in Regulation 4(a). I was interested to see the jobs which are included in the exemptions. Is it really true that we have a critical shortage of social scientists and research and development managers? They will not be saving lives in our hospitals and nursing in care homes at any time soon, will they?

Thousands of doctors and nurses come to the UK every year to work in the NHS and care services, which would be utterly devastated without them. The Government are being immensely short-sighted by
imposing this tax. The NHS is not a business that can absorb extra taxes by reducing profits. I call on the Government to introduce exemptions from this charge for health and care workers. If they do not do so, they will be adding to the already unsustainable funding situation of our health and care services and to the £20 billion black hole in the health budget and the £6 billion black hole in the care budget by 2020.

Lord Watson of Invergowrie (Lab): My Lords, the Labour Force Survey showed that by 2014 the number of workers participating in training courses away from their own workplace has collapsed since 1992. I will not repeat the figures that the Minister gave, but this feeds into a pattern. In general, UK employers underinvest in training relative to comparable countries. It is therefore understandable that the Government should decide to incentivise employers to invest in training so as to maximise the number of jobs available to the domestic workforce. In that aim, we support what the Government are attempting to achieve through these regulations.

However, the Secondary Legislation Scrutiny Committee was critical of the fact that the Explanatory Memorandum laid with the instrument said nothing about the opposition to the proposals voiced by most of those consulted by the Migration Advisory Committee. The Secondary Legislation Scrutiny Committee was also critical of the fact that the Explanatory Memorandum provided little or no detail about the impact of the charge on those employers likely to be affected. That led the committee to conclude that the process of policy formulation for the proposals was not complete and that the Government were not in a position to supply Parliament with sufficient information about the implementation and impact of the proposed charge. If that is not the source of some embarrassment to the Minister and his officials, then it ought to be.

As far back as May 2015, the then Prime Minister announced the intention to introduce the charge, and in March 2016 the scope of the charge was set out. Why then was the DfE not ready when the regulations came to be submitted? Given the array of staff in the department, there is surely no excuse for this. I hope that the Minister will apologise and give an assurance that in future his officials will be better prepared.

Since the charge was first proposed almost two years ago, we can discount any suggestion that it had its roots in what I regret to say is the increasingly anti-immigrant rhetoric that since last year’s referendum has characterised some government policy. The Government’s generally hostile approach towards migration—and the definition of it, as evidenced by their attitude on the Higher Education and Research Bill in relation to international students—risks further fuelling discrimination and social tension.

Changes to migration policies should be developed through consultation with employers and trade unions and, once agreed, should be introduced with adequate lead-in time to allow employers and employees to plan accordingly. That allows short-term gaps in the labour market to be filled while other measures are taken to address long-term training needs in the domestic labour market. It is to be hoped that that is what this charge will achieve.

Last week, during the briefing session on the charge, the Minister for Skills, Mr Halton, explained that it will be used to address skills gaps in the workforce. In terms of the resources available to do so, and to some extent reflecting what the noble Baroness, Lady Walmsley, has said, the Minister said he anticipated an annual surplus of around £100 million once the Home Office had deducted the costs involved in collecting the charge.

Identifying those skills gaps is at the heart of these regulations. The UK Commission for Employment and Skills’ Employer Skills Survey 2015 shows that, while overall employer investment in training, in kind and cash, increased between 2011 and 2015, per employee expenditure flatlined at £1,600, despite a period of economic recovery and business growth. That was the last survey to be published, and I regret to say that it will remain the last survey to be published because earlier this year the Government closed the UK Commission for Employment and Skills. We no longer have a national overview. Perhaps the Minister will explain the rationale behind what appears to be an extraordinary step. What will replace it?

The Employer Skills Survey 2015 highlighted what it termed skill-shortage vacancies by sector and listed 13. The top five were: construction; manufacturing; electricity, gas and water; transport and communications; and agriculture. Interestingly, health and social work were only in seventh place, despite the regular reports of difficulty in filling vacancies. The noble Baroness, Lady Walmsley, has stolen a bit of my thunder here, so I will not repeat the thrust of her argument. Certainly, the proportion of NHS staff who are not UK nationals is high, although already in decline following last year’s referendum. It seems questionable, at the very least, that the list of exempted occupations listed in the regulations does not include doctors or nurses at a time when the NHS is under real pressure in filling posts in these areas. I acknowledge that the noble Baroness, Lady Walmsley, said that it goes wider than doctors and nurses. Enforcing the levy would effectively penalise the NHS for recruiting workers from outside the EEA to fill gaps in an already stretched workforce in an essential public service. I accept that to some extent the NHS has over the years gone for the easier option of hiring from outwith the UK, but the pressures currently being experienced there will be as nothing two years hence. I urge the Minister to consider what the noble Baroness, Lady Walmsley, said and what the pressures on the NHS will be if the charge is applied across the board for that sector.

Science, technology, engineering and mathematics are also areas where there are skills gaps, not least in schools, where recruitment also remains a problem. I shall not repeat the comments I made in respect of the Engineering Construction Industry Training Board in a previous debate. Few teachers will earn above the £30,000 cut-off for the charge, and so non-EEA nationals will be unable to be used to help fill these gaps. From memory, Mr Halton—or perhaps it was officials—said that there are only about 150 non-EEA nationals in that bracket. I accept that that is not a big number, but none the less these gaps need to be filled. With maths and ICT demonstrating digital skills shortages for the jobs of tomorrow, there could have been a case for relaxing the charge in these areas.
One suggestion I shall make concerns the follow-through on the charge, which we all hope will meet its aims. Could employers not be eligible for some sort of rebate on the charge for employing a non-EEA worker? There is an element of double-charging. If an employer has identified a gap for a group of employees, so that he or she has to take on workers from outwith the UK and, I assume in this case, from outwith the EEA, while doing that, the employer is meeting the aims of this charge by bringing through young, or perhaps not so young, people to train them up to the necessary level. So he is paying the charge for them to be employed and to be trained, and he is also paying a surcharge for those outwith the EEA who he is using temporarily. So in a sense he is training people for the long-term good of the business and of the UK economy, and there does seem to be an element of double-charging, particularly when the £1,000 rises over the years to a maximum of £5,000—leaving aside the charitable sector—when the employer is in fact doing what the Government want him or her to do: training employees.

My other question for the Minister is: when will the charge be reviewed? I do not know whether there is any significance in the fact that the assumption in the regulations is that it covers only non-EEA employees for up to five years. I am not clear whether that is to be a maximum. But there may be a case for, in effect, a sunset clause so that after five years the regulations could be reviewed and some assessment made of the charge's success. As I said earlier, all of us in this debate, whatever our views and however critical we have been, want to see the outcome that the Government intend. I would be interested in the Minister's views on that point. I do not expect him to respond just now. I do not expect his officials to give him a response just now. If it is more convenient, I am more than happy to receive something in writing.

Overall, I certainly want to see this charge introduced effectively and fairly, leading to a situation where there are more UK workers able to fill the gaps that are evident now and likely to be even more evident in the post-EU years ahead of us. To that extent, I do not do this often but I wish the Government well because I think their intentions are good, but there are certainly some rough edges in this charge which could perhaps be smoothed down to make it more palatable and perhaps even more effective.

Lord Nash: My Lords, I thank all noble Lords for a really interesting debate. We welcome this feedback. I come back to my opening remarks: the investment in skills is crucial to a productive, strong UK economy—an economy which gives people from all backgrounds the opportunity to fill today's skilled roles as well as those in the future. Migration has a role to play in supporting the economy and supply of expertise and skills and we want to continue to attract the brightest and the best, but through the immigration skills charge we want to incentivise employers to invest in training. I am grateful for the support that has been expressed today for our desire to upskill our workforce. I am afraid that I will not cover all the points that have been raised but I will write to all noble Lords present today.

The noble Baronesses, Lady Walmsley and Lady Hamwee, asked why this impacts particularly on the health service. The MAC was clear in its view that the charge should apply to the public sector. It is not sustainable to rely on recruiting overseas staff and the Government are committed to building home-grown skills. All employers need to look at how they meet their longer-term skills needs, and the long-term strategy must be to train and retain our own nurses and doctors in the UK. Steps are being taken to address the shortage of nurses, including continued investment in training, retention strategies, and a return to practice campaign. We are introducing a new nursing degree apprenticeship. Health Education England has increased nurse training places by 50% over the past two years and is forecasting that more than 40,000 additional nurses will be available by 2020. Similarly, Health Education England is forecasting that more than 11,000 additional doctors will be available by 2020. The noble Baroness, Lady Walmsley, asked about the number of nurses impacted by the charge: 2,600 certificates of sponsorship were used for nurses in the year ending August 2015.

The noble Lord, Lord Watson, asked about the delay in publishing the impact assessment. As the charge is classified as a tax, we have not been required to carry out a formal impact assessment. It is also difficult to do so because it is difficult to anticipate how employers will respond to the charge and to wider changes to tier 2. In addition, the charge does not sit as an isolated measure—it is part of a wider skills programme to develop a strong, productive economy. On the noble Lord's point about how we will assess and evaluate the impact of the policy and whether the charge will be reviewed, we will monitor the operation of the charge and will undertake a review of the policy after one year, as covered in the Explanatory Memorandum.

6.30 pm

To clarify some of the exempted occupations: intra-company transfer graduate trainees are exempt as they sit with the investment by employers in skills. Other exemptions which apply to the tier 2 general category also apply to ICTs: PhD-level jobs, visas for less than six months and transfer responses before 6 April this year.

The noble Baroness, Lady Walmsley, asked whether the income would specifically go to NHS training. There have been discussions with the Department of Health about how health education and training can benefit from the Government's wider skills reforms such as apprenticeships. The amount of funding generated by the charge will depend on the use of the tier 2 skilled workforce route. The income raised from the charge will be used to address the skills gap in the workforce. The immigration skills charge is making a contribution to the department's budgets and is helping to sustain our investment in skills.

I was very grateful to my noble friend Lord Lucas for his comments in support of these regulations. I will be very happy to meet him and representatives of the IT industry to discuss how we can ensure the appropriate training in that sector.

There has been broad agreement about the need to invest and give people from all backgrounds the opportunity to develop and learn and be part of a
[LORD NASH]
highly skilled, competitive and successful economy. That is why we are introducing this charge. I will write to noble Lords to cover other points.

Lord Watson of Invergowrie: Before the Minister finishes, I mentioned the UK Commission for Employment and Skills, and that apparently it has been disbanded. Perhaps the Minister can give me a commitment that he will also write to me about that. I am happy to leave it at that just now.

Lord Nash: I will certainly cover that.

Baroness Walmsley: Before the Minister concludes his remarks, I will make one point. Of course I agree with what he said about the need for employers to make a contribution to the training of the workforce from whom they will eventually benefit. However, is he aware of the very high level of commitment to training that all health and care employers already make? It takes them a lot of time and costs them a lot of money. Every ward has training nurses on it; every clinical team has trainee doctors on it; most GP practices have GP trainees; most care homes also have trainee co-workers. An enormous contribution is made already. The noble Lord, Lord Watson, talked about double charging—that is what we have here.

Lord Nash: I have listened to what the noble Baroness and the noble Lord have said but I cannot add any more at this stage. I commend the regulations to the Committee.

Motion agreed.

Committee adjourned at 6.33 pm.
Grand Committee  

Thursday 30 March 2017

1 pm

Local Arts and Cultural Services  
Question for Short Debate  

Asked by The Earl of Clancarty

To ask Her Majesty’s Government what steps they intend to take to protect and improve local arts and cultural services, including museums, libraries and archaeological services.

The Earl of Clancarty (CB): My Lords, we have a rich and diverse local arts and cultural life within the UK. I refer to the museums, libraries and archaeological services in the title of the debate because when I first tabled it in May last year, none of these areas had been discussed in this House for some time and they form something of an intimate group. But we could also talk about the visual arts, film, theatre, music, dance, digital arts and many other areas that also make up the arts aspect of the debate. This cultural life is hugely important to us all as individuals, for the good of society, the development of the arts and the protection of our heritage. It is essential that this broad range of work is protected and developed, but it cannot be overemphasised that since 2010, with the onset of austerity, provision for local arts and culture has been steadily and in some cases drastically eroded, mainly through cuts to local authority arts and cultural funding.

This year, councils will spend £10 billion less than they did in 2010-11. According to the Local Government Association, councils will face a gap of £5.8 billion just to fund statutory services, including social care. Local authority investment in arts and culture has declined by £236 million—overall, 17%—since 2010, and in the period 2010-15, Arts Council funding fell by 36%. The Museums Association reports that between 2010-11 and 2015-16, local authority spending on museums and galleries declined by 31% in real terms and that at least 64 museums have closed since 2010—the majority due to local authority cuts—including many much-loved museums such as the Lancashire textiles museums. The Chartered Institute of Library and Information Professionals records that in 2014-15, more than 100 libraries closed in the UK, while in the same year 11% of the libraries in Wales were closed. These are fairly shocking figures.

Many authorities are now faced with impossible decisions. I am grateful to the Minister for his concern over the future of the internationally important New Art Gallery Walsall and I am glad that it has been saved. But the same round of cuts in Walsall has led to the decision to close nine of Walsall’s 16 libraries—a library service which this year happens to have been nominated for Library of the Year at the British Book Awards. It is not just a question of outright closures, but of the quality of provision. The Museums Association stated that in 2015, one in five regional museums was at least part closed. There are reduced opening hours for museums and libraries and significant reductions in staff, and the number of qualified librarians employed in libraries has fallen by 25% since 2010. Reductions in outreach programmes are reported by theatres, art galleries, museums and archaeology. There are concerns about the risk of inappropriate deaccessioning, and in 2014 two Northampton museums lost their accreditation status over the sale of the Sekhemka statue. There are increasing difficulties with improving collections, not just because of funding but because often, there is not the expertise to oversee it. Now, we even see the introduction of charges at our once entirely public museums—for instance, the York Art Gallery and Brighton Museum and Art Gallery.

The latest authorities to announce huge cuts include Bath and North-East Somerset Council, Bristol and Birmingham, where the Birmingham Museum and Art Gallery is now quite extraordinarily under threat. The community organisation Theatre Bath states that cuts will be, “killing off any hope of a supportive arts infrastructure for emerging or small-scale artists”.

Theatres such as the Playhouse in Liverpool and Newcastle Theatre Royal have become host venues for touring productions rather than producing their own work. We are in danger of destroying the innovative grass roots, including those which supply the West End.

Local authority involvement in archaeology is clearly necessary, not least because 90% of known archaeological sites are undesignated and rely on local planning. It seems clear to me—I am sure that the noble Lords, Lord Renfrew and Lord Redesdale, will clarify this further—that local archaeology cannot be divorced from the work of local authorities, yet as a result of the cuts, since 2006 there has been a 33% decline in crucially important local authority archaeology staff. Unless local authorities can identify concerns, the protection of our archaeology will be neglected.

All who work in the arts and cultural sector are resourceful people; it is part of their nature. I read this week of two artists who have received planning permission to open a skip as a gallery in Hoxton Square in Shoreditch. On the wider scale, resourcefulness will only go so far. If it went further, museums, libraries and arts organisations would not be closing or going to the wall. It is telling that the Library of Birmingham Development Trust, established to attract philanthropic donations, has now been wound up. Philanthropy will most often not work in the places where funding is most needed.

For local arts and culture, local authority involvement in funding is crucial. At its best, it works because local people are the experts on their own region. It works because it is effective and efficient. It is important because it provides geographically comprehensive coverage, yet, in the face of cuts, Sharon Heal, director of the Museums Association, has said that, “there is a danger that whole communities will be left without museums and the rich and diverse stories that they can tell”.

Every locality and every person, irrespective of where they live or who they are, deserves arts and cultural access. This is not in the first place a business, as the Government are trying to turn many of our services into; it is a right and it is a necessity. There should be
[The Earl of Clancarty]

statutory provision for local arts and culture. This is not about competition between services. Central government should ensure that every local authority has enough funding to do its job properly in every service they cover. It is failing in that duty.

I hope that the Minister will not refer to specific projects as though they are the main narrative—welcome as such initiatives may be individually, they should not be treated as such. The Arts Council continues to make it clear that they are not a substitute for local funding. I say this because of the understandably angry reception given this week by writers to the new £4 million Libraries Opportunities for Everyone Innovation Fund, calling it, "a smokescreen to hide the cuts".

The fund is of course a drop in the ocean compared with the £180 million loss to libraries since 2010. Francesca Simon has said with perfect simplicity:

“Libraries first and foremost need to be open, with professional librarians and well-stocked shelves”.

Funding is not now the only problem. The growth of what might be termed a "developer and investor-led culture" and the selling-off of public spaces and buildings—trends rooted in central government policy—mean fewer opportunities for local arts to gain a purchase. A new report, Creative Tensions, by the London Assembly Regeneration Committee, finds that a third of artists in London are expected to lose studios by 2019. There needs to be protection of the arts and cultural sector against soaring rents. It should not be said that, in London, individuals and smaller arts organisations are not suffering a tough time as well. I ask the Minister, too—this is a question about the private sector—whether he will look into the potentially disastrous effect of the new business rates on our high street bookshops, which are important alongside libraries in the fight against illiteracy.

I make no apology for having painted a bleak outlook for the day-to-day running of the arts and cultural services. Unless the Government change their strategy, it will become bleaker. Where this trend has been bucked to an extent, it has been for particular reasons, not least the substantial help that the EU has given over the years, including, for instance, to the Sage Gateshead and the Liverpool Everyman. Indeed, Liverpool has benefited hugely from being European Capital of Culture in 2008, as is Hull now as UK City of Culture. I ask the Minister whether there will be an attempt to maintain these EU funding connections, which are intrinsically bound up with all-important cultural co-operation. A significant purpose of arts and culture at the local level, both for individuals and local areas, is as a vehicle for connection to the wider world, both nationally and beyond. If we leave the single market, it will be disastrous for artists and all those working in the cultural sector, for whom free movement within Europe is essential.

It can rightly be argued that, to encourage access to art and culture for young people, education is crucial. I welcome Nicholas Serota’s announcement on Tuesday of the Durham commission, which I hope will look to a time beyond the EBacc when children in all schools will have a properly rounded education.

Baroness Bakewell (Lab): My Lords, in his first speech as the new chairman of the Arts Council, Sir Nicholas Serota made clear his priorities:

“I need to voice long-term concerns around public investment, and especially the loss of local authority funding—which is now the most pressing issue, day to day, for many cultural organisations across the country”.

Spending by councils on arts, culture, museums, galleries and libraries declined from £1.42 billion to £1.2 billion between 2010 and 2015, a 16% reduction, because of the squeeze put on local authorities by central government. But local authorities are making an enormous effort to cherish their arts and community policies; they know how valuable they are in economic terms—the creative industries are now worth £84 billion a year to the economy—as well as in human terms.

I shall cite two examples. In 2016, Manchester’s six largest cultural organisations contributed £135.9 million to the local economy. Over the past 20 years, its strategic investment has transformed the cultural reputation of the city—solving its social problems, too, such as loneliness—and its community spirit and well-being, nursed through the emotional and spiritual value of music, theatre, dance and literature. In 2016, Lonely Planet rated Manchester eighth out of the 10 best cities to visit, calling it a cultural dynamo of British culture. Culture has been one of the sectors enjoying double-digit employment growth in Greater Manchester. How much more could have been achieved in wealth and social cohesion without the shackles of ongoing government cuts?

Take another local council with an enlightened view of cultural value—my own borough of Camden, which prioritises culture, primarily by keeping a community festival funding stream that promotes community cohesion through local cultural celebration. I see for myself how this brings neighbours together and promotes literacy, opportunity and well-being. Camden is developing ways of working and seeking new partnerships at all times.

Both Manchester and Camden are vigorous, enlightened Labour councils, fighting in the teeth of government cuts to keep and extend their cultural reach. For whatever reasons—entrepreneurial, social or inspirational—the Government must recommend the Manchester and Camden models and recognise and value the range of inspiration nestled within those rural and urban communities.

Lord Redesdale (LD): My Lords, in three minutes you can hardly say anything, but I thank the noble Earl, Lord Clancarty, for including archaeology in the debate. I shall deal with a couple of points raised in the excellent briefings from the Council for British Archaeology and the Society for Museum Archaeology.

Some 90% of archaeological sites at present are protected only by the planning system, which is a problem given that one-third of those employed by local authority planning services in archaeology have lost their jobs since 2006. That is an ongoing problem for archaeology because, like every other arts area, it is within the discretionary spend of local authorities and
is therefore probably the only area they can squeeze. But of course, that is leading to major problems. In a recent survey, half of museums did not have an expert in the field of collections, and many museums have stopped taking archaeological artefacts into their collections because they do not have the space or the money to do so. That is going to cause real problems. It has been pushed on to the private sector, and the excellent work of the York Archaeological Trust should be noted. However, given the flooding of Jorvik, the ability to undertake this work on behalf of the local council is severely under threat, which will cause a major problem for the digging up of artefacts in the York area.

There is another problem coming down the line. Because archaeology is not a statutory responsibility—although it could be seen as one in the planning Bill—how long before developers start seeing it as something they have to undertake because they know that councils do not have the expertise or even ability to do anything about it? That question has been asked several times and is probably rhetorical, but I hope the Minister can give an answer.

Baroness Murphy (CB): My Lords, truly successful places that people want to visit and live in are always much more than economic powerhouses. Strong economies are always underpinned by a sense of creative vibrancy and cultural identity. That is as true now for towns and cities in the UK as it was for Florence in the Renaissance and London in the 1850s.

Unlike the noble Earl, I speak with no special expertise in this area, but as a local historian I am a heavy user of the museums, study centres and county archives of Norfolk and have come to appreciate the extraordinary role that local authorities can and do play in investing in our arts. I know that 2015-16 seemed like a bad year, with a sharp decline in educational visits and some predictable reductions in overseas ones, and it can feel extravagant to a local authority to invest in this area. However, new analysis by the Local Government Network showed that, perhaps surprisingly, if we look back over the past two to three years, the picture is not quite as the noble Earl reported. Many local authorities have protected their arts and culture funding and it has not taken disproportionate cuts. It is worth remembering that they have managed to sustain investment when some people here speaking up for social care would say that they have taken even further cuts. So they have managed.

How do we tackle this problem? Joint enterprise is therefore probably the only area they can squeeze. But of course, that is leading to major problems. In a recent survey, half of museums did not have an expert in the field of collections, and many museums have stopped taking archaeological artefacts into their collections because they do not have the space or the money to do so. That is going to cause real problems. It has been pushed on to the private sector, and the excellent work of the York Archaeological Trust should be noted. However, given the flooding of Jorvik, the ability to undertake this work on behalf of the local council is severely under threat, which will cause a major problem for the digging up of artefacts in the York area.

