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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
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House of Lords

Monday, 7 September 2015.

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Deaths and Retirements of Members

Announcement

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the deaths on 30 August of the noble Lord, Lord Williamson of Horton, on 31 August of the noble Lord, Lord Montagu of Beaulieu, and on 4 September of the noble Lord, Lord Moser. On behalf of the House, I extend our sincere condolences to the noble Lords' families and friends.

I should also like to notify the House of the retirements, with effect from 23 July, of the noble Viscount, Lord Montgomery of Alamein, and the noble Baroness, Lady Wilkins, and, with effect from 30 July, of the noble Lord, Lord Simpson of Dunkeld, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Lords for their much-valued services to the House.

I should also like to notify the House of the resignation of the noble Lord, Lord Sewel, with effect from 30 July.

Debt Management Advice

Question

2.38 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what assessment they have made of the thematic review *Quality of Debt Management Advice* published by the Financial Conduct Authority in June 2015.

Lord Ashton of Hyde (Con): My Lords, the Government are very concerned about the problems in the debt management market, including the quality of advice, which was highlighted by the Financial Conduct Authority's thematic review. This is why we reformed debt management regulation, transforming responsibility to the FCA's more robust regime to better protect consumers. Debt management firms are currently going through the FCA authorisation process. Firms that do not meet the FCA's threshold conditions will not be able to continue in the market.

Lord Sharkey (LD): My Lords, the Government are right to be concerned. The fact is that the FCA found that a staggering 60% of fee-charging debt advice cases posed a high risk of harm. The requirement to disclose the availability of free debt advice at first contact was often not done or was rushed, not impartial or not sufficiently prominent. It is not even clear whether cold-calling lead generators are obliged to disclose the availability of free debt advice at all. Cold-calling lead generation is banned for mortgages. Will the Minister agree to meet me to discuss banning it for debt advice as well?

Lord Ashton of Hyde: My Lords, although lead generators are independent and not regulated, the FCA requires debt management firms accepting leads from lead generators to satisfy themselves that the business has been procured fairly and in accordance with data protection privacy in electronic communication laws. The FCA is going through the authorisation process at the moment, as I said, and that is one of the things that will be taken into account. It has to ensure that the lead generators do things such as signpost to consumers the availability of free debt advice. The FCA has committed to undertake a review of its rules on unsolicited marketing calls, emails and text messages from consumer credit firms. Lastly, of course I am always pleased to meet the noble Lord.

Baroness Kramer (LD): My Lords, the House will remember that the Government dithered on tackling the abuses by payday lenders until the noble Lord, Lord Sassoon—the Minister in the Lords at the time—took personal action and drove the change. Will Ministers today consider doing the same, because cold calling is making victims of vulnerable people on a daily basis?

Lord Ashton of Hyde: As I just said to the House, the FCA is looking at this. We are not in a position to instruct the FCA on what to do, but there are actions that can be taken on unsolicited calls that I can go into if noble Lords want.

Lord Davies of Oldham (Lab): My Lords, on the broader issues of debt, will the Minister confirm that household debt is on course to reach a new level of 183% of GDP by 2020? That is above any level that it reached under 13 years of the last Labour Administration. Is it not clear that this faltering economic recovery that the Chancellor boasts about is being backed by household debt, with serious consequences in the longer run for the economy and for all households?

Lord Ashton of Hyde: My Lords, the noble Lord opposite has decided not to mention that household debt as a proportion of income has fallen to 145% in Q1 of 2015—down from a peak of 169% in 2008 under the Labour Government. We accept the forecast that household debt will rise by 2020, but this is driven by households investing in financial and housing assets. At the moment, three-quarters of debt is secured by property.

The Lord Bishop of St Albans: My Lords, given that the FCA report discovered that not-for-profit organisations were better at giving impartial debt advice, will the Minister tell us what plans Her Majesty's Government have to ensure that those organisations have sufficient funding to be able to offer that service to the 8.8 million people in the UK who are in need of debt management advice?

Lord Ashton of Hyde: The Government have increased funding to the management advice service to £47 million—an increase of nearly 23%—this year. We also accept that there is a position for fee-paying debt advice, but it has to be regulated properly and to treat consumers fairly. That is what the FCA is in the process of doing. The authorisation process will make some decisions on those individual firms by the end of this year. I should mention that the FCA's thematic review took a sample of eight firms out of approximately 200.

Lord Low of Dalston (CB): My Lords, picking up on the Minister's reference to quality, have the Government formed an assessment of how debt advice from the Money Advice Service compares, in quality and amount, with what was previously available under legal aid?

Lord Ashton of Hyde: I cannot tell the noble Lord that, but I will write to him on the subject.

House of Lords: Membership

Question

2.45 pm

Asked by ***Lord Rennard***

To ask Her Majesty's Government what plans they have to limit the size of the membership of the House of Lords.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, our manifesto recognised that the House cannot keep growing indefinitely, but we must refresh our expertise and experience. My first priority is promoting the purpose of the House and enhancing our accountability to inform our individual responsibility as Members. I also intend to make every effort to build cross-party support in finding the right solution to addressing the size of the House.

Lord Rennard (LD): Does the Leader of House agree that there should be a moratorium on further appointments to this House until sensible measures are agreed to reduce its size and that seeking consensus through a constitutional convention, involving all parties, is the best way forward for reform of this House in the long run?

Baroness Stowell of Beeston: I find it a little surprising that the noble Lord suggests—particularly from his Benches—that there should be a moratorium on appointments to this House. It is very important that we continue to refresh the membership of the House, and the new Peers who will be joining us over the next few weeks will add greatly to the work it does. I do not agree with the way forward proposed by the noble Lord: radical reform was tried in the last Parliament. We stood on a clear manifesto and I am now looking forward to talks with other party leaders, informed by things like the debate on this topic scheduled by my noble friend the Chief Whip for next week.

Baroness Trumpington (Con): My Lords, the Question is very similar to one I already have down on the Order Paper. I am looking for brevity and accuracy. The brevity applies to the Minister as much as it does to the questioner. Can the Minister, as well as those who are asking questions, be more brief in future?

Baroness Stowell of Beeston: I accept the point made by my noble friend.

Lord Reid of Cardowan (Lab): Does the policy which the Government outlined in the last Parliament—having membership of this House in proportion to the popular vote in the country—stand? If so, does this imply a moratorium on any particular group?

Baroness Stowell of Beeston: The noble Lord points to something which was in the coalition agreement. We are no longer in coalition; this is a Conservative Government and we therefore stand by what was in the Conservative manifesto. I have already made clear my view on the size of the House. The noble Lord directs an interesting point to the Liberal Democrat Benches.

Lord Cormack (Con): My Lords, could not the noble Lord, Lord Rennard, and his colleagues lead by example? Believing, as they do, in proportional representation, and having just been inflated into the most unrepresentative party in this House, if he and 40 of his colleagues took retirement, under the advantages of the 2014 Act, then the problem would at least begin to be addressed.

Baroness Stowell of Beeston: My noble friend is using me as a channel to ask questions to the Liberal Democrat Benches. He is quite right that we are all responsible for the effectiveness of this House and making sure that that happens.

Lord Grocott (Lab): My Lords, perhaps I may ask the Leader of the House to act as a channel to the Prime Minister from this House, initially to tell us whether he was accurately reported when it was implied, at least, that he felt that the political majority in the Commons should in one way or another be reflected as a political majority in the Lords. If that is the case, will she ask him to reflect on the fact that in 1997 when the Labour Party had a majority of some 170 in the House of Commons, it was in a significant minority in the Lords; ditto in 2001 after the 2001 election; and ditto after the 2005 election? It was not until 2006 that the Labour Party became the biggest single group in the House of Lords, which was quickly reversed of course by the coalition after 2010? Will she at least make sure that the Prime Minister is aware of those facts?

Baroness Stowell of Beeston: I can certainly reassure the House that the Prime Minister is not seeking in any way to make a government majority in this House. We recognise that the importance of this House is that it holds the Government to account and that the party in government should not be in a majority. The House should also understand that, even after the introduction of the new Peers announced the week before last, the Government still face a combined opposition of 80 Peers, which is twice the size faced by the last Labour Government when they were in power.

Lord Forsyth of Drumlean (Con): Will my noble friend clarify the position in respect of the appointments of new Peers who are also special advisers to the Government and, in particular, whether it is correct that they will be appointed to this place but not able to speak? That surely would make a nonsense of the importance of the role played by Peers on both sides of the House.

Baroness Stowell of Beeston: There is a convention that if a new Peer is a special adviser, they will be able to participate in the Division Lobbies but not contribute to debates. We do not necessarily know what decisions those individual special advisers will make as far as when they will make changes that will allow them to make a contribution, such as the most recent special adviser to join your Lordships' House, my noble friend Lady Helic, who I am sure all noble Lords will feel has been a very welcome addition to our ranks.

Lord Tyler (LD): My Lords, given that there are now many more people who favour the total abolition of your Lordships' House than support its retention on an appointments basis, do the Government recognise just what a dangerous game they are playing by resisting all serious democratic reform? Do the Government also recognise that the previous Government succeeded in getting a Bill through Second Reading in the House of Commons with a very large majority? Does the Leader of the House think that the Prime Minister, who says that he regrets the lack of progress of that Bill, has the guts now to reintroduce it?

Baroness Stowell of Beeston: The noble Lord and I had exchanges on this matter only recently just before the Recess, when I reminded him that the Bill to which he refers did not succeed in leaving the House of Commons. In our manifesto, we made it clear that that is not a priority for this Parliament. We see it as a priority to address the size of the House, and that is where we will focus our energies

Baroness Smith of Basildon (Lab): My Lords, the noble Baroness will have heard the views expressed from across your Lordships' House about size. I have to say that it is not enough to suggest, as she did in her recent article, that Peers should turn up less often. If we are effectively to address this matter, which we believe we should, it cannot be against a backdrop of more and more appointments. This Prime Minister has appointed more Peers per year than any other Prime Minister, with a greater proportion of Peers to the government Benches and fewer Opposition and Cross-Bench Peers. What discussions has the noble Baroness had with the Prime Minister on this issue? Did they discuss the constitutional convention? Does he recognise that if meaningful change is to be made, he cannot continue with the scale and number of his appointments?

Baroness Stowell of Beeston: The noble Baroness knows my party's position on a constitutional convention. We do not feel that that is a priority at this time. For me, as Leader of the House, it is important that we are an effective Chamber and that we make a very important contribution to the legislative process. It is right to focus on attendance rather than absolute numbers because the average rate of attendance is under 500. As effective Peers, we make our contributions when our experience and expertise are relevant to the matter at hand.

Disabled Children: Sexual Exploitation

Question

2.54 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government what steps they are taking to protect children with learning difficulties and disabilities from sexual exploitation.

Baroness Benjamin (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare an interest as a vice-president of Barnardo's.

Lord Ashton of Hyde (Con): My Lords, the Government's report, *Tackling Child Sexual Exploitation*, sets out the steps that the Government are taking to protect children from sexual exploitation, including children with learning difficulties and disabilities. For example, we are exploring how personal, social, health and economic education training and resources for schools might be tailored for staff and special schools, and have provided £4.85 million for services supporting child sexual abuse survivors, including vulnerable children with learning difficulties.

Baroness Benjamin: My Lords, I thank the Minister for that Answer. This week the report "Unprotected, Overprotected", by Barnardo's and other organisations, concludes that children with learning difficulties are particularly vulnerable to sexual exploitation. The Rochdale serious case review showed that five out of six children who were sexually exploited over a long period had learning difficulties and disabilities. What action have the Government taken to improve the support for this group of children, who often miss out on the information and advice they need to keep safe? Will they issue new guidelines on how sex and relationship education should be taught to vulnerable young people who suffer from learning disabilities? I hope they will show that they take this case really seriously.

Lord Ashton of Hyde: My Lords, there are few things that we take more seriously. Existing guidance and training for safeguarding professionals includes reference to the particular vulnerability of children with learning difficulties and disabilities. We are currently revising the 2009 *Safeguarding children and young people from sexual exploitation* guidance, and we will strengthen it so that professionals are better equipped to support children who are particularly vulnerable to CSE, including those with learning difficulties and disabilities. As I mentioned in my earlier Answer, we are considering how PSHE materials might be best adapted and used

[Lord Ashton of Hyde]
by staff in special schools. This Thursday my honourable friend the Home Office Minister Karen Bradley will be speaking at the event hosted by Barnardo's in connection with the report mentioned by the noble Baroness—I pay tribute to Barnardo's for its work in this field—and she will reiterate the Government's commitment to supporting vulnerable children.

Baroness Howarth of Breckland (CB): My Lords, I commend the Government for the work they are doing in education, but education alone will not improve the welfare of children. I would like the Minister to say something about what he is doing to support social workers, the people in the front line of this work, who have to pick up such cases and take them forward.

Lord Ashton of Hyde: My Lords, it is true that this problem is a multidisciplinary one, and involves not only social workers but the police, teachers and the health service. We are trying to co-ordinate that across the piece, and the Prime Minister has appointed a task force chaired by Nicky Morgan, who is going to take the whole issue of child protection and try to bring to bear the necessary government resources, including social workers. That will continue to be a high priority.

Baroness Uddin (Non-Afl): My Lords, I declare an interest, in that I have an adult son with autism. In the light of the Barnardo's report, what is the Minister doing to make sure that all educational institutions ensure that independent advocates are available, particularly to those with learning difficulties, when a child or a parent reports sexual abuse? In my experience there are still serious shortfalls in many of our institutions.

Lord Ashton of Hyde: The noble Baroness has highlighted a particular instance. The training is constantly being reviewed, and that could of course be taken into account: the ministerial task force will also take such things into account. For example, the Ministry of Justice has just recruited 100 more registered intermediaries to help especially vulnerable children and witnesses go through the criminal justice process, which is a difficult but necessary part of dealing with this problem.

Lord Wigley (PC): My Lords, I declare my interest as vice-president of Mencap on a UK-level and in Wales. Are the Government giving any attention to the possible need for an augmented level of punishment for those guilty of such crimes against people with learning disabilities?

Lord Ashton of Hyde: I did not quite catch what kind of punishment the noble Lord mentioned.

Lord Wigley: Augmented.

Lord Ashton of Hyde: I have no knowledge of that and have not been told anything, but I will find out about it.

The Lord Bishop of Peterborough: My Lords, given that abused children often do not show symptoms for some years, and that children with learning disabilities tend to show symptoms in different ways that are not as easily recognised, does the Minister agree that all children who are subject to sexual harm prevention orders or sexual risk orders should receive assessment of their needs and therapeutic support even before signs or symptoms are shown?

Lord Ashton of Hyde: That is a very sensible suggestion. These symptoms take time to manifest themselves. However, we realise that people with special needs have needs which go on beyond the conventional age of adulthood. The relevant statutory guidance for young people with special educational needs and disabilities extends to the age of 25.

Baroness McIntosh of Hudnall (Lab): My Lords, will the noble Lord reflect on the question from the noble Baroness, Lady Howarth, and tell us what impact he thinks cuts to local authorities will have on the services that are necessary to link up the various agencies helping with child protection that he mentioned?

Lord Ashton of Hyde: As I said, this is one of the Government's highest priorities. Across the piece, we are spending more money on social services and the police to deal with this problem, so I do not expect a difficult situation to arise. I could give a list of additional money that we have spent in this area; it is one of our highest priorities.

Airports Commission

Question

3.01 pm

Asked by ***Lord Spicer***

To ask Her Majesty's Government what is their estimate of the cost of the Airports Commission, chaired by Sir Howard Davies, including the costs of commissioning and analysing the commission's final report.

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, up until the end of August 2015, the cost of the Airports Commission is around £13.4 million across 2012-13 to 2015-16. This covers buildings, staff and IT costs, consultancy, publishing, travel and hosting public consultation events. The final cost will be known once the commission secretariat has been dissolved, following which we intend to publish the final figures. We do not hold estimates of the cost of commissioning or reviewing the findings and conclusions of the Airport Commission's report.

Lord Spicer (Con): My Lords, would it not therefore be a terrible waste of money if the Government were to reject the unanimous advice of the commission to go ahead with developing Heathrow through a third runway in such a way as to make it again the No. 1 international airport in the world, which it certainly was when I was Minister for Aviation?

Lord Ahmad of Wimbledon: My noble friend makes a very valid point about the detailed work done by the Airports Commission. I again put on record our thanks to Sir Howard Davies and his fellow commissioners for their work. As I said before the Recess, the Government have received the report. As my noble friend will be aware, the Prime Minister has established a Cabinet sub-committee on this issue and will announce the way forward by the end of this year.

Lord Soley (Lab): Will the announcement be made before the end of the year, and if not, why not?

Lord Ahmad of Wimbledon: My right honourable friend the Prime Minister has made clear to the Leader of the Opposition in the other place that the decision will be made and will be made by the end of the year.

Baroness Randerson (LD): My Lords, is it the Government's view that the Davies commission's remit gives sufficient consideration to the impact of a third runway on the Government's plans for a northern powerhouse? Are the Government convinced that the development of Heathrow will not have an adverse impact on, for instance, Birmingham and Manchester Airports?

Lord Ahmad of Wimbledon: The Government believe very strongly in the regional airport network. As I am sure the noble Baroness is aware, Manchester announced earlier this year—at the beginning of the summer in June—a £1 billion investment over the next 10 years. Indeed, we have seen further investment in, for example, road surface improvements around Birmingham, Bristol and Doncaster Airports, so various investments are being made which will reinforce the northern powerhouse.

Lord Bilimoria (CB): My Lords, Sir Howard Davies and his commission have put a lot of work into coming up with their recommendation, which has been decided as the one to go forward with. Why do the Government now have to appoint another sub-committee and take even more time? There is probably need for expansion of both Heathrow and Gatwick, but let us get on with Heathrow because it is affecting our competitiveness as a nation. Could the Minister assure us that this is going to be taken quickly and it will be established and put in place really fast?

Lord Ahmad of Wimbledon: The noble Lord is quite right. I agree with him that this has been a detailed report, which the previous Government, under the current Prime Minister, commissioned in 2012. The report has been received, and I am sure the noble Lord would agree with me that it is time now to give the detailed report considered opinion. It is quite right that there should be a sub-committee of the Cabinet to take this decision forward. I reiterate the point that the Prime Minister has made quite clear: a decision will be made by the end of the year.

Earl Attlee (Con): My Lords, does the Minister recall that I spent the first two years of the last Parliament dodging this very issue? The reason was the helpful policy input from the Liberal Democrat party. Does the Minister recognise that the Government really will have to make a decision on this matter this year?

Lord Ahmad of Wimbledon: I would never accuse my noble friend of dodging anything. If he did so that was his assessment; I thought he handled questions in this respect very ably from the Dispatch Box. I reiterate that the Government—and indeed the Prime Minister—have made it clear that a decision will be made and it will be made by the end of the year.

Lord Clinton-Davis (Lab): Whatever option is pursued, is it not clear that the cost will be enormous? Is not the real issue this: how best and how quickly we can advance British aviation in the best possible way? Surely it is apparent that there is only one answer and it is becoming blindingly obvious—Heathrow.

Lord Ahmad of Wimbledon: Again, I feel I am repeating myself. The Government have made their position very clear. The report has been received, it is being considered and a decision will be made. Of course the Government recognise the importance of Heathrow as well as other airports around the country. We continue to regard the importance of aviation in developing, furthering and strengthening the British economy.

Lord Davies of Oldham (Lab): My Lords, as well as the noble Earl, Lord Attlee, presumably the Secretary of State for Transport from time to time considered the issue of Heathrow and answered one or two questions on it in the other place. It is inconceivable that the Government are acting as if they are in total ignorance of the main features of what the report has been considering. I cannot understand—nor can the House, I believe—the additional delay in either endorsing that conclusion or saying that, in fact, the Government had an alternative strategy all along.

Lord Ahmad of Wimbledon: There is no dithering. Let us be quite clear here: it was the previous Government under the current Prime Minister, the same Prime Minister, who commissioned the report. The report was commissioned in 2012. The findings were received—very detailed analysis I am sure the noble Lord recognises—and there were 70,000 responses contained within the commission's report. Therefore, it is quite right that a considered opinion is given to the commission's recommendations, and that decision will be made not in due course, as I say again, but as the Prime Minister—the head of the Government—has made clear, by the end of this year, that is 2015.

Lord Foulkes of Cumnock (Lab): My Lords, I wonder if the Minister would make an educated guess—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): Order. It is actually the turn of the Liberal Democrat Benches.

Baroness Falkner of Margravine (LD): My Lords, in making the decision on Heathrow or Gatwick, depending on which it is, will the Government publish after the decision the considerations of the legal delays that might occur depending on which decision is taken? It would seem to me that the advocates of Heathrow should surely want for the first spades to start the construction work as soon as possible. However, Gatwick seems more plausible in terms of fewer political and legal interventions.

Lord Ahmad of Wimbledon: The Government have already made clear that they wish to proceed on whatever option is pursued on a speedy basis. That is why we set up the commission report in the first place and the Government have made clear that they will take a decision. In terms of the proposal about legal issues or whatever, it would be speculative for me to comment on those on this occasion because that decision has yet to be taken.

Chairman of Committees

Motion to Appoint

3.09 pm

Moved by ***Baroness Stowell of Beeston***

That Lord Laming be appointed to take the Chair in all Committees for the remainder of this Session.

Motion agreed.

Energy Bill [HL]

Committee (1st Day)

Relevant documents: 6th Report from the Delegated Powers Committee, 4th Report from the Constitution Committee

3.10 pm

Moved by ***Lord Bourne of Aberystwyth***

That the House do now resolve itself into a Committee upon the Bill.

Baroness Worthington (Lab): My Lords, I rise briefly before the House commences Committee to raise a very serious objection and concern that relates to the Bill. At present we do not have the impact assessment for the Bill, which we were promised before our deliberations began, and they begin now. I would like to hear from the Minister why this delay has happened—in fact, why the Bill was not published with an impact assessment in the first place. I also seek assurances that when the impact assessment is published, it will contain full details of the assumptions on which the Bill is based. Namely, there is the Government's continued assertion that we are on track to meet our renewables targets, which relates to Part 4. That is incredibly important and sensitive, since we have had many representations from industry about the impact of the Bill. It should be recalled that those elements of the Bill were not subject to public consultation, so the impact assessment is incredibly important for us to be able to consider the impact of the Bill. The other assumption that the Government now seem often to quote is that the levy control framework is spent and there is no more money left. We need to see details of those assumptions and the figures that underlie them but we do not have an impact assessment. I am very concerned about this issue and I look forward to a response from the Minister.

Lord Foulkes of Cumnock (Lab): My Lords, I should like to say a word in support of my noble friend Lady Worthington because this is not just an isolated example of the Government treating this House, and Parliament, in a cavalier fashion. If I may give another example, next week we were due to have a debate on English votes for English laws. It was promised again and again by the Leader of the House, the noble Baroness, Lady Stowell—I notice that she has disappeared—yet it has been switched. We are to have a debate on the size of the House, which is not an immediately urgent matter, yet the Commons will make a decision at some point about English votes for English laws and we were given the assurance that we would be able to feed into that. My understanding—I hope that the Chief Whip will answer this—is that the decision to move the debate on English votes for English laws off the agenda for next week was taken unilaterally by the Government and that when the Opposition were consulted, we said that we did not want to change. We wanted to have the English votes for English laws debate because it was promised to this House. That is another example of the cavalier way in which the Government treat this House, wanting to bulldoze their business through. It is about time that some people in this House stood up and said that Parliament has a responsibility to challenge the Government. The Leader of the House may think that we should come in only one day a week when we want to say a few words but we are here to hold the Government to account.

Lord Taylor of Holbeach (Con): The noble Lord has asked that I say something about the decision to change the agenda for the coming two weeks to allow the House to discuss the whole business of its membership. I think the House is acutely conscious of the issues raised in the media and by other noble Lords. I felt it was right and proper, as did the Leader of the House, that we should have an opportunity to debate this while we are here. As the noble Lord will know, we had promised a debate on EVEL. He made a point about that. Subsequently, this House decided to support very strongly a Motion from the noble Lord, Lord Butler, for a Joint Committee of both Houses to consider this matter. There has been no reply to this Motion from the House of Commons and, in the absence of a reply, if I am honest, there is not much that the Government could say in this House on this issue at this time.

I felt it was proper that we should deal with something of immediate concern to this House. That is why the Leader informed all sides of the House. There were consultations and there were reservations about changing business, but nobody does this freely or without proper

consideration of what is right and proper. I am sure all noble Lords are pleased that we will have the opportunity to debate in full the future of this House and its future reform in terms of the Motion tabled by the Government and the Motions of the noble Lord, Lord Pearson, and the noble Lord, Lord Steel, which will be debated at the same time next Tuesday.

3.15 pm

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, perhaps I may address the points raised quite fairly by the noble Baroness, Lady Worthington, in relation to the Energy Bill and the impact assessment. I had anticipated that we would have an impact assessment on the Bill by this stage, to be published ahead of Committee. I have been chasing the matter through the Recess, including this morning. I heard just before I came in that it has now been cleared on the Oil and Gas Authority. We have instructed that it be separated because the issue that caused the delay was the dialogue about the grace period on wind. No later than tomorrow, we will publish the impact assessment, which the noble Baroness has rightly been chasing. I hope that satisfies the noble Baroness.

Motion agreed.

Clause 1 agreed.

Clause 2: Transfer of functions to the OGA

Amendment 1

Moved by ***Baroness Worthington***

1: Clause 2, page 2, line 5, at end insert—

"( ) The Secretary of State shall, within one year from the date of coming into force of this section, undertake an assessment of the fitness for purpose of the OGA's powers in relation to relevant activities, and shall lay before each House of Parliament a report of the findings."

Baroness Worthington: My Lords, I thank the Minister for his response and for chasing the impact assessment. Can I take it that the full impact assessment will be published tomorrow, or will it be just the oil and gas part? Perhaps he could clarify that point for me.

Looking at Clause 2, our Amendment 1 is essentially a probing amendment but it is intended to enable us to debate this part of the Bill. At Second Reading, several noble Lords raised the fact that things are changing fast in the North Sea and in the oil and gas sector more generally. We have an undertaking to implement the findings of the Wood review and I am sure the cross-party consensus on that remains strong. However, the Wood review was published in June 2013. Here we are in September 2015 and the pace of change since that date has been quite remarkable.

We are seeing a steady decline in North Sea production. Outputs of oil and gas are already around 40% lower than in 2010 and lower than at any time since 1977. The first quarter of this year marked the seventh consecutive month in which the UK has been a net importer of petroleum, after having been a net exporter since 1984. The figures for 2014 show that the oil and gas sector as a whole lost £5.2 billion—its worst figure since the 1970s—and total revenues were lower than at any time since 1998 at £24 billion. I quote these figures, which were sourced from DECC's own analysis, to highlight how things are changing in this sector and in the North Sea specifically.

The other new element is that decommissioning is now a reality and is starting to incur costs. There was a feeling a few years ago that decommissioning was the beginning of the end. Now it is being seen as the beginning of a new industry and there is considerable decommissioning activity going on, not least because many of these assets have been in place for decades, perhaps well beyond their imagined timespan. They are therefore reaching the end of their usable lives, even if we wished to keep using them. The purpose of the amendment, then, is to ask for a report to Parliament on the fitness of the powers now being created for the OGA. We have suggested that it should be produced within six months but we do not have a fixed view; a year would be equally fine. However, we must make sure that we set off on the creation of this new quango or arm's-length body with the right set of objectives.

We will debate amendments later today where we will talk more about the need to update the objectives, particularly in relation to the storage and transportation of waste greenhouse gases. It seems clear that, as we look at the implications of climate change, which are now uncontested—I think it is settled that we need to decarbonise our energy systems—that will change the economics of all fossil fuel activity. If we are to meet our targets, either we will be forced to decarbonise our use of fossil fuels using CCS or we will see a drastic reduction in the demand for those products. Either of those has significant implications for the UK economy and for the oil and gas sector, hence the desire to table an amendment that enables us to have this debate and to require that the OGA be kept up to date with the most recent developments in this sector.

As I have said, oil and gas prices have fallen and there seems to be no sign of their coming back up again any time soon—of course these prices fluctuate but this now seems to be a systemic drop—so we must have a body with the right remit and objectives to do the job of making sure that, while we maximise the economic return from the North Sea, we accept that this may not be solely through the recovery of hydrocarbons but might, of necessity, require a completely new industry that not only extracts hydrocarbons but returns the waste gases to under the sea. We are blessed with a natural repository for many billions of tonnes of waste greenhouse gases, which I am certain we will need if we want to keep the costs of decarbonisation under control and ensure that we are decarbonising cost-effectively.

I shall speak also to Amendment 3 in this group. Amendment 1 requires a report to be made on the fitness of purpose of these powers, but Amendment 3 is more specific and seeks to change the primary objectives of the OGA to include CO_2 transportation and storage. It would negate the need for many of the subsequent amendments that we will talk about today

[BARONESS WORTHINGTON]
because it would bring about a high-level change which would mean that we would not have to catch lots of subsequent clauses and add references to CCS and storage and transportation to the powers being taken here. Many amendments that we will come to today relate to how, as drafted, there is reference back to the principal objective of the Bill and the fact that currently that principal objective does not include the transportation and storage of CO_2. Therefore, many of the amendments are trying to reinsert it. We could take another approach, such as the one set out in Amendment 3, which is simply to change the primary objective. There is merit in our discussing that, particularly as CCS offers a lifeline for the future development of hydrocarbon use in the UK by being able largely to decarbonise our use of those fuels.

CCS is essential in that it will enable us to keep using hydrocarbons but, as I alluded to earlier, it is equally important to keeping the costs of decarbonisation contained. At the global level, the Intergovernmental Panel on Climate Change has stated that if we do not have CCS on a global scale, we are likely to see the costs of decarbonisation being double what they would be otherwise, while in the UK the Energy Technologies Institute has estimated that without CCS, by 2050 the costs of decarbonising to reach our targets could be in the order of £40 billion to £50 billion a year more than if CCS is deployed.

This is an important and timely subject. We are seeing projects in the UK moving forward to deployment to enable us to make use of the North Sea. I am sure that the OGA will say, "We would rather have our remit nice and narrow; please leave us alone". That is fine, but we are moving to a time when the social contract between the citizens and taxpayers of the UK and the offshore oil and gas operators is changing. The oil and gas industry largely used to get on with what it was doing—delivering us rather nice, large sources of tax revenue—and everyone was happy. That is shifting. The revenues are falling, as we have seen in recent years, decommissioning costs are rising and the OGA itself, as we will come to debate later this afternoon, will potentially receive public funding to go about its business. This is no longer purely a commercially focused sector and it requires government to intervene to help it. It has the opportunity to receive public funding—the oil and gas operators already receive generous tax breaks that enable them to offset their decommissioning costs. The social licence between us, the citizens of the UK, and the offshore oil and gas operators is shifting. We need to make sure that the OGA reflects that change of balance and takes on a role fit for the 21st century.

We should always consider very carefully when we create new public sector costs. The Government have pointed out on numerous occasions that we are living through a time of austerity, and it seems a bit strange that we should be creating a new area of public spending here without requiring this to be a comprehensive body that takes into account a whole range of views and issues and keeps pace with current events. As good as it was, the Wood review—which I am sure will continue to receive cross-Bench support—is over two years old, and two years has been shown to be quite a long time in the oil and gas sector, hence the need for these two amendments. I look forward to the Minister's response and I beg to move.

Lord Howell of Guildford (Con): My Lords, I will say a few words in support of the spirit, at any rate, of this amendment from the noble Baroness, Lady Worthington. I declare an interest as chairman of the Windsor Energy Group, adviser to various energy companies, as in the register, and president of the Energy Industries Council. As the noble Baroness has rightly said, this is a sensible requirement for the future because, as she has also said, the North Sea is a mature province and the industry is clearly undergoing huge change—probably the biggest period of change since the 1970s and early 1980s. Most of the talk in the industry at the moment is about the impact of the halving of the oil price. Even in this morning's papers, we see some pronouncements by experts on the possibility of whole areas of the North Sea shutting down unless completely new arrangements and management structures can be devised to cope with the new situation.

Obviously, behind this lies the question of whether the price will stay down. My own view is that, barring high-impact events like huge new political upheavals beyond the ones we already have in the Middle East, there will be no obvious bounceback in the price for a very long time. People talk as though the OPEC countries had some choice of policy—they could just cut production and the price would go up. Well of course that would not happen. They have lost control of the price. Russia has no intention of co-operating, and the shale industry in America, although there have been a few bankruptcies, will come back again and increase production as soon as the price rises. So the OPEC countries would gain nothing. Iran of course may be coming on stream as well. All this means that the industry in the North Sea is now facing a period when, on the supply side, there will be a lot more oil. On the demand side, there will probably be rather flat demand, whether from China, from Japan—which is going back to nuclear so will not need so much—or, indeed, from the United States or us, where the demand for oil is flat or even falling.

This is a completely new management challenge. We must have some reassurance, at least in a year's time but preferably from the start, that the new regulatory authority—the OGA, with its expanded powers into a separate agency, as is now proposed—has the facilities, opportunities and abilities to manage completely new requirements. We have to see a province that is going to adapt to low prices, that develops completely new opportunities and new technologies, not unrelated to the points made by the noble Baroness about the possible disposal of carbon dioxide through CCS techniques, and that learns from other countries. Norway in particular may have a lesson or two for us on how to maintain a mature province and develop new opportunities at sea.

3.30 pm

When I had some responsibility for these things in the 1980s, I was told that the oil in the North Sea was going to run out in 1989. That was the experts' forecast, but it turned out to be spectacularly wrong. Today we

have seen a fantastic triumph of UK engineering over 20 or 30 years, a vast contribution to our revenue—I think it is estimated in today's money at about £330 billion—and we have seen the ability of the industry to cut costs in the face of new challenges. It will have to cut costs dramatically in the immediate future if many areas are to stay in business. It will need major help with decommissioning, which would have arisen whether or not the oil price had fallen because a lot of the platforms and infrastructure in the North Sea are coming to the end of their life.

We will need to see much greater emphasis on and encouragement for rapid and extensive new drilling. We are not drilling nearly enough in the North Sea, and again the Norwegians could teach us a thing or two about this. The incentives for new drilling seem to be much too targeted and fussy, and perhaps should be more general and allow all kinds of new innovations in drilling and discovery to go on. Various figures are given but there are said to be between 12 billion and 24 billion barrels of oil still in the North Sea. This is big money, and that oil could still contribute a vast amount to both our revenues and our national production.

Against that background, we certainly need to see in a year's time another very close review of how the new Oil and Gas Authority is getting on. I hope therefore that either the amendment or its spirit can be accepted and incorporated by Ministers.

Lord Oxburgh (CB): My Lords, I shall speak to Amendments 7, 22 and 23 in this group. The main purpose of the Bill is the more efficient and effective management of the remaining resources in the North Sea, and it seems sensibly directed towards that end. However, it is important to remember, as others have touched on, that the Bill has enormous implications for the fledgling CCS industry. CCS is able to use the same infrastructure that was used for production and the same subsurface analysis, and it is important that it has access to those.

Before I go any further I should declare an interest as president of the Carbon Capture & Storage Association. Perhaps it is worth pointing out that I helped to establish this association around 10 years ago, just as I retired from Shell, because I saw no alternative to CCS—no other way of managing the emissions that were going to be produced by the continuing use of hydrocarbons over the coming decades, and avoiding the damaging climate change associated with those, unless we had something like CCS. For that reason, it is important that we bear this in mind today.

I hope that the Government will regard the amendments as helpful; they are certainly intended to be. Their main aim is to ensure that CCS is not inadvertently inhibited or prevented through the application of regulations and procedures that were not designed for those purposes. The Bill is based around the pre-existing Energy Act, by which CCS was not envisaged.

Amendment 7 is designed to remind the OGA that, over time, its priorities may change. The OGA is primarily staffed by people whose backgrounds are in a variety of aspects of hydrocarbon exploration, production, management and regulation. It is not beyond the realms of possibility that CCS is not at the forefront of their thinking. It is quite important that this should be made clear, and that is what the amendment of the noble Baroness, Lady Worthington, does.

Amendments 22 and 23 are both intended to ensure that practitioners of CCS have the appropriate standing and access in order to operate efficiently and effectively when doing their business. It is apparent from the amendments tabled by the noble Baroness, Lady Worthington, and other noble Lords that this concern is fairly widely held. Had this debate not been held today there might have been much more opportunity for Members with such concerns to consult with each other, with officials and with Ministers and we might well have ended up with fewer and more coherent amendments. We are where we are, but this is a real concern.

Given that CCS is a central plank in the Government's energy strategy I hope that they will view these amendments positively. The amendments can certainly be improved and if the same objectives can be achieved in a more efficient way, I and, I am sure, others would be very happy to discuss this matter with Ministers and officials.

My final point is a trivial one in one sense but not in another. The Bill refers in a number of places to existing legislation—earlier energy Bills. It would be enormously helpful if officials preparing Explanatory Notes, who must have immersed themselves in the existing legislation, were able to include links in the Explanatory Notes to the online sources where that existing legislation can be found. We could all save a great deal of time and probably quite a lot of paper by following such links directly.

Baroness Liddell of Coatdyke (Lab): My Lords, I will not delay the House long because what I wanted to say has been said much more eloquently by my noble friend Lady Worthington and by the noble Lords, Lord Howell and Lord Oxburgh. To echo the last point made by the noble Lord, Lord Oxburgh, giving us some indication of the reference points in previous energy legislation really would make life a lot easier for all of us.

