Vol. 764
No. 32

Wednesday
15 July 2015

PARLIAMENTARY DEBATES
(HANSARD)

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

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# House of Lords

*Wednesday, 15 July 2015.*

*3 pm*

*Prayers—read by the Lord Bishop of Portsmouth.*

## Women: Dishonour-based Violence

*Question*

*3.07 pm*

*Asked by* ***Baroness Cox***

To ask Her Majesty's Government what is their response to the Day of Remembrance on 14 July for victims of dishonour-based violence, and what steps they are taking to prevent such violence against girls and women.

**The Minister of State, Home Office (Lord Bates) (Con):** My Lords, the Government are clear that so-called honour-based violence is utterly unacceptable. We commend the efforts of all those working to raise awareness of these horrific crimes, including through yesterday's first national day of memory for victims of this form of abuse. Tackling forced marriage and so-called honour-based violence is a key priority. This is why we have criminalised forced marriage and are committed to supporting survivors and those at risk.

**Baroness Cox (CB):** My Lords, I thank the Minister for his commendation of yesterday's day of memory for victims of so-called honour killings. It was symbolically chosen as the day that would have been the 29th birthday of Shafilea Ahmed, if she had not been suffocated by her parents in front of her siblings for daring to adopt a western lifestyle deemed to bring shame on her family. Is the Minister aware that many victims of "honour-based" violence still do not receive the support and protection they desperately need from the police and social services because of a reluctance to interfere in cultural practices? What steps are the Government taking to ensure that cultural sensitivities do not inhibit the protection of vulnerable citizens or, indeed, override the law of the land?

**Lord Bates:** The noble Baroness is absolutely right to raise this and I pay tribute to her tireless work in this area, championing people who are suffering in such a terrible way. It is very much a hidden crime and that is a major problem we face, but we are clear that we must not allow cultural sensitivities to get in the way of prosecuting the guilty. A crime is a crime and a victim is a victim wherever they are. We need to get that message out there. I was pleased that my colleague from the Home Office, the Minister for Preventing Abuse and Exploitation, was at the same event as the noble Baroness and spoke movingly of the accounts that she heard, which have given us a new sense of commitment to doing all we can to tackle this heinous crime.

**Baroness Hussein-Ece (LD):** My Lords, does the Minister accept that very many of the victims—these young girls and women subjected to this disgraceful, dishonourable crime of violence—find it incredibly difficult to approach the police and, in effect, shop their families? They rely heavily on organisations in the community that do a lot to support women and signpost them. Can the Minister say how much investment is being made to fund these organisations and to recognise the work they are doing to ensure that women have a place to go when they need help?

**Lord Bates:** My Lords, there are various things. Starting with the Home Office, we have the forced marriage unit, which has done tremendous work in going around the country and making sure that police, local authorities and schools understand the nature of the problem. We have just established the female genital mutilation unit, which will work in a similar way to promote awareness. Of course, it is vital that we work with these other organisations to which she has referred to ensure that we get the message across. The Chancellor announced a further £3 million for refuges for those suffering from domestic violence, and that area of access would be available to those who have suffered as a result of so-called honour-based crimes.

**Baroness Uddin (Non-Afl):** My Lords, as one of the architects, alongside the noble Lord, Lord Ahmed, of the first report on the task force on forced marriage, I welcome all the work that has been done—in particular by the Minister himself, and previously by the noble Lord who is now the Chief Whip. Will the Minister acknowledge the work of the Newham Asian Women's Project and Southall Black Sisters, which have been stalwarts, but for which the funding has, sadly, been decreasing over the years? Can he assure the House that that funding support will continue, without which our commitment will not be met to the victims of forced marriage and so-called honour killing? By the way, I find absolutely distasteful the whole idea that it is an "honour" killing.

**Lord Bates:** The noble Baroness's terminology is absolutely right—it is anything but honourable. It is a way in which to categorise the term, and I have challenged it myself in talking about these matters.

On funding, I am very happy to look into the specific case that she raises about that refuge to see what we can do there, but I am sure that the Government are committed to tackling this whole wide area of violence against women and girls. The Prime Minister has put himself behind this—that is why we had the Girl Summit here a year ago. Then there is the work of my former right honourable friend William Hague in advocating this on an international basis, because that is also where the solution lies.

**Lord Swinfen (Con):** My Lords, how many cases have been referred to the police or other investigative organisations to be looked into?

**Lord Bates:** My noble friend puts his finger on a key point. When you look at the level of prosecutions, after the legislation has been put through and the initiatives have been announced, we have not got a strong story to tell. The previous Labour Government introduced forced marriage protection orders; as a result there have been some 800 of those orders, which are a civil function. But we very much want to see further criminal prosecutions so that the message goes out that we do not tolerate this type of behaviour at all.

**Lord Rosser (Lab):** In the light of the answers that the Minister has already given, what resources are the Government providing this year and next to promote measures and action seeking to prevent dishonour-based violence? The support of which organisations or bodies has been secured by the Government in the drive to prevent dishonour-based violence against girls and women in this country?

**Lord Bates:** We have worked on a cross-party basis; the Serious Crime Act introduced new measures on female genital mutilation and the anti-social behaviour and crime Act introduced measures on forced marriage. We have now produced various statutory guidance, which is now available and being promoted to police forces. Her Majesty's Inspectorate of Constabulary is going to undertake a review this summer into so-called honour-based crimes to see what more can be done in police forces across the country. A great deal is being done, but we are not complacent—more needs to be done.

**Baroness Afshar (CB):** My Lords, I declare an interest as the president of the Muslim Women's Network UK. This group has been active in working within the community and with Muslim women, men and their families, but unfortunately it is starved of funds. As the Minister is very kindly offering some funds, please may I ask for some for us?

**Lord Bates:** I recognise that a great deal of work is going on. I hope that I have demonstrated that the Government are taking this very seriously. If there are particular organisations about whose work Members of your Lordships' House wish to make representations, then of course I am always available on this very important issue.

**Lord Flight (Con):** My Lords, some element of mistreatment of women surely arises from the practice of Sharia law, in contradiction to the law of the land. Is it not time that something was actually done to control this and potentially to ban the practice of Sharia law in this country?

**Lord Bates:** I think that is a wider point. There will be an opportunity for the House to consider that in the forthcoming counterextremism legislation, where we will look at the effort that has been made to challenge certain views in our society and to reaffirm British values.

## Local Authorities: Public Health Budget

*Question*

*3.16 pm*

*Tabled by* ***Lord Beecham***

To ask Her Majesty's Government what is their assessment of the impact of the £200 million reduction in the public health budget on local authorities in the current financial year.

**Baroness Pitkeathley (Lab):** My Lords, with the leave of the House and at the request of my noble friend Lord Beecham, I beg leave to ask this Question.

**The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con):** My Lords, the Department of Health recognises the importance of implementing this saving in ways that minimise any possible disruption to services. It is about to consult publicly on how best to do that, and on how best to monitor the impact on services.

**Baroness Pitkeathley:** I thank the Minister for that reply. In view of the very strong statements that we have had in recent weeks from the Prime Minister and the Secretary of State for Health—and indeed from the Minister himself from this Dispatch Box—about the importance of prevention to help the NHS cope with future demand, is it not extraordinarily short-sighted to impose reductions which inevitably will result in cuts to preventive services, such as contraceptive services, drug and alcohol services and weight reduction? Does this not absolutely undermine the Government's objective of improving public health?

**Lord Prior of Brampton:** I shall give a short quote from the Prime Minister:

"when you look at the costs of obesity, smoking, alcohol and diabetes, we know we need a completely new approach to public health and preventable diseases. A real focus on healthy living. That's why it's at the heart of the plan";

that is, the *Five Year Forward View*. We accept that prevention is extremely important. This reduction in spending is £200 million out of a grant for local authorities of £3.2 billion—a reduction of about 6%. Local authorities have demonstrated in many other areas an ability to extract savings. I am sure they will do the same in this case.

**Lord Walton of Detchant (CB):** My Lords, I am not the only doctor to have expressed some reservations when the Health and Social Care Act decided to transfer funding for public health from the National Health Service to the local authorities. Do the Government now regret that decision in the light of the problems highlighted in the Question—particularly at a time when public health is facing enormous challenges, not least due to the obesity epidemic and the alarming increase in the incidence of type 2 diabetes?

**Lord Prior of Brampton:** My Lords, I am hesitant to disagree with the noble Lord in view of the fact that he told me earlier that he qualified as a doctor in 1945, which was nine years before I was born. However, the devolution of responsibility to local authorities has been fairly universally welcomed. They are better able to take into account local priorities. I should also add that just over £2 billion of the public health budget is held centrally as well.

**Baroness Walmsley (LD):** My Lords, is the noble Lord aware that many of the local authorities commission these important prevention services from NHS providers? Has any impact assessment been made of the effect on the NHS of this loss of income?

**Lord Prior of Brampton:** I think that the noble Baroness will know that we are due to go out to consultation on this matter, and that is an important issue that will be taken into consideration.

**Lord Winston (Lab):** My Lords, does the noble Lord not recognise that this Question goes much broader than just the confines of the issue that we are discussing? Local authorities have an effect on the environment, transport, housing, poverty and a whole range of social issues that absolutely affect public health. Until that is sorted out, this is going to be a major problem in this country.

**Lord Prior of Brampton:** The noble Lord makes a good point that goes considerably broader than the Question. I accept that many of these things are inextricably linked.

**Lord Turnberg (Lab):** My Lords, does the noble Lord accept the report from NICE, which showed that investment in public health improves not only the health of individuals but the economy? Can I tempt him to agree that cutting funding by as much as—I think—7.5% is counterproductive in trying to improve the nation's health?

**Lord Prior of Brampton:** The noble Lord may be interested to know that the McKinsey institute assessed that the cost of obesity to the British economy was some £46 billion. I am under no illusion about the importance of proper prevention.

**Baroness Manzoor (LD):** My Lords, health inequalities continue the gap in access to services and equity in our health services. The gap remains the same and has not become narrower between various socioeconomic groups, 20 years on. That means the rich, poor, black and indigenous white population. Exactly what is going to be done with part of the health prevention budget to try to reduce the gap?

**Lord Prior of Brampton:** A condition of the grant to local authorities is that they take on the responsibilities that the Secretary of State has under the Health and Social Care Act to reduce inequalities. As statutory bodies, local authorities have a duty under the Equality Act 2010 to provide equal opportunities for people with protected characteristics.

**Lord McKenzie of Luton (Lab):** My Lords, just last month, the Secretary of State for Health told the Commons:

"The big change we need to see in the NHS over this Parliament is a move from a focus on cure to a focus on prevention".—[*Official Report*, Commons, 2/6/15; col. 459.]

Two days later, on 4 June, the Chancellor announced a £200 million cut in the Budget. How joined up is that, and how is it justified?

**Lord Prior of Brampton:** Most people in this House will recognise that a strong and successful National Health Service depends on a strong and successful economy. Sometimes Governments have to take difficult decisions to improve the long-term strength of the economy, which is what we did in that case.

## Caste Discrimination

*Question*

*3.22 pm*

*Asked by* ***Lord Harries of Pentregarth***

To ask Her Majesty's Government when they intend to implement the amendment to Section 9 of the Equality Act 2010 that requires the introduction of secondary legislation to incorporate caste as a protected characteristic.

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con):** My Lords, this Government completely oppose caste discrimination. Since coming into office, we have been considering the caste duty, particularly in the light of the Tirkey v Chandok employment appeal judgment. That suggests an existing legal remedy for claims of caste-associated discrimination under the ethnic origins element of Section 9 of the Equality Act 2010. We note this potential protection.

**Lord Harries of Pentregarth (CB):** I thank the Minister for her reply and I am glad that she mentioned that case because the Employment Appeal Tribunal, as she rightly said, stated that caste-based discrimination may already be unlawful under existing legislation, but not necessarily so. Is it not therefore essential for the sake of legal clarity that the clear will of Parliament be enacted—namely, that caste-based discrimination be included in the Equality Act?

**Baroness Williams of Trafford:** My Lords, the Employment Appeal Tribunal judge referred to caste in its many forms potentially coming within Section 9 of the Equality Act. This judgment is binding upon employment tribunals.

**Lord Cashman (Lab):** My Lords, in 2012, the United Nations Committee on the Elimination of Racial Discrimination in all its forms recommended to the United Kingdom,

"that the Minister responsible in the State party invoke section 9(5)(a) … in order to provide remedies to victims of this form of discrimination. The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report".

I have two simple questions. When is the next periodic review and will the Minister comply with these recommendations?

**Baroness Williams of Trafford:** I can confirm that this Government, elected only a few weeks ago, are actively considering the matter.

**Lord Popat (Con):** My Lords, the vast majority of the British Hindu and Sikh community are outraged at this amendment to the Equality Act. Does the Minister agree with the Hindu organisations that implementing this amendment would be a blow to community cohesion in this great country and that the Government should legislate to remove it from the statute book?

**Baroness Williams of Trafford:** I agree with my noble friend that the issue is divisive. There is a strong lobby both for and against, and the Government are very concerned not to exacerbate the problem. Therefore, the present position, whereby protection from caste discrimination is developing naturally through case law, is very helpful.

**Lord Avebury (LD):** Will the Minister tell us how many representations have been made and by which organisations for the repeal of Section 9(5)(a), as demanded by the noble Lord, and why the Government have not agreed to meet persons or organisations that support Section 9(5)(a), which includes the whole of the Dalit community in this country?

**Baroness Williams of Trafford:** My Lords, I do not have exact figures and names to hand but I am very happy to write to the noble Lord with them.

**Lord Desai (Lab):** My Lords, is not the problem that the majority Hindu and Sikh organisations are responsible for discrimination of the minority in their own ethnic origin community? I do not think that one should quietly concede the majority's view in this respect.

**Baroness Williams of Trafford:** I agree with the noble Lord that this can be a problem within communities of that nature, and is not generally something that is within the British culture.

**Baroness Flather (CB):** My Lords, the Hindu community says that there is no caste discrimination in this country and therefore we do not need this subsection. Fine—but if that is the case, why is it fighting so hard against it? If there is no discrimination, then there is no discrimination. If this becomes law—as it should, and the sooner the better—there will be no prosecutions, nothing will happen and it will die out. But because they are fighting so hard, it leads me to believe that there is discrimination.

**Baroness Williams of Trafford:** My Lords, cases of this nature are very few and far between. As I said, the Government are actively considering the matter.

**Lord Stevenson of Balmacara (Lab):** My Lords, the last Government passed a Bill that required the present Government to act, and they have failed to do so. We understand that there is evolving case law, but it does not fully satisfy those who feel that the law must be respected. The Government may be new, but are they really changing the rules so that we will be governed by what they think might be a helpful way forward?

**Baroness Williams of Trafford:** My Lords, it would not be appropriate for me to speculate on discussions within government. I do not want to comment on or rule out any course of action. As I have said a couple of times now, the Government are considering the present position.

**Lord Lester of Herne Hill (LD):** My Lords—

**Lord Singh of Wimbledon (CB):** My Lords—

**The Lord Privy Seal (Baroness Stowell of Beeston) (Con):** My Lords, it is the turn of the Lib Dem Benches and then we have time to go to the Cross Benches.

**Lord Lester of Herne Hill:** Will the Minister explain how her replies are compatible with parliamentary supremacy, given that Parliament decided to insert the duty into the statute? Will she also explain how it is compatible with legal certainty, given that the only way one could do it through case law would be by going to the Supreme Court, at a cost of many hundreds of thousands of pounds, when Parliament has decided that it should be done by us by statute?

**Baroness Williams of Trafford:** My Lords, I repeat once again that the Government will be actively considering this, and will take their view in due course.

**Lord Singh of Wimbledon (CB):** My Lords, it has been said, I think misleadingly, that Hindu and Sikh organisations are against this legislation outlawing caste discrimination. Can the Minister note that the whole Sikh community and the whole thrust of Sikh teachings are totally against the notion of caste?

**Baroness Williams of Trafford:** I duly note that.

**Baroness Symons of Vernham Dean (Lab):** My Lords, will the Minister please write to my noble friend who raised the question of the periodic review and let him, and indeed others who are interested, know when it will take place?

**Baroness Williams of Trafford:** I am very happy to do that.

**Baroness Royall of Blaisdon (Lab):** My Lords, the last Government agreed to conduct a feasibility study into if and how it might be possible to estimate the extent of caste-based discrimination in Britain. The research was concluded in November 2014, I understand, but the report has not yet been published. When is the report likely to be published, and why has there been such a delay?

**Baroness Williams of Trafford:** My Lords, the case law provides potential protection for someone wishing to claim caste discrimination, which is what all sides of this House wanted during earlier debates. We need to consider carefully whether putting the word "caste" into the Act would actually change or clarify the legal position.

## Hunting Act 2004

*Question*

*3.30 pm*

*Asked by* ***Lord Dubs***

To ask Her Majesty's Government what assessment they have made of the impact of their proposed amendments to the Hunting Act 2004 on efforts to protect animal welfare.

**The Minister of State, Home Office (Lord Bates) (Con):** My Lords, the proposed amendments do not overturn the hunting ban. Pursuit and killing of wild animals by dogs remains illegal. Hare coursing also remains illegal. The UK continues to have some of the strongest animal welfare protection in the world.

**Lord Dubs (Lab):** I wonder if the Minister has ever read the Conservative Party manifesto. In the spirit of helpfulness, perhaps I may point to one sentence:

"A Conservative Government will give Parliament the opportunity to repeal the Hunting Act on a free vote, with a government Bill in government time".

Whatever made the Government think that they could slip a measure through without having a full Bill, as they were contemplating doing a few days ago? Do not the Government realise that getting this measure through Parliament would be deeply unpopular—as it is in the country? Would not the best thing be to drop the whole daft idea?

**Lord Bates:** I can confirm that I did read the Conservative manifesto, and I think that quite a lot of the electorate probably read it as well. On the noble Lord's point, of course there is a manifesto commitment about a free vote, and that will come. What we were dealing with here was secondary legislation to bring in technical changes which would bring the legislation into line with that which exists in Scotland. That is what was at issue in this debate. No secondary legislation would change the primary purpose of the Bill, so that is a separate matter.

**Baroness Parminter (LD):** Does the noble Lord accept that an amendment to the Hunting Act which makes the number of dogs allowed to chase a wild animal limitless will make the Bill unenforceable? It has done that in Scotland, where there have been zero prosecutions for mounted hunts.

**Lord Bates:** I do not think that it will make it unworkable. There has been concern, which has been expressed in representations from farmers, particularly in upland areas, that the current provisions and exemptions for pest control are unworkable, causing them problems and resulting in the loss of livestock as a result of attacks by foxes. So the question was: can they bring it into line with that which is already the case in Scotland? The view was that that was a reasonable request and something which should be done.

**Lord Mancroft (Con):** Will my noble friend agree with me that the Government's proposals did not constitute repeal but were welcome nevertheless, and that we look forward to repeal, as it is in the manifesto, at a convenient moment in the future? In asking this question I declare my interest as chairman of the Masters of Foxhounds Association, chairman of the Council of Hunting Associations and chairman of the Countryside Alliance.

**Lord Bates:** My noble friend makes me grateful for that provision in the manifesto which the noble Lord, Lord Dubs, referred to, that it is a free vote on these matters.

**Baroness Smith of Basildon (Lab):** My Lords, is not a pattern emerging regarding the Government's attitude to legislation and the role of Parliament? Both the Delegated Legislation Committee and the Constitution Committee have expressed concerns about a worrying trend to limit scrutiny in this House. We have the absurdity of the Government's trying to rush through English votes for English laws with a multi-page amendment to the Standing Orders of the House of Commons with no reference to or debate in the House of Lords. Then, with the fox hunting legislation, we have a pantomime of trying to change—whatever the noble Lord says, it would change—the intent and the purpose of primary legislation through an amendment in secondary legislation. Are these examples the amateurish, foolish mistakes of inexperienced Ministers, or are the Government now frightened of sensible scrutiny?

**Lord Bates:** They might be, but the question is: which Ministers? The power to vary the exemptions was in the Act introduced by the Labour Government in 2004. Section 2(2) provides for the ability to amend Schedule 1 to the Act. We are simply taking the opportunity and advantage of the provision that they wisely put into the legislation.

**Lord De Mauley (Con):** My Lords, to what does my noble friend attribute the behaviour of the Scottish National Party, which appears to oppose amending the law in England so that it is aligned with that in Scotland and which a few months ago undertook not to do what it says it would now do?

**Lord Bates:** My noble friend raises an important point. In February, Nicola Sturgeon said:

"The SNP have a longstanding position of not voting on matters that purely affect England—such as foxhunting south of the border, for example—and we stand by that".

That was the SNP's position then; we know what its position is now, and I think people can draw their own conclusions. It also plays into a wider issue of why SNP Members of Parliament should seek to use their influence to stop England and Wales having the same exemptions as they have in Scotland.

**Lord Trees (CB):** My Lords, our society accepts the killing of animals for specific purposes. Does the Minister agree with me that such killing should be strongly justified, should be carried out in as humane a manner as possible and should be done by competent individuals acting in a cool and dispassionate but compassionate way? Furthermore, will he go so far as to agree with me—I doubt that he will—that in a civilised society like ours, we should do all we can to dissuade individuals from pursuing leisure activities for pleasure which result in the killing of animals?

**Lord Bates:** The Animal Welfare Act 2006 is very clear that the causing of unnecessary suffering to an animal is an offence and the maximum penalty is an unlimited fine or six months' imprisonment. That is not what we are talking about here; we recognise in certain circumstances that it is necessary to control pests, particularly in rural areas. The argument made is that the current provisions do not allow that to be done effectively. There is no question of contravening the Hunting Act, as my noble friend has mentioned, because that bans hunting with dogs to kill mammals. That would not be done in this case. It is a case of flushing out using dogs, with the killing done as humanely as possible but at the point of a gun.

## European Union (Approvals) Bill [HL]

*Committed to Committee*

*3.37 pm*

*Moved by* ***Lord Freud***

That the bill be committed to a Committee of the Whole House.

*Motion agreed.*

## Iran: Nuclear Deal

*Statement*

*3.38 pm*

**The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con):** My Lords, with the leave of the House, I shall now repeat a Statement made earlier in another place by my right honourable friend the Foreign Secretary. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on the outcome of the nuclear negotiations with Iran.

In recent days, the world has held its breath as talks between world powers and Iran edged towards a conclusion. The negotiations were hard. All sides faced tough decisions. In the early hours of yesterday morning, a process that began over a decade ago came to a conclusion.

The result is a historic deal, a landmark moment in efforts to prevent nuclear proliferation and a victory for diplomacy. The UK with its partners in the E3+3—China, France, Germany, Russia and the United States, with the EU High Representative as our co-ordinator—have at last reached a comprehensive agreement with Iran on its nuclear programme. With the conclusion of these negotiations, the world can be reassured that all Iranian routes to a nuclear bomb have been closed off and can have confidence in the exclusively peaceful nature of the Iranian nuclear programme going forward.

The origin of these negotiations lies in the revelation some 12 years ago that Iran was concealing nuclear activities, in violation of its international obligations. At that time, Iran, under a different Government, was not willing to meet the requirements of the International Atomic Energy Agency. The international community responded with multiple UN Security Council resolutions. The agreement that we have reached does not absolve Iran of blame for its previous activities, nor does it wipe the slate clean. Instead, it offers Iran the opportunity to draw a line under its past behaviour and, gradually, to build the world's trust in its declarations that it is not pursuing the development of a nuclear weapon. This will not be a quick process but, with the implementation of this deal, it should be possible.

The Government's purpose in seeking an agreement has always been clear: to secure assurance that Iran will not be able to develop a nuclear weapon. To that end, this agreement imposes strict limits on Iran's nuclear programme that are comprehensive and long-lasting. For 10 years, Iran's enrichment capacity will be reduced by over two-thirds from current levels. It will enrich uranium only to a level of 3.67%—well below the 90% level of enrichment considered necessary for a nuclear weapon. Its stockpile of low-enriched uranium will be limited to 300 kilograms, down from more than seven tonnes, with the balance exported to Russia. Its research and development activities will be constrained so that it will not be able to enrich with advanced centrifuges for at least 10 years. Additionally, no uranium enrichment, enrichment R&D or nuclear material will be permitted at Iran's underground Fordo nuclear site. The agreement also cuts off the plutonium route to developing a nuclear bomb. Iran's heavy water research reactor at Arak will be redesigned and rebuilt so that it will no longer have the capability to produce weapons-grade plutonium.

Given the historic levels of mistrust that have built up between Iran and the international community, a strong inspection regime and a framework for addressing concerns about past military dimensions to Iran's nuclear programme are vital for building trust and providing us with the confidence that Iran is meeting its commitments. Some of the crucial monitoring and

transparency measures of this deal will last indefinitely, such as the implementation of the additional protocol to the comprehensive safeguards agreement. The additional protocol for every country allows access to sites about which the IAEA has concerns that cannot be addressed in any other way. Iran is no exception. Iran's NPT obligations—including the obligation never to acquire or develop nuclear weapons—will apply during and after the period of the deal. We will not hesitate to take action, including through the reimposition of sanctions, if Iran violates its NPT obligations at any time. Our concerns about the possible military dimensions of Iran's nuclear programme will be addressed. The IAEA and Iran have agreed a road map of actions to clarify the issues.

Taken together, these measures mean that, if Iran were to renege on its promises and try to "break out" for a bomb, it would take at least 12 months even to acquire the necessary fissile material for a single device. The robust transparency measures that we have agreed mean that we, the international community, would know almost immediately and we would have time to respond. In return for implementing these commitments, and as our confidence in Iran's programme develops over time, Iran will receive phased and proportionate sanctions relief. Initially, there will be relief of EU, US and UN nuclear-related economic and financial sanctions but, to be clear, this sanctions relief will be triggered only once the IAEA verifies that Iran has taken the agreed steps to limit its nuclear programme.

Other core provisions in the existing UN Security Council resolutions will be re-established by a new resolution. Important restrictions on import and export of conventional arms and development of ballistic missiles will be reimposed through an annexe to the resolution and lifted only later in the agreement.

These relaxations are backed by a robust enforcement mechanism: if there is a significant violation of the nuclear provisions of the agreement, all previous UN sanctions can be reimposed through a snap-back mechanism, which any party to this agreement can invoke. The EU and the US could also reimpose their own sanctions in such a scenario. Clearly, having made this agreement, it will be strongly in Iran's interest to comply with the provisions of it to avoid a return to the sanctions regime that has crippled its economy for so long.

We now need to look ahead to the implementation of the agreement. After such a tough negotiation there will inevitably be bumps along the road. We entered into this agreement in good faith, and all sides must try to resolve together any problems in implementing this deal. But the deal includes robust enforcement provisions, and we will not hesitate to use them if Iran goes back on its word.

Although this agreement is focused solely on Iran's nuclear programme, its conclusion could have wider, positive consequences. By providing the means—through sanctions relief—for Iran's economic re-engagement with the world, it will allow the Iranian people to feel the tangible benefits of international co-operation. As that economic re-engagement materialises, we will, of course, seek to assist UK businesses to take advantage of opportunities that arise. That assistance would, of course, be enhanced through having a functioning British embassy in Tehran. We remain committed to reopening our embassies in each others' countries and will do so once we have resolved some outstanding issues.

The deal also has the potential to build a different kind of relationship between Iran and the West, and change in a positive way the dynamics in the region and beyond. In an atmosphere of developing confidence and trust, there will be an opportunity for Iran to realign its approach in support of the international community's efforts, in particular in confronting the challenge of ISIL and the resolution of regional crises, such as those in Yemen and Syria.

But this will be a process. It will take time. In the mean time, we remain realistic about the nature of the Iranian regime and its wider ambitions. We will continue to speak out against Iran's poor human rights record. And we will continue to work closely with our friends, allies and partners in the region who live with Iranian interference in their neighbourhood. Iran will not get a free pass to meddle beyond its borders.

An Iranian bomb would be a major threat to global stability. That threat is now removed. We and Iran now have a common responsibility to ensure that the wider potential benefits, for the region, and for the international community as a whole, are delivered. The UK is fully committed to playing its part and I commend this Statement to the House".

*3.48 pm*

**Baroness Morgan of Ely (Lab):** My Lords, I thank the Minister for repeating the Statement. The Opposition welcome the successful end to the marathon Iran negotiations. It allows us to see a glimmer of light in a world that seems increasingly precarious. We have had challenge after challenge in the field of foreign affairs over the past few years and it is comforting to have a successful outcome which has proved the value of the diplomatic route.

I start by paying tribute to the Foreign Secretary, John Kerry, our European and international partners and everyone involved for their efforts in securing this major diplomatic breakthrough. Neither should we forget President Rouhani, who has had to face down some pretty tough hardliners at home. I ask the Minister to join me in paying particular tribute to the noble Baroness, Lady Ashton, for her sterling work on this matter during her tenure as High Representative of the EU of Foreign Affairs and Security Policy. Nobody has worked on this matter more tirelessly than she has. It is a fitting tribute to her, and a part of her legacy, that this agreement has been delivered.

Will the Minister also join me in encouraging the US Congress to endorse this agreement, which would send a positive message about the role of diplomacy in the world? There are some worrying signals coming from the Republicans that they will seek to block this agreement, which I fear would be a mistake. There has long been consensus across these Front Benches that seeking an agreement with Iran was the right thing for the international community to do. We have always supported the twinned approach of sanctions and negotiations backed up by UN Security Council

[Baroness Morgan of Ely]
resolutions. None of us wants Iran to have a nuclear weapon and no one believes that the world would be a safer place were it ever to acquire one.

It is worth reflecting on how much graver the world might have looked today had the Foreign Secretary returned to the House of Commons to report that the talks had collapsed without an agreement. We would be facing the almost certain restart of Iran's nuclear programme with no means of monitoring or inspection, the possibility of a nuclear arms race in the Middle East and greater instability in an already volatile region. That is why it was right to use the negotiating opportunity that the pressure of sanctions against the Iranian regime has created. That process was not rushed in order to get this right. The important point now is to ensure that this agreement lives up to the words of yesterday's joint statement by the EU High Representative and the Iranian Foreign Minister: that this,

"is not only a deal but a good deal. And a good deal for all sides".

The Minister outlined many aspects of the agreement in detail. Let me touch on a number of these. First, Iran has reaffirmed as part of the agreement that,

"under no circumstances will Iran ever seek, develop or acquire any nuclear weapons".

This is, of course significant, but the world—especially those countries in the region that have particular concerns—will want to see that Iran's words are matched by its deeds, so I welcome the assurances that thorough and independent inspections are at the heart of this agreement. It is vital that its implementation is based not on faith but on facts, evidence and verification.

Does the Minister agree that, while we should be positive about the implementation of this agreement, we must also go into it with our eyes wide open? If there is a lesson to be drawn from the collapse of the agreed framework negotiated with North Korea by the Clinton Administration in the 1990s, it is that the success of these agreements should be judged not over months but over years. It is therefore right that some sanctions should be removed gradually and only when Iran honours the commitments it has made. Are the Government satisfied that, were Iran to violate the terms of the agreement, the provisions for sanctions to snap back are tough enough to block its path to a nuclear weapon? Does the Minister agree with the words of Javad Zarif, the Iranian Foreign Minister, who said yesterday that this deal represents,

"not a ceiling but a solid foundation … to build on"?

It is no secret that Iran has been involved for many years in exploiting sectarian tensions in the region, whether through proxy armies or support for terrorist groups. Those issues, and the difficulties in our own relationship with Iran, will not go away overnight. However, this agreement does present Iran with the opportunity to play a much more constructive global role. The Statement asserts that,

"we remain realistic about the nature of the Iranian regime and its wider ambitions".

Could the Minister elucidate what the Government understand by the "wider ambitions" of Iran in the area? The Statement goes on to say:

"Iran will not get a free pass to meddle beyond its borders".

What exactly is meant by this? Will we stop Iran from any involvement in defeating ISIL or Daesh in Iraq? What exactly are the Government suggesting in terms of the relationship between Assad and Iran, and its provision of arms to Hezbollah? What do the Government intend to do, and how, if they genuinely want to stand by this Statement? Does the Minister agree that opening up better links with Iran will help the process of reform within that country? It needs to include improving its human rights record and the ending of house arrest for opposition leaders.

The Iranians are a gifted people with a large, educated and determined middle class representing one of the world's great civilisations. There is a real opportunity to reach out and engage with this part of the world and the people living there, and to bring Iran in from the cold. For Britain especially, the Minister mentioned ongoing efforts to reopen our embassy in Tehran. Will she tell us specifically when she expects that to take place?

Working together as an international community is a well-worn phrase, but this moment shows what can be achieved through patience and diplomacy. If history teaches anything, however, it is that peace is a process and not an event. Yesterday, the Iranian President called this a "new chapter". We all live in hope that it is a new chapter which will help lead to a safer and more peaceful world, free of nuclear weapons. We on this side will continue to support all efforts to make that hope a reality.

*3.56 pm*

**Lord Wallace of Saltaire (LD):** My Lords, we on the Liberal Democrat Benches welcome this Statement and welcome enormously the successful conclusion of the negotiations, although we have some reservations about aspects of the Statement and its tone. Within the coalition Government, the Liberal Democrats pressed from the outset for an active exploration of a changed relationship with Iran. It has a very complex political system in which there are some very nasty and hardline elements, but also some elements of civil society and a desperate desire, particularly among the urban population, for a reopening of its relationship with the rest of the world.

We should pay tribute in particular to the Americans who led this negotiation and to the enormous efforts which Wendy Sherman, the American negotiator, put in. We should also recognise the enormous efforts which Cathy Ashton made as the EU negotiator. I would welcome the Minister marking the fact that this has been a triumph for European co-operation in foreign policy rather than simply a British effort. I noted in the last Statement made on the European Council that the Prime Minister said that we wanted to return the European Union to its original fundamentals as a customs union. The EU, in its original fundamentals, was never just a customs union; it was always about foreign policy, co-operation and security. The Government need to make that clear as they negotiate for EU reform.

We have some reservations about the suggestion that the origins of these negotiations lie in the revelation in 2003 that Iran was considering nuclear activities.

In 2003, the year of the invasion of Iraq, the Iranians offered to reopen negotiations with the United States and the European countries on a closer relationship, which the Americans blocked off. The then Labour Government, to their shame, simply followed the American lead, as so often they did in that period of an American Republican Administration, and we missed what seemed to many of us to be an opportunity for an earlier transformation of the relationship.

It being a principle in good international relations, we have to recognise that you need to understand how your opponent sees the world. At that point, the Iranians had seen, first, American and European support for Iraq in the Iraq-Iran war, which was a very bloody war, and, secondly, the western invasion and occupation of Iraq just next door to them. Not surprisingly, the Iranian regime—nasty though it was in many ways—felt threatened. Therefore, after 10 years of very difficult negotiations, we come to a position where we have not entirely secured the abolition of a nuclear weapons programme in Iran.

We recognise that this is a compromise on which there are things still to be done. However, there is now the opportunity for a gradual change in the climate. We should like to hear from the Minister how far the Government recognise that this offers the opportunity for a transformation of our relationship with the complexities of the various Middle East conflicts and the Iranian role in them.

I thought that it was extremely unwise of the Israeli Prime Minister to suggest that this was a disaster and that Iran represented an existential threat. The other week I heard an Israeli Minister refer to Saudi Arabia as a moderate state and the Iranians as evil. That seems enormously mistaken. Clearly, Iran does meddle well beyond its borders, but there are many other states in the Middle East which also meddle beyond their borders, supporting other terrorist, Sunni organisations. We need to be concerned about that as well.

As Liberal Democrats within the coalition, one of our concerns was that the Government risked being caught on the hardline Sunni side of a developing Sunni/Shia conflict. I hope the Minister will reassure us that the Government are determined not to be caught there and that our interests are in promoting an easier relationship between Iran and the Sunni autocracies to which we are so close. We still sell too many weapons to those heavily armed states. I hope she will say that we will now be pushing for a transformation as we deal with the multiple threats from ISIS and from other terrorist groups across the Middle East.

**Baroness Anelay of St Johns:** My Lords, I thank both Her Majesty's Opposition and the Liberal Democrats, with whom I was very privileged to work in coalition—particularly the noble Lord, Lord Wallace. I thank them for their support throughout this process. It has been an extremely long process and it has been difficult for political parties to remain united over that period. The seriousness with which all parties and their leaders have continued their commitment to it shows the major role that the UK plays, not only in the world but in trying to ensure that the world remains at peace without nuclear intervention.

It is with great pleasure that I recognise the remarkable role and patience of the noble Baroness, Lady Ashton, as high representative of the External Action Service of the European Union. One watched her attend meetings month after month, year after year and through the night. She always looked commendably and diplomatically in charge of events. We have much to thank her for.

I turn to specific questions from noble Lords. The noble Baroness, Lady Morgan, asked whether I was concerned about the role of the United States Congress. Clearly, there is now a period in which Congress has to consider the matter, at the end of which it can express its view. It is a matter for the United States Congress. I would not interfere in its events, just as I would not wish it to interfere here. We await the outcome with interest. All these matters can proceed only once a United Nations resolution has been achieved.

I was also asked whether I agreed that what had been achieved were thorough, independent inspections and verifications, and that those were at the core of everything. I absolutely agree with the noble Baroness. She also had a degree of realism—it may be painful, but we have to keep our eyes wide open for at least 10 years. This agreement has been won after such a hard struggle; we must not let any of it slip.

With regard to snap-back, am I assured that it is tough enough to block the way to obtaining nuclear weapons? Yes, I am. The process of snap-back is robust because it is structured in such a way that it reserves the powers of all the P5 of the UNSC to snap back to the original sanctions in the event of any violation by Iran. Of course, in any event, if either the EU or the US thought that there had been a violation, they could impose their own sanctions as well.

Iran's wider ambitions were referred to by both the noble Baroness, Lady Morgan, and the noble Lord, Lord Wallace of Saltaire. It is crucial that we consider the wider interests of the region. Throughout this process, I have always said that it is important that we are able to welcome Iran back into the international community, but that welcome has to be tempered by a realism that Iran has ambitions. I agree with the implication behind the question of the noble Lord, Lord Wallace, that it is important that all parts of the international community work with Iran so that we can work towards an easier relationship between Sunni and Shia, as I believe he put it. That is what we should all aim to achieve.

I am already reassured to some extent by the measured tone that we have heard from Saudi Arabia in its reactions to the signing of this agreement. That is, indeed, promising. My right honourable friend the Prime Minister has made it clear that we hope this may lead to our undertaking further work with Iran in encouraging it to act responsibly as part of the work that the coalition does, not necessarily as part of the coalition but working towards the same end, in dealing with the threat of ISIL—or, as some prefer to call it, Daesh.

Both the noble Baroness and the noble Lord asked me whether this agreement makes it easier for us to have relationships with Iran. I very much hope that it does, but again with our eyes wide open. As I mentioned

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in the Statement, this will not stop us speaking out against human rights abuses in Iran, but our current work and the fact that we will have a base eventually, when the embassy reopens, give us a much better opportunity to interact with the people in Iran and to make sure that information is more readily available. With regard to the opening of the embassy, there are still technical problems with regard not to re-equipping but actually to equipping the embassy after it was emptied. However, we are hoping that will be achieved by the end of this year.

The noble Lord, Lord Wallace, asked me whether the UK had an interest in not only promoting the easier relationship between Sunni and Shia, but also ensuring that we are able to work with countries in the wider community in the region in order to allay their concerns. I hear the concerns that President Netanyahu of Israel has already expressed and my right honourable friend the Foreign Secretary will travel there tomorrow to discuss the implications with him.

The noble Lord, Lord Wallace, teased me a little about the position of the Conservative Party vis-à-vis the European Union. I have always made it very clear that I find it very helpful to work through the European Union both with regard to negotiations such as these and certainly with regard to work in the United Nations. The E3—the UK, France and Germany—have been at the heart of these negotiations since the Foreign Ministers visited Tehran in October 2003, launching the process that culminated in yesterday's agreement. That says it all.

*4.07 pm*

**Lord Lamont of Lerwick (Con):** My Lords—

**Lord Jopling (Con):** My Lords—

**The Earl of Courtown (Con):** Shall we hear from the noble Lord, Lord Lamont?

**Lord Lamont of Lerwick:** My Lords, I refer to my entry in the *Register of Lords' Interests* as chairman of the British Iranian Chamber of Commerce. First, in judging this deal, does the noble Baroness think it important to point out that 10 years of sanctions did not succeed in reducing the total number of centrifuges, which during that period increased from 3,000 to 22,000, and that the only alternative to a negotiated settlement was military intervention and the use of force, which would have been disastrous? Secondly, she referred to possible past dimensions of the Iranian military programme, and said that they would be settled later. How far have the Iranian Government gone in committing themselves to allow these matters to be investigated, and does she have complete confidence that this will happen? Thirdly, does she agree that it is extremely encouraging that President Rouhani, who took the unprecedented step of opening public negotiations with the United States for the first time since 1979, has said that he sees the agreement as just the first step towards better relations between the Islamic republic and the wider world?

**Baroness Anelay of St Johns:** My Lords, I will deal with the latter point first. The noble Baroness, Lady Morgan, quoted the Foreign Minister with regard to the fact that the attitude in Iran is that this is the starting point, not the ceiling. This is not where we finish but where we start—and there is a great deal to do, to put it mildly. In response to my noble friend, it would be improper for me to give details about where the negotiations are and identify past activities, but those discussions continue. What I can certainly say is that with regard to implementation of the terms of the agreement, Iran will provide access to the IAEA in accordance with the provisions of the Additional Protocol to the Comprehensive Safeguards Agreement and the transparency provisions of the deal. So access has to happen. If anybody feels that there is any collusion or obstruction, there are ways in which that can be resolved by the joint commission—and, if necessary, we can go back to sanctions.

With regard to access to the wider investment in Iran, the fact is that all the preparations for developing nuclear capability went on while there were sanctions, but look what it did to the rest of the country. This agreement will allow the rest of the country to begin to thrive again.

**Lord Elystan-Morgan (CB):** My Lords, I hesitate to dampen the euphoria expressed in London and Washington in relation to this agreement, but are there not certain harsh realities of which we should remind ourselves? The first is that Iran is still solemnly and totally committed to the destruction of the State of Israel—a factor that may not be irrelevant to the condemnatory words of Benjamin Netanyahu. Secondly, despite all the restrictions, Iran—which is a theocratic state—is within a short step of becoming a lethal nuclear power, should it so wish.