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1.15 pm

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How do we tackle this problem? Joint enterprise has already been mentioned. The Minister will remember last year’s report from the Commons’ Culture, Media and Sport Committee, which highlighted Norfolk museum service’s hub model of museums and galleries, with collaborations with national institutions such as the British Museum, the Tate and the National History Museum—a mutually creative partnership since 1974 and a very cost-effective way of investing. Norfolk and Suffolk have also combined to create an East Anglia cultural board, which recognises that cultural tourism brings people into the region and encourages people to settle there. Social mobility is fostered by local arts, and social capital is not always allied to intellectual capital. Social creative capital can create social mobility.

I want in my last minute to comment on the crazy imbalance in arts funding between London and the rest of the UK. I know that Arts Council England is uplifting 4% more funding in 2018-22 to the regions, but at present the imbalance is shameful. It is often the provinces that produce artistic capital. It is a great shame that we do not have agreement on how to tackle the shift. We need to agree on a mechanism to get more money into the regions.

1.18 pm

The Lord Bishop of Derby: My Lords, I invite us to think about this issue from the point of view of the local and that of the consumer. As a poorly-paid clergyman, I have been a consumer of libraries all my life to get books. We are in an age that is moving from discrete organisations such as museums and libraries to what are called cultural hubs, and moving from the static to the dynamic and participative. We have to think about the people who we want to engage with culture and the arts. We are also in a moment where municipal life is dissolving before our eyes. That is partly because of lack of interest in public space and responsibility, so we have to be careful about looking simply to local authorities to bail us out.

Churches have, as your Lordships know, long been cultural hubs with all kinds of activities such as music, worship and learning, and building values between people. Let me give a very quick picture. A phenomenon in the Church of England is called “messy church”. People of all generations come together there for worship, craft making, consuming food and having fun. It is a cultural-bonding, value-creating moment with which people join in. That is where culture is going and where we have to make our pitch to keep the arts and culture alive. In the city of Derby, where I work, we have secular equivalents of our messy church. The museums have come together to form an independent trust. QUAD is an independent trust and charity, which has a cinema with other activities. They are messy cultural and artistic spaces which invite people to join, learn and be developed. They are the models that we have got to go with.

I have four questions for the Minister about the practicalities of how we are going to develop a culture of cultural development. First, VAT relief is available on theatre tickets and production costs but what is the equivalent for non-profit cinemas, for instance? Secondly, business rates have been mentioned but what is the guidance for business rates on emerging cultural hubs? Thirdly, there is a lot of pressure on local government and the national Government are blamed for withdrawing grants. What is the potential for local taxation to invite local people to participate properly? Fourthly, how are our churches, 15,000 of them across the country, going to be able to contribute to culture and art as a local phenomenon that people participate in?

If we are going to be worried about education, health and priorities, only a healthy cultural connectivity in our society will enable people to have the will and the wherewithal to support important things such as health and education.
1.21 pm

Lord Renfrew of Kaimsthorn (Con): My Lords, we are indebted to the noble Earl, Lord Clancarty, for this timely question on local arts and cultural services. As my time is so short I will, like the noble Lord, Lord Redesdale, restrict my contribution mainly to archaeological problems. I should declare an interest as chair of the Treasure Valuation Committee. The workings of the Treasure Act, like those of the local planning authorities, owe much to the archaeological expertise on the ground: to the finds liaison officers and archaeological officers working in county planning departments. In general the system works well, or at any rate has worked well until now, with the help of finds liaison officers. The relevant planning authorities generally seek the advice of archaeological officers.

As the noble Lord, Lord Redesdale, has already emphasised, however, the 33% decline in local authority archaeology staff since 2006 is a matter of great concern. The number working has declined from 400 to 271 staff. They advise on planning consents, conditions and circumstances where rescue excavation is appropriate and, where necessary, they maintain the historic environment record. It is a matter of concern that this attention has left a number of local authorities without professional archaeological advice. Middlesbrough is one case which is a matter of concern.

Archaeological problems. I should declare an interest as chair of the Treasure Valuation Committee. The workings of the Treasure Act, like those of the local planning authorities, owe much to the archaeological expertise on the ground: to the finds liaison officers and archaeological officers working in county planning departments. In general the system works well, or at any rate has worked well until now, with the help of finds liaison officers. The relevant planning authorities generally seek the advice of archaeological officers.

Museums are responsible for maintaining archaeological archives, and the archives, which are the result of rescue excavation and other studies, are essential for supporting the historic environment record, which is the basis for granting planning permission or for withholding it where there are archaeological objections. This is a general problem. I am not certain that it is fair to lay the problem at the door of the present Government, nor have members on the other side of the Committee—who are very numerous—done so in particular. But it is a matter for all local authorities to give sufficient priority to the archaeological and cultural resources which we are discussing. Archaeological resources in England are at risk through attrition. We must all do our best to maintain funding on all sides in this area.

1.25 pm

Lord Cashman (Lab): My Lords, I refer your Lordships to my registered interests. We are discussing extremely important issues that go to the heart of our communities. I sincerely thank the noble Earl, Lord Clancarty, for not only securing this debate but also his brilliant opening submission. I reiterate that we are discussing the steps that the Government intend to take or are taking to protect and improve local arts and cultural services, including museums, libraries and archaeological services. As we have heard, such services are always under threat, especially when local authorities are faced with diminishing budgets, not least from central government and as already outlined by the noble Earl.

Local authorities face very real and difficult choices, for instance when funding the increasing demands for social care services, but I would argue that it must not be one or the other; it should be both. What is the quality of life if it is devoid and deprived of culture, arts, libraries, museums and archaeology—the very things that open our minds and give us reasons to learn and live? Yet this is exactly what some local authorities and funders are having to face: difficult choices, creating a concept of basic services that will be supported and others which will not. I do not accept that concept. Indeed, my own life and life chances were enhanced in my very poor, impoverished community in the East End of London in the late 1950s and 1960s precisely because schools and local authorities believed that lives would be improved by exposure to and familiarity with the arts. I want these chances and experiences to reach beyond my generation and to be accessed by all.

I wish to refer to evidence given by the actors’ union Equity and to concerns expressed among visitor organisations. Equity expressed concern to your Lordships’ Select Committee about cuts in public funding of the arts through Arts Council England and local authorities, as this impacts on theatres that no longer produce their own productions, with a subsequent loss to the local economy and talent pools. It called on the Secretary of State to provide leadership on this and give local authorities direction on how to tackle these difficult funding issues.

Smaller, local authority museums and civic collections are deeply concerned that they are at the mercy of local authority cuts. They say that the decisions by some local authorities to place their collections into independent trusts may work in some circumstances but not all, and that it requires ongoing investment. Finally, a case in point is Birmingham City Council, which placed the stunning Birmingham Museums and its galleries into a trust but will not commit to providing core funding beyond this year. There is a very good argument to make that such collections, along with others, should be re-designated as national collections—like Liverpool’s—and therefore that the DCMS and Arts Council England should become responsible for them. Will the Government adopt such a model nationally?

1.28 pm

Lord Freyberg (CB): My Lords, in the brief time allowed I will concentrate my remarks on the future sustainability of local and regional museums. The rapid reduction in local authority budgets has put huge pressure on museums and will inevitably weaken the sector further if we do not think more strategically about how we wish to support them.

I therefore welcome the various public consultations that the Government have initiated, in particular the DCMS’s museums review and the review of Arts Council England and its work. These take place against a backdrop of ever-expanding costs of statutory services, most notably in adult social care. Unsurprisingly, museums in less well-off areas suffer most. I wholeheartedly agree with the remarks of the noble Baroness, Lady Murphy. We must do more to address these regional funding differences while expanding imaginative income-generating schemes—although these are rarely enough to cover lost funding. The oft-suggested introduction of entrance fees is not necessarily a solution either. Brighton & Hove Council and York Museums Trust both introduced charges in 2015; both have since
experienced drops in visitor numbers of more than 50%. The looming question of leadership and “What next?” has never been more important. We need to strengthen management capabilities so that directors and curators can meet the challenges of today's curatorial reality, when expectations have risen but funds have diminished.

My question to the Minister is: why do the Government in effect stand by when we can all see what is happening in the sector? The remarkable success and potential of non-national museums, as well as the public impact of partnerships with national museums, are now at risk due to the significant and swift decline in investment from local authorities. In the wider context of local and central government spending, the amount allocated to these museums is very small. Cutting it will have a minimal impact of reducing spending, yet the value of what is lost will be considerably greater.

In the winter edition of the Art Fund’s Art Quarterly magazine, its chairman, the noble Lord, Lord Smith of Finsbury, stated that he hoped that public consultations would articulate the word “essential” when it comes to museums and galleries. He believes:

“We need to continue to assert the value and importance of museums to us and our communities”.

Yesterday's formal exit from the EU has made the case only more relevant as we strive to make sense of that tension between nation and internationalism. So while there is inevitably a focus on funding at the moment, it is also vital to recognise how museums continue to play an important part in our public realm, be it in education, engaging in communities or attracting people to live in, work in and visit a place.

1.31 pm

Lord Faulkner of Worcester (Lab): My Lords, I join others in thanking the noble Earl for securing this debate. I declare an unpaid interest as chair of a charity called Worcester Live, which is the main provider of the arts in the city. It runs the only theatre; the only concert hall; one of the largest festivals in the county; an outdoor Shakespeare in partnership with the city council; an indoor Shakespeare in partnership with Worcester Cathedral—last year we commemorated the 800th anniversary of the death of King John by staging Shakespeare’s play around his tomb in front of the altar; a ghost walk, which is a tourist attraction; a one-year part-time foundation course for young people wanting to get to theatre school; a number of youth theatres; and much more.

Worcester Live exists for three reasons. First, it receives generous core funding support from Worcester City Council, which, per head of population, probably contributes more to the arts than any other district council. Secondly, it has a small number of wonderful individual benefactors, trusts and patrons. Thirdly, its productions and events are well-supported by local residents.

However, Worcester Live gets not a penny from the Arts Council, and that means that its finances are constantly on a knife edge. In my view, a disproportionate amount of arts money goes to London, and a huge percentage of it goes to classical music in one form or another—orchestras, opera and ballet—and to flagship venues, a point made earlier by the noble Baroness, Lady Murphy. I am far from convinced that the balance is entirely right, and I would like the Arts Council to recognise the value to local communities outside the south-east of popular non-elitist organisations such as the one that I am involved with.

I also want to mention another reason why local arts can be vibrant: the role of volunteers. There is in Worcester a splendid historical museum called Tudor House in the medieval heart of the city. It is because of the 60 or so volunteers that Tudor House is able to maintain free admission. At any one time there are about 30 of them working regularly as room stewards or in the coffee shop. Another group supports the education days, another group works as an operations committee and so on. Without volunteers, Tudor House and countless other local history museums would not exist, and they deserve better recognition from all of us. I hope the Minister will agree with me when he replies.

1.34 pm

Lord Berkeley of Knighton (CB): My Lords, how timely that the noble Earl, Lord Clancarty, should air this important subject just as we start the process of leaving the EU. When I, a born optimist, asked at Oral Questions on 7 March this year if the Government were concerned by the threat of closure facing many libraries and leisure centres, I was told that I was being pessimistic. Pessimistic? The Government were reminded by several noble Lords on 13 October 2016—and the Minister in today’s debate, I believe, answered—that several hundred libraries have closed since 2010.

While it is true that we all have to cut our cloth according to our means and that the internet has brought access to books and music much closer, nothing can replace the actual live experience: the object, a book, the sound of a bow hitting a string and the social cohesion factor of meeting and listening together or discussing literature in groups. I am sure the Minister will acknowledge that the publishing industry and the creative industries in general are part of the great economic success story of this country. But they need nourishing and investing in for our future prosperity and cultural excellence.

Many music clubs, festivals and orchestras up and down the country depend on visiting artists and chamber ensembles to enrich their programmes. How will Brexit affect them? Will British players be excluded from European orchestras, particularly European youth orchestras, where it will not be a matter of work permits but of actual acceptance into the group? Even for well-known soloists like the cellist Steven Isserlis, who has written to me on this subject and who gives many concerts in the EU, there is the worry of constant visa applications, which could be turned down if Brexit turns sour.

What about the colleges for whom the lost income from losing students, who might no longer be supported by the EU to come here, might well be a disaster? We have already heard of two orchestras that are decamping to warmer artistic climes. We need to act now to make sure this does not become an exodus and that we are not starved of cultural intercourse with our neighbours.
As I pointed out on 7 March, it is often rural, isolated communities who face bleak opportunities for education and entertainment, and I am sure the Minister would agree that the natural law of economics means that it is precisely those communities who are most likely to be hit hardest in times of economic drought.

It is clear that times are bleak for a whole range of arts and cultural services, but in the current climate, it is local museums, those directly managed and funded by local authorities, that are the most vulnerable. Others have charted the recent decline in local authority investment in museums. Arts Council England acknowledges that councils understand that investment in cultural services shapes local identity, promotes tourism, stimulates creative industries, and creates happier and healthier communities. Age UK showed that creative tourism, stimulates creative industries, and creates happier and healthier communities. Age UK showed that creative tourism, stimulates creative industries, and creates happier and healthier communities. Age UK showed that creative tourism, stimulates creative industries, and creates happier and healthier communities.

It is sadly inevitable that, given their shrinking budgets, local authorities see their non-statutory funding of museums as a low priority. The museums review announced in last year’s culture White Paper is due to be published this summer. I hope that its state of the nation report will enable us to understand how museums might need to keep changing to survive and thrive. But museums facing the sudden withdrawal of local authority support are sometimes forced to close before any alternatives are considered. In light of this, can the Minister assure us that the review will contain realistic recommendations to prevent closures and sell-offs?

Will the review outline steps better to identify early warning signs, which would allow enough time to develop proposals to transfer museums into trusts or community management schemes, for example?

I read that museums are not meant to become monuments to themselves—they can and should relocate collections or develop new partnerships or new directions if that will attract new or more visitors. In my home town of Bradford, a new £1.8 million gallery opened last week in the newly renamed National Science and Media Museum. Tim Peake’s spacecraft will be on display there. New exhibits—and the new name—reflect the museum’s changing focus on the science behind the magic of photography, film and television. It aims to combat a recent history of falling visitor numbers and to keep the museum fresh and relevant in our fast-changing, high-speed world. This is wonderful stuff, not least for the people of Bradford, who are fortunate that the museum is part of the London-based Science Museum group, which receives about £40 million a year from DCMS.

This brings me to one final point: those of us who look beyond these to our wonderfully varied and quirky local museums, there is much to discover: other speakers have indicated their favourites. They all help to preserve, protect and promote our nation’s history. We use them or we lose them.

1.40 pm

Lord Shipley (LD): I, too, thank the noble Earl, Lord Clancarty, for initiating this debate and I concur with the points made by him and other speakers. I should remind the Committee of my vice-presidency of the Local Government Association. I want to address two issues: first, regional cultural resources that have national and international importance; and secondly, the role of the private sector in supporting culture outside London.

We have heard a little bit about Manchester. I was there recently, visiting Mrs Gaskell’s house and the home of the Pankhursts. Both are wonderful to visit, but both have limited public opening times—three days a week and one-and-a-half days a week respectively. There might be perfectly good reasons for this that I am unaware of, and I pay a huge tribute to those running them for their achievement. It might simply be a lack of finance, but whatever the reason, will the Minister look at this issue to see if everything is being done that can be done to support longer public opening hours for such important international visitor destinations?

Right across the country, similar buildings that are major international resources can be underused and under-visited. In Newcastle, where I live, we have the Mining Institute, where the electric light was first demonstrated and which could become a major public destination in its own right. Does DCMS have a register of such key buildings across England that could be invested in? If there is not one, might one be created?

The Arts Council has a good record in starting to address the regional imbalance that we have heard about, but it needs to keep going. I noted in the recent culture White Paper that while total DCMS grant in aid from 2009 to 2015 has declined in cash terms, non-public investment has doubled in that period. That is very good to see, but I suspect that corporate giving mostly benefits London, where so many company headquarters lie; yet corporate responsibility should be to invest in culture across the United Kingdom because profits might well derive from outside the immediate area of a company HQ. Will the Minister tell us what data the Government have on the extent of non-public investment for each part of England? Would it be possible to publish those data if they have them, or to secure them if they do not?
When the industrial strategy Green Paper was introduced, Greg Clark, the Secretary of State for BEIS, spoke of the importance of recognising the country’s strengths, “from science to the creative industries”.

The Prime Minister is also on record as saying that special emphasis in the industrial strategy would be placed on helping sectors of the economy such as the creative industries. However, the specific challenges mentioned in the industrial strategy are energy, robotics, satellites and space, leading-edge healthcare, manufacturing and materials, biotechnology and quantum, and transformative digital technologies. It might be possible that the last one includes creative industries, but they are not mentioned. It is an awful gap, so can the Minister confirm that the interests of the DCMS will be represented in the final version of the industrial strategy? It is very important that we see it there and that it is part of the discussions.

Secondly, the Government need to think carefully about research in the creative industries if they are going to see a vibrant sector arrangement. As part of the Autumn Statement, a £4.7 billion announcement was made about an industrial strategy challenge fund. This will be cross-disciplinary and cover a broad range of technologies to be decided by an evidence-based process. As part of that process, a number of consultative workshops have happened and it is evident from those that there is a high level of interest from the cultural and creative industries in bidding for and obtaining money from the fund. We do not know, however, whether that will be possible.

An interesting aspect of our creative industries sector, which is enormous and does a fantastic job for our economy, is that it is largely made up of very small companies—micro-companies and very small SMEs—that rarely have the scale to engage in research. There is a research council—the Arts and Humanities Research Council—and it has a plan to create eight regional hubs, anchored in higher education institutions, that reach out to SMEs in the creative sector. This is a very good idea and I would be grateful if the Minister confirmed that the creative industries will get a fair share of this vital research funding.

1.45 pm

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful to all noble Lords, and especially to the noble Earl, Lord Clancarty, for securing this incredibly wide-ranging debate. My reply will probably only scratch the surface but I will try to answer as many points as I can. It is clear that this is a subject that noble Lords are very interested in and in which they have their individual specialities. It is a very daunting prospect to face this array of specialised interests—with, admittedly, some help, I will do my best.

The Committee has shown the breadth and depth of its interest in arts and culture. The presence or absence of beautiful buildings, galleries, museums, libraries and treasured archaeological sites has a huge impact on whether somewhere thrives and is a good place to live. These institutions help bind communities together and link current generations to those that came before; they console and inspire individuals. They are remarkably popular: 76% of adults in England engaged in the arts in 2015-16, and in the same period—surprisingly to me—53% of adults visited a museum or gallery.

The whole Government recognise that, and it is why there have been excellent recent funding settlements for DCMS sectors, even at times of economic difficulty. Central government’s main financial support for the arts, culture and museums is delivered via Arts Council England; it plans to invest £1.1 billion of public money in the period 2015-18. These sectors also benefit from public funding through the National Lottery. The Arts Council alone is to spend an estimated £700 million over the same period. Furthermore, the Heritage Lottery Fund spent £434 million in 2016-17; it supports museums and heritage projects, including public libraries. Archaeological-sector projects are supported by Historic England, and museums receive £400 million a year from the DCMS in grant aid. Let us not forget, also, that to assist the sector we have extended the museums and galleries tax relief to permanent exhibitions.

The Government are also investing in flagship projects such as Hull UK City of Culture 2017, which thereby raised over £1 billion of additional investment, and the Great Exhibition of the North in Newcastle and Gateshead in 2018. Arts Council England, the Heritage Lottery Fund and Historic England have come together to create the Great Place scheme, which will spend £20 million on embedding arts, culture and heritage in local plans and decision-making.

However, the nature of the political system is that much responsibility for locally delivered services is devolved to local authorities. This principle has had the backing of all political parties. I recognise that local authorities have had challenging financial settlements over the past few years as we tackled a very large national deficit. That had to be done for the sake of our children and grandchildren. Nevertheless, many local authorities have acknowledged that not supporting arts and culture is both a serious failing and a false economy, and continue to invest in all those sectors.

One of the most effective ways for local authorities to develop and sustain arts and culture is through collaboration with other organisations. For example, Dig Greater Manchester, supported by the University of Salford and the Association of Greater Manchester Authorities, is giving thousands of Manchester residents the opportunity to take part in real excavations. Nearer to here, the Museum of London is receiving £180 million from the City of London Corporation and City Hall for its new premises, which will showcase the best of London’s history and archaeology, including brand new finds from Crossrail and other projects.

The merits of collaboration were recognised in the Government’s Culture White Paper, published last year. It announced a review of culture and digital technology, which is bringing together organisations such as Arts Council England, universities, the BBC, Culture24, and Connecting Cambridgeshire. The Government are therefore offering strategic support in a variety of ways. Together with the Local Government Association, we set up the Leadership for Libraries Taskforce. It published Libraries Deliver, an ambitious strategy...
[Lord Ashton of Hyde] containing a range of practical and innovative ideas for how local authorities can maintain and improve library services.

The noble Baroness, Lady Warwick, reminded us that last September the Government launched a museums review led by Neil Mendoza. It recently concluded a series of round tables exploring issues in the sector and is now considering its recommendations. The review is expected to be published in the summer. Of course matters such as opening times could well be included in that. The noble Baroness also mentioned the Bradford Media and Science Museum, which I was due to see last week but was prevented from doing so by the events of last week.

The noble Lords, Lord Redesdale and Lord Renfrew, talked about archaeology. As a result of the issues that they raised, we have asked Historic England to work with representatives from the local government archaeology and development sector to consider how best to respond to the reduction in the number of historic environment specialists employed by local government. This follows a report by the noble Lord, Lord Redesdale, and John Howell MP. This will involve developing professionally recognised standards and guidance, a review of local authority models for charging for archaeological services and research into the impact of heritage service changes in the south-west. It produced an update on progress in February 2017 on its proposed way forward, which it issued in October last year—I cannot go into all the detail now. In addition, Historic England is looking into training and skills retention and developing plans for heritage apprenticeships.

I wanted to say a few words about regional funding, which was raised by the noble Baroness, Lady Murphy, and the noble Lords, Lord Shipley, Lord Freyberg and Lord Faulkner, among others. We agree that we want to disperse funding across the country, and Arts Council England continues to do that. It will rebalance funding between London and the regions over the next few years. In the past three years, 70% of the funding was invested outside London, and that will rise to 75% by 2018. National portfolio funding outside London increases and will increase further in the 2018 portfolio. It will have increased by 4% between 2015 and 2018 and another 4% between 2018 and 2022.

The noble Baroness, Lady Bakewell, and the noble Lord, Lord Shipley, talked about Manchester. The Government have invested heavily in Manchester: £78 million in a new theatre and arts venue called The Factory. The South Asia gallery of the Manchester Museum received £5 million. As the noble Baroness, Lady Murphy, said, there is a 4% uplift in national portfolio funding, but furthermore, the 70% of lottery funding outside London increased to 75% over the past three years and 80% to 90% of the Ambition for Excellence scheme to support talent is spent outside London. That is £35 million. The strategic touring fund of another £35 million funds touring of arts productions and focuses heavily on areas of low engagement.