My primary point is that this is an opportunity for some lateral thinking. For those of us who have been listening to the trailers for Jim Naughtie's programme about the North Sea over a period of 40 to 50 years of exploration, it is astonishing to recognise the change that has taken place just in the past two to five years, or slightly longer. The major change has been that many of the larger oil companies have reduced their footprint in the North Sea and we have seen the entry of a number of independents. As the Wood report set out the case for setting up a regime of collaboration, it is important to bear in mind that for the independents, who are competitors one with another, it can be harder to get that degree of co-operation at the moment, when the North Sea is becoming more difficult. So would it not make sense to review where we are in a year's time to make sure that we do not have to have yet another energy Bill before both Houses? The change is phenomenal, and we must be prepared for it at every opportunity.

[Baroness Liddell of Coatdyke]

I greatly admire the work of the noble Lord, Lord Oxburgh, on carbon capture and storage. It is the holy grail for this country, which has so much fossil fuel. I am very concerned about the environmental impact of the continuing use of fossil fuels, but I am also concerned about security of supply issues. The flexibility that fossil fuels can give us when there is a potential security of supply crisis is very important, and we will take a lot of the sting out of the tail if we have operational carbon capture and storage.

This is not a political issue—it should not be a partisan issue across this House. This is a common-sense group of amendments that allows us a bit of lateral thinking and allows us to make legislation at a time when considerable change is still going on, not just in the UK continental shelf but across the energy industry.

Lord Deben (Con): My Lords, I declare an interest as chairman of the Committee on Climate Change. I echo the words of the noble Baroness that this is not a party-political issue but is much wider than that.

As was clearly shown by my noble friend, we live at a time in which the issue of energy, in particular oil and gas, is changing so fast that we have to be extremely careful that we do not set up systems that are not capable of easing alteration to meet new circumstance. It may be that the major Amendment 1, which was proposed by the noble Baroness, Lady Worthington, is not something that the Government will wish to be tied to; the particular time and so on might well be better expressed. However, I hope that the Government will take seriously the need to have within this legislation the means whereby this House can address the speed with which these things are changing and have the opportunity to make such alterations as become necessary—because we all know that however well one writes legislation, it is surprisingly easy to move to a situation in which you wonder why on earth you did not put that in, or why on earth that was not there.

Secondly, it would be very odd to produce legislation that did not allow specifically for the transportation and storage of greenhouse gases. This will not change in the future; it is central at the present time. The Committee on Climate Change has advised the Government of the importance and centrality of carbon capture and storage for many of the reasons that have already been addressed. However, the noble Baroness was right to say that there may well be an interim period in which we will need to use more fossil fuels than we would like, and the only way we can do that without having a damaging effect on the climate is of course by using carbon capture and storage. Britain has a leadership role in that and has already committed significant amounts of money to seek to ensure that we can do it. It would be simply odd to produce a Bill at this moment without enabling ourselves specifically to talk about carbon capture and storage.

Thirdly, it is important that this is in the Bill itself. I spent a long time as a Minister—some 16 years—and one thing I learned very rapidly was that it is very easy for institutions to say, "It's nothing to do with us because it isn't in the Act; that's not where our responsibility lies". I remember very nearly having a stand-up row with the person who was then responsible for the gas industry, because what should be done seemed so obvious, and she was determined to say that she could not do it because it was not in the Act. I thought that with a bit of imagination she would be able to do it, but that is a different issue. I do not want the need for imagination to be required here. It is one of the rarest talents and therefore it is a quite a good idea to make sure that we put into the Bill the ability—and also insist that it is part of the responsibility—of the new institution.

3.45 pm

Lastly, I want to echo the comment about the people who will naturally be at the heart of this process. All of us are creatures of our experience and knowledge and all of us find ourselves more at home with the things with which we are at home. In this particular area it is easy to have reached the sort of level that would mean that we would be suitable for work in this new authority without perhaps spending a great deal of time on carbon capture and storage. So there is a serious reason why we should add to the Bill in this way and I hope that my noble friend, if not necessarily agreeing to any of these amendments—and, like others, I say that it is a collection that might well have been brought together more effectively—will say, to benefit the Committee, that he will bring forward amendments to at least ensure that the transportation and storage of greenhouse gases becomes a serious part of the activities that we are discussing today.

Baroness Maddock (LD): My Lords, we on these Benches very much share the concerns voiced in all parts of the House today about this Bill. It may have two main parts—on the oil and gas industry, and onshore wind—but I agree with the noble Lord, Lord Oxburgh, that we have been asked to deal with it in a very unsatisfactory way. We had Second Reading on the last day of Parliament before the summer recess, and here we are in Committee today. I find that quite difficult.

In addition, amendments were tabled in the middle of last week and we still do not have some of the information we need to look at the Bill properly in Committee—and it is not just me saying this. Other people may have big offices to help them, but the beauty of this House is that we have lots of Back-Benchers with expertise who would like to take part in debates such as this; if we treat Bills in this way, it is very difficult for them to take part. I feel particularly strongly about energy Bills. Some of us have dealt with several energy Bills in this House, and we often find that very few people take part. That is partly because such Bills are often technical and, if Back-Benchers are going to take part, they need time to look at what the amendments mean and to get advice on them. I hope the House authorities will look seriously at this issue. I can understand some of the reasons why this has happened, but the situation is very unsatisfactory.

As I said, we agree with many of the things that have been said today. In setting up the Oil and Gas Authority, the Government are proposing, as we heard at Second Reading, to give some of their powers to this body. The Oil and Gas Authority will have ownership of carbon dioxide storage licensing but the responsibility for policy and strategy is going to remain, as I understand it,

with DECC. The problems associated with this were highlighted by the noble Lord, Lord Deben. I understand from briefings I have received that DECC and the Oil and Gas Authority have been rather reluctant to consider applying the authority's expertise to support future strategy development. I hope the Minister will tell us a little more about that. As the noble Lord said, the main reason seems to be that it is beyond the authority's licensing remit. The problem is that if people do not think that something is within their remit, they do not think outside the box and they will not do anything else. The authority said that it was not very keen on that happening; it thinks that it is outside the scope of its remit and it is not willing to fund it. I hope the Minister will reassure us on this issue and that, as we scrutinise the Bill not just in Committee but on Report, we can deal with some of these matters. I have also received a rather interesting letter from Professor Stuart Haszeldine of the University of Edinburgh on how we might go forward, and perhaps there will be a chance to discuss that at a future date.

It seems to me and my colleagues on these Benches that there is a danger—I am not the only person to say this today—that the Bill might create institutional barriers to the development of carbon capture and storage. Other noble Lords have said today that that does not help us with the purpose of the Oil and Gas Authority, which is to make sure that we make the best of what is in the North Sea. I am sure that the Minister will try to respond to that.

Many of the amendments before us today cover these issues—as everybody has said, we have a whole series of amendments on the same area—and had we not been so rushed into considering the Bill, we might have been able to address them more logically. However, I hope that the Minister will sense the feeling of the Committee and be able to respond positively. I hope he will assure us that he and the department are considering these matters, so that we can put such concerns to rest and come forward with something a bit more sensible on Report.

Lord Bourne of Aberystwyth: My Lords, perhaps I may first pick up on a point made by the noble Baroness, Lady Worthington on the impact assessment. It is only by splitting the impact assessment between the parts of the Bill dealing with oil and gas, and those dealing with wind, that we are able to publish tomorrow the impact assessment relating to the Oil and Gas Authority. I will update the Committee on Wednesday on where we are on the wind issue and on the dialogue about grace periods.

I thank noble Lords for the amendments and for the non-partisan way in which points have been made. I do not think there is a material difference—certainly not from the speeches I have heard today—between the Government's position on the importance of CCS and points made by noble Lords today. The best way forward might be if I go through where we stand at the moment in relation to the various amendments, and where we might be by Report.

My noble friends Lord Deben and Lord Howell, the noble Lord, Lord Oxburgh, the noble Baronesses, Lady Worthington and Lady Liddell, and various others spoke about the non-partisan nature of getting it right on energy for this country and for the planet—that is a very useful way forward and we certainly have a shared interest in it.

Let me address the pot pourri of amendments in this group. On Amendment 1, I acknowledge that it is important that regulatory measures be kept under review and for Parliament to be informed of the outcome of such activities. I also acknowledge the point made about the rapid nature of change in this area and in many other areas.

The noble Baroness's amendment would require a review to be undertaken within one year—rather than the six months that she mentioned; perhaps I misunderstood her—of the coming into force of Clause 2. Neither I nor the department think that such a period is sufficient to enable an effective review of the Oil and Gas Authority's activities, it being a new body in a new area. For this reason, I am not able to accept the amendment. However, the noble Baroness and others have raised interesting and valid points about a review which my officials are already considering, and we will return to this topic on Report. I hope that that addresses the immediate concerns. It is clear that we need to see how the legislation is working, how effective it is and whether there may be a need for a touch on the tiller or more. I accept that there is some need to look at how the legislation is working.

I thank those noble Lords who spoke to Amendments 3 and 23, which are significant and would extend the maximising economic recovery principal objective and, in the case of Amendment 3, the subsequent strategy to include transportation and storage of carbon dioxide. I accept that CCS is central to what we are seeking to do on decarbonisation, but I reassure noble Lords that things are happening—it is not as though we are not doing anything on this issue. The Office of Carbon Capture and Storage is already committed to comprehensive programmes on CCS, perhaps the most comprehensive anywhere in the world, to support the commercialisation of the technology and develop the industry.

My noble friend Lord Howell mentioned Norway, which is indeed important. However, Canada—where it is working on a commercial basis—is especially important in this context. Officials from DECC are going out to look at this on a fairly regular and sustained basis.

It is not as though no work is happening on carbon capture and storage. We are committed to a competition with up to £1 billion capital—that is current, and we will make an announcement on it early in 2016—plus operational support for large carbon capture and storage projects and a £125 million research and development and innovation programme. That is already happening.

I accept that we need to ensure that this dovetails with the work done by the Oil and Gas Authority. From my study of it, the Wood review—I accept that things move very quickly—said only two things about CCS, which perhaps illustrates how quickly it is moving, and both those are being picked up. The review suggested that the Oil and Gas Authority should work with industry to develop a technology strategy that will underpin the UK strategy of maximising economic return, and should include enhanced oil recovery and

[Lord Bourne of Aberystwyth]
carbon capture and storage. A draft is already being prepared on that, and it is going to happen. Page 49 of the Wood review goes on to say that the Office of Carbon Capture and Storage should continue to work closely with the Oil and Gas Authority and oil and gas licensees,

"to examine the business case for the use of depleted reservoirs for carbon storage and possibly EOR"—

or enhanced oil recovery. That, too, will be happening. I am sure that that provides some reassurance to the noble Lords who raised this issue.

If I may, I will come back to the purpose of the Bill, which seeks to incorporate all the key proposals of the Wood review into legislation. The Wood review has therefore to some extent tested and explored the new regime envisaged for the oil and gas industry, and the justifications for such changes are set out in the document. There has been no such exploration of how such an extension would affect carbon capture and storage, so I believe that more time is needed to consider fully how the OGA can take forward its role—it does have a role—in supporting carbon capture and storage.

Lord Deben: Would it not therefore be valuable if we give the new authority specifically the powers to do precisely that, rather than say that we will work on it and then do it? After all, if we give it those powers, work on it, and then find that it is not necessary, it will not do any harm. I always wonder why we do not do the things that will not do any harm when they might do some good.

Lord Bourne of Aberystwyth: As my noble friend I think knows, I am always in favour of doing things that would do good and against things that would do harm. Therefore, I will, I hope, be coming on to some points that may provide some reassurance.

Amendments at this stage could cause delays to the strategy that is set out in the Wood review and the legislation enabling the Oil and Gas Authority to carry out the vital functions that we have set out in regulating and stewarding the United Kingdom continental shelf. That said, the Oil and Gas Authority will have a key role in relation to carbon capture and storage. It will issue carbon dioxide storage site licences and approve carbon dioxide storage permit applications. We are also considering—this is important—how carbon capture and storage may be considered as part of a proposed decommissioning plan. The Oil and Gas Authority will take into account the viability of utilising captured carbon dioxide in enhanced oil recovery projects. I am very happy to engage with noble Lords between Committee and Report, along with officials, to see how we can do that. I hope that that provides some reassurance.

In addition, the transfer and storage of carbon dioxide is an important technology, which is why it is likely to form a key element of the technology and decommissioning sector strategies that will be developed by the Oil and Gas Authority in consultation with industry. These strategies will help to underpin the overarching strategy related to maximising economic recovery. I can therefore reassure noble Lords that we are certainly open to looking at how we move this forward, but I do not want to give the impression that we will change the principal thrust of the primary object of the Act, which is to maximise economic recovery. Certainly, we can explore ways of seeing how we can ensure that carbon capture and storage is incorporated within the remit of the work done by the Oil and Gas Authority.

I hope that I have covered the key points. One point was made by my noble friend Lord Oxburgh and echoed by the noble Baroness, Lady Liddell, which as a Minister I have much sympathy with. That is making sure that we have some clear reference points on legislation. I hope that we can let noble Lords have that because it is a point well made in this area as no doubt in many others—taxation, company law and pensions spring to mind as just three areas that would benefit very clearly. With my assurance that we are happy to look at how we can move this forward on both of the points made—a timely look at the legislation and how we can ensure that carbon capture and storage is not forgotten, and we certainly do not intend that it should be—I hope that the noble Baroness will be willing to withdraw her amendment.

4 pm

Lord Howell of Guildford: Can I press the Minister a shade more on something that we tend to forget when we debate these great issues of carbon capture and the future of the industry, and that is cost? It has been estimated that about £40 billion will be required to handle the decommissioning of outdated, redundant infrastructure in the North Sea. This whole process may be greatly accelerated if, as I earlier predicted, oil prices stay well down or go very much further down than they are already in the next four or five years. There is a huge cost there.

There is obviously vast cost involved in the piping of CO_2 into the North Sea, if that is the technology used, although brilliant minds like those of my noble friend Lord Oxburgh have thought of new ways of handling carbon without having to pipe it away into the North Sea into reservoirs. In some cases, reservoirs have to be suitably designed both to enhance oil production and to store the CO_2. All of these involve huge sums, which have not been mentioned. On top of that, the Government appear to be thinking in terms of further tax reliefs of all kinds in the North Sea, and I hope a great simplification of tax—it has been obvious that we have needed that for the past five or six years and I am glad that it is coming now, but again that is a lost revenue. Should we not give a little attention, as we push forward with this major reorganisation of the administration of North Sea and UK continental shelf affairs, to the enormous sums and where they will come from? I imagine that the answer is probably from the consumer and energy prices, but the Government have a duty to the public to explain some of the implications of what is now unfolding before us, including that colossal figure for decommissioning.

Lord Bourne of Aberystwyth: My Lords, my noble friend makes a valid point about the decommissioning costs and costs in general, which are very much at the forefront of the Government's thinking. He will be aware that the Oil and Gas Authority is essentially

being paid for by the industry. Other than initial seed-corn support of a small amount from the Government and the Government conceivably stepping in in an emergency situation, it is self-financing. But there are aspects that we will come to later in the legislation that talk about the public purse, this being one consideration that has to be borne in mind in relation to relevant activities. I need no persuading that costs are central to what we are looking at here.

Baroness Byford (Con): My Lords, the Minister has said that he is unhappy about having a review within a year, which is too soon. I can understand that, but can we press the Minister to come back with a suggestion of two years? Having followed other Bills through, I fear that this period will get extended. I hope that serious thought can be given, between now and Report, to putting forward a time before the final stages of the Bill are considered.

Lord Bourne of Aberystwyth: I thank my noble friend. I do not want to give a figure on the hoof; I am sure noble Lords would appreciate that that would be dangerous. We can look at this clearly between now and Report. If we are going to have a review we will have to say when it should take place. I would not anticipate coming back without a definitive idea of that.

Baroness Worthington: My Lords, I thank all noble Lords who have contributed to this debate, which has demonstrated the breadth of opinion and the cross-party consensus on the need for the Bill to be amended to ensure that carbon capture and storage—or certainly the storage and transportation elements of it—is on the face of the Bill, for the avoidance of all doubt. On these Benches, we will not be content for the Bill to leave this House without that issue being addressed. That said, I am grateful to the Minister for his response. I look forward to sitting down and engaging in the discussions he offered with officials and interested parties to see if we can come to an agreement on the review period for the legislation and the objective of the OGA. I understand the points that have been made, but if you create a body that has licensing powers over the storage of CO_2, which may well involve itself in meetings in relation to storage and transportation and which may be charging fees, how can this all be possible unless its primary objective includes a reference to that? The potential for judicial reviews or objections from industry would be much wider if we do not make it crystal clear from the outset that this is what we intend the OGA to do. The noble Lord has referenced the fact that this will be self-financing, but government amendments to be tabled today would mean that public money was potentially being given to the OGA. I reiterate that we will not be content unless something appears on the face of the Bill, but I look forward to sitting down with the Minister and his officials and, on that basis, I am happy to withdraw the amendment.

Lord Oxburgh: I join the noble Baroness, Lady Worthington, in thanking those who have participated in the debate and the Minister for his reply. I have one final question for him. Have the officials in his department conducted a study of how the Bill might impact CCS? There are serious questions there: if they have not done that, could they do so? It would be extremely useful as a lead-in to the next stage.

Lord Bourne of Aberystwyth: In answer to the noble Lord, officials have certainly been looking at how CSS fits in and dovetails with the Bill. We will continue to consider that and look at it if we are able to engage in discussions between now and Report. I am grateful for the noble Lord's comments.

Amendment 1 withdrawn.

Clause 2 agreed.

Schedule: Transfer of functions to the OGA

Amendment 1A

Moved by ***Lord Bourne of Aberystwyth***

1A: The Schedule, page 38, line 37, at end insert—
"( ) Omit paragraph 1(2)."

Lord Bourne of Aberystwyth: My Lords, Amendments 1A to 1F and Amendment 43 seek to amend the Schedule to the Bill to make amendments to other Acts and the Title of the Bill. Because the power for the Oil and Gas Authority to charge fees is provided for in Amendment 16, Amendments 1A to 1D are required. In particular, we amend the power to charge in Section 188 of the Energy Act 2004 and remove some other powers to charge fees. This illustrates the points that were made about the need for a destination table.

Amendment 1E amends the Schedule to insert a definition of the Oil and Gas Authority into the Energy Act 2011. This is consequential on government Amendments 33 and 34 relating to access to upstream petroleum infrastructure and on the transfer of functions to the Oil and Gas Authority in relation to access to upstream petroleum infrastructure. Amendment 1F amends the Schedule to remove the levy provisions from Section 42 and Schedule 7 of the Infrastructure Act 2015. These will be set out with amendments to this Bill—noble Lords should see Amendments 17 and 18—so that those using the legislation can find all the Oil and Gas Authority provisions in one place. I hope that that is helpful.

Amendment 43 amends the Title to include,

"to make provision about rights to use upstream petroleum infrastructure",

in consequence to Amendments 35 and 36, which insert new clauses on this topic. I beg to move.

Baroness Worthington: My Lords, as these are largely technical amendments bringing into line various pieces of legislation, I have no real objection and we support the government amendments.

Lord Bourne of Aberystwyth: My Lords, I am most grateful to the noble Baroness for that.

Amendment 1A agreed.

Amendments 1B to 1F

Moved by ***Lord Bourne of Aberystwyth***

1B: The Schedule, page 40, line 7, at end insert—

"Energy Act 2004

(1) Section 188 of the Energy Act 2004 (power to impose charges to fund energy functions) is amended as follows.

(2) In subsection (7), omit paragraphs (b), (h), (m) and (n).

(3) In subsection (8), omit paragraphs (da), (db) and (f).

(4) In subsection (12), in the substituted subsection (7A)(b), for "mentioned in subsection (8)(db)" (in both places) substitute "for which a licence under Chapter 3 of Part 1 of the Energy Act 2008 is required"."

1C: The Schedule, page 40, line 12, at end insert—

"( ) In that subsection, omit paragraph (e)."

1D: The Schedule, page 41, line 15, at end insert—

"(c) subsection (2)(d) does not apply."

1E: The Schedule, page 43, line 9, at end insert—

"In section 90(1) (interpretation), after the definition of "gas processing facility" insert—

""the OGA" means the Oil and Gas Authority;".

1F: The Schedule, page 43, line 9, at end insert—

"Infrastructure Act 2015

The Infrastructure Act 2015 is amended as follows.

Omit section 42 (levy on holders of certain energy industry licences).

In section 55(4)(b) (statutory instruments subject to affirmative procedure), omit "or 42(11)".

Omit Schedule 7 (the licensing levy)."

Amendments 1B to 1F agreed.

Schedule, as amended, agreed.

Clause 3 agreed.

Amendment 2

Moved by ***Baroness Worthington***

2: After Clause 3, insert the following new Clause—

"Report to Parliament on decommissioning costs

Within one year of this Act coming into force, and annually thereafter, the Secretary of State shall report to each House of Parliament on estimated decommissioning costs for North Sea oil and gas infrastructure."

Baroness Worthington: My Lords, I shall speak to Amendments 2 and 9. Amendment 2 is the requirement on the Secretary of State to report to Parliament on an annual basis on the,

"estimated decommissioning costs for North Sea oil and gas infrastructure".

This amendment has been tabled because an important facet of this debate is that the costs involved are hugely important, which the Minister mentioned earlier. Decommissioning is under way, it is likely to increase over time and we will see bits of infrastructure being removed, which will cause considerable costs to be borne. The upside is that we may well be about to invent a wonderful new industry in which we can get a global lead. The engineering excellence that we have demonstrated in the North Sea will be repurposed and we will apply that knowledge and expertise to the task of decommissioning, which I am sure will stand us in good stead both here and overseas.

However, through the course of my engagement with this Bill, it has come to light that those decommissioning costs will now partly fall on the taxpayer. The Treasury produced an estimate of the costs of decommissioning and how much will be expected to be a burden on the taxpayer. In the five years from now until 2020, HMRC estimates that something in the region of £9 billion will be expended, half of which will fall on the taxpayer. That is not an insubstantial amount of money, particularly as we hear, in the context of energy, an awful lot is made of the cost of the renewables subsidies and the green energy contracts. A levy control framework is applied to those costs. But here we have a liability on the taxpayer for essentially finishing off the job in the North Sea and assisting the oil and gas sector in bearing those costs.

Those costs are quite generous and the way in which they are calculated is that tax can be claimed back through the petroleum revenue tax, the PRT, and the ring-fenced corporation tax, the RFCT. Both provisions are very generous and enable costs to be claimed dating back throughout the time of the activity. They allow the use of retrospective taxation that has been paid to claim tax back against decommissioning costs. This evidently means a loss of revenue to the Exchequer, and therefore extra pressure on taxpayers to make up the difference somewhere else.

4.15 pm

I am not saying that the oil and gas sector has not been a great contributor to the British economy. However, as I said in my opening comments, although the oil and gas sector used to be left to its own devices, by and large, and generated a lot of tax revenue, the social contract between us and it is changing, and from now on we will revisit the topic of decommissioning often. The total cost is, of course, an estimate; it may be higher.

The purpose of the amendment is to require some transparency and give us an opportunity to debate the subject. The decommissioning costs would be regularly reported and we could debate the rightness, or otherwise, of continuing the arrangement whereby taxpayers foot the bill for a substantial amount of decommissioning, with a liability that appears—although I would be happy to be contradicted on this—to be relatively unlimited. Perhaps the Minister could clarify that. Is there a back-stop? Is there a point at which we say, "No, we will not pay"?

My second question on the amendment, to which I would welcome an answer from the Minister, is about what happens if a company goes bankrupt. It is unlikely that the big oil majors will disappear overnight—it might take a little longer than that—but we will probably see assets being transferred from some of the big oil majors to smaller organisations, perhaps companies with more appetite for risk or different funding profiles, which can continue to act when the majors might choose otherwise. That raises a risk: what happens if those entities are no longer with us, or get themselves in too deep and find themselves on the point of liquidation? Who will then take on the costs of decommissioning, and what provision is being made to protect the taxpayer in those circumstances? I hope that that will not be the case, but unfortunately we

have to imagine the worst—these are turbulent times, and things are changing fast. Amendment 2 is designed to probe on those issues, and I hope I can look forward to some words of reassurance from the Minister.

The second amendment in the group, Amendment 9, relates to the matters that the OGA must take into account under Clause 4. Many more amendments have been tabled to those provisions, and we will debate them in the next group, but Amendment 9 has been grouped under the heading of decommissioning, because it raises an important issue. Obviously some parts of the infrastructure will be able to be reused, both by people seeking to extend the lives of the wells and by those wishing to repurpose them and use them for storage of waste gases, but timing will be an issue. With lower oil prices, decommissioning may be more rapid than we first expected, which could mean infrastructure being removed sooner than we thought it would. We could then be out of step with what we hope will be a new industry to invest in to do with the transportation and storage of waste greenhouse gases.

We want to avoid a situation of accelerated gas decommissioning and possibly delayed carbon capture and storage, although I hope we shall not see that anyway because CCS has been rather slow to start with and should not be delayed any further. Such projects may well come on stream after the decommissioning decisions have been taken, which would be regrettable. I am sure that the Minister will say, as he said about the Wood review, that the OGA is fully cognisant of CCS, but CCS does not appear to be one of the key things to which it has regard. That is the problem. Where we want the OGA to focus on an issue, we should specify that issue in the Bill. A hierarchy of consideration, which requires it at least to think about potential reuse for carbon capture and storage before people press ahead with decommissioning, should be listed as one of the matters to which the OGA must have regard, and that is the purpose of Amendment 9. I beg to move.

Lord Howell of Guildford: My Lords, in case any eyebrows were raised over the apparent difference between the noble Baroness's figure of £9 billion and my figure of £40 billion, which are slightly different, I should make clear that I think the noble Baroness was talking about the next five years whereas I was talking about the next 25 years, over which time it is estimated that £40 billion will have to be spent removing redundant platforms and pipelines as well as plugging spent oil wells.

My noble friend said that the companies would fund all this. I wonder whether that makes reassuring sense in the light of what the noble Baroness, Lady Worthington, said about these companies being increasingly strapped for cash. If we are only half right about the evolution of world oil and gas prices—and it looks as though we are going into a period of prolonged glut in that field—the North Sea companies will have very tight budgets. This additional cost—whether it is £9 billion over five years or £40 billion over 25 years—will have to be found from somewhere. As we advance into this era and ask the OGA to take on these new responsibilities, and as we work out the practicalities of CCS, which have not yet all been solved, and the costs of it, we must be careful that we do not store up colossal financial problems for the future that will lead people in years to come to ask why we did not make clearer preparations. I wish to make clear the difference between the two figures of £9 billion and £40 billion and suggest yet again that we focus very carefully on where the money will come from.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness for her amendment and my noble friend Lord Howell for his comments. Without wishing to be too much of a doomsayer, I appreciate that there is always the chance of any business going into bankruptcy or company going into insolvency. The legal position is that decommissioning costs are picked up by industry under the Petroleum Act 1998—and industry does, of course, get tax relief.

I will address the noble Baroness's points on Amendments 2 and 9. Minimising the costs of decommissioning in the North Sea to both industry and the taxpayer will be a central focus of the new legislative landscape. It is essential that we create an environment that encourages collaboration and co-operation in order to bring down overall costs. The reuse of viable North Sea infrastructure is a top priority for the Oil and Gas Authority. As I outlined earlier, the Wood review suggested that the Office of Carbon Capture and Storage would work closely with the Oil and Gas Authority in moving this forward. That, indeed, is what is happening in line with the recommendations made by Sir Ian Wood in his review.

That said, I understand the thrust of what is being said and can confirm that decommissioning is high on the Government's agenda. Obviously there are costs associated with it and it is essential that we do it in the most cost-effective way, bringing in the possibility of reusing decommissioned sites in relation to CCS. I hope that noble Lords have had a letter indicating that the Government will bring forward amendments on decommissioning on Report. Unfortunately, it has not been possible to bring them forward earlier, but it is my intention that these amendments will address the issues of decommissioning costs and the viable reuse of infrastructure in the North Sea. On that basis, I hope that the noble Baroness will feel able to withdraw the amendment. I look forward to debating decommissioning in more detail on Report when government amendments on these issues will be brought forward.

Baroness Worthington: My Lords, I thank the noble Lord, Lord Howell, for his clarification. He is absolutely correct that, obviously, over a longer time period we will incur higher costs. I thank the Minister for his response. Possibly I did get the letter about the decommissioning amendments. I have to confess it has been a rather chaotic last few weeks so I will look again in my inbox. I would welcome that and I think that this issue must be addressed in the Bill. It is clearly a subject that we are going to see a lot of parliamentary time devoted to. Could the Minister write to me or give me clarification, as soon as possible, about the nature of the liability that taxpayers will face and about any safeguards that will be put in place to prevent it becoming an unlimited liability?

I notice from the industry side that the tax breaks that were granted have been underwritten by private law contracts to avoid any reverses being introduced

[Baroness Worthington]
by subsequent Governments. That seems to be quite a nice safeguard for the industry. As we know, Finance Bills are famous for being quite changeable. In fact, we saw quite a shift from the 2011 Budget where what were described as disastrous tax regimes brought in for the oil and gas sector were rapidly reversed and changed over subsequent Finance Bills. Therefore, one can see why the industry is keen to have these things underwritten and uses private law contracts now for those tax breaks. However, where are the reassurances for the public purse that this will not be a ballooning cost for us over decades to come?

I understand that it should be the industry that pays, but it does receive tax breaks, which amounts to a subsidy from the public purse. However, on the basis that there are amendments coming forward and that we will have another opportunity to debate decommissioning in full, I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Clause 4: Matters to which the OGA must have regard

Amendment 3A

Moved by ***Baroness Byford***

3A: Clause 4, page 3, line 12, after "from," insert "its existence and"

Baroness Byford (Con): My Lords, I begin by declaring my interests, which are in the register, and I have shares in oil companies. I also record my thanks to the Minister and his team for the briefing that they gave us prior to Committee and, indeed, for the follow-up work that I have received from them since. My amendment is a very simple probing amendment. The Minister in his letter stated that minimising public expenditure will be limited to that which arises from the relevant activities because this is the only area in which the OGA can have influence. He further stated that in due course a levy and fees will mean that the industry will pay the OGA's full costs. Indeed, our discussions earlier were about costs.

However, my concern remains. I do not feel that either the wording of the Bill or the Minister's interpretation mean that those working in and managing the OGA will have a duty to keep their costs as low as possible. As we said this afternoon, the amount of money coming into oil companies at the moment is so low that it is imperative that the OGA sets the standard of making sure that it does its work efficiently but keeps its cost as low as possible. I am concerned, for example, about the nature of office accommodation—it seems very simple—about location, travel, hotels, publicity and all the other parts that go into making the new OGA work properly.

I also share with colleagues that I have been assured that Treasury rules insist that fees should recover full costs and no more. That, however, does not explicitly cover a levy: nor does it limit spending levels. Therefore, in moving the amendment I still seek assurance that the OGA will have a duty to minimise expenditure on its internal operations. I beg to move.

4.30 pm

Baroness Worthington: My Lords, I thank the noble Baroness for introducing her amendment. I shall speak to amendments also in this group: Amendments 5, 6, 8, 20 and 21 in my name and Amendments 4, 10 and 11 in the names of my noble friends Lord Whitty and Lord Grantchester. This could be described as another pot pourri of amendments. I echo the noble Lords who mentioned that, had we had a bit more time and not been caught trying to table all our amendments in the last week of the Recess, we might have come forward with a slightly different grid with different groupings. However, we are where we are. What all these amendments have in common is that they relate to Clauses 4 and 9, which set out the core functions of the OGA and—Clause 9 in particular—the matters to which the OGA should have regard.

I do not intend to go over again the importance of CCS and the need to facilitate development of storage and transportation, as we have obviously rehearsed those arguments. However, if we do not change the primary objective, as set out in the Petroleum Act and amended by the Infrastructure Act, we will probably have to amend the Bill in numerous other places to ensure that CCS is properly taken into account. Clauses 4 and 9 are two places where we would expect something in the Bill to reassure us that this will be taken with due seriousness, and that the OGA will have the right legal backing needed to do its job properly.

Amendment 4, which is in my noble friend Lord Whitty's name, refers to the need for decarbonisation strategies. Having spoken to him, I know that the purpose of probing on this is that it is absolutely clear that, as we face climate change and start to absorb the implications of what we need to do, there is a great need for a holistic view of our pursuit and extraction of hydrocarbons. We are either going to change drastically our demand for hydrocarbons by moving into other sources of energy, or we will be capturing and storing the waste gases and putting them somewhere where they are not released into the atmosphere. I think both have quite profound implications and it is right that the OGA must have regard to the meeting of climate change targets and carbon budgets, and to the need for decarbonisation of energy. This is meant to be a Bill for the 21st century, not for the last century. Therefore, if we are to list specific areas to which the OGA must have regard, it would seem odd if climate change mitigation and decarbonisation were not specifically mentioned.

Amendment 5, which is in my name, is, as I said, an alternate way of ensuring that geological carbon storage is included within the matters to which the OGA has regard. Amendment 6 is similar to Amendment 4 in that it asks for consideration of the Climate Change Act and the targets within it.

We then turn to Amendment 10, which is in the name of my noble friend Lord Whitty and refers to energy efficiency. I think I am right to say that my noble friend would have preferred to write a wider amendment about energy efficiency in general, because that is a long-held area of great interest to him. There is certainly a need for any energy Bill to consider the role of demand reduction and energy efficiency but, as the scope of

this Bill is relatively narrow as it stands, this amendment relates to increasing energy efficiency within the areas of extraction of oil and gas, as related to the OGA. Amendment 11 relates to carbon capture and storage policy again.

The last two amendments in this group, Amendments 20 and 21, relate to Clause 9. They seek to make sure that the interpretations in the Bill are sufficiently clear that when we talk about licensees and operators, and data sharing and meetings—all the various powers being given to the OGA—we know it is explicit that those powers include those activities that relate to CCS. As I say, this could be made a whole lot simpler if we were to change the primary objectives but it seems that there are many ways of skinning this particular cat, and many of them are presented here today. That is the purpose of tabling these amendments and I look forward to the Minister's responses to these matters relating to Clauses 4 and 9.

Baroness Maddock: My Lords, I support the comments of the noble Baroness, Lady Worthington, on the amendments tabled by the noble Lord, Lord Whitty, particularly regarding climate change, carbon-reduction targets and energy efficiency. I compliment the noble Lord, Lord Whitty, on trying to get energy efficiency into the Bill because it is something that he, I and others on all energy Bills have tried to make the Government look seriously at always including. If we are concerned about reducing demand, which is another area we had to pursue energetically in the previous Energy Bill, we need to look at this if we are to meet a lot of the targets we have signed up to, not only in Europe but internationally. I support the thrust behind this and I admire the noble Lord, Lord Whitty, for getting energy efficiency into the Bill.

Baroness Young of Old Scone (Lab): My Lords, I also support Amendments 4 and 6 in respect of the matters to which the OGA must have regard, particularly climate change. The Climate Change Act set a statutory target to reduce greenhouse gas emissions by at least 80% from 1990 levels by 2050. In the shorter term, the Committee on Climate Change, under the noble Lord, Lord Deben, has recommended that the UK should have a virtually carbon-free electricity sector by 2030. We are clear that many of these targets will not be met under current scenarios, and this is an area in which it will be pretty strenuous to try to achieve them. Every tool in the toolbox will need to be used.

However, we are at a point where the Government seem to be removing some of the tools from the toolbox. We see in the Bill proposed changes to planning for onshore wind, changes to planning for low-carbon homes, the feed-in tariff support and the renewables obligation, and changes to proposals on tax incentives for low-emission vehicles. There is a concern, certainly in my mind, that if we remove too many tools it will become an even more strenuous and difficult task. That is why management of the oil and gas industry in the future is absolutely vital. It is important that the matters to which the OGA must have regard take account of UK and international obligations for greenhouse gas reduction, decarbonisation of energy and the carbon budgets set by the noble Lord, Lord Deben.

The Minister may say that the OGA already has a prime objective of maximising economic recovery, although I have not heard it put quite that way before. Indeed, one of the matters to which the OGA must have regard is minimising future public expenditure. It would be a bit of a stretch to say that that was a nod towards climate change. So, I ask the Minister to consider whether an explicit reference to having regard to climate change should be added to this list. If we do not make sure that all bodies involved in the energy business also have climate change at their heart, we will see huge effects on public expenditure from the impact of climate change in the future.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have spoken on this group of amendments, which seek to amend Clause 4, in Part 1, and Clause 9, in Part 2, of this Bill. Those amendments are Amendments 3A to 11—excluding Amendments 7 and 9 which are grouped separately—and Amendments 20 and 21.

Amendment 3A, moved by my noble friend Lady Byford, seeks to insert provision into Clause 4 of the Bill which would require the Oil and Gas Authority to have regard to the need to minimise public expenditure relating to, or arising from, its existence. Clause 4 already places an obligation on the Oil and Gas Authority to have regard to,

> "The need to minimise public expenditure relating to, or arising from, relevant activities".

The concept of "relevant activity" is intended to capture activities such as petroleum extraction or gas or carbon dioxide storage in relation to which the Oil and Gas Authority has statutory functions and functions under licences. For example, when taking decisions under licences, it is intended that the Oil and Gas Authority should have to consider whether a licence holder will be able to meet liabilities under a licence if these are liabilities that might otherwise have to be met by the taxpayer.