**Baroness Anelay of St Johns:** My Lords, there is no short step to becoming a lethal nuclear power. This is a robust, durable, verifiable agreement and any breakout would certainly take at least a year to achieve. It would be noticed very quickly and sanctions would come back. That is why this deal is so effective. I would say that there is no euphoria but a recognition that this is a tremendous success after so much work. There is also a realisation that Iran has much to do to become accepted as a viable international state.

**Baroness Symons of Vernham Dean (Lab):** My Lords, in the Statement which the noble Baroness repeated, she said that the IAEA and Iran had agreed what I believe she called a road map of actions to implement the agreement. Can she tell us whether this road map is in the public domain and, if so, whether she will ensure that it goes into the Library of the House? Secondly, I declare an interest as chair of the Saudi-British Joint Business Council. In the repeated Statement, the noble Baroness also referred to "developing confidence and trust" in the region. She said that the Foreign Secretary will be going to Israel to discuss matters already raised on the Floor of the House. Can she tell us about the other state that has expressed a good deal of difficulty over this agreement? Notwithstanding

what she said a moment or two ago about Saudi Arabia, there are enormous concerns there about this agreement. What steps are the Government taking to assure Saudi Arabia that we are aware of its difficulties with this and that we are prepared to work with it on those points?

**Baroness Anelay of St Johns:** My Lords, through diplomatic channels we are having discussions with a range of states, and clearly Saudi Arabia is an important player in that area with which we have close and enduring relationships and for which we have respect. We may disagree on many of its policies but we certainly agree that it has concerns and that it needs to maintain its national defence. Certainly, those discussions proceed, and that goes more widely.

The noble Baroness asked whether I would put into the public domain details about how the road map might be developed. The steps for Iran to take in the PMD road map are not public but I can say that there will be an increasing opportunity as we have these questions and debates to put on the record further details about the way in which there are robust controls over what happens if Iran were to break its word. My right honourable friend the Foreign Secretary began to do that yesterday in discussions with the press, and that will continue in the way in which Ministers seek to keep both Houses informed.

**Lord Jopling (Con):** My Lords, will the noble Baroness be kind enough to tell us a little more about the timing of the implementation over the next year or so of this deal? In particular, can she tell us about the effect that would be applied to the deal if the United States Congress were to fail to endorse it? As she said quite rightly, that is a matter for Congress—but would it be the case that if it failed to endorse it, that would bring the whole thing to a grinding halt and we would be back to square one? It would come as no surprise to any of us who observed the hysterical and overexcited way in which Congress greeted Mr Netanyahu when he was there—he is of course strongly opposed to this deal—if Congress decided not to endorse the deal.

**Baroness Anelay of St Johns:** My Lords, there are indeed many steps in the process by which we can reach the stage when we get to the transition period. There is a whole series of days: finalisation, adoption, implementation and transition days, and UNSCR termination day, which is 10 years after the anniversary of implementation day. This is to ensure that the terms of the agreement are kept to by Iran and that we do not allow the sanctions to be lifted too soon. Some of the sanctions, such as those with regard to arms and ballistic missiles, will take some years to lift.

My noble friend asked me specifically about the United States. My understanding is that Congress has up to 60 days to review the deal. As for Congress not approving the deal, it is not for me to advise the United States how their President might act but I rather suspect that this is such an important deal that the United States will find a way of agreeing with the other signatories, and that the agreement will take effect.

**Lord Ashdown of Norton-sub-Hamdon (LD):** My Lords, despite the necessary uncertainties about long-term destinations from what happened yesterday, is not one thing certain? We now have an opportunity to build a more stable Middle East that did not exist two days ago, for which much thanks. Is it not good also to recognise that that has been achieved through long-term, patient diplomacy, which stands in stark contrast to a Middle East policy that is otherwise fixated on the instant gratification of high explosives, and that this departure is also much to be pursued?

**Baroness Anelay of St Johns:** My Lords, I am always pleased to be able to celebrate the importance and effect of diplomacy. I entirely agree with what the noble Lord said about the opportunity for a more stable Middle East.

I am reminded by those who advise me that when, in response to my noble friend Lord Jopling, I was reading out the number of days—the finalisation, adoption, implementation, transition and UNSCR termination days—I should have said for clarity that UNSCR termination comes 10 years after adoption day, not implementation day.

**Baroness Afshar (CB):** My Lords, as an Iranian-born Member of this House I welcome this decision, in particular in the name of the people of Iran if the sanctions are removed on medication and food, because the poor in Tehran and the rest of Iran are starving. However, I am very grateful that the Government are remaining vigilant on human rights issues and I urge them to continue, because Iranian human rights measures are absolutely deplorable.

**Baroness Anelay of St Johns:** I can assure the noble Baroness that we will continue our pressure on the human rights record in Iran, which really bears no scrutiny because it is so poor. With regard to the suffering of the Iranian people, she is right to draw attention to the fact that sanctions have not affected medicines over this period.

**Lord Anderson of Swansea (Lab):** My Lords, this is historic but risky because of the history of deception by Iran and the linkages between the Revolutionary Guards and arch-proliferators such as North Korea. Do we expect that this agreement will lead to any spillover, for example into Yemen where Iran has had a very malign influence? What reassurances have we given the Gulf states, including more military assistance, to help them over the interim period? The Minister mentioned the embassy. If our businessmen are to take full advantage of the new openings, surely an embassy would help immeasurably?

**Baroness Anelay of St Johns:** My Lords, as I mentioned earlier, there are still obstacles in the way of reopening the embassy but we are working very hard on them in discussions with Iran and we hope to reopen it by the end of the year. The noble Lord is right that that will help businesses from around the world, particularly the UK, to operate there. However, businesses are right to be circumspect about how soon they go in and

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the circumstances under which they can operate. I am sure there will be lot of caution. I think I have already made it clear that we are talking to countries in the area through our posts and also sometimes through ministerial contacts with regard to the implications of this agreement. Clearly, our diplomatic work since last summer with regard to Yemen has been trying to ensure that there is no spillover into what appears at times to be a proxy war.

**Lord Howell of Guildford (Con):** My Lords, while we have no illusions about the continuous malign influence of certain Iranian groups in the Middle East, should we not recognise that if things were to go the other way or this deal were to be blocked, that would probably trigger the opening of a major nuclear arms race in the region? As it is, if this deal holds, can we not look in the other direction and begin to think about a Middle East nuclear weapons-free zone, which has long been the ambition of many? I urge my noble friend to encourage her colleagues to make that a priority for the future despite the obvious difficulties.

**Baroness Anelay of St Johns:** As always, I listen very carefully to my noble friend. He has great wisdom in this area. I agree with him with regard to the importance of ensuring that an arms race is not started and that blocking this deal could have achieved exactly that. With regard to the Middle East weapons-free zone, I had discussions about this when I was at RevCon in New York a couple of months ago—and I am grateful again to the Opposition for ensuring that I was able to go with their support during that period of purdah. I am afraid that progress was rather disrupted because of Egypt seeking to make it impossible for Israel to take part in those discussions—at least it appeared to try to make that impossible—by saying that if Israel did not turn up on specified dates the whole thing would go ahead without it. There is a lot of difficulty internationally in taking forward the idea of a Middle East weapons-free zone but I agree with my noble friend that we should try to do so.

**Lord Cunningham of Felling (Lab):** My Lords, the noble Baroness and Her Majesty's Government deserve our congratulations and so do our partners in this project, which we hope will lead to an enduring settlement. The Minister said on more than one occasion that if things did not turn out right it would take Iran at least 12 months to secure a weapon. Does history not show us that the ability to procure such a weapon is based on gross national product and nuclear engineering and the associated science and technology? Is the implication of what she is saying that we recognise Iran already has those assets?

**Baroness Anelay of St Johns:** My Lords, I certainly appreciate that the noble Lord has experience and is right to be cynical. However, the agreement takes into account several factors relating to how Iran could re-equip and get fissile material, and what we can do to stop that. For example, with regard to Iraq, the international joint venture will assist Iran in redesigning and rebuilding a modernised heavy-water research reactor in Iraq which will not produce weapons-grade plutonium, thus removing it from the picture. Fuel will be exported and Iran will not undertake reprocessing. Fordow will be converted into a nuclear physics and technology centre, and the IAEA will have daily access to it—not just every now and then, but daily access. We will be watching.

**Baroness Deech (CB):** What confidence can the Minister give the House that verification will work, given that 24 days' notice has to be given to Iran of an inspection, which even then may be refused by a commission? Surely, of course, only a very short-notice inspection would be worth it, given Iran's history of secret nuclear development. Why does she think that Iran has insisted on retaining and working on many thousands of centrifuges? What on earth can its motive be, if that state wishes to keep those thousands of centrifuges?

**Baroness Anelay of St Johns:** My Lords, as I think I explained in the Statement, the number of centrifuges is dramatically reduced, as is fissile material. What we have aimed at in this agreement is that Iran should still be able to have a civil need for use of reactors but not a military one. That is what we believe has been achieved. As for whether Iran can break out quickly, and the time between it being noticed and reported that something is going wrong and action being taken—how long it would take between a request from the IAEA to get access and being able to insist on access—it would typically take about 21 days between demand and access. There is, then, a very clear process that has to be followed, which I am happy to discuss with the noble Baroness in detail outside the Chamber, given the time available. Of course, the breakout period cannot be achieved except in a period of over a year. We have time to prevent breakout into a future with Iran having a nuclear weapon. It will not happen.

**Baroness Neville-Jones (Con):** My Lords, I welcome the agreement, which is obviously the fruit of a great deal of extremely hard work and hard negotiation. I think that most noble Lords will agree with me that the proof of its adequacy will be in implementation. This is one of those agreements where the words are fine but it is the actions that follow that will really matter. I hope that all parties to it, particularly the European parties, will be robust in checking any backsliding. One worry of those who would like to see this agreement succeed is that somehow Iran will be allowed to get away with things along the line and the robust reaction will not take place because it is all too difficult and unpalatable. I seek some reassurance on robustness.

My other point, alluded to by the noble Baroness who spoke previously, is on verification. Surely, this agreement depends crucially on adequate verification, and I worry that there seems to be an ability on Iran's part not only to challenge but to block verification proceedings. There seems to be a road through which they will be able to prevent the IAEA providing us with the necessary reassurances. How can we ensure that this joint commission, to which I gather such

issues will be referred, can cut through something like that? How can we get round Iran blocking something by language and words, and get it to fall into line?

**Baroness Anelay of St Johns:** We get round language and words by having the ability to have a snap-back on sanctions within the United Nations at any time, and the EU and the United States can do so themselves with their sanctions. My noble friend is right, however, to ask about the process. The joint commission makes its decision by consensus. Obviously, it can do it by majority. What I can say, of course, is that it is important that Iran is on that joint commission so that it can engage with and respond to any suspected issues of non-performance. It can represent its interests in the same way as all other members of the joint commission. But the fact is that if there is a disagreement over whether something is a serious breach, or if Iran were unwise enough to block the IAEA access to which my noble friend refers, it is still possible for the sanctions to be snapped back. That is the prize that Iran has sought: that there should be an end to sanctions. The prize that we have sought has been to make sure that this world does not face a nuclear weapon-holding state in Iran. I think that the prize for Iran and the prize for the rest of the world has been achieved.

## Supply and Appropriations (Main Estimates) Bill

*First Reading*

*4.30 pm*

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

## Cities and Local Government Devolution Bill [HL]

*Report (2nd Day)*

*4.30 pm*

*Relevant documents: 1st, 2nd and 3rd Reports from the Delegated Powers Committee*

*Amendment 34A*

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

**34A:** After Clause 7, insert the following new Clause—

"Audit committees

(1) A combined authority must arrange for the appointment of an audit committee to—

(a) scrutinise the authority's financial affairs;

(b) review and assess the authority's risk management, internal control and corporate governance arrangements; and

(c) review and assess the economy, efficiency and effectiveness with which resources have been used in discharging the authority's functions.

(2) The audit committee must have an independent chair."

**Lord McKenzie of Luton (Lab):** My Lords, I shall also speak to our other amendments in this group. A strong and adequately resourced scrutiny process is an essential ingredient in the process of devolving substantial powers to combined authorities—and, it might be thought, especially to mayoral combined authorities. The sheer quantity of amendments in this group reflects the importance that all noble Lords, including the Government, have given this issue.

Our Amendments 35 and 37 ensure that the scrutiny committees can inquire into and challenge not only actual decisions—for example, by call-in procedures—but matters under consideration prospectively, rather than just retrospectively.

Amendment 43 requires that guidance by the Secretary of State on the functions of overview and scrutiny committees should be affirmed by the affirmative procedure, in the light of the crucial role that such committees should play.

The Bill lacks an adequate procedure comparable to that of the audit committees found in local government. Amendment 36 seeks to remedy this deficiency, but we felt on reflection that it does not quite meet the case, since it delegates to the overview and scrutiny committee the task of appointing another committee, independently chaired, to carry out that audit function. Our Amendment 34A seeks to remedy the position by explicitly requiring the appointment of a separate audit committee, again independently chaired, with the responsibility for reviewing and scrutinising the authority's financial management and affairs in the same terms as Amendment 36. Given the potentially large expenditure of the combined authorities if the promise of devolution is to be realised, this is an important role and one that is distinct from the general overview and scrutiny process.

Although they have yet to be moved, we support the Lib Dem amendments concerning political balance and the chairing of the scrutiny committee, but have some concerns about possible delays of call-in powers, which could necessitate another round of consultation.

We will listen with interest to the government amendments, particularly to Amendment 41, which requires the approach to reconsideration powers to need the consent of the combined authority. This would appear unduly restrictive. We are not quite sure why it is proposed to have an alternative to an independent chair of scrutiny, but in any event can live with what is proposed. I understand that we are not able to hear from the noble Lord, Lord Kerslake, today on his very substantial amendment about governance, which we felt was very important. As proposed, however, some of the voting thresholds may be problematic, especially the requirement for unanimity at the first meeting of the overview and scrutiny committee.

Overall, however, these amendments highlight the importance that we should place on getting oversight right in circumstances where considerable power is rightly being placed with a combined authority and possibly a mayor. This should also address in part—although, doubtless, not comprehensively enough—those who have expressed fears about a single-party state. I beg to move.

**Lord Shipley (LD):** My Lords, we have a number of amendments in this group. During the debates on this Bill, we have tried from these Benches to emphasise

[LORD SHIPLEY]
the importance of legitimacy and accountability in this new tier of government. By legitimacy, I mean, first, a direct connection with the ballot box in the new structure and, secondly, the prevention of one-party states in which the same political party has control of the post of elected mayor, the nominated combined authority and the nominated overview and scrutiny committee. In Committee, we proposed direct election to the combined authorities, so that the mayor was not the only elected post, but this did not find favour. Now we have a group of amendments that concerns overview and scrutiny committees, which are very important—more important than they might have been, had some of the amendments that we debated in Committee been agreed.

I am pleased that, following our debate in Committee, further, more detailed proposals have come forward from the Government. Some are welcome but some do not go far enough. Let me explain what I hope the Government will do. Our amendments would require the chair of an overview and scrutiny committee to be from a different political party from the mayor; that assumes that the mayor is a member of a political party. If that is not the case, the chair could be from any political party. An independent chair could work—we said that previously—but it would be better to have an opposition councillor who has been duly elected to their post as a councillor from within the combined authority area, not least because if one appoints an independent person it immediately raises the question of who appoints that independent person. To put it another way: how is independence guaranteed? The make-up of the overview and scrutiny committee also needs to reflect the number of seats held by each party in those local authorities making up the combined authority. Later, we have proposals on the electoral system that should be used so that the first past the post system does not encourage the development of a one-party state.

Our other amendments would also allow the committee to call in decisions made by the mayor and delay them—not for long—to allow further consideration when it is felt to be necessary. To do its job properly, an overview and scrutiny committee needs the power to call for information and to receive it. It will not be enough if the overview and scrutiny committees exist but are then prevented doing their job by a combined authority that prefers to keep things out of public scrutiny.

Amendments 35 and 37, which we support, would enable the overview and scrutiny committee to examine decisions before they are taken, rather than wait for a decision to be made; that is welcome. Amendment 34A, which I signed up to, would create an audit committee with an independent chair. I welcome that proposal as well. It is essential in this case that the chair is independent and appropriately qualified to do the job. In practice, it should cover the functions of a public accounts committee, an efficiency committee and a risk committee. This matters because the savings that could be achieved by public service reform and reducing duplication at a local level have been well established, but we now need to ensure that it all happens. The audit committee would be of significant help in delivering that objective.

The noble Lord, Lord McKenzie, made mention of Amendment 41, and I will do likewise, with two questions for the Minister on that amendment. First, proposed new sub-paragraph (4A) states:

"An overview and scrutiny committee must publish details of how it proposes to exercise its powers in relation to the review and scrutiny of decisions made but not yet implemented".

If the implementation period is very short, what power would an overview and scrutiny committee have under this measure to hold up a decision for further consideration? Secondly, and this is the point that the noble Lord, Lord McKenzie, raised when talking about proposed new sub-paragraph (4B), what is the objective in requiring an overview and scrutiny committee to,

"obtain the consent of the combined authority to the proposals and arrangements"?

I can see that there could be a situation in which the overview and scrutiny committee misses something, which would need to be put right by the combined authority. However, I certainly hope that this measure would not be used by members of a combined authority who do not wish to see the overview and scrutiny function work effectively. I look forward to hearing the Minister's comments on that.

Finally, all our proposed amendments have a common purpose in wanting to ensure proper accountability for the devolution that is about to occur. I hope the Minister will agree that they should be included in the Bill.

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford):** My Lords, all these amendments are about overview and scrutiny and the accountability of combined authorities. Making overview and scrutiny as strong and effective as possible is a priority for us. I was pleased in Committee by how clear it was that this is a shared priority across this House. The government amendments reflect the discussions I had with noble Lords from across the House, and I am grateful to them all for the expertise and experience that they brought to the discussions. Effective scrutiny not only ensures better decision-taking by those exercising new devolved powers but can be the safeguard against one-party states developing, and so prevent the loss of public confidence in the process of devolution.

Before discussing the various substantive issues on overview and scrutiny that have been raised, I turn first to government Amendment 81, which provides that any orders made under the powers in the new Schedule 5A to the 2009 Act will be subject to the affirmative parliamentary procedure, rather than negative. The Delegated Powers and Regulatory Reform Committee recommended this, and we accept the recommendation.

Before turning to the detail of scrutiny arrangements, I shall address Amendment 34A, which would require the combined authority to appoint an audit committee and for that audit committee to have an independent chair. In the case of local authorities, and indeed in the case of such existing combined authorities as the Greater Manchester Combined Authority, the audit committee is appointed by the authority. Audit committees usually comprise senior non-executive members of the authority and, where this is the local choice, may also include one or more independent members. We recognise

the importance of audit committees. The role of that committee in any authority includes supporting the authority's chief financial officer, the Section 151 officer. It is an integral part of the financial controls and internal checks of the organisation.

Without this amendment, the approach would be to allow combined authorities to appoint, as they see fit, audit committees drawn from the membership of the authority and, where they consider appropriate, include independent members. I am sure that none of us wants unnecessary prescription. However, I can see the case for a combined authority, given its particular structure, which may or may not include a mayor, to be required to have an audit committee appointed by the authority. I can also see the case that it might be appropriate for such a committee to have one or more independent members. I am not persuaded that it would be right to prescribe in every circumstance that the chair of the committee should be an independent member. Accordingly, I am prepared to consider the issue further for Third Reading, have discussions with noble Lords and, if appropriate, return with an amendment on this at Third Reading.

I will return at the end to questions asked by noble Lords. Turning now to the substantive issues, I first address the question of call-in. Government Amendments 38, 41 and 49 and Amendments 39 and 40 relate to this. The government amendments aim to strengthen the power of call-in for overview and scrutiny committees of combined authorities. With these amendments, combined authorities and their overview and scrutiny committees will be able to set up and operate effective and proportionate call-in arrangements. These come into play when there is a real need, but equally they cannot become a mechanism for delaying or for impeding the efficient conduct of business. Crucially, the call-in arrangements in any authority will be a local matter for the authority and its scrutiny committees to decide and agree.

*4.45 pm*

Amendment 38 gives a strong foundation for call-in by providing that the overview and scrutiny committee has the power to direct the combined authority not to implement a decision called in while it is under review.

Amendment 41 provides that the overview and scrutiny committee must publish the arrangements of all procedures for call-in that it has agreed with the combined authority. This approach in handling the arrangements developed and agreed locally means that there can be a genuine local ownership of the call-in arrangements so that these become part of the local culture of effective scrutiny.

Amendment 49—this might assist the noble Lord, Lord Shipley—allows the Secretary of State to make provision about the length of time for which a decision can be called in. This is to provide a safeguard so that, whatever the local agreed arrangements are, call-in cannot be either for too short a period to be effective or so long that it delays the implementation of decisions for an unnecessarily long time.

Amendments 39 and 40, tabled by the noble Lord, Lord Shipley, and the noble Baroness, Lady Pinnock, would give the overview and scrutiny committee the power to call in a decision and require a delay in implementation for further public consultation to be carried out. I do not believe we can go along with this step. I do not think a delay in implementation should be contingent on public consultation. I think the noble Lord, Lord McKenzie, also alluded to his concerns on this aspect.

The next substantive aspect of overview and scrutiny that I would like to address is that of the powers and operation of scrutiny. The Government are committed to ensuring strong and effective scrutiny in combined authorities. Accordingly, we intend to make an order under paragraph 3(2)(g) of new Schedule 5A which would ensure that, like members of overview and scrutiny committees of a council operating executive arrangements, the members of the scrutiny committee for the combined authority will have access to documents containing exempt or confidential information that relates to a decision it is reviewing.

Amendments 44 to 48, 50 and 55 are also focused on enhancing the information requirements for overview and scrutiny committees, but I do not believe they are necessary or appropriate. Amendment 44 would allow the power to be given to an overview and scrutiny committee by order to compel other bodies to provide information. This is unnecessary because the power in paragraph 3(2)(g) already allows the Secretary of State to include in an order details of information that must be disclosed by "other persons". In addition, giving a blanket power to the overview and scrutiny committee to do this risks creating undue additional burdens on businesses and public authorities.

Amendment 45 would amend paragraph 3(2)(f) of new Schedule 5A so that the Secretary of State must, when making an order about the publication of reports or recommendations of an overview and scrutiny committee, or of the responses by the combined authority, require the overview and scrutiny committee to publish these.

Amendment 55 would remove the provision which allows the Government to provide for exempt or confidential information to be removed from reports, recommendations or responses when they are published.

Amendments 46, 47, 48 and 50 would amend paragraph 3(2)(g), which allows provision to be made in secondary legislation about information which must, or must not, be disclosed to an overview and scrutiny committee by the authority or by other persons. The amendments would require any order under this paragraph to require a local authority in all cases to disclose information to a scrutiny committee.

The Bill provides that the Secretary of State may make provision in secondary legislation for the publication of reports et cetera and for information to be disclosed to an overview and scrutiny committee. It is sensible that the principles of exempt and confidential information continue to apply. These principles require an authority to protect confidential information, such as information prohibited from being disclosed by a court order. The principles also protect exempt information—for example, information about the investigation of a crime—unless it is in the public interest to disclose it. Rather than encouraging the openness which they seem to intend, the amendments could produce the opposite effect

[Baroness Williams of Trafford]
and inhibit the overview and scrutiny committee in its work. Where authorities and scrutiny committees are forced to publish all reports in full, they may feel unable to write on sensitive matters which should rightly be considered.

Opposition Amendments 35 and 37 would widen the scope of scrutiny so that a committee may review decisions under consideration. In strict terms, while a decision is under consideration, there is nothing to review. However, I understand and indeed support the wish for overview and scrutiny committees not only to be involved after the event but to play a role in earlier stages of shaping policy. The Bill satisfies this by allowing the scrutiny committee to make reports and recommendations proactively about anything that affects the authority's area or its inhabitants, as provided for in paragraphs 1(2)(c) and 1(3)(c) of new Schedule 5A. Hence, Amendments 35 and 37 are not necessary.

I turn to amendments relating to the membership of overview and scrutiny committees and who should be their chair. On membership, government Amendments 42, 51 and 56 make provision further to guarantee the independence and appropriate balance of the membership of all overview and scrutiny committees of all combined authorities.

Amendment 51 provides that the majority of members of an overview and scrutiny committee must be members of the constituent councils of the combined authority area. In practice, nearly all members will be from constituent councils, but there may of course be independent members—as I will touch on in relation to the chair—or members in different roles as decided locally. Overview and scrutiny committees will have the power to co-opt non-voting members as they see fit.

As to the political balance of an overview and scrutiny committee, the Government are committed to ensuring in every case an appropriate political balance. Accordingly, the Government's firm intention is to provide by order under paragraph 3(2)(a) of new Schedule 5A that the political balance of any overview and scrutiny committee must align with the political balance of the elected members of the constituent councils, a matter which we discussed the other day. As a consequence, government Amendment 42 removes paragraph 2(4)(b), thereby removing the requirement for the committee to be politically balanced in relation to the combined authority membership. This amendment is vital to ensuring that we avoid everywhere the one-party state that noble Lords have mentioned in debates and achieve a truly politically balanced membership across the combined authority area.

Amendments 53 and 57 seek to provide that the membership of an overview and scrutiny committee is politically balanced, reflecting seats held by constituent councils in the combined authority area. While we understand and broadly share these aims, we believe that the approach which we are adopting of delivering and specifying political balance through an order is the right approach which will enable genuine political balance, in every circumstance, to be delivered.

As to the chair of an overview and scrutiny committee, government Amendments 52 and 56 make provision, again, to ensure the independence of an overview and scrutiny committee. Amendment 52 would provide on the face of the Bill that the chair of an overview and scrutiny committee for a combined authority must be one of two categories of person: either an independent person; or, in the case of a mayoral combined authority, a member of a constituent authority who is not of the same political party as the mayor or, in the case of a non-mayoral combined authority, a member of a constituent authority who is not of the same political party as the biggest party of the combined authority. The definition of independent will be provided in secondary legislation and ensure that any such person is recruited by the combined authority through open and fair processes. In the case of any particular combined authority, an order can specify what option for the scrutiny committee chair—independent person or constituent council member—is to be adopted. Alternatively, this can be left as a matter for local choice, to be exercised at any time the authority sees fit. Government Amendment 56 provides the appropriate definitions. I believe that these amendments deliver the intention that the noble Lords, Lord Shipley and Lord Scriven, sought to achieve in Amendment 54.

**Lord Scriven (LD):** I welcome the Minister's reply but I would like to go away and reconsider what she is suggesting. In my own personal experience, open competition or advertisement has been made for independent chairs of a number of committees on which I have sat in South Yorkshire, including for the fire authority. It turned out that the independent members—when further scrutinised after appointment by the majority party—all, interestingly, had a link back to that majority party. While I appreciate that what the Minister is saying is reasonable, in practice I have on at least three occasions seen it not to be reasonable. I ask her to really consider the whole process relating to independent members and how, in a one-party state, to stop such members being linked to the majority party—either the mayor's party or a combined authority party.

**Lord Ashton of Hyde (Con):** I remind noble Lords about the rules on Report: we should not introduce new matters and nobody should speak after the Minister, except for matters for elucidation.

**Baroness Williams of Trafford:** I thank the noble Lord, Lord Scriven, for his comments; I certainly will go away and think about them. In making these amendments, we hoped that they would deliver the intention that both he and the noble Lord, Lord Shipley, sought to achieve. No matter how the legislation is done, we could all point to examples where it is not quite perfect, no matter how good the intention and no matter how tight the legislation is—though I take the noble Lord's point.

I turn, finally, to opposition Amendment 43, which seeks to give greater statutory force to the guidance about overview and scrutiny that may be issued under paragraph 2(9) of new Schedule 5A. As the Bill stands, that guidance is already statutory guidance in the sense that due regard must be given to it. I do not think that further statutory requirements about guidance would be right. As the House will appreciate, if the

Secretary of State draws up any such guidance, he would of course want to seek the views of those who are expert in the field of overview and scrutiny.

I turn to some specific points and, first, to the point made by the noble Lords, Lord McKenzie of Luton and Lord Shipley, on why a combined authority should agree to the overview and scrutiny arrangements. It is important that scrutiny arrangements are agreed by the combined authority—though it need not be unanimous agreement—so that the authority embeds scrutiny into its arrangements and the culture of the organisation. It is certainly not a clause to be used to weaken arrangements; rather, it is to ensure a culture of scrutiny throughout the authority.

**Lord Shipley:** My Lords, can the Minister elucidate what happens if there is a stand-off because neither side agrees?

*5 pm*

**Baroness Williams of Trafford:** My Lords, that is an interesting question. I have witnessed many a stand-off in local authorities. The combined authority is obliged through its voting arrangements, whatever they may be—they will be different in different places—to come up with a resolution. I appreciate that it might start with a stand-off but I hope that it will be resolved in accordance with the democratic arrangements within the combined authority.

The noble Lord, Lord Shipley, asked about implementation, the short period of time and the powers of call-in. I hope I have explained to him that our new amendments give the Secretary of State the power to provide, by order, for a minimum call-in period.

The noble Lord also inquired about the chair of the overview and scrutiny committee. Under the Government's amendments, the chair of an overview and scrutiny committee can never be a member of a constituent council if he is a member of the same political party as the mayor of a combined authority.

I hope those responses are helpful and that, with them, the noble Lord will feel happy to withdraw his amendment.

**Lord McKenzie of Luton:** My Lords, I thank the Minister for her detailed response to our amendments and a raft of other amendments. I also thank the noble Lord, Lord Shipley, for his support for most of our amendments. I look forward to the Government bringing forward at Third Reading something on Amendment 34A and the audit committee. In respect of Amendments 35 and 37, I understand that the matter is already covered. I take the point on statutory guidance.

I do not 100% agree with the Government on Amendment 41 on the point that we discussed. However, it is fair to say that, together with the noble Lord, Lord Shipley, we have a substantial identity of view over a broad range of areas. We do not have an identity of view on everything, particularly around access to some of the documentation. However, for my part, I am happy to withdraw the amendment.

*Amendment 34A withdrawn.*

***Schedule 3: Overview and scrutiny committees***

*Amendment 35 not moved.*

*Amendment 36 had been withdrawn from the Marshalled List.*

*Amendment 37 not moved.*

*Amendment 38*

*Moved by* ***Baroness Williams of Trafford***

**38:** Schedule 3, page 22, line 37, after "includes" insert "—

(a) power to direct that a decision is not to be implemented while it is under review or scrutiny by the overview and scrutiny committee, and

(b) "

*Amendment 38 agreed.*

*Amendments 39 and 40 not moved.*

*Amendment 41*

*Moved by* ***Baroness Williams of Trafford***

**41:** Schedule 3, page 22, line 38, at end insert—

"(4A) An overview and scrutiny committee must publish details of how it proposes to exercise its powers in relation to the review and scrutiny of decisions made but not yet implemented and its arrangements in connection with the exercise of those powers.

"(4B) Before complying with sub-paragraph (4A) an overview and scrutiny committee must obtain the consent of the combined authority to the proposals and arrangements."

*Amendment 41 agreed.*

*Amendment 41A had been withdrawn from the Marshalled List.*

*Amendment 42*

*Moved by* ***Baroness Williams of Trafford***

**42:** Schedule 3, page 23, line 18, leave out from "committees)" to end of line 21

*Amendment 42 agreed.*

*Amendments 43 to 48 not moved.*

*Amendment 49*

*Moved by* ***Baroness Williams of Trafford***

**49:** Schedule 3, page 24, line 23, at end insert—

"(h) as to the minimum or maximum period for which a direction under paragraph 1(4)(a) may have effect."

*Amendment 49 agreed.*

*Amendment 50 not moved.*

*Amendments 51 and 52*

*Moved by* ***Baroness Williams of Trafford***

**51:** Schedule 3, page 24, leave out lines 24 to 31 and insert—

"(3) Provision must be made under sub-paragraph (2)(a) so as to ensure that the majority of members of an overview and scrutiny committee are members of the combined authority's constituent councils."

**52:** Schedule 3, page 24, line 31, at end insert—

"(3A) Provision must be made under sub-paragraph (2)(b) so as to ensure that the chair of an overview and scrutiny committee is—

(a) an independent person (as defined by the order), or

(b) an appropriate person who is a member of one of the combined authority's constituent councils.

(3B) For the purposes of sub-paragraph (3A)(b) "appropriate person"—

(a) in relation to a mayoral combined authority, means a person who is not a member of a registered political party of which the mayor is a member, and

(b) in relation to any other combined authority, means a person who is not a member of the registered political party which has the most representatives among the members of the constituent councils (or, if there is no such party because two or more parties have the same number of representatives, is not a member of any of those parties)."

*Amendments 51 and 52 agreed.*

*Amendments 53 to 55 not moved.*

*Amendment 56*

*Moved by* ***Baroness Williams of Trafford***

**56:** Schedule 3, page 24, line 42, at end insert—

"( ) In this paragraph—

"constituent council", in relation to a combined authority, means—

(a) a county council the whole or any part of whose area is within the area of the combined authority, or

(b) a district council whose area is within the area of the combined authority;

"registered political party" means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000."

*Amendment 56 agreed.*

*Amendment 57 not moved.*

*Amendments 58 to 61 had been withdrawn from the Marshalled List.*

*Amendment 62*

*Moved by* ***Baroness Williams of Trafford***

**62:** After Clause 9, insert the following new Clause—

"Requirements in connection with establishment etc. of combined authority

(1) The Local Democracy, Economic Development and Construction Act 2009 is amended as follows.

(2) In section 110 (requirements in connection with establishment of combined authority), for subsections (1) to (3) substitute—

"(1) The Secretary of State may make an order establishing a combined authority for an area only if—

(a) the Secretary of State considers that to do so is likely to improve the exercise of statutory functions in the area or areas to which the order relates, and

(b) the constituent councils consent.

(1A) If a scheme for the establishment of the combined authority has been prepared and published under section 109 the Secretary of State must have regard to that scheme in making the order.

(2) In a case where no such scheme has been prepared and published, the Secretary of State must consult such persons (if any) as the Secretary of State considers appropriate before making the order.

(3) In this section "constituent council" means—

(a) a county council the whole or any part of whose area is within the area for which the combined authority is to be established, or

(b) a district council whose area is within the area for which the combined authority is to be established."

(3) In section 113 (requirements in connection with changes to existing combined arrangements), for subsections (1) and (2) substitute—

"(1) The Secretary of State may make an order under section 104, 105, 106 or 107 in relation to an existing combined authority only if—

(a) the Secretary of State considers that to do so is likely to improve the exercise of statutory functions in the area or areas to which the order relates, and

(b) the constituent councils consent.

(1A) If a scheme has been prepared and published under section 112 the Secretary of State must have regard to that scheme in making the order.

(2) In a case where no such scheme has been prepared and published, the Secretary of State must consult such persons (if any) as the Secretary of State considers appropriate before making the order.

(2A) In this section "constituent council" means—

(a) a county council the whole or any part of whose area is within the area or proposed area of the combined authority, or

(b) a district council whose area is within the area or proposed area of the combined authority."

**Baroness Williams of Trafford:** My Lords, I know that we have already debated this but I promised to come back to it today, following the Delegated Powers and Regulatory Reform Committee report. I would also like to speak to Amendments 71, 72 and 77. I read with interest the DPRRC's report yesterday and would like to respond with a detailed explanation of the reasons behind these amendments. Amendments 62 and 77 are designed to fast-track the establishment of a combined authority where circumstances warrant this, while maintaining all the necessary safeguards.

The current process for creating a combined authority under the 2009 Act is lengthy and consists of four stages. First, local authorities have to undertake a governance review. This involves the authorities concerned considering whether a combined authority would improve the governance of the functions which they are considering it might exercise. In doing this, the authorities usually engage with local partners and their communities, although they are not statutorily required to do so. The next stage is for the authorities to develop a scheme for a proposed combined authority. Together, the governance review and scheme provide the reasons for establishing the combined authority and how it will operate. The third stage involves the Secretary of State undertaking various considerations and a statutory consultation that includes being required to consult the very authorities that have undertaken the review, prepared the scheme and are seeking the establishment of the combined authority.

The fourth and final stage is that each House of Parliament must approve a draft order providing for the establishment of the combined authority, after which the Secretary of State can make the order in the terms of the approved draft. Past experience shows that it can take well over a year even to reach the point of the order being made. Noble Lords will see that inevitably, the process involves some duplication. In particular, where establishing a combined authority is agreed as part of a devolution deal, the duplication of local discussion, engagement and consultation can be substantial.

Amendments 62 and 77 provide a streamlined process for creating combined authorities where the risks of duplication are minimised. An example might be where a number of councils, as part of a deal, agree to the establishment of a combined authority. They have provided the Secretary of State, as part of these deal discussions, with sufficient information and evidence to undertake the statutory tests: that is, to conclude whether creating the combined authority is likely to improve the exercise of statutory functions in the combined authority's area; and to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government. All councils in the area of the proposed combined authority then consent to its establishment.

In such a circumstance, the fast-track process would enable the Secretary of State to seek Parliament's approval to the draft order, once he has fulfilled his statutory duty to consult such persons as he considers appropriate. With this streamlined process, the councils no longer have to undertake the lengthy process of developing a governance review and preparing a scheme. This is because the substance of these processes will have been undertaken in a different way and the Secretary of State will continue to be required to apply the statutory tests and the statutory consultation, which he would need to do in accordance with administrative law—the legal framework which applies in any case where the Secretary of State exercises his powers. He must have regard to all relevant considerations, must not have regard to irrelevant considerations, and his decisions must be rational and within the powers that he is exercising.

These amendments also provide that where the fast-track process is not being followed and councils are developing a governance review and scheme, the process can still be more streamlined than it is currently. The current requirements on consultation, particularly that the Secretary of State consult the authorities that have prepared the scheme, are replaced by a requirement that the councils, which will have engaged with their communities when preparing their scheme, must consent to the establishment of the combined authority in the terms of that order. The Secretary of State still has the option of consulting if he considers it necessary.

These amendments therefore facilitate the timely implementation of devolution deals which will be of critical importance to areas being able to respond quickly to the economic challenges and opportunities they and the country face today—helping to grow our economy, improving productivity and increasing our competitiveness. I hope noble Lords consider that these explanations address the DPRRC's comments.

Government Amendments 71 and 72 will enable the Secretary of State to confer functions of a public authority on local authorities as well as combined authorities. Amendment 83 is consequential on these. These amendments are intended to make it clear that there is a level playing field for all areas to agree devolution deals with the Government, including areas where there is no combined authority.

Noble Lords have previously raised concerns that the Bill focuses on devolution to large cities with combined authorities, and asked how the Bill's provisions apply in non-metropolitan areas where there may perhaps not be combined authorities. We are clear that devolution applies equally across England—to counties and towns as well as cities. As I have said, the Government are ready to discuss with any area the powers and budgets they want devolved to them and the governance arrangements they propose to support those powers. We want towns and counties to play their part in growing the economy, and we are offering them the opportunity to agree devolution deals and provide local people with the levers they need to boost growth.

It will be for local areas to decide over what geography they would wish to have those powers devolved. Where a functional economic area covers a wider area than a single local authority, a combined authority can be an excellent means for enabling local authorities to collaborate effectively and work across their administrative boundaries. But there are areas in which the functional economic area may comprise a single local authority, and where this might be the best geography over which to devolve powers and budgets. We are already discussing such deals with some areas and making excellent progress in areas such as Cornwall. Amendments 71 and 72 are necessary to enable such deals to be agreed. These amendments apply to county councils and district councils the same powers for transferring public functions as under Clause 6, which the House has approved, including the amendments approved on Monday.

The Delegated Powers and Regulatory Reform Committee has concerns about the potentially wide scope of powers that could be conferred under the provisions in Clause 6 and these new clauses without a statutory consultation. We responded to its concerns on Clause 6 by tabling Amendment 33, which was passed by the House on Monday. This requires the Secretary of State to lay a report before the House whenever an order is laid before Parliament under the provisions in Clause 6. This report would need to include details of any consultation.

Before saying more on consultation, I would like to address the point made by the Delegated Powers Committee that a duty to lay a report cannot be regarded as equivalent to a duty to consult. We do not see, and never have seen, the duty to lay a report as replacing a duty to consult. The purpose of the report is to ensure that Parliament has full information about the deal in question, including information about the powers being devolved, why they are being devolved and what outcomes are expected from that devolution. We see the report addressing the issue raised by the committee that there is no information about the kind of powers that may in any case be devolved.

[Baroness Williams of Trafford]
We have explained why this Bill is an enabling Bill. Equally, we recognise the importance of Parliament being fully aware of the nature of a deal when considering an order implementing it. That is the purpose of a report.

In relation to both Clause 6—before we introduced the additional requirement of the report—and to the equivalent provisions which Amendments 71 and 72 introduce into the Bill for transferring powers to county councils and district councils, including unitaries, the Delegated Powers Committee has concluded that they constitute an inappropriate delegation of powers. In our response to the committee's first report, with the important points we have included, we made it clear that we do not share this view.

*5.15 pm*

The committee saw no reason why the legislation giving a wide discretion as to the conferring of functions should not, at the same time, give a clear indication of what those functions might be. As we have set out in this debate, and as we heard persuasively from the noble Lord, Lord Heseltine, on Monday, if the Government set out in some way the scope or template for devolution, it would turn the whole bottom-up devolution process which they are pursuing, following their manifesto commitment, on its head. It is for the areas themselves to decide and come forward with what they want devolved to them. It is for them to reach their decisions without some centralist template, schedule or description constraining their ambition. As the noble Lord, Lord Heseltine, explained, if there were to be some centralist framework, given the nature of Whitehall, the risk is that it would be limiting. This Government, with their manifesto commitments and through this Bill, are seeking to reverse 150 years of centralisation. We are not—as the Delegated Powers Committee is suggesting—confusing flexibility with imprecision.

Turning back to consultation, in the context of deal making, we do not see that making a duty on the Secretary of State to consult would be appropriate. Such a duty would reinforce the top-down, government-driven view of this process—the very antithesis of what we want this process to be. We consider that consultation is more appropriately undertaken locally by the areas developing the proposals than by the Secretary of State. However, it is right for the Secretary of State to consider such consultations. He will need to do so in order to fulfil the statutory test before regulations transferring powers can be made. This is likely to improve the exercise of statutory functions in the local authority's area.