The noble Baroness, Lady Warwick, specifically asked whether the museums review will help to show museums how to avoid closures and sell-offs and identify early warning signs. The review is looking specifically at the sustainability of local museums as a key line of inquiry and will make recommendations this summer. The noble Baroness also mentioned the reopening of the National Science and Media Museum, a national museum. That is another trend—that national museums are having more and more venues outside London.

The noble Lord, Lord Stevenson, asked about culture and whether that is included in the industrial strategy. First, of course, the Secretary of State was a member of the committee that put that together. I can say to him that the cultural sector is included in the definition of ‘creative industries’ that is mentioned in the Green Paper in an early sector review, the Bazalgette review. We are certainly looking forward to working with him and all interested colleagues in the coming weeks and months. The review is focused particularly on prosperity across all the creative industries, and we recognise that the cultural sector as part of those is contributing to UK prosperity through its many national and international commercial successes.

I must really speed up now. The noble Earl, Lord Clancarty, and others made a very valid point about EU funding. Of course it is too early to say where we will do that, but I can say that we are extremely well aware of it. It is not only about the money; it is the partnership and the links with EU organisations that are important here. Of course we will have extra money when we are not a net contributor, but this is all part of the negotiation and we are very well aware of it, as we are cultural people in terms of free movement, which will be part of it. One of our jobs, and one that we are taking very seriously, is ensuring that the Department for Exiting the EU is aware of the concerns of the cultural sector. That is definitely a job that the DCMS has.

The noble Lord, Lord Redesdale, mentioned the fact that half of museums do not have collection specialists and that many are no longer accepting archaeological archives from developers. The museums review is specifically looking at the issue of archaeological archives and storage, and will report in the summer.

The right reverend Prelate the Bishop of Derby asked four questions, one of which I am going to answer; I am afraid the others on tax are pretty well outside my remit. The Government are keen for churches to contribute and play a full part in community life. In December 2016 we announced the English churches and cathedrals sustainability review. That is now in progress and exploring these issues. I might mention that on broadband, for example, the WiSpire initiative is one very good way in which they might contribute.

There were other questions but I apologise that I do not have time to answer them. If I may, I will write. I will conclude by saying that arts and culture are a huge part of what makes the villages, towns, cities and nations that comprise our United Kingdom so special. We want them to be available to everyone, to be cherished and protected and to have the strategic and financial support that they need. This is the central mission of the DCMS, and it is heartening to be reminded that this House shares our determination.

1.58 pm

Sitting suspended.
Educational Attainment: Boys

2 pm

 Asked by Lord Lingfield

To ask Her Majesty's Government what plans they have to improve the educational attainment of boys of all ages at state schools.

Lord Lingfield (Con): My Lords, I remind noble Lords of my education interests in the register, and thank them for taking part in this debate this afternoon.

A retired general known to me was inspecting a school cadet corps, and as he went round, he noticed that, whereas the girls had large numbers of badges on their arms for military pursuits such as shooting, first aid and field-craft, the boys had virtually none. When he addressed the parade he said, “Boys, you must really pull your socks up. You’ve got hardly any badges on your arms”. While he was speaking, a lad in the front row kept putting up his hand, military discipline vying with indignation, and said, “Sir! We’ve got just as many badges as the girls, but the girls won’t sew them on for us!”.

That is a somewhat frivolous introduction to what is actually a very serious subject: boys in our state schools are doing badly compared with girls. I want to pay tribute to the excellent debate on this issue in Westminster Hall last September, secured by my honourable friend Karl McCartney, MP for Lincoln. Many excellent points were made by members across the political spectrum and I shall refer to them from time to time.

There are enough statistics to last the whole afternoon, but here are just a few of them. Last year’s figures show that in state schools girls are 30% more likely to enter university than boys. In Scotland, the figure is 43%. Indeed, the head of UCAS has recently predicted that, if current trends continue, girls born today will be 75% more likely to enter higher education. At the other end of the spectrum, there is a gap of nearly 16% between girls and boys judged to be achieving a good level of development at the end of the early years foundation stage—74.3% for girls and 58.6% for boys. These trends persist: when finishing primary school, some 57% of girls reach the required standards in literacy and numeracy; only 49% of boys do.

When we move to public examinations, last year girls opened up their biggest gap over boys in A to C grades for 14 years—71.3% of female entries were awarded at least a C grade compared with just 62.4% of their male counterparts. Especially in arts subjects, a quarter of girls earn As or A*s, but under 17% of boys do. It is only in mathematics that boys squeak ahead. At university, women are more likely to graduate than their male peers, and typically they get better grades.

Whichever way the data are read, they show that girls outperform boys at all educational stages in most areas of the curriculum. So boys are doing badly compared with girls, with all that that means for society, when surely their attainment ought to be closer to equal. Why is this? No one knows the answer as too little research has been carried out into this important question. Many theories abound and I shall consider some of them.

First, about 15% of teachers in English primary schools are full-time male teachers, and the figure for secondary schools is only 38%. Overall, therefore, three-quarters of all state school teachers are female. This means that the majority of boys, many of whom have no man in the house, never encounter a male role model at home or at school. Please do not get me wrong: I am not knocking our many wonderful women teachers—we obviously could not do without them—but common sense suggests that schools need nearer a 50:50 split, which, by the way, independent schools come closer to.

Does this worrying situation make a difference to boys’ performance? There have been a few studies, based on small samples, which suggest that boys’ attainment is not necessary better when they are taught by male teachers, but in reality no one knows. The decline of boys’ performance has, however, coincided with the drop in the number of male teachers since the 1980s. Could it be that many schools are now not focused enough on supporting boys, understanding what makes them tick and providing a clear disciplinary framework and an environment that does not fail to encourage masculinity? Boys develop more slowly in their teenage years, and many observably have less positive attitudes to schooling. It is very possible that male role models are vital in instilling in them the importance of education.

Whatever the answer, the Government need to address the imbalance of male teachers to female teachers in our schools. Why are men not joining the teaching profession as they used to? Again, there is only anecdotal evidence. Not long ago I talked to a number of newly graduated men at one of our universities. Would they graduated men at one of our universities. Would they think of teaching as a career? All were emphatic that they would not. Was it the salary? No, they thought that it was fine for someone in their 20s. They unanimously suggested that they could not put up with the disciplinary problems and the chance that there might be unwarranted accusations against them. When I questioned this, they told me that they had been at school only three years before and knew exactly what they were talking about.

It is also perceived wisdom that methods of teaching and examinations have been feminised in the past decades, particularly with the replacement of written examinations with continuous assessment and coursework in many subjects. This is thought to favour girls, who are better capable of the steady, organised work required, whereas boys, it is suggested, do better at putting a towel around their head and revising for all-or-nothing written papers. There has been a trend of late for schools and examining bodies to rely less on coursework and more on end-of-course examinations, but it is too soon to see if this will narrow the gap in performance again, as is suggested.

There is no doubt that the difference in attainment between boys and girls is a complex subject. It is visible across all ethnic groups. The Government have in the past rightly pointed out that most other OECD
countries have similar gaps. One would have thought, therefore, that there would be plenty of research in other countries to address this problem, but there is very little of real relevance. Girls are often said to do even better at single-sex schools than at co-educational schools. Do boys do better at boys’ schools than at mixed schools? There seems to be no research available to enable us to take a view. There are some 150 grammar schools in this country, some single sex, some co-educational. Do boys do better in selective education? We cannot tell as there are no useful immediate statistics to help us.

I do not ask the Minister to come up with any answers today to these complicated and vexing questions, but I am sure that we need to hear that the Government will consider a wide-ranging review of the issue. We badly need some high-quality investigative work, and I know that Members on all sides of the House will agree that that research should be free of political correctness and ideology. We need to find out what is putting men off seeking teaching careers so that we can encourage more of them into the profession. We need to know whether the teaching of boys by men really does make a difference to the performance gap. We need to know whether single-sex education is helpful to boys’ attainment or whether there is little difference. We need to know whether boys in selective schools do as well as girls similarly selected. We need to look at comparative studies from other countries—some work has been done in Sweden, the USA and Australia—to see whether there is anything we can learn. Above all, we need to know what can be done for boys without affecting the performance of girls.

Too many boys at present are discouraged by their results and tend to leave education unskilled and poorly qualified for future vocational courses. More young men than young women are not in proper employment or training. Their next steps are too often to be benefits claimants and then, too regularly, they encounter the youth justice system. We need to address the wider educational and inequality results and tend to leave education unskilled and poorly qualified for future vocational courses. More young men than young women are not in proper employment or training. Their next steps are too often to be benefits claimants and then, too regularly, they encounter the youth justice system. We need to address the wider educational and inequality consequences for our society.

2.10 pm

Baroness Morris of Yardley (Lab): My Lords, I am most grateful to the noble Lord, Lord Lingfield, for raising this question. It is a perennial problem facing our education system. Across all parties and groups there is a wish to solve it but so far there is not a lot of evidence that any of us have succeeded. The more we can focus on it, the better. I am grateful for the opportunity today to contribute.

I used to be an optimist about this. The noble Lord mentioned that boys’ attainment fell away in the 1980s. I remember that period well: it was when I was a secondary school teacher. I think what happened is that girls’ attainment improved while boys’ attainment stood still and that is when the gap started. In a strange way, I have always taken comfort from that fact. When I was Education Minister, we saw the performance of children from ethnic groups improve so that it overtook white children, who got left behind. I had seen that as optimistic, thinking that if we could do it for girls and ethnic groups we could do it for those boys, too. Until fairly recently, I thought that was probably the approach we ought to adopt, with focused targets on boys to try and replicate what happened in raising the attainment of other underachieving groups.

I have begun to change my mind on that, partly because we have a much stronger schools system than we had. We have better school leaders and better-quality teachers, yet we have not made that difference. It has not worked. Sitting around just saying, “Focus on boys and have another load of initiatives”, with £1 million spent here and there will not work. I am much more persuaded now—it is a more complex argument and a greater challenge to achieve—that the whole of the gender difference is wound up in the income difference. I take the phrase from the Social Mobility Commission, which says:

“The income gap is larger than either the ethnicity gap or the gender gap”.

I thought we could overcome that by focusing on boys but do not believe so any longer. The way we must go now to close the gap between girls and boys is to take on that big issue of the income gap. If we do that, we will raise standards everywhere and boys will rise with that.

I do not say that there is no issue with boys. This debate is about underachievement of boys in the state system but there is also underachievement of boys in the independent sector—I am not sure why they have been squeezed out of this debate—and from wealthy backgrounds. However, when you look at the nub of the problem, the hard edge is among poor boys. Whatever we do for poor boys would help other underachieving boys as well.

We could get drowned in statistics—I entirely agree with that—but I offer this set of statistics because they support my argument. Girls who do not get free school meals, so more affluent girls above the measure of poverty, are 107% more likely to gain five good GCSEs than free-school-meal girls. Boys who do not get free school meals are 135% more likely to gain five good GCSEs. So there is an issue about boys and girls.

If you look at the difference between free-school-meal boys and girls, it is only 33%. If you get even for poverty, the gender gap is 33%. If you plonk poverty back into the measure through free school meals, the gap is 107% for girls and 135% for boys. There must be a message in there that the gender gap is real but it is accentuated and made worse because, at its core, this is about poverty.

We must address the wider educational and inequality arguments and issues that face us. The most interesting set of statistics I found in the Library briefing on this—I could have sat for a week looking at all the statistics; they are fascinating and contradictory, which is one of the problems—is where gender gap by local area was looked at. We know that the largest gender gap is in St Helens, South Tyneside and Darlington. The lowest gender gaps are in Richmond upon Thames, Calderdale and North Somerset. I say no more. It is bound in with poverty. On the next page, one sees...
something interesting. The most deprived local authority in the country is Tower Hamlets, whose gender gap is 15%. That is too large, but it is only a percentage point away from the second-least deprived local authority in England, which is Rutland. My analysis of that is that Tower Hamlets has overall good standards. There has been good, solid school improvement. It is a high-achieving borough, even though it is an area of high deprivation.

Somewhere in that lies the answer. If you get school improvement right—you now know a lot about this, which we did not know years ago—you close these gaps. You close the poverty gap and you close the gender gap. My marker in trying to address this is that first we have to address poverty. That is not beyond the Minister’s brief, because it is not beyond anybody’s brief. If you address poverty, that will solve the gender gap. Secondly—and this is where I share my conclusion briefly. If you address poverty, that will solve the gender gap. Secondly—and this is where I share my conclusion with the noble Lord, Lord Lingfield—we need to look at the barriers that are caused by being poor. This is with the noble Lord, Lord Lingfield—we need to look at the barriers that are caused by being poor.

Secondly—and this is where I share my conclusion with the noble Lord, Lord Lingfield—we need to look at the barriers that are caused by being poor. This is with the noble Lord, Lord Lingfield—we need to look at the barriers that are caused by being poor. One high-attaining inner-city secondary school was working effectively with groups such as black Caribbean boys and Somali girls but had not attempted similar work with its lowest-attaining group: white British students eligible for free school meals. It is a fairly small survey, which highlighted only one otherwise successful school, but it is telling none the less.

Over 3 three million children are growing up in lone-parent households, about a million of whom have no meaningful contact with their fathers. Rates of lone parenthood are far higher among poor white and black groups than among Chinese, Indian and Bangladeshi populations. Research clearly shows that family breakdown is a risk factor for educational underachievement. Can the Minister explain how we are supporting families to prevent family breakdown? I draw the attention of noble Lords to my entry in the register of interests in quoting from the Centre for Social Justice’s 2013 report, Requires Improvement. In it, Sir Robin Bosher, director of primary education at the Harris Federation of academies, emphasises that 25 years as a head teacher has taught him that, “society must not underestimate the impact of family breakdown and the colossal effect a parent leaving home has on children”.

John d’Abbro OBE, who heads the outstanding-rated New Rush Hall School, argues that underlying almost all the exclusions that he sees is the issue of family breakdown. Boys are three times more likely to be excluded than girls, and many of the boys whom d’Abbro sees excluded grew up without fathers. A lack of discipline at home means that boys will test boundaries to the limit and beyond at school. US and UK research shows that, even if he is not spending a lot of time doing things with his son, a father’s presence is still a protective factor. We should not underestimate how hard it is for even the most dedicated single mothers to compensate for the psychological impact of a boy’s father not being there to encourage him, pull him up when necessary and show him love and care. The father gives a boy more reason to try harder, push himself and overcome: all vital for doing well at school, as is a father’s modelling of being able to provide for one’s family by linking effort and reward.

There are micro-communities in our country where three-quarters of households with children have no father living in the house. Male teachers are, therefore, even more vital in these local schools, as was highlighted by the noble Lord, Lord Lingfield. In 2012, however, one in four English primary schools had no full-time qualified male teacher and 80% of state-educated boys were in primary schools with three or fewer full-time qualified male teachers. In one low-income area—Lewisham, in London, which has well over twice the national average of lone-parent families—one-third of primary schools had no qualified full-time male teachers. Can the Minister update us on the number of male teachers today and tell us what is being done to increase their prevalence, especially where lone-parenthood rates are high?

Keeping fathers involved, even if they are separate from mothers, is vital. We have to start early: the last Labour Government passed legislation to ensure that all fathers’ names are on birth certificates in all but the most exceptional circumstances. This part of the Welfare Reform Act 2009 should be brought into force. Will the Minister inform us what is currently being done to improve the rates of active fatherhood?
2.22 pm

Lord Addington (LD): My Lords, I thank the noble Lord, Lord Lingfield, who—as we established in a debate here a couple of years ago—is a very distant kinsman of mine. I congratulate him on bringing this debate forward and on the way he did it. It is quite clear that this is a complicated problem and that a cocktail mix has led to this result: there is not just one answer. The more we look at it in that way, the closer we will get to finding some form of solution or a series of solutions to apply to this situation.

I am dyslexic. I am president of the British Dyslexic Association and I have other educational interests. I was first dragged towards this by something that I was told as a youth, which was that dyslexia is four times more common among males than among females. That would fit quite nicely into this debate, apart from the fact that all the work now says that it is not true. Most of the work that has been done states that it is as common. A study by Olson and DeFries at the University of Colorado looked at 400 pairs of twins and discovered that there was absolutely no variation.

A myth has been put to one side, so why do we start to have this change? It is quite clear from all the statistics that boys are being outperformed by girls. It is quite clear that there are variations through the social structure and income levels, so what is happening here? It is clearly some mix between the two. It was put to me that boys tend to have—whenever you make a statement here, there is always a general twist—better spatial awareness and spatial memory. The female of the species tends to be better at naming and locating types of memory. Different types of memory will work differently at acquiring reading.

My background in dyslexia tells me that when you have problems acquiring reading you have problems with the way we work within our school system. When we talk about reading and attainment in the school system, we are talking not about intelligence but about how we apply it. How do we get through that and make it work?

It is also clear that if you come from a background where you are expected to read, you will do it. The average male may not do it quite as naturally as the average female, but he will do it. A cocktail of events has clearly led to where we are now.

Some say that the problem comes from not having a father figure. I come from a broken home and I got to university, as did my brother. Indeed, the late Earl Russell, of great memory, used to point out that he came from a broken home. The fact that his father was Bertrand Russell may have altered the effect on him. There is not one single bullet here, there is not something that excludes you. However, it is clear that when schools have worked on bringing fathers into the system and said, “You will get involved, it is part of your role”, that helps.

Having more male teachers helps a little, but if the male teacher is not a figure who inspires you but is one who you try to avoid because he tries to give you work and makes your life difficult, that may make the situation slightly worse. We do not know how this works. That is the important thing, but we have to start addressing this, because the world of work, and access to it, is becoming increasingly tied into the idea of acquiring the ability to read to get through the education system.

Furthermore, and in contradiction to the way this debate was introduced, will the Minister say what, if any, work has been done on improving the identification of special educational needs within the classroom? Another problem is probably masked in these figures: the underdiagnosis of females with special educational needs. This underdiagnosis is very high, because males in the classroom tend to be more extrovert, their problems are seen and they are more trouble, while the female hides in the middle of the classroom. Those are both normal classroom survival techniques for those having problems. We are missing many of them: can we look at that? The problem may actually be bigger than these facts suggest if we take that into account. What are we doing to find the true facts, so that we can start to look at solutions?

The noble Lord, Lord Lingfield, has started—or rather, given impetus to—an important discussion here. It is incredibly important to identify what is going on: if we do not, we will underutilise our population and make the lives of the group that misses out slightly worse. Surely we should spend a little more time and energy on identifying the problem.

2.28 pm

Lord Suri (Con): My Lords, this is an important debate, especially now, as we have entered into the last few years of our membership of the EU. Creating an excellent education for all—academic or technical—is key to keeping Britain competitive in days to come. Our human capital is one of the greatest assets that commerce can nurture and safeguard, and the current situation for boys is simply not good enough. I am glad of the widespread realisation that the demise of technical education was an error. My tireless noble friend Lord Baker and his university technical colleges have gone some way towards stemming that decline, on which I congratulate him.

I pay tribute to the noble Lord, Lord Lingfield, for his work in ensuring that many more schools can have greater autonomy. I have always advocated the devolution of spending when it is reasonable to think that funds can be spent more effectively. On average, poor boys start school with a basic literacy level 15 points behind their female counterparts. The gap narrows to 10 points for wealthier households. This figure represents a significant and unnecessary loss of talent. This deficit can dog young men for the rest of their educational careers and have obvious negative impacts on their real careers and prospects.

The solution is not targeted support for boys but a better scheme to bring good educational reforms to parts of the country that have been left behind. Teach First has been an excellent initiative, and bringing more young and highly motivated people into the workforce to become positive role models and great teachers is an excellent idea.

The real change will come from a fairer school funding formula. It is time for funding to shift away from schools with high results and falling percentages.
of pupils on free school meals. It should move to schools in serious decline and need. London has been a real success story, and higher funding has undoubtedly helped, but London’s schools are now on the whole some of the best performing in the country, while free school meals have dropped by some 10 points. Support has worked, but some schools must be gradually moved off higher funding when there are others that are plainly more deserving. This will be politically painful, as redistribution always is, but it is absolutely necessary to our future.

Real attention must also be shown to former industrial towns, such as Rotherham and Wigan. The former Member for Stoke-on-Trent Central referred to his constituency as a place, “without a culture of formal education”. That kind of attitude could be allowed to slide in a town where jobs for life could be found in a local factory, but the decline in manufacturing has been disproportionately hard on young men. There still exists a skills gap, especially in engineering and other technical subjects. The answer is to make technical education an attractive prospect and to remove the stigma attached to it. Primarily, this can come through greater investment in such subjects, across all schools, and not just restricted to specialist schools.

2.33 pm

Baroness Bloomfield of Hinton Waldrist (Con): I, too, am grateful to my noble friend Lord Lingfield for introducing this important debate and to all noble Lords for allowing me to speak briefly in this gap.

My knowledge of this area comes from five years’ teaching boys and young men basic literacy skills in a young offender institution as part of a voluntary one-to-one teaching scheme. Not many children who leave education without educational attainment, let alone qualifications, will pursue a life leading to a custodial sentence, but it is true that many boys in young offender institutions have little functional literacy or, indeed, numeracy skills. This represents a real cost to society, not to mention untold misery for victims, their families and indeed the boys themselves.

Over five years, I taught a number of boys individually, which is, perhaps, the only way of making real progress in the prison environment. Of course, from my point of view, teaching was made immeasurably easier once issues of crowd control were removed. It was voluntary on both sides. Many had been labelled dyslexic, although I rarely saw any evidence of this and, using synthetic phonics and various online programmes, most made rapid progress. Almost without exception, they wanted to learn—but privately, away from mocking eyes of some of their peers, as though learning were something shameful. Almost universally, their lack of attainment in mainstream school could be attributed to truancy from an early age together with a lack of discipline at home. It is true that many admitted—almost all, in my experience—to having no resident father, and the person to whom the boys afforded the most respect was their nan or grandmother.

We should ponder not only why boys underperform girls but how to encourage boys at the earliest stage in their education that learning is useful, fun and will afford skills that will enable them to lead more fulfilling lives than they would do otherwise. Surely, the most significant factor in that would be the quality of teaching staff and the teaching staff’s training. I know that noble Lords will agree that the quality of teachers and their training has been improved through initiatives such as Teach First.

Even more can be achieved for boys in other ways, perhaps through engagement with sport and the valuable lesson that it gives beyond the skills of the game. I am also aware of various mentoring schemes in London boroughs for boys who lack encouragement at home. Some of these younger mentors have provided valuable role models. One of the most humbling lessons that I learnt in my time behind their bars was how much these supposedly tough young men valued someone—anyone—taking time with them individually, teaching them a skill that they were ashamed not to have mastered already and then showing a real, personal and non-judgmental interest in their progress.