The question of how the Oil and Gas Authority should spend its own resources is dealt with by other means. However, there are arrangements in place to ensure that the OGA's spending is controlled. As accounting officer, the OGA's chief executive is responsible and accountable to Parliament for the organisation of, and quality of management in, the authority, including its use of public money. The chief executive has responsibility for ensuring that the OGA operates in accordance with the guidance set out in the Cabinet Office's *Managing Public Money*.

Furthermore, the Department of Energy and Climate Change is establishing a robust governance framework to oversee its relationship with the OGA. This will ensure that any issues which may have a financial impact on government are reported to the Secretary of State at the earliest opportunity. The framework requires the OGA to have the prior written consent of the Secretary of State before it takes any action which will, or is likely to, give rise to an additional funding requirement from the department or gives rise to obligations or liabilities which are not expected to be affordable in terms of expected levy income. The Secretary of State will be the sole shareholder of the OGA and her role in this regard includes assessing

[LORD BOURNE OF ABERYSTWYTH]
and approving the business plan developed by the authority, among other things, to ensure its long-term viability and sustainability and its ability to deliver value for money in light of the strategies of the department and wider government. I hope that this explanation is reassuring.

I turn now to Amendments 4 and 6, which each make reference to responsibilities under the Climate Change Act 2008. While the OGA will be bound by any environmental legislation that relates to the exercise of its functions, it is purposely not an environmental regulator. Perhaps I may refer noble Lords to Clause 4, which refers to those matters to which the OGA must have regard—

"include the following, so far as relevant"—

so, obviously, any pre-existing legislation would be binding in relation to the OGA, and that would include the Climate Change Act.

Environmental regulation responsibilities under the Climate Change Act 2008 will continue to sit within the Department of Energy and Climate Change, which has expertise and experience in this field. There are synergies between the two forms of regulation, and the existing strong relationships between the OGA and DECC will continue. However, it is important that these regulatory functions remain separate, ensuring that the correct focus is placed on each by the different regulators. Noble Lords will also be aware that the amendments raise issues of compliance with the offshore safety directive, which requires a separation of oil and gas licensing and environmental functions, so I am not sure that it is legally possible either. I cannot agree that it would be appropriate to provide the OGA with additional environmental functions, and I hope that noble Lords will not press the amendments.

Amendment 5 includes reference to the development of carbon storage. I thank noble Lords for proposing these amendments because, as I have indicated, between now and Report I should like to look at the whole issue of carbon capture and storage to ensure that there is dovetailing between the existing regime for control of carbon capture and storage and the way that the Oil and Gas Authority will move forward on the matters in the Bill. Clause 4, as I have said, sets out a non-exhaustive list of matters to which the OGA must have regard when exercising its functions. The functions of the OGA include functions relating to carbon capture and storage. A number of the matters refer to "relevant activities", which is defined as activities in relation to which the OGA has functions. As things stand, the relevant activities therefore include CCS. These matters include the need to collaborate with industry and foster innovation, which should help the CCS sector to achieve its aims. In addition, reference is made under the heading "*System of regulation*" to encourage "investment in relevant activities", which once again should include CCS. No other sectors in relation to which the OGA has functions are explicitly referenced by this clause. Making the OGA's mandate and associated powers on CCS explicit when other sectors are not mentioned could have the effect of prioritising CCS over other areas, which the Government would be against. An example would be maximising the delivery of economic recovery. I hope that on that basis, and with the assurance that we will look at the whole issue of CCS between now and Report, the noble Baroness will be content not to press the amendment.

4.45 pm

I thank the noble Baroness for proposing Amendment 8 on behalf of the noble Lord. This amendment makes similar provision to Amendment 5 and would require that the OGA has regard, when exercising its functions, to the need to encourage innovation and working practices,

"with particular emphasis on the development and promotion of carbon transport and storage".

As I have said, the OGA has functions that relate to the CCS sector and is already required to have regard to the matters referred to in Clause 4 when exercising functions that relate to that sector, so far as relevant. This amendment, like Amendment 5, places too great an emphasis on carbon capture and storage and would have the effect of prioritising it over other areas. The Wood review specifically highlighted the potential of enhanced oil recovery—EOR—as something the Oil and Gas Authority would need to promote, as part of its remit to maximise the economic recovery of oil and gas from the continental shelf. As carbon dioxide can be used for enhanced oil recovery, this would potentially make a substantial contribution to lowering the cost of CCS projects, as well as benefiting North Sea revenues and jobs.

Clause 4 sets out that the OGA must have regard to the need to "work collaboratively" with industry and government in carrying out all activities in relation to which it has functions and to encourage innovation in technology and working practices. These legal requirements underpin the way we expect the authority to work with the department and the carbon capture and storage industry. If needed, there are other powers that DECC may use to force the OGA to do this, for example through the Secretary of State's power of direction. I hope that noble Lords have found these comments reassuring and will not press their amendment.

I thank noble Lords for proposing Amendments 10 and 11. The Oil and Gas Authority has been established to deal with the real and severe challenges facing the United Kingdom continental shelf and the United Kingdom's important oil and gas industry. Its primary role relates to oil and gas. The Oil and Gas Authority will have some functions in relation to carbon dioxide storage sites and permits, and will therefore be required to take account of the needs of CCS as it carries out its role. We acknowledge the benefits that carbon capture and storage can offer the continental shelf. No barriers which might inhibit active consideration of CCS are being put in place in the Energy Bill, and making the OGA's mandate and associated powers on CCS more explicit might compromise delivery of the goal of maximising economic recovery, if additional duties were overly onerous or distracting.

Further to what I have said, we do not propose to give the OGA a new objective relating to CCS through the Energy Bill. This is because there is uncertainty at the moment over the desired role on carbon capture and storage, which is also acknowledged by the Carbon Capture & Storage Association, which wants regulation

to be proportionate to the emerging nascent state of the CCS industry. There is also a strong likelihood that further legislative opportunities could be forthcoming. I hope that noble Lords have found these explanations reassuring.

Turning to Amendments 20 and 21, I once again thank noble Lords for proposing the amendments. As has been the case elsewhere, these amendments seek to broaden the definition of "licensee" throughout Part 2 of the Bill to include carbon capture and storage licensees. Part 2 creates a raft of further regulatory functions for the Oil and Gas Authority relating to offshore petroleum. As I have said previously, the Wood review carried out a thorough assessment of the oil and gas industry in the North Sea and of what was needed to support this mature and well-established industry. The result was the recommendation for a raft of new and significant regulatory powers, part of which is seen in Part 2 of the Bill.

These amendments would considerably widen the scope of these new regulatory powers beyond the realms envisaged by the Wood review and would extend the powers of the Oil and Gas Authority significantly, without consultation or full consideration of the impacts. These amendments subject carbon capture and storage licensees to the whole raft of new obligations and requirements imposed by Part 2 of the Bill. This includes the obligations in relation to information and samples, and the requirements imposed by the access to meetings provisions. It would also bring carbon capture and storage licensees within the scope of the Oil and Gas Authority's sanctions regime.

The Government recognise the role of the United Kingdom's carbon capture and storage industry. However, I suggest that the full impact of the widening of the regulatory scope that these amendments would create has not been thoroughly considered. This is particularly in the context of whether the regulatory burdens that would be imposed on the nascent CCS industry are necessary or justifiable. We do not want to impose these new obligations.

That said, as I have indicated previously in relation to other amendments, we are happy to sit down and look at how the whole CCS issue dovetails with the Oil and Gas Authority, because we have a shared interest across the House in ensuring that we maximise the important role of the CCS industry in helping us to decarbonise and reach the targets that we need to reach. I respectfully ask my noble friend to withdraw her amendment.

Baroness Worthington: Before the Minister sits down, although I thought that we had been making quite good progress in this debate in recognising the need to address the OGA's powers in relation to CCS, I felt that the comments in response to this amendment seemed to be very narrow in their interpretation of what we are going to be considering before Report. I reiterate that our not moving the amendments in this group does not preclude the fact that we want a full and deep discussion about which of those OGA powers need to be amended to address CCS. As we will come on to discuss, that will involve access to meetings, information samples and a whole raft of things that will be needed to facilitate CCS. Although I will not be moving those amendments, I reiterate that we should not be sliding back and we should be looking at the whole issue holistically before Report.

Lord Bourne of Aberystwyth: I thank the noble Baroness for that intervention. I am happy to do that, as I have indicated, but I do not want to give the impression—I do not want to commit us to this—that we are undermining the focus of the Oil and Gas Authority, which is to maximise the economic return from the North Sea.

Baroness Byford: My Lords, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 to 11 not moved.

Clause 4 agreed.

House resumed.

Syria: Refugees and Counterterrorism

Statement

4.52 pm

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows.

"Mr Speaker, before making a Statement on counterterrorism, let me update the House about what we are doing to help address the migration crisis in Europe and, in particular, to help the thousands of refugees who are fleeing from Syria. This issue is clearly the biggest challenge facing countries across Europe today.

More than 300,000 people have crossed the Mediterranean to Europe so far this year. These people came from different countries and different circumstances. Some are economic migrants in search of a better life in Europe; many are refugees fleeing conflict. It is vital to distinguish between the two.

In recent weeks we have seen a vast increase in the numbers arriving across the eastern Mediterranean from Turkey. More than 150,000 have attempted that route since January. The majority of these are Syrian refugees fleeing the terror of Assad and ISIL, which has seen more than 11 million people driven from their homes.

The whole country has been deeply moved by the heart-breaking images we have seen over the past few days. It is absolutely right that Britain should fulfil its moral responsibility to help those refugees, just as we have done proudly throughout our history. However, in doing so we must use our head and our heart by pursuing a comprehensive approach that tackles the causes of the problem as well as the consequences. That means helping to stabilise countries where the refugees are coming from, seeking a solution to the crisis in Syria, pushing for the formation of a new unity government in Libya, busting the criminal gangs that are profiting from this human tragedy and playing our part in saving lives in the Mediterranean, where our Royal Navy has now rescued over 6,700 people.

[Baroness Stowell of Beeston]

Britain is doing, and will continue to do, all these things. We are using our aid budget to alleviate poverty and suffering in the countries where these people are coming from. We are the only major country in the world that has kept its promise to spend 0.7% of GDP on aid. We are already the second largest bilateral donor of aid to the Syrian conflict, including providing more than 18 million food rations, giving 1.6 million people access to clean water and providing education to a quarter of a million children. Last week we announced a further £100 million, taking our total contribution to more than £1 billion. That is the UK's largest ever response to a humanitarian crisis. Some £60 million of this additional funding will go to help Syrians still in Syria. The rest will go to neighbouring countries—Turkey, Jordan and Lebanon—where Syrian refugees now account for one quarter of the population. More than half of this new funding will support children, with a particular priority given to those who have been orphaned or separated from their families.

No other European country has come close to this level of support. Without Britain's aid to these camps, the numbers attempting the dangerous journey to Europe would be very much higher. As my right honourable friend the Chancellor said yesterday, we will now go much further in the spending review, significantly reshaping the way we use our aid budget to serve our national interest. We will invest even more in tackling the causes of the crisis in the Middle East and north Africa and we will hold much larger sums in reserve to respond to acute humanitarian crises as they happen.

Turning to the question of refugees, Britain already works with the UN to deliver resettlement programmes and we will accept thousands more under these existing schemes. We have already provided sanctuary to more than 5,000 Syrians in Britain and have introduced a specific resettlement scheme, alongside those we already have, to help those Syrian refugees particularly at risk. However, given the scale of the crisis and the suffering of the Syrian people, it is right that we should do even more. So we are proposing that Britain should resettle up to 20,000 Syrian refugees over the rest of this Parliament. In doing so, we will continue to show the world that this is a country of extraordinary compassion, always standing up for our values and helping those in need.

So, Britain will play its part alongside our other European partners. However, because we are not part of the EU's borderless Schengen agreement or its relocation initiative, Britain is able to decide its own approach. So we will continue our approach of taking refugees from the camps and from elsewhere in Turkey, Jordan and Lebanon. This provides refugees with a more direct, safer route to the United Kingdom, rather than risking the hazardous journey to Europe which has, tragically, cost so many lives. We will continue to use the established UNHCR process for identifying and resettling refugees and when they arrive here we will grant them a five-year humanitarian protection visa. We will significantly expand the criteria we use for our existing Syrian Vulnerable Persons Relocation Scheme. As we do so, we will recognise that children have been particularly badly affected by the crisis in Syria.

In most cases the interests of children are best met in the region, where they can remain close to surviving family members. In cases where the advice of the UNHCR is that their needs should be met by resettlement in the UK, we will ensure that vulnerable children, including orphans, will be a priority. Over recent days we have seen councils and our devolved Administrations coming forward to express their willingness to do more to take Syrian refugees. This has reflected a wider generosity from families and communities across our country. I commend, in particular, the Archbishop of Canterbury for the offer made by the Church of England. My right honourable friends the Home Secretary and the Communities Secretary will now work intensively with local authorities and the devolved Administrations to put in place the necessary arrangements to house and support the refugees that we resettle. The Home Secretary will update the House on these plans next week.

Finally for this part of the Statement, in full accordance with internationally agreed rules we will also ensure that the full cost of supporting thousands of Syrian refugees in the UK will be met through our aid spending for the first year, easing the burden on local communities. This will be a truly national effort, and I know the whole House will come together in supporting these refugees in their hour of need.

Turning to our national security, I would like to update the House on action taken this summer to protect our country from a terrorist attack. With the rise of ISIL, we know that the terrorist threats to our country are growing. In 2014 there were 15 ISIL-related attacks around the world. This year there have already been 150 such attacks, including the appalling tragedies in Tunisia in which 31 Britons lost their lives. I can tell the House that our police and security services have stopped at least six different attempts to attack the UK in the last 12 months alone.

The threat picture facing Britain in terms of Islamist extremist violence is more acute today than ever before. In stepping up our response to meet this threat we have developed a comprehensive counterterrorism strategy that seeks to prevent and disrupt plots against this country at every stage. It includes new powers to stop suspects travelling and powers to enable our police and our security services to apply for stronger locational constraints on those in the UK who pose a risk. It addresses the root cause of the threat—the poisonous ideology of Islamist extremism—by taking on all forms of extremism, not just violent extremism. We have pursued Islamist terrorists through the courts and criminal justice system. Since 2010, over 800 people have been arrested and over 140 successfully prosecuted. Our approach includes acting overseas to tackle the threat at source, with British aircraft delivering nearly 300 air strikes over Iraq, and our airborne intelligence and surveillance assets assisting our coalition partners with their operations over Syria.

As part of this counterterrorism strategy, as I have said before, if there is a direct threat to British people and we are able to stop it by taking immediate action,

as Prime Minister I will always be prepared to take that action. That is the case whether that threat is emanating from Libya, Syria or anywhere else. In recent weeks it has been reported that two ISIL fighters of British nationality who had been plotting attacks against the UK and other countries have been killed in air strikes. Both Junaid Hussain and Reyaad Khan were British nationals based in Syria who were involved in actively recruiting ISIL sympathisers and seeking to orchestrate specific and barbaric attacks against the West, including directing a number of planned terrorist attacks right here in Britain, such as plots to attack high-profile public commemorations, including those taking place this summer. We should be under no illusion. Their intention was the murder of British citizens. So on this occasion we ourselves took action.

Today I can inform the House that in an act of self-defence and after meticulous planning Reyaad Khan was killed in a precision strike carried out on 21 August by an RAF remotely piloted aircraft while he was travelling in a vehicle in the area of Raqqa in Syria. In addition to Reyaad Khan, who was the target of the strike, two ISIL associates were also killed, one of whom, Ruhul Amin, has been identified as a UK national. They were ISIL fighters, and I can confirm there were no civilian casualties.

We took this action because there was no alternative. In this area, there is no Government we can work with. We have no military on the ground to detain those preparing plots, and there was nothing to suggest that Reyaad Khan would ever leave Syria or desist from his desire to murder us at home. So we had no way of preventing his planned attacks on our country without taking direct action. The US Administration have also confirmed that Junaid Hussain was killed in an American air strike on 24 August in Raqqa. With these issues of national security and with current prosecutions ongoing, the House will appreciate that there are limits on the details I can provide. However, let me set out for the House the legal basis for the action we took, the processes we followed, and the implications of this action for our wider strategy in countering the threat of ISIL.

First, I am clear that the action we took was entirely lawful. The Attorney-General was consulted and was clear that there would be a clear, legal basis for action in international law. We were exercising the UK's inherent right to self-defence. There was clear evidence of the individual in question planning and directing armed attacks against the UK. These were part of a series of actual and foiled attempts to attack the UK and our allies. In the prevailing circumstances in Syria, this air strike was the only feasible means of effectively disrupting the attacks planned and directed by this individual. It was necessary and proportionate for the individual self-defence of the UK. The United Nations Charter requires members to inform the president of the Security Council of activity conducted in self-defence. Today the UK Permanent Representative to the United Nations will write to the president of the Security Council reporting this specific military activity in Syria and explaining that this action was taken in the individual self-defence of the United Kingdom.

Turning to the process, as I said to the House in September last year,

"it is important to reserve the right that if there were a critical British national interest at stake or there were the need to act to prevent a humanitarian catastrophe, you could act immediately and explain to the House of Commons afterwards".—[*Official Report*, Commons, 26/9/14; col. 1265.]

Our intelligence agencies identified the direct threat to the UK from this individual. They informed me and other senior Ministers of this threat. At a meeting of the most senior members of the National Security Council, we agreed that, should the right opportunity arise, the military should take action. The Attorney-General attended the meeting and confirmed that there was a legal basis for action. On that basis, the Defence Secretary authorised the operation. The strike complied with international law and was conducted according to specific military rules of engagement, which always comply with international law and the principles of proportionality and military necessity. The military assessed the target location and chose the optimum time to minimise the risk of civilian casualties. This was a sensitive operation to prevent a very real threat to our country.

I have come to the House today to explain in detail what has happened and to answer questions about it. I want to be clear that this strike was not part of coalition military action against ISIL in Syria. It was a targeted strike to deal with a clear, credible and specific terrorist threat to our country at home. The position with regard to the wider conflict with ISIL in Syria has not changed. As the House knows, I believe that there is a strong case for the UK taking part in air strikes as part of the international coalition to target ISIL in Syria as well as Iraq. I believe that case only grows stronger with the growing number of terrorist plots being directed or inspired by ISIL's core leadership in Raqqa, but I have been absolutely clear that the Government will return to this House for a separate vote if we propose to join coalition strikes in Syria.

My first duty as Prime Minister is to keep the British people safe. That is what I will always do. There was a terrorist directing murder on our streets and no other means to stop him. The Government do not for one moment take these decisions lightly but I am not prepared to stand here in the aftermath of a terrorist attack on our streets and have to explain to the House why I did not take the chance to prevent it, when I could have done. That is why I believe our approach is right. I commend this Statement to the House."

My Lords, that concludes the Statement.

5.08 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Lady for repeating the Prime Minister's statement, which raises the most serious issues of humanity, moral obligations and national security. I would first like to ask about the refugee crisis. I think it fair to say that, until recently, many people were not even aware of the scale of the terror, the crisis and fear facing millions who have been forced to flee Syria. They are not people who want to leave their homes or their country. They are people from all walks of life, forced out in fear of their lives and those of their families. This is a defining moment for our country and for the Government.

[Baroness Smith of Basildon]

The body of a child washed up on a beach has shocked, upset and horrified everyone, but such deaths of those abused by traffickers in seeking sanctuary is not new and has been debated in your Lordships' House on a number of occasions. We must be strong, confident and proud in reaching out to those seeking refuge on our shores.

Among the Syrian children whom we will now take in will be the future hospital consultants at our bedsides, the entrepreneurs who will build our economy and the professors in our universities. They will also be among the strongest upholders of British values, because that has always been the story of refugees to this country, whether it was the Jewish children of the Kindertransport, including the noble Lord, Lord Dubs, or the Asian families whom I knew when I was younger, driven out of east Africa more than 20 years ago, or Sierra Leoneans fleeing a brutal civil war. The Prime Minister said last week that it would not help to take more refugees because it would not solve the problems in Syria, but that is a false choice. Helping those Jewish children was not part of our efforts to end the Second World War; helping east Asian families did not bring down the brutal dictatorships; but it was the right thing to do. It was a natural, human response.

We welcome the Prime Minister's announcement that our country will provide sanctuary to 20,000 refugees. I appreciate that it will be over this Parliament, but can the noble Baroness reassure me on the need for urgency, because people are losing their lives today? Can I suggest that it would be helpful now to convene local authority leaders from all over the country to discuss what they are prepared for, what they are able to do to settle those refugees into their areas, and the regional and local distribution to ensure that all areas can play their part—rural as well as urban, towns as well as cities? Many local authorities have already indicated that they are keen to step forward and play their part, which is greatly to their credit. They will need reassurances on additional resources, given the level of cuts they have already faced.

The Government have said that they plan to use the international aid budget for this purpose. Why did they not just use the reserves? Ensuring that refugees can be welcomed, supported and integrated is an issue not just for local government or the Home Office but for transport, education, health, business, tourism and, as we have heard, the devolved authorities. It is an issue also for churches, community groups and so many individuals who have cried out for action from the Government. Beyond what the Prime Minister has told the other place, can the noble Baroness tell us what discussions are planned to guarantee a nationwide, cross-government strategy that will co-ordinate the efforts of those who want to help and have asked the Government to help?

We support aid to existing refugee camps. Does the noble Baroness accept that desperate conditions in those camps have contributed to far too many people risking their lives trying to bring their families to Europe, and that this reinforces the need for greater co-operation across the EU and with the United Nations?

I turn to counterterrorism, because the scale of the threat posed by ISIL is clear. We have witnessed its brutal torture and murder of British citizens abroad and the sickening attacks that it has inspired and sought to organise here at home. The security services, the Armed Forces and our police do immensely important work to try to keep us safe. It is a difficult and dangerous task, and we are grateful to them for their efforts. This is the first time that Parliament has heard of the specific operation on 21 August, when the Government authorised the targeting and killing of a British citizen in Syria, a country where our use of military force is not authorised. We understand that a meeting of senior members of the National Security Council agreed that, should the right opportunity arise, the military should take action, as the noble Baroness said in the Statement. The Prime Minister said that the action was legally justifiable under the doctrine of national self-defence because, first, the man was planning and directing armed attacks in the UK; secondly, there was no other way of stopping him; and, thirdly, the action was necessary and proportionate. The evidence on each of these points is crucial to the justification for the action. Is it significant that the Attorney-General did not authorise this specific action but confirmed that,

"there was a legal basis",

for it? Was the Attorney-General's advice given or confirmed in writing, and will it be published? The Statement informs us that the Defence Secretary "authorised the operation". Why was it not the Prime Minister himself who gave the authorisation?

I want to ask the noble Baroness about the specific target of this attack, although I understand that there may be things she cannot disclose to the House. Inasmuch as she can, can she say what it was about this individual and his action that singled him out, given some of the other reports we have had? Did he represent an ongoing threat, or was the threat based on a specific act that he was plotting? Does she accept that there is a need for independent scrutiny of government action, perhaps by the CT reviewer and the Intelligence and Security Committee? Can she tell me whether they have been asked to look at this?

We are already engaged in the use of force against ISIL in Iraq. However, it is vital that the UK continue to play its part in international efforts to combat ISIL across the region. What is clear from the Statement is that, if the Prime Minister is to propose to join coalition strikes in Syria, he will return to the House of Commons for a vote on authorisation. Although your Lordships' House will not have a vote, it may be helpful to reiterate the position as set out by the acting Labour Party leader and shadow Secretary of State for Defence on 2 July. She made it clear when she said that ISIL,

"brutalise people, they murder people, and they are horrifically oppressive".

We will carefully consider any proposals in relation to military action in Syria that the Government bring forward, but we all need to be clear about what difference any action would make to our objective of defeating ISIL, the nature of any action and its objectives, and the legal basis. Potential action must command the support of other nations in the region, including Iraq and the coalition already taking action in Syria.

I am grateful to the noble Baroness for repeating the Statement and thank her for ensuring that there is additional time for questions from Back-Benchers today, given the level of interest in this issue. We look forward to her response.

Lord Wallace of Tankerness (LD): My Lords, I also thank the noble Baroness the Leader of the House for repeating the Prime Minister's Statement on these very profound and serious issues. I also endorse what the noble Baroness the Leader of the Opposition said—we appreciate the fact that there will be an extended period for Back-Bench questions.

Probably nothing is more important than the Government's primary responsibility of security of the realm and its citizens. The Prime Minister acknowledges that in his Statement. Clearly, we do not have the evidence, nor would it be appropriate to share that evidence publicly, and therefore we must accept the judgment of the Prime Minster in responding to perhaps one of the most serious calls that has been made on him. However, it would be interesting to know whether this is a matter that the Intelligence and Security Committee will be able to look at.

There is also reference in the Statement to the legal basis. Having worked closely as a law officer with the present Attorney-General, I know that his judgment would be made with considerable rigorous legal diligence and bringing to bear his considerable personal and professional integrity. I do not call for the publication of law officers' advice; that is not something that, as a former officer, I would readily do. However, the noble Baroness will remember that before the House debated chemical weapon use by the Syrian regime and a possible UK government response, and before we debated last year the position on military action in Iraq against ISIL, the Government published on each occasion a statement setting out the Government's legal position. If it is felt possible to elaborate on what was said in the Statement by a similar note, I think that we would find that very helpful.

The images of migration that we have seen on our screens and in our newspapers over recent days have certainly touched our common humanity. There has been an outpouring of the view that we must welcome refugees, and that is one that we certainly endorse. The Statement says that,

"the whole country has been deeply moved by the heart-breaking images we have seen over the past few days".

However, will the noble Baroness the Leader of the House tell us whether any of those travelling across Europe at the moment will be accommodated in any way by what was set out in the Statement? We have heard of 20,000 refugees—said very loudly; "over five years" is probably said more sotto voce—but these are people in camps in countries bordering Syria. That is not to dismiss what is being done in that regard, and it is welcome in as far as it goes. However, what the people in this country have been crying out about are the scenes on our television screens of people walking across Europe, fleeing terror and destitution. Yet can the Minister point to one sentence in this Statement that indicates that for those people there is some glimmer of hope that the United Kingdom will be a welcome haven?

We have a common problem and it requires a common response. There are problems in the Mediterranean, on Europe's borders and in coming across Europe and we should be promoting a common European response. The European Union system has its failings. The Dublin system is not by any stretch of the imagination perfect, but by our stand-offish stance we seem to have forfeited any real or moral authority in being able to give the lead in trying to improve or work out a more coherent European approach to this. Will the Government commit themselves to taking a more active role in co-operating with our European partners, as well as in participating in European Union efforts on relocation?

With regard to those who are coming, we welcome the steps have been taken. Many local authorities have indicated a willingness to take refugees. The Leader of the Opposition asked what would be done to bring these local authorities together, and it would be useful to know what consultations had already taken place. What consideration has been given as to whether there should be a dispersal programme or whether it is better to keep communities together for mutual support? I do not pretend that I have the answer to that, but real issues are involved. What has been done to ensure that there are interpretation services, counselling and support services for English as a second language?

We have heard about the international aid budget being used for the first year to support local authorities, but surely in a situation such as this there is something in reserve that we could use. The Statement itself refers to holding "larger sums in reserve". Has this been taken from the overseas aid budget for future years or has a separate reserve been taken up?

The Statement says that,

"we will ensure that vulnerable children, including orphans, will be a priority".

Just before we went into recess, there was a report about 600 young Afghans who had arrived in the United Kingdom as unaccompanied children who were deported after their 18th birthdays because their temporary leave to remain had expired. Many had already established strong roots in the communities where they were living. When we hear about the fact that we will give priority to vulnerable children including orphans, can we have some reassurance from the Government that they will not be summarily sent back after their 18th birthdays?

We will not resolve the Syrian refugee crisis unless there is a wider resolution to the Syrian problem. What steps have the Government taken to try to promote broader engagement with countries that might not at first instance appear likely to help, such as Russia and Iran, whose engagement will be necessary if we are to get a long-term lasting diplomatic settlement and tackle some of the root causes?

There is an immediate crisis on our doorstep. There are 2 million refugees in Turkey, 1.4 million in Jordan, and over 1 million in Lebanon. According to the UNHCR, there are 60 million displaced people worldwide, 46 million of whom are assisted and protected by the UNHCR. Developing countries host 86% of the world's refugees. While we have an immediate problem, there is a much wider global problem. We have to play our part in the funding that we have given to the UNHCR but we should be trying our best to engage more

[Lord Wallace of Tankerness]
countries, such as the Gulf states and the United States of America. Are we in a position to give some leadership to look to the future and tackle the global problems that will exist? We will return time and again to this issue, I suspect, because of its global nature.

The Prime Minister said earlier this week that Britain is a moral country. I believe that. I believe from what we have seen from communities and people across the country that we are a moral country, but I rather fear that this Statement falls short of a moral response.

Baroness Stowell of Beeston: My Lords, I am grateful to the noble Baroness and the noble and learned Lord for their responses to the Statement. I will start by responding to comments that were made about the refugee situation. I certainly agree with the noble Baroness about the contribution that refugees have made to this country over decades. I share her assessment of the positive aspects that we have gained as a country because of our approach to accepting refugees historically.

The noble Baroness asked me quite a few questions about this situation, including whether we would be starting off the new, expanded approach, which the Prime Minister announced today, by treating the matter as urgent. I can confirm that this is indeed urgent. The Prime Minister is right to say that accepting a specific number of refugees will not solve this crisis. We must make a contribution to assisting the people who have been affected so devastatingly in Syria. The country can be proud of what we have done over the last few years in assisting refugees who have been displaced there. Our approach to the numbers who arrive here will be very much informed by the UNHCR process. We will work very closely with them, as they are the experts in this area who will be able to advise on the people we should be accommodating. We will clearly be co-operating with local authorities and we have been in contact with the Local Government Association today. As my right honourable friend the Prime Minister has said, the Home Secretary and Communities Secretary will be leading a new Cabinet committee to make sure that we are co-ordinated, across government, in our proper response and in the way we support the refugees as they arrive.

The noble Baroness and the noble and learned Lord asked about how the aid budget will be used to support local authorities in their efforts to assist the refugees when they arrive, and there were questions about the use of reserves. The use of the aid budget to support refugees who are given support in the UK is compliant with the rules on the use of that budget. As to whether we would use reserves to do more in this area, the Chancellor will return to this when he looks at the spending review. It is important to stress that the aid budget will increase, in monetary terms, because our GDP is increasing. As I said in the Statement, this will be used to greatest effect where we feel we can make the most positive impact. There will be discussions with the devolved assemblies, via the committee to which I have already referred.

My right honourable friend the Prime Minister spoke today to Chancellor Merkel about what he was going to announce in Parliament and she gave her support to our measures. The British Home Secretary was one of the early voices calling for the meeting of European Justice and Home Affairs Ministers which will take place next week and will look at this matter again. I made it clear in the Statement that the UK is not a party to Schengen and that we believe our approach is the right one. In answer to the specific question from the noble and learned Lord, we do not feel it is right to offer refuge in the UK to the refugees who are currently in Europe, but we want to see greater co-ordination within Europe and the countries which operate within the Schengen agreement. We will provide and continue to provide our support to Europe in making sure that its borders are properly policed. The noble and learned Lord asked a specific question about how the rules would apply to refugees when they arrive in this country. The same rules that exist now will apply.

I am grateful to the noble and learned Lord, Lord Wallace, for his comments about the Attorney-General, his approach to his judgment and its being compliant with international law. The noble and learned Lord and the noble Baroness asked about publication of the Attorney-General's advice. As the noble and learned Lord acknowledged, it is not our practice to publish that advice. He also asked me whether we would publish a statement on the general legal position. There is a distinction to be drawn between when we published the legal position that was informing our proposal to take military action in Syria and Iraq, and this occasion when we are informing Parliament of action that was taken to deal with a planned counterterrorism atrocity. A distinction is to be drawn there, but I certainly will look at that.

The noble Baroness asked about the person in question and what distinguished them from others who may be proposing terrible attacks in the United Kingdom. The point to emphasise is that this person was operating in a place where we had no other option as regards the action that we decided to take. We are clear that that action was legal, proportionate, legitimate and the right thing to do.

The noble Baroness and the noble and learned Lord asked about scrutiny. By making this Statement and by making himself available to answer questions today, the Prime Minister is being held to account and is subject to some scrutiny. Further scrutiny that might apply—whether that be by the Intelligence and Security Committee or the independent reviewer—is something that we would want to consider. Certainly, we accept that we have undertaken action which is new and has not happened in this way before. Therefore, it is understandable that Parliament will ask questions about the scrutiny of this action.

Lord Ashton of Hyde (Con): My Lords, the noble Baroness, Lady Smith, and the noble and learned Lord, Lord Wallace, mentioned that the time limit for Back-Benchers has been extended from 20 minutes to 40 minutes. That is to allow more questions and is not an excuse to make speeches. I remind noble Lords that the *Companion* is very clear that,

"brief questions from all quarters of the House are allowed",

and that a Statement,

"should not be made the occasion for an immediate debate".

5.33 pm

Lord Dubs (Lab): My Lords, in the summer of 1939, I came to Britain by good fortune on a Kindertransport. At that time, Britain was the only country taking children who came in that way. It showed enormous generosity, which is not being equalled by what the Government have announced today. Will the Government show greater generosity, both in the number of vulnerable people this country accepts and in ensuring that those who come here are given the same welcome and wonderful opportunities that I have had?

Baroness Stowell of Beeston: Clearly, the noble Lord is a great example of this country's generosity and of the great contribution that people who have arrived here as refugees can make to this country. I do not accept his description that the Government, in the actions that they have set out today and have taken over the past few years in Syria, are not equalling what they have done in the past. This country has given a huge amount and will continue to do so. The noble Lord is right to emphasise children in this context but it is also right for me to remind the House, and to refer to the comments I made in the Statement, that we will be led very much by advice from the UNHCR. It would argue that in many cases it is not always the right course of action to give refuge to unaccompanied children and that sometimes it is better for the children to remain in the countries in which they are being looked after, rather than being given refuge somewhere else. We will be driven by the experts in this matter.

Baroness Chalker of Wallasey (Con): Will my noble friend draw the Secretary of State for International Development's attention to the bad conditions, through no fault of the Kurdish people, for those Iraqis who have taken refuge in the Kurdish area of Iraq? They are potentially a further stream of refugees. The conditions in the camps are one of the reasons that so many people have set out to take perilous journeys and cause the great difficulties we have within Europe at present. While I welcome the Statement, it is not enough to look just at what has happened in Syria and the camps that have taken Syrians. We have to look at the whole area. There is certainly capacity to disrupt those camps, which causes other people to flee.

Baroness Stowell of Beeston: I am grateful to my noble friend and I know how much she does to support refugees. She is very experienced in international aid and assistance. While Syria is the priority, we do not give refuge just to Syrians. There are refuge programmes, of which this country is proud, which ensure that others from other countries get assistance, but we are giving priority to those to whom the UNHCR says we should give priority at this time.

Lord Wright of Richmond (CB): My Lords, I welcome the extent to which we are increasing our help for Syrian refugees. Is it not time, however, for us to put our considerable diplomatic weight behind serious attempts, with our European partners, to find a political solution to the Syrian crisis that might ultimately enable many of these migrants and asylum seekers to return to their homes? Should we not now accept that there can be no political solution to the Syrian civil war without the involvement of the regime in Damascus? Should we not be telling our Saudi, Gulf and Turkish allies that there are more important priorities than regime change in Damascus? Is it not time to accept that both the Russians and the Iranians can play an important part, not only in encouraging Damascus to work for a political solution but in helping the regime to confront ISIS, which has tragically occupied large swathes of Syria's sovereign territory? Is there any logical reason why the Russians, who still enjoy a treaty of friendship with Damascus, do not have a right equal to that of the western coalition to protect their own interests in Chechnya and central Asia?

I note that the Statement describes the Syrian refugees as fleeing the terror of Assad and ISIL. We ought to consider more closely the differing objectives of our coalition allies in arming and supporting the Syrian rebels, whether it is the removal of Assad's Government, part of a wider Sunni conflict or attempts to destroy the PKK. Is continuing our present policies seriously in our national interest?

Baroness Stowell of Beeston: The noble Lord has covered a lot of ground in that contribution. Briefly, I would say that he is, of course, right that there has to be a political solution to the crisis in Syria. We agree that that requires the involvement of many, many actors in that region and other powerful regions around the world. I do not agree with his assessment of Assad. As he may recall from my responses to questions on previous Statements before the Recess, the UK is in dialogue with the Russians in order for them to use what influence they have over Assad, but we are very clear that the way in which we progress will not be one in which we are willing to work with Assad.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, I wonder whether the Minister realises what a discreditable attempt at press management it is to bring these two Statements together to us this afternoon. On the question of refugees, may I ask her to confirm what I think she said a moment ago—that any child or orphan brought in under this scheme will, as is the case under present legislation, be deported at the age of 18? That is what she seemed to say. Is that correct? And can she please explain the logic whereby the Government say that they will help refugees who are already housed and secure, and already being fed, in refugee camps outside Europe, but will do nothing for refugees who are desperate, and in some cases dying, for want of those things inside Europe? Is the difficult thing, which the Government cannot say, the words "inside Europe"?