Moreover, it is right that Parliament should know all about such considerations by the Secretary of State. The reporting requirement now included both in Amendments 71 and 72 and in Clause 6 of the Bill ensures that this is so. Each House of Parliament will need to approve any order conferring powers under the provisions in this Bill, or under Part 6 of the 2009 Act, through the affirmative procedure. For these reasons, I believe that Amendments 71 and 72 will ensure that Parliament will have all that it will need to consider the orders implementing the devolution deals.

**Lord Tyler (LD):** My Lords, I am grateful to the Minister—as I am sure are all noble Lords who have been following this very difficult process. It has been a difficult process from the outset because the Government have brought forward very substantial changes with these new clauses. I do not blame anybody for that. That is the way life is. It will be apparent from the noble Baroness's long explanation that the concerns of the Delegated Powers and Regulatory Reform Committee are substantial—and she has answered them substantially. But she was very generous earlier in saying that, between now and Third Reading, she would think about some of the issues that have been raised.

I wonder whether the House shares my view that we are in some difficulty. I do not know how many Members who have been following these proceedings have been able to read the report in detail. It was available only yesterday afternoon. I wonder, therefore, whether there would be general agreement in the House—and perhaps the noble Baroness would also agree—to giving us a little more time to see how these two quite distinct views might be brought together. The unanimous decision of that well-respected committee was that there were concerns about these two clauses. The fact that the noble Baroness needed 12 or 13 minutes to explain what exactly was involved in the new clauses rather supports my view.

Rather than having a detailed debate, and since there are only a few days between now and Third Reading, I wonder whether she would agree to withdraw government Amendment 62 and the associated short Amendment 77, as well as Amendments 71 and 72, so that everybody can be sure that we are bringing together the important concerns of the Delegated Powers and Regulatory Reform Committee with the substantial answers that the Government would wish to give. It may be that, with a small tweak here and there, the concerns of the committee can be met. Then we should be a great deal more satisfied with the process and reassured that the House's consideration of the Bill has been properly undertaken.

**Baroness Eaton (Con):** Will the Minister confirm that if an area currently without a combined authority agrees a devolution deal that involves the creation of a combined authority, without Amendments 62 and 77 it could be at least a year, if not two, before any powers could begin to be devolved?

**Baroness Hollis of Heigham (Lab):** My Lords, I, too, take this opportunity to raise again an issue covered in Amendments 62, 63, 64 and 65, on which I am still not sure we have got to the right position. Is there any flexibility here? I think we all recognise that the Minister has been extremely helpful to the House, but she is still holding to the view that you can belong to only one combined authority: therefore, I address the issues in Amendment 64. That is fine if you are part of Greater Manchester and a whole big combined metro authority. It is also fine when you want a combined authority of adjacent urban unitary authorities with shared goals and objectives. However, I think the Minister was the first to recognise that there are very real problems where you have an urban unitary area surrounded by rural areas. Plymouth may be an example of that, although I am not speaking for it as I do not

know whether it shares my views. Equally, where you have shire districts, as with Norwich and Cambridge—I am speaking for them—possibly Exeter, and many other medium-sized cities of England, there is a complexity because they are, if you like, islands of urban economic generation. Therefore, it makes sense not to have that one-size-fits-all version of a combined authority.

For example, my city produces economic growth. We have only about 20% or so of the relevant population but produce more than 50% of the relevant jobs. We want city and district partners for what we have now—that is, a greater Norwich partnership for economic development, travel to work and issues of connectivity. However, it would be desirable to have a wider geography with which to tackle the bigger issues of public sector reform, and integrated NHS and social care, for example, which cannot be done on a sub-county basis, and where it may make sense to go beyond a county basis and link across counties. How do we do this? I have just received an email from the leader of Cambridge City Council—not my own, so it offers a different view. We have been trying to see where the voices lay on this. Mr Herbert states that a growing number of councils want to create city-district partnerships for economic development and travel to work, while being part of a larger geography for public sector reform and tackling care and the NHS jointly. He says that the ideal solution might be,

"to have different combined authorities for those different functions, bringing together the partners who it makes most sense to work with on these different issues. That is particularly true for the largest county towns/cities and the new unitaries who have a strong common cause with immediately adjacent authorities, but not necessarily with all authorities in a county or LEP area".

Mr Herbert adds, however, that the problem is that,

"the current legislation around Combined Authorities, and the draft Bill the new Government has brought forward, seemingly do not allow for this—insisting on a single Combined Authority".

He talks of addressing the issue:

"While the Bill is still in draft, and before we get forced into arrangements",

which I maintain do not work for a large chunk of the country, such as urban authorities surrounded by rural authorities, unitaries surrounded by shire districts and district cities, which provide the energy for their counties, which are surrounded by other districts. The proposed single combined authority that the Minister has laid down will cramp the contribution that such areas can make to economic growth. I absolutely understand that this has to be negotiated in a bespoke way with the Secretary of State and am perfectly happy that that should be the case, following the thrust of what the Minister has argued in the past. Will the Minister or the Secretary of State therefore meet the leaders of such authorities in such situations for whom the single combined authority—the one-size-fits-all approach—does not work? If it is too late for this Bill and if the Government are willing to expand the remit, perhaps amendments to that effect could be tabled in the other place.

**Baroness Jenkin of Kennington (Con):** My Lords, can my noble friend clarify that Amendments 71 and 72 are necessary to put all local areas on a level playing field, and to enable a devolution deal in local authority areas such as Cornwall?

**Lord Woolmer of Leeds (Lab):** My Lords, I want to echo some of the points made by the noble Lord, Lord Tyler. From my own selfish point of view, I welcome speed in this area. There is no doubt that a lot of corners could be cut in terms of the public understanding of what is being proposed, the discussion and so on. These are substantial changes. Some local authorities will go in with others that never dreamt of doing so before. Other public bodies will be incorporated or will jointly share functions with local authorities never considered before. These are very substantial changes.

Normally, one would say that there has been a lot of thought about this, proposals have been discussed and so on. There is a balance here between speed and process, and Governments want to get on. In the days when I led a council, I had to get on. It is jolly annoying when you sometimes have to stop to consult and discuss more widely, but at the end of the day it can be helpful. If it is not done appropriately and adequately at local level, the Minister may find that there is more pressure at government level for those discussions to go on than they expected. So there is an argument for careful discussion. I am not suggesting that we hide behind that, but we should not put the cloak around us that speed is important. We have been waiting for years for this, as the noble Lord, Lord Heseltine, said—150 years, the Minister said. Let us get on with it; we know what we want to do. I would welcome the chance to discuss some of those matters at Third Reading, not to hold things up but just so that there is adequate discussion.

I ask the Minister to clarify one or two points. Amendment 62 states that,

"'constituent council' means a county council … or a district council".

I assume that that probably means both a county council and a district council, and that both would need to be considered. That may be purely language but I assume that it would mean both. Where do unitary authorities fit into that wording? Where do they fall into the constituent council language?

Finally, can the Minister clarify a point that was raised by my noble friend Lady Hollis? If a shire district council wished to join a combined authority—for example, comprising metropolitan district councils—am I right in saying that the county council, or part of it, would have to join? For example, if Harrogate and its associated area wished to join with West Yorkshire, would North Yorkshire County Council as a whole have to join a combined authority, and would it then have enough to join a combined authority? Could a shire district join a combined authority without the county council? If the Minister could clarify that, it would be useful to me. I am not suggesting that there would be a disagreement, but it would just be helpful to me to understand that.

If a very large county council were to be part of a combined authority through the fact that one or more of its district councils wanted to join that authority, would the other part of that county council be able to join another combined authority? In other words, could a very large county council be part of two combined authorities? That is not impossible for very

[Lord Woolmer of Leeds]
large county councils and it is not really clear in the Bill. It would certainly be helpful to me and to others to have those points clarified.

*5.30 pm*

**Lord McKenzie of Luton:** I thank the Minister for her detailed exposition of the issues around these two sets of amendments. I support the noble Lord, Lord Tyler, in asking whether we can take this forward to Third Reading, if necessary. These substantial amendments herald very significant changes to what has been the process hitherto. We had the Delegated Powers Committee's report just yesterday—for some of us who were on other duties, not until this morning—and the noble Baroness's presentation raises issues. Rather than asking the Government to withdraw the amendments, why do they not proceed while recognising that they are if necessary open to final amendment at Third Reading, which is only a few days away? Given the range of queries now emanating from our considerations—every time we look at this it raises more issues—it seems that we should try to structure a meeting with the Minister, and colleagues if necessary, between now and then to iron out as much of this as possible.

From our point of view, as my noble friend Lord Woolmer said, if we can speed up the process we would be supportive of that in principle. We certainly support extending the arrangements to individual counties and councils. That is not an issue but some of the process stuff is. One point that bothers me still is in relation to what the Delegated Powers Committee report said on Amendment 62. In paragraph 11, the report says clearly:

"We see the scheme process, which involves local engagement and consultation, as being wholly different from the process of discussion and negotiation which takes place only between the local authorities and the Secretary of State".

I would accept having administrative law brought into play and prayed in aid as a constraint or parameter that the Secretary of State had to comply with. But introducing that sort of concept fairly late in the day is a bit unusual, and its context needs proper consideration.

On Amendments 71 and 72, we know that the innate problem is of having a difference between those of us who believe that there should be some parameters put into the Bill, but not to stifle initiative and innovation, and the Government's view that they will oppose that. Notwithstanding that, it would be helpful for progress today and to get the best solution possible over these amendments if the Government would recognise that, if necessary and appropriate after further discussion, this would be open for amendment at Third Reading. That would otherwise save us making more difficult choices here and now.

**Baroness Williams of Trafford:** My Lords, I thank all noble Lords for the comments that they have made. My noble friend Lady Eaton talked about the problems of delay, which are very real. The noble Baroness, Lady Jenkin, talked about Amendments 71 and 72 being necessary for places such as Cornwall. She is absolutely right.

My noble friend Lady Eaton asked whether an area that is not currently a combined authority can access the powers of devolution. She asked about areas without combined authorities. Again, without Amendments 71 or 72 it is not possible to confer powers on, say, Cornwall. Places such as Cornwall would be very concerned if the Bill did not have that power.

The noble Baroness, Lady Hollis, asked why you cannot be in two combined authorities. Councils can be constituent members of one combined authority and non-constituent members of another. That is quite possible. I will give the noble Baroness an example before she gets to her feet. In Greater Manchester, Cheshire East is a non-constituent member of the Great Manchester Combined Authority for the purposes of, I think, business rates.

**Baroness Hollis of Heigham:** So it is not an opt-out?

**Baroness Williams of Trafford:** No, it is not an opt-out but it is a non-constituent member for the purposes of some of the powers the combined authority might get for business rates. I think that is the reason that it is a non-constituent member. I apologise if the noble Baroness is still confused.

The noble Lord, Lord Woolmer, asked several pertinent questions, as always—

**Baroness Hollis of Heigham:** Will the Minister come back to the substance of the questions I asked? She may well do later in her wind-up to this bundle of amendments but, if that is all she is going to say, forgive me, she has not addressed the issues. We share the same wish for outcome but can she come back to some of the other issues I raised?

**Baroness Williams of Trafford:** I was trying to say to the noble Baroness that for one purpose a local authority might be a constituent member of a combined authority; for another purpose—I gave the example of Cheshire East—it may be a non-constituent member of a combined authority. In other words, it has involvement with more than one combined authority but on a different basis, which I thought was the point she was making.

**Baroness Hollis of Heigham:** If the Minister could write to me more fully, that would be helpful and then perhaps we can follow it up. I do not want to waste the time of the House.

**Baroness Williams of Trafford:** I have just been passed another note about this. Another example is that York is a non-constituent member of West Yorkshire Combined Authority. In fact, I think that is why the noble Lord, Lord Woolmer, was nodding so readily.

**Lord Woolmer of Leeds:** At what point in a mayoralty would a non-constituent authority become a constituent authority? How many elements of the combined authority's functions would a non-constituent authority have to share in order for it to become a part of a combined authority? That presumably means that

the mayor of the combined authority would be taking decisions or influencing decisions of the combined authority that were outwith the electorate of this non-constituent local authority. Am I right on that?

**Baroness Williams of Trafford:** I hope I can answer this satisfactorily. Let us take the example of York, within Yorkshire. If York was to become a constituent member of some sort of Yorkshire combined authority it could not then become a constituent member of another combined authority, but I think it would be perfectly possible for it to become a non-constituent member of another combined authority for certain purposes. So in other words, if Cheshire East decided that it would, with consent, have a combined authority with Cheshire West and Chester, would that then preclude it from being a non-constituent member of the Greater Manchester Combined Authority? I do not think that it would—but I can confirm that in due course, if it helps the noble Lord.

**Lord Warner:** May I suggest that the Minister responds to the perfectly sensible proposition of my noble friend Lord McKenzie that we curtail this set of discussions so that we can make some progress?

**Baroness Williams of Trafford:** I always try to answer noble Lords' questions from the Dispatch Box. However, in this instance, I take the noble Lord's point. With the leave of the House, I propose to withdraw Amendment 62 today and return to it at Third Reading.

*Amendment 62 withdrawn.*

*Amendments 63 to 65*

*Moved by* ***Baroness Williams of Trafford***

**63:** After Clause 9, insert the following new Clause—

"Removal of geographical restrictions in relation to EPBs

(1) The Local Democracy, Economic Development and Construction Act 2009 is amended as follows.

(2) Omit subsections (3) and (4) of section 88 (EPBs and their areas).

(3) In section 95(2)(a) (changes to boundaries of an EPB's area: conditions), for "conditions A to D" substitute "conditions A and D".

(4) In section 98(3)(c) (preparation and publication of scheme for new EPB: conditions) for "conditions A to C" substitute "condition A".

(5) In section 99 (requirements in connection with establishment of EPB), after subsection (3) insert—

"(3A) Subsection (3B) applies where the Secretary of State is considering whether to make an order establishing an EPB for an area and—

(a) part of the area is separated from the rest of it by one or more local government areas that are not within the area, or

(b) a local government area that is not within the area is surrounded by local government areas that are within the area.

(3B) In deciding whether to make the order, the Secretary of State must have regard to the likely effect of the creation of the proposed EPB on economic development or regeneration in each local government area that is next to any part of the proposed EPB area."

(6) In section 102 (requirements in connection with changes to existing EPB arrangements), after subsection (2), insert—

"(2A) Subsection (2B) applies where the Secretary of State is considering whether to make an order under section 95 and—

(a) part of the area to be created is separated from the rest of it by one or more local government areas that are not within the area, or

(b) a local government area that is not within the area to be created is surrounded by local government areas that are within the area.

(2B) In deciding whether to make the order under section 95, the Secretary of State must have regard to the likely effect of the proposed change to the EPB's area on economic development or regeneration in each local government area that is next to any part of the area to be created by the order.""

**64:** After Clause 9, insert the following new Clause—

"Removal of geographical restrictions in relation to combined authorities

(1) The Local Democracy, Economic Development and Construction Act 2009 is amended as follows.

(2) Omit subsections (3) and (4) of section 103 (combined authorities and their areas).

(3) In section 106(2)(a) (changes to boundaries of a combined authority's area: conditions), for "conditions A to D" substitute "conditions A and D".

(4) In section 109(3)(c) (preparation and publication of scheme for new combined authority: conditions), for "conditions A to C" substitute "condition A".

(5) In section 110 (requirements in connection with establishment of combined authority), before subsection (4) insert—

"(3A) Subsection (3B) applies where the Secretary of State is considering whether to make an order establishing a combined authority for an area and—

(a) part of the area is separated from the rest of it by one or more local government areas that are not within the area, or

(b) a local government area that is not within the area is surrounded by local government areas that are within the area.

(3B) In deciding whether to make the order, the Secretary of State must have regard to the likely effect of the creation of the proposed combined authority on the exercise of functions equivalent to those of the proposed combined authority's functions in each local government area that is next to any part of the proposed combined authority area."

(6) In section 113 (requirements in connection with changes to existing combined arrangements), after subsection (2A) (inserted by section (Requirements in connection with establishment etc. of combined authority) above) insert—

"(2B) Subsection (2C) applies where the Secretary of State is considering whether to make an order under section 106 and—

(a) part of the area to be created is separated from the rest of it by one or more local government areas that are not within the area, or

(b) a local government area that is not within the area to be created is surrounded by local government areas that are within the area.

(2C) In deciding whether to make the order under section 106, the Secretary of State must have regard to the likely effect of the change to the combined authority's area on the exercise of functions equivalent to those of the combined authority's functions in each local government area that is next to any part of the area to be created by the order.""

**65:** After Clause 9, insert the following new Clause—

"Changes to existing EPB

(1) The Local Democracy, Economic Development and Construction Act 2009 is amended as follows.

(2) In section 100 (review by authorities: existing EPB)—

(a) in subsection (1), for "a review of one or more EPB matters." substitute "a review of—

(a) a matter in relation to which an order may be made under section 95 or 96;

(b) a matter concerning the EPB that the EPB has power to determine.";

(b) omit subsection (3).

(3) In section 101 (preparation and publication of scheme: existing EPB)—

(a) in subsection (1), for "any one or more of sections 89, 91, 92, 95 and 96" substitute "section 95 or 96";

(b) in subsection (2), omit "or powers".

(4) After section 101, insert—

"101A Application in respect of change to constitution, functions or funding: existing EPB

(1) Any one or more of the authorities to whom this section applies may, in relation to an existing EPB, apply to the Secretary of State in respect of one or more EPB matters.

(2) This section applies to—

(a) the EPB;

(b) a county council whose area, or part of whose area, is within the area of the EPB;

(c) a district council whose area is within the area of the EPB.

(3) For the purposes of this section an "EPB matter" is a matter in relation to which an order may be made under any of sections 89, 91 and 92.

(4) An application to the Secretary of State under subsection (1) must—

(a) be made in writing;

(b) specify how the exercise of the power to make an order under any one or more of sections 89, 91 and 92 would be likely to improve—

(i) the exercise of statutory functions relating to economic development and regeneration in the area of the EPB, or

(ii) economic conditions in the area of the EPB.

(5) An application may be made under this section only if every authority to whom this section applies consents to the making of the application."

(5) In section 102 (requirements in connection with changes to existing EPB arrangements)—

(a) in subsection (1), after "section 101" insert "or to an application made under section 101A";

(b) in subsection (2)(a), after "section 100(2)" insert "or section 101A(2)"."

*Amendments 63 to 65 agreed.*

*Amendment 66*

*Moved by* ***Lord Warner***

**66:** After Clause 9, insert the following new Clause—

"Devolving NHS responsibilities

(1) The Secretary of State may only exercise the powers in section 105A of the Local Democracy, Economic Development and Construction Act 2009 to transfer to a combined authority, or other designated body working in association with a combined authority, responsibilities of any health service body, if he considers that—

(a) it is in the best interests of the population served by the authority in terms of their health outcomes;

(b) it will facilitate the discharge of his duties in sections 2 and 4 of the Health and Social Care Act 2012 (duties to improve the quality of health services and reduce inequalities); and

(c) it will improve the effectiveness and sustainability of local health and care services.

(2) Under subsection (1) an "other designated body" must be a body corporate with a governing body and a chief accounting officer that are able to produce annual audited public accounts and be accountable annually to the combined authority for its performance.

(3) Where there is no other designated authority, the combined authority must have a designated chief accounting officer for the NHS responsibilities transferred to it and must account separately in its accounts for the monies spent on those transferred responsibilities.

(4) In making a transfer of responsibilities and resources in accordance with subsection (1) the Secretary of State shall require a memorandum of understanding on future service intentions, models of service delivery and use of resources to be agreed between NHS England and the combined authority or the other designated body working in association with the combined authority.

(5) A memorandum of understanding under subsection (4) shall—

(a) be for a period of at least five years;

(b) be consistent with the Secretary of State's responsibilities under the 2012 Act, including his Mandates to NHS England;

(c) ensure compliance with the regulatory and national service and information standards required of NHS commissioners and service providers; and

(d) specify the key health outcomes and improvements to be achieved for the period of the memorandum.

(6) The provisions of an agreed memorandum of understanding under subsection (5) shall be incorporated in an order made by the Secretary of State.

(7) An order may not be made under subsection (6) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(8) Once an order is approved, the Secretary of State may not use his powers of intervention in the actions of the combined authority or other designated body unless they have demonstrated, after due warning, a consistent inability to meet their population's health needs or to do so within the agreed funding provisions made available to the authority or other designated body.

(9) A combined authority or other designated body working in association with it under the provisions of this section shall publish an annual report on how responsibilities in the memorandum of understanding in subsection (4) have been discharged alongside the published annual accounts.

(10) In this section, "health service body" has the same meaning as in the National Health Service Act 2006."

**Lord Warner:** Noble Lords may understand why I got up a little impatiently earlier. I move Amendment 66 in my name and in those of the noble Lord, Lord Patel, and the noble Baroness, Lady Walmsley. Let me start by reiterating my support for this Bill and lack of any objection whatever to including the transfer of NHS responsibilities through it. This amendment brings us back to earlier discussions on the arrangements for devolving NHS responsibilities, which led to a very helpful meeting with the Minister and her colleague the noble Lord, Lord Prior, on 6 July, when Howard Bernstein, the Manchester City Council chief executive, and officials from NHS England also joined us. I thank the Minister for arranging that meeting. We clearly got across our main point of concern—that the Bill had failed to address how it dovetailed with NHS legislation, particularly the Health and Social Care Act 2012. I think that the Minister has accepted our main argument on that point, and I am only sorry that I was unavoidably absent when she moved her amendments to try to deal with that issue late on Monday evening, but I have read *Hansard* carefully.

Rather than ploughing on through the detail of my amendment, I raise a few points of clarification about the Government's apparent response to the concerns that my noble friend Lord Hunt and I raised at earlier stages of this Bill. As I understand the Minister from reading *Hansard*, she is saying that Amendment 28 enables NHS responsibilities to be conferred by order on a combined authority instead of a current public authority or for those functions to be exercised concurrently by an existing authority and a combined authority. The order could also impose specified conditions or limitations on that particular deal. That certainly meets my concern that the Bill seemed to have no regard to the 2012 Act, but it raises some other concerns which I shall come to briefly in a moment.

The Minister went on to say on Monday that the power to specify conditions or limitations in orders on the transfer of responsibilities would also give the Secretary of State power to stop the transfer of regulatory and supervisory functions to the local level. However, she then rejected Amendment 31, which rather confused me as it more neatly excluded those functions altogether from Clause 6. She offers the prospect of coming back to this issue at Third Reading. I do not think that we have dealt properly with the issue of regulatory and supervisory functions going down to the local level. I think the Government are trying to stop that, but I am not sure that, by making it an order-by-order process, that meets the case. I have a few other points. I see the Minister wants to jump up, but let me just finish my argument and then she can probably deal with all of them.

*5.45 pm*

I do not wish to be churlish, but the Government's way of dealing with my concerns and those of my noble friend Lord Hunt is pretty clunky. It could mean that each order could have different specifications of conditions and limitations depending on the local negotiations. This could mean over the years the piecemeal unpicking of the Health and Social Care Act 2012 across the country. We could end up moving from a "national" health service under that legislation to a service involving different arrangements in terms of entitlements and the Secretary of State's duties to different populations. There is a problem for the Government, in that they do not understand fully that this is a "national" health service. Many of the other functions that are being devolved are not an integral part of a national service. I fear that, given where the Government are taking this—accidentally—we will end up with a piecemeal set of arrangements that basically take the "N" out of the NHS. I do not say that the Government are trying to do that deliberately. It is one of the consequences of doing this deal by deal, with no oversight of conditions that cannot be part of these particular local deals.

The Government seem to recognise that there may be a problem because, as the Minister said:

"Amendments 80 and 82 are minor changes … enabling the Secretary of State to amend or modify legislation".—[*Official Report*, 13/7/15; col. 439.]

She gave the example of the National Health Service Act 2006. That adds to my concern that this agenda is a fragmentation of the NHS, involving a lot of local deals that make sense to a given locality, but with many consequences for other parts of the country that may not be part of those local deals. I am not sure that the Government, through the Department of Health, have really thought this through. In a moment I will suggest how they might deal with these issues.

I am not going to plough all the way through my amendments, but what I am concerned about is the collective punitive effect over time of the Government's "workaround" approach to the concerns that have been expressed while this Bill has been taken through the House. There has to be some overarching provision of the kind that my noble friend made in Amendment 31—about regulatory provisions not accidentally slipping down into local deals.

I would welcome the Minister's explanation, which I have never really had, of why she is unwilling, given the nature of the National Health Service, to include in the Bill a clear process for dealing with these issues. I accept that it may be late in the day for the Government to do that in this place, but they should still consider doing so in the other place. If they do not want to go that far, I have an alternative proposition: they should consider an amendment to the Bill which provides that, six months after Royal Assent and after consultation, some form of statutory code or guidance will be produced on how devolution of NHS responsibilities under the Bill will work, and how they will interpret the wide powers they have taken in the Bill to organise that devolution. I fear that if they do not clarify the situation, there will be a great deal of confusion, chaos and misunderstanding in the NHS, which could rebound on the Government over time.

That is my constructive suggestion to deal with a set of circumstances that are bubbling up as a result of the Government trying to do this quickly and without thinking through all the implications of using the Bill to devolve NHS responsibilities. In the mean time, I beg to move the amendment so that we can have a brief discussion on these matters.

**Baroness Walmsley (LD):** My Lords, I have not taken part in debates on the Bill before today but I have followed carefully what has been said about devolving health functions, and have had several conversations with my noble friends and the noble Lord, Lord Warner. I have agreed with the concerns expressed by my noble friend Lord Shipley and the noble Lords, Lord Warner and Lord Hunt of Kings Heath, that there is not enough specifically in the Bill to ensure the accountability of the new devolved entity in relation to healthcare, nor enough to ensure adherence to national standards. Despite the fact that national standards of course vary across England and the devolved nations—quite widely, in some places—it is important that at the very least we ensure minimum standards of care in the devolved entities in reality, not just in theory in the applications of the authorities to the Secretary of State in the first place.

It must be borne in mind that the Bill is breaking new ground at a time when the health and social care system is still settling down to the new structure introduced by the Health and Social Care Act 2012, and is doing so at a time when the NHS is being asked to make enormous efficiency savings, many acute health trusts are posting a deficit, and in some places the social care

[Baroness Walmsley]
system is in danger of crashing. Thus it is not surprising that opposition parties are asking the Government to place safeguards in the Bill in the interests of patients in Greater Manchester and other places in future, and to be very clear what is intended.

On 13 July, during the first day of Report, the Minister said in response to these concerns that government Amendment 28,

"enables the Secretary of State to provide for the functions concerned to be exercisable by the combined authority or public authority, subject to specified conditions or limitations".—[*Official Report*, 13/7/15; col. 439.]

She gave some examples, such as a condition that the combined authority must also meet the current statutory duties held variously by the Secretary of State for Health, NHS England and clinical commissioning groups, thereby ensuring the continuation of current NHS accountabilities and standards. The question is: will the Secretary of State impose such a condition? We need to know that now, not just after the Bill has passed. As the noble Lord, Lord Warner, has said, we are in danger of landing up not with a national health service but with a set of local health services. I hesitate to use the phrase "postcode lottery", but I think noble Lords know what I mean.

The Minister gave other examples of possible conditions, such as reducing health inequalities, continuous improvements in service and so on. While I am very much in favour of the real devolution of powers as opposed to simple decentralisation, it is my view that it is not worth doing these things at all unless they actually result in service improvements and reductions in inequality. I therefore ask her to be very clear about the Government's intentions in this respect.

We also need some assurance that the devolved authorities will still be subject to the same regulators that protect standards in the rest of the country; they cannot regulate themselves. We had some assurance about this from the Minister on Monday night when she accepted the points made, but I am sure that we would all be happier if this were reflected in the wording of the Bill. I am not satisfied that we should rely on the Secretary of State making a series of orders; there is a danger in that, and we need more than that.

**Lord Patel (CB):** My Lords, in Committee I sat through an extensive exchange in the debate between the noble Lords, Lord Warner and Lord Hunt of Kings Heath, and the Minister. I thought at the time that the noble Lords were enjoying themselves while the Minister was not. While I accept in principle that the devolution of the NHS has no problems with it—after all, we used to have regional health authorities—what is a problem is ensuring that they should be bound by the same statutory national regulations so that they do not themselves invent new regulations that are neither statutory nor binding on others. The point made by the noble Lord, Lord Warner, is important: if one set of regulations could be found in the Bill that would be binding, we would get away from having to make different sets of regulations each and every time, which is what would cause confusion. That is what the noble Lord alluded to and it seemed sensible to me. In principle, though, I accept that the devolution of the NHS is not a bad idea.

**Lord Hunt of Kings Heath (Lab):** My Lords, this has been a very useful short debate. I think that the Minister will know that those of us who take an interest in NHS matters have no problem at all with the aims of the Bill, particularly in Greater Manchester; we all see the advantage and the potential of pulling together the NHS, local government, the university sector and the hugely important life sciences sector within Greater Manchester. We are also very grateful to the Minister, both for the meeting that she arranged and for agreeing that we can come back to my Amendment 31 at Third Reading in order to ensure that regulatory and supervisory functions cannot be included in a transfer of responsibility.

I also say to her that I take it this will also involve the funding of local Healthwatch being taken away from constituent local authorities. I do not expect her to respond to this; I merely make the point that their job is to provide an independent assessment of local health services. If health is transferred to local government in the way provided, there is no way that local authorities should continue to have the money routed through them to fund local Healthwatch. Clearly, it should be allocated by national Healthwatch directly to local Healthwatch. We will certainly come back to this at Third Reading; it is a very important matter that I wanted to give her notice of.

Then there is the issue that a piecemeal approach by order could inadvertently undermine the national nature of the NHS. We are looking for a response at Third Reading that recognises that there has to be some statement about the integrity of the NHS as a national service. Those are the two issues that I put to the Minister. Perhaps people in local government do not understand that a lot of what is done in the NHS is done not through statute but by what has been described as soft power. In other words, at the end of the day the Secretary of State for Health can ring up any chairman or chief exec of any NHS body and, in the end, they will do what they are asked to do because they all recognise that they are part of the national NHS family. It is very important that we do not lose that sense of belonging if you are transferring functions to local authorities. The DCLG relationship with local authorities is very different from the relationship between the Department of Health and NHS bodies.

Many of the actions that are taken are not done through statute. For instance, none of the fantastic reconfiguration of stroke services in London, a reduction from about 20 to nine services that has led to hugely improved outcomes, was done through statute; it was done because people recognised that there was a lead from the centre and they responded to it. My concern is that once we move in the direction of the Bill, we will lose a lot of that sense of national cohesion. That is why some statement in the Bill rather than through individual orders would be so important and, in supporting where we are going with the Bill, would give some measure of comfort to people in the NHS.

**Lord Mackay of Clashfern (Con):** Having listened to this debate, and with a certain interest in these matters, it occurs to me that the devolution proposed in the Bill is a devolution from one subsidiary authority

to a local authority. There is no devolution of the responsibility of the Secretary of State, which is guaranteed under the 2012 Act. The Secretary of State remains responsible, in the same way as he is in relation to the existing health services. In a way, therefore, that is the theoretical guarantee for the National Health Service, except of course that the practical implications in which these things are worked out may be affected by this. The relationship between the Secretary of State and a local health authority may be a bit different from his relationship with the Greater Manchester authority. There is a possible problem in that area, but I think that we should emphasise that the Secretary of State is not by the Bill being empowered to devolve his responsibility as Secretary of State for the National Health Service.

*6 pm*

**Lord Hunt of Kings Heath:** My Lords, I always hesitate to respond to the noble and learned Lord, because he always comes back at me, but I am sure that he is right about the statute. It is more about the symbolism of that leadership. I know that one should avoid unnecessary legislation, but this is crucial. This is a very thin Bill in terms of pages; in terms of its significance, it is hugely important. Some of us are looking for some reassurance in statute that the essential point of what the noble and learned Lord said will continue in future.

**Baroness Williams of Trafford:** My Lords, I start by thanking my noble and learned friend for putting everything so succinctly and eloquently in summing up what is the case in the NHS in relation to devolution, and the noble Lord, Lord Warner, for again eloquently outlining his amendment.

Amendment 66 puts certain limitations and conditions on the conferral of health powers on a combined authority or another body working with a combined authority. In particular, it requires the Secretary of State to consider that various conditions are met; that the other body must be a body corporate with a chief accounting officer; and that a memorandum of understanding is produced and reported against. It also prevents the Secretary of State intervening except in certain circumstances.

As we have discussed, Amendment 28, which was passed, and others in its group would enable any limitations or conditions to be specified in an order transferring health functions and were intended to provide assurance that any future devolution arrangements will continue to uphold existing accountabilities and national standards for the NHS.

Most of the limitations and conditions that the noble Lord, Lord Warner, outlines could be specified in an order using those provisions if doing so were considered appropriate in the context of a bespoke devolution deal. For example, we could enable the conferral of health powers to a combined authority to be accompanied by a condition that it must also meet current statutory duties held variously by the Secretary of State for Health, NHS England and clinical commissioning groups, thereby ensuring continuation of current NHS accountabilities and standards.

**Lord Hunt of Kings Heath:** My Lords, I just want to raise a specific point about that which the intervention by the noble and learned Lord has raised. Notwithstanding what the Minister said about current accountabilities, my reading of new subsection (4) in Clause 6 is that because the Secretary of State may by order transfer a function and that the new subsection defines the public authority as being a Minister of the Crown or a government department, in some circumstances, the Secretary of State's power is indeed transferred to the combined authority. That modifies the noble and learned Lord's position, and that is why it is so important.

**Lord Warner:** Before the Minister responds to that, perhaps I may add to it. I read from her statement on Monday evening, where she makes it absolutely clear that, under Amendment 28, we would be conferring on the combined authority many of the duties, such as,

"the duty to seek continuous improvement in the quality of services, reduce health inequalities, promote the NHS constitution",

and to,

"seek to achieve the objectives in the NHS mandate".—[*Official Report*, 13/7/15; col. 439.]

As I understand it, what she is saying openly and transparently is that those duties get transferred to the combined authority through the order. If someone then says to the Secretary of State, "I don't like the way health inequalities are going on in Cornwall", or wherever, presumably, the Secretary of State can say, "Tough. I passed an order through Parliament which enabled me to offload that duty to this group of people for a period of time".

Is the Minister saying that she did not mean what she said on Monday, or have we got this wrong?

**Baroness Williams of Trafford:** My Lords, I am not going back on what I said on Monday. I think that I made clear on Monday that the accountability and functions of the bodies do not change.

**Baroness Walmsley:** On a point of elucidation, the Minister said that the Secretary of State could impose those conditions. Is there any circumstance in which the Secretary of State should not impose such fundamental conditions as she has outlined?

**Baroness Williams of Trafford:** Sorry, would the noble Baroness say that again? I apologise.

**Baroness Walmsley:** I was just saying that the noble Baroness said that the Secretary of State could impose conditions such as meeting the current statutory duties of the Secretary of State or NHS England. I wondered whether there would be any circumstances in which the Secretary of State should not impose such conditions, because I think that they are pretty fundamental to standards.

**Baroness Williams of Trafford:** I do not know of any such situation where he should not, but obviously each deal will be different. I cannot speak to a theoretical situation, but no one is suggesting that the Secretary

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of State loses the powers, particularly in respect of his ultimate accountability to Parliament for the provision of NHS services.

Most of the limitations and conditions that the noble Lord, Lord Warner, outlines could be specified in an order using the provisions, if doing so were considered appropriate in the context of a bespoke devolution deal. For example, we could enable a conferral of health powers on a combined authority to be accompanied by a condition that the combined authority must also meet the current statutory duties held variously by the Secretary of State for Health, NHS England and clinical commissioning groups.

Further safeguards are already provided by other provisions in the Bill. Before making an order to transfer functions, the Secretary of State must consider that such a transfer will improve the exercise of statutory functions. The Secretary of State is also bound by various duties in relation to the health service when exercising his functions. These are set out in the NHS Act 2006, and concern duties such as the duty to act with a view to securing continuous improvement in the quality of services and to have regard to the need to reduce health inequalities. Such duties would be relevant here and, in making an order transferring health service functions, he would be obliged to discharge them.

The order implementing a particular devolution deal must be debated and approved by both Houses of Parliament, and Parliament's consideration will be supported by the laying in Parliament of a report setting out the detail of the deal, a new requirement under the provisions in Amendment 33, which the House passed on Monday. Those reports will set out and explain the full deal—that is, the wider context in which any order is being made. Hence, the report will set out and describe any memorandum of understanding that councils in the area, the combined authority and the various NHS bodies involved have agreed. That memorandum of understanding will describe and make clear the nature of the devolution agreement, including the degree of permanence or how long it is expected to last. We can see this in the MoU which Greater Manchester has entered into.

Amendment 66 would also require a combined authority to publish an annual report on its deal in relation to health. As we have noted previously, there will be a process for evaluating the progress on each deal agreed with each area as part of the deal. For example, the Greater Manchester deal has an extensive programme of evaluation, with evaluations being public documents available to all with an interest in the area and the progress that it is making. In this context, it is not appropriate to make a requirement about the reporting or evaluation of some particular aspect of a deal—indeed, an aspect that may not be in all the deals which are agreed.

We do not feel there is a need to restrict the ability of the Secretary of State to intervene as set out in Amendment 66. The Secretary of State is already under a duty when exercising functions in relation to the health service to have regard to, always subject to the interests of the health service, the autonomy of the bodies exercising health functions.

**Lord Hunt of Kings Heath:** My Lords, I am sorry to intervene again but surely the whole problem is that the Secretary of State may in fact devolve that to a combined authority under the Bill? That safeguard ultimately may not apply. That is the problem. Look at Clause 6(4). The very fact that by an order-making power a government department or a Minister of the Crown can be abolished takes away that essential safeguard. This is a local government Bill, essentially written for local government duties. I can see how it fits, but once the NHS is taken in, we are talking about a very different order. No one is objecting to what is happening in Greater Manchester—I applaud what is happening there. At this stage, all we are asking is for the Minister to allow us to consider what she has said and bring it back at Third Reading. She is, I know, trying to be very helpful.

**Baroness Williams of Trafford:** My Lords, I am trying to be helpful, although I am not sure that I am being very helpful. I indicated to the House on Monday that we are considering with a view, as appropriate, to returning at Third Reading to the question of whether to exclude from functions that can be transferred those regulatory and supervisory functions of national regulators responsible for regulating public authority functions. However, I would add that our consideration is not about how to exclude them on an order-by-order basis but whether to take these regulatory functions out of the scope of the Bill. This would put beyond doubt—whatever devolution deals, including health, were agreed—that the position of the regulators, such as Monitor and the Care Quality Commission, would be untouched, as indeed would the NHS constitution and mandate and all the NHS standards of care and access, as my noble and learned friend Lord Mackay pointed out.

With these perhaps not entirely satisfactory explanations, I hope the noble Lord will agree to withdraw his amendment.

**Lord Warner:** There was a lot of heat but not much light, I suggest, from that debate. I say to the Minister that I am still thoroughly confused as to whether the Government are talking about transferring duties, powers, functions or responsibilities—there is a raft of words that may look as though they are the same, but they are not. On Monday night, the Minister talked about the conferral of duties from the Secretary of State. If, as the noble and learned Lord, Lord Mackay, is suggesting, the Secretary of State's duties in the 2012 Act are absolute and apply to the whole of England—I think he is probably right—I do not see how they can be transferred under an order-making power in this Bill. We need to come back to this at Third Reading. We need something specific about the NHS in the Bill. It may not be the detail of my amendment, but, at the moment, we are in danger of creating considerable confusion around the world in terms of the NHS and what is intended by the Bill in relation to its responsibilities. In the mean time, on that basis, I beg leave to withdraw my amendment.

*Amendment 66 withdrawn.*

*Amendment 67 not moved.*

*Amendment 68 had been withdrawn from the Marshalled List.*

***Clause 10: Governance arrangements etc of local authorities in England***

*Amendment 69 not moved.*

*Amendment 70*

*Moved by* ***Baroness Williams of Trafford***

**70:** Clause 10, page 10, line 39, at end insert—

"( ) At the same time as laying a draft of a statutory instrument containing regulations under this section before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the regulations and why the Secretary of State considers it appropriate to make the regulations.

"( ) The report must include—

(a) a description of any consultation taken into account by the Secretary of State,

(b) information about any representations considered by the Secretary of State in connection with the regulations, and

(c) any other evidence or contextual information that the Secretary of State considers it appropriate to include."

*Amendment 70 agreed.*

*Amendments 71 and 72*

*Moved by* ***Baroness Williams of Trafford***

**71:** After Clause 10, insert the following new Clause—

"Power to transfer etc. public authority functions to certain local authorities

(1) The Secretary of State may by regulations—

(a) make provision for a function of a public authority that is exercisable in relation to a relevant local authority's area to be a function of the local authority;

(b) make provision for conferring on a relevant local authority in relation to its area a function corresponding to a function that a public authority has in relation to another area.

(2) Regulations under subsection (1) may include further provision about the exercise of the function including—

(a) provision for the function to be exercisable by the public authority or relevant local authority subject to conditions or limitations specified in the regulations;

(b) provision as to joint working arrangements between the relevant local authority and public authority in connection with the function (for example, provision for the function to be exercised by a joint committee).

(3) The provision that may be included in regulations under subsection (1)(a) includes, in particular, provision—

(a) for the relevant local authority to have the function instead of the public authority,

(b) for the function to be exercisable by the relevant local authority concurrently with the public authority,

(c) for the function to be exercisable by the relevant local authority and the public authority jointly, or

(d) for the function to be exercisable by the relevant local authority jointly with the public authority but also continue to be exercisable by the public authority alone.

(4) Regulations under subsection (1)(a) may, in particular, include—

(a) provision for the making of a scheme to transfer property, rights and liabilities from the public authority to the relevant local authority (including provision corresponding to any provision made by section 17(4) to (7) of the Localism Act 2011);

(b) provision to abolish the public authority in a case where, as a result of the regulations, it will no longer have any functions.

(5) In this section—

"function" (except in subsection (4)(b)) does not include a power to make regulations or other instruments of a legislative character;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"public authority" includes a Minister of the Crown or a government department;

"relevant local authority" means a county council in England or a district council."

**72:** After Clause 10, insert the following new Clause—

"Section (Power to transfer etc. public authority functions to certain local authorities): procedure etc.

(1) The Secretary of State may make regulations under section (Power to transfer etc. public authority functions to certain local authorities) only if—

(a) the relevant local authority consents, and

(b) the Secretary of State considers that the making of the regulations is likely to improve the exercise of statutory functions in the local authority's area.