2.36 pm

Lord Storey (LD): My Lords, I, too, am grateful to the noble Lord, Lord Lingfield, for initiating this debate and I particularly thank the House of Lords Library, the Sutton Trust and Teach First for sending briefings.

It is clear from all the research carried out that there is a real and continuing problem with the educational attainment of boys at state schools, particularly boys from disadvantaged backgrounds. My noble friend Lord Addington rightly said that there is no one silver bullet that will deal with the problem, but consideration of and action on a series of interventions, policies and practices may help.

Sometimes, we learn from our own experiences. I was head teacher of two primary schools, both in deprived communities. My last school was in Halewood, which was a white working-class community. It was a large primary school of 600 pupils. In a sense, we threw everything at those pupils to get them up to a good level of literacy and numeracy. Thanks to our success, our results in literacy and numeracy were above the national average, and we celebrated that fact, as did the five Ofsted inspections we had while I was there. But it used to always concern me that when my pupils left to go to a whole plethora of secondary schools, their results declined dramatically, and I never understood why.

I was interested in researching for this debate to come across Sutton Trust information which said among the various facts and figures that every year there are high-achieving boys at primary school—pupils scoring in the top 10% nationally in their key stage 2 tests—who five years later receive a set of GCSE results that place them outside the top 25% of pupils. How is that, with all the work carried out at primary level?

I can also tell noble Lords that a third of my staff were male teachers, and two were from ethnic backgrounds.

All that work is carried out at primary school. Two weeks ago I visited a primary school near Preston—I will not name the school—which is in a very deprived community. It is an oasis. It has a children’s centre
linked to it and early years provision, all through a school purposefully built by the local authority. I was really impressed. Ofsted rated it outstanding. It is an outstanding school in a desperately deprived community. I said to the head, “What happens to the pupils?”, and he reiterated what I just said: “Actually, sadly, they do not do as well in secondary education”.

So what is going on? I do not know the answer. I hear the noble Baroness, Lady Morris, talk about poverty: I hear people talk about the importance of the home—of course, the home and poverty are important; of course, having role models is important. But we cannot sit around and wait for those things to happen; we have to do something now. There is no time to wait around for role models to become available if families are to get immediately out of the poverty trap. We need a plan of action to make sure that we succeed.

Early years provision is of course vital. It should not be about a national childminding service; there need to be trained staff who create stimulating, challenging learning environments and know the importance of learning through play. It is important that we develop those policies and strategies. Here is my starter for 10—I am suddenly conscious that I was rambling at the beginning and lost time. We need to use high-quality information about pupils’ current capabilities to select the best steps for their education and teaching. We need to use high-quality structured interventions to help pupils who are struggling with literacy. We need more highly qualified teachers—I do not think this has been mentioned—to teach in deprived schools. I am again indebted to the Sutton Trust research, which has shown that teachers in advantaged schools are more experienced than those in deprived schools. We should perhaps have our most experienced teachers in deprived schools. The research found that financial incentives and more time for lesson preparation would attract those experienced teachers to teach in deprived schools.

Let us implement targeted attainment improvement programmes. Let us continue to look at using the pupil premium. We must make better use of teaching assistants, who are a valuable resource to primary and secondary schools, and adopt evidence-based interventions to support teaching assistants in their small-group and one-to-one sessions. We need peer tutoring, one-to-one tuition, collaborative learning and effective setting of homework. I am sure that if we have a plan of action, we can turn things round.

2.42 pm

Lord Watson of Invergowrie (Lab): My Lords, the noble Lord, Lord Lingfield, has done us all a favour in opening up this important matter for debate. I listened to him with interest. His concluding remark that we need more objective research on this matter is true. There is a plethora of research and all noble Lords have been given a considerable amount of backing material for this debate, but there are still areas that would benefit from further research.

The debate highlights a real and entrenched sociological conundrum: why do girls consistently outperform boys in educational achievement? I might in passing ask why men nevertheless overtake women in the workplace in both levels of pay and getting the top jobs, but that is a debate for another day.

Boys in England are nearly twice as likely as girls to fall behind in early language and communication. Despite a dramatic improvement in overall results over a period of more than 10 years, the gender gap has hardly changed for five-year-olds. Research by Save the Children, which noble Lords will have seen, shows that while there has been a 20% improvement in overall attainment in state schools and an 8% reduction in the poverty gap since 2006, there has been a reduction of just 1% in the gender gap in educational attainment. As recently as 2015, boys accounted for 51% of children who started primary school in the state sector but for 66% of those who were behind in their early language and communication. The pattern is the same across all ethnic groupings.

I am not sure whether the announcement earlier today that the Government are about to end SATs tests for seven-year-olds has relevance to this debate, but at key stage 2—that is, 11-year-olds—girls who are eligible for free school meals outperform boys eligible for free school meals by a greater margin than those not eligible for free school meals. I agree with the point made by my noble friend Lady Morris about poverty being a determinate factor—that is undoubtedly the case—and it was interesting that noble Lords each identified a different subject. The noble Lord, Lord Farmer, talked of the lack of role models.

The noble Lord, Lord Addington, said there is no one answer, and of course that is right. A number of aspects contribute to this. There is no obvious reason for the general disparity between boys and girls, but a recent study by the University of Bristol showed how big an impact the gender gap in the early years foundation stage has on boys’ primary school attainment. That is not a silver bullet, but it is the area I want to concentrate on. Two-thirds of the total gender gap in reading at key stage 2 can be attributed to the fact that boys begin school with poorer language and attention skills than girls.

That is just one piece of research, but the evidence from a wide range of studies over recent years clearly points to high-quality early childhood education and care provision being the most powerful protection against the risk of falling behind, especially for boys. This is, of course, the case in respect of all children, but especially so with children from disadvantaged backgrounds. The Government say they want to improve social mobility. I do not doubt their good intentions, particularly as regards apprenticeships, but I have regularly criticised their recently discovered priority of grammar expansion, for which they have managed to find pots of money at a time when comprehensive schools are in a real funding crisis. There is no evidence to show that grammar schools have a positive impact on social mobility. If social mobility is to become a reality, the resources made available to it must be targeted first, second and third at early years provision because that is where it really can have a meaningful and lasting effect.

Yet since 2010 more than 400 of the Sure Start centres championed by the Labour Government have closed. In July 2015, the then Childcare Minister
announced that the Government would be launching an open consultation on children’s centres that autumn. It never happened. Does the Department for Education still intend to proceed with that consultation? It is not only overdue but very necessary.

The Government really need to grasp the fact that they must invest in the best early education and childcare provision, particularly in the most deprived areas, led by graduates and supported by skilled staff at all levels. That would be showing a commitment to children who are falling behind by providing them with the chance they deserve of a fulfilling—in all definitions of that word—early years experience, one that supports their development and increases their chances of a full and successful adult life.

A well-qualified early years workforce is vital if young children are to have the support they need to thrive and enjoy success in school and then in later life. The entire workforce is important. Better-qualified early years practitioners deliver higher-quality care, which means better outcomes for children. The Government need to recognise the importance of continual investment in improved professional development for those working in early years, in their status and in the progression routes for staff at all levels. There is also a need to take steps to increase the number of 0-5 early years teachers and those with equivalent graduate qualifications in the workforce. Evidence shows they deliver significant improvements across all aspects of provision and are linked to better Ofsted ratings and higher-quality early years teaching. Studies show that the difference in the quality of provision between nurseries in the most and least deprived areas is almost completely wiped out if a graduate is present, yet the 2015 early years census found that less than half of private, voluntary and independent early years providers that offered free childcare had staff with EYT status working with three and four year-olds. That is not a loophole. It is a gaping hole, and urgent action must be taken to begin to fill it.

I shall finish with a quote from the Save the Children report that I mentioned earlier, “we cannot wait for disadvantaged children and boys to get to school before they receive the support they need, by which time they may already have fallen behind”, with negative consequences for their childhoods, school attainment and life chances. We must invest in the best early years provision, led by early years teachers and supported by skilled staff at all levels, particularly in the most deprived areas. Minister, please take note.

2.48 pm

Viscount Younger of Leckie (Con): My Lords, this has been a short but fascinating debate, and I thank my noble friend Lord Lingfield for raising this important and complex issue. I shall start by setting out what we know about the issues affecting boys’ performance at school and describing the measures that we are putting in place to address many of the problems.

We have known for decades that boys develop at a different rate from girls and that there are certain areas of the curriculum, such as English, in which girls tend to outperform boys, but it is only in recent years that a pervasive gender attainment gap has begun to open up in state schools in England, with girls now outperforming boys at all educational stages and in most curriculum subjects. The gap opens early and persists—indeed widens—through school. Let me give some statistics. Last year, 75.4% of five year-old girls achieved the expected levels for all the early learning goals, compared with 59.7% of boys. As my noble friend Lord Lingfield said, at the end of primary school, 50% of boys—I think that he said 49%—and 57% of girls achieved the expected standard in reading, writing and maths. By the end of secondary school, girls outperformed boys across all the GCSE headline measures. I could give more statistics that confirm this pattern.

As a result, it is not surprising that boys are less likely to go on to further study at 16 or to apply to university, but let us look at the reasons why. What is clear is that the early years are critical. The noble Lord, Lord Watson, raised the issue of research, which highlights stark differences in early cognitive and social development. Girls start school with more advanced social and behavioural skills and, for example, more well-developed language and attention skills, which have been shown to account for two-thirds of the gender gap in reading observed at age 11. While girls outperform boys across all major ethnic groups, there is considerable variation. Boys from particular ethnic backgrounds, including Chinese and Indian, do much better than others, notably white British and black Caribbean boys.

As the noble Lord, Lord Addington, said, boys are much more likely than girls to be identified as having special educational needs, although he also said that the underdiagnosis of SEN among girls may also be an issue. There is a much higher incidence among boys of social, emotional and mental health needs, speech, language and communications needs and autistic spectrum disorder. Boys are much more likely than girls to be temporarily or permanently excluded from school, yet it is not clear from research evidence whether negative behaviour in school is a cause of poorer academic attainment or one of its consequences. Similarly, there is a lack of good research into how educational outcomes are affected by family structures and, in particular, the absence of a male role model. One recent study found that families with single mothers are associated with greater gender gaps in children’s non-cognitive skills, but it did not look at academic attainment.

My noble friend Lord Farmer asked what was being done to improve the rates of active fatherhood and how we are supporting families to prevent family breakdown. There can be no doubt that parental conflict causes heartache and damages children’s upbringing, potentially harming their opportunities well into the future. We now understand more about the mechanism through which children’s outcomes are affected by parental conflict and that it impacts directly on children’s well-being, as well as getting in the way of good parenting. We must make reducing conflict between parents our priority, regardless of whether they are together or separated. That means making support to reduce parental conflict a part of local provision. To achieve that, we will continue to work with local authorities to help them to embed this work into local services.
We understand the importance of both mothers and fathers to children's future outcomes, regardless of whether couples are together or separated, but we often hear by services are less likely to identify men as parents and to consider them as having responsibilities to their children. We are ensuring that both mothers and fathers are supported through our parental conflict work and will look at whether more can be done to ensure that services recognise fathers and help them to play a full and active role in their children's lives.

International studies suggest that boys and girls differ in their behaviour and attitudes towards school and academic study. Girls are more likely to use self-regulation strategies, to do their homework and to respond to school work more positively. Noble Lords may agree that this is a rather obvious conclusion. However, the impact of school factors on the gender attainment gap is not obvious. There is some research that shows no conclusive link between the size of the gap and overall school performance. However, we know that schools with little or no gap have a positive effect on boys' and girls' performance. We are committed to tackling educational underachievement wherever it exists, not by targeting specific pupil groups but by setting high expectations for all pupils and building a self-improving school system offering world-class education to every pupil. I begin with the early years—which are so important, as the noble Lord, Lord Watson, said. Every three year-old is entitled to 15 hours per week of free early education. Numbers of qualified staff and graduates in the early years workforce are rising, and we have introduced early years teachers, who must meet the same entry qualification requirements as teachers of older children. At primary school, we have introduced a stretching national curriculum with higher standards in English and maths so that all pupils secure the basics in literacy and numeracy by age 11. At secondary school, through the English baccalaureate, we have set a strong expectation that all pupils will receive a rigorous academic education that prepares them for further study and employment.

Beyond the core curriculum, we want to ensure that all pupils can develop essential life skills—qualities such as resilience, perseverance and self-control. We actively encourage schools to develop these qualities in their pupils through activities such as team sports, volunteering, arts, drama and cadet training. I am mindful of the anecdote that my noble friend Lord Lingfield mentioned at the beginning of his speech.

Our vision for a self-improving schools system is fast becoming a reality. The growing network of teaching schools and multi-academy trusts ensures that schools can collaborate and be supported to raise standards. We are working hard to create a sustainable pipeline of high-quality head teachers and school leaders, and have put in place reforms to improve teaching quality at all levels. My noble friend Lady Bloomfield highlighted the importance of good teachers and Teach First. I also acknowledge the point made by the noble Lord, Lord Storey, about the need for more experienced teachers in deprived schools. He is, of course, quite right.

However, while there are now nearly 1.8 million more pupils in good or outstanding schools than in 2010, there are still a million pupils in schools which are inadequate or require improvement. A good school place remains out of reach for too many, particularly those from less well-off families. The ban in place since 1998 on opening new selective schools makes it harder to create good school places and limits access to the most stretching academic education to those who can afford to move near to existing grammar schools or pay for independent schooling. That is why we propose to scrap the ban on new grammar schools and allow them to open where parents want them, with strict conditions to make sure they improve standards in local schools and beyond. However, recognising that highly academic routes are not for everyone, we are also reforming technical education, offering training for highly skilled occupational areas such as engineering and manufacturing, health, science, construction and digital. We continue to develop the increasingly popular apprenticeships route, with which noble Lords will be familiar, through a strong partnership between government and industry, equipping young people with the skills that employers need to grow.

I am fast running out of time. A very important point was raised by the noble Baroness, Lady Morris, on the link with poverty. If I had more time, I would speak about that. I shall write to her and copy in all noble Lords who took part in the debate, because there is a link and some very important messages there which we are aware of and need and seek to address.
To conclude, as my noble friend Lord Lingfield said so eloquently, this is a complex topic. I think that all noble Lords recognised that there are no quick fixes, yet the far-reaching reforms of education set in train by this Government, covering the early years right through to higher education, are equipping schools with the tools to tackle these entrenched issues. I passionately believe in the transformative power of high-quality education, that that is a right for all and that strong leaders in good schools are in a unique position to make it happen. Above all, and as noble Lords said, there is undoubtedly more work to be done to tackle these issues. The focus of the Secretary of State for Education must be and is on the 1 million boys and girls stuck in underperforming schools and how to ensure that each one is able to reach their potential. Only then can her and the Prime Minister’s unerring focus on improved social mobility truly become a reality.

Organization for Security and Co-operation in Europe
Question for Short Debate

3.01 pm

As asked by Lord Bowness

To ask Her Majesty’s Government what assessment they have made of the future role of the Organisation for Security and Co-operation in Europe, in the light of the continued conflict in the east of Ukraine and the annexation of Crimea by the Russian Federation.

Lord Bowness (Con): My Lords, I declare at the outset that I have the privilege of leading the UK delegation to the OSCE Parliamentary Assembly and am a vice-president of that Assembly. The noble Lord, Lord Dubs, the noble Baroness, Lady Hilton of Eggardon, and 10 other colleagues from the other place are members of the delegation.

In 2012, in Questions for Short Debate about Her Majesty’s Government’s view of the role of the OSCE and, in November 2013, about their hopes and priorities for the Helsinki+40 process, I raised the whole question of the OSCE. I ask this further question as circumstances have changed and because there is, even in Parliament, a lack of awareness of the OSCE, what it does and the complex and varied issues with which it is concerned in some of the most troubled parts of its region.

It is difficult to get attention. I failed abysmally with even our own The House magazine, and in two long debates in your Lordships’ House on the UK’s international relations post-Brexit and our future engagement with the UN and US, I could not find a single reference to the OSCE. I know that the Minister, the noble Lord, Lord Collins of Highbury, and the noble Lord, Lord Wallace, who as a Minister had the misfortune to reply to my two previous Questions, are well aware of the activities of the OSCE. For the record, though, I would like to state that the OSCE region comprises 57 states stretching from the United States and Canada in the west to Mongolia in the East. The chairmanship rotates among the participating states, currently Austria, and the meetings are chaired by that country’s Foreign Minister. There are also relationships with other Asian and Mediterranean partners not within the organisation itself.

The Permanent Council, comprising the ambassadors of the participating states, meets weekly in Vienna, as does the Forum for Security Co-operation. There are three major institutions: the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, and the Representative on Freedom of the Media. The annual report of 2015—the 2016 report is not yet available—listed 17 field missions or operations including four in the western Balkans, one in Ukraine with a special monitoring mission alongside the observer mission at Russian checkpoints, and another seven in the Caucasus and Eurasia. All these missions or project offices deal with a wide variety of issues: anti-terrorism, anti-trafficking of people measures, building democratic institutions, training police and judiciary, human rights and much more. Within the secretariat, the conflict prevention centre is the link with the field missions charged with early warning of potential conflicts in any participating state.

At the Dublin ministerial in December 2012, there was much optimism. The then chairman-in-office from Ireland spoke of setting out a clear path from then until 2015 for work that would significantly strengthen the organisation. That enthusiasm was shared by the then UK Foreign Secretary, now the noble Lord, Lord Hague of Richmond, when he said that a key outcome of the 2012 Ministerial Council was an, “agreement on a new initiative designed to inject a fresh dynamic into the OSCE as we approach the 40th anniversary”. In 2015 the OSCE did indeed mark 40 years of the Helsinki accord, which was drawn up to establish a new security order for the region and agreed standards governing not only relations between states but the treatment of states by their own people. Sadly, by then those agreed standards, which had already been weakened by events in Georgia, were shattered by the Russian annexation of Crimea and support for separatist movements in east Ukraine. Moreover, there is no sign that the Russian Federation is going to change its approach to Ukraine despite the sanctions, and the situation is in danger of joining the other frozen conflicts in Georgia, Nagorno-Karabakh, Moldova and Transnistria. In all these cases the Russian Federation is an essential part of any solution.

The need for consensus in OSCE severely restricts the organisation’s ability to act. In the very short term it could find four major posts falling vacant. The Secretary-General is retiring, as is the director of the Office for Democratic Institutions and Human Rights. There is no High Commissioner for National Minorities, in that there has been no agreement on either appointment or replacement. The mandate for the Representative on the Freedom of the Media expires this month. There are problems with extending the mandate for the mission in Armenia, and the mandate for the mission in Tajikistan expires in June. Further, there is no budget for 2017. In the light of President Trump’s remarks about “America first” and the funding of the UN, does the Foreign and Commonwealth Office have
confirmation that the United States, which is the largest contributor followed by the United Kingdom, is going to continue its support for the organisation? In our new global future outside the European Union, are we prepared to make sure that the OSCE has the resources to operate?

The organisation experiences practical difficulties due to its lack of legal personality. How do Her Majesty’s Government see these issues developing in the situations in Ukraine? Are there steps that we as the United Kingdom could take, especially given the importance of the City to the Russian Federation? Questions remain unanswered about the extension of the special monitoring mission in Ukraine and the possibility of a much-discussed police mission. Do we acknowledge that our zero-increase policy towards the budget may have to be revised? While we all favour the possibility of a much-discussed police mission. Do we as the United Kingdom could take, especially given the situation in Ukraine? Are there further steps that we the Majesty’s Government see these issues developing in

In replying to the debate in 2012, the then Minister, the noble Lord, Lord Wallace of Saltaire, referred to our funding of 48 national secondees and contracted staff. Can the Minister tell us what our present contribution to the organisation is in that area? The western Balkans, a region that the UK has historically backed for a future within the European Union, gives cause for concern. The alleged coup in Montenegro, political instability in other states, and the somewhat ambiguous position taken by Serbia towards Kosovo and its links with Russia are all matters of concern. Our decision to leave the European Union has been a disappointment not only to many of us but to those countries, and while the Prime Minister has assured us that we will continue with our involvement, important and specific work is being done by the OSCE, so an assurance of backing for this work, if necessary with resources, would be welcome.

Lastly, perhaps I may say a word about the Parliamentary Assembly. In January 2012, the noble Lord, Lord Wallace of Saltaire, said:

“We regret that there is on occasion a degree of rivalry between the Parliamentary Assembly and the OSCE’s secretariat as such and we would very much like to see the Parliamentary Assembly and the OSCE secretariat working more closely together” — [Official Report, 16/1/12; col. 422.]

Since January 2016, when Mr Roberto Montella assumed the office of Secretary-General, there has been a dramatic and welcome change, not only in the relations between the Parliamentary Assembly and the secretariat but between the Assembly and the institutions of OSCE, particularly the Office for Democratic Institutions and Human Rights. Members from different delegations pay tribute to Mr Montella in helping to bring about this change.

I thank the UK permanent representative, Sian MacLeod, who is also playing an important part not only as the chair of the Human Dimension Committee this year but in bringing members of the Permanent Council and the Parliamentary Assembly together. The Parliamentary Assembly is considering ways in which it can support—not, I emphasise, control—and remained informed about the work of the institutions and field missions, and build a long-term relationship with them, to the advantage of both. Members of the Assembly are committed to playing a role in trying to encourage dialogue and increase understanding. Immediately after the attempted coup, as a gesture of support, current President Muttenen took a small group to Turkey’s elected Government to stress the need to maintain all the democratic norms and rule of law in the face of such provocation.

Members from different delegations have had discussions with representatives of Uzbekistan to encourage them to renew participation in the Assembly and OSCE, which appears to have been successful, at least in regard to the Assembly. The Assembly is meeting in Belarus, which, despite some current problems, will present a further opportunity for contact and dialogue. I hope the Minister will feel able to give encouragement to this parliamentary diplomacy, which many in the Assembly believe is an important part of our role in addition to, not instead of, the important election-monitoring activity. In connection with that, I must pay tribute to the noble Baroness, Lady Hilton of Eggardon, although she is not here this afternoon, for her record in undertaking so many of these monitoring missions over so many years.

I look forward to the contributions from other noble Lords and the Minister’s response.

3.11 pm

Lord Giddens (Lab): My Lords, I congratulate the noble Lord on securing this debate and introducing it so ably. It is pity that there seem to be as many chiefs as Indians speaking in it; I seem to be the only speaker who has no direct connection to the organisation. I speak mainly as someone who has worked a lot on India’s speaking in it; I seem to be the only speaker

“Thedy” —

the Russians—

“are using this girl as a live bomb in the propagandistic hybrid war against Ukraine”.

The Russian view, of course, is diametrically opposed, as is their attitude towards Jamala, the Ukrainian singer who won the contest last year, with a song about the deportation of the Tatars from Crimea by the Soviet Government in 1944. Like the OSCE, the song contest, which involves 43 participating states, is based on inclusiveness and consensus.