Baroness Stowell of Beeston: I am not going to dignify the noble Lord's comments about press management with a response. In response to the specific questions he asked, the point I was trying to make about the way in which we will support refugees who come to us who are children is that there is a clear legal framework that applies when people arrive here as refugees, which includes, after so many years, people being entitled to residency in the United Kingdom. I am not suggesting that there is a new set of rules, or a

[Baroness Stowell of Beeston]
change to existing rules, because of this expanded refugee programme at this time. As for those seeking refuge who have already arrived in Europe, I agree with the noble Lord that we have seen harrowing evidence of suffering not just over the last few days but over the last few weeks, but we are very clear in our mind as a Government that the best policy is the one that we are pursuing: to support people in Syria and to offer refuge to those in the camps in the countries on the borders of Syria, in order to prevent more people risking their lives by crossing the Mediterranean to seek refuge. We really believe that that is the right way forward.

The Archbishop of Canterbury: I warmly welcome this start in the response of domestic hospitality, which comes in addition to the very considerable work that we have done overseas through the overseas aid budget and the work of the Royal Navy. It is on that basis that, challenged by this, the churches, starting this morning, are working urgently to add to what they have already been doing locally, and to work together to achieve and support a coherent, compassionate and credible public policy. I have spoken today to Cardinal Nichols about this. Does the Minister accept, however, that 20,000 is still a very slim response in comparison both to the figures given by the UNHCR and the European Commission, and to the other needs we see, and that it is likely to have to rise over the next five years, unless of course the driver, which I hope she accepts is local conditions in the camps, is dealt with significantly? Does she also accept that within the camps there is significant intimidation and radicalisation, and that many of the Christian population, in particular, who have been forced to flee, are unable to be in the camps? What is the Government's policy about reaching out to those who are not actually in the camps? Finally, does she accept that, regardless of membership of Schengen, a problem on this scale can only morally and credibly be dealt with by widespread European collaboration?

Baroness Stowell of Beeston: I am very grateful to the most reverend Primate for being here today and contributing on this Statement, and for his leadership, and that of other faith leaders, over the last few days and the recent period while we have been observing such terrible scenes. He raises some important points. He described our response as a slim one; he will not be surprised that I do not accept that definition. As I have said, we do not believe that this is just about providing refuge to individuals here in the United Kingdom; we must support people who are in and around Syria and are very much in need, and we have been doing that in a substantial way. No other European country has contributed as we have over the last few years, and I really believe that we should be proud of what we have done to support people in that part of the world. We want to continue doing so, and we are targeting our aid in that area—using the increase, in monetary terms, in the aid budget because of the rise in GDP—so that we can ensure that, as the most reverend Primate highlights, local conditions in the camps are addressed. As for the Christians being among those who are most in need because they are not receiving the support that others are, this is something for us to discuss with the UNHCR. It is important that when the UNHCR considers the criteria for those who are most vulnerable, those should include Christians who are not receiving the kind of support that others may receive.

Lord Anderson of Swansea (Lab): My Lords, since the Prime Minister's harder line last week, we have seen the tragic photographs of that drowned little boy. Recalling that his family fled from Syria to Turkey and were trying to get to Greece rather than go into a camp, will the Minister confirm that that family would not have been helped in any way by this Statement? Secondly, does the status of the five-year humanitarian protection visa mean that people would be in danger of being deported at the end of the five years, if conditions were to change? Does that accord with our obligations under the refugee convention? What is the legal advice on that? Finally, I want to ask about the letter to the President of the UN Security Council that is said to justify action in respect of a named individual. Does that letter just give a bare assertion that this man was planning action, or has planned action, against the UK, or was evidence supplied that came from our intelligence services? Clearly it would be wrong for this House to ask for the evidence, but surely there must be some evidence, rather than a bare assertion, if we are to convince the UN Security Council that we are acting in accordance with proper legal principles.

Baroness Stowell of Beeston: I will have to come back to the noble Lord on his last question about the letter to the UN. I am not clear about the specific terms in which a sovereign nation has to inform the United Nations and the detail it is necessary to set out. However, I am confident that we will have complied with the necessary requirements in informing the United Nations. As the noble Lord acknowledges, it is not possible for me to go into the detail of the evidence as that would compromise our security procedures. On his questions about our existing arrangements for refugees, as I am not familiar with the detail of how refugees are supported when they come to the United Kingdom in terms of their status, residency and so on, and as this question has been raised a couple of times, I will place a letter in the Library outlining the situation. However, I reassure the House that the existing arrangements will continue to apply. I am happy to outline that in a letter.

Lord Blencathra (Con): My Lords, has my noble friend seen the reports that ISIL boasts that it will infiltrate thousands of jihadists into the tens of thousands of refugees leaving Syria? Will she therefore give a cast-iron guarantee that we will concentrate our priorities on women, children and the vulnerable, and that they will all be thoroughly screened before coming to this country? Will she therefore treat with extreme caution demands that we take some of the fit and well-fed young men we saw fighting Hungarian police, because it seems to me that, if they are willing to do that, they might not be the best fighters for British values?

Baroness Stowell of Beeston: My noble friend makes an important point. One of the reasons why we believe that the policy we have adopted of giving refuge to

people via a resettlement programme that includes a very thorough screening process by the UNHCR is the right one is that it offers us a much better assurance that we do not risk people coming to this country to attack us. We cannot have the same assurances in respect of those fleeing Syria who have been accepted through routes adopted by others in the European Union.

Baroness Symons of Vernham Dean (Lab): My Lords, I welcome the Statement's explicit commitment—

Lord Kerr of Kinlochard (CB): My Lords—

Lord Ashton of Hyde: We cannot all speak at once. It is the turn of the Cross Benches.

Lord Kerr of Kinlochard: The Statement is a Statement, is a Statement, and the Leader has my support and sympathy. There are many things in the Statement with which I agree. However, I am puzzled by what it does not say. In particular, I am puzzled by the noble Baroness's answers to the question asked by the noble and learned Lord, Lord Wallace, and the noble Lords, Lord Ashdown, Lord Dubs and Lord Anderson. We are saying that we will not help one of the 366,000 people who are now in continental Europe and that had the little boy on the beach at Bodrum lived, he would have been no concern of ours. Unlike our friends in Dublin, who are not bound by Schengen any more than we are but are voluntarily taking some of these tragic refugees, we are saying that we will take not one of them, however awful their case, and that is what we will say at the European Union meeting this week. Are we sure that reflects the spirit of the country? Are we sure that is in the national interest? Are we sure that a little magnanimity might not come in handy?

Baroness Stowell of Beeston: My Lords, I am clear that we as a nation have decided that the best way of supporting—

Noble Lords: The Government have—

Baroness Stowell of Beeston: If your Lordships prefer, I will say "Government". This democratically elected Government have decided that this country will support those in need through the approach that I have outlined. Indeed, that has been our policy for a considerable time. We have given refuge to 5,000 people from Syria since the crisis started. Alongside the refuge that we are offering, we have made a huge contribution to support those people affected by this crisis in the region. That is not something that can be said about all the other member states in the European Union. We think that our approach is the right one for the refugees, and the right one in the long-term interests of achieving stability in that area and supporting people in need.

Lord Wallace of Saltaire (LD): My Lords, I regret deeply the absence of any reference in the Statement by the Government to co-operation with other countries. At least in July before we rose, the Prime Minister's Statement referred to the need for Britain to operate within a broad international coalition. Does not the noble Baroness accept that this is a common problem that we share above all with our neighbours on the European continent and that there has to be common action, particularly European action? Does she not accept, for example, that what is happening in Calais, which directly affects us, is part of this same movement of peoples across Europe; that we depend on co-operation with the French and others in this respect; and that co-operation, not unilateral action by Britain alone, is where we have to take things forward from here?

Baroness Stowell of Beeston: The noble Lord makes a good point about Calais. Clearly, we have co-operated with the French over the summer to address the situation that worsened earlier in the summer. The Home Secretary was one of the Home Affairs and Justice Ministers who called for the meeting that will take place next week because we think it right that Europe should co-operate more. However, those within the Schengen agreement are not operating in a co-ordinated, coherent way. We want to support them but we are very clear that we do not believe it is in the best interests of this country or those who are most in need to join the action that has been taken by other member states. We are co-operating all the time with our partners in Europe by helping them strengthen their operations on the borders and trying to provide them with the expertise they need. However, in the end they have decided that they want to pursue the course they are following. We believe that by pursuing that course they are increasing the flow of refugees from Syria and that is putting people's lives at risk unnecessarily. We think that a much better approach is the one we are pursuing, which is to provide refuge but to do so for people from the camps directly.

Baroness Kennedy of The Shaws (Lab): My Lords—

Lord Davies of Stamford (Lab): My Lords—

Lord Taylor of Holbeach (Con): My Lords, can we please have order? I am afraid that the noble Baroness, Lady Kennedy, arrived in the Chamber not only after the Statement had been read but also after the contribution had been made from her own Front Bench. In the circumstances she ought to follow the *Companion* and not speak. It is the Labour Party's turn and the noble Lord, Lord Davies, is on his feet.

Lord Davies of Stamford: My Lords, on the basis of the admittedly limited evidence that we have, the Government were absolutely right to take a decision to eliminate those three terrorists. I think that in similar circumstances they will have the support of almost the whole country in taking action when it is necessary and clearly called for in instances of that kind.

Is it not the case that we badly need a debate on refugees, not just a Statement, not least because of the longer-term consequences and almost certainly a great increase in the number of refugees and immigration

[Lord Davies of Stamford]
applicants from all sorts of places as a result of the drama of the last few weeks? Is it not however, sadly, really rather nauseating for the Prime Minister to congratulate himself on a policy of "extraordinary compassion"—that is the phrase used in the Statement this afternoon—when, in fact, we are taking none at all of the refugees from Syria who are currently on the move? We are taking only up to 20,000 over five years. Have not the Germans, who have undertaken to take 800,000 almost immediately, thoroughly put us to shame on that? Is there not also the rather unpleasant sense that on this very important issue, as in so many others, the Government's policies seem driven by a PR agenda? Ten days ago when immigrants or refugees were bad news generally in many people's minds in the Government, the Government were not prepared to take a single new Syrian refugee. Then the media published pictures of dead children on the beach—

Lord Ashton of Hyde: I am sorry to interrupt but can the noble Lord please be brief and ask a brief question?

Lord Davies of Stamford: Is it not very unfortunate that the impression should be given that it is a PR agenda rather than a matter of principle or even a long-term analysis of national interest on which the Government's decisions in this area have been based?

Baroness Stowell of Beeston: As regards the noble Lord's request for a debate, my noble friend the Chief Whip has already scheduled time for a debate on the humanitarian situation. That is scheduled for a week on Wednesday. Regarding the other points made by the noble Lord, I can only repeat what I said before. This is a policy that the Government have adopted over the last few years. We believe that the contribution we are making to support people in and around that region is significant. It is much greater than any other European country. As far as expanding the refugee programme, the policy remains the same; we are simply expanding it because we see an increased need at this time.

Lord Higgins (Con): My Lords, it is very important that migrants in danger of drowning in the Mediterranean should be rescued. However, at present after being rescued they are then disembarked in the European Union, thereby adding to the number of people coming across the borders. Does my noble friend agree that it is not really compatible with our policy that we should continue to do that, because at the moment the traffickers are able to say, "Don't worry if the boats look unseaworthy. You'll be rescued by the navy and taken to your destination anyway"? Therefore, they are encouraged even more to take the risk. More broadly, do we not have a definite interest in the Schengen agreement, which results in the situation in Calais, as has been pointed out? Should we not take a much stronger line in persuading our European partners that they ought—at any rate on a temporary basis—to suspend Schengen because it is not compatible with having external borders that are clearly not effective?

Baroness Stowell of Beeston: My noble friend remarked on those crossing the Mediterranean. I think we were right to provide assistance via the Royal Navy to those who require rescue from the crossings. However, he raised an important point that I do not think I have yet addressed in response. There are criminals involved in taking advantage of these very vulnerable and desperate people. They are making money out of people in great danger. By following our policy, we are trying to make it clear that there is another way to refuge that does not require the risk. It should also mean, therefore, that we are able to disrupt the criminal behaviour of people abusing the weakness and vulnerability of people.

On my noble friend's point about Schengen, he is absolutely right that it is very important that the borders of the European Union are properly held and policed and that we, although we are not a member of Schengen, should do all that we can to make sure that those borders are strong. That is where we make a very strong contribution, have done for a long time, and will continue to do, because we do not think that Europe is doing all that it should in maintaining its borders.

Baroness Symons of Vernham Dean: My Lords—

Lord Green of Deddington (CB): My Lords—

Lord Ashton of Hyde: My Lords, I am sorry to interrupt again. It is actually the turn of the Cross Benches and then we can come to Labour.

Lord Green of Deddington: My Lords, first, I warmly endorse the remarks made by the noble Lord, Lord Wright of Richmond. Both he and I are former ambassadors in Damascus. We have first-hand knowledge of that country and its regime. We have been long concerned about the Government's policy towards Syria and we think it is time for it to be reviewed. That said, does the Minister agree that the focus of the debate has been entirely on refugees, which of course is right? However, not all migrants are refugees. We have to keep in mind that a significant number—we do not know how many and we will not know until their cases have been considered—are in fact economic migrants.

It is very important that the actions taken by Governments in Europe and in the UK do not have the unintended effect of causing a very large flow of people into the Union and this country who have no right to be here. Does the Minister therefore agree that this is exactly the wrong moment to cut the resources available to the Home Office and the Border Force to distinguish between genuine refugees and economic migrants? They should be doing the exact opposite. We have a new and major crisis on this whole front and that should be recognised in the way we address it.

Baroness Stowell of Beeston: The noble Lord raises an important point—that not all those arriving in Europe are refugees, and some are economic migrants. That is another reason why we believe that our policy is better than the one that others in Europe are adopting

because, informed by the specific advice from the UNHCR, we are able to make sure that those to whom we give refuge are not seeking a better life for themselves for only economic reasons while not at immediate risk. Regarding the other points raised by the noble Lord, clearly it is essential that we maintain our borders and that is something that we continue to do.

Baroness Symons of Vernham Dean: My Lords, I would be grateful if the Minister could clarify a couple of points in the Statement. It makes the point that this country has provided sanctuary for more than 5,000 Syrians so far. It goes on to say that we will settle up to 20,000 Syrian refugees over the Parliament. Are we in total proposing to settle 25,000 or are the 5,000 already subsumed in the 20,000 mentioned later in the Statement?

The Statement also says that we will play our part,

"alongside our other European partners",

and then goes on to say that we will decide our "own approach". While I did not altogether welcome the tone of the point made by the noble Lord, Lord Ashdown, he does have a very strong point indeed. Surely a child who has drowned on a beach in Europe does every bit as much to excite our compassion as a child washed up on a beach outside our borders. The response of the British public in the last 10 days or so has shown that actually people are not that concerned whether we are taking people solely from the refugee camps pinpointed in the Statement. Surely it is right that if we really are demonstrating compassion we extend it to people who are suffering every bit as much in the countries of Europe of which we are a part. I hope the Minister can assure us that that point will be kept under constant review and that the Government will keep listening to what the British people say about this, because I for one do not believe that the Government have quite got the message yet.

Baroness Stowell of Beeston: I can confirm for the noble Baroness and the House that the 20,000 mentioned in the Statement are in addition to the 5,000 refugees that we have already given sanctuary to, so that number will not be absorbed into the 20,000. As far as her other comments are concerned, I agree that the people of this country do not draw a distinction when looking at the plight of people in desperate need. We are all moved by those in need of help and support, and by the tragic circumstances of those who have sought refuge and, on the way, have lost their own children. But alongside their not drawing a distinction between where people are coming from, at the same time, what people in this country look for—and what we as a Government are trying to do in our response to this situation—is for us to combine two simultaneous requests from the public. They are that we show our compassion by providing support for people in desperate need but do so in a way which is well organised, is actually sustainable and, in the long term, will not make matters worse; and that we have a policy that will ultimately help to bring an end to the situation causing all this desperation. I think that they look for something which is comprehensive, and that is what we are trying to deliver.

Baroness Bakewell of Hardington Mandeville (LD): My Lords—

Lord Boateng (Lab): My Lords—

Lord Deben (Con): My Lords—

Lord Ashton of Hyde: It is the turn of the Liberal Democrats.

Baroness Bakewell of Hardington Mandeville: My Lords, as we have already said, many local authorities up and down the country have been preparing contingency plans to assist them to make room for the refugees. Many of these local authorities have growing lists of residents who are in temporary accommodation but are nevertheless willing to help. All local authorities should be able to say how many refugees they will accept, and central government must say what it will do to make sure that the refugees get the funding needed. Will the noble Baroness say in what way the Syrian refugees are to be dispersed throughout the country and how their children are to be integrated into our schools and education system?

Baroness Stowell of Beeston: The discussions between central government and local government are only just starting, although there is already very much a partnership in place with those local authorities that have been giving assistance and refuge to those whom we have already helped over the last few years. I assure the noble Baroness that we will work with the local authorities and, as I say, adopt a partnership approach.

Lord Boateng: My Lords—

Lord Deben: My Lords—

Lord Ashton of Hyde: My Lords, we have very little time. It is the turn of the Conservatives.

Lord Deben: Does my noble friend accept that the words of the most reverend Primate the Archbishop of Canterbury, remarking upon the fact that many Christians cannot stay in the camps because of intimidation, mean that the policy of the Government, which may be logical in every way, ought to be reconsidered in such a way that we can take those refugees who have had to leave the camps and find themselves on the continent of Europe? To refuse to do that would not represent or respect what the British people want.

Baroness Stowell of Beeston: My noble friend heard what I said in response to the most reverend Primate and I do not really have anything to add to that. I have tried in my responses today to demonstrate that the Government are providing refuge to people in desperate need. We are building on a programme of support that has been extensive and very much at the forefront of what else is being provided by other members of the European Union. We will continue to do all that we can. I am sure we will continue to discuss this on other occasions, and I very much look forward to that.

Energy Bill [HL]

Committee (1st Day) (Continued)

6.15 pm

Clause 5: Directions: national security and public interest

Amendment 12

Moved by ***Baroness Worthington***

12: Clause 5, page 3, line 35, at end insert—

"( ) are necessary in order to inform the OGA's role in developing and promoting carbon storage,"

Baroness Worthington (Lab): My Lords, thank you for returning to Committee. Amendment 12 in Clause 5 relates to the Secretary of State's abilities to give directions to the Oil and Gas Authority. Again, I fear that we are now retreading familiar territory in our discussion of the Bill and some of the concerns that we have with it. The amendments in this group are probing and designed to give the Minister an opportunity to respond on how he considers that these powers might be used by the Secretary of State. We revisit the two issues that we talked about earlier today, which are that the Oil and Gas Authority should have explicit mention of carbon storage and transportation in its objectives and in the matters to which it has regard. For consistency's sake, we therefore believe that the Secretary of State should also have those powers.

The purpose of these amendments, particularly Amendments 12 and 14, which are in my name, is to ask the Minister whether he could give us a little more information about the circumstances under which he envisages the Secretary of State needing to use these powers. Perhaps he could also give us an example of what kind of direction he imagines the Secretary of State might be giving the Oil and Gas Authority in relation to its functions under these powers. There is clearly not much in the public domain to help me get a handle on the thinking behind Clause 5, so it really would be an illuminating contribution from the Minister if he were able to give us some examples of the circumstances, particularly the exceptional circumstances referred to in the Bill, and the examples of direction.

We had a discussion prior to the break about the primary purposes of the OGA. I remain convinced that there is a clean and very succinct way of doing this, which is to refer to the Oil and Gas Authority's primary objectives and to include within them explicit reference to activities that go beyond maximising economic recovery, as it is perhaps formally or informally understood. At the moment, it is interpreted as meaning that we will extract the maximum volume of hydrocarbons from our natural resources which fall within our territorial waters offshore, and indeed onshore. But it may be that that definition of MER, while it still of course has cross-party support, needs to be revisited and revised.

In the previous discussion, we saw reference to new matters to which the OGA should have regard being added to Clause 4. The Minister's response in that debate was that there is no need to be explicit about these matters and that climate change is taken care of elsewhere, as indeed is the need to decarbonise and CCS. But if that logic were to apply, it is the case that one of the matters stated in Clause 4 is the need to have regard to a secure supply of energy, so if we are being true to ourselves and saying that we should have a narrow focus for the OGA and do not need to reiterate these things, there is no need for any reference to security of supply in that part of the Bill either. However, I do not think that is correct. Indeed it was helpful that the noble Lord, Lord Deben, who is no longer in his place, made reference to the fact that to avoid doubt it is always better to be explicit about these things, for fear that people with slight imagination —he used that phrase but perhaps it should be "lacking in imagination"—might mean that there is a narrow interpretation of what the OGA is created to do and what is within its powers and remit.

That is a very lengthy way of saying that we look forward to hearing more from the Minister on Clause 5, which is clearly an important part of the Bill. However, as I read it, I am left wondering what these exceptional circumstances are and what these directions could look like. I look forward to hearing from the Minister in his response. I beg to move.

Lord Whitty (Lab): My Lords, I have two amendments in this group, but I also want to apologise to the Committee because, due to my attendance at my Select Committee, I was unable to be here for the previous debate, during which, as my noble friend said, the case was made for ensuring that the OGA—while it may well have principal objectives—has to operate in the context of wider energy policies. Issues of climate change, energy security and affordability are relevant to how the OGA fulfils its main functions. Indeed, if its main function is in terms of maximum economic recovery, what happens on those other dimensions of energy policy affects the actual economics in MER. Therefore, it is important that the OGA, as set out in the earlier clauses, has some regard to those broader objectives of energy policy. It is also important that the Secretary of State can intervene in those areas.

Amendment 13 would allow the Secretary of State to give directions where it would be necessary to meet the terms of the Climate Change Act and the budgets promulgated under that Act. Amendment 15 relates to the Committee's discussion before the break about carbon capture and storage, so that directions could relate explicitly to the storage of gas and oil and the storage of carbon dioxide as part of a carbon capture and storage scheme. The amendments previously discussed relating to Clause 4 need to be complemented with the ability of the Secretary of State to intervene on those same subjects. That is what these amendments would do.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I shall speak to the amendments in this group and I thank noble Lords who have participated in the debate for speaking to their amendments. Amendments 12 to 15 relate to Clause 5 of Part 1 of the Bill, which concerns directions the Secretary of State may give to the Oil and Gas Authority. As the noble Baroness, Lady Worthington, said at the outset of our consideration in Committee, most of what we are looking at in the non-government amendments relates to carbon capture and storage.

That is certainly a point well made. As I have indicated, we have undertaken that we will look at the issues relating to carbon capture and storage prior to Report.

As has been said, Clause 5 gives the Secretary of State power to direct the Oil and Gas Authority in the exercise of its functions if the Secretary of State considers the directions in the interest of national security or otherwise in the public interest. The noble Baroness, Lady Worthington, asked for examples of that and I will try to provide a couple. First, if a licence is applied for by a person who is suspected of corruption and whose possession of a licence the Secretary of State thinks would lead to reputational embarrassment or political damage to the United Kingdom, the intention is that the Secretary of State should be able to direct the Oil and Gas Authority not to issue a licence to such a person.

Secondly, another instance may be if there are other competing uses for a particular area of the seabed in respect of which the Oil and Gas Authority may grant licences. The intention then is that the Secretary of State should be able to give a direction to the Oil and Gas Authority as to over which areas it should or should not exercise its licensing powers so as not to prejudice those other uses.

Finally, another example may be that the Secretary of State should be able to direct the Oil and Gas Authority not to grant further consents for development in the face of public concern about the scientific evidence in relation to the methods used or a change in government policy. Clearly, that is not an exclusive list but those are some situations that may be covered by it.

The amendment makes it clear that the power in Clause 5 can extend to the Oil and Gas Authority's functions in relation to the carbon capture and storage sector. We believe that it is unnecessary to do this because the Secretary of State's power to give directions to the Oil and Gas Authority as to the exercise of its functions already applies to the carbon capture and storage sector in so far as it is in the ambit of the Bill.

Baroness Maddock (LD): I thank the Minister for allowing me to ask a question on this issue. At Second Reading I asked how much the Government had looked at the way Norway had organised its oil and gas industry. When Norway looked at these areas, I wondered how far it looked at carbon capture and storage and whether we have learnt anything from that in relation to what we are discussing at the moment.

Lord Bourne of Aberystwyth: I have no direct knowledge about lessons we have learnt from Norway, but I can certainly reassure the noble Baroness that we look closely at the Norwegian experience and the Canadian experience of carbon capture and storage. If I may, I will drop her a line on that and copy it to other Peers who have participated in today's debate.

We believe this amendment is unnecessary as the Secretary of State's power to give directions to the Oil and Gas Authority in the exercise of its functions already applies to the carbon capture and storage sector, as I have said. On that basis, we do not see the need for this amendment. Similarly, Amendment 15 makes it clear that the Secretary of State's directions to the Oil and Gas Authority may include requirements on the development of storage facilities for gas and oil, or storage of carbon dioxide, as part of a carbon capture and storage scheme. Once again, the Secretary of State's functions of licensing the storage and unloading of gas and the storage of carbon dioxide are being transferred to the Oil and Gas Authority by the Bill. As such, the Secretary of State's power to give directions to the Oil and Gas Authority in the exercise of its functions already applies to these sectors. Were additional functions to be added to the Bill, they, too, would be covered by this provision and an amendment would not be necessary.

Turning to Amendments 13 and 14, the Oil and Gas Authority will be established formally so that it is an effective, robust and independent regulator. As part of this, it will deliver on the strategy to maximise the economic recovery of petroleum from the United Kingdom continental shelfs. The Oil and Gas Authority is purposely not an environmental regulator and environmental regulation will continue to sit within the Department of Energy and Climate Change, which has the expertise and experience in this field. There are synergies between the two forms of regulation and the existing strong relationship between the Oil and Gas Authority and the department will continue. The department will continue with its vital mission of seeking secure and diverse energy supplies, including renewables, nuclear and indigenous resources. The United Kingdom has adopted ambitious climate change targets, committing us to an 80% reduction in emissions from 1990 levels by 2050. Emissions are already down by 29% on those levels.

As I indicated on a previous amendment that was brought forward on environmental concerns, these amendments also raise issues of compliance with the offshore safety directive, which is legally enforceable against us. This requires a separation of oil and gas licensing from environmental functions. So it may not be legally possible to do this either.

6.30 pm

Lord Whitty: I do not believe that either my amendment or the other amendments intend to designate the OGA as a drafter or an enforcer of environmental legislation. They seek to ensure that anything the OGA does will not jeopardise—preferably, they would further—the broader objectives of the Government. This does not mean that it is a regulator; rather, that the Secretary of State would have the ability to intervene if some of the economic decisions taken by the OGA jeopardise its legal obligations under the domestic climate change Acts, or indeed jeopardise its international legal obligations under EU or any global climate change agreements. We are not arguing that the OGA should be an environmental regulator.

Lord Bourne of Aberystwyth: I am grateful to the noble Lord for that clarification. We will have another look at the position, and indeed I am probably using the term "environmental regulator" in something of a shorthand sense. We have legal concerns on this, but I undertake to take a second look and possibly we will come back to it on Report.

[Lord Bourne of Aberystwyth]

In the light of my comments and the undertakings that I have made previously, I respectfully ask the noble Baroness to withdraw the amendment.

Baroness Worthington: I thank the Minister for his reply and my noble friend Lord Whitty for his contribution to the debate. It is helpful to have specific examples of when the Secretary of State may need to take powers to direct the OGA. I have to say, though, that they do not really reassure me. I should like to read Clause 5 again in more detail because it seems that when it comes to the licensing of activities, competition and scientific evidence, it will give the Secretary of State quite a high degree of enabling power. I wonder whether the process as outlined in the Bill, which is just to notify Parliament with no debate, is sufficient in the circumstances. I could fast forward and imagine a time when there might be a part of, shall we say, a constituency which may not wish to have a particular oil and gas activity taking place. It might suit the Secretary of State to exclude that objection, and in these circumstances it seems that the Secretary of State could simply ask the OGA to do so without any debate about it.

The examples are helpful and it may be something we come back to on Report. However, before I withdraw the amendment I should like to reiterate my point that if we are going to take the line of defence that the OGA is narrow and does not need to have all these matters cluttering its mind, this seems to be a situation where it is being expected to have some sort of regard to security of supply, even though it is not a security of supply expert any more than it is a climate change expert. In terms of the trilemma, which we all know and love, of energy security, affordability and decarbonisation, to make explicit reference to security of supply in Clause 4 but not to affordability or climate change issues seems to suggest that one leg of the stool is more equal than the others. Again, we will probably want to come back to that, even if it is just to take out the reference to security of supply, which might be the most obvious solution.

At this stage I am happy to withdraw the amendment, but as I say, I will read Clause 5 with a greater degree of understanding and scrutiny now that we are back from the Recess. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendments 13 to 15 not moved.

Clause 5 agreed.

Clauses 6 and 7 agreed.

Amendment 16

Moved by ***Lord Bourne of Aberystwyth***

16: After Clause 7, insert the following new Clause—

"Powers of the OGA to charge fees

(1) The OGA may charge fees—

(a) for making a determination under Schedule 1 to the Oil Taxation Act 1975;

(b) on an application made to it under section 3, 15, 16 or 17 of the Petroleum Act 1998;

(c) on an application of a prescribed description made to it by the holder of a licence granted under—

(i) section 3 of that Act (searching for, boring and getting petroleum), or

(ii) section 2 of the Petroleum (Production) Act 1934 (licences to search for and get petroleum);

(d) on an application of a prescribed description made to it by the holder of an authorisation issued under section 15 of the Petroleum Act 1998;

(e) for carrying out or attending any test, examination or inspection of a prescribed description;

(f) on an application made to it under section 4 or 18 of the Energy Act 2008;

(g) on an application of a prescribed description made to it by the holder of a licence granted under section 4 or 18 of that Act;

(h) for the storage by it of samples or information in accordance with an information and samples plan (see section (Information and samples plans: supplementary) (2) of this Act).

(2) The fees—

(a) are to be determined by or in accordance with regulations made by the Secretary of State, and

(b) are to be payable by such persons as the regulations may provide.

(3) The OGA must pay into the Consolidated Fund any amount which it receives in respect of fees charged by it under this section.

(4) Subsection (3) does not apply where the Secretary of State, with the consent of the Treasury, otherwise directs.

(5) Where in relation to any matter the OGA has a function mentioned in subsection (6), that function is treated for the purposes of this section as carried out pursuant to an application made to the OGA (whether or not there is any requirement to make such an application).

(6) The functions are—

(a) extending the term of a licence;

(b) giving its consent or approval in relation to any matter;

(c) objecting in relation to any matter.

(7) The Secretary of State must consult the OGA before making regulations under this section.

(8) In this section "prescribed" means prescribed by regulations made by the Secretary of State."

Lord Bourne of Aberystwyth: My Lords, I will now speak to the government Amendments 16 to 19, which relate to the funding of the Oil and Gas Authority, including the provision of payments and financial assistance to the authority. The Oil and Gas Authority will be formally established so that it is an effective, robust and independent regulator of petroleum recovery. As part of this, it will deliver on a strategy to maximise the economic recovery of petroleum from the United Kingdom territorial sea and the United Kingdom continental shelf. The new body will be funded by industry. This is consistent with the user pays principle because industry will be benefiting from the work and expertise of the regulator.

The Oil and Gas Authority is providing a range of services to industry. These services include the issuing of licences as well as issuing relevant consents and permits, for example, to begin petroleum production. It is correct and in compliance with the Treasury's Managing Public Money remit that the costs of these

services should be recovered via direct fees rather than via the general levy. This will ensure that only those who require and benefit from the service will bear its costs.

Amendment 16 inserts a new clause into the Bill which will ensure that the costs of the relevant services provided by the Oil and Gas Authority may be recovered via a direct fee. Details of the fee mechanism and the method of calculating the full cost of the service will be set out in regulations. Amendments 17 and 18 insert new clauses allowing the Secretary of State to make regulations providing for a levy on industry to meet the costs of the authority; that is, the indirect costs of administration and so on. These new clauses are in similar terms to the levy provisions set out in Section 42 of and Schedule 7 to the Infrastructure Act 2015, but they reflect the fact that the functions will be carried out by the Oil and Gas Authority as a government company rather than as an executive agency, where in law the functions are with the Secretary of State. We thought it would be more helpful to those using the legislation to find the levy provisions in this Bill, and I hope that noble Lords are reassured by that. The noble Lord, Lord Oxburgh, who is not now in his place, and the noble Baroness, Lady Liddell, both referred to the need to simplify access to some of the provisions in this area, so I hope that the fact that they will all be contained in this Bill rather than in the Infrastructure Act 2015 is helpful.

To allow the regulator to recruit and retain the best candidates, particularly those with specialist experience, we need to ensure that the regulator has financial flexibility and sufficient funding. Amendment 17 enables the Secretary of State to provide by regulation for a levy on the holders of specified licences. The levy will fund the costs of the regulator, but it must not exceed the costs incurred in carrying out the relevant functions. The amendment also allows the levy to be imposed to cover the costs of the Oil and Gas Authority exercising its functions, including those relating to the new powers we are conferring on it, such as dispute resolution, data acquisition and enforcement. Amendment 18 sets out illustrations of the way in which the levy power may be exercised. This is in similar terms to Schedule 7 to the Infrastructure Act 2015. Regulations will set out the detail, including the amount payable by different categories of licence holders. Just by way of explanation, it is intended that those licence holders who are actually exploiting the area will be paying more than those who have not yet taken up the opportunity.

Some consequential amendments to the schedule are necessary, such as Amendment 42, which amends the schedule to the Bill to remove the levy provisions from the Infrastructure Act 2015 as set out in Section 42 of and Schedule 7 to that Act. These amendments are covered separately with Amendment 1, which seeks to amend Clause 2, which introduces the schedule. In fact the amendment has already been dealt with, so I fear that my notes are out of date.

I turn now to Amendment 19, which provides a general power for the Secretary of State to make payments and provide financial assistance to the Oil and Gas Authority. The power is not restricted to the specific functions of the authority, and therefore payments may be made at the discretion of the Secretary of State to fund any of its functions. As well as covering statutory functions, it will cover those which are contracted out to the Oil and Gas Authority. The authority will be funded through a levy on the holders of certain energy industry licences and by fees which will be paid for the carrying out of particular services. The Secretary of State may also need to provide funds to the authority to cover any unforeseeable events. The amendment will allow the Secretary of State to provide financial assistance to the Oil and Gas Authority in the form of grants, loans, guarantees and indemnities. I beg to move.

Baroness Byford (Con): My Lords, first, obviously the details will be set out in the regulations. Does my noble friend have any idea when those regulations may be available, or if they are available already? That would be helpful to us in our discussions as we go through the Bill. Secondly, I particularly welcome the flexibility that has been given to the Secretary of State to make payments which might unexpectedly be needed. Having that sort of provision makes good sense.

Baroness Worthington: My Lords, I thank the Minister for his introduction of these government amendments and the noble Baroness, Lady Byford, for her contribution. However, I disagree with the noble Baroness slightly on her last comment. It may be necessary for the Government to make financial support available, but I worry that that creates yet another unbounded public spending commitment, and I know that the noble Baroness is very keen to try to constrain such commitments, as are the Government. I question the need for government Amendment 19, but at this stage I am not sufficiently briefed to know how extraordinary these clauses are. Maybe this is a very common thing, and we always create these abilities to give grants to quangos with no further detail, but perhaps we do not. I would be very grateful if the Minister could provide a bit more context, when he replies, about the need to provide for grants, loans and other financial provisions.

I ask because I am concerned about the growing costs of decommissioning, which we have talked about in previous debates. Similarly, I am slightly nervous about unbounded liabilities on the public purse at a time when so many people are being asked to tighten their belts. The profits of the offshore oil and gas industry are well known, and it would seem odd for it to be given special provision while everyone else is seeing their budgets cut. In particular, I am slightly worried that these unforeseeable events are not defined and that there would be, as I read it, very little in the way of opportunity for debate or questioning of the Secretary of State if such financial provisions were made. I would like further clarity on how much scrutiny there might be on that aspect. Those are the main points at the moment, and I look forward to a response from the Minister.

Baroness Byford: Perhaps I could express myself slightly more fully before the Minister responds. I looked at government Amendment 19 in terms of a national emergency—something out of the ordinary—and I was not quite sure, if it did not come in within the new clause, whether there was another way in which that sort of money can be accessed for the OGA. That was the presumed context within which I raised the

[Baroness Byford]
issue. The noble Baroness is quite right that I am very keen to make sure that the Government live within their means. However, there are times—as we have seen in the international field when we have had major oil spills or something has gone really wrong—when emergency money has to be made available and I wondered whether that was within the context of the new clause in Amendment 19.

Lord Bourne of Aberystwyth: My Lords, I will try to address the points raised by the noble Baroness, Lady Worthington, and my noble friend Lady Byford. The first was about when the regulations for the charging regime will be laid. They will need to be in force when functions transfer to the Oil and Gas Authority next summer, assuming the passage of the legislation. We have an indication of how much the levy will cost industry and the distinction to be made between those that are currently exploiting oil and gas fields and those that are not. The cost of the levy for the first six months for licence holders that are not exploiting is £2,759.30p—which seems pretty precise—and for those that are exploiting, it is £30,422.92p. I am sure we would reserve the right to vary that somewhat, but it gives an indication of how much the levy will cost. I think the regulations relating to the activities that are subject to the direct costs have not yet been laid, but I will restate the point that the aim is to recover the costs: it is not make a profit, but to ensure that the costs are covered. That should provide some reassurance.

The noble Baroness, Lady Worthington, and my noble friend Lady Byford both raised points in relation to Amendment 19, on financial assistance. I think this is intended to cover two situations—if there are others, I will make sure that I deal with them in writing. First, it is intended to cover any shortfall in the levy and charge regime in the short run. I suppose this relates to cash-flow issues and is to ensure that things are kept running. That would presumably be a short-term measure and not involve a great amount of money in the scheme of the authority.