(2) The power to make regulations under section (Power to transfer etc. public authority functions to certain local authorities)—

(a) is exercisable by statutory instrument;

(b) includes power to make transitional, transitory or saving provision;

(c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act whenever passed or made.

(3) A statutory instrument containing regulations under section (Power to transfer etc. public authority functions to certain local authorities) may be made only if a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.

(4) At the same time as laying a draft of a statutory instrument containing regulations under section (Power to transfer etc. public authority functions to certain local authorities) before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the regulations and why the Secretary of State considers it appropriate to make the regulations.

(5) The report must include—

(a) a description of any consultation taken into account by the Secretary of State,

(b) information about any representations considered by the Secretary of State in connection with the regulations, and

(c) any other evidence or contextual information that the Secretary of State considers it appropriate to include.

(6) If a draft of regulations under section (Power to transfer etc. public authority functions to certain local authorities) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument."

*Amendments 71 and 72 agreed.*

*Amendment 73*

*Moved by* ***Lord Tyler***

**73:** After Clause 10, insert the following new Clause—

"Governance arrangements for local government: entitlement to vote

In section 2 of the Representation of the People Act 1983 (local government electors), in subsection (1)(d) for "18" substitute "16"."

**Lord Tyler:** My Lords, I can be relatively brief, because the case for this amendment is very straightforward and has been rehearsed on all sides of your Lordships' House with considerable support on many occasions.

The Liberal Democrats have been in favour of this extension of the franchise to 16 and 17 year-olds for many years. Indeed, I presented in your Lordships' House Private Member's Bills on the subject in the 2013-14 Session, the 2014-15 Session and the current Parliament. These have enjoyed widespread support across the House. I am especially grateful for consistent support from the noble Lord, Lord Lucas, on the Conservative Benches, the noble Lord, Lord Adonis, on the Labour Benches, and the noble Baroness, Lady Young of Hornsey, on the Cross Benches. Recently, we have enjoyed the very substantial support of the Labour Party, which now officially endorses the campaign. I am delighted to share this amendment with the noble Lord, Lord Kennedy.

Hitherto, our support for the extension of the franchise has been based on personal experience of the growing maturity of this age group, their increased responsibility and the acknowledged fact that their citizenship course should lead inexorably to voter registration as they become adult citizens and then to participation in the democratic process. There is good reason to think that young people are more likely to register to vote, and start a lifetime of actually voting, if they are still in the home environment. Once they leave, usually at about the age of 18 for further education of all sorts or employment, they become much more elusive. All the other distractions kick in and their involvement in the life of their home area weakens or ceases altogether. The 18-plus age group all too often disappear off the electoral scene, and once gone many never return.

We would be the first to admit that this used to be based on theory and subjective judgment. However, since September last year, we have had hard empirical evidence from Scotland of the readiness among young people to take on this vital civic function. The huge success of the extension of the vote to 16 and 17 year-olds in the referendum, as negotiated by my right honourable friend Michael Moore but agreed to by the whole coalition government Cabinet, was thought by some to be a step too far.

But consider the facts. First, there was a remarkable response in terms of registration—no signs of disinterest there. Secondly, the level of debate, as noted by all observers including Members of your Lordships' House, was lively, intelligent and very well informed. Thirdly, the turnout on the day of the poll was excellent, with 75% casting their vote, which far outweighed that of the 18 to 24 year-old cohort, which managed only 54%. That demonstrates the point that I was making earlier. Fourthly, and contrary to the hopes of Mr Alex Salmond, the majority of those in that younger age group supported the Better Together case, displaying more maturity and resilience to the blandishments of the separatists than many of their elders—notably, middle-aged men. In summary, the new young voters proved themselves to be better informed, more conscientious and even more mature than many of their elders—they blew to smithereens all the misgivings and dire warnings of the doomsayers.

As a result, in the debates on the Wales Bill in your Lordships' House last autumn, I successfully argued that a similar referendum in the Principality could not rationally and in justice exclude this age group. My understanding is that all parties in the Welsh Assembly have now decided to include them.

I will quote the views of the leaders of the parties in the Holyrood Parliament. Since the referendum in Scotland, that Parliament voted on 18 June this year to extend the franchise consistently both for the Scottish Parliament itself and for all local elections north of the border. All the parties, including the Conservatives, whose leader has been an enthusiast for this reform, voted unanimously for the change. That prominent Conservative, Ruth Davidson MSP, argued this persuasively in a recent interview in the *Guardian*:

> "I'm happy to hold my hands up and say I changed my mind. I'm a fully paid-up member of the 'votes at 16' club now for every election. I thought 16- and 17-year-olds were fantastic during the referendum campaign. I can't tell you the number of hustings and public meetings I did, and some of the younger members of the audience were the most informed. You know, there is nothing more terrifying for somebody up on the stage who is trotting off the latest IMF figures to have somebody in the front row with a smartphone googling your answers to make sure that you've got it exactly right. That happened, and that is terrifying, let me tell you".

She spoke at a BBC event for youth voters and said, about that:

> "There were eight and a half thousand kids there asking questions about the Barnett formula! It was phenomenal. It was truly, truly impressive".

Then she was asked by the *Guardian* interviewer if she had told the Prime Minister that he is wrong about the franchise. She said:

> "Absolutely, absolutely. I've spoken to the prime minister about it. He's not convinced, but I continue to work on him".

I hope there will be Members on the Government Benches this evening who will also be prepared to work on the Prime Minister to recognise the facts of life as demonstrated north of the border.

All parties in Holyrood have now, as I say, had direct experience of this extension of the franchise, this inclusion of this age group, and it is clearly both rational and right. At the end of my speech on this issue in Committee, I posed two simple questions for Members of your Lordships' House who might still remain resistant to this logical change. I suggested that they ask themselves, first:

> "What evidence have they that the young people in this specific age group in England and Wales are less mature, less responsible and less well informed than their compatriots in Scotland? Secondly, if this is truly a United Kingdom, how can they justify discrimination in such an absolutely crucial matter as the electoral franchise, which will exclude young people south of the border?".—[*Official Report*, 29/6/15; col. 1918.]

The electoral register is surely the foundation stone of our representative democracy. We should not knowingly countenance variations of this order in different parts of the country. In the subsequent debate, and indeed in the days since, not one Member of your Lordships' House has even attempted to answer those questions; nor has anyone else, to my knowledge. The half-hearted objection that this Bill is not the appropriate place to

achieve this reform simply does not stand up to scrutiny. The Long Title of the Bill includes the following statement:

"to make provision about local authority governance; and for connected purposes".

As the Public Bill Office correctly advised us, here it is, this amendment, on the Marshalled List. Nothing could be more relevant to local authority governance than the franchise on which its governors are elected. I beg to move.

**The Earl of Listowel (CB):** My Lords, I oppose this amendment, but in doing so I must apologise to the House because I was slightly delayed at the start. We went through the previous grouping very quickly and, with the permission of the House, I would like to intervene at this point.

I opposed this move the last time that it was raised by the noble Lord, Lord Tyler, on the then Wales Bill. Immediately I learned that moves of this kind were in the Labour manifesto I sought to speak with Labour's representative on youth. I feel very concerned about this matter although it is encouraging to hear what the noble Lord says about the experience in Scotland, and I look forward to studying the outcome. The aims are utterly laudable considering that young people in this country more and more will be carrying the burden of our pensions and of healthcare of the elderly. Listening to their voices is very important indeed, and of course we should always seek as far as possible to listen to the feelings and wishes of young people. The trouble is that, with respect, I do not think this is the right way to do it.

I am very interested in adolescents. I have worked with them and much of my life has been spent thinking about the issue of adolescence, speaking with professionals and reading the theoretical material around it. It is really important to think about adolescence in this context. "Adolescence" comes from the Latin root "to grow up". It is a huge change in young people's lives. One looks, for instance, at Anna Freud and her work in the 1960s on adolescence. She of course set up the Hampstead nurseries at the end of the Second World War to provide for children separated from their parents, and the Anna Freud Centre is named after her. She was a great expert in this area. She highlighted the fact that huge physical changes take place in adolescence, that huge sexual changes take place, and that issues around aggression and how young people manage aggression manifest themselves. It really seems unfair to ask so much of young people when they are going through all these changes. She also highlighted the way that one week they will be studious, perhaps—thoughtful, intellectual—and then the next week can go to the other extreme, to the opposite sort of behaviour. They of course also very much reject their parents as they go through adolescence and often take extremely opposite views from those of their parents.

These young people are going through a very interesting time, and of course they are rather suggestible, particularly with the use of the internet now. It is easy to access them, so politicians who wish to and are unscrupulous can quite easily manipulate these young people. We have seen the ease of manipulating such young people through the process of grooming young people for sexual exploitation and by Islamic State. These young people may manifest themselves as quite intellectual at times, but they change very suddenly to a different point of view. They are not very stable because of their growing period.

I feel very concerned about this, and I hope your Lordships will reject this amendment. I look forward to the House's response.

**Lord Heseltine (Con):** My Lords, this is a highly controversial subject. There are many opinions on both sides of the House, and I have no doubt that the issue will be returned to time and again. Perhaps, however, your Lordships will agree with me that this Bill is the implementation of a manifesto commitment by the elected Government to devolve power from the Whitehall departments to combinations of local authorities. It is not about changing the electoral system. There was no reference in the manifesto associated with this commitment to changing the electoral system. Although as a Member of another place I was probably guilty on many occasions of abusing the full interpretation of the law in order to advocate petty or personal views that I held, I cannot believe that your Lordships are going to agree to add little bits—like trinkets on a Christmas tree—that suit our own particular ambitions but actually are not the intention of the Bill.

If the noble Lord were to talk about the need to change this, there is a proper place for that to happen, and that is for the Government to launch a wide basis of consultation. I think it would be appropriate for that to start in another place, which after all reflects the elected democracy of this country, and it would not be appropriate for this House to try to impose on another place a suggestion of that sort. I do not enter into the merits of the case. I merely suggest to your Lordships that we are here with a very specific task: the implementation of a manifesto commitment, which we should execute with dispatch.

On that basis, having heard all the eloquence that the noble Lord brings to this cause and to many others, I hope very much that he will feel he has served the purpose that he had in mind and not seek to change the electoral arrangements under the guise of devolving power to local authorities.

*6.30 pm*

**Lord Knight of Weymouth (Lab):** My Lords, with all due respect to the noble Lord, who quite rightly commands huge respect across the House, I have to disagree with him on this matter. This Bill is an exciting Bill, in terms of re-forging local government and opportunities around it. Extending the vote to 16 and 17 year-olds was debated and in principle agreed in respect of the Scottish referendum. The UK Youth Parliament consistently argues that we should extend the franchise to 16 and 17 year-olds. Yesterday, we heard in the other place the excellent maiden speech of the newly elected Member, Mhairi Black, who is but 20 years old. I have no doubt that, three years ago, she would have been well able to exercise her franchise responsibly. I have no doubt either, having worked with members of the Youth Parliament when I was in government, that 16 and 17 year-olds would do so,

[Lord Knight of Weymouth]
too. I say with due respect to the noble Earl that I understand that people mature at different rates, but I also understand that 18, 19, 30 and 40 year-olds mature at different rates. We really should be doing this. The issue was debated in respect of Scotland and we should now extend it to England.

**Lord Cormack (Con):** My Lords, it was indeed debated in the case of Scotland, but without any consensus in this House. I support strongly what my noble friend Lord Heseltine, said: that this is not the Bill to tack it on to, nor is it for us in this House, with a Bill beginning in this House, to send it to another place with this stipulation in it. The noble Lord, Lord Tyler, and I have crossed swords on many occasions on this issue, so what I am saying will be of no surprise to him. He knows that I respect his point of view; he knows that I fundamentally disagree with it.

This is my first intervention on this Bill, and I apologise for that, but this is not the time and this is not the place. I completely concede the one powerful aspect of the argument of the noble Lord, Lord Tyler, and he knows that, because, when we were first confronted with the idea of votes for 16 year-olds in the Scottish referendum, I was one of the first in your Lordships' House to argue that it should not have been agreed and conceded by the Prime Minister. I believe that it was changing the constitution in a very difficult way and creating a precedent which it would be difficult to resist. However, as the noble Lord knows only too well, we have not had a wide-ranging debate on this issue and my noble friend Lord Heseltine is entirely correct in suggesting that there should be some form of inquiry, commission or whatever to look at the whole issue of the franchise.

I believe that it is illogical in a country where it is not legal to drive a motor car, to consume alcohol or to smoke cigarettes at the age of 16 for young people to have the vote. I also believe that there is some danger in giving the vote to those who still have, in most cases, two years of full-time education ahead of them. There is all the difference in the world between a sixth-former who is to some degree under the influence of a school teacher, and a young undergraduate who has left school and is beginning to enter the wide world. Therefore, whenever this debate is rehearsed in your Lordships' House or any other place, I will take a lot of convincing—and I doubt that I will be convinced—that we should make this change.

In the past couple of years we have made constitutional changes without linking them up. We had the ridiculous business earlier this year, in the last Parliament, where certain things had to be settled by St Andrew's Day and other things by St David's Day. Artificial deadlines were set up, and there was no cohesive argument or proper plan. Now we are falling into the same danger again if we seek to insert this measure in a Bill which has not yet been to the other place. The other place, if it wishes to insert an amendment to this effect, is the right place to do so. We are not, and I hope that the amendment will be resisted this evening and that we will have at some stage in the not-too-distant future a proper opportunity to examine the franchise and whether or how it should be widened. I have my own views—I believe that we should have compulsory registration; I even believe that there is a case for compulsory voting; and I believe passionately, as your Lordships know because I have spoken about it many times, in citizenship education—but things must be done logically and sensibly. Although I would never accuse my friend, the noble Lord, Lord Tyler, of not being sensible, I honestly do not believe that he is doing this House or the constitution in general a service if he presses this amendment tonight. If he chooses to do so, I shall certainly vote against it.

**Lord Quirk (CB):** My Lords, the noble Lord, Lord Tyler, has done his cause, this House and this Bill a service. I would be very sympathetic to the idea of lowering the participation age in elections, which is an issue that has worried us all for many years ever since 16 became the age for marrying et cetera. However, I also agree that the place to start such a move is not in this House. It may well be in the Bill, and now that the noble Lord has very kindly brought this matter to Parliament's attention in this way, I feel sure that the people down the corridor will take the hint and, if they are so minded, can introduce the measure, knowing full well that there will be a sympathetic reception to such an amendment when it comes back here.

**Lord Brooke of Sutton Mandeville (Con):** My Lords, I rise expressing extreme sympathy for the enthusiasm which it is possible to develop for politics at a very early age but which does not lead me to be in support of the amendment. I was one year old at the general election of 1935. I therefore had to wait until 1945, when there was a further general election. Two and a half Members of Parliament for the Labour Party have played first-class cricket and one hundred and twenty-six and a half have played first-class cricket and represented parliamentary seats in the Conservative interest. The half was Aidan Crawley. I was at a prep school in Buckinghamshire where he was the Labour candidate. It was a matter of total astonishment to me at the age of 11—admittedly, there had been no elections between 1935 and 1945—that somebody who had played first-class cricket for Oxford and for his county, Kent, could espouse the Labour cause.

It was the case by then that my late noble kinsman had won the first by-election after Munich and therefore I had lived with a Member of Parliament in the Conservative interest for the previous seven years. We arrived late at the count in 1945 in Lewisham West, where my late noble kinsman was the Member of Parliament defending the seat. His seat had been announced. It is a seat which has generally gone with the Government of the country, a fact which was further proved by the late Chris Price, whom a number of people in your Lordships' House will have been very fond of. He told me that he was absolutely sure that the reason why he was elected for Lewisham West as a Labour candidate was the coincidence that the Tory who had won the seat back in 1951 was a Mr Henry Price and that the people of Lewisham West assumed that Chris was his son.

The thing that had the most powerful effect on me in the 1945 count occurred in Lewisham East, where Herbert Morrison retained the seat. The independent

candidate—a man called Russell—had been put in prison by Morrison in 1941 and had remained there until 1945, when he was released and decided that he would get his revenge on the Home Secretary by standing against him. He got the best part of 1,000 votes and gave what was, without question, the longest speech of thanks to a returning officer that I have ever heard; Mr Russell spoke for 25 minutes, explaining why he disapproved of Mr Morrison.

In the years immediately after 1945, my late noble relative stood as the Conservative candidate in a by-election in Kilburn. She won the seat by 300 votes and held it again at the next council elections. I have, I think, every ground for thinking that she is the last Conservative councillor to represent Kilburn in all the years since. In 1949, in an era when there had been no Conservative—

**Lord Thomas of Gresford (LD):** This sounds like an innings by Mr Geoffrey Boycott. I wonder if the noble Lord could get to the point of the amendment.

**Lord Brooke of Sutton Mandeville:** The noble Lord's intervention is most gracious; if he will forgive me, I am coming towards that end. Between 1945 and 1950, no by-elections were won by the Opposition party, yet in the LCC elections in 1949, my late noble kinsman led the Conservative Party to an absolute dead-heat—that was the first sign that there was a change in the politics of the country. I acknowledge what the noble Lord, Lord Thomas of Gresford, has just said and I will fast-forward as much as I can.

I followed the referendum in Scotland with the keenest interest and I totally understand why it constitutes a large part of the argument about this change. However, there were factors in that referendum that greatly raised the temperature and enthusiasm of people. In the years since I entered your Lordships' House, the previous Labour Government insisted on changing the arrangements for election after election on the grounds that the number of people who were voting was going down, but they never succeeded in reversing the situation as a result of the steps that they took—there was diminishing enthusiasm.

I have, myself, been subjected to some evidence. A young man, a boy, who sits in a youth parliament locally—I live in rural Wiltshire—sought to enlist me in the cause of the noble Lord, Lord Tyler, not directly but on the same principle. I was happy to enter into correspondence with him and to engage in argument and discussion, but I said to him that, before the conversation went any further, he had to explain why there seemed to be no shift at all in voting patterns between the ages of 18 and 35 and, if that was so, why I should support him on voting at 16. It is on those grounds that I am opposed to this amendment being carried at this stage.

**Lord Kennedy of Southwark (Lab):** My Lords, this amendment was previously debated in Your Lordships' House in Committee. I and my noble friend Lord McKenzie of Luton were delighted to add our names in support of it and we do so again today. It is of course the policy of not only the Labour Party—and now the Liberal Democrats—but of the Scottish National Party and, I believe, the Green Party and Plaid Cymru. It is also, as was referred to earlier, the policy of the Scottish Conservative Party, whose leader Ruth Davidson MSP is on record as saying that she is a fully paid-up member of the "votes at 16" club. Why would the leader of the Scottish Conservative Party support votes at 16? I suspect the answer is the experience of young people aged 16 and 17 who voted in the referendum and the 75% turnout in that group, which the noble Lord, Lord Tyler, referred to.

*6.45 pm*

The Minister should therefore speak to her colleagues in the Scottish Parliament and hear first hand why they are convinced that this is the right thing to do and have, with all other parties in that Parliament, voted to give young people aged 16 and 17 the right to vote in local and Scottish Parliament elections. Young people in Scotland took up their new responsibility with pride and a real sense of civic duty—they have shown that it was the right thing to do. We should extend this to allow other young people to vote at the age of 16 to elect local councillors across the whole of the UK.

What is also important, however, is proper citizenship education. What is offered at present is not really up to scratch and needs to be improved. The noble Lord, Lord Cormack, is a great supporter of that and on that much we are agreed—although I know he is not with me tonight on allowing 16 and 17 year-olds to vote. There is no fixed age for people to take part in a whole range of things. At present, at 16 you can consent to medical treatment, join a trade union, pay tax, consent to sexual relationships, change your name by deed poll, join the Armed Forces, be a company director, and get married, albeit with parental consent.

The reasons for opposing this amendment have been heard before—when, for example, the Labour Government chose to reduce the age from 21 to 18. I have enormous respect for the noble Earl, Lord Listowel, and the noble Lord, Lord Heseltine, but I do not agree with their remarks this evening. If you look back in history, Lord Curzon said in 1912, when talking about votes for women, that women did not have the experience to be able to vote. Looking further back to the debates on the 1832 Reform Act, landowners said that only people who had an interest in land should be allowed to vote. Today, in 2015, those statements are seen as quite ridiculous. To deny young people the vote will, in future years I am sure, also be seen as ridiculous. You can of course vote at 16 in three of the nearest Crown dependencies to the United Kingdom: the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey. You can also vote at 16 in elections in Norway, Germany and Austria.

In Committee, I gave the shocking figures for the number of attainers registered to vote. I referred to the fact that we have seen a 45% drop, which is nothing short of catastrophic. Both parties in the previous Government should be ashamed of what has happened. I asked the Minister about it in our previous exchange and she said that she had not actually read the Electoral Commission report but was equally concerned about the point I had raised. Has she now read the report and what action will she be taking to

[Lord Kennedy of Southwark]
deal with this appalling state of affairs? If we were looking at another country, I am sure the Government would be saying that it was a terrible state of affairs and that it should sort it out. The Minister might also have seen the briefing from the Electoral Commission. It says very little and has, again, come out at all too short notice. Can she speak to her friend Gary Streeter, who answers questions about these issues for the Speaker's Committee? Again and again, the Electoral Commission issues responses on these matters on the day of the debate or the night before. If they are to be meaningful, they need to come out much sooner.

I say to the noble Lord, Lord Brooke of Sutton Mandeville, that I have never played first-class cricket but I am a strong supporter of Surrey County Cricket Club—I wear my club tie with pride tonight—and I have attended its matches at the Oval many times. I am also a proud supporter of the Labour cause.

**Baroness Williams of Trafford:** My Lords, Amendment 73 would have the effect of lowering the voting age for local government elections in England and Wales from 18 to 16. There is no doubt that the Scottish referendum debate was unique in the way that it engaged the public and secured the participation of 16 and 17 year-olds in a way that we have not seen before—I absolutely acknowledge that, as well as the other factors that may have engaged the people of Scotland.

It is clear that lowering the voting age to 16 for local elections in England and Wales is a major change to the fundamental building blocks of the country's democracy. The starting point for making such change would seem to be that those democratically elected to represent the people of this country consider all the issues involved, seek the views of those they represent, and seek to recognise where public opinion stands on the issue and what would maintain confidence in ensuring that the elections are free and fair and give genuine voice to the people. They discuss the issues and, having carefully weighed the argument and recognised where consensus and opinion lie across the country, decide whether or not to make the change.

This should be the approach to deciding whether to make fundamental changes to our election systems. It is entirely consistent with this approach for the Scottish Parliament to decide the voting age for local government elections in Scotland, and there the Parliament has now decided to reduce the voting age to 16.

It is clearly right for Parliament to consider whether there should be a change to the franchise for local government elections in England. However, noble Lords may wish to reflect on whether it is appropriate that such a fundamental electoral change should be instigated in your Lordships' House—an unelected Chamber—rather than in the other place. Whatever the quality of the many and varied discussions we have had today, we can all agree that, although the quality of our debate is high, we have necessarily not had the wide-ranging consideration which can happen only following a debate across the country and after hearing the views of many on the issue. In short, whatever merits there may be in making this change to the franchise for local elections, today is not the time and this Bill is not the vehicle.

As to its merit, noble Lords will know that the Government have no plans to lower the minimum voting age. In most democracies, including most of the EU member states, the voting age is also 18. In the EU, only Austria allows voting for 16 year-olds. The age of 18—not 16—is widely recognised as the age at which one becomes an adult and gains full citizenship rights. In 2014, the Select Committee which conducted an inquiry into lowering the voting age to 16 noted in its report that the available evidence suggests that the public are in general satisfied with the voting age as it is.

The noble Earl, Lord Listowel, spoke about the broader issue of the transition from childhood to adulthood, which deserves fuller consideration than as an adjunct to the Bill. He talked about the vulnerabilities, in many ways, of 16 and 17 year-olds to various external influences.

I shall refer to comments made by noble Lords in this House on that point. In the Legal Aid, Sentencing and Punishment of Offenders Bill 2012, the noble Lord, Lord Beecham, said:

"My Lords, given the time, happily this is a short amendment. The Police and Criminal Evidence Act 1984 established that people under the age of 17 years are to be treated as children and therefore have to be questioned or interviewed in the presence of an appropriate adult, but people of 17 years of age and up to 18 are not treated in the same way. The Government have dealt with what has been an anomaly about treating 17 year-olds as adults for the purposes of bail, and that has now been changed to lift the age to 18. It would seem to be consonant with that approach if the appropriate adult provision was also extended from 17 years of age to 18. This is a straightforward matter".—[*Official Report*, 15/2/12; col. 882.]

During proceedings on the, Criminal Justice and Courts Act 2015, noble Lords opposite recognised that:

"Anyone who is the parent of a teenager or whose children were recently teenagers knows that at that age a person is on the cusp of adulthood. They are moving out of childhood and into adulthood. It is often a very difficult stage where young people appear to be very mature and yet at the same time they are childlike and vulnerable".—[*Official Report*, 23/7/14; col. 1201.]

That was said by the noble Baroness, Lady Kennedy of The Shaws.

The noble Lord, Lord Tyler, talked about discriminating against 16 and 17 year-olds. Deciding whether or not to give the vote to 16 and 17 year-olds is not a question of removing some inappropriate discrimination; it is about what is appropriate for 16 and 17 year-olds, who are at the point of moving out of childhood and approaching adulthood. Many things are not appropriate for people at that point in their lives. They cannot marry without parental consent, as the noble Lord, Lord Kennedy, said; they are treated in special ways in various aspects of the criminal justice system; and they cannot join the Army without parental consent.

For the reasons I have set out we cannot support the amendment and I hope that the noble Lord will agree to withdraw it for two reasons only: first, this is not the Bill to decide a huge issue such as this; and, secondly, we are an unelected Chamber and it is not for us to propose a change in the franchise.

**Lord Tyler:** My Lords, the noble Baroness's last remark has really irritated me because I have worked hard to prevent the views of the House being treated as not significant simply because, at the moment, we

are unelected. I have worked hard to achieve some election. Indeed, if there had been slightly different circumstances in 2012, the previous Government's Bill would have been sorting out this issue by now.

In the mean time, I am extremely grateful to colleagues on all sides of the House for the serious way in which they have approached this issue. I am particularly grateful to the noble Earl, Lord Listowel, because he went to the heart of the matter. I can reassure him that in Scotland this issue was treated seriously; the debate was very thoughtful, and when the Scottish Parliament came back after the referendum they recognised that young people had taken the issue seriously. Given his experience, I hope he will agree that it is a fact of life that if you give people responsibility they will become more responsible. Anyone in your Lordships' House who thinks that suddenly we are going to be swamped with huge numbers of irresponsible, immature 16 and 17 year-olds who will swing elections should worry about older people. I am 73 and I do not pretend that I am always entirely logical on all issues.

**Lord Cormack:** The noble Lord believes very strongly in elections—he said that again a few moments ago. If this Bill had followed the normal course and had come to us from another place, and the other place had not inserted an amendment on votes for 16 year-olds, would he think it appropriate to do so?

**Lord Tyler:** I would. As the noble Lord constantly reminds us, we have a particular responsibility to think carefully about the way in which our constitution should operate. I entirely agree with what he said during his speech that what happened in Scotland is a precedent that is difficult to resist. I agree with him; I think that is absolutely true.

I say to the noble Lord, Lord Quirk, that it is precisely because we are in a position with this Bill to encourage the other place to think about it that the best way to do that is to pass the amendment. That is what Parliament is all about, a conversation between the two Houses.

I do not accept that the Bill is an inappropriate vehicle for thinking hard about the foundation stone of our democracy. As the noble Lord, Lord Heseltine, has said on many occasions throughout the Bill, this is an exciting moment in which to revive local democracy. What better way to do that than to explain to young people that the future of their local communities is at the centre of this proposal? As I said earlier, the Bill specifically refers to the governance of local authorities—and therefore this would be appropriate.

We have had an interesting debate but, at the end of it, no Member of your Lordships' House has sought to answer the two questions that I posed in moving the amendment. I believe that the young people of England and Wales are just as mature, responsible, well informed and ready to take on some of the responsibilities of adult citizenship as the young people of Scotland. It has been proved in Scotland and all parties in Scotland have now accepted that it has been proved. It is time for us to catch up with them and demonstrate to the young people of England and Wales that we have confidence in them, too. Therefore I wish to test the opinion of the House.

*6.59 pm*

*Division on Amendment 73*

*Contents 221; Not-Contents 154.*

*Amendment 73 agreed.*

**Division No. 1**

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*7.12 pm*

*Amendment 74*

*Moved by* ***Baroness Janke***

**74:** After Clause 10, insert the following new Clause—

"Referendums to undo change to mayor and cabinet executive

In the Local Government Act 2000, omit section 9NA (effect of section 9N order)."

**Baroness Janke (LD):** My Lords, I ask the House to correct a great injustice in the city of Bristol. In 2012, there was a referendum in which 12 cities voted on whether they wanted an elected mayor. Bristol was the only city to vote yes. As a result, it has to ask the permission of Parliament to vary or change its system of governance. Many people in Bristol may still support

an elected mayor but many are saying that they should have the rights of every citizen in every other city of England; namely, that they should have the right to collect a petition, have another referendum and vary their system of government if they so wish. At the moment, that is not the case.

Section 9NA was added to the Local Government Act. It states that, in the case of a referendum being conducted by order, only cities that reject the referendum may still vary their system of governance. This amendment seeks to omit Section 9NA from the Act. It is a great irony that we have before us a Bill which many have said is exciting, and promises new horizons and greater involvement for local people, as well as responsibility, as we have just seen in the vote on the voting age. Yet, one city and its nearly 500,000 citizens do not have the right to reject a system of governance that they find no longer suits them.

I hope noble Lords will agree that this democratic deficit cannot be allowed to prevail. If the new Bill is to go forward and to become an Act, and we are to give greater powers, greater freedoms and greater responsibilities to combined authorities throughout the country, we must correct this anomaly today. I ask for, and hope I will get, support from Members on other Benches. I beg to move.

*7.15 pm*

**Lord Heseltine:** My Lords, we touched on this subject in Committee. I hope very much that your Lordships will reject this proposal. In this House, it is universally agreed that we are shifting power on a massive scale to local authorities in whatever form they decide to combine. It is important, urgent and economically of great significance. The idea that we should be trying to reintroduce a system whereby the moment someone becomes unpopular as a mayor, the whole focus of attention in the city or conurbation over which they have been elected should be subject to people going around with petitions saying, "Can we have a new system of government?", is about the most undermining thing one could do to the strength of the authorities that we are trying to create.

One could expand on the arguments but the House has been sitting for a considerable time. The simple argument is that we want to devolve serious power to elected people who have the certainty of a period in power in which to carry out their responsibilities. I have never seen a Government take the difficult decisions that have to be taken, often in circumstances not of their making—there could be an economic downturn or whatever—without the elected leaders, Government or council not being at some stage very unpopular. That does not mean that they are wrong; it means that they are sometimes doing a difficult job that is often long overdue. To accept this amendment would be to create a degree of instability and uncertainty, which is precisely the sort of thing that we are trying, in this legislation, to get rid of. I hope your Lordships will reject the amendment

**Lord Beecham (Lab):** My Lords, the noble Lord, Lord Heseltine, was part of a Government which did not merely effect a change in personnel; they abolished a whole range of councils without any local choice in the matter at all. I am afraid that one must take his criticisms of this amendment with that background in mind. The Government's current proposals effectively impose, as it were, a life sentence on the form of governance of combined authorities. That does not apply to the mayoralty in other authorities.

Your Lordships will recall that several councils whose people chose to have an elected mayor have, in light of the experience, changed their minds and, perfectly properly and democratically, decided that that should no longer be the case. It seems quite invidious that when councils were compelled to have a referendum—not by local demand but by the Government—they are stuck with that choice for evermore. The noble Baroness has adduced a perfectly consistent, logical argument and we on these Benches will support her should she choose to divide the House.

**Baroness Williams of Trafford:** My Lords, this amendment seeks to remove Section 9NA of the Local Government Act 2000, which currently provides that, where a council has been required to hold a mayoral referendum under an order made by the Secretary of State, and where that referendum has been successful and a mayor duly elected, the mayoral model of governance cannot subsequently be changed except by a further Act of Parliament.

I recognise the strength of feeling that the noble Baroness, Lady Janke, brings to this debate and her view—I do not know whether it is the view of the people of Bristol—that the people of Bristol should have the opportunity to hold a governance petition for a referendum on a change to their governance arrangements. In summary, if I have understood the noble Baroness's arguments, she would like the people of Bristol to be in the same position as they would have been in if they had, in 2011, had a petition for a mayoral referendum, and in the resulting referendum in 2012 had voted to have a mayor.

Were this to be the situation, I accept that the people of Bristol could petition for and hold a further referendum at any time from May 2022 on whether to switch from a mayoral form of governance to some other form of governance. The people of Bristol are not in that situation. The situation in Bristol is that Parliament agreed that there should be a referendum on whether to have a mayor, and the people of Bristol voted to have one. Accordingly, as noble Lords will have heard me say in Committee, I cannot accept this amendment on the grounds of both precedent and principle.

I have spoken previously about the precedent established by the arrangements put in place for establishing the London mayoralty, whereby Parliament instigated a referendum through enacting primary legislation and the electors subsequently voted for a mayor. The arrangements were then put in place by a further Act of Parliament. There is no provision in these arrangements for the people of London to vote that they no longer want a mayor.

I have also spoken about the position in Bristol, where Parliament instigated a mayoral referendum under the Local Government Act 2000 through both Houses approving an order establishing a referendum and the people of Bristol then voted for a mayor.

[Baroness Williams of Trafford]
That form of mayoral governance was then established under the Local Government Act 2000. As in the case of the Mayor of London, mayoral governance in Bristol can be changed only by a further Act of Parliament. The amendment before us would mean that the electors of Bristol could, if they chose, have a referendum following a governance petition, and if they voted to end the mayoral model, it would end.

I have also been quite clear that, in those cases where a mayor has been introduced wholly by local choice, it is right that wholly local choice should be able to end the mayoral governance. However, in the case of Bristol, a change of governance should be by both local choice and some decision of Parliament specifically related to Bristol.

Following our previous discussions, I have been considering what further options there could be for properly involving both Parliament and the people of Bristol in such a decision. I do not believe the noble Baroness's amendment would properly involve Parliament in a decision about Bristol. However, the Bill provides a means for Parliament to be involved in various ways with specific places in the course of implementing a devolution deal.

Clause 10 provides that, with the consent of the councils involved, regulations can be made that modify an application in particular cases of the provisions of Part 1A of the Local Government Act 2000. Among other things, this makes provision about mayors, including provisions about mayors in Bristol's situation. As we have discussed during the passage of the Bill, any regulations under Clause 10 powers need to be approved by a resolution of both Houses of Parliament, and the intention is to make such regulations where this is necessary to implement an agreed devolution deal.

Accordingly, as part of an agreed devolution deal with Bristol, through its approval of Clause 10 regulations —which would provide the opportunity not afforded by this debate for full consideration of the issues for Bristol—Parliament could indicate its willingness to see the electors of Bristol have a choice through a referendum to end, if they wished, the Bristol mayoralty. Having said this, it is, of course, entirely a matter for the councils involved in any such deal to decide what powers they wish to be devolved to them and what changes in governance arrangements they wish to propose. While the Government are ready to have conversations with any area about any proposals, I cannot prejudge what the outcome might be in a particular case. On that note, I hope noble Lords will be prepared to withdraw their amendment.

**Baroness Janke:** My Lords, I thank the Minister—I meant to thank her initially—for her time spent discussing the amendment with me. I would like to put that on record.

The noble Lord, Lord Heseltine, mentioned that, when something becomes unpopular, people suddenly want to put an end to it and this threatens all sort of things. This is not the case. We have had plenty of unpopular decisions in our city which have not necessarily ended up changing the system of governance. In fact, several attempts by the local paper to introduce a mayor failed dismally. It was only after Ministers came to Bristol, marketed the concept and made lots of promises that people believed them. If we are really talking about trust, moving forward and giving responsibility, this is a very poor basis on which to do so.

The Minister has already said that this is modelled on and relates to the situation in London. It does not. I have spoken to colleagues in London and the whole situation there was completely different. This is an anomaly. There was no legislation put before Parliament to enable a Bristol mayor. I put to your Lordships that it is entirely disproportionate that one city should have to come to Parliament to change its system of governance. It is out of spirit with the Bill, it is out of spirit with the feeling of the people of the city, and it is entirely undemocratic. On the basis of the arguments I have heard, I should like to test the feeling of the House by putting it to a vote.

*7.24 pm*

*Division on Amendment 74*

*Contents 182; Not-Contents 141.*

*Amendment 74 agreed.*

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*7.35 pm*

*Amendment 75*

*Moved by* ***Lord Shipley***

**75:** After Clause 10, insert the following new Clause—

"Governance arrangements of local authorities in England: election of councillors

(1) Section 36 of the Representation of the People Act 1983 (local elections in England and Wales) is amended as follows.

(2) After subsection (1) insert—

"(1A) Rules made by the Secretary of State under subsection (1) must ensure that each vote in the poll at an election shall be a single transferable vote.

(1B) A single transferable vote is a vote—

(a) capable of being given so as to indicate the voter's order of preference for the candidates for election as members for the constituency; and

(b) capable of being transferred to the next choice when the vote is not needed to give a prior choice the necessary quota of votes or when a prior choice is eliminated from the list of candidates because of a deficiency in the number of votes given for him.""

**Lord Shipley:** My Lords, earlier today I spoke about the need to ensure accountability in this new layer of local government. I said that one way to increase

[LORD SHIPLEY]
public confidence in this structure would be to reduce the likelihood of a one-party state being created in a local area. The best way to prevent it is to introduce proportional voting through the single transferable vote for local elections, which Scotland, of course, already has.

Whenever power has been devolved in the UK in recent years, it has been accompanied by a change to a more proportional voting system. I believe, and have said several times during our debates on this Bill, that further devolution of powers will be put at risk if they are not matched by improved legitimacy, accountability and strong scrutiny and governance arrangements.

In Scotland, STV was used for all council elections in 2007 and 2012. There are no longer uncontested seats there and no council is controlled by single parties with huge majorities that do not reflect that party's share of the vote. In England and Wales, however, there are more than 100 councils where one party commands more than two-thirds of the seats. In Scotland, there is none. Compare that situation with what the Government now propose for this new tier of local government. First past the post elections are what generates the one-party state. With a more proportional voting system, legitimacy, accountability and public confidence in the new structure would be enhanced. Given that multi-party politics is now firmly established in the UK, voters' wishes at the ballot box need to be translated proportionately into seats at the local government level. I beg to move.

**Lord Kennedy of Southwark:** My Lords, Amendment 75 is not one which we on these Benches can support. I declare an interest as an elected local councillor in the London Borough of Lewisham.

Although this amendment is concerned with elections to local councils in England, I mentioned in Committee that we had a referendum in 2011 on changing the voting system for elections to the House of Commons. That was wholly rejected and I have seen nothing following on from that result, or anything that has happened subsequently, which leads me to believe that the country wants to change the voting system for any elections. I also mentioned that we have got ourselves into a bit of a mess in recent years. We have managed to heap on voters a whole plethora of voting systems and that is not a good thing to do. I accept that, where a proportional system has been chosen, it should remain. However, I would like to see us use fewer systems.

I also referred to the fact that I thought that one of the worst systems was the supplementary vote system. I have observed many counts where people have only put a cross in the second column, which means that their vote is discounted. Therefore, I would like to see a reduction in the number of systems being used, and we certainly cannot support the amendment tonight.

**Baroness Williams of Trafford:** My Lords, this amendment is about the voting system for local government elections in England and Wales. Like Amendment 73, it would introduce a fundamental change to these. As I explained in the case of the earlier amendment, we are clear that issues such as this need to be considered in a far wider context than this Bill. Even in terms of timescale, when STV was introduced in Scotland, the review of the 32 local authorities took two years, and clearly in England that would take much longer. Notwithstanding any of the arguments for or against the amendment, as I said in the previous amendment, this is not the Bill to be talking about changes to the franchise. As the noble Lord, Lord Kennedy, pointed out, the people of this country said no to the alternative vote in 2011—I was one of the people who campaigned against it. Again, it is not the place of an unelected House to propose changes like this. Therefore, I ask the noble Lord to withdraw his amendment.

**Lord Shipley:** My Lords, if it is not the role of your Lordships' House to scrutinise legislation, it is hard to see on what basis this Bill has started in this House. If your Lordships are not permitted to move amendments or to discuss matters of direct concern about one-party states being created in combined authority areas across a number of parts of England, then I think it is the responsibility of your Lordships' House to be able to do so.

The noble Lord, Lord Kennedy of Southwark, raised a number of objections. We mentioned Scotland, and the truth is that if it still had a first past the post electoral system in local elections, the Labour Party would have been wiped out in Scotland at that level as well. I do not argue that that is in the interests of our democracy; nor do I argue that it is in the interests of our democracy that there are no Conservative councillors in a number of our northern cities. This is not good for democracy. The only way that you can solve the problem is for someone to take an initiative.

I am reconciled to the fact that the two big parties in this country do not want change, because it suits them not to have change—at least, it does in England and Wales. Actually, however, we have a higher responsibility. We operate now in a world of multi-party politics. It is wrong that votes are not equal and that one-party states can be created through the first past the post electoral system. That is what the Government are perpetuating, and it is entirely appropriate for your Lordships' House to take a view on that. I wish to test the opinion of the House.