The OSCE was created during the Cold War but got what seemed like a whole new life with the collapse of the Soviet Union. The Paris charter of November 1990 spoke of the coming of, “a new era of democracy, peace and unity”.

which the OSCE would play a fundamental role in preserving. The ideological backdrop to this was captured by the then-celebrated work of the American political
scientist, Francis Fukuyama, with his announcement of ‘the end of history’. History very soon reasserted itself in the failure of West and East to agree a new security architecture for the European continent.

I consider this to be the structural backdrop to the stresses and strains that we see at the moment. A market economy failed to materialise in Russia while democratic reform remains stunted. The OSCE was marginalised while the western states remain locked into NATO, from which Russia was excluded. The common security space that the Russians have advocated never saw the light of day. Its last gasp was the blunt rejection of the Medvedev plan, originally put forward in 2008. I remember asking a Starred Question about it, and the Minister at the time gave a really dismissive reply.

The OSCE became increasingly seen by the Russians as driven by the aim to create regime change, while its civil rights missions were interpreted as attempts to infringe on Russian sovereignty. The Russian leadership also felt betrayed by NATO’s role in Libya, as it went well beyond the stated aims of the UN resolution that Russia had reluctantly, under pressure, endorsed.

The OSCE looked to be going nowhere, but it has been propelled back to the forefront precisely by the Ukraine crisis. The current chair, Austria, has inevitably made defusing that crisis one of its main priorities. Its capabilities to do so are self-evidently limited because of the need for consensus and the lack of legal personality, thus the Minsk 2 agreement—or a version of it—was implemented by members of the Normandy format, the Government in Kiev and representatives of separatist groups plus the Trilateral Contact Group on Ukraine. The OSCE is part of that latter group and was important in its overall monitoring role. Nevertheless, it is a collaborative organisation in a world seemingly once again becoming disturbingly geopolitical.

There are new challenges for President Putin inside Russia with the recent surge of street demonstrations. The response so far from the authorities has been straightforward repression and the arrest of its most prominent figure, Alexei Navalny. As the noble Lord said, President Trump’s likely policies with regard to NATO are, to put it mildly, still unclear, as is the real meaning of the friendly overtures that he made towards Russia in his campaign. He has virtually no experience of international politics. Russian hackers almost certainly intervened in the American election, and Russia is both cultivating populist leaders in Europe and being cultivated by them. The stand-off between Russia and Ukraine is a frozen conflict that could become very dangerous. This is a period of world history that could become deeply unstable.

In the past, the OSCE has been variously described as a toothless tiger, a sleeping beauty or a wining and dining club for diplomats. However, its role in the current conflict has been crucial, so I have two questions for the Minister. Does she agree that lessons learned from the experience of the special monitoring mission to Ukraine could potentially open up a new role for OSCE in other conflicts? Does she also agree that this is a time when, as a country, we must actively seek to defend and sustain multilateralism? This is, after all, by far the most interdependent world ever.
in the minds even of those who know about Eastern Europe. While the loss of Crimea hit most of us, I am not sure how much the daily fighting in Ukraine really matters to British people. I was surprised that last week’s defence debate, which dealt considerably with our Armed Forces’ capability, barely touched on security in Europe or the situation in the Balkans or Ukraine.

Our sub-committee took evidence on the OSCE, especially from Dr Tom Casier of Kent University, who felt that it lacked legitimacy and had been ineffective as a security mechanism. Both he and Vladimir Chizhov, the Russian ambassador to the EU, said that there should be a new security architecture which included Russia and NATO and OSCE members. We recommended, “a serious dialogue on issues of shared interest”, building on a range of agreements, cultural exchanges and common spaces between the EU and Russia. The OSCE conference in Rome in March last year called for a much stronger, more strategic EU-OSCE partnership.

In the sub-committee, we recognised that Russian perceptions of NATO as a security threat had to be acknowledged, while also challenged. We have to try harder to understand Russian fears of EU and NATO expansion. EU enlargement may be on hold, post-Trump and post-Brexit, with Brussels talking more of multitrack solution, as already applied to Romania and Bulgaria, but hearts and minds are still being won, and western influence in Ukraine presents a problem for President Putin. NATO ensures that Russian military expansion has been contained although, unsurprisingly, OSCE members have been unable to implement the Minsk 2 agreement, and dirty tricks continue.

In Crimea, all opposition to Russia by Tatar leaders and Ukrainian activists has been cruelly put down. Direct political interference continues all over the Balkans. Serbia’s continuing claim to northern Kosovo is undoubtedly backed by Russia. I could see examples of this on the bridge at Mitrovica and the other business with the train plastered with slogans saying, “Kosovo is Serbian”. How can Serbia be allowed to continue on a path to EU membership if it behaves like this?

My forebear, Samuel Morton Peto, built the first-ever railway in battle from Sebastopol to the front line. Of course, as a European, I do not feel that I am on any front line or have any claims on Crimea, except to wish that its people will gain more freedom from the Russian torments that they have suffered over many years. I hope that, in future, we can hold a much fuller debate on relations with Russia, because discussion of the OSCE undoubtedly raises much wider questions, including our own future post-Brexit foreign policy in the region.

3.25 pm

Lord Dubs (Lab): My Lords, I congratulate the noble Lord, Lord Bowness, on having secured this debate, and perhaps even more importantly, on the very positive role that he has taken as leader of the British delegation to the OSCE Parliamentary Assembly. He and I have discussed on numerous occasions the work of the assembly and the OSCE in the wider sense. There are, of course, a number of issues on which reform is desirable, and I know that the noble Lord is battling hard to achieve those reforms, so I am delighted to be part of his delegation and I salute him on the work that he has been doing.

I have been a member of the parliamentary assembly for several years. Last year, we saw Roberto Montella become the new Secretary-General, which was desirable. We also have a brilliant British ambassador to the OSCE in Vienna, Ambassador Sian MacLeod. We had dinner with her in a restaurant in Vienna and an excellent briefing from her and her staff, and that was very positive and helpful.

One of the most useful things that the parliamentary assembly does is election monitoring. That is not because we uncover all sorts of scandals; it is because the countries that are having elections and know that we are coming take care not to do anything that we might pick up as being a breach of proper electoral behaviour. Of course, one occasionally sees administrative inefficiencies—I saw some myself—but we keep the system clean. People ask why the OSCE monitors British and American elections. The answer is that if we monitor elections in Russia and in some other countries that have more dubious democratic credentials, they will say that we cannot monitor just them; we have to monitor here as well. There have been monitoring missions to our elections—of course, we cannot take part in monitoring in our own country; but it is a positive part of the work.

I noticed that some countries attach great importance to the work of the parliamentary assembly. I cannot speak so much for the OSCE, but it is interesting that there was a resolution criticising one of the Stans—I cannot remember which one—and we immediately had the ambassador on our doorstep demanding to see us and demanding that we vote against the resolution. I pointed out to him that the only time we ever saw people from his country was when there was a resolution down for an OSCE plenary. Why did he not show more interest in us at other times? That fell on somewhat deaf ears; I had better not mention him.

It is, however, clear that some countries attach more importance to their delegations to the assembly than perhaps we do, as evidenced by the fact that too many representatives at the parliamentary assembly seem to confine their speeches to government handouts. Perhaps our Government would like that: no, I am sure that they would not. We, in fact, are pretty free-thinking, and although we get briefings from Ministers here before we set out, and the Foreign Office gives us written briefing, we do our own thing as seems right. It is somewhat depressing that some countries feel that their only job there is to make political speeches on behalf of their Government. On one occasion, I said something that was slightly critical of the British Government—I am sure that Ministers would accept that—and somebody came up to me and asked for my speech. I said, “I haven’t got a speech; I have five words on a bit of paper, because that tends to be the way we do things, as opposed to these handouts”.

Having taken the tragic step of leaving the EU, we will need more international links in the future. Whatever criticisms we might therefore make of the OSCE, subject to the reforms which I hope the noble Lord, Lord Bowness, will achieve in the near future, it is still...
clear that we will need those international links. Whatever the weaknesses of the OSCE and the debates there, at the very least it gives us international context, the chance to have debates and, on the fringes of the conference, the chance to have chats with politicians from other countries. That is pretty positive.

A lot of time in the parliamentary assembly has been taken by specific discussions about Ukraine and the Crimea, and Russian action there. The parliamentary assembly has given us some chance to contrast the way in which the Russians went into the Crimea and had a quick referendum, as they called it, without any of the objective context which we, for example, had in Scotland for its referendum or indeed in Northern Ireland. I say to those people: just have a look at Scotland. We had several years of debate and there was an even-handed approach. There had to be even access to the media on both sides. There was no army there telling the people how to vote. At the end of that time, the people of Scotland decided they did not wish to leave the United Kingdom. Contrast that with what happened in the Crimea.

In the excellent Library briefing pack, I see that there is a letter dated 15 March and headed “Statement by the Delegation of the Russian Federation”. It says: “The multi-ethnic population of Crimea took the corresponding decisions”—to join Russia—“by a huge majority in a free and fair expression of its will. The status of the Republic of Crimea and the city of Sevastopol as constituent entities of the Russian Federation is not open to reconsideration or discussion. Crimea is and will remain Russian. This is a fact that our partners will have to come to terms with. This position is based on and fully complies with international law”.

Well, we know what we think about that stuff. It seems to be wrong in every respect. I say to the Russians: have a look at the way we decide things in the United Kingdom—for example in Scotland, where an important decision was done fairly and democratically.

Briefly, I am a member of the migration committee of the OSCE, which does some quite useful work in looking at refugees and other issues. I am also a member of the Moldova committee, which is more difficult these days.

There is a disconnect between the OSCE and the parliamentary assembly. I would like that assembly—I know that the noble Lord, Lord Bowness, would like this, too—to get closer to the day-to-day work of the OSCE. When visiting a country, I sometimes suddenly realise that there is an effective OSCE mission there. But the parliamentary assembly is not able, so far, to engage with that as fully as we would like. I know that changes are on the way. A final thought: as far as I know, no country of the 57 in the OSCE still has the death penalty, with two exceptions: the United States and Belarus. Our next plenary will be in Minsk in July and we will have to tell them a thing or two about the death penalty.

3.33 pm

Lord Wallace of Saltaire (LD): My Lords, it was very kind of the noble Lord, Lord Bowness, to remind me of past speeches. I should declare a couple of interests: I am a member of the European Leadership Network and I am very sorry that the note from Ms Shetty came round so late today. Nevertheless, I hope your Lordships find it useful. I was also the British secretary of the British-Soviet Round Table from 1979 to 1989. When it was launched, it was a very difficult process. When I was there from Chatham House to provide the secretariat, we found ourselves talking to hard-nosed Russians who had a different view of what reality was, let alone truth. We were roundly attacked by the Sunday Times and others for being soft on communism but we persevered and found it useful to maintain a dialogue, even under difficult circumstances. It got easier over the years.

The CSCE, as it was then, was also set up to build a dialogue between the Soviet Union and the West, with the great advantage that the younger generation of reformers in the Soviet Union wanted to be recognised and accepted as part of a wider Europe. They were therefore willing to make concessions on things such as human rights in order to be accepted. After the Cold War, the West took its eye off the ball and we found that Russia was not evolving in quite the way that we had recommended. The aggressive enlargement of NATO, first in the late 1990s and then most disastrously with the insistence of the George W Bush Administration that we should offer membership to Georgia and Ukraine in Bucharest in 2008, made matters worse. However, one always has to remember that those countries wanted to join NATO. They applied pressure, because they wanted to get out from under Russian control.

The Russian system of government, meanwhile, has gone backwards towards crony capitalism, a corrupt elite and now the closing down of civil society. We face a Russian regime that has been there for some time and is becoming increasingly hostile to the West, including the European Union. We have the old frozen conflicts: Georgia is the one that I know best, and it has been deeply frustrating over the years. There have been attempts to interfere in the Baltic states, even though they are members of NATO and the EU. There is subversion—as already mentioned—in various states across south-eastern Europe. Russia Today is trying to produce its own versions of reality in our own national debates. We have Russian support—possibly including financial support—for hard-right parties across Europe, and perhaps even interference in American elections.

We have, therefore, a very difficult Russian regime to deal with. There is systemic corruption, continuing killings of journalists and prominent critics of the regime and an underlying weak economy—I learnt this morning that the oil price is expected to go down to $40 or even $30 in the next year or two, which will make the Russian situation even more difficult. In addition, we see cybercrime mixed with cyber interference, military adventurism and defence spending as a distraction from its domestic difficulties—including in the Middle East—and this extraordinary identification of the legitimacy of the Putin regime with terrorism, traditional Russia and orthodoxy, so that in remembering World War I they want to commemorate not the Russian revolution but the sacrifice of the honest Russian peasants and the role of the tsar in looking after them. Above all, Russia claims the status of a great power, alongside the USA and superior to the rest of Europe.
[Duke of Roxburghe]

The OSCE is the only body we currently have for multilateral dialogue; it is ineffective but necessary. It is hard work—I am sure that the noble Lord, Lord Bowness, feels that it is in many ways deeply unrewarding—but we do need to keep talking and have conversations around the table. The younger generation that you occasionally meet are people through whom one can at least begin to convey messages and do business with for the future.

I hope, therefore, that the noble Baroness, Lady Goldie, will say that the British Government will maintain their strongest support for the OSCE and nominate strong candidates for the posts where those in office are stepping down. I stress that we need to know more about the British approach to this. I have read most of our new Foreign Secretary’s speeches. In his November speech at Chatham House, he said that it was the first of a series of strategic speeches on British foreign policy. I have not yet found anything strategic in what he has said on British foreign policy or about Russia, although I recognise that he was due to be in Russia this week and has been unable, for various reasons, to go.

FCO expertise on Russia was run down in the 1990s. Is it being rebuilt, given that we now realise that we again have a very difficult Russian regime with a very uncertain future? There is money laundering by Russians in London; there is a substantial population of Russian oligarchs in London. What response are we making to the extent to which influential Russians close to Putin use London as one of their vacation spots in the West? Lastly, how do the British Government see the need for continuing European co-operation in managing the Russian regime in all its uncertainties and in assisting the states in Russia’s neighbourhood—which is also Europe’s neighbourhood—given that we have now accepted, it seems, that Germany is the leader of the West on this and our future relationship with Germany and our other European partners seems unclear?

3.40 pm

Lord Collins of Highbury (Lab): My Lords, I too thank the noble Lord, Lord Bowness, for initiating this important debate. I also congratulate him on his role in the OSCE. The Minister and I have come straight from a debate on the European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017, so this makes a refreshing change. I have to make sure that I do not confuse all my notes. There were not too many volunteers for that debate. However, I am glad that we have an opportunity to hold a relatively short debate on this issue. It is important because we do not devote sufficient parliamentary time to this aspect of international relationships.

Other noble Lords, including my noble friend Lord Dubs, have said that the key role of diplomacy and multilateral dialogue is something that we need to focus on increasingly in the very fragile world that we are living in. A lot has happened since Helsinki, and of course our world view from here is clearly different from the world view in Russia. I thank the noble Lord, Lord Wallace, for the email I received just before lunch and I have read the documentation, but one element that was missing was something about the world view we have compared with that of Russia. The Russian narrative is one of post-war grievance, fear of encirclement and regime change; that is what underpins its position. The serious point about that world view is not whether it is justified or true, it is the fact of whether the leadership in Russia holds it and whether that governs its reactions. I have no doubt that the view is held and therefore our response has got to take that into account, whatever it is. Like the noble Lord, Lord Wallace, I do not for a moment suggest that dialogue means that we do not raise concerns about human rights abuses or about the need for democratic action.

This comes to that point, and I hope that the noble Baroness will respond to the questions about how we can continue our support for the OSCE, in particular in its key working areas of diplomacy, multilateral dialogue and monitoring on the ground. Noble Lords have mentioned that important work and our focus today is of course on Crimea and Ukraine in the context of the work undertaken by the OSCE Special Monitoring Mission. That monitoring work across the 57 nations is particularly about how we can uphold democratic values. It is key to ensuring that those values are kept at the forefront of our activities.

Something I want to focus on is the reports we have had from Crimea. On Tuesday there were reports from lawyers and human rights activists saying that the Russian authorities in Crimea are increasingly imprisoning human rights activists in psychiatric hospitals. They are no longer denying them in an overt way, rather they are using other means to deny people their human rights. Reports have been made of some 43 Tatar activists having been abducted since the annexation by Russia. What have the Government done in terms of these reports? How are they being taken forward and are we engaging with the Russian authorities and international bodies to address this issue? Of course there have been specific incidents in both Crimea and Ukraine, in particular that involving armed men intervening in the activities of the special monitoring mission and the use of armed force in relation to the use of what I suppose we should call a drone to conduct monitoring. Does the Minister share the view of the chief monitor of the SMM on the firing on unarmed civilian monitors? Have the Government taken account of that and what steps are we taking within the OSCE to ensure that those responsible are held to account?

In the brief time that we have, I conclude by saying a little about what the noble Earl, Lord Sandwich, and the noble Lord, Lord Wallace, said. With those two competing world views, how do we use multilateral organisations—I am not necessarily saying that the OSCE is enough—to take the temperature down? How do we ensure that we manage to avoid incidents that could escalate? Clearly, there is a role for the OSCE in this regard, particularly in terms of an investigative function. That is not only to examine the details of specific incidents but, most importantly—and again the noble Lord introducing this debate referred to this—to enable a learning process whereby incidents can be avoided. We learn from them so that we can
better manage them and avoid them in the future. I am particularly keen to hear from the Minister how she sees that might be taken forward in the OSCE’s toolbox for the future.

3.46 pm

Baroness Goldie (Con): My Lords, I thank all noble Lords for their contributions to today’s debate. I particularly thank my noble friend Lord Bowness, who has a distinguished reputation in relation to the OSCE, for raising the important issue of the future role of the Organization for Security and Co-operation in Europe. I also welcome the work of my noble friend and other Members of this House in the UK delegation to the OSCE Parliamentary Assembly.

As many have indicated, the OSCE is a pillar of international co-operation. It has both a uniquely comprehensive approach to security and an important geographical spread, with participating states stretching from Canada to central Asia—a fact that my noble friend Lord Bowness rightly highlighted. The autonomous institutions of the OSCE are an essential element of its early warning and conflict prevention apparatus. The strength of these institutions means that, with the will of all the participating states, the organisation can contribute significantly to the promotion of security, stability, democracy and the rule of law across its region. That point was made very powerfully by the noble Lord, Lord Wallace of Saltaire, who eloquently advocated the attributes of the OSCE in these important and vital matters.

The OSCE oversees a body of commitments that include human rights and democracy, conflict prevention and conventional arms control. These commitments bind all 57 participating states at a political level to a set of principles. The OSCE’s institutions hold participating states to account and support them in their efforts to uphold these principles and commitments. The United Kingdom is a long-standing supporter of the OSCE. We fully support, and where necessary defend, the work of the autonomous institutions and their mandates. This includes supporting a senior adviser in the office of the Representative on Freedom of the Media, and the nomination of the noble Baroness, Lady Falkner, for the role of High Commissioner on National Minorities. I reassure the noble Lord, Lord Wallace, of the UK’s belief in and commitment to the OSCE.

The OSCE carries out valuable work right across its region. As contributors have indicated, it has maintained a long-standing presence in the western Balkans, South Caucasus and Central Asia, where it provides support and expertise on a range of key issues, from institutional reform to media freedom. Its role in supporting future reform in these areas will continue to be crucial.

Today, nowhere is the importance of the OSCE clearer than in Ukraine, a point made by the noble Lord, Lord Giddens. The crisis in the east of the country continues to have a devastating effect on millions of people on both sides of the so-called line of contact. Civilian casualties and ceasefire violations this year have already reached record levels. The sensitivities are widespread and acute, and have been eloquently described by the noble Lord, Lord Giddens. The OSCE has been active throughout Ukraine since the crisis began in 2014. It provides crucial information to the international community and is a platform for dialogue aimed at bringing about a de-escalation of the crisis.

The United Kingdom has strongly supported the special monitoring mission in Ukraine since its establishment in 2014. We are one of the largest contributors to the mission’s budget. We have provided specialist training and support, and we have one of the largest contingents in the mission, second only to the United States. In the face of escalating violence, this civilian mission is bravely monitoring the line of contact. We must pay tribute to that courage and determination as it is not a safe or easy job. The monitors are providing balanced, factual reporting, which is a vital component of what is happening in Ukraine. We are deeply concerned by the continuing violence against monitors, including recent incidents where Russian-backed separatists have aggressively denied them access to certain areas of the country. Quite simply, this violence must end. The mission must have unrestricted access to all parts of Ukraine, including Crimea, as mandated by all 57 participating states.

It is three years since Russia illegally annexed Crimea. The United Kingdom does not recognise this illegal annexation. Russia’s disregard for Ukrainian sovereignty and territorial integrity and its continued support for separatist forces in eastern Ukraine are at the root of this crisis. Continued Russian denials of responsibility distort the facts. The United Kingdom believes that to achieve a lasting resolution to the crisis, Russia must end its destabilising activities in the region, comply with its commitments under the Minsk agreements and return Crimea to its rightful place under Ukrainian Government control.

A number of very interesting points were raised, and I will try to address them as best I can. My noble friend Lord Bowness raised the consensus principle. The consensus rule can be a hindrance to progress and delay effective, meaningful decisions, including on areas of work which are a priority for the UK, such as on human rights and fundamental freedoms. However, there is another side to it. The consensus nature is a fundamental characteristic and is key to ensuring the continuing participation of those states with which we have fundamental differences of opinion. Ongoing dialogue is preferable to alienating them by challenging the way business is done in the OSCE.

My noble friend Lord Bowness also raised the position of the United States of America. Our understanding is that the United States continues to be active in the OSCE and we see no evidence of a lessening of interest by the United States. He also asked about UK secondees to the OSCE. That is an important area. I understand that we have 57 secondees in Ukraine and two in organisational activities outside Ukraine, one in Moldova and one in the media freedom office. We are looking to fund more, especially in head of mission posts.

The noble Lord, Lord Giddens, raised the important issue of the special monitoring missions and posed the interesting question of whether this exercise by the OSCE and the SMM in Ukraine demonstrates a role
that perhaps could be used elsewhere. That is a good question to ask. Given the unusual and, indeed, unique work of the OSCE, it is a point worth reflecting on. The noble Lord also raised the issue of multilateralism, suggesting that we should be both pursuing and defending multilateralism in these difficult times. Let me be clear that I think that this is a desirable objective. I have not ever been and will never be a unilateralist supporter, but I think that multilateralism is an important objective.