The second point relates to unforeseeable situations. The noble Baroness, Lady Worthington, asked for examples. In a sense, it is difficult to give examples because they are unforeseeable, but it could include some massive oil spillage where immediate funding is necessary or, God forbid, some terrorist incident where money is needed. That is the sort of situation. Those are two examples, but there will clearly be others, as this is about the unforeseeable. The unpredictable nature of the scenarios is clear there, but in addition there is the cash-flow element. I think it is fairly standard in these situations to have something of this nature. I hope that provides reassurance and that I have satisfied the noble Baroness.

Amendment 16 agreed.

Amendments 17 to 19

Moved by ***Lord Bourne of Aberystwyth***

17: After Clause 7, insert the following new Clause—

"Levy on licence holders

(1) The Secretary of State may, by regulations, provide for a levy to be imposed on, and be payable by, one or more of the following kinds of persons—

(a) persons who hold licences (other than excluded licences) granted under section 3 of the Petroleum Act 1998 (searching for, boring and getting petroleum);

(b) persons who hold licences (other than excluded licences) granted under section 2 of the Petroleum (Production) Act 1934 (licences to search for and get petroleum);

(c) persons who hold licences granted under section 4 of the Energy Act 2008 (unloading and storing gas);

(d) persons who hold licences granted under section 18 of the Energy Act 2008 by the Secretary of State or the OGA (storage of carbon dioxide).

(2) The Secretary of State must exercise the power conferred by subsection (1) so as to secure—

(a) that the total amount of licensing levy which is payable in respect of a charging period does not exceed the costs incurred by the OGA in exercising its functions in respect of that period, and

(b) that no levy is payable in respect of costs incurred in the exercise of functions—

(i) for which fees are charged under section (Powers of the OGA to charge fees), or

(ii) which the OGA is authorised to exercise by virtue of an order under section 69 of the Deregulation and Contracting Out Act 1994.

(3) In determining for the purposes of subsection (2)(a) the total amount of licensing levy payable in respect of a charging period, an amount of levy payable in respect of that period may be ignored if (during that period or subsequently)—

(a) having been paid, it is repaid or credit for it is given against other licensing levy that is payable, or

(b) having not been paid, the requirement to pay it is cancelled.

(4) The amount or amounts of licensing levy payable by licence holders must be—

(a) set out in the regulations, or

(b) calculated in accordance with a method set out in the regulations.

(5) The licensing levy is payable to the OGA.

(6) The OGA must pay into the Consolidated Fund any amount which it receives in respect of the licensing levy.

(7) Subsection (6) does not apply where the Secretary of State, with the consent of the Treasury, otherwise directs.

(8) The Secretary of State must consult the OGA before making regulations under this section.

(9) Section (The licensing levy: regulations) does not limit the provision that may be made by regulations under this section.

(10) In this section and section (The licensing levy: regulations)—

"charging period" means a period in respect of which licensing levy is payable;

"excluded licence", in relation to a charging period, means a licence that, if granted at the beginning of the period, would fall to be granted by the Scottish Ministers or the Welsh Ministers (and for these purposes a licence within subsection (1)(b) is to be treated as granted under section 3 of the Petroleum Act 1998);

"licensing levy" means the levy provided for in regulations under this section."

18: After Clause 7, insert the following new Clause—

"The licensing levy: regulations

(1) Regulations may provide for the licensing levy payable in respect of a charging period to increase or decrease over that period.

(2) Regulations may provide for an amount of licensing levy payable by a licence holder to be calculated by reference to the size of an area to which a licence held by that person relates.

(3) Regulations may provide for different categories of licence holders to pay—

(a) different amounts of licensing levy, or

(b) amounts of licensing levy calculated, set or determined in different ways.

(4) Regulations may provide for a category of licence holder to be exempt from payment of the licensing levy.

(5) Regulations may provide for interest (at a rate specified in, or determined under, the regulations) to be charged in respect of unpaid amounts of licensing levy.

(6) Regulations may provide for unpaid amounts of licensing levy (together with any interest charged) to be recoverable as a civil debt.

(7) Regulations may confer a function (including a function involving the exercise of a discretion) on—

(a) the Secretary of State,

(b) the OGA, or

(c) any other person, apart from the Scottish Ministers or the Welsh Ministers.

(8) Regulations (including regulations of the kinds mentioned in subsections (3) and (4)) may provide for a category of licence holder to consist of persons who hold a kind of licence that is specified in the regulations.

(9) The regulations may (in particular) specify any of the following kinds of licence—

(a) licences granted under a particular enactment;

(b) licences of a particular description granted under a particular enactment;

(c) licences, or licences of a particular description (including a description falling within paragraph (a) or (b)), granted—

(i) before a particular time,

(ii) after a particular time, or

(iii) during a particular period.

(10) In this section—

"licence" means a licence falling within section (Levy on licence holders)(1);

"licence holder" means a person who holds a licence (whether the person was granted it or has, after its grant, acquired it by assignment or other means);

"regulations" means regulations under section (Levy on licence holders)."

19: After Clause 7, insert the following new Clause—

"Payments and financial assistance

(1) The Secretary of State may make payments or provide financial assistance to the OGA.

(2) The payments or financial assistance may be made or provided subject to such conditions as may be determined by the Secretary of State.

(3) In the case of a grant such conditions may, in particular, include conditions requiring repayment in specified circumstances.

(4) In this section "financial assistance" means grants, loans, guarantees or indemnities, or any other kind of financial assistance."

Amendments 17 to 19 agreed.

Clause 8 agreed.

Clause 9: Interpretation of Part 2

Amendments 20 to 23 not moved.

Clause 9 agreed.

Clauses 10 to 18 agreed.

Clause 19: Petroleum-related information and samples

Amendment 24

Moved by ***Lord Whitty***

24: Clause 19, page 11, line 25, after "which" insert "were or".

6.45 pm

Lord Whitty: My Lords, in moving Amendment 24, I will speak to the others in the group. We move on to information and samples. These relatively small amendments are intended to ensure that the information and sample regime takes account of the role of carbon capture and storage: in other words, that it is reflected within this part of the Bill in the way that it should be reflected—the Minister has indicated some sympathy towards this—in the earlier clauses relating to the activities of the OGA.

Amendments 24 and 25 are very small and are intended to ensure that the definition of "petroleum-related information" is kept as broad as possible, so that it is not limited to the fulfilment of the principal objective—it is narrowly defined at present—and not time limited to activities which continue to be relevant to that objective. In other words, it could be used, either in parallel with extraction processes or after they have taken place, to provide samples and information to CO_2 licence holders and storage operators. The use of "and" between the two subsections creates an ambiguity here, and if the Government's intention is to ensure that the information could be provided to and required of CO_2 storage operators, they need to make these amendments.

Similarly, on Amendment 25, which relates to the transfer of such information, there are many within the potential CCS market who regard the inability to access samples as one of the barriers to using former gas and oil facilities for carbon storage. In order to ascertain whether the facility is appropriate and can technically be operated as a storage area, information that is held by the OGA as a result of it having been provided by the extraction operators ought to be made available to the CCS operators. Amendment 25 is designed to ensure that that can happen and that the Government have the powers to transfer such data. The Government have already indicated that they hope to be able to transfer such information, and this would give a proper legal base to that and make it enforceable. In addition, Amendment 28 clarifies that the OGA could require information and samples for the purpose of carrying out any of its relevant functions, not just its principal function. Again, that would ensure that storage licensing was included in that provision.

I hope the Government can look at these amendments and, taking account of the points made earlier in Committee about CCS, consider whether these relatively minor amendments to the Bill would help to encourage and give some degree of confidence to potential operators of CCS making use of our North Sea facilities. I beg to move.

Baroness Liddell of Coatdyke: My Lords, we are all getting very excited about these amendments so we are anxious to speak. I want to add a couple of sentences. There is a history in the oil and gas sector of not

[Baroness Liddell of Coatdyke]
sharing information, for whatever reason: sometimes it is competitiveness but sometimes, although I hate to say it, it is sheer awkwardness. Although CCS technology has been around for a long time and has been proven, there is nervousness about transmission, so it would make a great deal of sense if the OGA had the authority to require the sharing of this information, whether for safety reasons or any other reason. Those of us who have had to deal with the oil and gas industry know that it is very shy about passing on the kind of information that my noble friend Lord Whitty has spoken so eloquently about.

Baroness Byford: My Lords, I have two amendments in this group, Amendments 26A and 30A. As we discussed earlier, the OGA may well choose to encourage small innovative companies to come into the business. The termination of rights under a licence, for whatever reason, may result in the failure of a company. The wording in the Bill seems to imply that the duty to retain information and samples will continue, but I am not sure how long that continues for. If a company ceases to continue in business for whatever reason, what happens to those samples? Is the implication of the clause that the OGA will be bound not to encourage innovation—which would be regrettable—other than in companies that are part of or allied to others and which would pick up the pieces in the event of bankruptcy? In other words, does this subsection of the Bill in practice restrict the OGA's duty to have regard to,

"The need to encourage innovation"?

I turn to Amendment 30A, picking up on the comments from the noble Baroness, Lady Liddell, about data sharing. In many businesses, not just the oil business, people are very wary about data sharing, and in many cases I quite understand why. My amendment goes to the other end of the question: what happens to some of these data? Do they get passed on, and what restrictions are there on data being shared and pooled for the benefit of everyone? Over the years, Governments and businesses have been required to release data, which have then been passed on to third companies in a way I am sure the Bill does not intend. My second amendment refers to that. In his letter to me, the Minister stated that,

"information may be disclosed if any one of the factors listed under 27(5) applies".

However, I still do not understand in what circumstances the OGA would disclose protected material simply because the person who had provided it had consented, although there was no need for disclosure under Clause 27(b), (c) or (d). Is there an implication that permission to disclose will be a standard part of any relationship with the OGA? Really, my amendment comes between the previous contribution relating to the concern that we should share data, which is quite right, and the question of how those data are used, not abused, in future.

These are two very simple amendments, and I am delighted to have spoken to them.

Baroness Worthington: My Lords, I shall speak to the amendments in my name and those of the noble Lords, Lord Teverson and Lord Oxburgh. Here again we have an example of a slight lack of communication at the end of the Recess, but I am certain that by the end of Report we will have all this ironed out.

We are addressing similar points to those addressed by the previous amendments, as described very eloquently by my noble friend Lord Whitty. This gets to the nub of our concern about the OGA's remit not being sufficiently broad to ensure that it is able to carry out its functions in a rapidly changing world, in which conversations about carbon capture and storage may be happening more often than conversations about the exploration of new wells or life extensions of existing ones. It is about ensuring that there is nothing in the Bill to prevent the very sensible powers that have been taken to enable activities in the North Sea to be well organised from applying to those activities when they relate to carbon capture and storage.

We—and, I am sure, others—have received excellent representations from academics and the CCSA on the issue of information sharing and samples, which requires careful attention. I was very interested to find out about the issue of samples. Over the past 50 years of exploration and production in the North Sea, and indeed offshore all around the UK, the oil and gas sector has acquired rock core data. In the drilling and exploration of wells, a core of rock is extracted and then maintained, curated, labelled and well looked after. That core sample contains all sorts of information that might be relevant for people wishing to repurpose sites in the North Sea or to continue their use in other forms. I believe that at the moment there is an obligation to maintain these physical samples. However, if a company abandons a hydrocarbon field, that requirement is no longer in place, and I am told that those physical samples can therefore literally be landfilled. The samples have cost millions, if not billions, to acquire, and should be valued as such.

We would therefore like to see something in the Bill that acknowledges that, when it comes to information and samples, we are discussing a very great resource that has practical implications for the development of CCS when it comes to understanding rock strata, and this information should be available. The Minister might say that the British Geological Survey retains an archive of these rock cores, but that is only an archive: you are not able to take samples from it and cannot use it to do the kind of sampling or study and research that you might want to, so that would not be sufficient. There is a need for something that will keep these cores that are owned by the oil and gas companies in a good state and available for people who may find them useful in future.

7 pm

In addition, beyond the actual samples lots of information is held by the oil and gas companies resulting from their operation—for example, understanding of the deep subsurface geology, the injection histories of the hydrocarbon field and the measurement of subsurface pressure in the reservoir and overlying rocks. These are all pieces of information that will, of course, be useful if we are trying to assess our storage capabilities, particularly the borehole data. We need to know how the borehole was drilled and how it was engineered, so we can understand whether it is possible to reuse

boreholes and to secure against leakage. The list goes on, so there is a significant issue here about information and samples.

We remain concerned that the Bill is not sufficiently clear on the reuse and availability of the information and samples for parties that may come along in the near future—indeed, at any time in the future—and wish to use the North Sea for CCS. We can continue to have our discussions about the general principles and the objectives of the OGA but these amendments speak to specific issues that might be a hurdle. I hope to hear some positive words from the Minister, since I am sure that this we will all continue to receive representation regarding this issue. We would welcome further discussion with the Government.

Lord Bourne of Aberystwyth: My Lords, these amendments seek to amend Chapter 3 of Part 2 of the Bill, relating to information and samples. This is another smorgasbord of amendments and I shall attempt to do justice to the contributions that have been made.

Amendment 24 seeks to broaden the definition of "petroleum-related information" that is used throughout Chapter 3 of Part 2. The broadening of this term is to include information acquired by relevant persons in the course of carrying out activities that were once, but are no longer, relevant to fulfilment of the principal objective. I confess that we are not certain what the gap is that the amendment seeks to fill, but I am very happy to engage with the noble Lord, Lord Whitty, to see specifically whether there is a gap and whether we need to fill it. We feel that, as drafted, the clause provides the Oil and Gas Authority with the power to acquire all the information that it is likely to require to fulfil its role.

Amendment 25 seeks to ensure that the two definitions of petroleum-related information are not interdependent. It is our view, having looked at this and having had lawyers look at it, the provisions, as drafted, are not interdependent. Any information that an offshore licensee acquires or creates that is relevant to the principal objective will fall within paragraph (a) and anything a licensee acquires in the course of carrying out activities under their licence which is not relevant to the principal objective would fall within the scope of paragraph (b). This is clarified in the final part of that paragraph, which specifies that in order to fall within paragraph (b) the information cannot also fall within paragraph (a). So I do not think that they can be interdependent, but I am happy to have another look to make sure that we are right. We feel that the clause allows the Oil and Gas Authority to access any information that licensees acquire under their licences, including information which is not relevant to the fulfilment of the principal objective.

I thank those noble Lords who spoke on Amendment 26, which seeks to insert a new subsection into Clause 19 for the purpose of confirming that the provisions within Chapter 3 of Part 2 of the Bill, relating to information and samples, apply for the purpose of data sharing with carbon capture and storage operators. The noble Baroness, Lady Worthington, made some telling points on samples in general. We will look at the points she made about access to the archive and so on—however, we believe that nothing within Chapter 3 prevents the Oil and Gas Authority disclosing information and samples to carbon capture and storage operators, outside the general restrictions provided for in Clause 27. These general restrictions apply to the disclosure of all protected information acquired by the Oil and Gas Authority under its powers in Chapter 3, to any person. Similarly, carbon capture and storage operators are given no special treatment by the clauses, in so far as there is no provision allowing disclosure to them and not to others. Once restricted information is publishable it may be disclosed to any person, including any carbon capture and storage operator.

Amendment 26A relates to Clause 21, which provides a power for the Secretary of State to make regulations imposing obligations on offshore licensees to retain information and samples where there has been a termination of rights under the licensee's licence. This information can be of significant importance to the Oil and Gas Authority and the rest of the UK continental shelf, and it is therefore important that the Oil and Gas Authority can continue to access this information and samples after a licence is terminated. Clause 21 states that regulations may provide for the requirements to retain information to continue following a termination of the licensee's rights under the licence, but the amendment would nullify these obligations if the licensee whose licence rights had been terminated ceases to be in business.

The most frequent ground for termination of a licensee's rights under a licence is where a licensee transfers interests in a licence to another party. In that case, the rights granted under the licence continue for the party to whom they have been transferred but are automatically terminated in respect to the transferring party. Where a licence is revoked, the obligations and liabilities in respect of that licence continue, even in cases where a licensee becomes insolvent. This is done to protect the regulator from acquiring onerous and costly liabilities which may result from that licence.

This amendment is particularly relevant to information and samples plans, as provided for by Clause 23. These plans are intended to safeguard petroleum-related information and samples during licence events, such as the revocation of a licence after a company becomes insolvent. In such a case it would be imperative for the rights and obligations requiring the retention of information and samples to continue past the termination of rights and until the information and samples plan can be put in place. The amendment would prevent this and allow those companies which cease to be in business legitimately to dispose of the petroleum-related information and samples which they hold. This would be a significant and severe loss for the Oil and Gas Authority and the UK continental shelf as a whole. That is something to which we cannot agree and I am sure that it is not the intention of the amendment. I hope, in those circumstances, that that point will be taken on board.

Amendment 27 seeks to specify that an information and samples plan, as provided for by Clause 23, may provide for the transfer of petroleum-related information or samples to a new licensee or a new carbon dioxide storage licence holder. The policy intent of the information and samples provisions is to ensure that petroleum-related

[Lord Bourne of Aberystwyth]
information is accounted for and safeguarded against loss during licence events, such as the surrender and expiry of licence rights. That said, nothing within the existing provisions would prevent a plan providing for the transfer of information to any other person, including a carbon dioxide storage licence holder, and for that person to take on the obligations that are imposed by that plan. The amendment makes presentational but non-material changes to the Bill and I therefore undertake to take it away for further consideration.

Amendment 28 seeks to insert a new subsection into Clause 25 for the purpose of confirming that information and samples plans shall also provide for the sharing of petroleum-related information with carbon capture and storage operators. As I have explained, the information and samples provisions are intended to ensure that petroleum-related information is accounted for and safeguarded against loss during licence events. They are not specifically intended to facilitate the sharing of information between parties. However, I confirm that nothing within the existing information and samples provisions prevents petroleum-related information being shared with carbon capture and storage operators.

Amendments 29 and 30 seek to broaden the scope of the Oil and Gas Authority's power to acquire information and samples as set out at Clause 26 by either removing the requirement for the Oil and Gas Authority's function for which the information is requested to be relevant to the fulfilment of the principal objective, or to add an alternative requirement that the function is relevant to the promotion and development of carbon capture transport and storage. Clause 26 is in response to recommendations made in the Wood review, which noble Lords will be aware focused virtually solely on oil and gas exploration and production offshore. The clauses are therefore drafted very specifically to cater for offshore oil and gas, and the focus on the principal objective and offshore licences reflects that. This is an important focus, and any expansion of these powers beyond it may have significant repercussions for other areas of the Oil and Gas Authority's functions. Much of the information acquired under this power, although relevant to maximising economic recovery in the United Kingdom, will also be of interest and importance to other industries, such as carbon capture and storage. Nothing within the Bill restricts access to that information by any person once it has been published under the disclosure provisions.

The noble Baroness's Amendment 30A requires that the cases in which protected information may be disclosed by the Oil and Gas Authority, which are detailed in Clause 27(5), must apply in defined circumstances. Clause 27(5) seeks to set out a clear set of circumstances in which protected material may be disclosed under Chapter 3 of Part 2 of the Bill. I feel that we do this, but I will be happy to write to my noble friend Lady Byford to seek further to clarify this issue.

Furthermore, Clause 27(8) provides that protected material may be published or made available to the public at such times as may be specified in regulations made by the Secretary of State. I therefore consider that there is sufficient detail within the clause to ensure that the circumstances under which protected material may be disclosed are understood.

On the point made by the noble Baroness on stifling innovation, we do not believe that that will happen. The obligations continue indefinitely or until an information and samples plan is put in place. If a company ceases in business, the plan can provide for the ongoing obligations to end, and the information is then handed to the Oil and Gas Authority.

I will look closely at the proceedings in *Hansard* to ensure that we have looked in detail at those points. As I say, with regard to the one point where the matter seemed to be largely presentational, I will have a look at that to consider whether an amendment is advisable. However, with that, I hope that the noble Lord will be able to withdraw his amendment.

Baroness Byford: My Lords, before the noble Lord, Lord Whitty, comes back on his amendment, perhaps I may return to Amendment 26A. It certainly was not my intention to make things very difficult. My question was on the samples. If a company goes out of business and is not taken over or linked to another, I understand that parts of the samples that are taken are held by the British Geological Survey. However, in response to my earlier inquiry, I was told that the remainder of the sample is required to be retained by the company. I tabled this amendment because of the problem of how that will happen if the company no longer exists. The amendment was not meant to be disruptive but concerned a practical issue: if the company no longer exists, how can it continue to hold a sample? How would that work? Again, I would be very happy for the Minister to take that away to consider it. I did not know the answer to what seemed a very ordinary question.

Lord Bourne of Aberystwyth: I know that my noble friend was not seeking to be difficult or disruptive in any way; I know her too well to think that. I am happy to write further on the issue, but if the company goes into liquidation, basically, proceedings under the Insolvency Act would apply, and the liquidator—I believe this is the case, although this is on the hoof—would then have to act in response to any request from the Oil and Gas Authority to make the samples or the information available. However, I will write to my noble friend on that issue and will ensure that other noble Lords are copied in as well.

Lord Whitty: My Lords, I am grateful to the Minister for such a detailed response to my amendments and the others in this group. Obviously, I will have a very close look at what he said in *Hansard* and will consult those who were concerned about these issues. Certainly there is concern that the overlap between "principal objective" and "petroleum-related" could exclude things that were not currently related to the extraction—or exploration of the extraction—of petroleum, and therefore could exclude carbon capture and storage. However, the Minister has given various reassurances on that, some of which I will require some legal advice on. I am quite happy to arrange for a meeting with him or his officials. However, I repeat that I am very grateful that he has taken these amendments seriously and I hope that we can reach some accommodation on this. I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendment 25 not moved.

Amendment 26 not moved.

Clause 19 agreed.

Clause 20 agreed.

7.15 pm

Clause 21: Retention: supplementary

Amendment 26A not moved.

Clause 21 agreed.

Clauses 22 to 24 agreed.

Clause 25: Information and samples plans: supplementary

Amendment 27 not moved.

Amendment 28 not moved.

Clause 25 agreed.

Clause 26: Power of the OGA to require information and samples

Amendment 29 not moved.

Amendment 30 not moved.

Clause 26 agreed.

Clause 27: Disclosure of information and provision of samples

Amendment 30A not moved.

Clause 27 agreed.

Clause 28: Timing of disclosure etc: supplementary

Amendment 31

Moved by ***Lord Bourne of Aberystwyth***

31: Clause 28, page 16, line 19, at end insert—

"(4) In determining the time to be specified in respect of protected material in regulations under section 27(8), the Secretary of State must have regard to the following factors—

(a) whether the specified time will allow owners of protected material a reasonable period of time to satisfy the main purpose for which they acquired or created the material;

(b) any potential benefits to the petroleum industry of protected material being published or made available at the specified time;

(c) any potential risk that the specified time may discourage persons from acquiring or creating petroleum-related information or petroleum-related samples;

(d) any other factors the Secretary of State considers relevant.

(5) In balancing the factors mentioned in subsection (4)(a) to (d), the Secretary of State must take into account the principal objective.

(6) For the purposes of subsection (4)(a), the owner of protected material is the person by whom, or on whose behalf, the protected material was provided to the OGA under this Chapter."

Lord Bourne of Aberystwyth: My Lords, in moving Amendment 31, I shall also speak to government Amendments 32 and 36. I am extremely grateful to the Delegated Powers and Regulatory Reform Committee for its consideration of the Bill and the detailed work it always does. These amendments are made to implement some of the recommendations set out in the sixth report of the committee.

Amendment 31 amends Clause 28 to include factors the Secretary of State must have regard to before making regulations under Clause 27(8). Such regulations would determine the periods of confidentiality that are to apply to protected material before it can be published or made public. When balancing these factors the Secretary of State must take into account the principal objective of maximising the economic recovery of United Kingdom petroleum. The regulations made under Clause 27(8) are to be subject to the affirmative procedure as a result of Amendment 36, which amends Clause 61 to this effect.

Amendment 32 amends Clause 40, subsection (2) of which requires the Oil and Gas Authority to issue guidance on the matters to which it will have regard when determining the amount of a financial penalty. In line with the committee's recommendation, this amendment requires that the Oil and Gas Authority lays any guidance or revised guidance produced under Clause 40 before each House of Parliament. I am most grateful to the committee for its recommendations, but I should say that the Government have not additionally sought to apply any parliamentary procedure to the guidance, as that is not established practice; for example, we followed that practice in relation to the supermarkets adjudicator and the data commissioner.

Before I move these amendments, I should say that I have heard that the impact assessment with regard to the Oil and Gas Authority has in fact been published, which is good news. It should be available online now, but we will undertake to get it round to Peers who participated in this debate no later than tomorrow. I apologise for the lateness of that. I beg to move.

Baroness Worthington: My Lords, I am grateful to the Minister for introducing these government amendments. Indeed, we—Labour—had also tabled an amendment following the Delegated Powers Committee's recommendation; of course, that will now be withdrawn in the light of the Government's decision to table amendments. We are obviously pleased that the Government have listened to that committee and taken on board its recommendations in regard to the use of the affirmative resolution procedure. We think that is an important addition to the Bill and has improved it—we are grateful.

Before we conclude today's debate, I am encouraged to hear that we will, finally, see an impact assessment. When we sit in Committee and we dedicate our time to

[BARONESS WORTHINGTON]
scrutinising these important matters, having an impact assessment in front of us at the time is much more useful than having it after the Committee's deliberations have concluded. We have a number of groups that we will talk to on Wednesday, so at least we will have some information for that. In the light of the impact assessment's late arrival, I would not be surprised if some of the contributions on Wednesday revisit ground that we visited today without the benefit of the impact assessment. That aside, we look forward to seeing it and I am grateful to the Minister for confirming its arrival. These amendments, as I have said, are implementing recommendations that we support and we have no further comment.

Lord Bourne of Aberystwyth: I thank the noble Baroness very much for those comments—I fully understand and sympathise with her position on the impact assessment. I agree that it would have been much more desirable to have the impact assessment in considering the amendments today. I thank her for her support on the amendments in relation to the Delegated Powers and Regulatory Reform Committee's recommendations.

Amendment 31 agreed.

Clause 28, as amended, agreed.

Clauses 29 to 36 agreed.

House resumed.

7.22 pm

Sitting suspended.

Arrangement of Business

Announcement

7.30 pm

Baroness Evans of Bowes Park (Con): My Lords, I can confirm that this debate is now the last business and that we will not return to the Energy Bill today.

Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015

Motion to Regret

7.30 pm

Moved by ***Lord Beecham***

That this House regrets that the Government are introducing the Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015 without having undertaken a review of the impact and coherence of the cuts to litigators' fees; agrees with the Secondary Legislation Scrutiny Committee's analysis that there is too little evidence to establish what effect the fee reduction would have; and regrets the Government's lack of engagement with the profession and those affected by its reforms (SI 2015/1369).

Relevant document: 3rd Report from the Secondary Legislation Scrutiny Committee

Lord Beecham (Lab): My Lords, I refer to my interests registered as an unpaid consultant with my former law firm.

Last year, the Government reduced the fees payable for criminal legal aid work by 8.75%. On 25 June this year, they published the regulations which are the subject of this regret Motion and which implemented the planned imposition of a second cut of 8.75%, effective for new cases begun after 1 July. However, the Bar was exempt from this second, further cut, at least for the time being. Therefore, it affects essentially solicitors.

The regulations also prescribe new fixed fees, effective from next January, for police station and magistrates' court work and in Crown Court cases involving up to 500 pages of prosecution evidence—the new PPE. Alongside these changes, the Ministry of Justice is pressing ahead with radical changes to the process of bidding for contracts.

The regulations evinced from the Secondary Legislation Scrutiny Committee a critical report of the kind with which the Ministry of Justice is by now all too familiar. In its report of 25 June, the committee highlighted concerns about the lack of detail about the effect of the first instalment of the 17.5% cut and the deviation from the original timetable. It pointed out that the so-called Explanatory Memorandum gave no information about the effect of the first cut despite the statement in the memorandum accompanying the original cut that that there would be continual monitoring and a review.

The impact assessment—again, typically—is described by the committee as "very short on detail" and as offering,

"nothing about quantification of the impact on legal aid providers",

whereas the Law Society was quoted as claiming that 120 providers—about 8% of the total—were facing bankruptcy as a result of the previous round of cuts.

An exchange of correspondence between the noble Lord, Lord Trefgarne, and the Minister is recorded in the committee's report of 2 July and reflected the customary complacency of the Ministry of Justice. The noble Lord, Lord Trefgarne, concluded the exchange by asking two questions: first, what evidence could be provided as to the maintenance of quality, promptness and reliability of the service and how the department would ensure that these were maintained and monitored; and, secondly, given that 1,099 bids had been made for 527 contracts, what would happen to the unsuccessful applicants and was there a risk of market distortion. Perhaps when he replies the Minister could enlighten us as to these matters.

The background to these regulations is of course the Government's determination to secure further reductions in the legal aid bill, the effects of which have so often been a matter of concern in this House and the world outside. Since 2010, the legal aid bill, civil and criminal, has fallen from £2.2 billion to £1.7 billion—that is over 20% in cash terms and more in real terms—and appears, even without the anticipated saving of £55 million from the measures which are the subject of this Motion, to be falling further to some £1.5 billion. Of course, all these figures include VAT.

Before the Minister does so, I should say that the Labour Government also implemented cuts in legal aid and froze criminal legal aid fees. Indeed, I first came to be acquainted with my noble friend—my now good friend—Lord Bach as a result of securing a debate at the Labour Party conference criticising such cuts. The Government, however, appear determined to reduce the number of law firms able to undertake legal aid work— although they have temporarily, as I indicated, spared the criminal Bar from the second 8.75% cut—heedless of the potential impact on clients and the future of the profession.

In the north-east, for example, seven firms will obtain contracts north of the Tyne and five south of the Tyne. These are very large geographical areas such that access to lawyers will become more difficult for many clients and attendance at police stations more difficult for practitioners. Moreover, the fees payable for different categories of work vary widely. The fee for attendance at a police station, which could well be in the middle of the night—as I shudder to recall—varies between £118.80 in Hartlepool to £160.88 in Durham. The rationale for this does not appear self-evident.

There is great concern about the so-called two tiers of contract under which firms can opt to act only for their own clients or in addition undertake duty solicitor work, whether it be at police stations or at court. There is a widely held view locally and indeed nationally that the former group will fall away because of the limited number of cases in what is in any case a declining number of cases overall, as testified by the court closure programme—in itself controversial but justified by the Government because of lack of demand. National and civil legal aid expenditure fell by 11% in the last quarter of 2014 compared to the same period in 2013. The number of magistrates' court cases fell by 17%, committals for sentence by 29%, and all non-Crown Court crime by 7% in volume and 14% in value.

I discussed the situation with partners in my old firm, where the criminal department is a relatively small part of the practice, and with the senior partner in another practice where it is much more significant. During my 35 years as a partner, and since, the criminal department made a very modest contribution to the firm's profits but was maintained because we felt we ought to offer the service. It would appear that the average profit margin on criminal legal work is around 5%. An experienced solicitor might expect to earn only around £40,000 a year, significantly less than in other areas of practice, even in firms with a larger criminal department. Firms are not recruiting trainee solicitors and, even if they wanted to, it is unlikely that many would apply when there are much more financially rewarding areas of law in which to practise. There is therefore likely to be a shortage of able solicitors in future, and of course the Bar, which has temporarily escaped the second round of 8.75% cuts, faces the same potential problem, with adverse consequences ultimately for recruitment to the judiciary, as senior judges have pointed out. The Justice Minister Mr Vara's suggestion that work could be carried out by legal executives underlines the point while ignoring the fact that many firms cannot even now afford to employ legal executives as well as solicitors.

The difficulties that I have outlined are not, of course, restricted to the north-east. A particularly illuminating article by Steven Bird was published by the London Criminal Courts Solicitors' Association. It demonstrated that some areas in the south-east would see some police station fees cut by more than 30% and that magistrates' court fees, falling into what would have been the higher fee band, would be cut by an average of 52.7%. In London, a flat rate of £200.93—I love the precision of the 93p—will mean a cut varying from lucky Bexley of 8.67% to Heathrow of 33.25%. In the complex new arrangements for Crown Court cases where the new PPE applies, with different fees for each band of 100 pages up to 500 and 11 different categories of offence, fees could be cut by 50% or more.

Members will be aware that the measures now under way evoked both a strike, in effect, by solicitors and an unusually close degree of joint working between the Law Society and the Bar, as evidenced by the material published by the Criminal Bar Association. The irony of this latest assault on our cherished system of legal aid and access to justice, already compounded by the ludicrous criminal charges order which is the subject of another regret Motion that I have tabled, in the year when we have celebrated the anniversary of Magna Carta, is clearly lost on this Government. We learnt not to expect more of Mr Grayling, but had hopes of Mr Gove. It is not too late for him to think again about the changes due to take effect next January. He acted, after all, to abandon Mr Grayling's vanity project for the secure college at Glen Parva.

In the mean time, perhaps the Minister, if not tonight then perhaps by way of a letter to be placed in the Library, could answer some questions. What, if any, contingency plans are in place if an insufficient number of firms of solicitors accept contracts for duty solicitor work in police stations or courts? How will the Government react if the contract process is disrupted by legal challenges from unsuccessful bidders? What plans exist to deal with the situation arising from contracts becoming unviable during the period for which they are to run? What assessment has been made of the ability to survive of firms with only an own-client contract and, in the event of a significant number of firms failing to do so in any locality, what contingency plans exist to deal with the problem? What assessment has been made of the impact of the changes on the number of solicitors needed to provide an efficient and accessible service and upon recruitment?

Will the Minister look into the parallel matter of the emerging problem of long delays in trials proceeding because of short staffing in the Crown Prosecution Service? What future does the Ministry of Justice foresee for the Public Defender Service? How many advocates does it plan to employ and on what terms? Will the service be required to compete with private firms or is it seen as a resource of last resort where insufficient private firms fail to survive the new regime? When will the workings of the new structure be reviewed?

Finally, what assurance can be given that it is not part of the Government's intention for criminal legal aid work to be consigned to oligopolies, such as the likes of G4S, Serco or Sodexo, upon which they increasingly rely to provide public services?

[Lord Beecham]

Concern about access to justice in general, and the future of legal aid in particular, has been a regular feature of this House's deliberations in the five years that I have been privileged to serve in it. We seem to be witnessing the slow death of legal aid. I hope that we will not, in the near future, be obliged to act as a coroner's jury, performing an inquest on its ultimate demise. I beg to move the regret Motion.

Lord Marks of Henley-on-Thames (LD): My Lords, I refer to my registered interest as a practising barrister, though not undertaking work in the criminal field.

The fact that this Regret Motion is being debated at all is evidence of a problem that has bedevilled the relationship between the legal professions and government for many years now. Governments of all complexions have failed to seek consensual solutions to the challenge of providing a publicly funded criminal justice system that will work successfully both for the public and for the two essentially private sector professions. A mutually supportive and trusting relationship between the professions and government is essential if our criminal justice system is both to be effective and fair and, at the same time, to command public confidence. There is a crying need for the Ministry of Justice to work more closely with the professions to reach an acceptable agreement—a compact—for fees and future allocation of work. The constant war of attrition over recent decades has damaged government and the legal professions and should not continue. This was a view held and often expressed by my noble friend Lord McNally when he was a Minister, although of course he was bound by the constraints placed upon him by being part of the coalition Government with the overwhelming need to find cost savings. This Government are also so constrained, and we understand that.

I will speak of the reductions affecting criminal work, and my noble friend Lord Carlile of Berriew will speak largely about the changes affecting work for prisoners.

The background against which the implementation of the second stage of the 17.5% reduction in fees is being imposed is a great deal more favourable than it has been for some years. Sir Bill Jeffrey summarised this at the start of his extremely helpful report, *Independent Criminal Advocacy in England and Wales*, published in May 2014. He wrote that:

"The landscape of criminal advocacy has altered substantially in recent years. Recorded and reported crime are down. Fewer cases reach the criminal courts. More defendants plead guilty, and earlier than in the past. Court procedures are simpler. There is substantially less work for advocates to do. Its character is different, with more straightforward cases and fewer contested trials. In the publicly funded sector (86% of the total), it pays less well".

The climate should, therefore, present us with opportunities to make improvements to the criminal justice system, to make it work better and more cost effectively by collective and collaborative effort and working on a clearly evidenced-based approach. Yet the introduction of these regulations has been far from that.

7.45 pm

The justification for the second 8.75% fee reduction was to have been the economies of scale and reductions in cost that were to be expected as a result of market consolidation—the theory being that fewer providers would have larger and more certain volumes of work, which would enable them to weather lower costs by making such economies of scale. Of course, that argument ignores some of the difficulties inherent in reducing provider numbers. A reduction from 1,600 contracts to 527 for solicitors offering cover at police stations involves a substantial limitation of choice for the public. It also makes it far more difficult for new entrants into the market to prosper, which has the effect of ossifying criminal practice in the hands of a few providers. It risks defendants being left without adequate advice at police stations. I do not believe that any clear assessment of that risk—the risk of solicitor cover being unavailable or simply too far away—has been carried out.

Even if one overlooks these points, there is an inherent deep unfairness in what has happened. Although the cuts were introduced in July of this year, the market consolidation that was intended to enable the profession to weather them is delayed until at least January 2016, so that there is a minimum of six months between the two with no protection in place.