*7.43 pm*

*Division on Amendment 75*

*Contents 71; Not-Contents 222.*

*Amendment 75 disagreed.*

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Carter of Coles, L.
Chisholm of Owlpen, B.
Clark of Windermere, L.
Clinton-Davis, L.
Collins of Highbury, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Corston, B.
Courtown, E.
Craigavon, V.
Crawley, B.
Crickhowell, L.
Cumberlege, B.
Davies of Coity, L.
Davies of Oldham, L.
De Mauley, L.
Dixon-Smith, L.
Donaghy, B.
Dubs, L.
Dunlop, L.
Eaton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Temple Guiting, L.
Farmer, L.
Faulks, L.
Fink, L.
Finlay of Llandaff, B.
Flight, L.
Fookes, B.
Ford, B.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gale, B.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Goldie, B.
Golding, B.
Goodlad, L.
Gordon of Strathblane, L.
Goschen, V.
Hamilton of Epsom, L.
Hanworth, V.
Hardie, L.
Harding of Winscombe, B.
Harris of Haringey, L.
Harris of Peckham, L.
Hart of Chilton, L.
Haskel, L.
Haworth, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Helic, B.
Heseltine, L.
Higgins, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hollick, L.
Hollis of Heigham, B.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Horam, L.
Howarth of Newport, L.
Howe, E.
Howells of St Davids, B.
Hoyle, L.
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jones, L.
Jones of Whitchurch, B.
Jopling, L.
Judd, L.
Kakkar, L.
Keen of Elie, L.
Kennedy of Southwark, L.
Kilclooney, L.
King of Bridgwater, L.
Kinnock of Holyhead, B.
Kirkham, L.
Kirkhill, L.
Lawrence of Clarendon, B.
Lawson of Blaby, L.
Lea of Crondall, L.
Leigh of Hurley, L.
Levy, L.
Lexden, L.
Lingfield, L.
Liverpool, E.
Lyell, L.
Lytton, E.
McAvoy, L.
MacGregor of Pulham Market, L.
McIntosh of Hudnall, B.
Mackay of Clashfern, L.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
McKenzie of Luton, L.
Mallalieu, B.
Mancroft, L.
Mar, C.
Marlesford, L.
Massey of Darwen, B.
Mawson, L.
Maxton, L.
Mobarik, B.
Monks, L.
Moore of Lower Marsh, L.
Morris of Handsworth, L.
Morrow, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Norton of Louth, L.
Nye, B.
O'Neill of Gatley, L.
Palmer, L.
Palumbo, L.
Pannick, L.
Patel of Blackburn, L.
Patten of Barnes, L.
Pendry, L.
Perry of Southwark, B.
Pitkeathley, B.
Popat, L.
Prescott, L.
Prior of Brampton, L.
Prosser, B.
Ramsay of Cartvale, B.
Rebuck, B.
Reid of Cardowan, L.
Renfrew of Kaimsthorn, L.
Risby, L.
Rogan, L.
Rosser, L.
Royall of Blaisdon, B.
Sanderson of Bowden, L.
Sassoon, L.
Scotland of Asthal, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shields, B.
Shrewsbury, E.
Simon, V.
Snape, L.
Soley, L.
Spicer, L.
Stedman-Scott, B.
Stevenson of Balmacara, L.
Stoddart of Swindon, L.
Stone of Blackheath, L.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Taylor of Bolton, B.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Touhig, L.
Trefgarne, L.
True, L.
Tunnicliffe, L.
Turnberg, L.
Ullswater, V.
Verma, B.
Waldegrave of North Hill, L.
Warwick of Undercliffe, B.
Wasserman, L.
Watson of Invergowrie, L.
Wheatcroft, B.
Wheeler, B.
Whitby, L.
Whitty, L.
Williams of Trafford, B.
Young of Hornsey, B.
Young of Norwood Green, L.
Younger of Leckie, V.

*7.54 pm*

*Amendment 75A*

*Moved by* ***Baroness Hollis of Heigham***

**75A:** After Clause 10, insert the following new Clause—

"Combined authority and local authority functions: report on additional council tax bands

The Secretary of State shall, following consultation with local authorities, lay before each House of Parliament a report on the introduction of additional higher bands of council tax in England for the areas of combined or local

authorities which may assume additional functions under the provisions of this Act, with the number of bands and the tax rate for each band to be specified in regulations which would be made by the Secretary of State."

**Baroness Hollis of Heigham:** My Lords, this is a probing amendment, for obvious reasons, and it has slightly awkward wording to put it into the scope of the Bill, for equally obvious reasons. Quite simply, it asks the Secretary of State to discuss with local authorities and return with a report on the financial impact and desirability of additional council tax bands, perhaps to have two or three above the current band H.

This issue is not going to go away—we are, I think, heading into a perfect storm. Local authorities and combined local authorities are rightly taking on greater functions for economic growth, for which they need enhanced resources. Yet in the past five years, our finances have been cut by some 40% while needs such as social care have grown. Those needs will increase even further when 50p an hour is added to the minimum wage for domiciliary care. That is highly desirable, but how is it to be funded? We need more money in the system.

On Saturday 11 July, the *Guardian* showed that in 2010 we had some 200,000 houses worth more than £1 million but that, just five years later, the figure is 525,000. The huge price distortion in housing over the past 20 years, with vast capital gains which are neither earned nor taxed, means that there is a widely shared recognition that our council tax bands which are levied on such property take a far higher proportion of lower rather than of higher incomes. The bands are highly compressed; therefore they are regressive and unfair, and therefore they should be modified—which, in turn, would generate more income.

Those bands were devised in the 1991 revaluation for the new council tax which replaced the Tory poll tax. I was among those who worked on that Bill, and we all agreed that we needed to revalue every 10 years or so. The longer you leave revaluation, the more problematic it is—and no Government, including my own, have had the guts to do it. It is precisely because the problem gets worse that no Government will step in to stop it getting even worse than it is. I fear that a full revaluation seems unlikely unless the Bill of the noble Lord, Lord Marlesford, goes for it. However, one quite modest piece of tinkering—adding on extra bands at the top—would be a useful way forward. It would do two things: it would bring in extra income to the local authority, and it would be fairer to individual families. There are 13 streets in London where the average house price is £10 million. No one in this House thinks it right that a property worth £2 million, let alone £10 million or £20 million, should be in the same band as a property with one-third or even 1/10th of its value.

Just to remind ourselves, band D is the fulcrum point of the eight bands. Dwellings in the top band H are rated at three times the bottom band A. The entire width between the bands is 3:1, so if band D is one, band C is eight-ninths of that, band B is seven-ninths and band A is six-ninths. There is a one-ninth drop for every band below D. Above band D, band E is 11/9ths, band F is 13/9ths, band G is 15/9ths and band H is two. Of course the higher bands cover a wider range of property price ranges, but even so, they have a more generous ratio to band D than smaller homes in lower bands. It is not a flat tax but it comes pretty close to one because the top band pays only three times as much as the bottom band, even though the property may be worth 30 times as much. This is profoundly unfair and regressive. We have a 3:1 ratio in our property taxes while the old rating system offered a far greater stretch—something like 20:1, I think—until it was abolished for the poll tax. In some countries, the property tax ratio is nearer to 20:1, and as far as I can tell, we have in this country one of the most compressed sets of local property tax bands in Europe and compared to the USA.

If one driver of this amendment is fairness for hard-pressed families, who need public services more than the wealthy, the second is income for equally hard-pressed local authorities. In the north-east, half of all properties are in band A and only 3% or 4% are in bands F and G, so the levy at band D is usually well above the English average. London and many parts of the south-east are the mirror opposite, with only 3% or 4% of properties in band A and 20% in bands F, G and H, so their band D is much lower still.

What are the implications? The result is that not only do the very affluent in London not pay a fair property tax within London but neither is it fair when compared to authorities outside London. Families in the lowest band A in Nottingham, Hartlepool and Walsall pay around one-fifth more in council tax than the residents of Kensington Palace Gardens, whose properties are valued at more than £40 million apiece. To take another example that the Minister may be familiar with, families in band A properties in Trafford paid almost the same in council tax—£736 —as families in band H properties across Wandsworth and Westminster.

*8 pm*

Of course, the heavy lifting should be done by fairer equalisation grants but modifying the bands can contribute to that. However, if the Government will not tackle a full revaluation—and my Government were equally squeamish—I urge them to deal with the most obvious unfairness of the artificially compressed bands at the top and at least do a partial revaluation of top band H. London has around 60,000 band H properties, the south-east 34,000, the east 12,500—which is mainly Cambridge—and the north and the Midlands have a third of that. Stretching the bands at the top would produce greater fairness within each region but would also, of course, allow greater resources for equalisation between regions.

How feasible is fishing band H? It is very feasible. I have consulted several district valuers on this. Every year, local valuers value new property—it is about half their workload—substantially modified existing property, significant environmental changes, such as new roads, and conversions from flat to shop to house. Overall in this country they do about 300,000 to 400,000 valuations a year, depending on the amount of new housebuilding. There are some 132,000 band H properties in England. Revaluing band H properties alone, perhaps over three years, would add about 10% to valuers' average annual workload, though more in London and less outside. It is about the same as the annual fluctuation now that

district valuers have in their workload, which is driven by the rate of housebuilding. It seems to me entirely feasible.

When Wales introduced a new band I as part of its full 2004 revaluation, about one-third of its band H properties moved up. If the same proportion held in Norwich it would be done in a month. Nationally, 50,000 properties might move up one or two bands, bringing in several million pounds to local authorities. If we had the resources to fish band G as well, so much the better. I emphasise again that a less compressed set of bands would allow a fairer redistribution within boroughs as well as greater resources for equalisation across the country.

We did not construct sufficient bands in 1991. We did not anticipate future house price rises. We did not future-proof the system as we should have done. Property prices have outgrown the bands but done so unevenly, inconsistently and unfairly. This is a property tax. If those at the very top do not pay their fair share, those in the bottom bands have to pay proportionately more. I beg to move.

**Lord Marlesford (Con):** My Lords, the noble Baroness, Lady Hollis, has identified a problem that many of us would recognise. The extremely good system of council tax needs updating. She proposes in her amendment that the Secretary of State commissions an inquiry and produces some proposals. I have to some extent anticipated this because I have produced a scheme for dealing with this problem. The problem is—as the noble Baroness described—that it is not acceptable in today's world that the most expensive property pays only three times the amount of the humblest and cheapest property. The very fact that there is a differential between band A and band H shows that the principle of taxing according to value is accepted. I say that because I know the views of my noble friend Lord True on property taxes. I am not particularly keen on any taxes but council tax was a very elegant and successful successor to the poll tax, which was a political disaster. I believe that we need to update it in a way that is not unduly retrospective and most of all that does not require the great bureaucracy of a revaluation. Since the old days of the rates people have always worried about the huge task that a revaluation would involve. That is why my proposals are somewhat different.

I start with the table as it is, which is bands A to H. Band A starts at up to £40,000, as was done in the original April 1991 proposals. The highest band H starts at £320,000, which is today a meaningless figure in terms of property values after inflation. I am suggesting that there should be new bands. They would still be called A to H and there would be a greater rate of progression than one to three. I have set this out in my Bill. My Private Member's Bill has been lucky enough—I came seventh in the ballot out of 42 or 43 Private Members' Bills—to get a Second Reading date, which is Friday 11 September this year. I hope that some of your Lordships may be kind enough to come to that occasion and to speak on it.

Basically I am proposing that there be a considerably greater rate of progression between band A and band H. Equally, I have set bands that are much more in accordance with today's values. Band A will go up to £250,000 instead of £40,000, band B will be £250,000 to £500,000, band C £500,000 to £1 million, band D £1 million to £2 million, band E £2 million to £5 million, band F £5 million to £10 million, band G £10 million to £20 million and band H will be more than £20 million. These valuations are relevant to today's prices.

Originally the Government put a rate of six for band A. They did this for arithmetical reasons so as not to have fractions. They made band H 18—three times band A. I also start band A at six and therefore under my scheme there will be no change in the tax paid from the present time up to the value of £250,000. Thereafter I go up to eight instead of seven. That is a 33% increase for properties between £250,000 and £500,000 as opposed to a 17% increase. In other words, taking it nationally, band A—give or take £100—is £1,000 a year. So band A is currently £1,000 and band H is currently £3,000, give or take a differential for different local authorities.

So I would be having about £1,300 as opposed to about £1,200 for my band B. But when it gets up to the higher figures and the top level—say band G, where it is £10 million—there would be a considerably greater progression. Instead of being only 2.5 times, it would be 16.7 times. And when it gets to the astronomical figures, even by today's values, of £20 million, band H would be 42 times as much as band A. So band A would still pay £1,000 and band B would be paying £1,300; it would then go up progressively, but more rapidly as it gets higher. For example, for band F, which is £5 million to £10 million, it would be eight times—and then it goes up to 16 times followed by 42 times. So there is a considerable progression at the top.

The great thing about my idea is that, instead of having a valuation, you take the values or the actual prices paid for the properties. All the properties are on the land registry, which came into full operation on 1 April 2000. It will apply to half of all the dwellings in England, using the actual values paid—and I should amend the Bill so that it applies only to England and not to Scotland and Wales. The other properties will migrate to the new system as and when they change hands. So there would be two bands operating side by side; there will be the present bands A to H, which go up three times, and the new bands A to H, which go up 42 times.

Nobody will be on the new bands unless that is the known price that they have paid. Even if it is a very expensive house, it is very unlikely that back in 2000 it would have been anything like as expensive, so there is a natural evening out so that it does not appear vigorous and savage when first introduced. The other properties will migrate as and when they change hands, whether that is by sale, gift, inheritance or anything else.

It is a neat system, because it would require no valuations at all. I think that it would come into force in a way that people would find fair and acceptable. We have to do something, and this is my suggestion for something.

**Lord True (Con):** My Lords, I was referred to by my noble friend and although I was not going to speak on this amendment—I have made only one speech in the course of this Bill—I was provoked to speak by what

[LORD TRUE]
was said by the noble Baroness opposite. I am afraid that I am not going to follow my noble friend in trailing a great speech on 11 September, but I look forward to participating in that debate. I think that he is too wise an old bird to assume that he really knows everything about the council tax—but, if he wants to hear it, I shall be there on 11 September.

I was provoked by the noble Baroness opposite, who was quite open in what she said—that she wants more money and more tax. She said, "We need more income". It was cloaked in the marvellous language of equity, but it was actually the true language of the party opposite. Does my noble friend on the Front Bench agree that, having been seen off on the mansion tax by the British people not very long ago, the noble Baroness is leading the charge to get back at the British people by other means, behind the front doors of their homes?

**Lord Beecham:** It is right to begin the Opposition's response to this issue by reminding the House that the noble Lord, Lord Heseltine, to a large extent removed the poll tax and replaced it with the council tax, which was a distinct improvement, although it must be said that the council tax contains an element of the poll tax within it. That is what leaves us in an anomalous situation, more than 20 years on, with this now outdated tax base.

*8.15 pm*

I declare an interest—I have a general local government interest, but I also have an interest as a householder with a house in band F that is worth some 20 times the value of some of the smaller houses in the ward that I represent in Newcastle. That is a function of how out of scale matters now are. The suggestion that there should be a rebanding is very timely, although my noble friend has not insisted on any particular formula; she is asking for a proper review. I concur with her in deeply regretting the fact that the Labour Government twice missed an opportunity to do this, or rather rejected an opportunity to do it. The first time was in respect of a report that was assembled by a committee of which I was a member, chaired by my former right honourable friend Nick Raynsford, and the second time by Sir Michael Lyons. Both of those reports were kicked into touch. But nobody has yet mentioned the fact that there was a change in Wales, which took the form of increasing banding at the top, with two extra bands—but no split was made at the bottom of the scale, which perhaps should have been the case. However, there is a precedent, at least, for making a change something along the lines of my noble friend's suggestion.

The noble Lord, Lord Marlesford, has clearly got some very interesting ideas about how to reform the council tax, but there is an element that needs to be considered. When we look at those very high valuation figures, we are essentially talking about London—and, perhaps, one or two places outside. But there is a case —examined by Nick Raynsford's review and the Lyons review—for looking at regional banding. That would seem to me a potentially more equitable way in which to change the system. But we do not have to take a particular view about the outcome of the process that my noble friend suggests, except that change is clearly necessary. It is intolerable that these vast differences apply, and the noble Lord adequately demonstrated the huge disparity in valuation that now takes place, which is not reflected in the tax paid. That is particularly irritating when so much of the property in London that is of that value is owned by people not resident here anyway, yet they still pay a very modest contribution. In a sense, the noble Lord is proposing something like a mansion tax; the Chancellor has taken over a few of the Labour Party's suggestions in the past and reissued them in blue covers, and it may be that the noble Lord can persuade the Chancellor to do likewise with this. But let us not call it a mansion tax; let us call it a local tax, or a council tax, but a modified and improved council tax.

As to the total quantum, that is a separate issue. I do not think that my noble friend's amendment necessarily involves an increase in the total to be raised, although it is probably time that that was the case. But it is somewhat odd that there is regular revaluation of commercial rateable values for the purposes of the business rate, which, incidentally, gives rise to huge problems with appeals that take ages to deal with and are very difficult—particularly when the Government expect in the event of a successful appeal not to have to return to councils moneys that councils have handed over to the Government. But that is perhaps a separate issue. This Government set their face against any revaluation of the domestic system.

It is time that that process was begun. My noble friend's modest and restrained amendment, and the way in which she described it, offers an opportunity which I hope the Government can accept. I apprehend that she may not test the opinion of the House on this, but I hope that she has planted a seed in the minds of the noble Baroness and other Ministers in an effort to update the good work the noble Lord, Lord Heseltine, commenced 24 years ago. It would produce a more equitable system between taxpayers and between different areas of the country. That is the objective. I hope that ultimately—and over not too long a period—we will see progress.

**Lord Marlesford (Con):** Before the noble Lord sits down, I would like to point out that my proposal is in no way a mansion tax. A mansion tax is a toxic brand that did huge damage to his party. It is a phrase invented by the Lib Dems, who then had the sense to abandon it. Mr Miliband scooped it up and proposed to use it. It was a terrible mistake from the point of view of the Labour Party. It must have cost them a lot of votes, because of course, "mansion tax" is a "soak the rich" label. It is what old Labour was about; it is not what Mr Blair was about and will not, I assume, be what the Labour Party will be about at the next election. My system is in no way anything to do with the mansion tax.

**Lord Beecham:** It will be interesting to see what the *Daily Mail*, the *Telegraph* and the *Express* make of the noble Lord's suggestions when they come to be debated. I suspect that he may find those words reappearing in their columns. We will see.

**Baroness Williams of Trafford:** My Lords, I thank the noble Lords who have spoken this evening, particularly my noble friend Lord Marlesford, who has given a

good warm-up act for his Bill, which we will discuss on 11 September and to which I will respond. I will return to the matters he has raised this evening when we consider that Bill.

Amendment 75A would require the Secretary of State to lay a report in Parliament on the introduction of higher bands of council tax in the areas of both combined and local authorities. The Government have stated their determination to keep council tax bills low. The last five years of council tax increases are the lowest since council tax was introduced in 1993 and have even been lower than inflation. We already provide local referendums, triggered at a threshold of a proposed increase over 2%, so that people can have a say on the levels of their council tax.

The noble Baroness, Lady Hollis, compared different areas. Of course, councils will ultimately have a say on the level of council tax that they raise. Many councils have frozen their council tax over the last few years. We do not support higher council tax bands, or a council tax revaluation which would be required to implement them. Revaluation and higher council tax bands can lead to higher council tax bills for hard-working people. We are clear that council tax is not a wealth tax but a charge for the use of local services.

The current banding system reflects the fact that many larger homes make slightly greater use of local services, but it intentionally is not a poll tax or a domestic rate. The Government have already taken a number of steps to tackle property tax avoidance by a small minority of wealthy people, and also increased stamp duty on the highest valued homes.

Given these explanations, I hope that the noble Baroness will be content to withdraw her amendment.

**Baroness Hollis of Heigham:** The reply I was disappointed in was actually that of the Minister. She knows, as does everyone here who has spoken in this debate and has a local authority background—I could not speak for the noble Lord, Lord Marlesford—that what effect there is on local authority revenues can be entirely neutral. It is a way of distributing the load. Therefore, to say that if you are in favour of having extra bands at the top in the name of greater fairness, that is unfair to the very rich, is itself a bit rich, given that at the moment, many of them are paying council tax of £20 a week. That is less by far than what people on one-fiftieth of their income, with a property value of one-tenth of theirs, are paying in their local patches. My amendment is cost-neutral, in the sense that the impact depends entirely on where the individual local authority pitches its band D. It can collect exactly the same money as it collects now but in a fairer way or, going back to the point made by the noble Lord, Lord True, it can decide that it wants to use it to raise more resources, primarily from those who can most afford to pay—the broader shoulders of those who are multimillionaires, many of them billionaires—towards the cost of the additional functions of economic growth such as connectivity, transport and building our infrastructure. A lot of that will rightly be carried by local government, but it does not have the revenue to do it and has no means of finding it.

You can approach it whichever way you like. You could use it to raise more revenue or you could decide, if you are of a more conservative disposition, that you do not want to raise any more revenue but none the less, you are mildly troubled by the fact that someone in a property worth £400,000 is paying the same as someone in a property worth £40 million. I myself would be mildly troubled by that, and I am surprised that that view is not shared more widely by some of your Lordships.

The noble Lord, Lord Marlesford, has given us a much more ambitious plan than I was proposing. What I am trying to do is simply to keep this issue in people's minds. The longer you leave it, the worse the problem becomes. We can either try for a big bang down the road in which you will hear from the losers but not from the winners, or we can start making some incremental adjustments. The easiest way to start doing that is at the very top, where most people have a pervading sense of the unfairness of the extent to which council tax bands have outgrown the value of house prices. There is no longer the co-terminosity that existed when we devised this system—in which I was a player—back in the early 1990s.

The time is late, and I will stop there. Obviously, I will withdraw the amendment, but I say to the noble Baroness that it is rubbish to say that this is all about trying to raise council tax—and she knows it. She knows from her local government experience that this provision could be neutral in terms of the money it raises, or it could not be neutral and you could raise more money. It is about rebalancing in a fairer and more equitable way the relativities of property values within any local authority—full stop. If she is on the side of not balancing those relativities in a fairer way, I can only say that I am deeply disappointed in her response tonight. None the less, I beg leave to withdraw the amendment.

*Amendment 75A withdrawn.*

*Amendment 75B*

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

**75B:** After Clause 10, insert the following new Clause—

"Devolved governance arrangements for London

(1) The Secretary of State may by order establish as a body corporate a joint board for the Greater London Area for the purposes of improving statutory functions relating to economic development and public functions generally within the Greater London Area.

(2) An order may be made under subsection (1) only if the relevant authorities within the Greater London Area and the Mayor of London consent to the making of this order.

(3) In this section relevant authorities means—

(a) London borough councils, and

(b) the Common Council of the City of London.

(4) An order under this section must specify the name by which the joint board is to be known.

(5) The joint board for the Greater London Area is to consist of members appointed by the Board's constituent councils and the Mayor of London.

(6) The Secretary of State may by regulation make provision in relation to the joint board about—

(a) the membership of the board,

(b) the voting powers of members of the joint board,

(c) the executive arrangements of the joint board, and

(d) arrangements for the transfer of property and other liabilities.

(7) The Secretary of State may by order—

(a) make provision for a function of a public authority that is exercisable in relation to the Greater London Area to be a function of the joint board, and

(b) make provision for conferring on the joint board in relation to the Greater London Area a function corresponding to a function that a public authority has in relation to another area.

(8) An order under subsection (7)(a) may make provision—

(a) for the joint board to have the function instead of the public authority, or

(b) for the function to be exercisable by the joint board concurrently with the public authority.

(9) In this section a public authority—

(a) includes a Minister of the Crown or a government department;

(b) does not include—

(i) the Mayor of London,

(ii) the Common Council of the City of London Councils, or

(iii) a London borough council.

(10) The Secretary of State may by order provide for Chapter 1 of Part 1 of the Localism Act 2011 to have effect in relation to the joint board as it has effect in relation to a local authority.

(11) The Secretary of State may by order abolish the joint board for the Greater London Area only if the board's constituent councils and the Mayor of London applies consent to the making of the order."

**Lord McKenzie of Luton:** My Lords, I will also speak to Amendment 75C. In doing so, I return to the issue of devolution for London. Following our brief debate at the conclusion of consideration in Committee, we have now tabled two more detailed amendments in my name and that of my noble friend Lord Beecham and the noble Lord, Lord Tope, whose experience of the London local government scene is second to none—in parallel of course with the noble Lord, Lord True. These amendments have been drafted by London Councils. We thank the Minister for facilitating the meeting after Committee, which included a representative of London Councils. We understand that there may have been other meetings as well. It is hoped that these have helped establish a consensus around what is required in terms of additional devolution for London and how that might be delivered. We are advised that over the last year London boroughs and the Mayor of London have worked together to develop ambitious plans for further devolution to London. Yesterday, at a meeting of the London Congress, London's elected leaders endorsed a proposition for London that set out proposals for devolution and public service reform in relation to employment, skills, business support, crime and justice, health and housing. Each of these areas represents a key challenge facing London. Indeed, some touch on two of the most critical issues facing the country over the next five years: improving productivity and boosting the supply of housing across all tenures. The approach to each is underpinned by the belief that London, like other cities, should have significant responsibilities devolved from the national level in order to develop locally led responses to its most pressing issues.

London's current government arrangements work well, with London boroughs and the mayor possessing distinct executive powers, but maintaining a successful strategic partnership. However, it is considered that further devolution to London will require new decision-making arrangements at both pan-London and sub-regional level. Further, London Councils points to a need to explore which elements are likely to require underpinning in order to meet the standards of accountability expected of government in respect of process and funding.

*8.30 pm*

During the debate in Committee, we were encouraged by the comment from the noble Baroness, Lady Williams, to explore these issues in more detail and further probe the Government's thinking. As I said, we thank her for facilitating the meeting. At the request of London Councils, we have tabled two probing amendments that set out the thinking in more detail and seek to explore where statutory underpinning in support of further devolution might be needed.

The new clause in Amendment 75C has been tabled to provide a basis for debating the need to create an enabling provision for operational delegation to groups of boroughs in London. To be clear, this has not been drafted with a view to its being included in the Bill as worded, but with the aim of securing the Minister's reassurance that existing provisions will meet the tests of government for delegation to groups of London authorities in London.

In particular, London Councils is concerned about what, if any, underpinning may be required if there is a view that existing provision is insufficient to support ministerial delegation to joint committees formed under Section 101(5) of the Local Government Act 1972. Boroughs in London are not permitted authorities for the purposes of delegation under Section 16(1) of the Localism Act 2011 and cannot take on the functions of other public bodies. Existing borough groupings are already pushing up against the limits of what can be achieved using existing voluntary arrangements.

Subsection (1) of the new clause in Amendment 75C would provide for a joint committee of London boroughs to be able to request in writing to the Secretary of State arrangements for the delegation to it of a function of a Minister or of a government department. These arrangements might reasonably include conditions on the exercise and applicable geography of a delegated function. They might also cover provision relating to revocation of a delegation and strengthening existing provisions requiring any decision by the committee to be passed by a simple majority. The amendment is not prescriptive and invites a Government response about what, if anything, is needed legislatively to make such arrangements as proposed. Subsection (2) requires that any request made under subsection (1) must have the support of all members of the joint committee making the request. Similarly, subsection (5) states that no delegation or variation can be made under subsection (1) without the agreement of all constituent members of the joint committee. Taken together, subsections (1), (2) and (5) set a triple lock on the use

of provisions within the clause. This would respect the need to balance the efficacy of joint arrangements with the sovereignty of local borough leaders.

The new clause in Amendment 75B deals with establishing a joint board for devolution to London. It explores the kind of provision that is believed to be needed in order to establish between London boroughs and the Mayor of London support for further devolution to the capital, along the lines set out and in the endorsed draft of the London proposition. As with Amendment 75C, the new clause has not been drafted to prescribe at this stage all the details of a new pan-London decision-making mechanism. Rather, it reflects the desire by London boroughs to raise the issue of London governance at a point in the Bill's passage where appropriate reassurance and debate might be secured.

In particular, London Councils has offered this clause with a view to exploring three issues. First, there is the potential legislative presumption in favour of delegation to the mayor through Section 223 of the Localism Act 2011. In particular, joint work between London boroughs and the mayor in preparing the London proposition has underlined the need for a shared mechanism for overall steering and direction. The second issue is the extent to which it would be helpful if any delegation of functions to London recognised the collective governance of those functions by London boroughs in combination with the mayor. In particular, while it might be that a joint committee of London boroughs and the mayor proposes a partial way forward, such an approach could make boroughs reliant on entirely voluntary arrangements, particularly with regard to voting.

Specifically, London Councils is concerned that paragraph 39(1) of Schedule 12 to the Local Government Act 1972 states:

> "Subject to the provisions of any enactment (including any enactment in this Act) all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority".

Subsection (1) of the new clause in Amendment 75 specifies that the proposed purpose of the board is to improve statutory functions relating to economic development and public functions generally within the Greater London area. The motive for proposing such a wide-ranging purpose is to encompass the potentially broad sweep of functions that might be devolved to London as part of joint negotiations that it is understood are under way with the Government.

Subsections (2) and (3) require that the board can be established only if all the boroughs, the City of London and the Mayor of London agree. Subsection (5) states that any joint board should consist of members appointed by the board's constituent councils and the Mayor of London. Subsection (6) proposes that details relating to a number of aspects of the board—membership voting powers, executive arrangements and so on—might be provided for in regulation. Subsections (8) and (9) propose that the power be limited so that the board cannot take on any function that is currently a function of the mayor, London boroughs or the City of London. This reflects agreement across London government that all areas of activity under the authority of either the London mayor or London boroughs will remain separate from any partnership arrangements and decision-making on newly devolved matters.

**Lord Brooke of Sutton Mandeville:** I realise that the drafting of the amendment is not the noble Lord's, but in proposed new subsection (9), to which he referred a moment ago, it might be sensible if the penultimate word in the penultimate line was struck out at this juncture, as, at the moment, it constitutes nonsense.

**Lord McKenzie of Luton:** Are we dealing with Amendment 79B and proposed new subsection (9)?

**Lord Tope (LD):** Perhaps I can help and speed things up a bit. The subsection to which the noble Lord draws our attention refers as printed to the "City of London Councils". The word "Councils" is obviously superfluous and a mistake. It might reveal where the drafting came from.

**Lord McKenzie of Luton:** I am grateful to the noble Lord, Lord Tope, for some assistance on that. This was the drafting of London Councils, but I will make sure that it is corrected. I am grateful to the noble Lord for bringing that to my attention.

Proposed new subsection (10) proposes that the board be given the general power of competence. That is in order to support the potential for future rounds of negotiation. Proposed new subsection (11) creates provision for the Secretary of State to dissolve the board only if the board's constituent councils and the Mayor of London agree, although we recognise that the board might be dissolved through an Act of Parliament.

We are close to the end of this House's consideration of the Bill. Nevertheless, we hope that the amendments will elicit a response today or at Third Reading that will enable progress to be made. If not, we hope that at least a fair wind will be given to the issue as the Bill heads for another place. I beg to move.

**Lord Tope:** My Lords, my name is also to the amendment, and I am very pleased to give my support in the terms described by the noble Lord, Lord McKenzie, to whom I am particularly grateful for introducing the amendment so clearly and fully. I join him in expressing our gratitude to the Minister for meeting us and London Councils so that we could explore our concern over the issue rather more fully—leading, I think, to a better understanding all round.

It has been my lot to speak only at the end of each stage of the Bill, having sat through all the other debate—which I have done with great interest and considerable patience. It has been clear from the start that the Bill as drafted, although it includes London, does not really relate to London government. Nor is there any intention to recreate in any way the structure of government that pertains in London. That is correct. London's government structure is unique. On the whole, over the past 15 years, it has worked fairly well.

However, I have had the impression, in part from your Lordships' debates, but also from debate outside the House and in other places, that there is a general

[LORD TOPE]
feeling that because London has its Greater London Authority, its directly elected mayor and the London boroughs, devolution within London is largely finished, certainly in legislative terms—that we have done it and now it is time for the rest of the country to catch up. I entirely reject that view. London is by no means finished. Devolution is anyway an ongoing process that will develop and evolve, possibly for ever, in different ways. Certainly after 15 years, we are ready to see greater devolution of power—I stress that word—from central government to London government. By London government, I do not mean only the Mayor of London, I mean the London boroughs as well, and I mean jointly between the Mayor of London and the London boroughs.

In replying so far, at each stage of the Bill, the Minister has been fulsome in welcoming any proposals that may come from London to bring that about. We are concerned that there should also be the necessary enabling legislation in place to allow any proposals agreed between each borough, the mayor, the City of London and the Government to come into effect as quickly as possible. Concern has been expressed during debate among your Lordships that we should not delay implementation by holding referendums or in any other way. It would be absurd if we went through all the stages of getting 32 London boroughs, the City of London, the Mayor of London and the Government all to agree on what we wanted to do about further devolution in London only to find that there was not legislative provision to enable it to happen and that we had to wait for another legislative opportunity to bring that about. We all know that such legislative opportunities do not come along very often. This is the obvious place to make such provision and this is the right time to do so.

The noble Lord, Lord McKenzie, made clear that our amendments are not intended to be a detailed proposal for implementation now, but rather a fairly detailed indication of thinking within London. Not the amendment but the proposals reflect considerations that took place yesterday at the meeting of the congress of leaders of the London boroughs and the mayor. To that extent, it is a probing amendment rather than one that we seek to see in this exact form in the Bill.

We do this to try to give greater clarity to the direction in which London and London government are going in their thinking and determination to have much wider powers devolved to it from central government in the areas, as the noble Lord, Lord McKenzie, said, of employment, skills, business support, crime and justice, health, and housing—in other words, on a much wider basis than is presently the case. The concern is that we can go only so far on co-operative arrangements and mutual agreement. We need reassurance that there is statutory provision to enable the bodies—particularly the joint committees when they are established—to operate effectively, be responsible and, when appropriate, be legal entities. So we are trying to find out the latest thinking of the Government in those areas. If it is the view that further legislative provision is necessary—I think now that it increasingly is—then this is the Bill in which to do it. We seek an undertaking from the Government that, by the time the Bill reaches Royal Assent, such provision will be included in it.

*8.45 pm*

**Lord True:** My Lords, since we are told that this is a probing amendment, perhaps I might be probed. I come with apologies to the House at this late hour, particularly to the Minister, who has done an absolutely outstanding job in leading the House through the Bill. However, when the amendments on London were tabled in Committee at the last possible stage, a lack of notice prevented me attending. Perhaps as leader of a London borough, a member of the leaders' committee of London Councils and one who was present at the meeting that has been alluded to several times, I might be allowed to speak for rather longer than I would otherwise do. I will try not to test the patience of the House, but the issues are important.

A meeting of the London congress, lasting one hour and in the presence of mayor Boris Johnson, is not a suitable occasion for dissecting in detail a document that is laid before the committee. It is true that yesterday at the congress of London Councils, with the mayor, general assent was given for discussions to continue on the potential strands of devolution in London. We believe that boroughs can and should do more. However, assent to continuing work in progress should not be taken to indicate universal consent by all those present and all the boroughs represented to all that is on the table or, if I may say so, some of the things that may be lurking in briefcases under the table.

London is very different from other areas being considered under this Bill. It already has a very powerful elected mayor and a regional government. It has scrutiny arrangements and a London Assembly, which is imperfect in many ways, I agree, but which for now exists—although I wonder about putting two forms of government or congress alongside each other. It also has 32 London boroughs, about which Whitehall and others are sometimes rather sniffy. Many of those boroughs freely co-operate and we know no law to make us do so. My own borough shares services with Merton and Kingston. We run joint children's services as a community interest company with Kingston, which is monitored by a joint committee supervising those services across the two councils. We are also setting out joint staffing with Wandsworth. Working with Wandsworth, we will be larger than Newcastle and Luton combined, and certainly bigger than Bristol or Manchester City Council. We are only one sector of a huge and hugely diverse capital. The boroughs have a legitimate place and voice and should not just be shuffled aside in these discussions.

I can confirm that valuable discussion is ongoing between the Government, the Mayor of London and London Councils, which we support, about potential strands of devolution. It is unfortunate that, sometimes, the geometry of these discussions is asymmetrical. For example, some of the more eccentric elements in what was a curate's egg of ideas on planning published last Friday were discussed by the Government with the mayor but not with London Councils, the powers of which are to be overridden by the mayor. That does not create the climate of trust that is vital to success in devolution discussions between different levels of authority.

I referred to the diversity of our capital and the diversity of the strands of the policy being discussed, which have been listed by the noble Lord, Lord McKenzie.

In my submission, it is unlikely that, over such a vast canvas of place, policy and authorities, a single statutory institutional model will fit every contingency. It is already obvious that, in London, some areas of policy, under the Little Red Riding Hood garb of devolution, actually mask the wolf of centralisation, whether up to City Hall or further up the pecking order in the bureaucratic jungle. We need to know exactly how we are to proceed in these critically important areas under discussion. Work could begin now and has already begun across London without the need for statutory institutions in many of these areas. We should get on with it and not inhibit those authorities that are already trying to do things by navel-gazing too much over the legal text. I do not subscribe to the amendments before the House; nor do I, or my group on London Councils, subscribe to the text put forward for the governance model for London.

There is a clear conflict in some areas—I have referred to housing and planning—between devolution and centralisation. These issues are not easily resolved, but they have to be discussed. They will be harder to resolve if the illusion persists that the boroughs are the problem. If we had had the power in our borough to develop some dormant and semi-dormant public sector land, it would have been developed long ago. It would have been developed with provision for local schools and amenities that some of the proposals advanced last Friday sadly lacked. Why can we not give a council the right to acquire public sector land that is not used? The value of the land could remain vested in the state, and we could just get on with a community brief that delivers some of these houses and schools and things that people want. Why is it that local boroughs—London boroughs—are too often just put in the firing line and told that they are not part of the debate? I ask that they should be.

The massive expansion in the population of London that is now envisaged must be addressed on a regional basis, considering infrastructure, travel to work and so on. It is like the expansion in the Victorian era. It simply cannot be contained by pouring concrete within the line of the GLA borders drawn on a map. It is bigger than just the Mayor of London, the London boroughs and the nation. Of course a great many things will have to be done within the London boroughs and the London area. We all acknowledge the need to play a part in that, but we need a broader discussion. If we confine it to this, we will miss many points.

I will not go into the details of the amendments. They have been explained at some length by the noble Lord, Lord McKenzie. I do not agree with them; they are premature. Amendment 75C, as I read it, locks any committee that is formed into existence on terms that may be varied, whereas its duties may be dissolved only by legislation. Although councils have to consent to go in, the fact that it is statutory gives the Government of the day a lock on a committee's dissolution. In that sense, it is rather reminiscent of the euro. Once you are in, you are in. Hence, in my view, there is a need for prior consent. It is a one-way lock that the noble Lord is putting forward. There are some very worthwhile experiments and ideas on devolution under consideration, but those ideas may or may not work. Their success will depend on whether future Governments sustain the revenue streams in the areas they propose to devolve. That is something on which no Government have a great record.

Devolution is a great idea. I am all for it if it is what it says on the tin, but I and, I know, a number of other London leaders of a similar mind will want to see a little more of the nature of the contract before we sign or consent freely to a statute's being passed into law. It would be a very difficult world if we were to be given these new functions, about things where we were required by law to fill holes the Government or the NHS later left behind. We might find ourselves being forced to cut even faster things we are already called on to reduce.

I do not want to appear wholly negative. I am not negative. I think this is a very worthwhile discussion. There is good, positive work in progress. But I hope no one is under the illusion that everybody is already signed up to the details in the small print. I do not think it should be pre-emptive or placed in any statutory gridlock before full and general consent from the London boroughs.

Some strands of these policies may be able to be advanced more quickly than others. But I am a realist: I understand the appetite of City Hall to keep control and not devolve fully. But I am also a localist and I think my right honourable friend the Secretary of State is, too, so I hope that careful thought will be given to balancing those factors as we look to the future in our capital instead of, as all too often happens when a new policy is made and when there is a great idea, as there is underlying this Bill, people going forward insisting on a single-institutional answer and trying to force varying and diverse problems, policies and solutions into one straitjacket.

Let us finish what is already on the table before us in the Bill before bringing in London, before calling for another not quite yet properly cooked dish of London pie and mash. It is not quite ready yet; do not let us rush it out of the kitchen, appetising though the pie and liquor may well be, if we can get to the point of agreeing the solution.

**Baroness Williams of Trafford:** My Lords, as discussions on these amendments have demonstrated, the ideas for devolution in London to London councils are interesting and varied. As I have explained many times in previous debates, there is an expectation that local areas will do just that and come forward with proposals to support devolution for their areas, and of course London is no exception.

I know that London boroughs and the Greater London Authority are working on a package of reform proposals, and I was very pleased to meet the noble Lord, Lord Tope, and others—I think that it was last week; time goes very strangely in this House—and interested to hear their thinking. We expect boroughs and the GLA to come forward to us with those proposals in the coming months. I recognise that the proposals may need a strengthening of London governance arrangements, and I can see how the proposals in the amendments may provide the kind of governance arrangements that might be needed.

[Baroness Williams of Trafford]

However, for now, I suggest to noble Lords that we continue at some later stage our discussions on what the most appropriate changes would be to provide the London governance needed for future greater devolution and how such changes might best be provided for in this Bill. Therefore, I ask that noble Lords do not press their amendments.

**Lord McKenzie of Luton:** My Lords, I am grateful to all noble Lords who have spoken in that brief debate. Insofar as what the Minister said, yes, of course, we will withdraw the amendment at the appropriate time, but it is good to hear that a package of proposals is being worked on which might entail strengthening of governance arrangements.

The point of having amendments now is that the Bill is just about to pass from this House. This is a legislative vehicle, which is why it is an opportunity to test the water on what might be an appropriate structure to deal with the emerging devolution proposals.

Clearly, the noble Lord, Lord True, is heavily involved in all this—it is an integral part of what he does—and I accept entirely that, as he said, there is a desire to continue with the work in progress of developing these thoughts. It is not a done deal in the sense of what he said. I accept, too, and can well imagine that devolution in London is heavily impacted by diversity and the need to build a climate of trust with government. Given the massive expansion in the population, to which the noble Lord referred, I acknowledge, too, the need to look at this on a regional basis and the need for broader discussion.

I am grateful to the noble Lord, Lord Tope, for his support for the draft amendments, on the basis that they are probing amendments to try to set down and understand some parameters. A key question that emerges from this is whether the legislative hurdles that they seek to address are real—I think that this is one of the issues that London Councils had concerns about.

I accept that this is not necessarily about locking people into particular institutions. It is an attempt to understand where these sorts of devolution arrangements that London boroughs wish to enter into can be enabled under existing legislation or whether something is needed in addition. Perhaps we could hear more specifically from the Minister. We had one discussion on that and it seemed that, in some areas, there was acceptance that additional legislation would be required. We have got the sense this evening that this is the case—this Bill will go to the other place in September and October but it will have been passed in some shape or form by the end of this year—so this is a missed opportunity if London devolution, as London wants it, needs the benefit of some tweaking or changing of legislation. Can the Minister address that point?