The noble Earl, Lord Sandwich, rightly identified the complex and difficult history of the Balkans, and raised the question of engagement with Russia, which was echoed by the noble Lord, Lord Collins. Managing tensions with Russia will be a long-term challenge for the UK and our allies. There will be no return to business as usual while the situation in Ukraine remains unresolved. We will not ignore the fact that Russia-backed and directed separatists have effectively tried to redraw the boundaries of Europe. At the same time, it is important that we continue to engage with Russia; to avoid misunderstandings, we should push for change when we disagree and we should co-operate when it is in the UK’s national interests to do so.

The noble Earl also raised the question of Russia’s illegal annexation of Crimea, to which I referred briefly. I reiterate that we do not and will not recognise the illegal annexation of Crimea by Russia, whose intervention in eastern Ukraine and illegal annexation of Crimea is a flagrant violation of a number of its international commitments, including under the United Nations charter, the OSCE Helsinki final act and the 1997 Russia-Ukraine treaty of friendship, co-operation and partnership.

The noble Lord, Lord Dubs, in a characteristically colourful, entertaining—if that is the correct adjective—and certainly well-informed contribution made an important point, praising the precautionary effect of the electoral monitoring. I was very struck by that; there is no doubt about it that if people know that others are coming to look at their activities, they will possibly try to put their house in order before that point arrives. The noble Lord also raised the issue of the Parliamentary Assembly relying on government press hand-outs, to which I have written down in response, “Old habits die hard”. If I may say so, the noble Lord is testament to original speech and original thought. The noble Lord also made an interesting point in relation to the Scottish independence referendum—and I think that this is important. That was a fine example of a free election process; it was a good process and, in my opinion, it was a good result. If I have any regret, it is that certain parties are paying no attention to the result, but that is another aspect of the debate.

The noble Lord, Lord Collins, raised a number of points which I have tried to cover in my responses to other noble Lords. If I have managed to overlook anything, I shall check Hansard and undertake to write to him. I think that we are both slightly fatigued by our engagement with the southern hemisphere.

It is clear that there will continue to be an important role for the OSCE into the future. We welcome the decision reached at the OSCE ministerial council last December to begin a structured dialogue on the current and future challenges and risks to security in the OSCE area. That could be a useful forum to help to reduce risk and build confidence, trust and security among the participating states. The OSCE’s vision of common security and close co-operation is one that we wholeheartedly support. The crisis in Ukraine not only highlights the continuing threats faced by countries in the OSCE area and the rules-based system, it highlights once again how relevant the OSCE is and reinforces the need for international co-operation more broadly. We must continue to strengthen the OSCE and the international rules-based system. I assure noble Lords that the UK will continue to play a leading role in this vital work.

Local Post Offices

Question for Short Debate

4 pm

Asked by Lord Hain

To ask Her Majesty’s Government what plans they have to guarantee the future of local post offices.

Lord Hain (Lab): My Lords, I refer to my entry in the register of interests.

The Post Office is under serious threat, with the Crown office network being decimated and sub-post offices closed. Yet, frustratingly, there could be a positive future if only the Government would support the establishment of a post bank.

In the last Parliament, the Tory-Lib Dem Government split the Post Office from the profitable Royal Mail letters business, which today is paying out more £200 million a year in dividends. The split was unprecedented. No other Government have separated the retail arm from the rest of the mail operation. This was done despite the fact that the Post Office was, and always has been, heavily reliant on the Royal Mail letters business for its income; and despite the fact that the Post Office was also dependent on public funding to support the network and would be left exposed to government austerity cuts, as indeed it has been.

At the time of the separation in 2012, concerns were raised both here and in the other place about how the Post Office could survive. The Government’s answer was to transform the Post Office into a “genuine front office for government”, covering everything from benefits and public services to passports and driving licences, and to oversee a significant expansion of its income from financial services. Five years later, neither of these pledges has come even close to being delivered. Indeed, Post Office revenues from government services have fallen by some 40% in six years. The promised expansion of financial services has never materialised. Post Office’s revenues have grown by a paltry 2% in six years, not even keeping up with inflation. Alongside that performance, we have seen a huge reduction in annual government funding. In 2012, the Post Office received a subsidy payment of £210 million to keep open its network of local branches. Next year, this will stand at just a third of that, at £70 million.
The consequence of these three things—the separation of the Post Office from Royal Mail, the failure to grow new revenues and the fall in government subsidy—has all too predictably been a programme of cost-cutting from the board of the Post Office that bears all the hallmarks of a service in a state of managed decline. In the past year alone, the Post Office’s cash handling business, Supply Chain, has ceased all its non-post office work at a loss of 600 jobs. The long-standing defined benefit pension scheme, with 3,000 active members, is due to be closed this very Saturday, 1 April. One hundred-and-thirty customer-facing financial specialist roles, in what was meant to be a growth area, have been made redundant. The Post Office card account is being phased out.

These things are just the tip of the iceberg. The Post Office appears determined to cast off the Crown office network, the largest flagship branches in high street locations. In 2012, there were 373 Crown branches; today, there are around 285 following two closure and franchise programmes in 2014 and 2016. A further 70 are currently earmarked for closure and franchise. But why is this happening? The Crown office network as a whole is in profit; its offices are in prime locations throughout the country—they are the largest branches with the greatest potential to bring in new work, yet they are being closed. The Post Office has only one justification for this: cutting costs. Yet the closure and franchise of Crown offices leave customers worse off on a range of measures including queue times, customer service and disabled access. They mean the loss of good jobs, which are replaced by part-time, minimum wage roles, with a consequent loss of quality. It moves the Post Office from being prominent on the high street into the back of a WHSmith. Is this the stewardship we expect of a valued public service? Is this the sort of business model that the Government are really proud of?

The sub-post office network is also under relentless assault. Postmasters are being pushed on to new lower cost contracts and they face the threat of losing their post office altogether unless they sign up. For too many of them, the sums no longer add up. More than 700 post offices are currently up for sale and more than 700 branches are under what the Post Office terms “temporary closure”, which in many cases is a euphemism for saying that it cannot find anyone to take on a branch, so it has closed. What are the Government doing about the serious concerns being raised by postmasters about the viability of the new business model? Again, when it comes to these new lower cost models, it is post office customers who lose out. As the Federation of Small Businesses has said, the range of services available is more limited in franchised outlets than in traditional branches. In 2015, Citizens Advice called on the Post Office to implement what it called a,”

“rigorous and wide-ranging improvement programme”,

to address major failings in the model. Can the Government tell us whether the Post Office has implemented such a programme or that it will now commit to doing so?

All of this points to a service in trouble. In January, a group litigation order hearing in the High Court gave the green light to a group claim against the Post Office for postmasters claiming losses arising from the Horizon computer system. This could see the Post Office facing compensation claims worth tens of millions of pounds, and in court the Post Office conceded something that it has long denied—namely, that the records on the Horizon computer system could be changed by a third party. Given that the Criminal Cases Review Commission is reviewing some 20 convictions that have relied solely on Horizon records under prosecutions brought by the Post Office, that is deeply concerning. Will the Government now finally recognise the need for a full, independent inquiry into this issue? Do the Government stand by the way the Post Office board has handled these cases?

If the Post Office is to survive and remain relevant to people today, it must surely innovate and deliver new services. Cost-cutting can take it only so far. It is neither new nor novel, yet the obvious answer is the establishment of a post bank. In 2006, the French Government set up La Banque Postale through its post office network, which in 2015 made a profit of €1 billion. Italy and New Zealand provide further examples of countries establishing post banks in recent years, which have quickly become the linchpin of their postal operators. There is no reason why the UK should not do this rather than set out to make our Post Office a world leader in decline. Part of the key to La Banque Postale’s success seems to be the size of its network, with almost 12,000 outlets. That gives it a presence in communities across the country. Moreover, there is a level of trust in a bank based in the post office, which customers already have a relationship with, along with its reputation for socially beneficial activities, such as tackling financial exclusion, providing micro credit loans and lending to social housing projects. With its own 11,000 outlets, this is exactly the sort of model that a post bank in the United Kingdom should adopt.

Villages have long lost their banks along with their pubs, their shops and now their post offices. Local council front offices have closed under the pressure of government cuts. Public service access directly with the public is disappearing. Thousands of bank branches in towns throughout the United Kingdom are being remorselessly closed. Glastonbury in Somerset, with its population of 9,000 and many more in nearby villages, now has no high street banks at all. The worst hit are elderly customers who do not drive or go online. The massive decline in high street banks surely is an opportunity for the Post Office to step in and provide a local banking presence in communities throughout the United Kingdom, if only the Government would back the proposal. The Post Office’s current offering in this area is frankly abysmal. The partnership with the Bank of Ireland is not driving the revenue growth we were promised. It does not even provide core products like a business bank account or a children’s account. Some four and a half years into a pilot scheme, it still has no nationally available current account. These are surely core products that any serious challenger bank should be offering as a minimum.

Last year, the Government launched a public consultation on the future of the Post Office; it received tens of thousands of postcards collected by the Communication Workers Union calling for it to set up a post bank through its network. If France can do that
.Local Post Offices

[LORD HAIN]
successfully, why not Britain? Despite huge technology and lifestyle changes in our society, the need for a high street outlet remains, and only the Post Office can still fill that need for both local residents and small businesses. Local post offices could be the new-age front offices for a whole range of national and local government services and financial services across the country. Why are the Government not supporting this exciting new vision, instead of putting the very survival of the Post Office at risk?

4.10 pm

Lord Lisvane (CB): My Lords, I hope not to take up all of the luxurious 10 minutes which we have been allotted. I thank the noble Lord, Lord Hain—in view of our happy working relationship in a former life, I hope that I may call him my noble friend—for providing this opportunity. I shall not follow his comprehensive, powerful and compelling speech, with most of which I thoroughly agree, because I want to concentrate on those parts of the country which are most marginal in terms of not only post office provision but other services.

I take as my example the County of Herefordshire, where I live. I should declare that I am a deputy-lieutenant of the county and Chief Steward of the City of Hereford—although I am glad to say that in modern times that post is almost entirely ceremonial—and that my wife is about to become high sheriff of the county. Herefordshire has one of the lowest population densities in England. Two-thirds of the county are among the 25% most deprived areas in England, measured by geographical barriers to services. Average income is below both regional and national averages. In addition, Herefordshire’s population is older than the national profile, with one in five people aged 65 or above, as opposed to one in six nationally.

The criteria set out in the Post Office’s consultation, which closed at the end of last year, were that 99% of the population should live within three miles of a post office and 90% should live within one mile. The village in which I live is small—the entire parish has a population of 70—but it is five miles from the nearest permanent post office, and one would have to travel five miles further away again before getting to an alternative permanent post office. I must acknowledge that there is a mobile post office in the pub in the next village, but it is open for only two hours on only two days a week.

It is welcome that the Post Office and the Government have affirmed that the post office network will not fall below 11,500 offices, but of course, this is against the background of the savage reductions of 2008, in which some 1,500 post offices were lost, and the overall loss over the decade 2000-10 of about 4,500 post offices—reductions which bore disproportionately on the most rural areas. It used to be said—the noble Lord, Lord Hain, touched on this in his speech—that you could tell a viable village community by the eight Ps test: parish church, pub, policeman, provisions—that is, a village shop—primary school, petrol, phone and post office. In the age of mobiles, the phone is probably no longer relevant, but it is depressing to see how many village communities no longer meet many of those criteria. In our case, we used to meet all of them, apart from having a policeman five miles away, but we now meet only one: we still have a parish church. One of those we lost was a post office.

Post offices cannot be seen in isolation. They are—especially, perhaps when operated from a village shop—crucial to community and communication. Without such community hubs, the life will go out of a village. The elderly and the less mobile—perhaps people who cannot afford a car—will move away, as will others. Economic activity will reduce and the village will become yet another statistic in the spiral of deprivation which constantly threatens rural communities.

If the Government’s thinking is to be truly joined up, as I am sure the Minister will acknowledge, they need to recognise that relatively small expenditure of public money in sustaining rural communities and stabilising their populations can save many millions in social care and housing which result from moves towards urban centres, to say nothing of savings in the environmental costs of transport. So, for example, the suggestion by the Association of Convenience Stores of improving remuneration for those taking on a post office business should receive serious consideration, as should increased investment in mobile post offices, which act as a sort of force multiplier.

I end with one particular form of development that may address two problems. Here I should make a second declaration: my wife is a Church of England priest and chairman of our diocesan board of finance, and I am a churchwarden. My distinguished friend and neighbour in Herefordshire, Sir Roy Strong, has a great love for and understanding of parish churches. At the same time, he has also been an extremely effective and imaginative advocate for increasing their use for secular purposes while safeguarding their use for worship. I will give your Lordships one outstanding example that could serve as a model for many others. Yarpole, just on the Herefordshire side of the border with Shropshire, lost its village shop 10 years ago. The parish church now houses in its nave the community shop and, crucially, the post office, with a cafe in the gallery above. The footfall is constant and significant, with car journeys greatly reduced. There are five part-time paid staff, including the postmaster, and 60 volunteers. The now ecclesiastically housed post office plays a key part in a vibrant rural community.

I would be very grateful if Ministers could focus their minds on how such enterprises might be encouraged and how villages and parochial church councils who want to move in this direction might access the relatively modest sums needed to make a church suitable for this sort of additional use. The conventional sources such as lottery funds have too many other calls upon them and, in any event, their focus is not on the most rural areas or small populations, which is just where the need is greatest.

I would entirely understand it if the Minister were not able to respond in detail today but I would appreciate the opportunity of meeting with her at a later stage. I suggest that the prize of sustaining marginal rural communities and their post offices, and at the same time breathing new life into our great heritage of parish churches, is a win-win, and one that I heartily commend.
4.17 pm

Lord Young of Norwood Green (Lab): My Lords, I, too, thank my noble friend for raising this vital issue. It is clearly quality not quantity participating in the debate this afternoon. I declare an interest as a former joint general-secretary of the Communication Workers Union.

I hope that whatever views the Government express this afternoon, they share the one that the post office is a vital part of all our communities. Despite all the activity online with email, e-banking and internet shopping, the local post office still has a role to play in rural and urban communities—as the noble Lord, Lord Lisvane, exemplified to us. I had not heard of the eight Ps formula before but will endeavour to remember it. The point he made about post offices being community hubs is absolutely true. It occurred to me as he and my noble friend spoke to ask whether there has been an impact from the increase in business rates—I do not expect that the Minister has the facts before her now. I hear the good news that she has that information; I do not know if the information itself is good news, but I hope so.

I will touch on some of the points made by my noble friend Lord Hain, both because they are worthy of repetition and because I may come at some from a slightly different angle. Even the House of Lords Financial Exclusion Committee pointed out the importance of the local post office, and it is absolutely right. We still have a situation where 95% of the population say that they use the post office within the year. Every week, 17 million visits to a post office take place. So the Post Office is still thriving but is under a great deal of pressure.

Some 97% of post offices are run by small retail businesses on an agency basis, typically alongside convenience retail. I share my noble friend’s concern about ensuring that the quality of the service they offer is what they are contractually obliged to do. I think it is in many cases but not in every case, and I offer is what they are contractually obliged to do. I share my noble friend’s concern about their future. I stress that this is from their perspective but they see it as a business in decline. Surely we should be aiming for a business that responds to the needs of local communities, not just rural but urban communities. There are 3,000 branches that are literally the last shop in their village. There is an investment fund to support those branches, but will it continue? That is another question on which I would welcome a response from the Government.

If we look at the social value of post offices, independent research shows that the Post Office Ltd continues to deliver more than £4 billion in social value each year to people and businesses throughout the UK. We know its vital role as a part of local communities, as the noble Lord, Lord Lisvane, said.

I also want to raise the future of the Post Office card account. I am told that there are currently 3 million users of the card account. They are people who cannot get a bank account or who are not used to dealing with a formal bank account and so value the services that come with it. I will be disappointed if the Government cannot say that they are not going to phase out the Post Office card account. With 3 million users, it is obvious that there is a requirement for it, and it will continue. A significant number of people still see it as a key way to manage their finances.

At this stage in the afternoon, I do not want to repeat all the arguments that were put so well by my noble friend, who dealt with them more than adequately. I look forward to a response to the questions I have raised.

4.26 pm

Baroness Buscombe (Con): My Lords, I am very grateful to the noble Lord, Lord Hain, for bringing this debate to the Committee today. Time is on our side, so I shall be able to reply as fully as possible to all three noble Lords who have spoken today. I hope they will forgive me if I am repetitive, but I think I have the luxury of time and I want to be able to reassure noble
[BARONESS BUSCOMBE]

Lords as much as possible. The speech I have before me is in stark contrast to that of the noble Lord, Lord Hain. I believe that we have a really good story to tell. The story I have in my head relates very much to the village where I live—Goring-on-Thames. It has an incredibly vibrant post office. It has most of the Ps to which the noble Lord, Lord Lisvane, referred. I think it is only missing the phone and the petrol. The reality is that the post office is still a critical part of the community and the infrastructure. I think of it as the bush telegraph, alongside the local grocery store.

I shall begin by setting out the Government’s story on this and will then respond, in a perhaps slightly repetitive fashion. The Government recognise the important role that post offices play in communities across the country. We have said so time and again, and we mean it. Local post offices are an important option for customers, particularly more vulnerable and remote customers, and small businesses to access a range of mails, financial and government services. That is why the Government committed to securing the future of 3,000 rural post offices in our manifesto, typically those branches that are the last shop in a community.

Between 2010 and 2018, the Government have provided nearly £2 billion to maintain, modernise and protect a network of at least 11,500 branches across the country. The Government set the strategic direction for Post Office Limited, which means that we ask it to maintain a national network of post offices that is accessible to all and to do so more sustainably with less need for taxpayer subsidy. Post Office Limited delivers this strategy as an independent business. The Government do not interfere in its day-to-day operations, such as the provision and location of branches.

Today, there are more than 11,600 Post Office branches in the UK, and the network across the UK is at its most stable for decades. This is because Post Office Limited is transforming and modernising its network, thanks to the investment that the Government have made. Government support has enabled more than 7,000 branches to be modernised, more than 4,200 branches to be open on Sundays—I wish we could say that of banks—more than 200,000 weekly opening hours to be added to the network, losses to be reduced from more than £120 million to £24 million—in financial terms, that is real progress—and subsidy to be reduced by more than 60% from its peak in 2012-13. We have the most stable network in more than a generation and customer satisfaction has rightly remained high, at more than 95%, to which the noble Lord, Lord Young of Norwood Green, referred.

The best future for the Post Office network is a sustainable future, and that is what the Government are making possible through significant investment and reducing the network’s reliance on taxpayer support. We want to create certainty for all who work in the Post Office and for customers. In short, the business is offering more for customers, doing so more efficiently for the taxpayer and ensuring that Post Office services remain on our high streets throughout the country.

There has been a lot of assertion and suggestion that the Post Office is in crisis. Indeed, those were the opening words used by the noble Lord, Lord Hain. Far from being in crisis, however, the Post Office is following a successful course to commercial sustainability under the leadership of its management team. The Government disagree with the unions’ view that the Post Office is failing, as it is reducing its losses, reducing its need for subsidy and continuing to offer a high-quality service to customers with longer and more convenient opening hours. This is not the sign of a Post Office lacking a strategy, but a clear signal that the Post Office management has a goal of a secure network and increased financial sustainability. The Post Office is working hard to achieve this. The business already engages with its stakeholders, such as the National Federation of SubPostmasters and its unions, and I encourage them to continue their dialogue with the Post Office. While significant challenges remain to completing the goal of securing its future, the Government believe that the business is on the right path.

On the question of creating a post bank, as was suggested by the noble Lord, Lord Hain, this was considered in 2010, but it was decided that the government investment then available would be better used to modernise the network. The success of this approach has seen more than 7,000 modernised branches, opening hours extended during the week and at the weekend, and a network at its most stable for decades. While the Post Office did not create its own bank, it has built a successful financial services business, offering loans, mortgages, savings and foreign currency. These are delivered through its partnership with the Bank of Ireland and offer all the key benefits of a post bank. The Post Office has also developed its insurance offer by building its in-house capability. These services are available across the Post Office’s nationwide network and online, offering reach that no other bank in the UK can match.

Moreover, the Post Office has been working with the banks and the British Banking Association to create a standardised framework for access to third-party banking services. The framework was launched in January and offers simplified access to those holding accounts with other banks across the UK. This means that more than 99% of personal account holders and more than 75% of small business can access basic banking services early in the morning, late at night and throughout the weekend; and, as I said earlier, in terms of timing and access, the banks simply cannot begin to compete.

This is surely both a fantastic opportunity for the business and for the communities it serves, many of which have been badly affected, as the noble Lord, Lord Hain, said, by bank closures. Indeed, that has happened in my village: we are about to lose our last bank. The post office network, therefore, not only already provides a breadth of financial services that rivals the high street banks: with the newly launched banking framework it can also offer customers of other banks access to important basic banking services. It is therefore hard to see what a post bank offers to customers which is not already offered.

On the changes to the Crown network, the Post Office’s proposals for franchising and hosting some of its Crown branches are part of its plans to ensure that the network is sustainable and profitable in the long
term. Again, that is all about offering certainty and assurance, particularly to those who work in the Post Office for the long term. This is not about closing branches, it is about moving a branch to a lower-cost model and a better location for customers, securing and improving delivery of post office services in a given area. I have a classic example; admittedly, it is not in a rural area but in Islington. There was a merger of an old branch, unsuitable for disabled access or conversion, and a “temporary” branch had been in place for more than 10 years. The new single branch, which has replaced the two, is bright, welcoming, better located at the centre of the high street and has disabled access. The same goes for Beckenham. Its post office was relocated from an awkward end of the high street, which was difficult to access due to traffic and roads, and is now right in the middle of the high street in WH Smith. So we are thinking not only about access but about convenience for the customer. That is critical, because post offices have to remain competitive, attractive and accessible.

These ongoing plans have to date meant that Post Office Crown branches have moved from a £46 million annual loss in 2012 to breaking even today. The change from a Crown to a franchise or host branch has been undertaken previously in many locations across the UK and is a successful way of sustaining post office services, as a post office can share staff and property costs with a successful retailer. However, as always, more work needs to be done. There continue to be Crown branches which are loss-making, which is why these changes are important. By making all branches more sustainable, including the Crowns, we will help to keep post office services on our high streets throughout the country while reducing the funding burden on the taxpayer. It is worth remembering that 97% of the Post Office’s branch network is already franchised, being run by independent sub-postmasters.

The current funding agreement for the Post Office expires in March 2018. The Government have said publicly that they consider that the Post Office is likely to continue to require some funding to sustain the nationwide network and to meet our manifesto commitment to secure 3,000 rural branches. Funding discussions with the Post Office have opened and continue.

The Government conducted a consultation exercise on the post office network before the end of last year. The aim of the consultation was to help us to understand what the public and businesses expect from the Post Office and to make sure that where the Government are required to comply with any obligations, such as to the European Union, they are able to do so. I stress that this consultation did not propose any changes to the network but sought views on how to make it stronger, sustainable and better for its customers. The Government expect the Post Office to require funding over the coming years. The feedback we received will help test how that funding may best support the network. The Government will publish their response to the consultation in due course.