The Law Society expects numbers of firms to fold or stop taking criminal work as a result of this second tranche of cuts. Yet the Government's impact assessment accompanying the regulations entirely missed the point. It recognised the,

"additional pressures created by declining case volumes",

and that there are,

"additional challenges in coping with reductions in fees".

Yet the impact assessment made the assumption, described as key, that there would not be any major impact on future clients, explaining that:

"Any impact on clients would be felt through a lack of legal aid coverage should providers be unable to sustain a second fee reduction. We believe that any potential problems with sustainability are mitigated by the changes to legal aid procurement and the harmonisation of fee structures"—

in other words, by the very market consolidation that has now been delayed. But the fact is that there is already, and will be, a loss of providers. The assumption to the contrary flies in the face of human economic behaviour.

It is very similar to the assumption that was made in relation to raising court fees—that the enhanced fees of up to £10,000 to bring a money claim were assumed not likely to lead to a reduction in case starts.

The real challenge for government in this Parliament should be to get the criminal system working better. The report by Sir Bill Jeffrey, which I mentioned earlier, recognised the value of independent and successful legal professionals providing high-quality advocacy. He made a number of important suggestions for the future work of solicitor and barrister advocates in the fields of training, early choice of advocates for cases, and the structure of the two professions and the work they undertake. The Government should heed his report very carefully, and it would be very helpful if the Minister could say in his response how and when they intend to respond to the Jeffrey report, which they commissioned.

The Government should also respond positively, and not just with warm words but with the allocation of the necessary resources, to the need to implement in

full the recommendations of the *Review of Efficiency in Criminal Proceedings* conducted by Sir Brian Leveson and published in January this year. With better communications, fewer unnecessary hearings attended in person by all parties, getting charging decisions right first time and ensuring continuity of representation and of case management throughout the life of cases, there could be a manifestly more efficient system. But as Sir Brian made clear, resources are needed to establish and kick-start that more efficient system—resources for better technology and resources for training. It is incumbent on the Government to provide those resources—and to ensure that the morale of those involved in establishing and running the system is high, so as to make the changes successful.

No doubt the Government would say that savings needed to be made now, and would point to the obvious fact that that the savings that would result from the Leveson proposals would take time to be made. But that is, quite simply, no reason for not making them or trying to make savings now by enabling remuneration in ways that are unfair, that reduce the number of practitioners willing to undertake criminal work, and that diminish morale throughout the system.

On legal aid, we have proposed ways of saving money without cutting fees to unacceptable levels. We have suggested making defendants' restrained funds available for paying reasonable defence fees in very high-cost cases. In civil cases, you cannot freeze funds without an exception for the payment of reasonable costs, yet at present the defendant in a criminal case who has restrained funds is entitled to legal aid because he cannot use the funds to pay for his defence. It defies logic, but apparently some in the Government support retaining the present arrangements.

We have also suggested that larger companies should be required to carry compulsory insurance for directors and employees to cover the costs of fraud prosecutions; we have employer compulsory liability insurance, so why not that? Such defence costs are usually now incurred by the legal aid budget in disproportionately expensive very high-cost cases. These are practical ways to reduce the cost of legal aid without driving firms out of business or making criminal work a Cinderella service, and without destroying the morale of those who work in it. We wish to co-operate with the Government to find ways to save money that are effective and fair, and to be involved in a far more consensual approach.

Lord Ponsonby of Shulbrede (Lab): My Lords, I congratulate my noble friend on moving this Regret Motion. I sit as a magistrate in London in the family courts, the youth courts and adult criminal courts and I frequently hear cases where the defendant or applicant is a litigant in person. From the court's perspective, some litigants in person represent themselves very well. They understand the advice that they receive from the clerks and manage both the legal process and the practical aspects of navigating the court system through to a conclusion that they believe is satisfactory. However, some—I would say many—litigants in person have difficulty understanding the guidance that they are given when in court. They struggle with the whole procedure and, at the end, do not feel that they have been treated justly by the system that they have grappled with.

I want to tell noble Lords an anecdote from about a year ago. It concerns a woman who turned up in court charged with fraud against her employer. She was a litigant in person. She came into court and was correctly identified. The clerk then asked her whether she was guilty or not guilty. Her reply was, "I am guilty but I want to plead not guilty". When asked to explain herself, she did indeed have a rationale for saying that. She was imminently due to have a medical operation. If she had pleaded guilty she would lose her employment and not be able to have the operation, so she was going to delay the finding of guilt until a trial.

It could be argued that the defendant had told us that she was guilty and that she was planning to commit a further fraud on her employer. But as a court we were limited in the advice that we could give to her other than to advise her of the benefits of a guilty plea. We had 30 other cases to deal with that day. We filled in the necessary forms and the matter was indeed put off for trial. If that lady had had some robust defence advice, she may have decided to plead guilty as she had indeed told us she was guilty. But her right to plead not guilty trumped everything else, resulting in the additional cost of the trial.

The overwhelming point that I want to make is that we see many vulnerable people in courts—people who are not able to represent themselves. There is a concern. The Magistrates' Association, together with other interested bodies, has tried to judge whether the justice system is functioning properly with this increase in litigants in person. I draw the House's attention to a survey of magistrates published on 13 January this year. Views were taken before costs came in in February 2014 and again in November 2014 after the increase in litigants in person. The survey shows a noticeable increase in the dissatisfaction expressed by magistrates because they felt that the system was not being as just as it should be.

I understand that there are a lot of surveys, but the current chair of the Magistrates' Association, Richard Monkhouse, was a statistician in a former life and this is a robust piece of work. I have looked at it myself and I have a scientific background. I hope that the Government will look at these figures carefully because they raise a worrying growth in uncertainty and dissatisfaction with the increase in the number of litigants in person.

A wider point should be made. Other aspects of the legal and court system also feed into the general sense of dissatisfaction and the feeling that the court system as a whole is not properly offering justice to people. We have heard from my noble friend about the imposition of the criminal courts charge. In the family courts, we have had cuts to legal aid and an increase in the costs of drug and alcohol testing, which reduces access to fairness for people. We have had the increase in tribunal fees and cuts to CABs. These are off-topic for the purposes of this debate, but they add to the sense of many vulnerable people feeling that the court system as a whole is not open to them as it should be.

Lord Carlile of Berriew (LD): My Lords, it is always a pleasure to follow the noble Lord, Lord Ponsonby, who brings a rich vein of evidence from his experience as a lay magistrate to your Lordships' deliberations.

[Lord Carlile of Berriew]

I declare the interests of having been a barrister practising criminal law for 45 years and having spent 28 years, until I retired from these roles at the end of last year, as a part-time judge at various levels and, particularly for this debate, as a former president of the Howard League for Penal Reform.

In a few moments, I shall talk about prison law specifically, but I wanted to address some issues about the generality of this debate, if I may. I agree with the broad thrust of what has been said about the effect of the regulations. However, I want to commend the Lord Chancellor for his willingness to engage with the legal profession, both the Bar and the solicitors, during recent weeks and months. This has been appreciated. Other things could be done than cutting criminal legal aid in the way which has been described.

8 pm

There are still cost savings to be made which could be addressed and I can give some examples. Lord Justice Leveson's report and the target of one case, one hearing or, at worst, one case, two hearings, which just does not take place at the moment, could save a great deal of money. Announcements have been made about the closure of court buildings but that could go much further and would not result in removing court proceedings from localities. There is absolutely no reason why most magistrates' court hearings and, indeed, county court hearings in the civil jurisdiction, should not take place in town halls, village halls or school halls—buildings where the public would be less intimidated. Layers of administration could be removed. For example, every Crown Court centre has a resident judge. More or less by definition, they are all fairly intelligent men and women who could be trained to manage their court buildings and to be in charge of the whole staff in the courts. There should not be two separate administrations: the court judiciary and the court administration. I know from talking to resident judges that some might resign if presented with the obligation to manage the courts, but there are plenty of others who would seize the opportunity to be trained to do so.

There is an unacceptable level of regulatory duplication in the legal profession: the Solicitors Regulation Authority, which struggles with all the cases placed before it because it does not have adequate resources; the Bar Standards Board; the Legal Services Board; and the Legal Ombudsman. There is a level of duplication here which is—or should be—counterintuitive to any Conservative Government. The statutory bodies regulating the Bar could certainly be reduced by at least one, and possibly two, leaving the Bar Standards Board in place and saving public money. I respectfully suggest that another thing that is counterintuitive to a Conservative Government is the Criminal Defence Service. The nationalisation of part of criminal defences, when there is a perfectly good set of private sector organisations to deal with these things, is an admission of failure to negotiate, not an empirical and objective decision. I urge that the future of the Criminal Defence Service should be reviewed seriously. It is not, unfortunately, making the impact that was intended. Indeed, it is barely making any positive impact at all.

I turn to prison law and to cuts to legal aid for prisoners. One of the roles of lawyers—including the Minister, who is a very experienced and much admired Queen's Counsel—is to speak out sometimes for the unspeakable; to do really difficult things in an articulate way and to represent those many believe should not have rights but who are human beings who do have rights. Prisoners fall into that category. Since December 2013, legal aid for prisoners has been severely curtailed both in scope and through fee cuts. However, this has coincided with an unprecedented deterioration of safety standards in English and Welsh prisons; a rise in suicides; an increase in mental illness among prisoners; and a reduction in the effectiveness of treatment for this. All that is compounded by staff shortages. Access to justice is vital for prisoners who are, as members of a closed community, as the noble and learned Lord, Lord Brown, said,

"uniquely subject to the exercise of highly coercive powers".—[*Official Report*, 29/1/14; col. 1279.]

Previous regulations removed almost all issues that prisoners face from the scope of legal aid and outside it now are advice—never mind litigation—about access to mother and baby units, prolonged segregation and access to safe accommodation and support for vulnerable prisoners, including children, on release from prison. That means that if a perfectly reasonable judicial review has to be mounted—for example, on the basis that prolonged segregation was severely damaging a prisoner's health—it has to be done pro bono, if at all. If the provision of support for vulnerable prisoners, including children leaving custody, is to be challenged, that too has to be done pro bono. One contrasts that with the support that is available, at least in exceptional cases, for children with educational challenges and their parents.

The only forms of prison law work that remain in scope of legal aid at the moment are some parole and disciplinary hearings and a limited number of sentence calculation cases. As the Minister will know, the Court of Appeal granted the Howard League and the Prisoners' Advice Service permission to challenge those cuts at a hearing in July 2015, so that challenge remains pending. The Government have the opportunity to respond without going through the public expense of a court challenge by looking once again at the way in which prison law has been cut.

The Howard League, which I use as an example because I know it well, provides a free telephone legal advice line, through its very expert legal team, for children and young people in prison. It is the only dedicated legal service in the country for such people. The team has expertise and has a contract to carry out legal aid work but it is now carrying out almost a majority of that work for nothing. So here we have the private sector picking up serious cases, many of which succeed when challenges are mounted, but having to do it for nothing for one of the most vulnerable groups in the community. This is not an acceptable position because of the financial challenge it presents. The Howard League and other charities do not resile from their ambition to do as much pro bono work as possible and to be the leaders of opinion and the formation of new law in relation to prisoners, but they must be allowed to do reasonable work for reasonable

fees and that is just not happening. The work that remains in scope is all subject to a standard fixed-fee regime. This means that each case is paid for according to the case category. Lawyers get paid for the actual work they do only if they can prove that they have reasonably done more than three times the work allowed for by the fixed fee. That is self-evidently unfair to those carrying out the work and their clients.

For example, written representations for a person who has served his or her sentence, but is recalled to prison, attract a standard fee. However, the work can involve the consideration of hundreds of pages of documentation which may be extremely difficult to extract from the public service, particularly the prisons and the Home Office. Throughout that time, while the challenge is being mounted, the prisoner is deprived of their liberty, even though they have served the punishment part of their sentence and the state, of course, is paying the cost of imprisoning them—an imprisonment that may be the subject of successful challenge.

I suggest that the fee regime does not recognise the nuances or complexities of a case. A young person with learning difficulties recalled on an indeterminate sentence for public protection—an IPP—attracts exactly the same for his or her case as an adult on a much simpler fixed-term sentence. The new rates mean that practitioners who specialise in complex cases and who have the expertise are invariably operating at a loss.

I am informed that the result is that firms that have been skilled and experienced in prison law are pulling out of it and that lawyers are being laid off or moving to do other work. I suggest that that is unacceptable. Many may think that prison law is unattractive work, but it is important work. It concerns a prisoner's ability to change and to be released into the community, which is in everyone's interests.

I hope that the Lord Chancellor, who is plainly very interested in prison reform and has already made a significant contribution to change in prisons, will regard the sort of aspects of prison law that I have been talking about as part of the same picture and worthy of the modest investment that is involved in restoring legal aid to the sort of cases that I have been describing.

Lord Cotter (LD): My Lords, I thank the noble Lord for introducing this Motion to Regret, which I and many others hope will lead to a sustained examination of legal aid now and in the future, as a result in particular of the cuts proposed by the Government. My intervention will be very brief because I have no legal background whatever. I saw that this Motion was proposed for today, and I came to listen and to say a few words as, one may say, an ordinary member of the public.

I have listened to those who have a detailed knowledge of this field. I do not have that knowledge but I have had it put to me that there are grave concerns for the ordinary member of the public, who could be said to be at the bottom of the pile and might be induced—because of pressure and of feeling vulnerable—to shorten court proceedings and say, "Yes, I was guilty". I may be wrong on that; others more expert than me may say, "No, that is not the case". Is it the case that vulnerable people will suffer as a result of these proposals, as has been mentioned tonight?

My other concern is whether it is likely that fewer people will train for the legal field, which I trust the Government will look at. That is of great concern because there could be a shortage of legal practitioners, with the result of the service not being fit for purpose. With my lack of knowledge, I will sit down. Others have great knowledge to which I have listened, but I have great concerns on behalf of the ordinary public.

8.15 pm

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, this has been a wide-ranging and helpful debate. Although the Government have been criticised, there have been some positive suggestions. I assure all noble Lords that the Lord Chancellor and the Ministry of Justice listen to what is said in this House. I shall certainly report back what has been said during this debate.

The Motion gives me the opportunity to set out the background to the making of the Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations, which were laid before the House on 10 June, concerning the fees payable in respect of criminal litigation services funded by legal aid. The coalition Government consulted twice on the proposed fee reduction. The first consultation, *Transforming Legal Aid: Delivering a More Credible and Efficient System*, ran from 9 April 2013 to 4 June 2013. The second, *Transforming Legal Aid: Next Steps,* was published on 5 September 2013. The September consultation proposed the staging of the fee reduction plus a number of legal aid reforms, including changes to the way in which criminal legal aid services are procured and a reduction in the fees for criminal legal aid services.

The response to that consultation, *Transforming Legal Aid—Next Steps: Government Response*, was published on 27 February 2014 and set out the decisions taken in relation to the procurement of criminal legal aid services and fee reductions for criminal legal aid services. These regulations introduce a further fee reduction for work done under a criminal legal aid contract. This follows an earlier 8.75% reduction that was introduced in March 2014, making a total reduction of 17.5% from the April 2013 figures.

As the House will be aware, the Government consider that there is a continuing need to bear down on the costs of legal aid to ensure that we are getting the best deal for the taxpayer and that the system continues to command the confidence of the public, particularly in the light of the continuing financial challenge faced by all government departments. The House will be aware that the Ministry of Justice has no ring-fence around it, and is subject to particular pressures in this respect.

The phased introduction of the fee reduction was intended to mitigate its impact while enabling realisation of necessary savings. The second fee reduction applies to new cases starting on or after 1 July 2015, and there will therefore be a period of time before it has an impact on the legal aid income of providers.

The Government also believe that the current remuneration mechanism for criminal legal aid services is overly complex and administratively burdensome. These regulations introduce fixed fees for Crown Court cases with fewer than 501 pages of prosecution evidence,

[Lord Faulks]

and simplify the fixed fees for police station work and for magistrates' court work. The new fixed fee schemes are being introduced for services under the new criminal legal aid contracts governing criminal litigation services from 11 January 2016.

The Motion says that the House regrets that the Government made these regulations,

"without having undertaken a review of the impact and coherence of the cuts to litigators' fees; agrees with the Secondary Legislation Scrutiny Committee's analysis that there is too little evidence to establish what effect the fee reduction would have; and regrets the Government's lack of engagement with the profession and those affected by its reforms".

As I set out in my Written Ministerial Statement repeating the Statement made by Mr Vara in the House of Commons, the Government listened very carefully to the concerns of the profession in considering the programme set in train by the coalition Government for the criminal legal aid market.

We must ensure—this point has been made during the debate—that the high quality of service provided by litigators remains sustainable in all parts of England and Wales. We recognise that changes in the litigation market have the potential to affect the provision of advocacy, and we will work with the profession to preserve and enhance the high quality of advocacy that generally obtains within the system.

In March 2014 the coalition Government agreed that, prior to putting before Parliament the second fee reduction, they would consider and take into account the following factors. The first was Sir Brian Leveson's review, to which the noble Lord, Lord Marks, referred, aimed at identifying ways to streamline and reduce the length of criminal proceedings. I entirely accept his observations about the need to do that. This is part of the overall improvement that the Government hope to achieve in saving costs, but not at the expense of achieving a fair trial. The two other factors were criminal justice reforms such as digitisation, which will increase efficiency and affect how advocates work, and any impacts from earlier remuneration changes.

At the same time the coalition Government told legal aid providers that they should plan and bid for duty and own-client contracts on the basis of a second reduction of up to 8.75%, as they would be expected to demonstrate that they were capable of delivering at that level. Also in March 2014, the coalition Government announced that they had worked with the Law Society to agree additional support for litigation providers that would assist with the transition to the new regime. The ministry agreed to implement interim payments at plea and case management hearing stage in summer 2014—earlier than had previously been planned. We introduced interim payments for trials at the same time—cash flow being, of course, very important to the legal profession in this area, which I wholly accept is not over-remunerated compared with other fields of law.

The present Government fulfilled the commitment given in March 2014 to,

"consider and take into account",

the factors set out by the coalition Government. There was no commitment to any formal review or public consultation, but the Government considered the findings of Sir Brian Leveson's report on the efficiency of the criminal courts, the impact of broader criminal justice reforms and the impact of changes already introduced. We examined changes to our forecast legal aid expenditure, changes to the existing market, provider withdrawal rates—that is, whether people were leaving the market—and reasons, contract extension acceptance and early information from the duty provider contract tender. We also considered the implications for quality, promptness and reliability of the first fee reduction. The Legal Aid Agency has monitored, and will continue to monitor, the quality of the delivery of services through its well-established audit and peer review programmes.

All the further consideration undertaken reassured us that the legal aid reforms so far have not had any substantial negative impact on the sustainability of the service. I should perhaps pause here and remind the House that a defendant is eligible for legal aid just as he always has been; the issue is, of course, whether the changes will result in there being legal aid deserts or professionals leaving the profession, thereby endangering defendants' ability to secure their entitlement to legal aid. The level of interest in duty contracts—when the likely reduction in fees was already known—suggested that there remained an appetite to undertake criminal legal aid work under the new regime. Having considered all these matters, we decided to press ahead with the second 8.75% reduction in litigators' fees that was first announced by the coalition Government.

I cannot accept there has been a lack of engagement in this process. There have been three consultation exercises over a period of almost two years, two of them relating specifically to the fee reduction. There have been numerous discussions with the legal sector, many at ministerial level. The previous Lord Chancellor worked closely with the Law Society to shape the proposals for the new contracting regime. The present Lord Chancellor and Minister for Legal Aid have continued, and will continue, to engage with a broad range of legal aid providers.

The noble Lord, Lord Beecham, referred to the exchanges between the Secondary Legislation Scrutiny Committee and Mr Vara and remarked on the continuing correspondence and the failure to give what he inferred was a satisfactory response. I remind him what the Minister said on 10 July in answer to the outstanding questions from the noble Lord, Lord Trefgarne. This is particularly relevant to the audit and peer review programmes. The Minister stated:

"The LAA uses a wide range of monitoring tools".

Although he accepted that there were no published figures, he explained:

"Ongoing monitoring is precisely that, it is not a process with a beginning and end. As a qualitative process, it is not one that generates a significant volume of statistics".

In terms of the number of providers, which was one of the issues raised generally in the debate, Mr Vara said:

"A reduction would cause concern if the level of that reduction was likely to reduce future competitive tension. The precise level of that reduction that would cause concern, or acute concern, would depend on the design of a future competition, for example the number of contracts being tendered, so it is not possible to provide precise figures. After a great deal of analysis we concluded that we should offer 527 duty contracts. We have received 1,099 bids for those contracts. As I said in my previous letter though,

it is important to bear in mind that the 527 duty contracts does not equate to 527 firms providing work under such contracts. Some providers who obtain duty provider contracts to deliver the work under that contract will do so in conjunction with other firms (either as delivery partners or agents)".

So they may very often still have a future but not in precisely the same capacity, and of course they will still always have the possibility of own-client work. The need was to consolidate the duty provider part of the legal aid services provided by firms of solicitors.

The noble Lord, Lord Marks, referred to a number of aspects of efficiency and he was right to do so. He also referred to various suggestions which I think were almost all contained in the Liberal Democrat party manifesto as to other improvements that could be made. Some of these have already been considered. Those matters will receive ongoing consideration. At the moment, the Government are not, for example, satisfied that it is a good idea to have compulsory insurance. The coalition Government considered this and concluded that there were strong policy reasons not to make it compulsory. The coalition changed legislation to enable the recovery of legal aid costs after conviction and after a confiscation order and any compensation to victims had been paid. I accept the noble Lord's suggestion that we could go further. It is a matter for consideration, but at the moment there are no plans to respond in that respect.

The noble Lord, Lord Ponsonby, indicated that many magistrates were not happy with the situation as regards litigants in person. I am sure that litigants in person can present a challenge to particular courts. However, of course, as I say, the eligibility for legal aid has not been changed by any of these instruments that we are considering, which are the subject of this regret Motion. Some people simply may not have applied for legal aid but many of them will be eligible for it. I have sat as a judge with litigants in person and I sympathise with such tribunals as they present particular challenges in questions of plea and advice, but these do not, as it were, arise directly out of the matter which is currently before your Lordships' House.

The noble Lord, Lord Carlile, focused considerably on prison law. He will be aware that the coalition Government made some changes to the availability of legal aid for prison law, focusing very much on cases where the liberty of individuals was threatened, and took the view that, as he rightly points out, prisoners are in a particularly vulnerable position and may well need representation. However, I am sure he would accept that in many cases prisoners use legal aid when an objective view would consider that they should not do so. Equally, identifying precisely the cases where liberty is truly in issue is important. I undertake to take back the detailed comments the noble Lord made about that. However, the overall principle of the Government's approach remains a good one—namely, that we should focus legal aid on aspects of prison law where individuals' liberty is at stake rather than on some of the more trivial aspects which, unfortunately, were sometimes pursued.

As to the availability of prison law generally, the new model would still mean that specialist law providers would get a contract. They would not have to provide all the services at the same time. Those already awarded own-client contracts have the opportunity to bid for prison law as part of the tender process and will also be given authority to undertake appeal and review work.

8.30 pm

However, I understand that it is not necessarily desirable for there to be judicial review to challenge these cuts. At the same time, the noble Lord will understand why I would not wish to comment further on the matter currently before the court, in which the Howard League is maintaining various representations about the alleged unlawfulness of the Government's acts.

The noble Lord pointed out two other areas where the Government might save money, and I have some sympathy with his comments regarding regulation and the repetition of regulation in terms of the Bar and the solicitors' profession. Indeed, I have made some observations on the Floor of the House to that effect. It is certainly a matter that should be considered carefully. While, of course, regulation is desirable to protect the public from lawyers who do not perform their task adequately, at the same time regulation and overregulation very often result in overbureaucratic processes, which can ultimately cost the public more and therefore do not actually serve what should be the aim of a properly regulated profession.

The noble Lord also pointed quite rightly to the fact that there are difficulties in prisons, and particularly difficulties caused by violence in prison at the moment. Much of that is attributable to the prevalence of psychoactive substances, which have caused there to be assaults on prison staff at a very unacceptable level. Much is being done about that, including greater security by means of cameras on individuals—which are planned to be used a great deal more—which can result in more security both for the individual prisoner and, of course, the staff working in prison. There are challenges and the Government are fully aware of that.

The noble Lord rightly pointed to the fact that the Government and the Secretary of State have a particular interest in hoping that prisons can provide a proper source of rehabilitation. An increasing emphasis will be placed on education provision in prisons and it will be very much part of the Ministry of Justice's programme that conditions in prisons will improve significantly and, it is hoped, have a greater effect on the long-term rehabilitation of prisoners.

The debate has focused on a large number of issues. We understand that the main area of concern that the noble Lord, Lord Beecham, has directed against is that there is a risk of there being no adequate providers of legal aid around the country as a result of these cuts. For the reasons I have given, we are not satisfied that that is the position. However, we are not complacent. We acknowledge the value of the legal profession in providing proper representation and the importance of making sure that that is still available. We will continue to monitor that. I hope that what I have said has given some reassurance to the noble Lord that this is not a matter undertaken lightly and that he will understand the pressure that this Government are under to maintain a manageable legal aid service. It remains one of the most expensive in the world, as the noble Lord will be aware, and the most expensive in

[LORD FAULKS]

Europe. None the less, it is an important matter and this Government and all Governments are proud that it remains a beacon. However, cuts have had to be made. We respectfully suggest that those cuts are reasonable and, in all those circumstances, I ask the noble Lord to withdraw his Motion.

Lord Beecham: My Lords, I am grateful to all Members who have spoken in this debate and I congratulate my noble friend Lord Ponsonby and the noble Lord, Lord Carlile, on taking advantage of the occasion quite reasonably to raise matters which are not quite within the terms of the Motion, or indeed of the general subject of criminal legal aid fees. However, the points they made were telling and I hope that the Government will in one way or another respond to them with some proper consideration in due course. I endorse much of what they said and the very constructive suggestions made, particularly by the noble Lord, Lord Marks, in citing a number of cases in which it might be possible to find savings.

Incidentally, I do not object at all to the Minister failing to reply to the long list of questions that I threw across the Table at him. I know that he is very able to respond after proper consideration to such matters and I look forward to hearing from him with that rather long list in mind. But with all due respect to the noble Lord, I find that there is a note of complacency in his approach to these matters. One of the factors which I think the noble Lord, Lord Marks, mentioned is the matter of choice. Choice is going to be very restricted, given the relatively small number of firms of solicitors which will be engaged in the business of providing criminal legal aid. The likelihood for those who opt for just the own-client contract, from all the evidence around the profession and as perceived by the Law Society, is that after a relatively short time it will implode—and those firms engaged in that part of the legal world will simply go out of existence.

In addition, the Minister referred to consultation. While consultation took place in form, in my submission it did not really do so in substance. I cite in support of that contention two letters written by the president of the Law Society, one to the Lord Chancellor and the other to the Secretary of State for Business, Innovation and Skills. Dealing first with what I suppose is the more important of the two letters, the one to the Lord Chancellor, the Law Society's president said that he was,

"writing on behalf of the membership … to express our disappointment and concern about this decision"—

that is, the decision following the announcement of the department's plans. He said:

"The administration of justice is a fundamental duty of government and access to justice is an essential part of that responsibility … Today's decision further undermines the role of criminal legal aid solicitors in our justice system … You gave us an opportunity to explain our reasons for opposing the plans. We provided evidence from over 120 firms of the dire impact of the previous cuts, and the likely impact on the criminal defence service of proceeding with this further cut. I know that many criminal legal aid solicitors … will be concerned on behalf of the public at the implications",

of this decision,

"as well as worrying for their businesses",

and employees.

The president wanted to raise a number of points on behalf of the profession. First, he said:

"There is extensive and compelling evidence that criminal legal aid practitioners cannot sustain a second fee reduction".

Secondly, he said:

"The Ministry of Justice's … own financial assessment of the tender submission",

would in its view,

"underline the fragile nature of firms' finances".

Thirdly, he said:

"Making a further fee reduction … may jeopardise the savings the MoJ wishes to make in the broader criminal justice system".

Finally, and importantly, he said:

"Any decision should be deferred until there has been a full review of the evidence as to the effect of the first round of fee reduction in light of the financial reporting made to the Legal Aid Agency".

Given that the new system is in any event to come into place in January, I cannot understand why it is necessary to impose on the solicitors' and barristers' profession a fee increase half way through this period.

The society noted,

"the announcement of a review of the system after 12 months rather than assessing the evidence now",

and deplored that. Its view is that,

"a large number of firms will have closed during this time, and many others will…withdraw from this market".

It said that a review 12 months hence would be,

"too late to save many firms … This will be very difficult … for particularly the small, specialised firms".

The fear is that the impact of these changes,

"could create advice deserts where the most vulnerable members of society will be unable to access the legal advice they desperately need".

A lot of that advice, of course, is at the police station stage rather than the court stage. Drawing on memories from long ago, I cannot say I was enthusiastic about driving down at three o'clock in the morning to Jarrow police station to interview clients. Given that not only has this reduction in criminal legal aid fees taken place but fees effectively have been frozen for over a decade now, I think that the supply side is likely to be very seriously affected. Indeed, that was the subject of the letter to the Business Secretary, pointing out the danger to the firms in this sector and telling him—not reminding him—that it had been suggested to the Ministry of Justice that a decision should be deferred until there had been a full review of evidence.

Rather like his predecessor—and I hope this is not a precedent because I think Mr Gove, as others have said, has rightly attracted some approval for his more open-minded and better thought-through approach in many respects to some of the inheritance he acquired—it does not seem that he has listened to that view from the profession. I suspect that this debate will look a little pallid when compared with the one we will have about the perhaps more publicly controversial issue of legal aid charges, which we will come to when the House resumes later in the autumn.

However, I think it is important that the views expressed tonight should be considered further by the Government. I am afraid the course they are taking is very likely to fulfil the fears expressed in the Chamber tonight by those with whom they have consulted after a fashion. Nevertheless, we are not in a position to divide on this Motion—in fact, I do not think that there will be any Divisions in the next fortnight. In those circumstances, I beg leave to withdraw the Motion, but look forward to the next round.

Motion withdrawn.

House adjourned at 8.42 pm.

Grand Committee

Monday, 7 September 2015.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Lord Colwyn) (Con): My Lords, welcome to the Grand Committee. As usual, if there is a Division in the House, the Grand Committee will adjourn for 10 minutes.

Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015

Motion to Consider

3.30 pm

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

That the Grand Committee do consider the Misuse of Drugs Act 1971 (Temporary Class Drug) (No. 2) Order 2015.

Relevant document: 2nd Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, the order was laid before Parliament on 25 June. As noble Lords will be aware, temporary control legislation is a vehicle which enables us to act relatively swiftly to protect the public. It also provides time for the Advisory Council on the Misuse of Drugs to gather evidence and prepare full advice on the permanent control of such drugs.

The order specifies seven methylphenidate-based new psychoactive substances, including their simple derivatives, as drugs subject to temporary control under Section 2A(1) of the Misuse of Drugs Act 1971. The Government are grateful for the Advisory Council on the Misuse of Drugs's continued support in informing the Government's response to emerging new psychoactive substances sold as so-called legal highs. The advisory council's advice informed the order that we are considering today.

On 31 March, the then Minister for Crime Prevention received a recommendation from the advisory council under the temporary control provisions of the 1971 Act. The ACMD advised that five new psychoactive substances, related to the Class B drug methylphenidate, were being misused and that their misuse was having sufficiently harmful effects to warrant temporary control. This advice was accepted and a temporary order for the five substances came into force on 10 April 2015.

Following the coming into force of that order, the Government are aware that online retailers immediately withdrew those substances from sale and replaced them with a further two closely related substances. This came to light through the advisory council's considerations in preparation of advice for permanent control. On 16 June, the advisory council provided further advice on the two related substances and recommended that they should be included in this new temporary order. The ACMD continues to gather evidence to support a full report on these compounds.

The previous temporary order made on 10 April lapsed on 27 June, as there was insufficient time for both Houses to approve the order. The new temporary order that we are considering today came into force on 27 June to replace that order. This order specifies all seven methylphenidate-based new psychoactive substances, including their simple derivatives, as drugs subject to temporary control.

The methylphenidate-based substances are highly potent stimulants. One of these substances, ethylphenidate, was marketed online as an alternative to cocaine. Their harms are reported to include anxiety, paranoia, visual disturbance, chest pain and a strong urge to re-dose. Other reported harms include bizarre and violent behaviour, loss of fine motor control and high risk of bacterial infection and local tissue damage from injecting.

One branded formulation, Burst, was reported as causing particular problems in the Edinburgh area, including among injecting drug users, who report reinjecting repeatedly. There has also recently been a report of an outbreak of infections in that area associated with the injecting of new psychoactive substances, believed to involve ethylphenidate.

The National Programme on Substance Abuse Deaths reported five cases in 2013-14 where ethylphenidate was found in post-mortem toxicology, and another two cases where ethylphenidate was implicated in the cause of death during 2013-14. The advisory council recommended that urgent action should be taken due to the extremely potent nature of these compounds. For these reasons, the Minister for Policing, Crime, Criminal Justice and Victims accepted the advisory council's advice. The order, which is already in force, applies UK-wide to protect the public. It enables enforcement action against suppliers and traffickers while the advisory council prepares full advice on these compounds.

Under the order, front-line officers have additional powers to disrupt the sale of the substances online and in local head shops by targeting retailers who they suspect of selling temporary class drugs—if not other controlled drugs—including seizing their stock for analysis.

The activity is supported by the Home Office forensic early-warning system, which continues to provide added forensic capability to police forces. The order also sends out a clear message to the public, especially to young and vulnerable people, that these compounds are harmful drugs. The Government and the advisory council continue to monitor, through UK and EU drugs early-warning systems, these and other emerging compounds marketed as legal alternatives to controlled drugs.

[Lord Ahmad of Wimbledon]

Of course, until the Government receive the full report on these drugs they will continue to update public health messages to inform the public on drug harms, using the latest evidence gathered from early-warning systems. We know that the law change, on its own, cannot deter all those inclined to use or experiment with these drugs. However, we expect the order to have a notable impact on the availability and, in turn, demand for these drugs, as we saw with other substances.

Noble Lords will remember that methoxetamine was subject to temporary control and subsequently controlled permanently under the 1971 Act. We are aware that, on introduction of the temporary order, online sellers of these compounds immediately removed them from sale. Anecdotal reports from Edinburgh, where these compounds were first reported as being injected, also suggest a reduction in the number of people seeking treatment as a result of harms suffered from injecting them.

In conclusion, Parliament's approval of the order will ensure that it remains in force to reduce the threat to the public posed by these temporary class drugs for up to 12 months, while the advisory council prepares full advice on harms in relation to permanent control. I beg to move.

Lord Rosser (Lab): My Lords, I thank the Minister for his explanation of the purpose and reasons for this order, which we support. As he said, the order is a temporary class drug order that can be made if the substance or, in this case, substances are not class A, B or C drugs, and if the Secretary of State has either consulted the Advisory Council on the Misuse of Drugs or received a recommendation from the ACMD that a temporary class drug order should be made. The drug also has to be one that is being, or is likely to be, misused, and that misuse is having or is capable of having harmful effects.

The Explanatory Memorandum sets out the evidence in support of the necessary requirements that have to be met to make this order—which, as the Minister said, came into force towards the end of June and can remain in force for a maximum of 12 months. Having been made, the order requires a resolution of both Houses within 40 sitting days if it is to remain in force.

It would be helpful if the Minister could say why it was not possible for the Government to find time for this order to be discussed in this House between 25 June, when it was laid before Parliament, and 22 July, nearly a month later, when the House rose for the Summer Recess, particularly bearing in mind that the order came into force on 27 June. It is now nearly some two and a half months after it came into force that we are able to consider the order. It would be helpful to hear the Minister's response on that point.

One of the purposes of such a temporary order is that it enables a new psychoactive substance or substances to be brought under the temporary control of the Misuse of Drugs Act 1971, while, as the Minister said, the Advisory Council on the Misuse of Drugs can make a full assessment of its harms for consideration for permanent control as a drug under that Act. The Explanatory Memorandum states that the provisions of this order and its consequences will be communicated to key stakeholders and the wider public, especially young people. Presumably this has now been done.

Who are deemed to be the key stakeholders and do they differ from those listed as being consulted in paragraph 8 of the Explanatory Memorandum, headed "Consultation Outcome"? Are, for example, the businesses selling these substances in the legal-highs market, referred to in paragraph 10 of the Explanatory Memorandum, regarded as key stakeholders and thus advised of the terms of this order?

Although the Minister addressed the point in his opening comments, since the order has been in force for nearly two and a half months, is there any information on the impact that it has had on the level of use and availability of the two further related substances now subject to this order that were not included in the previous order? Might implementation and enforcement of the order be resulting, in respect of those two further substances, in the risks set out in paragraph 6.1 of the impact assessment materialising? Those risks are of course in respect of chemical derivatives or alternative new psychoactive substances imitating their effects being introduced in an attempt to circumvent the temporary drug control.

Lord Ahmad of Wimbledon: My Lords, first, I thank the noble Lord, Lord Rosser, for his support on this matter. This issue impacts society as a whole and when we are considering such matters it is important not only to discuss them but, where possible, that agreement is reached. We are looking at this particular issue and the challenges that psychoactive substances pose generally as a major challenge for society as a whole.

The noble Lord raised the issue of scheduling and timetabling. While I do not have a detailed assessment, based on my own previous roles in government, including as a government Whip, I can say that this is scheduled according to other parliamentary business and is discussed through the usual channels. The important point to bear in mind is that we proceed with this order now, as the noble Lord acknowledged, and do so in a timely fashion.