**Baroness Williams of Trafford:** I thank the noble Lord for that—it may be that some tweaking of legislation is required; we have on other parts of the Bill similarly alluded that the tweaking of other legislation might be required in order to align it with this Bill on devolution. The discussions have started well but I request that we give a bit more time to this and discuss it in due course.

**Lord McKenzie of Luton:** I am grateful for that. It is good that discussions are proceeding well; it is a good start to the process. I just hang on to the point that this is not an open-ended legislative opportunity. I suppose that we have had DCLG Bills quite frequently in recent times, but this one will be out of the other place by the end of the year. It will be a great pity if there is still uncertainty as to the legislative arrangements, this Bill is passed and somebody then says, "Hang on, we can't do something that we want to do as an integral part of devolution in London because we need primary legislation to do it". That was the thrust of the amendment—to probe and tease out that matter. I think that we have probably given this enough of an airing tonight, so I beg leave to withdraw the amendment.

*Amendment 75B withdrawn.*

*Amendment 75C not moved.*

***Schedule 4: Minor and consequential amendments***

*Amendment 76*

*Moved by* ***Baroness Williams of Trafford***

**76:** Schedule 4, page 25, line 14, at end insert—

"2A In section 91 (exercise of local authority functions), in subsection (1), after "an area" insert "all or part of which is"."

*Amendment 76 agreed.*

*Amendment 77 not moved.*

*Amendments 78 to 83*

*Moved by* ***Baroness Williams of Trafford***

**78:** Schedule 4, page 25, line 19, at end insert—

"(2B) An order under subsection (1)(c) may include provision for a function exercisable by a local authority in relation to an area all or part of which is comprised in the combined authority's area to be exercisable by the combined authority in relation to the combined authority's area."

**79:** Schedule 4, page 25, line 42, at end insert—

"5A In section 111 (review by authorities: existing combined authority), in subsection (3)(a), for "any of sections 104 to 107" substitute "section 104, 105, 106 or 107".

5B In section 112 (preparation and publication of scheme: existing combined authority), in subsection (1), for "sections 104 to 107" substitute "sections 104, 105, 106 and 107"."

**80:** Schedule 4, page 26, line 3, at end insert—

"6A (1) Section 114 (incidental etc. provision) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (3), for "by virtue of subsection (2)" substitute "in an order under this section by virtue of section 117(5)"."

**81:** Schedule 4, page 26, line 9, leave out sub-paragraph (3)

**82:** Schedule 4, page 26, line 12, at end insert—

"( ) After subsection (4) insert—

"(5) An order under any provision of this Part, other than an order under section 116 or an order mentioned in subsection (2A)(a) or (b), may include provision amending, applying (with or without modifications), disapplying, repealing or revoking any enactment whenever passed or made.""

**83:** Schedule 4, page 26, line 26, at end insert—

*"Localism Act 2011*

9 The Localism Act 2011 is amended as follows.

10 (1) Section 15 (power to transfer local public functions to permitted authorities) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for "a permitted authority" substitute "an EPB";

(b) in paragraph (b), for "permitted authorities" substitute ""EPBs".

(3) Omit subsection (4).

(4) In subsections (6) and (7), for "permitted authority" substitute "EPB".

(5) In subsection (8), for "a permitted authority" substitute "an EPB".

11 In section 17 (transfer schemes), in subsection (1), for "permitted authority" substitute "EPB".

12 (1) Section 18 (duty to consider proposals for exercise of powers under sections 15 and 17) is amended as follows.

(2) In subsection (1)—

(a) for "a permitted authority" substitute "an EPB";

(b) in paragraph (b), for "permitted authority" substitute "EPB".

(3) In subsection (3), in paragraph (a), for "permitted authority" substitute "EPB".

13 In section 20 (interpretation) at the appropriate place insert—

""EPB" means an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;"."

*Amendments 78 to 83 agreed.*

***In the Title***

*Amendment 84*

*Moved by* ***Baroness Williams of Trafford***

**84:** , line 5, after "governance" insert "and functions"

*Amendment 84 agreed.*

## Police Federation (Amendment) Regulations 2015

*Motion to Regret*

*9.03 pm*

*Moved by* ***Baroness Harris of Richmond***

That this House regrets that the Police Federation (Amendment) Regulations 2015 prevent the federation from being properly funded in order to represent its members (SI 2015/630).

*Relevant document: 33rd Report, Session 2014–15, from the Secondary Legislation Scrutiny Committee.*

**Baroness Harris of Richmond (LD):** My Lords, I remind your Lordships of my registered interests and, particularly, that I chair the interim independent reference group of the Police Federation of England and Wales. In the debate on the gracious Speech, I intimated that I would be putting down a prayer to seek to overturn Statutory Instrument 630, which was made on 9 March this year and came into force on 2 April. Unfortunately, I was unable to do this because of a misunderstanding of timings following the dissolution of Parliament. I am grateful to the Chief Whip for giving me time to express my deep concerns about this SI in the only way that I am able—through a Motion to Regret.

I believe this legislation to be very heavy handed; it represents, I believe, a fundamental attack on the rights of police officers by imposing draconian measures on their representative organisation. The statutory instrument refers to the membership of the Police Federation of England and Wales. Prior to the amendment regulations, the position was that membership of the federation was automatic for police officers in ranks from constable to chief inspector inclusive but that payment for that membership was voluntary. Now, membership ceases to be automatic and, in relation to subscriptions, various additional requirements have been made on the federation to inform police officers that payment of subscriptions is voluntary and to give members who choose not to pay contributions various rights. I will say a little more on that later.

As many of your Lordships will know, the Police Federation is in the process of implementing in full the recommendations of the independent review by Sir David Normington into its organisation. It set out 36 recommendations for a comprehensive organisational overhaul to deliver a more efficient, effective and transparent Police Federation of England and Wales. Given its compliance with the Home Secretary's demands regarding the implementation of Normington, I also question the necessity of such legislation and whether it is appropriate for the Government to interfere in arrangements between the federation and its members.

The police service already has severe strictures on its industrial rights and now the Home Secretary has imposed further conditions on this member-led and member-funded federation through statutory instruments. I fear that this can only serve to further weaken an organisation which has already lost a great deal of its strength over the past few years, not least from the huge fall of nearly 35,000 front-line police officers and staff, who have been lost across both England and Wales through government cuts to the police service.

As I said in my speech, this is the first time I can remember that law and order was hardly on the agenda during the general election. It was almost a footnote in manifestos focusing more on the NHS, education and immigration. However, we should not pander to the media or the politically prescribed flavour of the day as we would be failing to serve the public good. If we are to believe that police reported crime is down, why is it that the Government are continuing to compromise the very apparatus that has brought this about? It is counterintuitive. Cuts to policing have led to fractures appearing up and down the country to the very foundations of the police service.

Figures from the Independent Police Complaints Commission show that levels of complaints against the police in England and Wales have reached a record high, with a clear rise in the majority of police forces. The number of cases was 34,863, including a rise of 98% in one force, with the majority of complaints stating that the police are intolerant, rude and dismissive of the victims of crime. The fact is that this dramatic

[Baroness Harris of Richmond]
rise in complaints does not reflect a change in the determination and commitment of police officers. It comes down to a simple equation which shows ever-increasing response times and less time spent with victims of crime. The factor causing these results is a huge reduction in the resources available to the police service, and the outcome is a growing detachment and alienation from the communities of England and Wales.

The Peelian principles now present an almost impossible challenge for today's police service. Principle 2 of the nine principles asserts:

"To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect".

Further cuts can lead only to greater public discontent. If police numbers keep falling, the last resort will become the first response. Is this what the public want for the future of their police service? Is this what the Government want? If so, we need the police forces of England and Wales to revise and rework both their police charters and their victims' charters. If the public do not have revised expectations, given the cuts, the reputation of the police service will continue its downward spiral, overwhelmingly and through no fault of its own.

Because the Police Federation has been bogged down with internal restructuring and reorganisation—which may well take another couple of years to fully complete—it has not been able to be as effective as it has been in the past in representing its members to their elected representatives, regionally, nationally or in Parliament. We need this to change if we are to properly understand how crime is changing and where best to direct our focus to make best use of the resources available. A strong Police Federation means a stronger police service, which can only be beneficial to the public.

This statutory instrument will make the job of the Police Federation harder at a time when it has difficulties enough with dwindling subscriptions, because of the huge fall in membership due to the cuts in police numbers. However, if we help the Police Federation, we will help the police service as a whole and in turn help them to serve the communities of England and Wales. This SI enables an officer to demand help from the federation even if he or she has not previously paid any membership fees. How can any organisation operate in this way? It is like saying to an uninsured motorist who has had an accident: "It's all right. The insurance company will look after you. There was no need to fork out for insurance before you needed it". That would be ludicrous, and yet that is exactly what this SI does. There is no need for a police officer to become a member of the federation or pay any dues, but that officer can demand help from the federation, which can add up to huge amounts of money in matters of litigation when it is needed.

This is an awful piece of legislation and I deeply regret having to bring it before your Lordships in a Motion to Regret, as I would have preferred us to vote on it. However, I hope that my explanation of its effect will move the House to express its concern and dismay that things have come to such an unhappy place for our police service. I beg to move.

**Lord Mackenzie of Framwellgate (Non-Afl):** My Lords, I rise in support of the Motion moved by the noble Baroness, Lady Harris. I declare an interest as a former member of the Police Federation—which every officer is, as the noble Baroness said—and also as a former president of the Police Superintendents' Association of England and Wales. It concerns me that a police service that is held in very high regard throughout the world is to some extent being trampled into the ground. The police service lost the right to take industrial action in 1919. It does not seek to have the right to strike, but since it does not have that right, it is entitled to expect fair treatment.

The Police Federation has not been perfect. It has made mistakes—we acknowledge that, and the police service will acknowledge that. However, this regulation goes a step too far, as the noble Baroness, Lady Harris, pointed out. It is probably reasonable to give officers the option of whether to join the Police Federation, which at the moment is not the case: it is a closed shop. Whether officers should have to pay dues is a difficult issue, because funding is critical for the federation to do its job of representing its members in legal cases and going round the country doing what it does.

Crucially, the police are in such a position that they have to be treated fairly by the Government. I know that there have been one or two skirmishes with the Government—I am thinking of Downing Street-gate, as it is called—and I hope that this is not simply revenge for that type of incident. The police service is far too important for this type of trivia to be brought upon the Police Federation with that purpose in mind.

*9.15 pm*

There is room for reform. The Normington proposals recommend reforms and the Police Federation accepts reforms. But the noble Baroness, Lady Harris, is absolutely right to bring this Motion before the House. I certainly support it, particularly her point about an organisation that says, "You needn't join the Police Federation, but should you find yourself in difficulty and therefore require its services, you are not prohibited from joining, for that reason alone, to get the benefits from the organisation and then simply withdraw when things go smoothly". That is grossly unfair.

I hope that the Government's motives are not those to which I alluded and that they will give deep thought to this issue. The police service in this country is extremely important. It does not have the right to strike for obvious reasons. It is such a critical organisation, particularly at present when cuts are obviously affecting manpower. There is a restriction of a 1% pay rise for the next few years, which applies to other members of the public sector. Morale is particularly low at present. The Police Federation has just held a survey and I have never seen such figures. Usually you get people complaining about this and that but this serious survey suggests that the service is feeling really badly about itself. It is not the time to kick the service when it is down. I hope that that is not the intention of the Government. We do not want to destroy what I believe is the best police service in the world.

**Baroness Young of Hornsey (CB):** My Lords, I remind your Lordships of my registered interest as a member of the interim independent reference group

for the Police Federation of England and Wales, which is so ably chaired by the noble Baroness, Lady Harris. Having commissioned a wide-ranging review, the Police Federation has been committed to reforming itself following the publication of the Normington report last February. The organisation has worked hard to implement the recommendations of the report in full, as demanded by the Home Secretary at its annual conference in Bournemouth in May 2014.

Reforming large, unwieldy institutions with complex histories is never easy and transforming the Police Federation, which has remained largely unchanged for nearly a century, is certainly not a straightforward enterprise. When I was asked by the noble Baroness, Lady Harris, to join the then constables' advisory panel, I confess that what I knew of the Police Federation was limited to what I had read in the press and seen on television. The vast majority of that information was very negative following revelations of poor conduct subsequent to what became known as "plebgate". Successive high-profile media revelations regarding the apparent lack of transparency around funds and activities further harmed its reputation. In addition to that, there have been several high-profile cases that suggested corruption, unwarranted violence and racism.

Shortly after absorbing all this, I was engaged in chairing the Young review, which was tasked with making recommendations that would contribute to improving outcomes for young black and/or Muslim men. Here, again, although I was aware that some sections of the country's police force had been working towards changing their practices, the problems encountered by some black, Asian and minority ethnic populations and female officers did little to change my perceptions.

Since then, through my involvement initially as a member of the constables' advisory panel and now the interim independent reference group, and having had several opportunities to talk in some depth with PFEW members from different parts of England and Wales, I have developed a different, more nuanced view of the hugely complicated task that lies ahead. I have listened to officers describe their frustrations and anxieties regarding how they want to work more effectively with, for example, mental health services and social services. I have heard how efforts to modernise are sometimes resisted or misunderstood. I have heard how black, Asian and minority ethnic, and women members, express their frustrations at the slow progress being made in making the police force and the PFEW more diverse and representative.

Listening is really important. These concerns have not been represented to me as moans and whines. In the vast majority of instances, members are looking actively for solutions, being very positive and not just articulating problems. They are doing their best to look to the future, not backwards.

There is a long, complex narrative underpinning the process of instigating the changes recommended in the Normington review. What may surprise some noble Lords, particularly those who are more dependent on media accounts of the PFEW than on other accounts, is that the majority of representatives of the organisation whom I have met have expressed their strong disapproval of the actions of those who have brought so much negative attention on the organisation. In addition, those to whom I have been talking are very keen to move forward.

This is not to say that every police officer working in PFEW is wholeheartedly behind the changes—of course not. Nor are they all necessarily in agreement as to how and at what speed the review's recommendations should be implemented. Again, that is only to be expected. With so many divergent and complex strands and threads involved and with the weight of historical antagonisms and schisms within and outwith the organisation, the task of delivering an end product which brings together the different requirements of the Home Secretary and the Normington review and delivers an efficient, effective, representative Police Federation is clearly a painstaking and protracted process.

While there can be no doubt that serious damage has been done to the organisation's reputation, leading to a breakdown in political relations, we now have an opportunity to repair that damage and improve on the understanding between parliamentarians, government, the PFEW, police officers and the public.

I referred earlier to the destructive actions of a few within the organisation. The ability of regional federations to act autonomously is at the root of some of the circumstances which arose—a consequence of the structure of the federation itself, with its 43 regional branches. It remains to be seen whether that situation can be prevented from arising again in future.

Given that the Police Federation decided to review itself following this crisis and given the decision to implement wholeheartedly and in full the Normington recommendations as demanded by the Home Secretary, it appears disproportionately punitive to impose further strictures outlined in the statutory instrument. As the noble Baroness, Lady Harris, observed, the reduction in resources comes at a time when police forces across England and Wales are having to deal with the changing nature of crime, the rollout of new technologies and the training that that entails, and diminishing resources available for looking after the mental well-being of officers. All these factors and more mean that they will be facing huge challenges in the years ahead.

I believe that the Police Federation needs to move ahead and to do so quickly. It needs to tap into the momentum that has been gathering and work with those who want the organisation to do its job by affirming its commitment to the public interest, as recommended by Normington. That makes sense and is achievable only if the Police Federation is enabled to be a progressive, strong, diverse and adequately funded representative organisation. In this way, it will be able to ensure that it makes the best use of resources available, as well as working in the best interests of police officers. What may be characterised as punitive action taken by the Government through this statutory instrument is not helpful. It seems to be out of step with the basic tenets for bodies charged with representing their members. With the right support, guidance and advice, a reinvigorated Police Federation can be a force for positive change and an essential resource for government in combating the continually evolving landscape of crime throughout our communities in England and Wales.

**Lord Rosser (Lab):** My Lords, I begin by declaring that I am a member of the police service parliamentary scheme committee and I have also taken part in the police service parliamentary scheme itself.

I am grateful to the noble Baroness, Lady Harris of Richmond, for giving us an opportunity to discuss these regulations. The three speeches that we have heard so far have been eloquent and forceful. I am afraid that is not something I will be able to match, given that much of my contribution will be in the form of questions to the Minister as I am not entirely sure what these regulations mean in practice. I am sure he will be able to provide me with the answers since, as I understand it, these regulations have now been in force for some three and a half months, unless they have somehow been delayed. I hope that the Minister will respond on the basis of his experience of how these regulations are working and the impact they are having.

First, I refer to the report of the Secondary Legislation Scrutiny Committee. It is a fairly old report, given that it was published on 26 March this year. The committee stated in paragraph 8 of the report on the regulations:

"The concept of not allowing a closed shop to operate is well established but no-one, including the Home Office, is aware of a precedent for the proposal that members can opt into a 'union' and use its services without also paying a subscription".

I would be grateful if the Minister would say whether he believes that is a fair statement—namely, that the Home Office is unaware of a precedent for the proposal. In fact, it is no longer a proposal but a reality in these regulations. Will he also say why the Home Office felt it was necessary to have this arrangement uniquely for the Police Federation?

As the Minister will also be aware, the Secondary Legislation Scrutiny Committee expressed surprise that no estimate of the predicted financial impact of this legislation on the federation had been provided. I am sure that will not be a surprise question for the Minister and that he expected it to be raised. Why was no estimate given of the predicted financial impact of this legislation on the federation, and why did the Secondary Legislation Scrutiny Committee feel moved to comment on that fact? What is the Government's estimate of the predicted financial impact of this legislation on the federation, since, presumably, they have not embarked on bringing these regulations into force without knowing the answer to that question? Therefore, I would be grateful if the noble Lord would answer the question, which was also raised by the Secondary Legislation Scrutiny Committee.

If officers previously paid no subscription but then opted to pay one, can they at any time opt back into paying no subscription—for example, in circumstances where they received advice or support that led them to change from paying no subscription to paying one? Can they yo-yo to and fro between paying no subscription and paying one simply to cover the period during which they feel they require advice or support from the federation? Then, once they have had that advice or support, can they immediately opt back into paying no subscription? I would be grateful if the Minister would answer that question.

Can the Police Federation alone decide whether it will provide any level of service at all to officers who join the federation but decline to pay any subscription, or would it be stopped from doing this by these or any other regulations and be compelled to provide some level of service to officers who join but do not pay any subscription? At the moment that is not entirely clear to me from the information in front of me.

Paragraph 10 of the Secondary Legislation Scrutiny Committee report states:

"The Home Office also states that, apart from the provisions about specified matters outlined in these Regulations, legislation does not otherwise set out which members are eligible for what benefit. Further detail on the specific benefits that the Federation provides and the eligibility criteria for these benefits would be outlined in the Police Federation's Fund Rules".

That is a direct quote from the Secondary Legislation Scrutiny Committee, telling us what the Home Office has stated. In the light of that, do the Police Federation's fund rules have to be approved by the Secretary of State, or is it a matter solely for the federation to decide what these rules say, provided that they do not conflict with the provisions about,

"specified matters outlined in these Regulations"?

*9.30 pm*

Is there anything in these regulations that prevents the federation from deciding that someone who joins and declines to pay either the normal subscription or any subscription will receive no benefits at all? Once again, I would be grateful if the Minister could respond to that point.

Paragraph 9 of the Secondary Legislation Scrutiny Committee report starts:

"In relation to the new requirements the Home Office has stated",

and one thing that the Home Office has stated is that:

"Officers who currently withhold payment of their subscriptions have a limited entitlement to support",

from the federation,

"compared to a member paying their subscription fees".

What actually is the "limited entitlement to support" from the federation, mentioned as having been referred to by the Home Office in paragraph 9 of the Secondary Legislation Scrutiny Committee report? Can the federation decline to accept an officer into membership under these regulations, or is it compelled to accept into membership anybody who says they want to join? Can the federation lapse from membership any member who declines to pay a subscription? Is that a matter for the federation to decide?

Can the Minister also tell us the sources of funding of the Police Federation, apart from voluntary subscriptions? What percentage of its income comes from voluntary subscriptions and what percentage from other sources? I ask this in the context that, up to now, the Government do not appear to have provided any estimate of the predicted financial impact of this legislation on the federation, so clearly it is of interest to know what percentage of its income is made up of the voluntary subscription and what percentage of its income comes from other sources.

With reference to the regulations themselves, this is, on the face of it, a relatively minor point, but in Regulation 5, new Regulation 4A states that:

"Each branch board of the Federation must—

(a) notify each new member below the rank of superintendent, or police cadet, of that force that they may, but are not required to, opt to join the Federation".

Can the Minister confirm that this means that "each new member" covers everybody and not just those expressing an interest in joining the federation—in other words, that "new member" is a reference to all people joining the police force? If that is correct, who will provide the federation with details of such new recruits? I ask that question in this context because new sub-paragraph (b) says that each branch board of the federation must,

"notify each new member below the rank of superintendent, or police cadet, of that force who wishes to join the Federation".

To whom is that referring, since you cannot be a new member until you have joined? You cannot therefore come under the category set out in new Regulation 4A(b) of someone "who wishes to join". If you wish to join, surely by definition you are not a new member. I would be grateful for the Minister's explanation of what that part of the regulations means.

I turn back to the Secondary Legislation Scrutiny Committee's report. I am sorry if I am going from one part of it to another but there is a quote at the end to which the noble Baroness, Lady Harris of Richmond, has already referred. In paragraph 12, the report says:

"The Federation particularly objects to the requirement that it must provide services to someone who has not previously subscribed at the same level as a long-term subscriber".

Referring to the letter from the federation, the committee says that it,

"compares the proposal to 'a driver using an uninsured motor vehicle, having an accident and then contacting the insurance company for cover after the event'".

Can the Minister explain why that is not an accurate parallel of the situation in which the Government are placing the federation through these regulations? Finally, which part of the regulations says that the federation must provide some services to members who pay no subscriptions?

**The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con):** My Lords, I thank the noble Baroness, Lady Harris, for tabling this debate. At this late hour, I have indulged in a quite unique experience of opening my fast at Ramadan at the Dispatch Box, so every day certainly brings a new challenge and a new experience. I also thank all other noble Lords for their contributions on this subject.

I say from the outset, in response to various points made by noble Lords, that the Government—the Home Secretary, all Home Office Ministers and I, as a Minister for countering extremism—recognise the important role that the police service plays across a variety of important areas, none perhaps more pertinent than some of the challenges we currently confront. Along with other Ministers and the Home Secretary, I was with the chief constables only yesterday at a conference where we looked at general policing issues and, more specifically, at some of the issues we face in countering extremism.

Turning to the issue under discussion this evening, the Government's view is that it is vital that the Police Federation can command the trust of its members and the public. Sir David Normington's independent review found that the federation had lost trust and it was clear that the organisation required fundamental reform, a point to which the noble Baroness, Lady Young, alluded. I take this opportunity to explain how the amending regulations assist with addressing this issue. In line with the Government's statutory obligations, these changes were subject to a period of consultation with the federation last year. The Home Secretary was clear in her speech to the federation's annual conference in May 2014 that the Government welcomed its commitment to implementing the Normington reforms. At the same time, she outlined her intention to make a number of additional regulatory changes to support greater transparency and accountability for the federation.

Since 1919, when the federation was established, all officers automatically become members on joining the police, as has already been mentioned. Every officer from the ranks of constable to chief inspector was compelled to join the federation. They had no choice. The statutory instrument, which came into force on 2 April, ensures that new officers now actively choose whether and when to join the Police Federation at any point in their service. It is therefore their choice. Officers previously had the right to opt out of paying federation subscriptions, and so forgoing certain member benefits or services, but this was not necessarily consistent or clear to officers. The recent changes mean that officers will in future actively choose whether to pay subscriptions and receive the services and benefits to which they entitle them. This in part addresses a question raised by the noble Lord, Lord Rosser. It is also vital that the federation earn the right to represent its members. These changes, which are integral to federation reform, will help ensure a future where that will be the case.

The unique status of police officers, and their importance to the public, means they cannot join a trade union. The federation was created by statute as the recognised mechanism for representing the interests of officers. However, this should not mean that it can complacently rely on all officers being members. That is why the changes made ensure that the federation cannot discriminate in respect of certain core services it provides to its members based on the date they choose to join and pay subscriptions.

I understand that the federation has objected to this change, comparing it to,

"a driver using an uninsured motor vehicle, having an accident, and then contacting the insurance company for cover after the event".

This point was raised by both the noble Baroness, Lady Harris, and the noble Lord, Lord Rosser. However, there is a key flaw in this analogy. A motorist who is dissatisfied with their insurance company has the option of taking their business elsewhere. This is simply not the case for the thousands of rank and file officers up and down the country who continue to show professionalism, dedication and sacrifice in the line of duty. These changes are about putting power in these individual officers' hands to influence their federation.

It cannot be right for a federation that fails to command the confidence and trust of its members to be able to hold them to ransom. The ultimate conclusion of the federation's position is that all officers should become members as a form of insurance, rather than be convinced of the merits of federation membership.

[Lord Ahmad of Wimbledon]
That is the opposite of what we are seeking to achieve, which is giving officers the power to decide whether the federation has set out a compelling case for membership. The federation effectively holds a monopoly when it comes to providing support and representation to police officers. It should not be able to use that position to threaten to withhold assistance from any officer who chooses to join later in their service.

The noble Baroness, Lady Harris, also asserted that this will lead to an unreasonable financial burden for the federation—a point also made by the noble Lord, Lord Rosser—in representing new members who have not "paid their dues" earlier in their career. We would dispute that. Although all subscribing officers should have access to the same support, a member who chooses not to pay subscriptions will continue to have only limited entitlements.

**Lord Rosser:** Does the Minister intend to go on to tell us what those limited entitlements are? Are they the same limited entitlements that I understand such officers are allowed now, and is it provided for in the regulations that they have some limited entitlements? I would be grateful if the Minister could spell out what they are. Are they actually set out in these regulations or are they in the regulations which I think the SI before us seeks to amend?

**Lord Ahmad of Wimbledon:** I will come to some of the specific points the noble Lord has raised. On the exact entitlements, it will be more appropriate for me to write to the noble Lord and other Members. I say to the noble Lord and to the noble Baroness, Lady Harris, that one of the issues raised was concern about the financial capacity of the federation to deal with changes that are being made. A review of the federation's accounts last year found that it currently holds reserves of over £54 million. Indeed, the Normington review also recommended that the federation should reduce annual member subscriptions by 25% per cent, from an average of £258.96 to £194.22, given the level of federation reserves. In the very unlikely event that the federation finds itself in financial difficulty as a result of subscription income reducing, that would surely suggest that it had failed to convince rank and file officers of the merits of membership. That said, with the level of reserves currently held, that is highly unlikely.

The noble Baroness, Lady Young, also talked about a disproportionate response from the Government. In the interests of upholding openness and transparency, the instrument also clarifies the Home Secretary's powers to scrutinise details of all funds held for federation purposes. Normington was also clear that the federation must convince its members and the public of the good value for money of the work that the federation undertakes.

Finally, at the request of the federation, the instrument also makes provision for it to reimburse police forces for the payment of salaries of members of the national federation's joint central committee and for the central co-ordination of federation funds. This supports the Normington recommendation that there should be greater national oversight and transparency of federation finances.

If I do not cover all the questions that I have been asked this evening, I shall certainly review the contributions and write appropriately. On what the instrument does, the regulations laid on 12 March covered areas of membership, removing compulsory membership of the federation and applying a duty on the federation to inform new officers that they may opt in. Secondly, officers will pay subscriptions only if they actively choose to, and the instrument applies a duty on the federation to inform new officers that they may opt to pay subscriptions. On the accounts—this is a point that I have already made—it clarifies the Home Secretary's powers to call in and scrutinise all the accounts held by the federation at national or local branch level, for all moneys held by the federation.

*9.45 pm*

The noble Lord, Lord Rosser, asked specifically about membership and subscriptions. The PFEW provides a range of benefits and services, which is primarily a matter for the PFEW. It includes, for example, financial and legal services. Secondly, the regulations mean that the PFEW must support a subscription-paying member in formal matters of conduct, disciplinary or performance matters. Any further benefits or services are a matter for the PFEW.

The noble Lord also asked whether the federation was now required to inform each new officer of the non-compulsory nature of membership. The short answer to that is yes. The recent changes impose a new duty on the federation to inform new officers that membership is non-compulsory. This duty may be satisfied through internal communications to staff, on notice boards and through local representatives.

**Lord Rosser:** How will the federation know who all the new officers are? Will it be told by chief constables, or what? Is it left to the federation to find out who the new recruits are? Will there be an onus on the federation, or on the police forces to tell the federation whom has recently been recruited and whom it should give this information to?

**Lord Ahmad of Wimbledon:** The onus is on the federation. As I said earlier, it is for the federation to make the case for new police officers to say that they need to join the federation and tell them that it offers the services that it does. This is something that the federation will need to do to ensure that officers realise the benefits of being part of the body. Any representative body would have to make that case.

**Lord Rosser:** What the Minister is saying—and I am just trying to get this clear—is that the federation will have to advise any new officer who is recruited into a police force of the fact that they can join the federation but they do not have to and that, if they join, they do not have to pay any subscriptions: it is up to them. The Minister is saying that it is for the local branch of the federation to find out who the management of the local police force has recruited into the force. Surely, there must be some obligation on those who run the police force to tell the local branch federation whom they have recruited and whom the federation

then has—as I understand it—a statutory responsibility to advise that they can join the federation but they do not have to. Indeed, if the federation does not do that, it is liable to a penalty. Yet the Minister is saying that it is up to the local federation to find out who the management has recruited into the local police force. Surely that cannot be right; it must be for the management or the local chief constable to tell the federation who the new recruits are.

**Lord Ahmad of Wimbledon:** I think that the noble Lord is putting words into my mouth. I did not say that—I said that it was for the federation to make the case for its membership. So I think that he should reflect on what I have said from the Dispatch Box. In his usual style, he has asked a raft of questions and, as I said earlier, on specific areas I shall reflect on contributions made and respond accordingly.

**Lord Rosser:** My Lords—

**Lord Ahmad of Wimbledon:** Perhaps I can make my point; I have listened to the points that he has made. Every police force locally and every local branch has a relationship. As it works currently, they will be informed of new recruits joining, and it is for the federation to make the case for new recruits to join. No doubt they will outline the membership benefits at that time. The important thing with these regulations is that they put the choice in the hands of the individual police officer. In any representative body, no matter what profession you are talking about, that is how it works.

**Lord Rosser:** I think that the noble Lord has answered the question. If he had answered it before and I had not heard him, I apologise. What the noble Lord has just said is that the federation will be advised of the new people who have joined the force, and that was simply the question that I was asking: will it be advised by the police force who the new recruits are, rather than the federation itself having to find out? As far as I understand, the Minister has now made it clear that the local branch of the federation will be advised who the new people are and therefore the people that the federation have to advise. That has answered the question I asked.

**Lord Ahmad of Wimbledon:** Perhaps the reason why there was some confusion on my part is that that is how it works now. There is no change. The noble Lord is perhaps pursuing a line that is actually currently the way it works. Perhaps I can move on, given the lateness of the hour, and answer some of the other questions. I assure him once again that if there is anything I have missed, I will seek to write to cover those points.

The noble Lord, Lord Rosser, also asked whether an officer could still receive benefit if they choose not to pay a subscription, and whether it was in the gift of the federation to decide whether it supports non-paying members. Prior to this arrangement, it was possible for an officer to withhold payment of their subscription, and as a result they were entitled only to a limited number of benefits, dictated entirely by the federation. It is entirely in the gift of the federation to determine what benefits it would provide to members who opt out of paying subscriptions.

The noble Lord, Lord Rosser, said that the PFEW is unique, in that members can access services as soon as they opt in. Yes, the PFEW is unique and police officers cannot join a union. As I said in my main contribution, the PFEW is the only organisation they can join in the rank and file and it is absolutely right that police officers, who do a unique job, have arrangements that give them access to strong representation.

The noble Lord, Lord Rosser, asked what the reference to "each new member" meant in new Regulation 4A(b). The reference is to a new member of the police force, not to a new member of the PFEW. The noble Lord asked other questions and I will seek to review the comments that have been made.

The Government of course value the incredible contribution that police officers up and down the country make and the vital role they fulfil. The relationship between the Home Office and the police remains very strong. It is a constructive relationship, and as I have said on several occasions this evening, it is the Government's view that it is important for the Police Federation to earn the confidence of officers in order to make the best use of members' subscriptions and represent them with transparency and integrity. The changes made by the Police Federation (Amendment) Regulations 2015 will assist in that.

The noble Lord Mackenzie asked about the recent PFEW survey and evidence that government policy is leading to low morale among officers. I assure him and all noble Lords that the Government are determined to ensure that policing remains a rewarding, professional and respected career, and our reforms are certainly seeking to achieve just that. Part of that is ensuring that the Police Federation represents its members with both integrity and transparency. I have already spoken about the Government's strong support for our police forces.

We believe that the changes made by the Police Federation (Amendment) Regulations 2015 will assist the federation in ultimately regaining the trust of its members and indeed the public.

**Lord Mackenzie of Framwellgate:** Before the Minister sits down, will he confirm that similar provisions do not apply to the Police Superintendents' Association, which was established at exactly the same time in 1919? Will he also confirm that the Ministry of Defence Police Federation has a specific provision in its rules that says it will not provide assistance for people who join the organisation for any incident that applied prior to joining, which is exactly the opposite of what is going to apply to the national Police Federation?

**Lord Ahmad of Wimbledon:** I am sure that the noble Lord is well versed in what he has just quoted. In terms of confirming what he just said, I will write to him.

**Baroness Harris of Richmond:** My Lords, I am grateful to the Minister. He will not be surprised to hear that I am not at all satisfied with his remarks. He has quoted extensively from the Police Federation independent review by Sir David Normington, which I shall also refer to. First, I thank all noble Lords who

[Baroness Harris of Richmond]

have spoken—the noble Baroness, Lady Young, and the noble Lords, Lord Mackenzie of Framwellgate and Lord Rosser—for their remarks and their strong support. I thought that the questions from the noble Lord, Lord Rosser, were particularly apposite.

The report says that the Police Federation,

"was established to represent every constable, sergeant, and inspector (including chief inspectors) in England and Wales. There was also an unspoken understanding that the Federation would receive relatively generous direct and indirect public resources for its representation and access to chief officers and to local and national policy makers".

Of course the generous indirect public resources have now gone; the Home Secretary decided to take those away.

"Despite many reviews and reorganisations of policing this basic settlement has remained intact for 95 years. In our view it is as important and valid now as it was in 1919".

This is the view from the chair of the independent review, Sir David Normington.

"Police officers need—and greatly value—an organisation that represents them in individual cases of investigation or discipline; and can give them and their families"—

I stress "their families"—

"wider support when they are under stress. This absolutely necessary protection means that it is desirable for membership to be universal given the widespread risks that individual officers face. That is why membership of the Federation is automatic upon enrolment (although officers can opt out of paying the subscription). This is the most practicable arrangement currently and one which we support".

Lastly, the Police Federation told me that the amendments relating to subscriptions were unnecessary and not appropriate, as members already had a choice whether or not to pay subscriptions. The federation believes strongly that it should be free to choose what arrangements it reaches with its members in relation to subscriptions, and that it is not for the state to interfere in relation to the rights that late-subscribing members should have to assistance of any kind, from the federation or otherwise. However, as I have indicated to the Government, I do not intend to call for a vote—there would not really be much point at this late hour—so I beg leave to withdraw the Motion.

*Motion withdrawn.*

*House adjourned at 9.58 pm.*

# Grand Committee

*Wednesday, 15 July 2015.*

## Arrangement of Business

*Announcement*

*3.45 pm*

**The Deputy Chairman of Committees (Baroness Harris of Richmond) (LD):** My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

## EU: UK Opt-in Protocol (EUC Report)

*Motion to Take Note*

*3.45 pm*

*Moved by* ***Baroness Quin***

That the Grand Committee takes note of the Report of the European Union Committee on The UK's opt-in Protocol: implications of the Government's approach (9th Report, Session 2014–15, HL Paper 136).

**Baroness Quin (Lab):** My Lords, the report for today's debate focuses on the Government's policy on the opt-in protocol, which allows the UK and the Republic of Ireland to opt in to or out of EU justice and home affairs measures. The report concerns, in particular, the Government's approach to measures—most often, international agreements—which do not have a justice and home affairs legal base. The policy of the Government is one that the former coalition Government applied from 2010 onwards, during which time both the EU Select Committee of your Lordships' House and Sub-Committee E, which is the Justice Sub-Committee, had occasion to question its lawfulness.

The inquiry that led to this report was triggered by a letter from the then Justice Secretary and the then—and current—Home Secretary in June of last year setting out the Government's opt-in policy in some detail. The novel reasoning underpinning that letter prompted us to hold a short inquiry. We wanted to seek the views of legal experts on a dispute that had hitherto been confined to us and the Government. We were also prompted by a series of judgments from the Court of Justice over the previous two years that appeared to put the Government's policy in some doubt, so we wanted to seek the views of legal experts on those cases also.

While our inquiry at first glance may appear to have focused on a very narrow area of government policy, we felt that the Government's approach raised wider concerns. First, we were increasingly concerned that the approach violated basic EU principles. We also thought that it could give rise to legal uncertainty in the many international agreements that the EU concludes and therefore cause the third countries negotiating those agreements uncertainty. We were also concerned that the Government's approach could be counterproductive to our interests in the EU and could possibly undermine our good standing and our reputation with our partners.

In essence, the main issue that we wished to resolve was whether the opt-in protocol could be applied when the Government alone, unilaterally, considered that a proposal for EU legislation contained justice and home affairs content or whether a formal justice and home affairs legal base, under Title V of the Treaty on the Functioning of the European Union, had to be cited.

While we were concentrating on this very specific aspect of government policy, we noted—and our report makes this clear in chapter 2—that,

"the opt-in Protocol has provided the UK with a very effective safeguard against participating in legislation with a legal base in Title V, particularly internal EU legislation".

This fact is clearly demonstrated when you look closely at the Government's annual opt-in reports, but it was not mentioned at all in the Government's evidence to the inquiry, which is why I stress it here today.

I should also add that the recent balance of competences review undertaken by the outgoing Government does not seem to suggest that, in justice and home affairs with the opt-in and opt-out processes that are available to them, the Government have had any particular difficulties in safeguarding their position on these issues. Overall, from the Government's point of view, the system seems to have worked satisfactorily—perhaps the Minister can confirm this in his reply—whereas so often the general impression seems to be given that the EU is somehow constantly a threat in this area of policy and has to be constantly resisted.

Before I turn to the substance of our conclusions, however, let me mention our concern with the Government's way of co-operating—if that is the right word—with our inquiry. Four months elapsed from the launch of the inquiry until the Government submitted written evidence and confirmed their willingness to attend to give evidence. By that time, all our other witnesses had given evidence and we were contemplating having to report without the Government's own evidence. The Government explained that the delay was caused by a judgment of the Court of Justice of the EU, delivered last June, which they had been considering, but in our view that judgment, although complex, did not justify such a long delay in the Government's co-operation with the inquiry. We stated as much in the introduction to our report, and we hope that similar delays will not occur in future Select Committee inquiries of this House.

It is also disappointing, of course, that we have not had the Government's formal response to this report today. It would, I am sure, have better informed our debate. After all, our report was published on 24 March and the Government are normally obliged to respond within two months. Obviously, we had a general election, which meant that purdah was in place, but in accordance with this an extension for a response was given until 22 June, yet we learn that the Government are still considering their response. I would like to hear from the Minister today whether he has a firm date for the formal response to be sent to us. Even though time is fast running out, can we be assured that this will be before the parliamentary Recess next week?

[Baroness Quin]

I now turn briefly to summarise the committee's conclusions under our chapter headings. In chapter 3, we looked at the meaning to be given to "pursuant to" in Articles 1 and 2 of the opt-in protocol. None of the expert evidence we received in the course of the inquiry supported the Government's broad interpretation of "pursuant to" in that protocol. We felt that this was significant in itself and we noted in particular that the Republic of Ireland did not follow the UK's practice of applying the opt-in protocol in the absence of a Title V legal base. We agreed with all our witnesses that a legal base was also necessary to define the source of the EU's power to act and that this was consistent with the principle of conferral. We therefore concluded that the phrase "pursuant to" had an accepted legal meaning and that in the context of the opt-in protocol it meant that the Title V legal base was required before the opt-in could apply.

We also felt that the Government's very broad interpretation of "pursuant to", of the merits of which they tried to persuade the Court of Justice, would actually give the EU wide powers to increase its competence in many other policy fields where it is mentioned in EU treaties. We queried whether this was a consequence the Government wanted. It certainly seemed to us to be potentially counterproductive—a word I mentioned earlier.

In chapter 4, we looked at the issue of determining the legal base of an EU measure with JHA content. Again, all the evidence we received here contradicted the Government's approach to determining the legal base of a measure with JHA content. We accepted the weight of that evidence and concluded, as a consequence, that the Government's distinction between whole, partial and incidental JHA measures was misconceived and that the Government should reconsider their approach.

In chapter 5, we looked at the issues of legal certainty and loyal co-operation in the negotiation of international agreements with JHA content. While we accepted that there is a distinction between actual and potential legal uncertainty, we concluded, none the less, that the potential for the Government's policy to create real legal uncertainty was considerable. We concluded, too, from our point of view in terms of parliamentary scrutiny, that the Government's approach creates legal uncertainty around parliamentary scrutiny, as the two examples we gave in the introduction to the report showed. These two examples related to the fourth money laundering directive, an important measure, and Kosovan participation in EU funding projects.

We were concerned that the Government's unilateral interpretation raised questions about their acceptance of the uniform application of EU law. We were therefore also concerned about what impact that might have on the UK's reputation among other member states. Finally in this section, we concluded that the Government's policy puts them at risk of breaching the duty of sincere co-operation, under which member states have a duty to co-operate strongly with European Union institutions in the negotiation and implementation of international agreements.

In chapter 6, we looked at how the opt-in protocol had been interpreted by the EU institutions, because the Government put it to us that they believed that the Commission had actively pursued a policy of "legal base shopping", in order to undermine the UK's opt-in rights, which was a serious charge to make. Certainly, in one specific case they provided evidence that lent some support to this allegation in respect of the former Commission, and perhaps in particular a former Commissioner. However, it must be said that in this particular case the European Council of Ministers, quite rightly, supported the UK's point of view, and the UK in the Council was able to overturn the proposal for the legal base that the Commission had made, pointing out that it is related to the substance of a measure and cannot be related to whether that measure might have a certain geographical coverage or not. However, despite that exception, which the Government had drawn to our attention, we concluded that there was no persuasive evidence at all to suggest that the Commission had circumvented systematically the UK's opt-in rights.