The Post Office is the largest provider of counter-based government services in the UK—this was another concern raised by the noble Lord, Lord Hain—and has key contracts with the DVLA and the Passport Office for a number of transactions. Its extensive geographic reach and key role in the heart of communities mean that it is well placed to bid for and win important contracts. The Post Office continues to work with both local and national government to look at opportunities for delivering more government services through the network, but it is important to remember that the Government cannot simply award contracts to the Post Office. It is right that services must be procured competitively to ensure value for taxpayers’ money. Furthermore, government has an important role to play in ensuring that people can access government services in ways that best suit their needs. I have to admit that I am using online more and more to access such services.

Increasingly, many of us prefer to access government services online, which can be more convenient—as I have just said. While this has an unfortunate impact on the Post Office, we cannot ignore people’s desire to transact with government digitally from the convenience of their own homes. It is for that reason that the Post Office continues to develop its online presence. For example, it is one of the largest providers of identity verification through the Government’s Verify service.

In terms of restructuring at its headquarters, as part of the Post Office’s ongoing transformation to make it more commercially sustainable, there will be a 20% reduction in the 1,100 people at its headquarters function. They are largely based at Finsbury Dials in central London. A more efficient and lean central support team will mean a greater scope to share benefits from contracts that the Post Office wins with the agents who run the branch network. This will make the 50,000 jobs in the agency network more secure. There will be no reduction in the service that the public will see.

As we know all too well, it is a difficult time for the high street. Some key presences such as BHS have gone and others are having to make tough decisions to survive. We recognise that the Post Office is a key presence on British high streets and a key part of local communities. That is why we have supported it in transforming to keep post offices at the heart of their communities, which has involved significant change. Many stand-alone post offices have moved into other retailers where the Post Office and the retailer can operate better together, sharing staff and property costs, as I have said, and where Post Office business is a big driver of increased footfall for the host retailer. I appreciate that changes such as these are not easy, especially where it involves staff leaving the business, but it is essential that the business gets a grip on its costs to ensure that it can meet the challenges it faces now, and those it will face as the way we shop and access services continues to change.

Before concluding, I want to reference some of the questions that were raised. I hope I will be forgiven if I find myself being repetitive. First, the noble Lord, Lord Hain, referred to the separation from Royal Mail. Of course the Post Office and Royal Mail are now very different companies and since separation in 2012 the Post Office, as a separate company with its own board, has had the commercial independence to focus on what is best for the business and to adapt and...
change to best meet the challenges it faces. There is a long-term commercial agreement in place between the two parties and they have worked together successfully since separation. The Post Office has become increasingly sustainable since separation, with its transformation programme delivering more than 200,000 extra opening hours a week across the country. More than 4,200 branches are open on Sundays, directly benefiting customers.

The changes to the Post Office cash supply chain mean that the business can now deliver the same service to its branches for less overall cost. The Post Office cannot realistically compete for external business against competitors which have lower pay and more flexible working conditions. It is also difficult to make a case to invest in what is a declining market for cash, with the rise of electronic payments such as contactless. The Post Office believes it will be able to deliver the expected savings only by adopting a clear and consistent policy of completely exiting the external market and focusing on delivering cash to its own network.

Moving on, the noble Lord, Lord Hain, also referred to Horizon. I understand that civil proceedings have been issued against the Post Office on the matter of the Horizon IT system. This is of course a matter for the courts and I am unable to comment further. I understand that a number of individuals have raised cases with the Criminal Cases Review Commission—the CCRC. This process is independent of government, so unfortunately I cannot comment further. We do not feel the need for a full independent inquiry, as the noble Lord, Lord Hain, suggested, but feel that the court is the best place to deal with this difficult situation.

Regarding the post office network consultation, it was an important step in determining support for the network in the future, once the Government’s existing funding agreement with Post Office Ltd comes to an end in 2018. No changes to the network were proposed through this consultation; we were seeking to re-affirm views with stakeholders. The consultation ran for six weeks and we received more than 30,000 responses from members of the public, businesses and stakeholders. As I have already said, we will respond to that consultation in due course.

The noble Lord, Lord Lisvane, focused on rural areas and asked about accessing criteria. The Post Office is in a difficult position because quite a number of the banks that it provides a service for do not wish to continue to operate in rural areas. The Government are also doubling rural rate relief to properties with a rateable value of £12,000 and below from April thanks to the business rate revaluation, which will ensure that business rate bills more closely reflect the property market. Nearly three-quarters of businesses will see no change or a fall in their bills from April thanks to the business rate revaluation, with 600,000 businesses set to pay no business rates at all. A £3.6 billion transitional relief scheme will provide support for the minority who face an increase.

The 2016 Budget announced the biggest ever cut in business rates, worth more than £6.7 billion across the next five years. Small businesses will benefit from the doubling of small business rate relief thresholds, and properties with a rateable value of £12,000 and below will receive 100% small business rate relief from April. The Government are also doubling rural rate relief to 100% from 1 April 2017, which will benefit many eligible post offices in designated rural areas.

Quality was an important point raised by the noble Lord, Lord Young of Norwood Green, in relation to Horizon IT systems. The Post Office is committed to ensuring that all branches across its network offer excellent customer service, and has a strong history of working with its many franchise partners and agents to achieve that. Independent research shows that customers are happy, with satisfaction levels consistently high, but it places a lot of emphasis on the need to retain quality.

I confirm that the Post Office is committed to ensuring that all its staff, including postmasters, receive the necessary training to successfully and effectively deliver all its products and services. Of course, the success of the business depends on that. However, any service that the Post Office offers must provide a realistic and viable commercial rate of return for the business.

I shall make a quick reference to awareness. Awareness of the services provided by the Post Office is very important. A House of Lords report published on 25 March, Tackling Financial Exclusion: A Country that Works for Everyone?, references the importance of awareness. On the point about publicity, it says that the Post Office is in a difficult position because quite a number of the banks that it provides a service for do
not want the Post Office to proactively make customers aware of the services because that serves to pull footfall away from bank branches that are already struggling, thereby exacerbating the problem of bank branch closures. So there is a difficult balance to strike here.

**Lord Young of Norwood Green:** My Lords, that is a bit of a disappointing answer. In the situation of which we have given many examples, there are no banks around. If the Post Office is offering the services, it should not be a problem because the banks have withdrawn their services. I thought that was one of the primary reasons for the Post Office offering the basic standard services for other banks. What was the purpose of the standardised framework agreement if it was not for that? Surely it is more important, especially in rural environments where there are no banks available, that the public are aware of this service, otherwise it defeats the objective of the framework agreement.

**Baroness Buscombe:** I accept what the noble Lord is saying. In fact, I was going on to say that there may be a balance to strike between the banks and post offices, but our focus is on the strength of the post offices and on meeting customer requirements. The report makes a number of recommendations, including around whether the Post Office can better publicise what it offers. The Post Office, in response to this, will be working with its partners to explore what it can do to implement the recommendations. That is the point I was going to come on to; we are not just taking the report, sitting down and saying, “Well, that’s a problem. Leave them to work it out”. Awareness of what the Post Office can do and can deliver—and it is growing in that sense—is really important. I add that the Post Office card account contract has been extended to at least 2021.

In conclusion, a more efficient Post Office is better able—

**Lord Hain:** My Lords, before the Minister finishes, could the Government study La Banque Postale’s success in France, and would the Minister—or Margot James, the Minister primarily responsible—write to me explaining in what way the British situation could match that? Do the Government really think it is doing so with their current policy? I do not think it is.

**Baroness Buscombe:** I spend quite a lot of time in France and I have to say that my experience of post offices in France does not match those that I enjoy in my local village. However, I will of course talk to my colleague in another place, Margot James, about this, and see if we have been looking at the French model as the noble Lord suggests.

**Lord Hain:** And will she write to me?

**Baroness Buscombe:** And then of course we will write to the noble Lord, Lord Hain, and copy all other noble Lords.

**Lord Lisvane:** I am so sorry to keep the Minister from her peroration for a moment or two longer, but I wonder if I might take her back to the question of tendering for partner organisations. As she will know, it is perfectly normal practice in any tender to weight the criteria. I think we would be grateful for an assurance that in the case she quoted, the synergies that can be made for the benefit of local communities are appropriately weighted in the tender process.

**Baroness Buscombe:** I absolutely understand where the noble Lord, Lord Lisvane, is coming from. Again, I will talk about that issue and that point with my colleague in another place, Margot James. Thank you for raising it.

The government investment—

**Lord Young of Norwood Green:** On a further point of clarification, I am grateful for what the Minister said about the Post Office card account being sustained until 2021, but what happens after that? What does the noble Baroness envisage—will there be a review and consultation process? If she does not have the answer perhaps she could write.

**Baroness Buscombe:** That would be up to the Department for Work and Pensions. We have to see how things are going. Hopefully the response will be positive, but we do not know—it is too far down the line for us to comment now. It will, however, be a matter for the Department for Work and Pensions.

In conclusion, since 2010 the Government’s investment has, along with the hard work of post office employees and postmasters, delivered real improvements. It has enabled the business to offer more to customers and to do so more efficiently, thereby ensuring that post office services remain on our high streets.

I encourage noble Lords to look objectively at the results achieved by the business in recent years: the most stable network for decades, £100 million reduction in annual losses, 7,000 branches modernised and transformed, more than 1 million additional opening hours per month and more than 4,000 branches open on Sunday. While significant challenges remain in completing the goal of securing the future of the Post Office, the Government believe that the business is on the right path: one that will protect local post offices for the long term.

4.56 pm

Sitting suspended.

**Alcohol Abuse**

*Question for Short Debate*

5 pm

**As asked by Lord Brooke of Alverthorpe**

To ask Her Majesty’s Government what is their most recent estimate of the cost of alcohol abuse to the National Health Service; and what steps they are taking to reduce those costs.

**Lord Brooke of Alverthorpe (Lab):** My Lords, I am grateful to the Chief Whip for finding a slot for this debate, even though it is the last business. I am grateful...
[LORD BROOKE OF AVERTHORPE]

that I have so many speakers—I am surprised—and equally surprised by the number of people who have written to me in advance of the debate, which seems to indicate that we should look for a longer debate at some later stage.

After welfare, the cost of health is the biggest charge the Chancellor of the Exchequer has to deal with, yet if one examines Budget speeches one sees that it rarely gets a mention. In fairness to Philip Hammond, it did this year, because of the crisis in care, which is of course directly linked to health. Health costs continue to grow at around 4%, but the economy is down around 2%. With an ageing population, the health service, as one ex-Health Minister in the Lords recently said to me, is a car crash waiting to happen. So every action must be taken or at least explored to avoid further injury to or collapse of the health service.

Like the Queen, the NHS is one of the few remaining pieces of glue that keeps us together as a United Kingdom. People everywhere are increasingly fearful of what the future holds but, happily for the UK, at least for the moment, people do not have the fear that illness brings to many people overseas—the fear of how to pay for their treatment. That burden is lifted by the NHS, and it helps faster recovery, but it is at even greater risk if politicians are reluctant or unprepared to engage in an open and honest debate about the problems we have funding the health service. That is at the heart of my debate today—seeking changes that will reduce the burgeoning public health costs but also changes that lead to healthier, happier and longer lives. As part of that, the Government must confront the stark challenge that alcohol abuse presents for the NHS in terms of the financial costs, resources and the impact on staff time and welfare.

Alcohol is estimated to cost the NHS around £3.5 billion per year, which amounts to £120 for every taxpayer. If I have got the figure wrong, I am sure that the Minister will correct me. Even though drinking has declined marginally in recent years, there is a growing burden of alcohol-related admission problems for the health service. As our NHS tries to deal with these difficulties, there is the difference between costs rising at 4% per annum and growth in the economy at only 2%. The consequences of harmful drinking are a factor that we must address—and that is not surprising, given that Public Health England has recently reported that alcohol is the leading cause of death among 15 to 49 year-olds. There are now more than 1 million alcohol-related hospital admissions a year. Alcohol has caused more years of life lost to the workforce than have the 10 most serious cancers, and in England more than 10 million people are drinking at levels that increase the risk of harming their health. There are 23,000 alcohol-related deaths in England each year, which means that alcohol accounts for 10% of the UK burden of diseases and death, and is one of the three biggest avoidable risk factors.

Evidence indicates that ease of access and persistently cheap alcohol perpetuates these problems, with deprivation and health inequalities particularly prevalent among men from the lower socio-economic groups. Alcohol is 60% more affordable than it was in 1980, and affordability is one of the key drivers of consumption and harm. Cheaper alcohol invariably leads to high rates of death and disease. David Cameron and the coalition Government recognised this back in 2012 when they produced what I would describe as a progressive alcohol strategy. In its foreword, he talked about, "a real effort to get to grips with the root cause of the problem. And that means coming down hard on cheap alcohol". Regrettably, that just has not happened. Other aspects of the strategy have disappeared, too. There seems to be a vacuum with no discernible sense of direction. I hope that today’s debate might start to move us towards a more positive approach than we have had for the past two or three years.

I will not spend much time on minimum unit pricing. I am sure the Minister’s reply will be quite predictable: we are awaiting the outcome of the Supreme Court’s decision on the Scotch Whisky Association appeal. If we did have that, I am sure the Minister would argue that we need to see whether minimum unit pricing is working in Scotland before taking any decision to bring it south of the border. If I am wrong on that, I would be very grateful if he could correct me.

What I would like to hear is whether the Secretary of State is willing to initiate talks with the Chancellor about revamping VAT and excise duties on alcohol so that low-alcohol drinks would not contribute anything, or very little indeed, in the future but we would start to tax at a much higher rate the stronger alcohol, which is particularly damaging to people’s health and which at present does not attract particularly high taxes. I am looking to see whether the Government are prepared to investigate a more differential approach to taxing alcohol.

Wine consumption has increased, particularly in recent years, and, as many people know, wine has got stronger and stronger. At one time it was 11% or 11.5%. Now it is in the order of 13%, 14% or even 14.5%. This is especially true of the red wines from the New World.

Happily, one of the positive sides of Brexit—this freedom we have—is that it will provide greater freedom for adjusting taxation. Such a change could not only raise income for the Exchequer; higher taxes on stronger alcohol could be an inducement for people to drink lower-strength alcohol, which would be better for them.

Is the Minister aware that the Institute for Fiscal Studies has recently done some research on this? Indeed, in February it produced a report which indicates that moving towards the differential taxes I have been describing could meet half the cost of the welfare bill, which of course is a major account the Exchequer has to deal with annually. Whether or not that is a starter remains to be seen, but I would be grateful if the Minister had a look at that report and let the Committee know whether he thinks the idea is worth pursuing, as well as raising the issue with his Secretary of State.

This week I have been to two parliamentary health meetings, one on gout. “Gout is not a laughing matter” was the title of the gathering. It was interesting to learn that one in 40 people in the UK now has gout, and its prevalence is rising. It rocketed between 1997...
and 2012 by an astonishing 64%. Again, much of this is linked to the increased consumption of stronger red wines, and to obesity.

Alcohol is a major contributor to obesity, although many people are not aware of this. The drinks industry has managed to evade the usual labelling requirements for calories and sugar content in products. The Government have failed to effect changes here because they have prayed in aid existing EU regulations on labelling, which they say have prevented them moving in this direction. Showing calories and sugar content in alcohol is not required in Europe. There was an attempt to introduce such a requirement in Europe but it was overturned, so we must stick by existing EU regulations. Again, Brexit means we will have a freedom here we did not have previously. I have been campaigning for a long time to have calories shown on alcohol labels. People should know what they are consuming, just as they do with most other products. Why is it not happening?

In fairness, some producers, such as Sainsbury’s, which has its own brands, have shown calories. Sainsbury’s did that because research indicated that drinkers wanted to know about what they were drinking. Why should it not apply elsewhere? I would like to know what the Government are doing on this, given that they now have a strategy on obesity.

Alcohol also contributes to type 2 diabetes, which is reaching epidemic proportions. There is a direct link there. About 10% of alcohol contributes to diabetes and we need to get some movement on that.

This week I also went to a meeting of the All-Party Group on Liver Health—I declare my interest as patron of the British Liver Trust. Liver disease is now costing £2.1 billion a year, up 400% since 1970, and the upward curve continues in the UK while in Europe the cost is declining. There must be a reason for this, and we should be looking at what it is. This is a great problem for A&E departments, as mentioned in previous exchanges with the Minister. Alcohol is a contributory factor in 70% of A&E cases at the weekends, and I would like to know what the Government intend to do about that.

We need to start examining a whole range of other options, particularly given that this week, the Government are taking steps to withdraw certain free prescriptions. We need to look at the 9 million people with hypertension who are getting NHS medication for it. We need to look at the millions of people—and the number is increasing—who are on tablets for depression. Will the Minister say whether people who are on medication for depression should not be drinking alcohol, and whether it is permissible? If in fact, as I know, many people are taking tablets but still drinking, is it not time to look at that in the context of developments this week? People should have a choice: either they take the tablets for depression and stop drinking; or, if they want to continue drinking, they should pay for their tablets over the counter.

I saw the figures in a recent Written Answer from the Minister on how much is being spent on medication—it has rocketed since 2010. We have to start looking for a different approach. We need the Government to accept responsibility for the policy areas they can control. We need the industry to accept greater responsibility—I will not go on about the industry in great detail today; I will leave that for a separate debate—and we need people to take more individual responsibility, given this new world in which the NHS is under great financial pressure. I hope I will get a positive response on many of these points from the Minister, and maybe we can look forward to a wider debate on drawing up a real strategy in the future.

5.12 pm

Baroness Chisholm of Owlpen (Con): My Lords, this is an important debate, and I thank the noble Lord, Lord Brooke of Alverthorpe, for initiating it.

A recent study in the south-west showed that one in three adults exceeds the permitted government guidelines and that 83% of at-risk drinkers see themselves as moderate or light drinkers, whereas 69% are not concerned about how much they drink. There appears to be a common assumption that the benchmark for too much alcohol is when control is lost on the occasional bender, reliance on alcohol is required to get through the day or a bad hangover is experienced. Few understand the risk to their health, their family or the wider community. High blood pressure, mental health, accidental injury, violence and liver disease are just a few health issues directly linked to alcohol. As the noble Lord, Lord Brooke, mentioned, liver disease is arguably one of the biggest health issues facing the NHS along with deep-seated serious health problems, and the harm is being done to a large extent in the privacy of people’s homes.

Alcohol admissions and related injuries put A&E departments under huge pressure. Estimates have suggested that three in every 10 patients attending A&E are there because of alcohol. People are calling ambulances like cabs to ferry them to hospital when they become incapacitated. Those who are not injured often just need to sleep it off in a place of safety, but they arrive in A&E by ambulance or cab or are taken there by friends. Those who have sustained injuries can be aggressive towards staff, leading to staff being vulnerable and of course adding to the difficulty of treating the injury.

Alcohol harm knows no boundaries. Its tentacles can affect anyone in a community—rich, poor, young, old, the well-educated and those who are not. What can be done? There is no easy solution. Perhaps the following could help towards people being more responsible about their drinking as well as cutting the cost to the NHS. A combination of price control and taxation would successfully target those who drink more of the cheapest and strongest alcohol products.

A comprehensive cultural change is required to educate young people towards activities that do not revolve around drinking. Is an advertising campaign the way forward to educate parents and families about the dangers? Parents play the biggest role in educating their children about the dangers of alcohol abuse. Parents should know who their children are hanging around with and make an effort to get to know the parents of their children’s friends. When parents are involved, they are more likely to be able to pick up the signs of any problems. Of course, that is the perfect
misuse affects patients’ general health, tackling that and how well their patients are looked after. There is healthcare professionals on quality, treatment outcomes the UK Government to focus the attention of dental common. The new dental contract reflects the aims of dental caries and periodontal disease being the most can have detrimental effects on dentition—dental erosion, Anaesthesia in Dentistry.

The president of the British Fluoridation Society and a life interest as a retired dental surgeon and a member and have on the mouth, larynx, pharynx and oesophagus Lords to the effects that alcohol and excess alcohol my personal expertise and draw the attention of noble name of the noble Lord, Lord Brooke of Alverthorpe, as it enables me to make a few comments relating to personal expertise and draw the attention of noble Lords to the effects that alcohol and excess alcohol have on the mouth, larynx, pharynx and oesophagus and the consequential costs to the NHS. I declare my interest as a retired dental surgeon and a member and fellow of the British Dental Association. I am a vice-president of the British Fluoridation Society and a life vice-president of the Society for the Advancement of Anaesthesia in Dentistry.

As we have already heard, alcohol causes at least seven different types of cancer, and oral cancers are among those most closely linked to drinking. About 70% of people diagnosed with oral cancer are heavy drinkers. There are almost 7,000 diagnoses a year. This means that almost 5,000 heavy drinkers will be struck by mouth cancer every year. The risk is even greater for those who tend to drink and smoke at the same time. It is estimated that heavy drinkers and smokers have 38 times the risk of developing oral cancer than those who abstain from both products.

This particularly debilitating disease, which kills thousands and leaves many of the survivors with disfigured faces and difficulty in eating and speaking, is, worryingly, one of the fastest-increasing types of cancer, with cases up by almost 40% in the past decade. It now kills more people in the UK than cervical and testicular cancer combined. Yet awareness of it and of the role that drinking and smoking play in causing it remains stubbornly low.

Dental professionals are on the front line in the fight against cancer. Dentists are uniquely placed to diagnose oral cancer very early on before the patient notices any symptoms and seeks help. This is crucial, as mouth cancer patients have a 90% chance of survival if the condition is detected early, but this plummets to just 50% if the diagnosis is delayed. As dental teams are the only health professionals who see healthy patients on a regular basis, they are also in a unique position to provide brief advice and support to their patients who drink above the lower risk levels, warning them not just of the increased risk of oral cancer but also of the possible periodontal disease and tooth erosion that is associated with drinking some types of alcohol. Where appropriate, dental professionals can signpost higher-risk patients to their GP or local alcohol services, with such early intervention helping to save the NHS money further down the line.

Screening and primary dental care would involve similar strategies to those used by primary medical practitioners, using the same valid and reliable questionnaires and motivational interventions developed in psychology. These have been found to be effective and cost-beneficial in some dental settings. Although suitable screening tools and treatment interventions are available, it is unclear which of them are most effective and precisely how and when they should be deployed in primary dental care. It is clear, however, that the dental team can contribute and that this contribution fits well with its responsibilities and interests.