Turning to the noble Lord's question about communication—again, a very important point—included within "key stakeholders" are the ACMD, the Department of Health, BIS, industry and the MHRA. It is important that all key stakeholders that were part of the initial consultation are included in the communications that have taken place. The noble Lord also asked about the additional two substances or derivative products that were subsequently included. I will write to him about specific issues or evidence that have been raised.

I also stress that tackling the legal high market continues to be an important priority for this Government and the advisory council's work programme. Noble Lords will be aware of the Government's action to ban the supply of psychoactive substances for human consumption for their psychoactive effect through the Psychoactive Substances Bill. As noble Lords are aware, the Bill completed its passage through this House before the Summer Recess and has now been introduced in the House of Commons. When in force, the Bill will

give powers to the police and other enforcement agencies to enable them to disrupt the supply of these dangerous and harmful compounds, including tackling their availability on the internet.

The legislative action is supportive of the long-term strategic objectives—many of which I know noble Lords share—set out in the Government's action plan: to reduce demand by raising awareness of the harms of psychoactive substances; to make it difficult to obtain and supply those that pose risks to health; and to ensure that statutory services are able to effectively provide treatment and support recovery. Our balanced approach to tackling psychoactive substance misuse includes the development of toolkits on prevention, and programmes on treatment such as NEPTUNE. We have also taken action in response to the New Psychoactive Substances Review Expert Panel's recommendations to help local areas prevent and respond to the use of new psychoactive substances, including guidance on taking action against the head shops I mentioned earlier. We have acted swiftly on the advisory council's advice to make the temporary class drug order presented today to protect the public from the potential harms of these substances.

We are committed to a drugs policy that is informed by evidence of harm and the advisory council's expert advice. Our duty as a Government is to consider this advice in light of all the information made available by drugs early warning systems to ensure that our response is proportionate to the threat posed by emerging drugs. As I am sure noble Lords will acknowledge, the UK continues to lead international action to tackle the emergence of new psychoactive substances. Our efforts, supported by key partners, led to the international control of mephedrone by the UN in March this year. We continue to share best practice on a balanced approach, including recently sharing our world-leading treatment guidance with our international partners. We also continue to work with our key partners on a list of new compounds that are causing concern, with a view to the UN subjecting these compounds to international control in due course. I hope that noble Lords will find that this legislative measure is conducive to ensuring that ultimately the public are protected from the harms of these new psychoactive substances, and I therefore again commend the order to noble Lords.

Lord Rosser: Before the noble Lord sits down, may I come back to my question about who the key stakeholders are? Paragraph 8 refers to who is consulted. Paragraph 9 states:

"The provisions of this Order and its consequences will be communicated to key stakeholders and the wider public, especially young people".

Paragraph 10 makes reference to,

"those businesses selling these substances in the 'legal highs' market".

Does the reference to the key stakeholders—that is, those who will be advised of the provisions of this order and its consequences—include, for example, those businesses selling these substances in the legal highs market, referred to in paragraph 10 of the Explanatory Memorandum?

Lord Ahmad of Wimbledon: I believe that we have communicated to all key stakeholders, including those mentioned within the order. However, for fullness of response, I shall write to the noble Lord to ensure that there is a full record of that.

Motion agreed.

Merchant Shipping (Alcohol) (Prescribed Limits Amendment) Regulations 2015

Motion to Consider

3.48 pm

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

That the Grand Committee do consider the Merchant Shipping (Alcohol) (Prescribed Limits Amendment) Regulations 2015.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con): My Lords, these regulations will bring in new alcohol limits for professional mariners in UK waters or serving on board UK-flagged ships wherever they are in the world. These limits, more restrictive than those in place today, are aligned with those agreed at the International Maritime Organization to apply to all shipping around the globe, with the intention of improving maritime safety.

Noble Lords will be aware of the vital contribution made by the maritime industry to the well-being of this country. In this London International Shipping Week we are celebrating the fact that 95% of our imports and exports are carried by ship, and that the maritime sector contributes up to £13.8 billion of direct gross value added to the UK economy each year. It is therefore crucial that we seek to ensure the safe operation of this industry, working with shipping and port operators and with other maritime nations around the world. One source of risk that we can tackle together is that posed by alcohol consumption, which can impair the ability of mariners to fulfil safety-critical duties.

On the roads, a driver with 100 milligrams or more of alcohol in 100 millilitres of blood is seven times more likely to be involved in a fatal motor vehicle crash than is a driver who has not consumed alcohol. If the amount of alcohol is 150 milligrams or more, it is roundly 25 times more likely. The same underlying principle applies on a ship; excessive alcohol consumption increases the risk of error and accident. The current alcohol limits for professional mariners were introduced by the Railways and Transport Safety Act 2003 and are the same as those applied to motorists in England and Wales—in the case of breath, 35 micrograms of alcohol in 100 millilitres; in the case of blood, 80 milligrams of alcohol in 100 millilitres; and, in the case of urine, 107 milligrams of alcohol in 100 millilitres.

At that time, there was no internationally agreed alcohol limit for mariners. This situation changed in 2010, when the Standards of Training, Certification and Watchkeeping Convention of the International

[Lord Ahmad of Wimbledon]
Maritime Organization was amended. For the first time, mandatory alcohol limits for mariners globally were agreed—in the case of breath, 25 micrograms of alcohol in 100 millilitres, and, in the case of blood, 50 milligrams of alcohol in 100 millilitres. These regulations will bring UK legislation into line with the alcohol limits agreed internationally, with the addition of a limit in the case of urine of 67 milligrams of alcohol in 100 millilitres. In doing so, we will reinforce the importance of these limits in securing the safety of ships, and all those who travel on them.

Furthermore, having common international limits helps to ensure that mariners know what is expected of them wherever they are, and enforcement when people are found to have exceeded those limits, national borders not being visibly marked at sea. The regulations also require the Secretary of State to review the impact of the amendments they make and publish a report of the review's conclusions. This provision seeks to ensure the continued effectiveness of the alcohol limits set for professional mariners for the long term. Her Majesty's Government are committed to maintaining safe navigation around these shores and, indeed, wherever ships registered in the UK may sail. These new limits on mariners' consumption of alcohol are an example of how we are doing this in co-operation with our international partners. I commend these regulations to the Committee.

Lord Rosser (Lab): Once again, I thank the Minister for his explanation of the purpose and objectives of this order, which again we support. Before the introduction of the International Convention for the Standards of Training, Certification and Watchkeeping for Seafarers in 1978, the training standards for seafarers were established by individual Governments, which almost inevitably meant widely differing standards between different countries. Since it came into force in 1984, the STCW convention has been subject to a number of revisions and this country has supported and implemented all of the previous amendments. The amendments agreed at the STCW Manila conference in 2010 further updated the convention and the code, and included, for the first time, putting mandatory limits on alcohol consumption, instead of an advisory one, for those on watch-keeping duty. These amendments came into force on 1 January 2012, with a five-year transitional period ending on 1 January 2017.

The STCW convention is incorporated into European law, and the new alcohol limits which are the subject of the order we are discussing are covered by a 2012 EU directive. This order changes the UK's existing alcohol limits for professional mariners to match those now set by the STCW's watch-keeping standards for fitness for duty by amending Section 81 of the Railways and Transport Safety Act 2003. As the Minister said, the levels are being changed to 25 micrograms of alcohol in 100 millilitres of breath and 50 milligrams of alcohol in 100 millilitres of blood as required by the STCW and EU directive, and to the commensurate figure of 67 milligrams of alcohol in 100 millilitres of urine for consistency.

The Explanatory Memorandum refers to the consultation exercise on the Manila amendments, including the ones covered by this order, and indicates that all the bodies consulted agreed that the alcohol limits for professional mariners should be amended to match those set by the Manila amendments. Why does it appear to have taken over 10 months to seek the approval of this House to an order with which, apparently, all those consulted agreed? The transposition note in respect of this order also states, in respect of Article 2 on transposition, that compliance with the EU directive was required by 4 July 2014. I am assuming that was not the deadline date for approving this order, but perhaps the Minister could say what it was we were required to do by 4 July 2014, and whether we met that date.

The Explanatory Memorandum states in paragraph 4.2 that the limits for alcohol prescribed in Section 81 of the Railways and Transport Safety Act 2003 apply to professional mariners only,

"as the provisions relating to non-professional mariners in Section 80 have not been commenced".

Would the Minister confirm that the STCW convention and code, and the EU directive, apply only to professional mariners and not to non-professional mariners as well? Assuming that to be the case, why have the provisions relating to UK non-professional mariners in Section 80 of the 2003 Act not been commenced for a lengthy number of years? What are the current alcohol limits for non-professional mariners?

The regulations, which, I repeat, we support, deal with a safety issue. Indeed, some shipping companies take a much firmer view on what is an acceptable alcohol limit than those provided for in current or proposed legislation. I am not personally aware of how serious is the problem of breached alcohol limits by professional mariners in UK waters. If the Minister cannot say so immediately, I hope that he might provide some information on how many instances there have been over an appropriate 12-month period of UK professional mariners in UK waters or on UK-registered ships being in breach of the current statutory limits, and how many instances there have been of non-UK professional mariners being in breach of those limits in UK waters.

Lord Ahmad of Wimbledon: My Lords, I once again thank the noble Lord, Lord Rosser, for his support of the Government's proposals and the regulations before us. He is right that this was decided upon by the 2010 Manila conference. For the first time it is being looked at from an international basis, which is very much the right way forward in ensuring that standards are maintained.

The noble Lord raised the issue of this taking 10 months. This was part of the wider effort to ensure we transposed all the Manila amendments. That has taken some time, even though this part was agreed to by the consultees, as the noble Lord mentioned.

On the 4 July deadline, all other parts of the Manila amendments were transposed by March 2015 in advance of the 4 July deadline. The passing of the regulations will ensure compliance in that respect.

The noble Lord raised the issue of non-professional mariners. Indeed, I raised that question myself in looking at the regulations. At the moment, it applies specifically to professional mariners. It is my understanding

that the question of whether these rules should apply to non-professional mariners has been consulted upon. Part of the challenge posed during the consultation in the 2000s—I believe during the time that the noble Lord's party were in government—was how this would be monitored and, more importantly, applied effectively. Nevertheless, as he rightly pointed out, it is an issue that has not been commenced. As far as the Government are concerned, it is an issue that we will continue to look at as we move forward with the new regulations on professional mariners. Nevertheless, he is right to raise that issue.

The noble Lord also spoke on the evidence of accidents relating to alcohol consumption. The Marine Accident Investigation Branch has identified 19 accidents where alcohol consumption played a significant part since 2009. One led to a fatality and two led to the complete loss of a ship. Many of the others presented a significant risk to human life and the marine environment, where it was fortunate that a worse outcome was avoided.

With those responses, and once again thanking the noble Lord for his support, I commend the regulations to the Committee.

Lord Berkeley (Lab): I apologise for not being here at the beginning of the discussion, but the Minister and my noble friend Lord Rosser mentioned non-professional seafarers. I remember debating this issue about 10 years ago. I recall the legislation saying that the limit was the same as the alcohol limit on drink-driving. We had a big discussion at that time on how it was to be enforced. Whether you are a professional or an amateur seafarer, and whether you are in a rubber dinghy or running a cruise ship, you can cause just as much damage. I never got a satisfactory answer—I think that one of my colleagues was the Minister at that time—to how you enforce somebody who is going back to a boat late at night in a rubber dinghy. I think that a policeman is the only person who can make an arrest, but how many policemen are hanging around a small port at closing time?

It is a bit distressing that it is taking so long to become accepted wisdom that you should not be in charge of a boat, whether you are paid to be so or not, if you are under the influence of alcohol. I hope that the noble Lord will take that into account and try to push things forward a bit more.

Lord Ahmad of Wimbledon: As I said in my remarks to the noble Lord, Lord Rosser, this is an area which I myself raised, and I shall certainly take back his comments. As the noble Lord acknowledged, the challenge posed was that of enforcement. However, he is also right to point out that, whether one is a professional mariner or not, the damage that can be caused by alcohol consumption is very much the same as the impact that alcohol consumption can have on our roads. I note the noble Lord's concerns in that respect.

Lord Rosser: I fully take the Minister's point that the issue of non-professional mariners has been going on for some years, but do the STCW convention and the code apply only to professional mariners or do they apply to both?

Lord Ahmad of Wimbledon: They apply just to professional mariners.

Lord Greenway (CB): My Lords, I welcome these regulations, which are a move in the right direction, but I point out, as the Minister has done, that there are still quite a number of instances where alcohol results in either the loss of a ship or the loss of life. Over the years, alcohol has traditionally been the scourge of the seaman. I am glad that we have moved on from the bad old days when even captains were drunk for days on end. However, I must point out the pressures of working at sea today. Working under great stress and with a minimal crew, often you do not have anybody to talk to, so the temptation to drink is still very much there. It is something that I fear is not going to disappear overnight but I think that this is a move in the right direction.

Motion agreed.

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Motion to Consider

4.03 pm

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

That the Grand Committee do consider the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Relevant documents: 1st Report from the Secondary Legislation Scrutiny Committee, 2nd Report from the Joint Committee on Statutory Instruments (Special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): These regulations were laid before this House on 16 March 2015. The Energy Act 2013 gives the Secretary of State the power to make regulations requiring landlords of residential premises to install smoke and carbon monoxide alarms. These draft regulations were laid under Section 150 of that Act and Section 250 of the Housing Act 2004.

The draft regulations will require private sector landlords, from 1 October 2015, to have at least one smoke alarm installed on every storey of their rental property which is used as living accommodation, and a carbon monoxide alarm in any room used as living accommodation where solid fuel is used. After that, the landlord must make sure that the alarms are in working order at the start of each new tenancy.

Local authorities will be responsible for enforcing the regulations. An authority will be required to issue a remedial notice to a landlord if it has reasonable grounds to believe that the landlord is in breach. If the landlord fails to comply with the notice, the local housing authority must, if the occupier consents, arrange the necessary action to ensure that the property is compliant. The local housing authority can also levy a civil penalty charge on the landlord of up to £5,000.

[Baroness Williams of Trafford]

The regulations have been brought before this House because the Government want to increase the safety of private sector tenants. Setting a minimum standard for the testing and installation of smoke and carbon monoxide alarms will reduce the risks that tenants face from fire and carbon monoxide poisoning in the home.

Working alarms save lives—in the event of a fire in your home you are at least four times more likely to die if there is no working smoke alarm. Successive Governments and local fire and rescue authorities have made extensive use of non-regulatory approaches to increase the uptake of smoke alarms, including a series of highly effective public campaigns such as Fire Kills and the home fire safety checks. However, private rented sector tenants remain less likely to be protected by a working smoke alarm than any other tenant.

The department has also piloted alternatives to regulative approaches to increase the installation of carbon monoxide alarms. However, there are still high-risk properties without these alarms installed. Carbon monoxide poisoning is a serious and preventable form of poisoning. Each year there are around 40 deaths from accidental carbon monoxide poisoning in England and Wales and in excess of 200 non-fatal cases that require hospitalisation. We estimate that the new regulations will save 26 lives and nearly 700 injuries per year. The majority of landlords act responsibly and protect their tenants with working alarms. However, a minority of private sector landlords have proved resistant to safety advice and recommended best practice. That is why the Government decided that it was necessary to introduce the draft regulations, to protect the tenants of these landlords.

A regulatory approach to the installation of smoke and carbon monoxide alarms was discussed as part of the Government's discussion paper, *Review of Property Conditions in the Private Rented Sector*, and the majority of responses were in favour. The regulations aim to increase the safety of tenants by ensuring that they are not subject to death, poisoning or injury by a lack of smoke or carbon monoxide warning alarms.

The Government have funded local fire and rescue authorities to purchase a number of alarms for free distribution to landlords, encouraging all landlords to act responsibly towards their tenants as well as helping them comply with the regulations. Alongside these regulations, the department intends to continue to pursue its non-regulatory solutions in order to boost regular testing and uptake of alarms further across all sectors.

I turn now to the concerns of the Joint Committee on Statutory Instruments. The draft regulations were laid in March, before the Small Business, Enterprise and Employment Act 2015 received Royal Assent. The department, however, acknowledges that, as of 1 July, Ministers are required to include a review provision in secondary legislation that regulates business, or publish a statement of why it is not appropriate to do so. Following this, if the draft regulations are approved by Parliament and made, the department has committed to amending the regulations by adding a review clause at the earliest suitable opportunity.

These regulations prove the Government's commitment to continue improvement and create a private rented sector that works for us all. I commend the regulations to the Committee.

Baroness Finlay of Llandaff (CB): My Lords, I welcome these regulations, and in speaking to them I do not want to sound too harshly critical, but I fear that the carbon monoxide provisions do not go far enough. As the Minister said, there are on average 40 deaths a year from carbon monoxide poisoning in the home. The figures that I have—and I speak as chair of the All-Party Parliamentary Carbon Monoxide Group—are that more than 4,000 hospitalisations a year are related to carbon monoxide poisoning in one form or another. The problem is that the available figures may seriously underestimate the size of the problem. University College London recently assessed that 6% of the London households it surveyed had a high or very high risk of exposure to carbon monoxide. Public Health England commented in March that,

"the burden of non-fatal accidental CO poisoning in England is higher than the burden from mortality",

and that,

"the numbers of people admitted to hospital with CO poisoning in England are larger than previously estimated and do not appear to be reducing".

The cumulative effects of low-level poisoning over time can indeed be lethal and can present as things such as strokes. The All-Party Parliamentary Carbon Monoxide Group, which I co-chair, recommended that,

"the Government should ensure that all coroners' post mortems routinely test for carboxyhemoglobin … levels",

to see how many cases are missed. I am grateful to the chief coroner who has had a very useful discussion with myself and others and the Gas Safety Trust, which is now piloting with Public Health England a study to develop a protocol for coroners to test for carbon monoxide at post-mortems so that we get an idea of the size of the problem.

The difficulty with the proposed regulations is that they relate to just over 330,000 private rented homes with solid-fuel-burning appliances, but this would protect only a small number of people—roughly 8.2% of those in private rented accommodation—because there is an equally high risk of carbon monoxide poisoning from other fossil-fuel-burning appliances, not just those that burn solid fuel. The regulations particularly name gas. The data collected from coroners' reports in the past 19 years show that over 35% of deaths were related to mains gas. The requirement that landlords should install and maintain an audible carbon monoxide alarm in all properties with fuel-burning appliances is laudable; the problem is that it will not protect the remaining 92% of those living in private rented accommodation. Some 4.6 million homes will have other fossil-fuel-burning but not solid-fuel appliances, and are at risk not only from the appliances being badly maintained but from neighbours' appliances being badly maintained with carbon monoxide leaking through brickwork, through cracks in the walls and cracked flues—and also at risk from some of the cooking practices from some of the families who have come here from abroad, who use tinfoil as a way in

which to distribute heat over the top of the gas stove, when therefore the gas does not burn properly but burns to carbon monoxide. In that way, you get very high levels of carbon monoxide at about waist height, which is of course the level of the children's heads and faces when they are in the kitchen with their mother.

The problem with testing alarms is, of course, that in asking that the alarm is tested every six to 12 months, I and others would like to see the onus on the landlords to test the alarms, and that they be required to do so annually. Can the Minister clarify what "proper working order" means? Does it mean that the sensor is checked and not just the battery? Only last week, a couple in Devon had a narrow escape from death after their alarm failed to register a leak, which was because of a faulty sensor. The problem is that alarms cannot be a substitute for proper installation and maintenance of fossil-fuel-burning appliances across the board.

I also have a concern that social housing is exempt. A Hackney Homes study of over 22,000 local authority homes found almost 5% carbon monoxide instance per thousand households. The study also found 35% of these instances resulted from a defective gas appliance. Therefore, while these regulations are step one, can step two include social landlords and then, after that, include that every home where there is a fossil-fuel-burning appliance, at the time when that appliance is installed, renewed or serviced, must be fitted with a carbon monoxide alarm? It should also be the case that those providing the service are proper registered Gas Safe services, and those selling the appliances should sell the carbon monoxide alarm at cost price, not at the huge mark-up that there is at the moment.

4.15 pm

Lord Marlesford (Con): My Lords, first, I declare an interest in that I have residential properties, which are let, in the village that I live in in Suffolk and these regulations will apply to them. That is in the register of interests.

I support the intention behind, and the method employed in, these regulations. I am sure that, with her scientific knowledge, the noble Baroness who has just spoken has made many valid points about carbon monoxide. However, I am rising to protest about the way in which these regulations have been introduced so far. They are very complicated, as I shall show.

I should like to refer to the report, published in June this year, of the Secondary Legislation Scrutiny Committee, which has already been mentioned by my noble friend. The report draws attention to this statutory instrument as being very important and in the public interest, and it states:

"It will be important that the Department secures effective publicity for the new requirements in good time for the date of October 2015 when the Regulations come into force".

I suggest that that has simply not been the case. The draft regulations were laid in March but that does not mean that the right sort of consultation on them took place; nor was there any real indication of what was likely to be involved. In fact, the scrutiny committee said that in its Explanatory Memorandum,

"the Department states that … it does not intend to publish new guidance on the policy".

It is interesting that it has now produced guidance but we should keep bearing in mind the date—1 October 2015, which I think is three weeks away. That is pretty relevant because the guidance was produced last Friday, 4 September, and I have a copy of it in my hand. I obtained it only today but that is quite good with publication having been on Friday, and I doubt whether many other people have it. The guidance contains various questions. One is:

"Is there a 'grace' period for landlords?".

The point made by the department—it is published by the Government and is the official view of Whitehall—is:

"If the regulations are approved, landlords are expected to be compliant from 1 October 2015 when the regulations will come into force. There will be no grace period after this date to install the required alarms".

That is one of the most astonishing things that I have heard from Whitehall on something which is going to be a major undertaking for many people. In my view, it is an absurd idea. I think that there should be a much better explanation. Until last Friday, the CLA, of which I am a member, found the regulations so complicated to read that its official advice was that they were being brought into effect only for new tenancies—in other words, they were to be brought into effect gradually. It was only last Friday, when this new guidance was published, that the CLA changed its advice, saying that the regulations apply to all tenancies as from 1 October, and that advice was issued today. The CLA has a major role advising people with such tenancies of the obligations upon them. I doubt very much whether there are in the country sufficient pieces of kit to be fitted by 1 October, let alone whether they could physically be purchased and installed by that date—and yet, there is no period of grace.

I shall give noble Lords an example of the sort of complication. What is meant by a "solid fuel burning combustion appliance"? Some would be obvious to many of us. A wood-burning stove is an example. However, open fireplaces are included but they would not normally be regarded as a combustion appliance. I suspect the drafting and do not think that the courts would say that an open fireplace was a combustion appliance. The word "appliance" has a different connotation. There should be much more precision in the drafting of such regulation.

There is also a little note in the advice which states:

"In the Department's view, a non-functioning purely decorative fireplace would not constitute a solid fuel burning combustion appliance".

I asked the CLA today about this and it said that this was extremely unclear. For example, let us suppose—as is the case in many old properties—that fireplaces have been left for perhaps decorative or listed-building reasons in a room that has now become a bathroom. They would normally come under this rule. What is the requirement? Is it necessary, as with the energy certificate, to put a board over the fireplace so that it could not be used? Much more precision is needed in these matters.

I am asking for a much longer period. There is no way in which it is practical to bring these regulations into effect on 1 October with no period of grace.

[LORD MARLESFORD]
The Government have to think again about this. It is an example of extraordinarily bad Whitehall administration.

Lord Crickhowell (Con): My Lords, I have a few preliminary remarks. First, as I usually do, I find myself in almost total agreement with everything that the noble Baroness, Lady Finlay of Llandaff, had to say. I re-emphasise the importance of the whole issue of carbon monoxide poisoning. My second confession is that I returned to this country from abroad only this morning and I had not seen these regulations until my noble friend Lord Marlesford drew my attention to them. Thirdly, I think that I have to declare an interest in that I am a tenant of premises that fall within the definitions here. The new regulations may or may not apply to me. There are certainly carbon monoxide and fire alarms in the building and on the upper floor. I do not think that there is an installation on the ground floor that may come under the definition—although it is virtually never used. However, the regulations may not apply in my case because they will apply only to tenancies that come into effect after 1 October. I think that I will be renewing my lease within the next day or two because my landlord and I have already agreed the terms. However, I will hasten to tell my landlord that we may have such an appliance.

My anxieties are like those of my noble friend and I begin, as he did, with the recommendation of the Secondary Legislation Scrutiny Committee. I began to wonder exactly how far the consultation had advanced. The Minister referred to some initial consultations, which I think took place in general a year or so ago. We are informed in the Explanatory Memorandum that during those consultations, which took place between February and March 2014, there were 299 responses to the question on smoke alarms. "A regulatory approach", we are told,

"was supported by Fire and Rescue Authorities, industry representatives and over 96% of landlords, agents and fire officials who responded to the paper".

I am glad that they did respond to the paper, but quite clearly if only 299 responded, it does not necessarily indicate that there was—or even now is—a widespread awareness of what has happened in terms of consultation. I do not think that my noble friend the Minister gave us any real information about that.

The scrutiny committee did give us some quite useful information in an appendix. We were told in appendix 1 that the Department for Communities and Local Government,

"intend to update a core set of guidance documents".

The guidance documents are listed: the *How to Rent* guide, the industry code of practice, the model tenancy agreement, and the *Renting a Safe Home* guide. We are entitled to know whether those have all been updated, when and in what way. I would certainly be grateful for that information.

The appendix goes on to say:

"In addition to updating current guidance, we plan to use our partners and the media to communicate the regulatory changes. We have already communicated the key message through press notices".

I wonder how many people in the business world actually read the press notices on matters such as this, issued even by so great a department as the one in charge of these regulations. It says that we,

"are working with our partners: lettings agents, landlord representative bodies, local authorities, fire and rescue authorities and alarm manufacturers to publicise the requirements over the next 6 months".

What we really are entitled to know—this is what the scrutiny committee really demanded—is exactly how far that consultation and dissemination of well-publicised advice has gone. I do not think we heard very much about that, with great respect to my noble friend the Minister, in her introduction.

Before we approve these very important regulations—even if it is only a first step, as the noble Baroness suggested—we should know exactly what has been done to ensure that they are widely understood. I am quite certain that my very nice landlord, who is currently renewing the lease of my property, has no idea about it. I am not criticising him for that because I had no idea at all about it until my noble friend Lord Marlesford spoke to me less than an hour ago. I suspect that that situation would be found up and down the country. If we are to approve regulations that are to come into effect in three weeks' time or something, we should have rather better information than we have been given so far.

4.30 pm

Baroness O'Cathain (Con): My Lords, I too am indebted to my noble friend Lord Marlesford for alerting me to this. I am absolutely horrified—particularly in light of the remarks of the noble Baroness, Lady Finlay of Llandaff—about the real problems behind carbon monoxide poisoning. I take it that this regulation relates to smoke alarms and to alarms that will identify carbon monoxide. They are two separate things.

My mind then begins to race ahead and I think, "Wait a minute—does anybody know that we should have these alarms?". Surely every house and flat in the country should have them. If the situation is as serious as we are led to believe, and I am sure that it is, this is important. I live in a purchased flat in a block of flats and last year there was a fire in one of the flats. The whole flat was burned out. There was no alarm—or rather there was a smoke alarm in the flat, but it did not matter. I have a smoke alarm in my flat that goes off when I burn the toast, which happens quite frequently. I go down to say that I am terribly sorry for the alarm, but actually it does not ring outside my flat. I could be burned to a cinder along with the toast. Only when it is eventually noticed from outside that there is a fire, or smoke coming out, will an alarm be sounded throughout the whole building. It is so haphazard. The fact that this is being looked at today will benefit somebody—all of us could benefit from it—if people begin to think about the issue in depth.

I also found the report of the Secondary Legislation Scrutiny Committee upsetting, even where in the first paragraph it says that these regulations could not be scrutinised until our first meetings in the new session were convened in May, when we came back. This is really unacceptable, particularly when I go round saying how wonderful for scrutiny the House of Lords is.

We all agree that we are the ones who scrutinise the legislation. Nobody else does it as well as we do. No other Parliament in the world does it as well as we do. Yet we do not do it. This is crazy.

My other point is about press notices. I draw the Grand Committee's attention to paragraph 7.3 of the Explanatory Memorandum, which states:

"Given the diminishing returns from public information campaigns, it is therefore necessary to supplement them with regulations".

I really think that the regulations should make it absolutely imperative that smoke alarms and anti-carbon monoxide alarms are installed and regularly checked. There are tenancies that last for five years or 10 years. Some last for 12 months. What is being said here is that the alarm has to be sure to be working only at the beginning of the tenancy. That is stupid. There must surely be some form of measure to ensure that alarms are investigated or assessed annually, or maybe even triennially.

If you have a car that is more than three years old, it has an MOT every year. This kind of check is just as important. Dangers do not stem just from these wonderful combustion systems. The fire in our block of flats was actually caused by the overheating of a computer charger. The whole thing more or less blew up. The benefit now is that we have been alerted to the danger. I was certainly never alerted to it. Instead of taking pride in the fact that we scrutinise everything, we can say that with the diminishing returns from public information campaigns we are alerting people to the need for checks and assessments. Surely people need them anyway.

Lord Hunt of Kings Heath (Lab): My Lords, this has been a very interesting debate so far. I declare my interest as patron of CO-Gas Safety and adviser to Consumer Safety International. I welcome the regulations as far as they go. I will mainly focus on the issue of carbon monoxide but, in the light of our debate so far, I should like to put a couple of other questions to the Minister. I am most grateful to the noble Lord, Lord Marlesford, and other colleagues for asking about the guidance. Will the Minister confirm that the guidance was issued only on Friday? That being so, why has it not been made available to Members of your Lordships' House? It does not appear to be in the Public Bills Office, nor is it laid on the Table. It is rather an abuse of parliamentary process that when we are debating the regulations the guidance has not been made available. If it has and I have missed it, I will certainly apologise to the Minister, but I should like to know.

Secondly, the department said that it had done its best to use a variety of methods to publicise the regulations. Is the Minister seriously saying that all that has happened is that various stakeholders have been told about it and a press notice issued? I acknowledge that her department's press notices are renowned for the elegance of their language and the persuasiveness of their argument, but simply issuing a press notice is clearly insufficient.

My third point is that I thought that the Minister said in her opening remarks that the Government are now going to amend the regulations. Can she confirm that? She referred to advice from the Joint Committee on Statutory Instruments. I may have misheard what she said, but can she confirm it and the timetable for those amendments?

My fourth point relates to a briefing that I have just received from Electrical Safety First, a charity. It does not concern the specific terms of the order, but the charity makes the point that electricity causes more than 20,000 house fires a year, with many people injured and killed. I understand that Electrical Safety First's policy is that people in the private rented sector are protected by mandatory five-year checks on electrical installations. Will her department respond to that point?

I turn to the subject of carbon monoxide. I welcome the regulations—they are a small step forward—but, like the noble Baroness, Lady Finlay, I very much doubt that the figure that she cited of 40 deaths per year from accidental carbon monoxide poisoning is accurate. As CO-Gas Safety has pointed out, for carbon monoxide poisoning to be suspected, there has to be a test. At the moment, even in the event of unexplained deaths, there is no test. The noble Baroness has already referred to her work recommending that the Government should ensure routine post-mortem testing under the auspices of coroners. If the research now being carried out by the Gas Safety Trust proves that it is practical and effective to do so, will the Government accept the noble Baroness's recommendation? She is both co-chair of the All-Party Parliamentary Carbon Monoxide Group and a past president of the British Medical Association, so she speaks with great authority on the issue, which is why I tend to agree that the estimate of 40 deaths is a gross underestimate.

Secondly, the impact assessment states that the department intends to pursue non-regulatory solutions in order to encourage uptake in all households which do not yet have a carbon monoxide alarm installed. How is that to be done? I assume that it will not just be through another departmental press notice. I know that some campaigners believe that it should be through prime-time TV warnings.

Does the Minister accept that although CO alarms are a useful back-up precaution, they cannot be a substitute for the proper installation and maintenance of gas safety equipment by a registered gas safety engineer? Is she aware that this regulation covers only a small percentage of households in the UK? Indeed, work by CO-Gas Safety going back to 1995 shows that far more deaths occur in owner-occupied homes than in the private rented sector. What is going to happen in relation to owner-occupied homes? Is the Minister aware that respected experts, including Mr Harry Rogers and Mr Stephen Hadley, through Consumer Safety International, have raised concerns about the accuracy of these CO alarms? Is she satisfied that the alarms are constructed to a reliable and accurate standard, wherein the sensor's function and accuracy levels can be tested?

I want to ask the Minister about government policy in relation to these issues when it comes to Europe as a whole. She will know of the tragic deaths of Christianne and Robert Shepherd from Horbury near Wakefield, who were just seven and six years old when they died from carbon monoxide poisoning from a faulty boiler

[Lord Hunt of Kings Heath]
on a Thomas Cook holiday in Corfu in October 2006. My honourable friend Mary Creagh MP raised this on 14 July in an Adjournment debate in the Commons and described how the family were forced to wait years, until 2010, before a criminal trial was held in Greece, at considerable emotional and financial stress to the family. The court in Corfu found three hotel workers, including the hotel's general manager, guilty of manslaughter by negligence. In February 2014, eight years after Christi and Bobby's deaths, the inquest into their deaths reopened in Wakefield. In May the inquest jury concluded that the children had been unlawfully killed and that Thomas Cook had breached its duty of care.

In paying tribute to the brave and determined efforts of the family, I would like to put a couple of points to the Minister. First, research by Mary Creagh's office revealed that at least 40 holidaymakers have died of carbon monoxide poisoning in Europe in the years since Christi and Bobby died. Does the Minister agree with that assessment? Secondly, in November last year the European Commission launched a Green Paper on the safety of tourism accommodation services. Work commissioned by ABTA from John Gregory, a CORGI gas safety expert, showed why European action was so necessary. He found a lack of legislative consistency throughout Europe and that there is no Europe-wide statistical database of serious incidents caused by carbon monoxide poisoning, meaning that in essence the extent of the problem is as unknown on mainland Europe as it is in the UK. He also raised concerns that the competence, training and knowledge of the operatives undertaking servicing and maintenance of gas appliances across the EU are of a lesser standard than that required in the United Kingdom.

I raise this because, in contrast to ABTA's responsible approach, the Government have opposed the introduction of a European safety regulation which would have dealt with these problems. My understanding is that opposition from the UK and some other member states has meant that the European Commission is not now taking its Green Paper forward. I ask the Government to think again and to encourage the Commission to continue work to assess how EU regulations could be put in place. If not, we are left with no specific EU-level regulation which sets out minimum safety standards for tourist accommodation safety.

Just as concerning is another brief I have received from ABTA about the prospects of an adequate revision to the EU directive on the safety of appliances burning gaseous fuels. Amendments have been proposed in the European Parliament which would extend the safety regime across the whole of Europe by implementing rules on installation, maintenance and servicing. Again, I understand that the UK Government are opposed to this and because of this opposition it is likely that these measures will not receive agreement within the EU. Again, I hope that the Minister will reconsider the Government's opposition to this.

Overall, the regulations, as far as they go, are welcome, but I accept that it is right that landlords should be given appropriate time and proper publicity to ensure that they understand the duty that falls on them. In that regard, I hope that the Minister will be able to respond to all these issues, particularly to consider whether, even at this late stage, the Government need to reflect on what publicity is to be given on these regulations.

4.45 pm

Lord Beecham (Lab): My Lords, I shall raise a couple of questions on paragraphs 7.8 and 7.9 of the Explanatory Memorandum, which deal with the tenures covered by the regulations. Paragraph 7.8 defines a specified tenancy as,

"a tenancy … lease, sub-lease … of residential premises which grants one or more persons the right to occupy the premises as their only or main residence in return for the payment of rent".

I find it difficult to understand why that restriction should be imposed. If Members of your Lordships' House were renting premises in London but lived elsewhere, as many of us do, those premises would apparently be excluded from the provisions of these regulations. I am sure that the noble Baroness will be sensitive to the life expectancy of Members of this House—at least on the government Benches. However, it does strike me as odd that that restriction is imposed.

Furthermore, the schedule excludes other categories of letting arrangements,

"where the accommodation is shared with the landlord or falls outside of the traditional private rented sector".

Again, I do not see why someone paying rent in a property the rest of which is owner-occupied should be exposed to a risk that would not be the case if he were renting the whole property. Then there is the question of what is meant by a tenancy or letting arrangement falling outside the "traditional private rented sector". We now have Airbnb and similar organisations providing facilities by which occupiers or owners of property can let, usually for short holiday periods and matters of that kind, with probably quite a significant turnover of people. Again, why should those people be exposed to risk, unless the noble Baroness can confirm that such properties are included? It seems to me that they are not part of what the Explanatory Memorandum describes as "traditional private rented sector" properties.

Paragraph 7.9 says that the Schedule excludes agreements where there is shared accommodation with the landlord or landlord's family. I briefly referred to that in speaking to paragraph 7.8, but paragraph 7.9 has the explanation:

"This is likely to arise where an owner occupier rents out a room in their own home".

The justification for that is:

"The Regulations are not targeted at owner occupied accommodation".

Of course, by definition this is a property that is no longer exclusively owner-occupied accommodation. Given that a profit is presumably being made out of the letting, the regulations should at least be extended to properties of that kind.