In chapters 7 and 8, we looked at the case law of the European Court of Justice and the Government's litigation strategy. While we recognise the Government's concerns, again we concluded that there was no evidence to suggest that the court for its part had sought deliberately to undermine the safeguards in the opt-in protocol. We concluded that it was highly unlikely that the court will change its established approach to determining legal bases, including for measures with JHA content, as the Government suggested it might, and we therefore recommended that the Government review their litigation strategy in the light of these conclusions.

Rather than just criticising the Government's strategy, we also made one suggestion, that if they wanted to raise these concerns with their partners, they could consider the feasibility of an inter-institutional agreement on the scope of Title V. I would be interested to know whether the Minister feels able to respond today to that suggestion made in the report.

In conclusion, and in looking forward to hearing what other noble Lords may say on this matter, I will say that the sub-committee's report was strongly endorsed by the EU Committee of this House and, therefore, comes here with all-party and non-party approval. I thank very much all colleagues who contributed to the inquiry, in particular my former colleagues on the EU Justice Sub-Committee, with whom it was a pleasure to work.

We believe that it is essential that the Government carefully consider the evidence which the inquiry received and which casts doubt on the legality of the Government's policy. While the formal response to the report is still awaited, I none the less hope that the Minister can give us some reassurance here today. I beg to move.

*3.58 pm*

**Lord Richard (Lab):** My Lords, I thank my noble friend Lady Quin for the way in which she chaired this committee. It was done with skill, charm, and to great effect. I also thank the clerks to the committee, who

performed with their usual skill, as did our legal advisers, who in this particular case were absolutely essential.

I am delighted to see the noble Lord, Lord Faulks, here. As a former practitioner, with many years at the Old Bailey, may I say how much I have admired, watching him in this House over the years, the charm and skill with which he advocates some of the worst causes it is possible to devise? Professionally, therefore, I am delighted to see him here.

This is an extraordinary debate. First, I have never known a report which, frankly, was quite so universally critical of the Government's legal position. Usually, in an issue which involves disputes of this sort, you find somebody, somewhere, who is prepared to stand up and say, "Yes, I think the Government are right". In this case, we could not find anybody who was prepared to do that. Secondly, I think this is the first time I have ever taken part in a debate on a report of one of your Lordships' Select Committees in the absence of a response to that report from the Government.

As I understand it, a number of deadlines were passed and it was felt that this debate had to proceed. Quite why there has been no response is as yet unclear. If it means that the Government are actively and seriously reconsidering their current position, that is to the good and this debate is perhaps premature. If not, why has there been such an inordinate delay? This is offensive to the committee and contemptuous to the House. As my noble friend Lady Quin said, we waited a long time to receive the Government's evidence to the committee. When it came, it was negative and sparse.

As I see it, there are three issues that ought to be considered here: first, whether the Government's view as to the effect of the protocol is accurate, and particularly whether their interpretation of the words "pursuant to" is right; secondly, the effect of the recent judgments of the European Court of Justice and whether that case law is undermining the scope of the opt-in protocol; and, thirdly, whether there is any evidence that the Commission has deliberately tried to subvert the scope of the opt-in itself.

I will deal with these three issues separately. I think it is worth while to begin at the beginning; namely, with the terms of the treaty itself. Under the terms of the Lisbon treaty, the UK was given an opt-in protocol to replace its loss of the right to veto. That protocol allows the UK not to participate in justice and home affairs legislation. A recital to the protocol explains that it is intended to,

"settle certain questions relating to the United Kingdom and Ireland".

The relevant articles of the protocol read as follows. Article 1 provides that the UK,

"shall not take part in the adoption by the Council of proposed measures pursuant to"—

I emphasise those words because they will become extremely important—

"Title V of Part Three of the Treaty on the Functioning of the European Union".

As a consequence, Article 2 establishes that,

"no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States".

I do not think I need to read the rest of the article.

This dispute has arisen because of the Government's interpretation of "pursuant to". In their written evidence, the Government said—and this is the nub of the argument—that Articles 1 and 2 of the opt-in protocol,

"are not restricted to provisions in agreements concluded under a Title V legal base, but to those adopted or concluded 'pursuant to' Title V. This is a broader test which, in the Government's view, extends to any provision in an international agreement that contains content where the EU competence for negotiating, signature and conclusion of that agreement flows from Title V of the Treaty on the Functioning of the European Union or TFEU, that is, JHA content".

It is in respect of that issue that we heard a number of witnesses.

The clerks of the committee made efforts to find lawyers who actually agreed with the Government's position on this. They failed. I have never known a body of evidence from a number of distinguished witnesses which was so definitively in the same direction. They were asked whether they thought the Government's interpretation of "pursuant to" was legally reasonable. None did. Professors Peers, Chalmers and Barrett were unanimous in their view. Professor Peers said the Government's interpretation was "unconvincing". Professor Chalmers concluded that it was "particularly challenging". Professor Barrett thought it was a "singularly unlikely interpretation". Dr Bradshaw concluded that "pursuant to" should be interpreted as "requiring a legal basis". Professor Cremona thought the Government's approach was "misconceived, legally speaking".

The only body that advocated the Government's interpretation were the Government themselves. No academic, no Government, no institution supported them. It is worth pointing out, as my noble friend already has, that Ireland, the other beneficiary of this opt-out procedure, has declined to follow the Government in their stance. It has not argued for a similar definition of "pursuant to"; I do not think it has even raised it.

It seems to me that the ordinary meaning of the expression "pursuant to" is more than an alternative way of expressing "following upon". It requires, as our evidence says, a direct link with the parent measure. As was pointed out by Professor Peers, if the drafters of the protocol had intended the broad notion of the words advocated by the Government, they would have made it clear with different wording. Professor Cremona thought that the French version, "en application de ce titre", and the Italian version, "a norma di detto titolo", clearly expressed the concept of being based on or adopted according to that title.

This view is fortified by the fact that "pursuant to" appears in no less than 99 places in the EU treaties, protocols and declarations. The Government apparently take the view that the words should be interpreted in relation to the context in which they appear. Since this could lead, potentially, to 99 different versions of what the phrase means, it seems to me that that approach is somewhat fanciful. The Minister was a distinguished

[Lord Richard]
legal practitioner and will know that, if the words are clear, they should be given the same interpretation wherever they appear.

The committee therefore concluded that it was unpersuaded by the Government's interpretation of "pursuant to" and found the argument that "pursuant to" in the opt-in protocol should be interpreted differently from elsewhere in the treaty equally unconvincing. The committee therefore called on the Government to reconsider their interpretation. That is the nub of the dispute that the committee had with the Government, although there were other issues, which I have briefly touched on.

I can deal with the remaining two issues that I raised rather more shortly. In chapter 7 of the report, the committee analysed six recent Court of Justice judgments. It also had the benefit of the opinion of the expert witnesses on Title V case law. It concluded in accordance with that evidence that the court's approach to determining the legal base in the six cases we analysed did not differ from established case law and that the Government's view that those cases do not have an impact on their opt-in policy lacks credibility. The committee thought that they clearly did.

In the course of the evidence, we heard rumours, particularly from the then Lord Chancellor, Mr Grayling, that the Commission in its choice of legal base was actively trying to subvert the opt-in. However, when the evidence was produced, it was less than convincing. The committee concluded that,

"the Government's letter of 21 January provided no persuasive evidence of Commission circumvention of the UK's opt-in rights. There is certainly no evidence to support any allegation that such circumvention is systemic".

In only one case—the draft PIF directive—did the Government, in the committee's view, provide some evidence that lent some support to this allegation. We should not forget that in that specific case the Government appealed to the Council, the Council agreed with the Government, and the legal base was changed to Title V.

To sum up the situation, it seems to me that the Government have just got it wrong. I am not wholly convinced that the advice given to the Government by their legal advisers was designed to express their view of what the law really is. When I joined the Foreign Office many years ago, I was told that the function of government legal advisers was not to tell me what the law was, but to tell me what legal arguments were available for me to use to justify the policies that I wanted to pursue. There is nothing wrong in that, except that it deserves to be recognised for what it is. The Government's lawyers have indeed produced some arguments. I do not find them convincing, and nor did the committee. I hope the Government will change their position. They certainly should.

*4.09 pm*

**Baroness Ludford (LD):** My Lords, it is a privilege to take part in this debate. I did not have the pleasure of serving under the noble Baroness, Lady Quin. I am a new member of the Justice Sub-Committee under the chairmanship of the noble Baroness, Lady Kennedy of The Shaws, and I look forward very much to continuing to work on that committee. I spent 15 years in the European Parliament on the relevant committee dealing with justice and home affairs issues. In the five years between the Lisbon treaty coming into force and my stepping down, involuntarily, from the European Parliament, I became very familiar with the exercise of the opt-in under the protocol, and indeed with the whole exercise of the block opt-out, which we will no doubt discuss in the next debate.

As I listened to the noble Lord, Lord Richard, in particular, I could not help trying to suppress a giggle as I thought that this would make a very good satirical sketch. However, the serious point is that the Government are creating a great deal of confusion and legal uncertainty, first, for this House and the other place over the correct parliamentary procedures that should apply to this area. The scenario that we seem to have is that the Government decide after the three-month window, "Oops, we've discovered some microscopic JHA element very late in the day—too late to let you guys know that the opt-in enhanced scrutiny procedure applies". We had a letter dated 3 June 2014 from the Justice Secretary and Home Secretary saying breezily that,

"there may be occasions where the Government fails to recognise JHA content in an EU proposal at the outset. We are endeavouring to keep these occasions to a minimum by raising the profile of JHA content in otherwise non-JHA dossiers across Whitehall".

There are two possible reactions to that. One is that it cannot be very significant if it is not easily spotted, so why are the Government bothering about it? The second is: get your act together a bit earlier and check what is actually in the proposal.

The second, and perhaps more important, area where confusion and legal uncertainty will be created is with the EU institutions, with the other 27 Governments and with our international partners. That is brought out very well in paragraph 91 of the report, which says that the uncertainty about when and whether Protocol 21 applies is,

"particularly problematic in the context of international agreements, as it would mean that third countries might be unable to assess, when they conclude an agreement with the European Union, to what extent the Union assumes liability with respect to the United Kingdom. This will ultimately affect the correct implementation of the *pacta sunt servanda* principle, a cornerstone of international law".

So we have the situation where the Government say, "We think there is JHA content but we didn't manage to secure a Title V legal base. None the less, we don't regard the UK as bound by the JHA element". To say that this is "not an ideal outcome", as the Government did in a letter of 3 April 2014, is an understatement of the highest order, but of course they assert that the situation did not give rise to legal uncertainty—we just put a statement in the Council minutes and everything is hunky-dory.

It seems to me that, to use a popular phrase or saying, this is no way to run a whelk-stall. There are serious implications for the rule of law, for the uniformity of the EU legal order and for the confidence that our partners, both European and international, can have in our dependability. I cannot see any possible advantage for a country that this year has celebrated 800 years of Magna Carta and the rule of law, which has one of the most admired legal systems in the world and which

surely trades on the rule of law probably as much as any other country in the world—indeed, it relies on the rule of law and on everyone else meeting it.

Perhaps I am being rather party political, but the idea that there is a conspiracy against us seems to sum up everything that is wrong with a Conservative-dominated or Conservative-only Government's attitude to the European Union—"They are out to get us". Of course it is fair enough to be vigilant and ensure the correct application of the treaties. That in itself is an application of the rule of law. There may be cases where the Commission tries to push the envelope, more out of a sense of, "Well, the Commission would, wouldn't it?", because that is the institutional way of trying to ensure that the EU competence is at its maximum, but as the noble Lord, Lord Richard, said, the way to push back against that is to use political and legal arguments with the Council and the Parliament and eventually, if necessary, with the court. Various examples of this have been cited, such as the PIF directive and the road traffic offences directive, where both the Council and the Parliament were convinced that, because of the criminal law element, a Title V legal basis was needed.

Indeed, a current example can be found in the proposed arrangements for Greece, where the Commission is apparently trying to use funds from the European financial stability mechanism, on which I am far from an expert, as bridging finance. That would bring in the UK. The Chancellor may well be right to say, "No, it was agreed in 2010 or 2012 that the UK would not be outvoted in the use of those funds". In certain circumstances it is perfectly right to use political and legal arguments to make sure that the UK's legal rights are protected.

Secondly, there seems be an attitude that we find reasons to stay out of projects and be isolated, instead of finding reasons, within the proper framework, to contribute and be seen as a source of positive energy rather than always adopting a negative attitude.

Thirdly, there seems to be so much nitpicking on this matter—arguing for the sake of it. I cite the arguments about the phrase "pursuant to" as a classic example of this. The committee brought this out very well on the money laundering directive. You really could not make it up, but the Government were,

"considering challenging the legal basis of a measure it strongly supports solely to preserve its position on the application of Title V".

That is the definition of shooting yourself in the foot.

Fourthly, this is the complete opposite of winning friends and influencing and shaping EU policies. I feel strongly that justice, like security and law enforcement, is an area where the UK has a big contribution to make. While respecting all our legal rights, it does us no credit whatever to act in this capricious way.

I wish that the last but one Government, the Labour Government, had never negotiated the opt-in protocol in 2007. I personally believe that we could have relied on our political heft and the emergency brake mechanism, but we are where we are, and since we have to operate it, let us at least work in a spirit of sincere co-operation—not subjugation to Brussels, but as a reliable and dependable member state.

*4.19 pm*

**Lord Tunnicliffe (Lab):** My Lords, first, I thank the members of the committee for their excellent report, which should give much food for thought for the Government and for the Home Secretary in particular. I pay tribute to the mover of today's debate, my noble friend Lady Quin, as the former chair of the EU sub-committee on justice. Her stewardship as chair shone brightly, if all too briefly. My noble friend Lady Kennedy of The Shaws has a challenge to follow in her footsteps.

Unlike the noble Baroness, Lady Ludford, we on these Benches support the concept of an opt-in. Indeed, it first came about under a Labour Government. Opt-ins can offer important guarantees and safeguards on key measures. We believe in retaining our co-operation with Europe on policing and criminal justice. Indeed, we agree with the committee when it says:

"The Government's annual opt-in reports demonstrate that the opt-in Protocol has provided the UK with a very effective safeguard against participating in legislation with a legal base in Title V, particularly internal EU legislation, when it does not consider it to be in the national interest to do so".

It nevertheless seems that the opt-ins and their processes are being misused. We can only conclude that they are being misused deliberately.

We on these Benches and the Benches of my opposition colleagues in the other place have repeatedly criticised the Government for their approach and the way they have dealt with opt-ins, putting party interest above national interest and creating confusion. In many cases, the Government seem to try to tell their Back-Benchers and supporters that they are the awkward squad in EU negotiations, yet they know that they need the co-operation of other EU countries in pursuit of justice.

Perhaps the most obvious example of this was the Government's handling of the European arrest warrant in the other place at the end of the last Session. This was quite spectacularly mishandled. The one issue that everybody wanted to talk about was not in the Motion before the House, but many rather anodyne measures were.

That brings me neatly on to the direct matter at hand—the report of the committee. It should make pretty uncomfortable reading for the Minister and his boss. It is pretty clear that the Government have a completely perverse approach to the whole process. At the heart of the issue is whether the opt-in protocol can be interpreted to mean that it is the content of an EU measure which determines the application of the protocol rather than a legal base under the JHA title of the Treaty on the Functioning of the European Union—Title V. In responding to this point, the committee said:

"All the evidence we received contradicted the Government's approach to determining the legal base of a measure with JHA content".

It went on to say:

"Its effect is to make a clearly established legal principle inordinately complex".

It is clear that it is the latter principle that should be applied, but the Government's mess with their party's substantial anti-EU base means they are constantly

[Lord Tunnicliffe]
trying to please the unpleasable. Yet we know on these Benches that there are good Ministers and officials who are trying to make sensible progress on negotiations. It really is a mess. I fear that the small majority the Government enjoy in the other place may make these matters worse rather than better. This muddle has direct consequences, as the committee's report says, in that it gives rise to legal uncertainty and,

"risks breaching the EU legal duty of 'sincere cooperation'".

It appears that the Government have been trying to blame others, namely the Commission, for some of their woes. Yet this report makes it clear that there is no evidence of any underhand activity by the Commission; nor does it find evidence that the Court of Justice of the European Union has,

"sought deliberately to undermine the safeguards in the opt-in Protocol".

The report then suggests the Government review their litigation strategy.

The tail continues to wag the dog. Only yesterday, I heard that the Minister's colleague, the Europe Minister David Lidington MP, had dismissed claims that UK was seeking working rights opt-outs in the EU renegotiation as "rumour and chatter". That is not much of a denial.

The way in which the Government have approached the protocol is a scandal. It does not seem that they have behaved much better in their relationship with the committee, and it is totally wrong that they have not yet responded to it formally. Can the Minister tell us when the Government plan formally to respond to the committee's report? I look forward to the Minister giving some indication of their response to the stinging criticisms that have been made.

In summary, it seems a great shame that the Government are subverting and confusing a straightforward process for EU opt-ins. We see this as being only for reasons of political management within their own party—and for a group that will never be satisfied. Is it not time that they simply did the right thing, accepted the recommendations in this report and embraced the very real power that they have in respect of EU opt-ins to protect our national interests?

*4.25 pm*

**The Minister of State, Ministry of Justice (Lord Faulks) (Con):** My Lords, I begin by thanking the noble Baroness for securing this debate. I thank her for her very clear and elegant opening of the debate, and indeed I thank all noble Lords who have participated in it. Protocol 21 plays an important role in protecting the United Kingdom's interests in Europe. I pay tribute to the noble Baroness and her committee for the comprehensive work that she undertook as part of the inquiry into how the Government have applied it.

Before I try to respond to the various points made in the debate, perhaps I may say something about the protocol and its significance. I appreciate from the debate that there is not unanimity about the desirability of the protocol in the first instance—a difference between the Liberal Democrat position and—

**Baroness Ludford:** I apologise for interrupting, but I want to make it clear that I was expressing a personal opinion.

**Lord Faulks:** I am grateful for that clarification—a difference between the view expressed by the noble Baroness, Lady Ludford, and that expressed on the part of the Labour Party by the noble Lord, Lord Tunnicliffe.

The United Kingdom's and Ireland's justice and home affairs opt-in has been in existence for civil justice, asylum and immigration measures since 1997. It was extended to policing and criminal matters with the Lisbon treaty, which came into force in 2009. The intention was to allow the United Kingdom to protect its specific interests, such as the common law legal system and border controls, while retaining the ability to take part in EU justice and home affairs measures where that was in the national interest.

The noble Baroness, Lady Quin, asked whether the JHA opt-in has proved an effective safeguard. I note that her committee expressed no view as to its desirability—expressly so—but she posed that question and asked whether it was an important or even an essential safeguard. I can tell the Committee that it has been used on numerous occasions to protect the United Kingdom from being required to participate in measures which might adversely affect our border controls or our fundamental legal principles. However, the debate with which we are concerned is essentially about the scope rather than the utility of Protocol 21.

The areas covered by Title V of Part Three of the treaty include some of the most sensitive for us as a nation: immigration and border controls, policing and criminal law. The United Kingdom also retains an ability to opt out of measures that build on the Schengen acquis. The UK takes part in police co-operation and judicial co-operation aspects of Schengen but does not participate in any aspects of the acquis relating to border controls. The Government have not applied to join the Schengen provisions on visas and border controls and have no intention of doing so. Any such move by a future Government will require a referendum, thanks to the 2011 Act. I know that that measure was opposed during its progress through this House, but I now understand that it is part of Labour Party policy that there should be a referendum in those circumstances. I shall not go into more detail on the Schengen opt-out, as that has not been the focus of today's debate.

Protocol 21 was included in the treaties to make sure that any new proposal that was presented "pursuant to" Title V would not bind the United Kingdom unless it chose to be so bound. However, it is the Government's view that the drafting of the treaty has created a lack of agreement about when the United Kingdom is able to exercise these rights—whether it is necessary for there to be a Title V legal base cited on the face of a proposal or whether it is where the EU's competence to act flows from Title V, regardless of the legal base cited.

The noble Lord, Lord Richard, rightly focused on "pursuant to" and what he said was a pretty unambiguous interpretation of those words. Of course, the treaty could have said "under" rather than "pursuant to". As he and the Committee will know, in the government

lawyers' view, "pursuant to" is capable of interpretation rather more broadly than many, or even most, of the academic lawyers who were called before the committee said.

I recognise that the approach of the previous Government—I know that the noble Baroness, Lady Ludford, distanced herself from the previous Government, although it was a coalition Government—is not shared by others, and that it created some challenges. But it is important to recognise that we do not have a definitive legal view on which interpretation is correct. While I accept that the European Court of Justice has taken some decisions on what is or is not JHA content, it has not set out definitively whether the opt-in applies in the absence of a legal base. Unless and until it does, the Government and others must work according to their interpretation of the treaty. I respectfully suggest that describing the Government's approach as capricious is a little harsh.

The report on which today's debate has centred helpfully sets out some of the issues flowing from this lack of agreement. These can be very complex and challenging, and the Government must decide on the basis of the evidence before them—

**Lord Richard:** Before the Minister leaves "pursuant to", if he looks at the French version—"en application de ce titre"—it is impossible to claim that those words mean merely "following on from" without a definitive link. It is quite clear that the French text, which I imagine expresses the substance of the argument, refers to the application of Title V. In those circumstances, how can he claim that "pursuant to" means something totally different?

**Lord Faulks:** The French and German interpretations are also referred to in the committee's report. Of course, the protocol has to be read as a whole on what its intention was. While I do not want to weary the Committee with the evidence that was given by government lawyers, the noble Lord will recall, no doubt, the fact that Article 1 should be read in the context of Articles 2 and 3. Indeed, I remind him of what John Ward said in his evidence to the committee, when the then Secretary of State for Justice and the Home Secretary gave evidence. He said, in answer to a question from the noble Lord, Lord Elystan-Morgan, that,

"I think it is important that the words 'pursuant to' need to be read in the context of Protocol 21. Protocol 21, we say, is different because of the particularly sensitive nature of justice and home affairs matters. But it is clear, looking at the context of the rest of the treaty, that it is fully recognised that justice and home affairs matters are difficult and sensitive, which helps to interpret Protocol 21".

**Baroness Quin:** I would like to pursue this further. The phrase "pursuant to", which my noble friend Lord Richard referred to, generally has an accepted meaning, both in English and in the other language versions, which applies throughout EU legislation, and it is simply the Government who have one view and everyone else has another view. Is that not the case?

**Lord Faulks:** Of course, I do not dispute the evidence that the committee heard. The argument that was used in the course of the questioning by the noble Lord, Lord Elystan-Morgan, was that we should be looking at the natural, ordinary meaning, which is the traditional way of interpreting a statute in British law. A purposive interpretation would admit a rather broader interpretation of what the protocol was intended to achieve in terms of the opt-in and opt-out.

These are deep legal waters, and we could spend a great deal of time debating this. I accept that the preponderance of legal opinion was against the government interpretation, but I respectfully refer the Committee to the fact some of the difficulties were acknowledged by the committee in the course of its evidence—not, I accept, specifically to deal with the "pursuant to" aspect, but to do with the choice of legal basis. Paragraph 119 of the committee's report states:

"Dr Bradshaw said that the Law Society had no insight into the Commission's thinking, but noted that the choice of legal basis was 'a matter of profound disagreement on occasion, not just between the EU institutions and the member states, but also within and among the EU institutions'".

Indeed, the conclusions of the committee at paragraphs 184 and 185 were:

"We agree with witnesses who have suggested that the CJEU's approach to determining the legal base of international agreements means that the complexity of an agreement is not always reflected in the resulting choice: it renders somewhat invisible the ancillary or secondary objective, including ancillary or secondary JHA objectives. We understand why this would cause concern to the Government".

**Lord Richard:** Will you read the next paragraph?

**Lord Faulks:** I was going to do that very thing.

"Nevertheless, this does not, in our view, amount to a deliberate undermining of the safeguards in the opt-in Protocol. We note that for internal EU measures on JHA policy, the opt-in Protocol is a very effective safeguard for the UK".

I note that in the course of the debate there has been a very firm disavowal that there was any deliberate intention by the Commission to, as it were, get round the Title V question, but there is an acknowledgement that it may not always be easy to choose the correct title.

The most recent annual report on the application of the JHA opt-in and the Schengen opt-out, which was published in February 2015, shows that the previous Government took 33 decisions under the two protocols during the period between December 2013 and the end of November 2014. Thirty-one of them were taken under the JHA opt-in. Of those 31 decisions, 18 applied to proposals which did not cite a Title V JHA legal base. They included a directive on customs infringements and sanctions, a decision establishing a European platform to enhance co-operation in the prevention and deterrence of undeclared work and several third-country agreements which created legal obligations in the JHA field.

These are all examples of legislation with a JHA impact on the UK that did not cite a Title V legal base. If unsuccessful in changing the legal base, these are the types of cases where a change of approach might mean that the UK cannot exercise its right not to be bound.

[Lord Faulks]

The Government are committed to considering carefully any changes to their approach to the opt-in to ensure that we can lawfully exercise the UK's right under the treaty to protect our national interests by retaining control of our policing, justice and immigration systems. The committee's detailed report has given the Government a great deal to consider. We do not believe it is in anyone's interest to rush the process of responding to it, although of course I take on board the criticism that has been made of the delays.

The Government have sought to ensure that the committee and Parliament are kept updated and sighted on developments in individual cases and the policy as a whole. As was acknowledged in the debate, the Justice Secretary and the Home Secretary wrote recently to the committee to let it know that this subject is still under consideration and that the Government would provide a response to the committee shortly. That raises the question of what "shortly" means. I am afraid that the answer is that it will not be until after the Recess. I know that there has been regret about that, but it is important that the content of this detailed report, and indeed of the debate, are fully taken on board by the new Government.

The noble Baroness asked about one particular issue which also forms part of the conclusions—whether we should be thinking of an inter-institutional agreement. I think the noble Lord, Lord Dykes, asked questions about that in the course of the evidence. It is something that will certainly be considered. When the Government have concluded our consideration of the policy as a whole we will take forward such engagement as is appropriate.

The issues relating to the protocol are complex and technical, and go, as I am sure the Committee will accept, to issues of sovereignty in the very sensitive areas that JHA co-operation deals with—policing, criminal and civil law, and immigration and asylum. As the noble Lord, Lord Tunnicliffe, said, the JHA opt-in is extremely important to us.

We note what has been suggested about the litigation strategy. That is something that will be taken very carefully into account.

The Government are concerned, of course, to reflect the protection that the opt-in gives the United Kingdom on these important areas. We will consider carefully our approach to that. The process is not yet complete and we believe, as I have indicated, that we should take time to get it right.

The debate as to the proper approach and whether it should vary from that taken by the coalition Government will be influenced very much by the careful consideration by the committee and the evidence that it called for, which is well summarised by the report. I am grateful for all the contributions to this debate.

**Baroness Ludford:** Before the Minister sits down, I want to clarify that, although he said that I distanced myself from the previous Government, I did not. I distanced myself only from the attitude exemplified in the report. I am, in fact, very proud of the heavy lifting done, in particular, by the former deputy Prime Minister which ensured that the UK stayed in the 35 policing and criminal justice measures. It is no secret that there was disagreement between the coalition partners on these matters. While I am at it, let me say that I was expressing a personal view on Protocol 21, but that does not, of course, extend to the Schengen protocol, which governs border issues.

**Lord Faulks:** I am not going to go into the detail of who was or was not in favour of particular matters that were opted into or opted out of. The noble Baroness referred in the course of her speech to the rule of law, Magna Carta and "pacta sunt servanda". I assure her that this Government take the rule of law and the desirability of honouring agreements extremely seriously. The commitment of this Government to those remains extremely profound.

*4.42 pm*

**Baroness Quin:** My Lords, even though this has not been a long debate with many speakers, it has been a high-quality debate with many powerful points made. I am very grateful to my noble friends and to the noble Baroness, Lady Ludford, for all the words they have said in support of the work of the committee and of its report. I echo strongly the words of my noble friend Lord Richard about the excellent work that the clerks of the committee did. In my experience they worked assiduously and are immensely able. They certainly guided me, as a non-lawyer, through some complex legal territory which might have become a legal quagmire without their assistance.

I also thank the Minister for the manner in which he responded. His defence of the Government's policy as it has evolved so far did not elicit much support from those who spoke in the debate, but I hope that in the Government's consideration of this matter—which, given the long delay, I hope will be very serious—will take on board the points the committee made. Although I am no longer chair of the sub-committee and no longer a member of the EU Select Committee, I have a feeling that this subject will not go away as long as the Government persist in following this approach. I say that to the Minister in the hope that I may convince him and his colleagues to look more favourably on the report's recommendations than we think may be the case at the present time. Having said that, I once again thank all those who have taken part in this debate.

*Motion agreed.*

## European Union Committee on 2014–15 (EUC Report)

*Motion to Take Note*

*4.45 pm*

*Moved by* ***Lord Boswell of Aynho***

That the Grand Committee takes note of the Report of the European Union Committee on 2014–15 (1st Report, HL Paper 11).

**Lord Boswell of Aynho (Non-Afl):** My Lords, I am delighted to introduce this debate on the European Union Committee's annual report for the previous Session. European scrutiny is one of the key activities of the House. During the previous Session, the EU Committee, together with its six sub-committees, involved at any one time 74 Members of the House, who are supported by 24 members of staff. The levels of expertise and helpfulness among those staff are truly remarkable. Together, this constitutes one of the most exhaustive systems of national parliamentary scrutiny of European legislation throughout the European Union. The former President of the Commission, Jose Manuel Barroso, said:

"The House of Lords is one of the best in Europe in terms of analysis. Very, very competent analysis of the legislation".

I should like also to take this opportunity to put on record my thanks to the chairman and members of the six sub-committees, and in particular the contribution of the many members who have just stepped down from the committees, including three sub-committee chairs: the noble Lord, Lord Harrison, the noble Baroness, Lady O'Cathain, and the noble Baroness, Lady Quin, who has just recently addressed the Grand Committee.

The report considers the work of the committee and its sub-committees in a thematic way. First, our core business is to scrutinise proposals emanating from the European Union institutions, together with our Government's policies towards them. During the previous Session, the committee scrutinised almost 150 European legislative proposals, together with other significant documents. These covered a broad range of issues, including: the climate and energy policy framework; occupational retirement provision; a single market for telecoms; structural reform of European credit institutions; the European Police College; data protection; and the handling of asylum applications. The committee also conducted detailed scrutiny of key issues and processes, including: the Commission work programme for 2015; the draft budget of the European Union; and, as was referred to in the earlier debate, the United Kingdom's block opt-out from justice and home affairs measures.

While there has been an improvement in the performance of some government departments in meeting their obligations to the scrutiny process, the Government's handling of scrutiny came under pressure in some cases. I regret that there was an increase in the number of avoidable overrides in 2014-15, so I ask the Minister, who I welcome to her place, what she can tell us about the steps that are being taken to prevent such occurrences and to spread best practice in the handling of scrutiny across government departments. I emphasise to the Committee that we draw what I think is a reasonable and practical distinction between scrutiny overrides that are essential because of the exigencies of times and those which are avoidable and should be a matter of concern to Ministers.

Our committee has also been extremely active in its inquiry work. Across the Session, we heard oral evidence from 180 witnesses and received 161 written submissions. We examined a number of issues of central and current concern, including: the impact of the European Public Prosecutor's Office on the United Kingdom; the post-crisis European financial regulatory framework; the European Union and Russia; the civilian use of drones in the European Union; a new European alcohol strategy; the UK's opt-in protocol, as already mentioned; regional marine co-operation in the North Sea; the capital markets union; and the coalition Government's review of the balance of competences between the United Kingdom and the European Union. We have also undertaken follow-up work in relation to a number of previous inquiries. Our experience across this Session has demonstrated to us that, as well as the traditional model of long and fully detailed inquiries, there is considerable value in such follow-up work and in issuing shorter reports when there is a need to respond quickly.

Another significant innovation was the introduction of pre-European Council evidence sessions with the Minister for Europe, giving the committee an opportunity to examine publicly and influence the Government's negotiating position on key issues before the event. Although I think it is fair to say that there was some initial resistance from the Foreign and Commonwealth Office, two such pre-Council sessions were held in the second half of last year and one in March this year. We recommend that the practice should continue in the new Parliament, and I invite the Minister to confirm the Government's commitment to doing this.

We have also taken steps to enhance our communication of the work of the committee. When I had the honour of taking the chair of the committee some three years ago, some concern was expressed about our communication. We took on board a very strong message that we should work hard on this area, which is one reason why this report is submitted for debate. The committee's work was featured in nearly 400 broadcast features and print articles. Some of our reports, notably the one on EU-Russia relations, gained national, European and even international media coverage.

I am sure that your Lordships will be interested to know that in October 2013 a dedicated Twitter account for the committee was launched: @LordsEUCom. The account is used—by my staff, not by me—to communicate our scrutiny and inquiry work, as well as news about events such as international conferences, debates in the House and other relevant matters. The account has gained followers from EU institutions, other national parliaments, think tanks, commentators, commercial organisations and members of the general public. It has helped to raise the profile of the committee, particularly outside the UK. We will seek to build upon our recent involvement in social media but I emphasise that we also take seriously our responsibility to communicate our work effectively to Members of the House. We have a joint commitment—to communicate inwards to colleagues here and to continue to seek innovative ways of communicating our work to a wider audience.

The committee's terms of reference require it,

"to represent the House as appropriate in interparliamentary cooperation within the EU".

We have attended 19 interparliamentary conferences and have also worked hard to enhance our working relationship with colleagues from the House of Commons, the devolved legislatures and the European Parliament.

[Lord Boswell of Aynho]

One of our major priorities during the Session has been to take forward the recommendations of the report we issued in April 2014 on the role of national parliaments in the European Union. In October, we met the incoming Commission First Vice-President for Better Regulation, and also for relations with national parliaments, Frans Timmermans, and we used the meeting to put forward our proposals for reform of the reasoned opinion procedure. We welcome the fact that the streamlined Commission work programme for 2015 suggests that the Commission is seeking to avoid the clashes over subsidiarity which have occurred in the past. We also warmly welcome Mr Timmermans' emphasis on the Commission engaging with national parliaments and taking their views seriously. We have been pleased to meet a number of commissioners already this Session. In fact, two have been in London before our committee this very week.

The committee has also worked hard to promote the establishment of a green card mechanism whereby national parliaments can, as well as scrutinising and giving their opinion or caveat on European proposals, play a positive, constructive role in setting priorities for collective EU action where that is appropriate. The committee has proposed a pilot green card, urging the Commission to take action to tackle food waste, building on the report on that important subject produced by our Energy and Environment Sub-Committee. The pilot initiative has gained the support of more than one-third of the varying chambers of national parliaments. Other parliaments would have signed up to this, but have various constitutional or procedural reservations, although their political commitment is clear. Accordingly, I will shortly be writing to President Juncker to urge the Commission to respond to this proposal.

The role of national parliaments is, of course, a key element of the Government's proposals for reform of the European Union ahead of a referendum by the end of 2017. Although I stress that it is not the committee's task to advocate a yes vote or a no vote, which is a decision for the British people, nor is it technically our responsibility to scrutinise the European Union Referendum Bill shortly to arrive before your Lordships' House, because that is domestic legislation, although it bears on Europe, I can assure noble Lords that the committee will be scrutinising the reform and referendum process closely and, as I hope we always have done, objectively and impartially. In this Session, we have already taken helpful evidence from the Minister for Europe on the subject and plan to publish a short report on the renegotiation process before the end of July with, probably, follow-up reports as appropriate either on specific areas or thematic issues.

In that climate, and in the context of other pressing current issues, such as the Greek financial crisis, the Mediterranean migrant crisis and the continuing difficulties in relations between the European Union and Russia, I submit that the work of the European Union Committee is more important than ever. I am grateful for this opportunity to bring forward and discuss its work. I am looking forward to the Minister's reply and to contributions from Members from all parts of the House. I beg to move.

*4.59 pm*

**Baroness Scott of Needham Market (LD):** My Lords, I shall focus my remarks on the work of the Energy and Environment Sub-Committee, which I have had the honour and pleasure of chairing for three Sessions. Working at close quarters with so many Members of this House whose expertise and experience is unparalleled across a wide range of disciplines has been a truly rewarding experience for me. It would, of course, be invidious to single anyone out, but I am going to do it anyway and reflect on the noble Lord, Lord Plumb—Henry Plumb—who has been running his family farm for 63 years. He was a vice-president of the National Farmers' Union in 1965 and is the only Briton to have been President of the European Parliament. With that sort of expertise on a committee, it is quite difficult to go wrong.

I also offer a word of thanks to a number of other noble Lords. First, and in particular, I thank the noble Lord, Lord Boswell, whose leadership and encouragement, both personally and to the main Select Committee has been an enormous help, especially in these recent months when the UK's very participation in the European Union is being called into question. Secondly, I thank former members of the sub-committee who, in our wonderful House of Lords phrase, have been rotated off as a result of recently introduced procedural changes. Their dedication and good humour have made chairing the sub-committee nothing short of a joy. Finally, I thank the three continuing and eight new members of the sub-committee, who already, in a few short weeks, have approached the various topics put before us, which range from the Paris climate change conference in December and the common fisheries policy's discard ban to the use of financial instruments in rural development.

The recent changes in sub-committee membership, put into effect by what is known in your Lordships' House as the rotation rule, became known on my last committee as the slaughter of the innocents. The introduction and strict retrospective enforcement of a three-year rule for European Select Committees was, in my view, an extremely misconceived idea, and I remain of that view. Eight out of the 12 members of my sub-committee were rotated off at the end of the last Session, and that was replicated across the other committees. This of course will be repeated every three years, and a large number of members will need to be replenished, which has huge implications for the retention of expertise on our committees. Although I can absolutely see that there is an increasing demand for Select Committee places in general, I have no evidence that that applies to the work of EU scrutiny committees, which are highly specialised. Therefore I take this opportunity to urge the Chairman of Committees and the usual channels to look at this matter once again and pay particular attention to the effect of the change on the EU Committee and its sub-committees.

I also put on record my very grateful thanks to the professional team who support me: our clerk, Patrick Milner; Alistair Dillon, our policy analyst; and Mark Gladwell, our committee assistant.

As your Lordships may know, the remit of the committee which I chair includes agriculture, fisheries, environment, energy and climate change. Unlike the House of Commons, one of our big strengths is the ability to undertake cross-cutting inquiries which cut across the normal departmental disciplines. The last report authored by the sub-committee, on regional marine co-operation, which we called *The North Sea Under Pressure: Is Regional Marine Co-operation the Answer?*, is a good example of that sort of cross-cutting work. The North Sea, as one of the most industrialised seas in the world, is under many pressures. Both the European Commission and member states have a suite of policies aimed at the economic development of the sea and another whole suite of policies aimed at environmental management. It is not clear to us how these competing pressures will be managed at a strategic level; indeed, we found that such management is embryonic and sporadic. No existing body or mechanism has a broad enough remit to facilitate the sort of political co-operation that we need if these tensions are to be resolved in the North Sea basin. We argued for the re-establishment of a North Sea ministerial conference.

We have called for greater progress on electricity interconnection in the North Sea and for further support to be provided to the regional fisheries advisory councils. We also highlighted a lack of data: there is a problem with gathering data and, more significantly, there is poor sharing of data between sectors and between member states. This report was published in the wake of the new maritime spatial planning directive, and we hope that our conclusions and detailed recommendations will help to influence policy-making at both a national and an EU level as that directive gathers pace. Informal soundings suggest that our report has been very well received in other North Sea states, including Germany and the Netherlands. A number of stakeholders have submitted their own response to our report. I also echo the sentiments of the noble Lord, Lord Boswell, about the work of our press team, which I thought was really quite remarkable in what is actually a rather technical subject. We had a lot of coverage including, inexplicably for a report on the North Sea, from the *Shropshire Star*.

It is with some sadness that I say that the government response to our report was very late indeed. Despite an extended deadline, it took three attempts and a letter from the chairman before we finally received the response this morning. I can only assume that, knowing that this would come up in the debate today, they were aware that the Minister's wrath would be swift and terrible had they not replied by this morning. However, I make the point in all seriousness that we had been as accommodating as we could be, and that really was not good enough.

As we have already heard, the sub-committee authored a report in 2014, *Counting the Cost of Food Waste*, calling for urgent action at a number of levels to reduce the proportion of the food we grow—currently a scandalous one-third—which is thrown away. In the course of the last Session I met a wide range of stakeholders to discuss potential solutions and measures in the light of our report. I think it is fair to say that the report has been widely acclaimed, both in the UK and across the EU, and has contributed to the well-deserved reputation of our Select Committee as a leader in policy impact and scrutiny. As we have heard, in the short term the sub-committee is seeking to influence the content of the circular economy package at European Commission level by using the green card which the noble Lord, Lord Boswell, spoke about. It is a powerful testament to the work of our committee if one of our reports on a subject such as food waste can act as a driver for real and tangible change right across the Union. I remain optimistic about this and I look forward to the result. On the principle of the green card initiative, I can do no better than echo the words of the Select Committee report, which said that,

"if the democratic legitimacy of the EU is to be renewed, national parliaments should be given a positive, constructive role in setting priorities, alongside the existing right of objection".

I end by commenting briefly on the contribution that the committee and the House will make to the ongoing debate on the UK's membership of the European Union. Over the coming months the voices on all sides will be very loud. That noise should not be allowed to distract our attention away from the important task of ongoing scrutiny. Others may decide to lay this task aside, but I do not believe that we should. We have been tasked with holding the Government to account and scrutinising their actions on matters both large and small, high profile and technical. I am sure that I speak for every member of my sub-committee when I say that we have no intention during this coming time of shying away from that crucial responsibility.

*5.07 pm*

**The Earl of Sandwich (CB):** My Lords, since I have just completed my service both on the EU Select Committee and the EU External Affairs Sub-Committee, I feel that it is the right time to thank the chairmen and colleagues of both committees, some of whom are present, for giving me such a rich experience. It is regrettable that I have had to step down from the sub-committee after only two years because of the terrible new rules on rotation mentioned by the noble Baroness. I agree completely with her that we can only pray for the staff of current and future committees who will have to accommodate an increasing turnover of Peers with varied overseas experience. The only solution I can think of is the creation of a new external affairs committee of the House.