Alcohol and lifestyles closely associated with alcohol can have detrimental effects on dentition—dental erosion, dental caries and periodontal disease being the most common. The new dental contract reflects the aims of the UK Government to focus the attention of dental healthcare professionals on quality, treatment outcomes and how well their patients are looked after. There is now more emphasis on health promotion. Since alcohol misuse affects patients’ general health, tackling that abuse is therefore important for primary care dental professionals from a purely dental perspective. Addressing this in primary care settings also enables dental professionals to meet wider health promotion responsibilities.
2012 and there are numerous reports detailing the cost to the NHS, which has been outlined as £3.5 billion a year. Last year there was an excellent report by the APPG on Alcohol Harm called The Frontline Battle about the huge burden on the emergency services caused by alcohol misuse. However, there is precious little mention in these reports—or, therefore, praise or policy from Her Majesty’s Government in this regard—of how alcohol and its use varies in religious and ethnic minority communities, the Joseph Rowntree Foundation report in July 2010, Ethnicity and Alcohol: A Review of the UK Literature, being a notable exception.

What is known is that in many ethnic minority communities the rates of abstinence are higher. According to the Public Health England evidence review that I have mentioned, 15% of white women, 38% of black women and 74% of British Asian women abstain completely. There are many reasons for this, including the physiological. According to the Berkeley university well-being project, it is very common in people from Chinese, Japanese and Korean backgrounds to have difficulty digesting alcohol because of a genetic variant that impairs the production of an enzyme that helps to metabolise alcohol in the liver. Within religious communities such as the Latter-day Saints, Muslims, the Salvation Army and Methodists, and for many within the black Pentecostal churches, refraining from alcohol is advocated, which may explain the lower levels of alcohol consumption in the British black and black Caribbean communities.

While the main government messaging needs to remain around drinking sensibly as this is the majority activity, the lack of commendation by the NHS and government Ministers of religious and ethnic minority communities, particularly Muslims, who refrain is remiss. Having taken part in the parliamentary police service scheme and been out on a Friday night on Shaftesbury Avenue, it is not people in obvious religious attire such as Muslim women or Salvation Army leaders that you see literally in the gutters and then appearing at A&E—a fact that is just not mentioned. These religious and ethnic minority communities are indeed ahead of the curve as they are in tune with the rising number of young adults, the millennials, who drink in moderation or do not drink at all.

Studies have shown that where there are young adults in a college setting with a significant number from a black or minority ethnic community, overall the young people in that group drink less. It has an effect of good peer pressure within the group. Yet the lack of evidence is serious as without it there are none of the bespoke policies needed to help those in these communities who drink. There is evidence that when such people drink they do so at higher levels, hidden away and facing barriers to accessing the help they need from the NHS. Also, if you drink without the enzyme to break down alcohol there are greater health risks and a higher incidence of hypertension. I have not seen any awareness of this within the NHS.

A national piece of work, looking at the evidence and policies in Yorkshire mill towns, city centres such as Birmingham, Chinatown and boroughs such as Lambeth is well overdue. It would show how much ethnic minorities save the National Health Service but also any deficiencies so that people could then access services they need. Perhaps religious leaders could also help bring down the barriers for communities when they need to access other professional services.

5.26 pm

Lord Smith of Hindhead (Con): My Lords, I am grateful to the noble Lord, Lord Brooke of Alverthorpe, for raising this Question for Short Debate today. I recently had the honour of serving with him on the Licensing Act Select Committee and am therefore aware of his concerns about the damaging effects of excessive alcohol consumption. I very much respect his long-term commitment to raising awareness of this matter. It is appropriate that I declare my interests as set out in the register, in particular my role as CEO of the Association of Conservative Clubs, a private members’ club group with some 850 members’ clubs located throughout the UK.

I believe that the vast majority of the population enjoys alcohol with no problems at all. In moderation, alcohol plays an important and beneficial role in the nation’s life. A society that socialises together is a stronger one. For many people, drinking provides and has always provided social cohesion. I made many points in my maiden speech about when, if used in moderation and linked with socialising, alcohol can play an important role in alleviating some life-limiting lifestyles. It is a recognised fact that people who enjoy an active social life avoid loneliness and the devastating effects that isolation can have on a person’s health. Pubs, clubs, restaurants and bars provide a significant part of most people’s social lives. Whether it is meeting family or friends, watching sport or celebrating a special occasion, the common denominator for many is having an alcoholic drink. By and large, this is enjoyed responsibly and without repercussions.

Of course, I recognise that for others alcohol can become a poison and a prison. It is undoubtable that alcohol puts an enormous strain on front-line services, not least the NHS. Would my noble friend the Minister consider updating the direct cost to the NHS that was put at £3.9 billion back in 2014? Then we would have an up-to-date figure of exactly where we stand. We know that per capita alcohol consumption has fallen by more than 17% during the last 10 years. Alcohol-related crime is down and the number of young people consuming alcohol is down by 38% since 2004. Alcohol-related hospital admissions for those under 40 has declined by 11% since 2010 and alcohol-related deaths have fallen by 10% according to the Office for National Statistics. The UK today drinks less alcohol than 16 other European countries, according to the World Health Organization.

However, I would be the first to say that there is still much more to do to prevent people who are sensible consumers of alcohol becoming the irresponsible minority who deliberately drink to destruction, to deter existing nuisance drinkers who pre-load on cheap alcohol and cause trouble in our villages and towns, and to help those who are sadly addicted to alcohol, harm themselves and their families, and greatly risk promoting the cycle of self-abuse and alcoholism on to their children and the next generation. Does the Minister feel that enough
is being done to treat people who are addicted to alcohol in the UK? Does he feel that these treatments are proving effective?

There is an increasing trend of stay-at-home consumption, with large quantities of alcohol being purchased—often very cheaply—from supermarkets and off-licences. I have concerns that some of the deals on offer for beers and lager can cut down the cost to as little as 63 pence per pint. I am also concerned that recent statistics show that as much as 40% of all alcohol purchased in the UK is bought by only 10% of the adult population. Does the Minister think that more could be done to restrict offers and implement safety mechanisms within the off-trade on a par with those that exist in the on trade?

Local alcohol partnerships are playing an important role in creating healthier, safer high streets. Organisations such as the Portman Group, Best Bar None, National Pubwatch and Purple Flag are working with the alcohol industry and local authorities to tackle crime, disorder and underage sales. Importantly, they are also working to improve responsible alcohol marketing and to provide education and information about the damaging effects of excessive consumption. I hope the Minister will agree with me that education on matters such as smoking has vastly improved, and the same could be achieved on excessive consumption of alcohol.

Finally, I offer a further point for consideration. Every time the police issue a fine for drunk or disorderly conduct, those funds could be shared with the ambulance service. The police do an excellent job, but so does the ambulance service, and it is rare that the two are not in partnership with each other on these regrettable occasions. We have a responsibility not to limit the freedoms and activities of people, while also providing safeguards and information for those who are vulnerable. I look forward to hearing the Minister’s response to the debate today.

5.31 pm

Baroness Walmsley (LD): I, too, congratulate the noble Lord, Lord Brooke of Alverthorpe, on securing this important debate. Last January, I chaired a seminar run by the All-Party Parliamentary Health Group on developing a long-term strategy to reduce the harm from alcohol consumption. We heard from several eminent contributors whom I shall mention as I go along. We started with Professor Sir Ian Gilmore, chair of the Alcohol Health Alliance, who described the burden of alcohol harm. He told us that, statistically, alcohol is the number one risk factor for premature death in the UK today. The BMA tells us that 60 different medical conditions are caused by alcohol abuse, and are therefore preventable. Sir Ian Gilmore said that 70% of presentations at A&E on a Friday or Saturday night, and about 20% of all hospital admissions, are related to alcohol. Interestingly, mental and behavioural disorders due to alcohol use account for almost 20% of those admissions, so we know that we are talking about mental, as well as physical, diseases. We know what the diseases are; several noble Lords have referred to them today. In addition to those physiological diseases, of course, accidents are caused by alcohol use, and there are a lot of hospital admissions because of those, as well.

Sir Ian was followed by Dr Mirza, an emergency medicine consult from West Middlesex University Hospital. He began by shocking us all with four real-life but typical situations that had taken place in his department over the past month. They included drunken patients attacking staff or police officers, running rampant and breaking thousands of pounds-worth of hospital equipment, requiring to be restrained and taking up hours of time of the staff, meaning that other sick patients were not treated for hours. The disruptive effect on the department was enormous, he said, and added additional strain to an already overstretched A&E department.

What does all this cost the nation? The Government themselves estimate that it costs £3.5 billion a year to the NHS, £11 billion a year on criminal justice and £7.3 billion in lost production, a total of £21 billion a year. What could the NHS and social care do with that money?

In addition to these costs and the burden of disease, there are costs for children and families. My daughter-in-law is currently writing a PhD thesis about the scale of domestic violence following excess alcohol consumption after major sporting events. Dr Mirza pointed out that there are many children living with one or more parents with an alcohol-related problem, resulting in mental and emotional strain and poor academic attainment for the child.

What are the options for reducing these harms? First of all, we have to ensure that young people are educated in their PSHE lessons about the harm that alcohol can do. We heard from Professor Yvonne Kelly, Professor of Lifecourse Epidemiology at University College London, that, of those adults who drink, 80% to 90% of them start in the second decade of life. Pleasingly, as someone has said, there has been a fall in the number of underage drinkers in the past 25 years, and I put that down to education. However, she told us that the amount being drunk by each underage drinker shows no sign of falling, so these are the people we need to target. A number of options were suggested to us, including those affecting price, labelling, marketing, advertising, availability, low-alcohol options, help with behaviours, etc. Many of these have excellent evidence of effectiveness, according to the academics.

I have a number of questions for the Minister. Has he done an impact assessment of the reduction in alcohol abuse services following the cuts to public health budgets? Is he aware that this money is well spent? For every £1 spent on alcohol treatment, £5 of public money can be saved. We know that a five-minute chat from a health professional can have a major effect on a person’s drinking habits, yet GPs do not have time to do this in a 10-minute appointment. Will the Minister publish imminently the Government’s new alcohol strategy, and will he consider including in it minimum unit pricing to tackle products such as white cider, which I was staggered to discover costs only 15p per unit of alcohol and is used mainly by very problematic drinkers? Will he ask the Chancellor to increase the general cost of alcoholic drinks? Given what the noble
Lord, Lord Brooke, said, what can he do to reduce the comparative cost of low or zero-alcohol products? Will he issue guidance to local authorities which authorise licences to ensure that health is a factor in licensing decisions, so that they understand the effect of long opening hours and high density of premises selling alcohol? Alcohol action areas have already proved the effectiveness of reducing density and hours.

Will the Minister also look at what can be learned from the policies on tobacco? I agree with the noble Lord, Lord Brooke of Alverthorpe, about labelling. Labelling of tobacco products showing the health damage they can do could easily be replicated with alcohol. Alcoholic products should not only show the calories and units of alcohol they contain but also have a reminder of the Chief Medical Officer’s advice about maximum weekly consumption and alcohol free days. Perhaps we can do that after Brexit.

There is evidence that increased exposure to alcohol increases the chances of children drinking, so will the Minister also include in the policy a ban on advertising of alcoholic products before the watershed? Will he also consider banning alcohol sponsorship of sports events for the same reason? The health and economic benefits of all these actions would be immense.

My noble friend obviously did not dwell much on taxation and price regulation, because he covered a much wider canvas. However, the analysis by Public Health England said:

“Implementing a minimum unit price is a highly targeted measure which ensures any resulting price increases are passed on to the consumer, improving the health of the heaviest drinkers”, is surely right. As PHE points out:

“The MUP measure has a negligible impact on moderate drinkers”—
who we do not want to undermine—
“and the on-trade”.
I hope that the Minister will be able to say something about where the Government are on the MUP.

I pick up the point raised by my noble friend and the noble Baroness, Lady Walmsley, on labelling. Post Brexit what the Government do about labelling will be entirely in their hands. As the Minister is responsible for the Department of Health’s response to Brexit, can he say what work is now being done by either his department or Public Health England to look at what the Government are going to do when they have control over labelling? Potentially, we could be much more effective than current EU regulations allow us to be.

Finally, I acknowledge a very good briefing that I had from the British Medical Association on this issue. It has set out a number of requests—principally, that the Government should:

“Publish a new updated alcohol strategy”. Will the Minister agree to do that? It mentions minimum unit pricing and reducing,
“the affordability of alcohol through taxation measures”. It makes an important point about ensuring that health,
“is a key factor in licensing decisions”. I know that we will receive a Select Committee report on the implications of the big change in licensing 10 or 12 years ago. However, this obviously needs to be considered very carefully. The BMA also goes on to ask for an implementation of,
“evidence-based measures to reduce drink driving levels”, and,
“a range of measures to reduce and better manage pregnancies affected by alcohol”,
and makes a number of other requests. At heart, there is a request to the Government to take stock of the pressures that we face, update the current alcohol strategy and take some courage in their hands and be prepared to move on from the rather insipid voluntary approach that we have to a tougher approach, in which they must look at taxation and a minimum unit pricing policy.

The Parliamentary Under-Secretary of State, Department of Health (Lord O’Shaughnessy) (Con): My Lords, I congratulate the noble Lord, Lord Brooke, on securing this important debate and on his obvious tenacity in pursuing this issue. I am sure that this will be the first of many occasions we will have to discuss this matter. I also thank all noble Lords for a wide-ranging, well-informed and informative debate.

I think all noble Lords accept that the vast majority of people who consume alcohol—whether in my noble friend Lord Smith’s clubs or elsewhere—do so as a
pleasurable and indeed even positive part of their social lives. However, we also know there are very serious harms and health costs associated with alcohol misuse, which is estimated, as the noble Lord, Lord Brooke, and other noble Lords have pointed out, to cost the NHS around £3.5 billion a year. The recent Public Health England evidence review tells us that alcohol is now the leading risk factor for ill-health, early mortality and disability among 15 to 49 year-olds in England, causing 169,000 years of working life lost. That is more than the 10 most frequent cancer types combined—a truly alarming figure. As the noble Lord, Lord Colwyn, pointed out, that is having an effect in specific areas such as increases in oral cancers.

Alcohol misuse is also a significant contributor to some 60 health conditions, including circulatory and digestive diseases, liver disease, a number of cancers, as has been said, and depression. Alcohol-related deaths have increased in recent history, particularly deaths due to liver disease, which saw a 400% increase between 1970 and 2008. As several noble Lords have pointed out, that is in contrast to trends seen across much of western Europe and, as my noble friend Lady Walmsley pointed out, it is also in contrast to outcomes in many minorities in the UK. It is not so much a British problem as a problem of certain communities within Britain.

In the UK, there are currently more than 10 million people drinking at levels that increase risk to their health. Those health risks, as the noble Baroness, Lady Walmsley, pointed out, are both mental and physical. They lead to more than 1 million hospital admissions annually, half of which occur in the most deprived communities, so this is also an issue of social justice. My noble friend Lord Smith was right to point out the work that the police, the ambulance service and other public services do to deal with—mopping up, sometimes physically as well as figuratively—the results of alcohol misuse. I take this opportunity to pay tribute to their work; they often have to deal with both physical and verbal violence in doing so.

We also know the tragedies that can occur from mothers drinking alcohol during pregnancy, leading to problems after birth. This is not just a UK but a global issue. To address the challenges of the prevalence of fetal alcohol syndrome disorders, the WHO is starting a global prevalence study. We will consider the results of alcohol misuse. I take this opportunity to pay tribute to their work; they often have to deal with both physical and verbal violence in doing so.

It is also important to recognise the devastating impact that addiction has on individuals and their families. It is unacceptable that children have to bear the brunt of their parents’ conditions. I was shocked to learn that, according to Alcohol Concern, 93,500 babies under the age of one, which I make to be about a sixth or seventh of the cohort, live in a family where a parent is a problem drinker. As the noble Baroness, Lady Walmsley, pointed out, there is a link to domestic violence which affects not just children but also partners. My colleague, the Minister for Public Health and Innovation, recently met with members of the All-Party Parliamentary Group on Children of Alcoholics to set out our plans to work with MPs, health professionals and those affected to reduce the harms of addiction and support those who need it. I am sure that noble Lords will agree that that is an important mission.

However, I am glad to say that we can also observe some promising trends regarding alcohol. As my noble friend Lord Smith pointed out, the figures for alcohol crimes and deaths are down, although there are other problems which we have talked about. People aged under 18 are drinking less, which stands in stark contrast to the data for the over-65s who are drinking more—I am not looking at anyone here—and there has been a huge increase in the number of hospital admissions for the over 65s in recent years of more than 130%. Nevertheless, there has also been a steady reduction in alcohol-related road traffic accidents.

We also have social action campaigns, such as Alcohol Concern’s dry January, in which I have taken part over the past few years, as I am sure other noble Lords have too, which are starting to change attitudes. The point that my noble friend Lady Berridge made about minority and religious groups leading the way was incredibly important. I accept her point about the need for appropriate analysis of how to communicate with those communities. We were unable to get the information, admittedly at short order, that she wanted, but I shall certainly write to her and put a copy of the letter in the Library for noble Lords. She makes an important point and she may have highlighted a weakness in the current strategy.

We have also seen real progress through working in partnership with industry. 1.3 billion units of alcohol have been removed from the market by improving the choice of lower alcohol products; nearly 80% of bottles and cans now display unit content and pregnancy warnings on their labels; and we have published guidance on updating the health information contained on labels better to reflect the latest advice on alcohol published by the UK Chief Medical Officer.

Several noble Lords asked about calories and labelling. This is an area where the European Commission is looking at legislation. It is not always the fastest moving institution in the world, and we have of course just signalled our intention to leave the European Union, but we will certainly look at that legislation as it comes through. It is fair to say—that I am not in a position to make a commitment at this point—that the UK has been a leader in this kind of area, not just on drink but on smoking as well, and I hope that, looking ahead, we would continue that leadership position.

An essential part of our strategy to tackle alcohol harms is the provision of high-quality, evidence-based treatment services. Local government now has the responsibility to improve people’s health, in particular on the public health side. This includes tackling problem drinking and commissioning appropriate prevention and treatment services for the local population’s needs. Several noble Lords asked about addiction and spending on cessation services, which increased from 2014-15 to 2015-16, even within the context of challenging budgets for public health. I see this as a positive move, but it is something to be kept under review.

The NHS remains critical to preventing alcohol harms. There is a new scheme to incentivise investment in alcohol interventions. The national Commissioning for Quality and Innovation indicator has been developed, and in the way beloved of the NHS, it has been given
the acronym CQUIN. It links a proportion of service providers’ income to the achievement of national and local quality improvement goals. The practical effect of that is that every in-patient in community, mental health and from 2018-19 to acute hospitals, will be asked about their alcohol consumption and, where appropriate, will receive an evidence-based brief intervention or a referral to specialist services. The noble Baroness, Lady Walmsley, pointed out that the evidence shows that people who receive a brief intervention are twice as likely to have moderated their drinking six to 12 months after the intervention when compared to drinkers receiving no intervention, so it is obviously a low-cost but highly effective action.

In addition, as my noble friend Lady Chisholm mentioned, by 2018, around 60,000 doctors will have been trained to recognise, assess and understand the management of alcohol use and its associated problems. My noble friend Lord Colwyn pointed out that dentists have a vital role in prevention and spotting early problems. The new dental contract means that there has been an increasing number of patient episodes, and Public Health England has developed an alcohol training resource for dental teams. I would be interested, as a follow-up, to find out if that has been successfully adopted within the profession that he represents.

Furthermore, the inclusion of alcohol assessment and advice in the NHS health check, which is offered to all adults in England aged 40 to 74, means that GPs and other healthcare professionals can offer advice to promote a healthier lifestyle. Since we mandated the alcohol assessment and advice component, nearly 5 million people have had a check. Referral to alcohol services following an NHS health check is around three times higher than among those receiving standard care, which is yet another example of how a small nudge in the right direction can make a great impact.

Several noble Lords talked about providing people with the right information so that they can make informed choices. Last year, Public Health England launched the One You campaign to help motivate people to improve their health through action on the main risk factors. This includes a drinks tracker app to help drinkers identify risky behaviour and lower their alcohol consumption and a new “days off” app to encourage people not to drink alcohol for a number of days a week, in line with the CMO’s recommendations.

My noble friend Lady Chisholm and the noble Baroness, Lady Walmsley, asked about education. PSHE is obviously a critical part of making sure that young people are informed about their choices. There has been a review of the PSHE curriculum—we have seen a strengthening of PSHE in recent announcements by the Secretary of State for Education. There must be, at least in part I think, some impact on the positive trends that we are seeing among young people in lower drinking, although it is of course hard to isolate what exactly causes that. We know, however, from the smoking environment that constant public health campaigns do have that impact, particularly for younger people.

It is also notable that while the incidence of mental illness has unfortunately and sadly increased among young people, there has not been the same increase in drinking. That is an interesting inverse correlation that is worthy of further investigation.

Several noble Lords asked about the affordability of alcohol. In this context you think of Hogarth’s “Gin Lane” and “Beer Street”, and the important role that taxation has historically played in changing drinking habits. The UK currently has the fourth highest duty on spirits among EU member states, and higher-strength beer and cider are already taxed more than equivalent lower-strength products. In relation to a move in the direction that the noble Lord, Lord Brooke, pointed to, noble Lords may know that it was announced in the Budget that duty rates on beer, cider, wine and spirits will increase by RPI inflation. In addition, a consultation is currently seeking views on the introduction of a new band to target cheap, high-strength white ciders which are a particular problem among young people. It is also seeking views on the impact of a new lower-strength still wine band to encourage production and consumption of lower-strength wine—another point talked about by the noble Lord, Lord Brooke. It is worth touching briefly on minimum pricing. I am afraid that my answers are entirely predictable on this issue. We await the conclusion of the court case. I will, however, look at the IFS report that was mentioned and we will keep a close eye on that issue going forward.

The noble Baroness, Lady Walmsley, asked about advertising, as, I believe, did the noble Lord, Lord Hunt. The Advertising Standards Authority has a vigorous approach to preventing advertising to children and young people, but I am assured that it is kept under review to make sure that it is having an impact. Again, it is worth investigating whether that has had an impact on the lower instances of drinking among young people.

It would be wrong for Ministers to restrict the treatments offered to young people. That is a clinical decision, although I know that clinicians are increasingly trying to change the behaviours of smokers and drinkers before providing significant treatments. There is also a link between drinking and depression, as the noble Lord rightly pointed out.

I close by again congratulating the noble Lord, Lord Brooke, on securing this debate on such an important subject. Alcohol misuse has a significant impact on people’s health, the NHS, the wider care system and society in general. I also believe, however, that progress is being made. The Government remain deeply committed to ensuring that people are given the information and support—and if necessary the treatment—that they need to reduce harms from alcohol. I look forward to working with the noble Lord and all noble Lords to reduce alcohol misuse in the years ahead.

Committee adjourned at 5.58 pm.
### EXPLANATION OF ARRANGEMENT AND ABBREVIATIONS

Dates of proceedings are indicated by numerals in brackets. Volume numbers are shown in square brackets.

Bills: Read First, Second or Third Time = 1R, 2R, 3R.

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