Our committee was far-sighted in tackling a subject which should be of intense interest to EU watchers as we approach the referendum. It is simply known as interparliamentary co-operation. Our chairman has already drawn attention to the fact that it sounds like a boring topic, implying MPs enjoying more Latvian holidays, COSAC lunches and so forth, but I have learnt that it is actually a good deal more than that. The title of our report was, *The Role of National Parliaments in the European Union*, and the point of it was to help strengthen the role of parliaments in the process of EU decision-making.

This was carefully provided for in the Lisbon treaty, but since the powers of the European Parliament came under the spotlight, national Parliaments have been more or less overlooked. Yet that should be a

[The Earl of Sandwich]
fundamental part of the Government's current approach to the EU: greater involvement by a national parliament, whether through greater subsidiarity, green cards or reasoned opinion, is surely exactly what this Government are seeking. We have not yet had the formal response to our report, but I hope that the Minister can confirm today not just that the committee was on target but that specific actions and recommendations will be followed up, some of them by parliaments themselves rather than by Governments.

Speeding up the reasoned opinion procedure would seem to be one urgent task for parliaments because the yellow card route has not been very easy to organise. In the case of the EPPO proposal in 2013—which I had come across when I was on the legal affairs sub-committee a year earlier—the objections of 14 member states to the new public prosecutor's office were lodged with the Commission in time. This was ground-breaking stuff, and it was regrettable that those objections were not only ignored by the Commission at first but, in the end, rejected by the European Parliament on the grounds that nations by themselves were not catching up with half of their own fraud cases. It may or may not be right about that, but I am glad to say that in the end the UK decided not to opt in.

Meanwhile, as we have heard, a specific proposal has been put forward to introduce a pilot green card procedure—in this case, on the subject of food waste—and I wish it every success. Whatever the outcome of that initiative, it is extremely important that different parliaments learn to co-ordinate their approach to the Commission more effectively in future. I am expecting the Minister to confirm that the Government see the value of this process and will give it their active support where they can. Strengthening our valiant parliamentary office in Brussels would also help.

Incidentally, it has been extremely helpful for the committee to have our Minister for Europe present upstream of European Council meetings, and I strongly support the proposal to continue this practice wherever possible. I know that he is in favour of it. It is also helpful for him to hear the opinions of the committee on upcoming issues. Of course, it helps when the same Minister remains in post for a considerable time.

I want to come on to just one example of the work of sub-committees which I believe to be outstanding, and I played a small part in it. Noble Lords will have noticed that Commons Select Committees have benefited from a lot of propaganda lately, partly because of the newly declared virtues of elected chairmen. However, MPs also need to be more aware of the talents of Lords Select Committees and sub-committees, which are unashamedly nominated and perhaps in most cases carry a good deal more experience. Our Select Committee reports, as our chairman has mentioned, are otherwise universally recognised, not least in Brussels.

The example of a report that I give is: *The EU and Russia: Before and Beyond the Crisis in Ukraine*. This was the work of the External Affairs Sub-Committee, and we were lucky that through a persuasive chairman—the noble Lord, Lord Tugendhat—we were able to look at Russia and Ukraine at such a critical time. The report appeared in a burst of publicity, here and abroad, in March and it became a clarion call for all those who are still too dimly aware of the troubles on the EU's eastern frontiers. I was glad to hear the Prime Minister say earlier today that the UK will continue to assist Ukraine in any way it can.

We consulted a wide range of experts. I shall not, of course, refer to any individual recommendations now, but the report opened up the crucial question of diplomatic awareness of eastern Europe within the EU and the UK. I feel strongly—to make a more general point—that these reports must not be the last words uttered by committees, nor must the knowledge fade away with changes in personnel. In the case of the External Affairs Sub-Committee, issues such as Somali pirates, the rule of law in Kosovo or, importantly, the effectiveness of EU aid on sanitation in Africa—all before my time—must not be confined to the reports but must be followed up through further evidence sessions. That is not possible in every case, but it should be done whenever it is.

I hope the noble Lord, Lord Bowness, will refer to this too, but the Select Committee made an epic study of EU enlargement, which will continue to be a vital issue for the future of the Union and the role of the United Kingdom, we hope, within it. The Government's thorough, if now forgotten, review of competences should be enough to convince the public that we have to stay in Europe—should they ever broadcast it to them, which I doubt they will. A lot of work was put into that, and I would be grateful if the Minister could refer to it.

Finally, I put in a small plea that the expert staff and advisers to the committee should be acknowledged a little more prominently in the reports and the annual report, simply because of the outstanding contribution they make.

*5.15 pm*

**Baroness Smith of Newnham (LD):** My Lords, I am somewhat of an interloper here this afternoon as I think I am the only person who is neither a Front Bench spokesperson for foreign affairs nor a member of the committee or any of its sub-committees, whether rotated on or off. I am coming to this not with any experience of having served on the committee, but from the other side of the fence, having followed the work of the European Union Committee as an academic. The reference by the noble Earl, Lord Sandwich, just now to the work on EU enlargement reminded me that I have been reading House of Lords reports for more than 20 years. When I was a graduate student in Oxford, if you wanted to know what was going on with EU enlargement, the place to look was House of Lords reports which you always had sitting in hard copy in EU depositories and libraries. That was a very effective way of doing research 20 years ago, and the work of your Lordships' committee remains outstanding. As the noble Lord, Lord Boswell, noted in his opening remarks, the fact that the former President of the European Commission has pointed out the excellence of the work is testament to the importance of the work that the European Union Committee has done.

However, there is a paradox. We are an unelected Chamber, yet the role of the EU Committee is recognised across the European Union. I was picked up on that when I gave a lecture a few months ago in Leuven. I was talking about national parliaments and Europe generally, but I said a little about the role of the House of Lords. I was taken to task during questions when somebody said, "It's all very well for you to say what a good thing the House of Lords is, but it is not elected. How on earth can the House of Lords help improve democracy and legitimacy in the European Union?". That was an important point, and wearing my academic hat I have to go away and think about it. The report on the committee's work for 2014-15 and the programme of work for 2015-16 absolutely make the case for how important the committee's role has been and how it is becoming more important. The decision to invite the Minister for Europe before Council meetings is hugely important. I seem to recall that in Governments up until 2010, the Prime Minister used to give pre-Council statements. We do not have that at the moment, but pre-scrutiny or holding the Government to account before Ministers go off to negotiate is very sensible.

The report was incredibly useful in raising some of the issues that perhaps go undiscussed and unannounced to most people, including interparliamentary co-operation, which has the danger of sounding as if it is about people just wanting to go and travel for the sake of it and have a nice lunch in a nice location or about who goes to which place and why. One academic colleague who follows interparliamentary conferences was greeted like an old friend at a conference that we held on national parliaments in Europe by none other than Sir William Cash, the very long-standing chair of the European Scrutiny Committee in the other place, which does not seem to have quite the same crop rotation or chair and membership rotation.

We discovered that if you keep talking to people, the discussions and the informal communications, thanks to interparliamentary conferences and interparliamentary co-operation, are incredibly important precisely because they give the opportunity not just for academics and practitioners to talk to each other but, far more importantly, for members of national parliaments and the European Parliament to meet on a regular basis and exchange ideas. Therefore, when it comes to issues such as the current yellow and orange cards and the prospect of the green card, the fact that members of parliaments know each other and can say, "Look, how about doing this?" is hugely important.

The fact that this report outlines the number of activities that Members of your Lordships' House have attended is incredibly helpful. Even more interesting would be to have a sense of what the other place is doing as well—I realise this is heresy, and that this report was about only the work of the House of Lords EU Committee—because clearly it is engaged in many issues. It is disappointing that there is not more engagement between the two Chambers. Clearly, each Chamber is sovereign. We talk about interparliamentary co-operation in a general sense but there is not a huge amount of exchange between the two Chambers. Although both the noble Earl, Lord Sandwich, and the noble Lord, Lord Boswell, talked about the House of Commons, we have not yet found ways of creating effective synergies. At the moment there is still a danger of overlap or duplication—everyone wants to do a report on the role of national parliaments or on EU-Russia—or you get lacunae: between the two Chambers, we do not cover everything. If we could find ways of greater co-operation between the two ends of Westminster, that would be most welcome.

I would like to pick up on a couple of other things in the report. The balance of competences review, which has already been mentioned, ran to very many weighty tomes—I think it was 32 different reports—and the Minister for Europe and the former Minister, my noble friend Lord Wallace of Saltaire, spent many hours going through them. The balance of competences review is mentioned in the annual report with a suggestion of the analysis being important, and there is a criticism of the failure of the Government to produce a synthesis of the reports. An overall analysis is vital if the review is to have an impact on the wider public debate on the UK-EU relationship. I am rather sceptical because the previous Government tried to keep the debate off the agenda rather than putting it on to the agenda, and I think that that was a lost opportunity. There is a wealth of information in the balance of competences review which has tended to go under-reported, with the exception of the expert communications that the committee has achieved, as the noble Lord, Lord Boswell, pointed out: a lot of coverage for the report on the balance of competences review and the frustration of Members of your Lordships' House at precisely the fact that it had gone under-reported and under-debated. So I congratulate the committee on its work and the traction it has got in the media.

There is a great similarity between committee chairs, who are obviously being told that they need more visibility, and academics, who are told to have impact and to engage more with practitioners. I think most academics working on the European Union would be incredibly grateful to welcome Members of your Lordships' House to any of our academic conferences on co-operation between national parliaments and other EU institutions. There is clearly an opportunity for co-operation and co-ordination. A report has just gone to the Economic and Social Research Council a year after the project I was involved with was completed, where I was supposed to demonstrate impact so I stressed the fact that my colleagues and I had talked to the EU Committee and vice versa. I hope there is at least a half-life to such engagements between academics and practitioners so that the exchanges can continue.

My final point is about the future. I very much welcome the point that was made in the report about the upcoming referendum and the fact that the committee will be looking at ways of engaging with the renegotiation, considering how best to scrutinise both the renegotiation process and its outcome effectively and proportionately. The noble Lord, Lord Boswell, has suggested that the work will be done objectively and impartially. It is hugely important that such work is done, because it is not done by the media and it is not done effectively by Members of the other place. Academics may try to do it, but the more that it can be done by Members of your Lordships' House, the better. Although my reading of the report is that it is down to the committee to engage in this way, I

[Baroness Smith of Newnham]
suggest that it is down to all Members of your Lordships' House to ensure that there is a well-informed debate ahead of the referendum.

In light of the comments about following up reports, could there be further work on the eurozone and the potential of Grexit or associated issues which are already having a significant impact on the debate in the UK? This is being pushed particularly by Eurosceptics saying that the way Greece is being treated is clearly a reason for us to campaign for no, but there is a real danger that even among pro-Europeans, people are saying that the EU does not seem to be delivering, that there is no support for a country such as Greece. That is increasing the possibility of a no vote. While your Lordships may need to be objective and impartial on your committee and in its reports, I do not feel the need to be so impartial right now.

**Lord Boswell of Aynho:** Before the noble Baroness sits down, she will want to know that although there is no current representative of the EU Financial Affairs Sub-Committee with us, it held a very interesting evidence session today with some extremely big hitters on the specific current issue of the Greek situation. We are keeping a very close eye on that matter.

**Baroness Smith of Newnham:** I am very grateful for that. I was drawing towards my final point, so I shall not detain your Lordships any further.

*5.27 pm*

**Lord Bowness (Con):** My Lords, I thank the noble Lord, Lord Boswell, for his comprehensive introduction to the committee's annual report for this last Session. I am fortunate to serve under the chairmanship of the noble Baroness, Lady Scott of Needham Market, who during the last Session expertly guided our sub-committee through the inquiry into regional maritime co-operation in the North Sea and through the follow-up work on food waste, which was a ground-breaking report. Noble Lords should appreciate just how much work the chairman has done to raise the profile of that issue, both at home and abroad. The report itself is a good example of the effectiveness of the committee's work. I trust that the annual critics of the Select Committee—who, of course, are not here—will take note.

When the Select Committee made its original decision to set down its annual reports for debate, for some members, at least, there was the hope—I will not say the anticipation—that it would become an annual occasion for a far-reaching debate on European matters, covering, as it does, many of the key elements of EU activity in the past year and, indeed, looking, at least partly, to the future. Personally, I hoped that it would bring home to Members of your Lordships' House that the work of the Select Committee is mainstream and not about obscure elements of foreign policy but about many elements of our own domestic politics. It is not just for the usual suspects, such as are collected in the Grand Committee this afternoon.

I shall also refer to the corporate knowledge of members, built up over the years, alluded to by the noble Baroness, Lady Scott of Needham Market, and the noble Earl, Lord Sandwich. I suggest that that contributes to the quality of the committee's work and to its enviable reputation across the European Union. We really should make sure that our own domestic procedures and desire to involve more Members, with a good turnover of Members during each Session, does not adversely affect this.

The aspiration for a great debate has, I suggest, failed this year at least, as we are not in the Chamber for the first time, I think, although I emphasise that I make no criticism of the Select Committee for opting to take advantage of this opportunity to hold the debate in Grand Committee. But that sense of disappointment is alleviated by the presence of my noble friend the Minister. I am sure we are all delighted to see her in her place to respond to this important debate.

The report also looks to the future. For the sub-committee on which I serve, I believe that the work on the proposed energy union will be very important. I hope that the Minister will be able to share with us the Government's views on the priorities of the proposal and what lead they are going to give, especially in the area of energy security and the encouragement and development of interconnectors and of pipelines to provide alternative supplies of gas, which will be needed for a long time, however much investment and effort is put into renewables. These will reduce the dependence of our partners and our immediate neighbours upon supplies from an increasingly erratic Russian Federation.

I am also sure that the Sub-Committee on External Affairs under the chairmanship of my noble friend Lord Tugendhat will have many serious matters before it. Having just come back from a meeting of the OSCE Parliamentary Assembly, one is reminded of just how fragile is stability in some areas of our near neighbours in the European Union. In the Union itself we have come to take that stability for granted. However, today armed clashes have been reported in western Ukraine, not eastern Ukraine, between the Government and extreme nationalist groups on the borders of two EU members, Hungary and Slovakia. There are serious political problems in Macedonia, a candidate country. Relations between Serbia, another candidate, and Kosovo are not resolved, although they are progressing. These events and those in Ukraine and Greece emphasise the need for our wholehearted commitment to a European Union in a form which goes far beyond a mere trading bloc.

Nationalism is not far below the surface in a number of countries, as are ethnic divides. These are encouraged, I am afraid, by some outside interests. It is very easy to mock Europe's compromises, but where would Greece be today—sadly, it may still be—without some compromise by all parties? Despite all this, there are still nations in Europe, particularly in the Balkans, which want to be part of the Union—not just for trade and free movement but for what the EU symbolises—and we should not allow their aspirations to wither on the vine. A candidate country such as Macedonia is concerned not merely about the lack of progress towards membership of the EU and NATO and political instability within but the consequences of instability in Greece.

Whatever our views about the euro, austerity policies or the actions of the present Greek Government, we have an interest here in the UK in ensuring that Greece remains within the EU and is not allowed to fall under the influence of malign forces that are epitomised by the Russian Federation, which is very active in that part of the continent. I respectfully suggest to the Minister that it is in our interests to see the Greek economy start to grow, as it was doing before the present Greek Government came to power, and for the Greek people to be able to see an end to their ordeal, which has been far greater than that of other countries which have fallen into economic difficulties.

Apart from its own economic ills, Greece is struggling with the problem of migrants fleeing Syria through Turkey and into its islands. I know from the press that we here in the United Kingdom have not looked too kindly on suggestions that the European financial stabilisation fund could be used for assisting a further bailout. I know that my right honourable friend the Prime Minister claimed as a success the pledge that that fund would not be used for such purposes and that UK taxpayers are protected from any exposure. That was a very laudable aim and was an achievement at the time. However, circumstances and needs change, and perhaps as a country which takes pride in its foreign aid budget—which goes in some instances to countries whose needs and governance may be open to question—we may at least consider the needs of the Greek people and whether funds could be used, if not for bailout, for aid to stimulate growth, subject, of course, to safeguards.

It took the United Kingdom until 2006 to complete the repayment of post-war loans of some £27 billion—at 2006 prices—from the United States and Canada. That loan was a fraction of the amount owed by Greece, yet it still took us, with all our resources, 61 years to repay it. If self-interest is our guiding star, including in our negotiations over our future in the European Union, the need for stability of one of our partners in a key part of our continent may be reason enough for a change of heart and the expression of a little solidarity with the Greek people and our partners.

*5.36 pm*

**Baroness Ludford (LD):** My Lords, it is with great admiration and pretty much 100% agreement that I follow the noble Lord, Lord Bowness, in this debate. I have the greatest admiration for the committee, and I can say that because I have only recently joined the Justice Sub-Committee, as I said in the previous debate. Even when I was an MEP and not at all active in this House over the previous five years, I was always pleased to see the frequency with which the noble Lord, Lord Boswell, and indeed the noble Lord, Lord Bowness, were in Brussels. Several noble Lords have quoted the tribute from José Manuel Barroso, who said that,

"The House of Lords is one of the best in Europe in terms of analysis"—

although we could differ and say that it is the best. However, that is considerably to the credit of the noble Lord, Lord Boswell, whose personality also contributes to the high profile of the committee.

The committee's work is more important than ever. Its strength is that, across the six sub-committees, it does not treat Europe as foreign policy but, as the noble Lord, Lord Bowness, said, as an extension of domestic policy mainstreamed into and connecting to the work of all the domestic Whitehall departments. Obviously, the Foreign Affairs Sub-Committee deals with foreign affairs, but those are the foreign affairs of the EU, not the EU as this country's foreign policy. That is an extremely valuable asset of the committee.

The committee has two broad strands. One is the sheer weight of the expertise and analysis that goes into the reports, which one could say is for all kinds of reasons different to the work of the European Scrutiny Committee in the other House; the work in this House has a great deal more depth. However, it also tries to keep the Government honest as regards what they do in Brussels and what they tell us that they are doing there.

I have been in the House for nearly 18 years, but for 15 of those I was a Member of the European Parliament, which perhaps explains why this is the first time I have been involved in the work of the EU Committee. Therefore I have not yet had the opportunity or joy of being rotated off; I suppose that I have been spun on to a sub-committee for the first time.

In my first few weeks as an MEP, I remember meeting the noble Lord, Lord Tomlinson, on the Eurostar. I think that he must have been chairing Sub-Committee A on Economic and Financial Affairs, and he told me that he had managed to squeeze some money out of the budget for 300 copies of a report. Perhaps one would not do that now. The reports were being physically carried by him, or at least by some of his staff, on the train. He was, in a sense, putting his money where his mouth was in distributing them in the European Parliament. Nowadays of course, these things are zipped across by email—although I must admit that I have a weakness for paper copies, as I can then scribble on them and highlight certain passages, so I am not a very good model for electronic communication. I thought that that was a good example of spreading the message in practice. There is absolutely no doubt about the high regard had for, and high reputation of, Lords EU Committee reports in the European Parliament and among all those in the know across the EU.

Scrutiny overrides are a serious matter. The Government need to address them and to be rather more scrupulous in respect of the procedures. In the references to the overrides, I noted that one of the bad boys—or, let us say, bad girls—was my former colleague Jo Swinson MP, who was then a Minister in BIS. She got herself into hot water and was asked to explain a long gap in replying to the committee. However, since that evidence session, BIS has become an exemplar of how to handle European scrutiny matters. That is a tribute both to the committee and, if I may say so, to Jo Swinson. She obviously went back and achieved some action and some change, so well done her.

Our committees have done very important work in raising the profile of the role of national parliaments. As one might expect me to say as a former MEP, it is very important that there is no confusion between the

[Baroness Ludford]
role of national parliamentarians and that of Members of the European Parliament. National parliamentarians can never substitute for a directly elected European Parliament, but it is very important that on the one hand the European Parliament does not become a little snobbish towards national parliaments and, on the other, that national parliaments and the European Parliament work in partnership, as well as between themselves in the 28 member states.

Running throughout this annual report is a co-operative and collegiate approach to increasing pressure on the European Commission, as well as working with the European Parliament. There are some interesting remarks about pushing the Commission to take account of its own Impact Assessment Board reports. There is absolutely no excuse for the cavalier way in which the Commission sometimes approaches the advice given by its own advisers. The Commission must also give much more respect to yellow cards. The reaction to the EPPO reasoned opinions, perhaps led by the previous Commissioner for Justice, with whom I did not always see eye to eye, was deeply regrettable. It is well said that the Commission should publish the annual work programme in good time for constructive input. I was very interested to read about the dialogue with Vice-President Timmermans, which sounds very hopeful.

The committee asked the House's Procedure Committee to look at whether the right to issue reasoned opinions could be delegated to it, but it decided not to proceed. I hope that it might take the opportunity to have another look at that, perhaps in order to make sure that there are no delays in the system. I find the reference to a possible green card very interesting—what with green cards, yellow cards, orange cards and a possible red card, we are going to have traffic lights not only for food labelling but for guidance from national parliaments.

I wanted to say something about two pieces of the committee's work from the previous year. One was the work on the block opt-out and the opt back in on justice and home affairs, which exemplifies the two aspects of the committee's work that I mentioned. One of those is the sheer quality of the analysis that the committee undertook. It played a major role in making sure that the underpinning and justification for the opt back in was there. It also tried, not entirely successfully, to keep the Government honest in the way that they dealt with this matter. Huge credit goes to the committee, specifically to its chairman, the noble Lord, Lord Boswell, for that.

The second piece of work, which I will not dwell on as I am running out of time, was on the balance of competences review. I can only agree with its conclusion in regretting the lack of a final analytical report bringing all those 32 individual reports together. A huge amount of work went into the balance of competences review, and it has been totally underexploited as a resource, which is an enormous shame. It could have been the basis—it could still be—for a multilateral reform exercise, instead of being a kind of unilateral repatriation or renegotiation exercise.

I can only congratulate the committee on its increasingly successful communications strategy. I follow it on Twitter and it follows me—they follow me. This morning, I was working at home and was able to listen to the audio version of the Grexit seminar in the Financial Affairs Sub-Committee. That was a very useful resource. The work that the committee has done in the past year bodes well for the scrutiny that it will no doubt apply to the negotiations that will be taking place for the rest of this year as a prelude to the referendum. I look forward to that work.

*5.48 pm*

**Baroness Morgan of Ely (Lab):** My Lords, I, too, thank the noble Lord, Lord Boswell, and his team for the incredible amount of work they have done over the past year. The quantity and quality of the work is worth marvelling at, and it is clear that it is having a significant impact, not just in terms of the accountability of the UK Government on EU matters but in informing debate across the whole of the EU. Yes, EU issues are foreign issues, but they are also about domestic issues, something that needs to be underlined.

Prior to coming to your Lordships' House, the only contact I had with this place was through giving evidence as a Member of the European Parliament to one of the committees that came over to Brussels. Your Lordships were a formidable bunch then and are a formidable bunch now. The clarity of the work was deemed absolutely invaluable, not just by politicians in the EU but by the administration. The one comment I had at the time was that your Lordships' brilliant work did not have the impact that it should have, because the committee was generally retrospective in its investigations and so it could not inform debate prior to a position being taken. That meant that a lot of the work was going to waste. The committee has addressed that concern to an extent, particularly in relation to Council meetings. The fact that the committee has implemented these pre-European Council evidence sessions means that difficult questions can be put to Ministers prior to negotiations rather than the committee dealing with a fait accompli with no prospect of influencing the debate. I congratulate the committee on this initiative. I suggest that it is about looking at what is coming down the pipeline. That is really important. That is the best way to influence debate.

The committee has also taken active steps to broaden the number of means by which it reports on its activities. This is an extremely welcome development. I am afraid that I was one of those people who were unaware that the committee had a Twitter account until I read the report. That probably says something. It is quite interesting that somebody like me is not aware of it; nor am I aware of when the committee meetings take place and who is giving evidence. Of course, I could go and look for this information but it would be quite useful to have some kind of push mechanism to let interested people know what is coming up so that if we were interested in attending those debates we would be able to do so.

The EU is undergoing the most fundamental challenges it has had to face in the past few decades. The direction and understanding of the European project—what it is all about—is being played out not just here in the UK but across the whole EU. That scrutiny role is essential in this time of increased uncertainty. This

week we have all been absorbed in the Greek financial crisis and the question of where responsibility lies for the country's debts and how and when democracy should be honoured. The crisis on the Mediterranean shores is testing the understanding of what is meant by social Europe and undermining that responsibility of burden-sharing.

Of course, the UK is now committed to holding a referendum on EU membership with these really difficult issues as a backdrop, and we are doing this at a time when there are political upheavals across the whole continent, with extremist parties gaining ground on both the left and right. One of the issues that the Prime Minister has put on the table in relation to British renegotiation is national parliamentary oversight, which does seem slightly hypocritical because this year the Government have pushed for more scrutiny overrides than has hitherto been the case. It seems very odd that the Government in charge of that negotiation, insisting on further domestic parliamentary scrutiny, are not respecting the current system of oversight to the extent that perhaps they should. Does the Minister think that each department should put in place mechanisms to ensure that, as far as possible, there will be an absolute minimum number of scrutiny overrides? As we have heard, BIS seems to have learnt its lesson and we want to know when the other departments will be following suit.

There are many examples of excellent inquiry work carried out by the committee. We have debated many of those reports: the one on the relationship between the EU, Russia and Ukraine on the Floor of the House; and the devastating inquiry on the balance of competences review, which did not suggest that a single policy area should be repatriated. We have discussed the role of national parliaments on the Floor of the House. I am a little sorry I was not involved in the debate on energy in the EU. I do not know if that came to the Floor of the House. I specialised in that area in the European Parliament so I am sorry I missed it.

We are aware that the Conservatives are deeply divided on Europe but I am afraid that the debate has started on the left as to whether the left and the centre-left should continue to support EU membership. I would like to take the opportunity, while we are discussing the EU, to outline why we should nip this debate in the bud and determine that we should fight for a reformed Europe which works for the people of Europe. The first thing to note is that despite the dreadful austerity and pain being imposed on the Greek people, Syriza, Alexis Tsipras' party, has repeatedly said that it wants to stay in the EU and the euro—even the left in Greece has a subtle and refined understanding of how important the EU is to it as a nation.

The cause of Greece's plight is not the EU or the euro but corruption, tax evasion and bad accounting, as suggested by Thomas Piketty and other distinguished left-wing economists recently. Of course, you would need a heart of stone not to empathise with the innocent people of Greece, who are suffering untold misery, but the leadership of the country must take its share of responsibility for the situation. Let us not forget that half of Greece's debts were written off three years ago. It also had the biggest loan in international history. It was interesting to hear the Prime Minister today suggesting that a measure of debt relief for the country may be necessary.

The EU is not some kind of sinister self-contained planet doling out cruel and harsh austerity measures to innocent hard-working Greeks just for the sake of it; its decisions are taken by the democratically elected Governments of 28 member states. All bailout measures decided under the European stability mechanism have to be approved by the national Parliaments of the eurozone countries, so this talk about a massive democratic deficit at the heart of the EU is simply not borne out by the facts.

Without the EU, the UK would have little protection from a Government intent on diluting hard-fought workers' rights which have been given extra protection due to our EU membership: health and safety, increased paid holidays, improved maternity rights, protection in redundancy and transfers, equality rights and protection from discrimination in addition to equal treatment for part-time, fixed-time or agency workers. This is particularly important at a time when the trade union movement is being challenged in such a fundamental way in this country.

The EU is the world's largest donor of development aid. The EU is at the front of defending human rights and minorities nationally and internationally. Of course, EU institutions are not perfect, but rather than whingeing from the side-lines and spewing out grossly simplistic accusations which are not grounded in fact or evidence, the left and centre-left in Britain should be championing a modern vision of a progressive economy based on our traditional values of fairness, tolerance and social justice. Any retreat into isolationism and cheap denigration of our potential allies in Europe would carry a heavy risk in the longer term.

I concur with the noble Baroness, Lady Scott, that this is no time to take your foot off the scrutiny pedal. The European Committee of the House of Lords understands more than most that the EU has its flaws. I dearly hope that this time next year, when we are assessing the work of the committee, we will not be doing so for the last time. The consequences of leaving the EU would be devastating for our economy, our status in the world and the protection of our citizens.

*5.58 pm*

**The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con):** My Lords, first, I add my tribute to the distinguished contribution of the noble Lord, Lord Boswell of Aynho. It is difficult for me to say "the noble Lord" as, although he is a Cross-Bencher, he has had a long and distinguished career as my noble friend in both this House and another place over a range of policy areas. Colleagues around the House have referred to the expertise of the members of the committee. The noble Lord personifies that expertise. In particular, I know that my right honourable friends the Foreign Secretary and the Minister for Europe, David Lidington, have found the analyses of the noble Lord, Lord Boswell, as chairman of the European Union Committee, insightful.

[Baroness Anelay of St Johns]

I also thank other noble Lords for their contributions today. I put on record my appreciation of the work of all those who serve or have served on the European Union Committee. Reference has been made to the way in which there has been rotation—it sounds like a guillotine—and also that we have a rather different way of appointment than the other place. I was part of the usual channels until last summer and had the duty of appointing people to European committees. Although the usual channels never blab, I can say that I always had a waiting list of people wishing to serve and work hard on the committees. They do not see it as a sinecure and a soft option for going on visits. These people work very hard and I value that.

The European Union Committee is rightly well renowned throughout Europe for its expertise and insight. It draws on some of the foremost experts on European issues, including former MPs, MEPs and Commissioners, as well as evidence from the private, public and voluntary sectors. Others, including the noble Baroness, Lady Ludford, referred to José Manuel Barroso's comment last year when he said:

"The House of Lords is one of the best in Europe in terms of analysis. Very, very competent analysis of the legislation".

We all benefit from that. It is clear that the committee is not only competent but, as we have heard today, it is enormously productive in the number of reports that come out, all of which are relevant and current.

During this Session the committee has scrutinised 150 EU legislative proposals and significant documents and has published 12 reports covering a range of important EU issues. It has attended 19 interparliamentary conferences and has been mentioned in almost 400 broadcast features and print articles. The numbers speak for themselves. This annual report reflects the breadth and depth of the committee's work, demonstrating the impact and importance of cumulative work on issues over multiple Sessions. Its wide-ranging dialogue with MEPs and Commissioners has strengthened its recommendations. Similarly, the committee's engagement with social media—I should say to the noble Baroness, Lady Morgan, that I did spot the committee's Twitter feed; I got to it through a page on the intranet—has helped to ensure a well-informed public debate on the EU.

The committee's contribution to the balance of competences review was welcomed and valued, and it is leading the way with its work on the green card system to help national parliaments play a positive and constructive role in setting priorities for EU action. That work demonstrated in particular that national parliaments can have a tangible and constructive impact on policy-making in the EU. The noble Earl, Lord Sandwich, and the noble Baroness, Lady Smith of Newnham, among others, referred particularly to the report on the balance of competences, and perhaps it is right that I should say a word or two on that. The noble Earl wondered when we might respond to it. I am able to say that we expect to be able to respond before the Summer Recess, which is not far away. So I hear what I say—the trouble is, so do noble Lords. On the question of how the balance of competences review is being used, I can say that the Government consider that it has already had an impact on the debate, as evidence on engagement both in the UK and overseas testifies.

The review delivered 32 reports which examine almost every aspect of EU activity and how it affects the UK's national interest. As such, it has provided a comprehensive baseline, establishing how the current arrangements are working and future challenges, providing a valuable contribution to our wider debate on the EU. Bringing all this evidence together in one place for the first time enables people to judge for themselves what works well and where there is room for improvement. I understand that for the 32 reports from October 2012 to the end of 2014, some 2,300 pieces of evidence were submitted, departments held more than 250 events, and meetings were attended by approximately 2,100 stakeholders. I can say that all the reports and their evidence are published online alongside press releases and Statements by the Foreign Secretary. However, I take the caution expressed by noble Lords today that perhaps both the Government and the committee need to look again at our strategy on putting out information. I know that sometimes it can be drowned out by the cacophony of sound across the media. We need to keep plugging away at this to make sure that in a democratic country this information reaches those who need to be able to see it.

I now return to the committee's annual report. It shows the breadth and depth of the committee's work. Throughout all this the committee has said that if the Government value the committee's work, why do we have scrutiny override? That has been the other side of the question. I reassert that the Government are committed to a strong scrutiny system. We want Parliament to be able to hold us to account for decisions in Brussels. We want our national Parliament to have a strong role in decision-making in the EU. However, we have taken on board the points made by noble Lords today. We are continuing to raise awareness and improve scrutiny standards; we drove overrides down by almost 40% from 2013 to 2014, but as the committee has pointed out, there have been some slips. The committee's report reflects that these were promptly addressed, but we need to avoid repeats and learn lessons.

The noble Lord, Lord Boswell, made it clear that we are referring here to avoidable overrides and the noble Baroness, Lady Morgan of Ely, asked that we keep such overrides to a minimum. I can say that we are taking steps to do exactly that by, for example, establishing best practice across Government and working with the EU institutions to ensure a smooth process between London and Brussels. FCO officials visited UKRep and the EU institutions in February to deliver scrutiny workshops to raise awareness of how it is done and of the need to be timely. We have launched new training and support, including the FCO's Diplomatic Academy foundation level course, and from April, materials on scrutiny have been made available across Government.

It goes further than that. The Minister for Europe wrote to ministerial colleagues about scrutiny in the run-up to Dissolution at the end of the last Parliament. He chaired a meeting of Ministers at which scrutiny issues were discussed. In that period the Cabinet Office

also chaired a meeting of senior officials to discuss scrutiny performance issues—departments are encouraged to draw on a range of best practice ideas which they can adopt. The Minister for the Cabinet Office also wrote to both committees earlier this year about scrutiny failings in his department and set out a range of actions taken within Government to raise standards. I hope that noble Lords can see that we have taken the criticism and accepted that it needs to inform improvement in the way we operate. There are difficulties across government, as there always are, in providing timely responses, but our job is to put in place the training and awareness which means that we can respond in a timely way. That is what we will continue to try to do.

As ever, we remain keen to work with the EU Committee to strengthen the whole scrutiny system, both in respect of the avoidable and the unavoidable. We want to look at all aspects of why the unavoidable happened too, in line with the Government's response to the Commons European Scrutiny Committee report. We will continue to strengthen the process and our approach, maintaining high standards across the board; Parliament deserves nothing less.

There was a question from the noble Lord, Lord Boswell, about the ability of the committee to question Ministers before European Councils. Clearly, I cannot make any commitment on behalf of my right honourable friend David Lidington, the Minister for Europe, but I have heard Mr Lidington say time and again in front of his colleagues in the House of Commons that if they want a model of what works well in European scrutiny, they should look to the House of Lords and the system here rather than to his own House. I know that he values the opportunity to appear before committees of this House. He puts a high priority on his relations with these committees and I know that he has appeared twice ahead of European Councils recently. I am sure that he will do his best, although other things may intervene. However, noble Lords can be assured of his respect for the committee.

I turn to one or two other points raised during the debate outwith the exact remit of the annual report. Here, I ought perhaps to refer to the comments of my noble friend Lord Bowness concerning the EU energy union plan. I was interested that he raised that. Last week, on Thursday and Friday, I attended the Croatia Forum, when I discussed this exact issue with colleagues from across Europe and Foreign Ministers from countries as far afield as Turkey and Georgia. Of course, representatives from countries in south-eastern Europe such as Bosnia and Herzegovina and Kosovo were there, as well as the United Nations. We also had other members, including the Italian Foreign Minister.

Energy security is very much a matter of concern across all countries—not just in Europe, with regard to the EU plan, but elsewhere. The energy union was endorsed by leaders, who adopted the conclusions on the Commission's communication at the European Council in March. The Commission will now start to bring forward the individual legislative proposals and other measures outlined in the communication. The first significant step towards implementation will be a package of measures to be launched today, comprising legislative proposals on the energy labelling directive and phase 4 of the EU Emissions Trading Scheme, together with a consultation on energy market design and a communication on barriers to investment.

The Government remain supportive of an energy union that has a fully functional internal energy market at its heart, and that is the message that I took to the Croatia Forum last week. I also made it clear that the UK has played a key role in securing an ambitious climate and energy framework through to 2030, including a target to reduce our greenhouse gas emissions by at least 40% by 2030. I have recently been involved in launching climate risk reports looking at these various issues—one produced as recently as Monday morning at the Stock Exchange.

I turn to the body of the report and to the wider horizons that have been referred to. As noble Lords have pointed out, Europe has never been higher on the agenda. We face challenges and we all have great concerns about the proceedings in Greece. As my noble friends have made clear here and as my right honourable friends have made clear in another place, the fact is that the future of the Greek economy has an impact on the rest of us, even those of us who are not in the eurozone. All countries need to work together to ensure that there is stability for the security of all our nations across the continent of Europe.

We are also seeking to tackle migration across the Mediterranean, as well as managing our own renegotiation, to which noble Lords have referred. Renegotiation brings us further opportunities. The Prime Minister has made it clear that he wants to reform our relationship with the European Union to make it a better and more easily functioning place for all to do business so that it is a reform that is of benefit not just to the UK but to all other member states. That was a message that I also took to the Croatia Forum: reform for all and competitiveness. Completing the digital single market, in particular, would be good. That is something which the euro accession states are very aware of and they are keen that it should happen. We should ensure that we tackle migration and make sure that our welfare systems do not act as incentives. Migration happens and is valuable but it is a case of migrating for work. We should remain out of closer union with Europe. It may be good for other countries but it is not good for us.

The Prime Minister, the Foreign Secretary, the Foreign Office Europe Minister David Lidington and, above all, I value the committee's work when tackling all the complex questions that face us. The committee has set out an ambitious agenda for the next Session and has welcomed a swathe of new members, as we have been reminded today, with expertise from across the European spectrum. I look forward to seeing the fruits of the committee's future labours and to engaging with the committee on its continuing work.

*6.14 pm*

**Lord Boswell of Aynho:** My Lords, in conclusion, this has been a fascinating and constructive debate. I thank all those who have participated, including the Minister for her comments and her positive tone. I also thank noble Lords for the extremely generous and somewhat unmerited tributes that have been paid to my own involvement in this. If I accept them, I do so

[LORD BOSWELL OF AYNHO]
entirely in the name of the committee and all those who have worked so hard. If we have been vitiated at all, it is an endemic problem in that we do not always get those of the sceptical tendency to come and join in. However, they remain welcome, because there is no future in putting your head in the sand and resisting a challenge. We have to face and answer those challenges where they occur.

I will depart from my normal practice of not thanking individual members, because that is self-evident. To select one, if I may, without being invidious, I will mention the noble Baroness, Lady Scott, not only because she leads the Energy and Environment Sub-Committee with such distinction, as others have said, but because she has been very much directly involved in the path-breaking work on food waste and how it should be avoided, and we are taking that forward into the wider European agenda. However, I am sure she will feel that that is only exemplary of the work of the other sub-committees.

In my own office I look at more than 40 years of annual reports and at the remarkable wisdom of those who set up the structure in the 1970s, when we joined the European Union, providing for detailed, specialist scrutiny in sub-committees under the umbrella of an overall EU Select Committee, which enables us both to be specialists and generalists, and to draw those lessons together. That has been so valuable in the way it has worked.

In that context—I will reply only briefly to some points raised—I will say a word or two about relations with the scrutiny committee in another place. I assure noble Lords that it is good; at a personal level it is excellent. It occurred to me at one point, when the chairman of the other committee was being referred to—his appointment may or may not take place very shortly—that we had both played cricket in Corfu 50 years ago. That arose not because we were travelling to a cricket match but because we were travelling to a Greek parliamentary gathering on the Greek coast. We work well but, much more seriously, there is a huge interchange at professional and official level the whole time. That works extremely well and applies also to government departments. When, frankly, we beat the Government up on particular issues and failures of scrutiny process or other difficulties, we should all remember that that is the exception rather than the rule. It is a job that we have to do, but it sits on top of a great deal of constructive work. I also pay tribute to the work of the national parliament representatives in Brussels, who, again, work very well, because they are both located within the official structure and work very closely with officials there. We are always grateful, as indeed we were last week, for our exchanges with the official representation within Brussels, which is of such high quality and needs to be, given the challenges ahead.

I will also single out another area with regard to personalities—namely, our relationship with the European Parliament, which has been referred to, and other national parliaments. In putting forward these ideas regarding the green card, I have been at great pains, but rightly so, to acknowledge the role that has been played by other national parliaments. We did not start this, but we have somehow found ourselves in the driving seat, not by assassination, execution or rotation, but simply because people have had to move on to other responsibilities, including ministerial ones. However, it does not work if you go on an ego trip, saying how good we are and how nobody else counts. Equally, it would be unwise indeed and would be fruitless if we were to see ourselves as in any way in enmity or tension with the European Parliament. I can report to the Committee that I had an extremely positive and constructive meeting with President Schulz only last week. I think we are beginning to understand how we can do more together than if we put ourselves at enmity.

Very briefly, in winding this up, I say first that I am very conscious of the honour that is bestowed on me by the House by my appointment as one of its officers, which is the way the structure works. All those involved in Select Committee work will remember their obligations to this House, which creates them and provides the vehicle for these extraordinary, interesting developments and the inquiries and the scrutiny that we do. We need to bear in mind that obligation. We need to be self-critical about it and make sure that we do it properly.

What has come out—it has been touched on by a number of contributors today—is that there is a wider obligation, albeit that we do not have a direct democratic mandate. Nevertheless we have what might be called a democratic obligation to the citizens of the United Kingdom, particularly in a time of considerable test or responsibility in a referendum. The challenges I conclude on in terms of our committee are, first—and it applies to the Government, other national parliaments and our Parliament—that it is quite easy to say we are in favour of an enhanced role for national parliaments, but you have to think long and hard about how you are going to effect that and how you are going to work with others to make sure it takes place in a way that is helpful to the process of European reform rather than otherwise.

Secondly, and I think this is the cardinal point, I am tempted to quote "If":

> "If you can keep your head when all about you
> Are losing theirs".

We are going to have a period of stress, comment, pseudo-comment, excitement, doubt and perplexity, and we are going to ask the electorate a big ask to make a mature decision. I think that in a modest way our committee may, by continuing to fly the flag of objectivity, scrutiny, and fair comment, contribute to the education of people in that process, and so we will do our best.

*Motion agreed.*

*Committee adjourned at 6.22 pm.*

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