I appreciate that we are not in a position to amend these regulations, but a number of points have been made by noble Lords opposite, and at some length and with great force by my noble friend, that require attention. I suggest that the matters I have raised also need to be looked at. Otherwise, we are potentially

exposing people—it will be a fair number of people if we take the different categories into account—to continuing risk. That is not in the least desirable.

In so far as owner-occupied properties, shared in the way set out in paragraph 7.9 of the Explanatory Memorandum, might be brought within the provisions of the regulations if subsequently amended or revised, the result is that nobody loses. The owner-occupiers gain and their safety is enhanced. Therefore, it certainly seems worth the Government taking another look at the regulations and coming back with new ones that meet many, if not all, of the points that have been raised in the Committee today.

Baroness Williams of Trafford: I thank all noble Lords who have taken part in this debate, which has been quite wide-ranging and informative, certainly to me. I also declare a former interest as the landlord of an HMO property. I say right at the outset that it is good practice for anybody, whether in their own home or in private rented accommodation, or indeed for local authorities, to have carbon monoxide detectors and smoke detectors fitted. As a landlord, I certainly did, and most landlords do so. Here, we are trying to target the small number of landlords in the private sector who do not feel responsible for their tenants.

The noble Baroness, Lady Finlay, made some very interesting points. One was that the regulations do not go far enough, and she wondered whether there are far more deaths than the 40 that we think there are. She asked whether post-mortem testing for it would be the answer. In the context of these regulations, there are probably many things that we could do but this is a very good start in tackling the small number of private landlords who have little regard for their tenants, whether in terms of smoke and carbon monoxide detectors or the general standard of the accommodation. This is what the regulations seek to tackle.

The noble Lord, Lord Hunt, asked me about an amendment. The amendment is a "to review" clause. The regulations will be reviewed in two years' time, acknowledging that they may need to be looked at again.

The noble Baroness, Lady Finlay, talked about social landlords. They are exempt but generally in the social sector they tend to be far more diligent in providing carbon monoxide and smoke detectors. As I said, it is a small number in the private sector who seem to be the culprits.

The noble Baroness asked me about the regulations for installing carbon monoxide alarms applying only to rooms containing a solid fuel-burning appliance. I acknowledge that other things may lead to carbon monoxide leaks but these appliances are the main culprits in terms of creating carbon monoxide poisoning. Going way back to my O-level days, I remember learning that you could tell when someone had carbon monoxide poisoning because they would go pink. I do not know whether people stay pink at the post-mortem stage but that was a sign that someone had carbon monoxide poisoning. The noble Baroness, Lady Finlay, also asked about gas appliances. Again, she may well be right but I understand that the incidence is extremely low compared with that relating to solid fuel-burning appliances.

As I said earlier, there is a review clause in the regulations and there will be a review in 2017, but it is probably fair to make the point that these regulations have to strike the right balance by protecting tenants but not causing unnecessary burdens for landlords, the vast majority of whom, as I said, are diligent towards their tenants.

The noble Baroness also asked why the regulations require landlords to check the alarms only on the first day of the tenancy. We want to ensure that tenants entering a house or property are protected on day one, but we expect it to be both the landlord and the tenant's responsibility. I have experience of a smoke alarm going off when the battery was getting low. Unless you deal with the problem, your life will be a misery.

My noble friend Lord Marlesford said that October 2015 was too soon and that there was not to be a grace period. First, any self-respecting landlord will already have installed a smoke alarm and a carbon monoxide alarm. They are available free. They are not complicated devices. The draft regulations were laid back in March. He is absolutely right that the explanatory booklets for landlords and local authorities were published only on 4 September, but they were emailed to key stakeholders.

Lord Crickhowell: I am sorry, but I do not know what a key stakeholder is. I do not want to be difficult, but I hope that when she clarifies that matter, she will tell me what detailed consultation has been taking place and about the amendments that I specifically asked about to the various documents.

Baroness Williams of Trafford: A key stakeholder is someone who has a stake or interest in the regulation or legislation at hand.

In going forward with the regulations, the Government provided £3.2 million in a one-off grant to help fire and rescue—

Lord Marlesford: Before my noble friend leaves that point, I was certainly not regarded as a key stakeholder—there is no reason why I should be—but I received from the CLA only this morning a link for me to be able to download the advisory note issued last Friday. It produced its new view when it received that advisory note last Friday, which makes the idea of bringing it into force with no period of grace obvious nonsense.

Baroness Williams of Trafford: I take my noble friend's point: he is not a key stakeholder and he got it from someone who would be regarded as a key stakeholder. That includes local authorities, groups of landlords and managing agents. It is not long until 1 October, but the draft regulations were laid back in March, so people who have an interest in this—that is, stakeholders—knew that it was coming.

Lord Hunt of Kings Heath: When the noble Baroness opened her remarks, she made the point that most responsible landlords do this in any case. Clearly the focus here is essentially on poor landlords who probably

[Lord Hunt of Kings Heath]
have no connection with any of the stakeholder groups—I mean, it is extremely unlikely that they are members of the CLA. Given that we are probably dealing with the kind of landlords who do not have much to do with any such groups, we need a publicity campaign to get it across to them. The criticism here is that guidance three weeks before the start—which poor landlords will never see—plus a press notice which presumably was not covered by the media will simply not do the business. That is the point that the noble Lord is making.

5 pm

Baroness Williams of Trafford: I take the noble Lord's point that rogue landlords, just like rogue employers or anybody else, are the hardest to reach and the least likely to listen to legislation on their obligations. Certainly the Fire Kills campaign was very effective—I hope—in raising awareness of carbon monoxide, which, as the noble Baroness, Lady Finlay, says, is a silent killer.

Lord Beecham: I wonder whether publicity is being aimed at tenants to demand that these regulations be enforced. If it is not, perhaps that is something that should be taken up.

Baroness Williams of Trafford: *How to Rent* may well be updated in terms of giving tenants more advice. More than ever, tenants have better information on how to rent and on their rights under their rental agreements. My tenants were certainly very well informed and I can assure noble Lords that they were well looked after.

My noble friend Lord Marlesford asked about new guidance. We have decided to issue new guidance in the form of explanatory booklets, one for local authorities and one for landlords. We also want to update *How to Rent*, as I have just said to the noble Lord, Lord Beecham, in time for 1 October 2015. My noble friend Lord Marlesford also asked about decorative fireplaces. A decorative fireplace would be one that was clearly not used for burning; in other words, closed off for the purposes of being able to light a fire.

The noble Lord, Lord Hunt, asked about electrical safety in the private rented sector. I can inform noble Lords that landlords are already under a general duty to ensure that electrical installations are safe and kept in good working order.

The noble Lord, Lord Beecham, asked why tenancies for main homes are included and not for people such as your Lordships, who might spend some of their time in London. That is a fair point. Again, it is a start in terms of addressing problems with landlords. I hope that none of your Lordships have rogue landlords looking after them. The noble Lord also talked about tenancies that have been excluded. Student halls, hostels, refuges, care homes, hospitals and hospices are excluded because they all have their own requirements regarding standards, just as Airbnb is not considered a permanent home. Noble Lords are looking slightly puzzled. The premises that I have just mentioned benefit from existing protections under the Regulatory Reform (Fire Safety) Order 2005. I hope that that helps.

Lord Beecham: Does that apply to the use of properties by Airbnb? I take the point about the others, such as care homes and the like. What about the Airbnb ones?

Baroness Williams of Trafford: No, it would not include Airbnb, but it would include those other types of premises that I mentioned. I hope that I have answered all the questions. I beg to move.

Baroness Finlay of Llandaff: I was waiting until the Minister had gone through the list of all the different types of accommodation. Could she undertake to ensure that, in particular, all universities have the information circulated to them? The university population comprises a large number of students, who go into privately rented accommodation around the UK, which is of very variable quality. In previous years, at the beginning of the autumn term, which we are now approaching, there have been deaths. On a cold night students have turned the heat on. There was a carbon monoxide problem and they died. They were not solid fuel appliances; they were usually gas appliances. However, in the wake of this important move—it is an important move; the Government have accepted that something has to be done—it would be very helpful if universities were asked specifically to alert students to the dangers and make them carbon monoxide-aware. Charities are doing this but they cannot cover the whole area.

Baroness Williams of Trafford: The noble Baroness makes a very valid point. In fact, I remember the first day that my son moved into a student house with a boiler in his bedroom and I was terrified that he was going to die in the middle of the night. It is a really good point, which I shall take back.

Lord Hunt of Kings Heath: The Minister has not responded to the points that I made about European negotiations on safety standards. Would she care to write to me on those matters?

Baroness Williams of Trafford: I will certainly do so. I have just spotted that point and I will certainly write to the noble Lord.

Lord Marlesford: Following the very interesting, important and sensible point made by the noble Baroness, Lady Finlay, does the Minister not now realise that the courts or anyone else will not see three weeks as being a reasonable time for these regulations to be put into effect? The guidance states that there is no grace period. If anyone tried to impose a £5,000 penalty on day two, three or four, I would have thought that that would be seen as absurd in judicial review terms. Will she not take away and reconsider the implementation date? I certainly could not agree to the regulations going forward with an implementation date of 1 October. That is obviously nonsense. The Minister herself gave a lot of examples, referring particularly to the very limited number of stakeholders. One would like to know how many stakeholders there are. I very much doubt whether people have had advisory notices. I do not believe that anyone would regard dishing out advice last Friday, three weeks before the regulations

come into force, as adequate. It clearly is not. It is bad government and basically bad administration by Whitehall, and I hope that the Minister does not defend it.

Baroness Williams of Trafford: My Lords, there are two points here. First, it is imperative to protect tenants from unscrupulous landlords who will not meet their obligations. Secondly, in the theoretical situation set out by my noble friend, if on day two—2 October—a landlord was in breach, that landlord would have 28 days to comply, so the date we are talking about is more like six weeks from now.

The Deputy Chairman of Committees (Baroness Harris of Richmond) (LD): The Question is that this Motion be agreed to. As many as are of that opinion will say "Content"; to the contrary, "Not content".

Lord Marlesford: Not content.

The Deputy Chairman of Committees: I think that the Contents have it.

Lord Hunt of Kings Heath: My Lords, surely if one noble Lord says "Not content", the statutory instrument just reverts to the main Chamber, where it is open to a substantive debate if the noble Lord puts down a Motion. That is my understanding.

The Deputy Chairman of Committees: That is exactly what will happen and I hope that the noble Lord is satisfied with that. As he knows, we do not vote in Grand Committee.

Baroness O'Cathain: For clarification, does that mean that this will go back to the Chamber?

Lord Hunt of Kings Heath: As far as I understand it, that is the case—I have seen this happen before—although I do not wish to pre-empt the view of the Chairman. The Grand Committee cannot approve a Motion if a noble Lord decides that he is not prepared to say "Content". It simply reverts to the Chamber and will probably appear on the Order Paper within a short time. My understanding is that it is open for debate on the Floor of the House.

The Deputy Chairman of Committees: That is exactly what happens. I am grateful to the noble Lord. It will go back to the Government and they will decide when and if they take the regulations to the Floor of the House.

Lord Marlesford: That presumably means that unless they come back this week or next week, because Parliament does not come back until 12 October, it would be impossible for this statutory instrument to be brought into effect on 1 October.

Baroness Finlay of Llandaff: My Lords, perhaps I may suggest that there is other business to consider and it will be up to the Chief Whip to determine the timetable. We have a sitting Friday coming up, when it is possible to consider this matter. That will be up to the Chief Whip and we should now move on.

Motion negatived.

Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2015

Motion to Consider

5.12 pm

Moved by ***Lord Faulks***

That the Grand Committee do consider the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2015.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments

The Minister of State, Ministry of Justice (Lord Faulks) (Con): The statutory instrument before us today amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to set out the merits criteria that an applicant must meet in order to qualify for civil legal aid for a female genital mutilation—FGM—protection order. This statutory instrument also makes amendments to specify the applicable merits criteria for victims of modern slavery, servitude or forced or compulsory labour for legal representation in relation to immigration matters.

The Government considered it important that these provisions were brought into force without delay so that victims and potential victims of modern slavery or FGM could be protected. In particular, it was a government priority that the FGM protection order provisions should commence before the start of the school summer holidays as a means of protecting girls and women from being taken abroad during this period. For these reasons, and owing to limited parliamentary time, the statutory instrument before us was made and brought into force using an urgency procedure, and I am now seeking the approval of noble Lords.

FGM protection orders were introduced in the Serious Crime Act 2015 and came into effect on 17 July. Courts now have the power to grant FGM protection orders to protect women and girls against genital mutilation offences and to protect women and girls against whom such an offence has already been committed. The making, varying, discharging and appealing of FGM protection orders were brought within the scope of the civil legal aid scheme by the Serious Crime Act 2015. Amendments were also made to legal aid regulations under the negative parliamentary procedure to accommodate their introduction, including the financial means test.

The Modern Slavery Act 2015 makes provision for the protection of victims of modern slavery, servitude and forced or compulsory labour, and it came into effect on 31 July. The Act provides tools to tackle modern slavery, makes sure that perpetrators can receive appropriate punishments and enhances the support and protection for victims. Why are the Government taking this action? Why is it necessary?

5.15 pm

The amendment to the merits regulations permits the application of less stringent merits criteria for FGM protection orders than those applied more generally in relation to applications for legal representation. The amendment provides for specific merits criteria to apply to applications for legal aid for FGM protection orders by specifying that the relevant merits criteria are the same as those applied to applications for full representation in relation to domestic violence cases. The amendments provide for specific merits criteria to be applied to applications for legal representation in relation to immigration matters—that is, those concerned with modern slavery. I should perhaps explain that the Government wish to replicate the civil legal aid arrangements for the victims of human trafficking for victims of modern slavery, the provisions of legal aid for advice and representation for damages in employment claims in relation to their exploitation, and in relation to immigration matters. The Modern Slavery Act brought these matters within the scope of the civil legal aid scheme by amending Schedule 1 to LASPO.

The effect of the amendments is to provide that the specific forms of civil legal service known as "help at court" and "investigative representation" are not appropriate forms of civil legal service in connection with immigration matters. Additionally, the amendments provide that the existing merits test in Regulation 60 of the 2013 merits regulations applies in relation to representation in immigration matters for victims of modern slavery.

The Government are committed to protecting victims and potential victims of FGM and modern slavery. This statutory instrument makes relatively minor but important changes to the civil legal aid scheme following the implementation of FGM protection orders and enhanced protection for victims of modern slavery. I therefore commend this statutory instrument to the Committee and I beg to move.

Lord Beecham (Lab): My Lords, this is one of the rare occasions on which I can congratulate the Government and the Minister on doing something positive in the arena of legal aid. Later this evening we will revert to the more normal discussions that take place between us across the Chamber in another respect. However, this is an important matter, and I very much welcome the Government's initiative in ensuring that the change in the law can be adequately enforced.

In that connection, with regard to something that we have just discussed at some length concerning other serious matters relating to safety within the home, there is the publicity that is being given about the issue generally, but more particularly about the availability of legal aid for those suffering from abuse in terms of either of the two categories embodied in the order. It may well be the case that the Government are already directing publicity not only at the potential victims but at organisations and others who might be able to assist in disseminating the information that legal aid is available. It may be too early at this stage for the Minister to give an indication of the number of cases that are thought likely to be brought under each category, or it may be that the information is simply not available this afternoon. However, if and when it becomes available, that information would be helpful—and, of course, it would lend some force to any publicity that the Government will no doubt give about the remedies that will be available.

Having said that, the Opposition certainly support the Government's steps here. We look forward to assistance being given to people who are being ruthlessly exploited and who hitherto have had insufficient protection from the law.

Lord Faulks: My Lords, I am grateful to the noble Lord, Lord Beecham, for his support for these regulations, and I look forward to renewing our customary postures later in the day.

As he rightly says, these are early days, and it is difficult to give any figures. I made the very same inquiry of my officials and understandably they were somewhat tentative. I do not suppose that the numbers are going to be very large. What I can say, of course, is that there has been a great deal of publicity generally about both areas that we are concerned with. Therefore, I think that the general public and all those who are likely to encounter these issues will be aware of the situation and will be keen to find out the extent to which there may be legal aid, and I am sure practitioners working in this area will make themselves aware of it.

A guide to the court process was published in July this year, and I understand that it includes the relevant information. I am now being handed a copy, which lays out, in paragraphs 31 to 34, the information which will assist. This is under the female genital mutilation protection orders; it explains their scope and who can apply, and it contains information about the availability of legal aid. Anybody familiarising themselves with these orders—a practitioner or anybody affected by or concerned about them—would find out that legal aid was available. I am not sure whether there is similar information in relation to modern slavery but, if there is, I will undertake to convey it to the noble Lord.

That being, I think, the scope of the inquiry made by the noble Lord, I think we can now proceed to ask noble Lords to approve this amendment. I believe that it is a reasonable one and that it will provide appropriate frameworks for the provision of legal aid for victims of both FGM and modern slavery.

Motion agreed.

Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015

Motion to Consider

5.23 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I beg to move that the draft order laid before the House on 29 June 2015 now be

considered. If it pleases the Committee, I will provide a brief summary of the background to this order and set out what it seeks to achieve.

When the Fixed-term Parliaments Act 2011 was passed, it provided that the next general election for membership of this Parliament would be 7 May 2020. That same Act also provided that the next Scottish parliamentary general election would be 5 May 2016. The Scotland Act 1998 provides for the poll at Scottish parliamentary general elections to be held on the first Thursday in May every fourth year. This all combines to mean that, as things currently stand, there are due to be general elections to both the UK and Scottish Parliaments on 7 May 2020. Clearly, such a clash of elections is undesirable and this Government have always been committed to ensuring that it should be avoided.

The Government are also committed to implementing the recommendations of the Smith commission agreement. One of those recommendations is that the Scottish Parliament should have all powers in relation to Scottish parliamentary and local government elections in Scotland. As noble Lords will be aware, the current Scotland Bill makes provision to implement that recommendation. However, as both the UK and Scottish Governments agree that Scottish parliamentary electors should be aware of the term of the Scottish Parliament to which they are electing Members when they vote in May 2016, we are faced with an issue of timing. If the Scottish Parliament is to legislate in advance of the May 2016 election to determine a date for the first Scottish parliamentary ordinary general election after that one, the power to do so needs to be devolved now. Devolving that power is exactly what this order does.

The order is made under Section 30 of the 1998 Act, which provides a mechanism whereby Schedules 4 and 5 to that Act can be modified by an Order in Council, subject to the agreement of both the UK and Scottish Parliaments. This order will amend both Schedules 4 and 5 to the 1998 Act, with the agreement of both Parliaments. Schedule 4 to the 1998 Act lists enactments which are protected from modification by the Scottish Parliament. Much of the 1998 Act is included in that list. As I have previously mentioned, the 1998 Act provides for the poll at Scottish parliamentary general elections to be held on the first Thursday in May every fourth year. Section 2(2) of the 1998 Act makes that provision. Therefore, this order will amend Schedule 4 to the 1998 Act to allow the Act of the Scottish Parliament to modify Section 2(2) in relation to the first Scottish parliamentary ordinary general election after 2016. Secondly, Schedule 5 to the 1998 Act lists the matters that are reserved to this Parliament. Among other things, elections for membership of the Scottish Parliament are reserved. In order that the Scottish Parliament can determine the day of the poll at the first Scottish parliamentary ordinary general election after 2016, this order will amend Schedule 5 to provide that that matter will no longer be a reserved matter.

The amendments to both schedules will combine to ensure that the Scottish Parliament has the power to determine the date of the first Scottish parliamentary ordinary general election after that to be held next May. The order also amends Section 2 of the 1998 Act in connection with the amendments to the schedules. However, the order places certain limitations on the day which can be chosen by the Scottish Parliament. Specifically, the order will prevent the day of the poll determined by the Scottish Parliament being the same as the day of the poll at a UK parliamentary general election, a European parliamentary election or ordinary local government elections in Scotland. I note that these limitations were as recommended in the Smith commission agreement.

I also take time to anticipate two matters in relation to the order. First, devolving this power to the Scottish Parliament will mean that the Scottish Parliament can, in respect of that election, legislate for the term of the relevant Parliament. Some have asked whether that could result in there being a term of 50 years determined by the Scottish Parliament. To that the Government have two responses. First, the Scottish Parliament is a responsible, democratic body; there is no realistic prospect of such a thing happening. But even if it was contemplated in the wilder imaginings of any parliamentarian, let me also point out that pursuant to Article 3 of the first protocol to the European Convention on Human Rights, there is a requirement for free elections at reasonable intervals. The Scottish Parliament, pursuant to Section 29 of the Scotland Act 1998 can bring forward only legislation that complies with the convention—and, in particular, Article 3 of the first protocol.

5.30 pm

The second matter I want to mention is why, in the context of this provision, there is no requirement for the decision made in the Scottish Parliament to be supported by a two-thirds majority. In accordance with the Smith commission agreement, this order provides that it will be for the Scottish Parliament to determine the date of the parliamentary term that I have referred to. Paragraph 27 of the Smith commission agreement states:

> "To provide an adequate check on Scottish Parliament legislation changing the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament, UK legislation will require such legislation to be passed by a two-thirds majority of the Scottish Parliament".

However, the provisions in this order do not change the franchise, the electoral system or the number of constituency and regional Members for the Scottish Parliament. Accordingly, to require a two-thirds majority in respect of this matter would be to innovate upon the Smith agreement because the provision does not fall within the terms of paragraph 27 of the Smith agreement. It is not the intention of this Government to innovate upon the Smith agreement. It is the intention of this Government to honour the terms of the Smith agreement and to implement them fully and in accordance with their proper terms. In these circumstances, there is no contemplation of a supermajority in respect of this order.

This order demonstrates the Government's commitment to devolving further powers to the Scottish Parliament and to honouring the Smith commission agreement. It also demonstrates the way in which this Government can work effectively with

[LORD KEEN OF ELIE]
the Scottish Government to make the devolution settlement work. I commend the order to the Committee. I beg to move.

Lord McAvoy (Lab): My Lords, I thank the Minister and his staff for keeping me fully informed at an early date, allowing me to consider what is proposed in more detail. I hope that this mini-debate will be far less interesting and contentious than the one two debates ago. There is agreement here. The Opposition are fully behind what the Government are doing. I suppose that some comments could be made about the 50-year proposal, although I think the possibility of that lessens with the change of First Minister. I say that jokingly, of course, in case anybody in the Scottish press gets excited about any perceived attack on Mr Salmond—God forbid.

Certainly, the proposal is firmly within the Smith commission agreement, which the Official Opposition fully support. There are exceptions, which have been outlined by the Minister, and we go along with those as well. The two-thirds majority safeguard is absolutely right. As the Scottish Parliament goes on and gains more experience, it would be entirely ludicrous for anyone to suggest that there is a possibility of it behaving in a manner that, quite rightly, was posited by the Minister as being something that none of us want. Certainly, the Scottish Parliament is growing in experience. The people of Scotland and the United Kingdom should remember that the concept of a Scottish parliament was bitterly opposed by the Conservative Party at the time. We are absolutely delighted at the major conversion of the Government to the principle of a Scottish Parliament. In fairness to the Government, we believe that they are sticking by the terms of the Smith commission to deliver as much as possible to the Scottish Parliament in these devolved matters.

I reiterate that we are fully behind what the Government are doing. In serious terms, the maturity of the Scottish Parliament is growing. That can only be good for relations in Scotland itself and for the very important matter of relations between any Scottish Government out of Holyrood and the United Kingdom Parliament. I repeat again, we are fully behind the measure.

Lord Steel of Aikwood (LD): My Lords, I, too, support the order. I welcome the Advocate-General's introduction of it. My mind goes back to the passage of the 1998 Bill through this House. At that time, I tried to move amendments that would have covered exactly the issues we are debating today. I am sorry to say that I did not get any support from the Labour Government, or indeed from the Conservative Opposition at that time. It struck me as odd that we were establishing a new Parliament in Scotland, yet this Parliament was going to continue to control that Parliament's internal affairs. That seemed to me to be wrong. I was reinforced in that view when I took office as the first Presiding Officer at the Scottish Parliament and found that silly things such as the number of Deputy Presiding Officers we were allowed to have was laid down by this Parliament—that we could do nothing to make any internal changes. I therefore welcome the order. The Smith commission was very clear in stating that the Scottish Parliament should have all powers in relation to its own elections and,

"powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament".

That seems to me to be common sense. I very much welcome it.

If we leave this order as it is, it is open to the Scottish Parliament to change the predicted date of a Scottish Parliament election. I have tried to work it out. I hope that my arithmetic is correct, but if we leave things as they are and the Westminster Parliament is on a fixed basis of elections every five years and the Scottish Parliament is on a fixed basis of every four years, every 20 years there will be a clash. The Scottish Parliament would therefore have to use the powers in the order to make the changes. In the light of that, it would be sensible if the Scottish Parliament were to reflect on the fact that we have a fixed-term Parliament here and in Scotland, and that it would make more sense for the fixed term to be the same so that the dates do not clash at any time. That is a matter for the Scottish Parliament to decide in the future. In the mean time, I thank the Advocate-General for the introduction of this change to Schedules 4 and 5 to the original Act and I give it a full welcome.

Lord Keen of Elie: I first acknowledge the perspicacity of the noble Lord, Lord Steel, at the time of the passage of the 1998 Act. However, I was not here. I thank the noble Lord, Lord McAvoy, for the position that he has expressed. Of course, there has been more than one Pauline conversion on the road to final devolved settlement. We all hope that there will be more, even among the nationalists.

Motion agreed.

Armed Forces Act (Continuation) Order 2015

Motion to Consider

5.39 pm

Moved by ***Earl Howe***

That the Grand Committee do consider the Armed Forces Act (Continuation) Order 2015

Relevant documents: 2nd Report from the Joint Committee on Statutory Instruments

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the purpose of the order that we are considering today is to continue in force legislation governing the Armed Forces—the Armed Forces Act 2006—for a further period of one year, until November 2016. This reflects the constitutional requirement under the Bill of Rights that the Armed Forces may not be maintained without the consent of Parliament.

The legislation which makes the provision necessary for the Armed Forces to exist as disciplined forces is renewed every year. There is five-yearly renewal by Act of Parliament. That is the primary purpose of Armed

Forces Acts. Between Acts, there must be an annual Order in Council. That is the purpose of the draft order that we are considering today.

If the Order in Council is not made by the end of 2 November 2015, the Armed Forces Act 2006 will automatically expire. The effect of this would be to end the powers and provisions necessary to maintain the Armed Forces as disciplined bodies.

The order will continue in force the 2006 Act until the end of 2 November 2016, when a new Act of Parliament will be required to provide for the legislation to continue for the next five years. We expect the next Armed Forces Bill to be introduced into Parliament soon, and I look forward to our debates on the Bill and on matters of great importance to our Armed Forces during its passage in your Lordships' House. Indeed, before then, I look forward to enjoying a full and interesting debate next week on the role and capabilities of the UK Armed Forces in the light of global and domestic threats to stability and security.

Turning back to the business in hand today, I should say something about why we need to keep the 2006 Act in force. The Armed Forces Act 2006 applies to all service personnel wherever in the world they are operating. It provides nearly all the provisions for the existence of a system of command, discipline and justice for the Armed Forces, covering such matters as offences, the powers of the service police and the jurisdiction and powers of commanding officers and of service courts, in particular the courts martial. It is the basis of the service justice system that underpins the maintenance of discipline through the chain of command which is so fundamental to the operational effectiveness of our Armed Forces.

The 2006 Act also provides for a number of other important matters for the Armed Forces, such as for their enlistment, pay and redress of complaints. Members of the Armed Forces have no contracts of employment and so no duties as employees. Although members of the Armed Forces owe a duty of allegiance to Her Majesty, their obligation is essentially a duty to obey lawful orders, but without the 2006 Act, commanding officers and the courts martial would have no powers of punishment for either disciplinary or criminal misconduct. That is why the Armed Forces Act 2006 is so important and why we need to continue it in force. I beg to move.

Lord Rosser (Lab): My Lords, I thank the Minister for his explanation of the purpose and need for the order. We have this debate on the Armed Forces continuation order each year, and I must say that I am no clearer at present than I was when I was first involved in these debates what would be the implications if the order was not carried.

I do not intend to speak at any length. We support the order and, as the Minister said, we have a separate defence debate in the Chamber next week. However, bearing in mind the wide-ranging nature of the order and the apparent consequences if it was not agreed, it has always seemed to me—if, apparently, to no one else—that consideration of the order each year could be used as the basis for an annual general defence debate in the Chamber. There is, after all, very little, if anything defence and Armed Forces-wise that it could be argued would not be relevant in a debate on an order which if not agreed calls into question the continuation of our Armed Forces as a disciplined fighting force.

As paragraph 7.1 of the Explanatory Memorandum states, the Armed Forces Act 2006, which the order extends for a further year from 2 November 2015,

"provides nearly all the provisions for the existence of a system for the armed forces of command, discipline and justice … It also contains a large number of other important provisions as to the armed forces, such as provision for enlistment, pay and redress of complaints".

5.45 pm

Paragraph 7.3 of the Explanatory Memorandum states:

"The central effect of expiry of the 2006 Act would be to end the powers and provisions to maintain the armed forces as disciplined bodies".

I take this opportunity to ask the Minister: what precisely are the implications of paragraph 7.4 of the Explanatory Memorandum? Paragraph 7.4 says:

"The requirement for renewal (under Section 382 of the 2006 Act) is based on the assertion in the Bill of Rights 1688 that the Army (and by extension now the RAF and the Royal Navy) may not be maintained within the Kingdom without the consent of Parliament".

Does that mean that if this order is not agreed by Parliament before the end of 2 November 2015, there is either no statutory authority or only limited statutory authority for the continued maintenance of our Armed Forces? If that is the case, does that mean that any or some actions within or by our Armed Forces would be outside the law? For example, could our Armed Forces still take lawful military action or lawfully incur current levels of expenditure if this order extending the 2006 Act is not agreed by Parliament within the required timescale? Further, what in practical and legal terms does the statement mean at the end of paragraph 7.3 of the Explanatory Memorandum that:

"If the 2006 Act were to expire, members of the Armed Forces would still owe a duty of allegiance to Her Majesty",

in the light of the statement in paragraph 7.4 to which I have already referred? Would the consent of Parliament have been withdrawn if this order was not agreed by Parliament and the 2006 Act expired as a consequence, and what in practical terms would the reference in paragraph 7.3 to our Armed Forces owing,

"a duty of allegiance to Her Majesty",

actually mean in those circumstances?

Baroness Jolly (LD): I thank the Minister for his explanation of the order and note that his speech is somewhat familiar, as I delivered it myself last year. These things do not change an awful lot so I shall not take long.

The order reflects the constitutional requirement under the Bill of Rights that the Armed Forces may not be maintained except with the consent of Parliament. The noble Lord, Lord Rosser, has repeated some of the points and questions that I probably failed to answer last year around this whole issue of what happens should we not agree. But I would like to highlight an area that had its own legislation passed

[Baroness Jolly]
earlier this year—the Armed Forces (Service Complaints and Financial Assistance) Act 2015—in particular, complaints, which are covered in this order.

The 2014 continuation order covered the old complaints system. The 2015 legislation to set up the new Service Complaints Ombudsman amended the Armed Forces Act 2006. Will the Minister confirm that this continuation order incorporates the service complaints paragraphs of that Act? The ombudsman set up in the Act will have stronger powers than the current commissioner to investigate any maladministration in the handling of a service complaint. Will the Minister also confirm that as the Act goes live in 2016, the system set up is on track to meet the change in legislation?

I note, too, my responses last year with regard to the letter from noble Lord, Lord Tunnicliffe, to the department, and Mr Morrison's response on the 2014 order. Can the Minister confirm whether he believes that the Explanatory Memorandum of this year reflects the contents of Mr Morrison's letter? Will the noble Earl also confirm that next year we will be debating a 2016 Armed Forces Act, which we expect to, as it is done every five years, and does the Minister have any inkling of that timetable?

As the Minister has highlighted, we have the opportunity in next week's debate on role and capabilities of the UK Armed Forces to explore in more detail issues of a more specific nature, and I hope that the Minister will accept the point made in last year's debate, which the noble Lord, Lord Rosser, repeated today, that a general debate is useful. The issue could helpfully be swept up in the debate next week and the Minister could respond to areas that are defence related but are only tangentially connected with role and capability. In the mean time, I am happy to agree to the continuation order.

Earl Howe: My Lords, I am grateful to the noble Lord, Lord Rosser, and the noble Baroness, Lady Jolly, for their comments and questions. I shall address them in turn.

The noble Lord, Lord Rosser, devoted his remarks to questions around the hypothesis that were this order not to be approved, the effect on the Armed Forces would be to render them, in practice, completely ineffective. I can confirm that. The practical effect of not renewing the Act would be that the Armed Forces as we know them would cease to exist because, among the many important provisions in the Act, the key provisions are perhaps the duty to obey lawful commands and the mechanism for enforcing that duty. Without these, the Armed Forces would be unable to continue as disciplined forces. They would continue to owe allegiance to Her Majesty but to deploy the Armed Forces in practice or in theatre would be rendered almost impossible because the system of obeying duties would fall away.

Lord Rosser: Perhaps I should clarify. I understand fully the point that the noble Earl has made. Is the Minister saying that it would be impractical to undertake military action because there would be no duty to obey commands, or is it also the case that if this order was not passed it would be illegal for our Armed Forces to undertake any action? Is it an issue about practicality or is it an issue about whether it is legal?

Earl Howe: It is both, as I understand it, in that the requirement for annual renewal can be traced back, as noble Lords have pointed out, to the Bill of Rights 1688. It declared that the raising or keeping of a standing Army within the kingdom in time of peace, unless it be with the consent of Parliament, is against law. That means, essentially, that it would be illegal to have a standing Army or, indeed, a standing Royal Navy or Royal Air Force. It has not been a matter for any Government in living memory to contemplate a scenario whereby Parliament might not approve the continuation of the Armed Forces.

Lord Rosser: My Lords, I am not advocating that either but I am not entirely clear that the Explanatory Memorandum actually says that about the legality, in words of one syllable.

Earl Howe: I shall naturally take advice from those who are expert in this field. If anything that I have said is wrong or requires expansion I will of course write to the noble Lord. I agree that this is a subject of theoretical interest. I am glad to hear that there is no proposal to take the questions to their logical conclusion, but I recognise the importance of the questions that the noble Lord poses and will be happy to clarify, perhaps at greater length in writing, what the legal position amounts to.

The noble Baroness, Lady Jolly, also referred to the Bill of Rights, but focused her remarks on the system of complaints and asked whether the changes that are being introduced are on track. They are. As she knows, the Ministry of Defence worked closely with Dr Susan Atkins, the first Service Complaints Commissioner, to make the service complaints process more efficient and to strengthen the commissioner role. That was the basis of the Armed Forces (Service Complaints and Financial Assistance) Bill that received Royal Assent on 26 March this year. As she is aware, the Act shortens the complaints process and replaces the commissioner with a new Service Complaints Ombudsman. Implementation is expected in January. The ombudsman will have significant new powers, while maintaining the right balance between the authority of the military chain of command, which must be responsible for looking after its own people, and strong independent oversight through the ombudsman.

Nicola Williams, the former ombudsman in the Cayman Islands, with whom I had a useful conversation the other day, took over as the commissioner in January and will become the first ombudsman, subject to approval by Her Majesty the Queen. Nicola Williams's first annual report on the fairness, effectiveness and efficiency of the service complaints process was published on 24 March. The Government's response was published on 16 July 2015.

The noble Baroness, Lady Jolly, asked me whether the Explanatory Memorandum reflects the content of Mr Morrison's letter. I will have to get back to her on the answer to that.

As for the timetable for the Armed Forces Bill, I anticipate that it will be introduced into Parliament shortly. I cannot comment on its content before that happens, but my understanding is that the Bill should be under way in October.

Motion agreed.

Consumer Rights Act 2015 (Consequential Amendments) Order 2015

Motion to Consider

5.58 pm

Moved by ***Baroness Neville-Rolfe***

That the Grand Committee do consider the Consumer Rights Act 2015 (Consequential Amendments) Order 2015.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I shall speak also to the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2015. These orders form part of the implementation of the Consumer Rights Act 2015 and, with the leave of the Committee, I will take them together. Most of the Act comes into force on 1 October.

Before turning to the orders, I thank noble Lords for their valuable contributions to our debates and to ensuring that the Act is in good shape. I am particularly grateful to the noble Baroness, Lady Jolly, who has just left us, for her help in steering the Act through the House, and to the noble Baroness, Lady Hayter, and, if I may say so, to the newly fashionably bearded noble Lord, Lord Stevenson, for their well-informed contributions to our lively debates.

The Act is part of a wider package of consumer law that will boost the economy by £4 billion over the next 10 years. It may be helpful if I remind your Lordships of what the Act does and if I say a little about what we are doing to ensure that consumers and businesses are aware of their rights and obligations under the Act.

The Consumer Rights Act is a major part of the reform and simplification of UK consumer law. It provides clear consumer remedies for goods, services and digital content so that consumers know what their rights are and what they are entitled to if something goes wrong. This will help increase consumer confidence so that people try new products and services and also shop around. It will also help businesses more readily to understand their responsibilities.

It is crucial that consumers and businesses know about their rights and obligations. We have therefore been working closely with trading standards to help businesses prepare for the changes, including the provision of clear guidance on the Act on its Business Companion website and the development of a consumer rights summary which businesses can voluntarily display in their shops at the point of sale. To help consumers better understand their rights, we have also been working closely with Citizens Advice, MoneySavingExpert and Which?. The consumer rights summary will be published on the TSI website before 1 October.

Alongside the Act, on 1 October, when the business information requirements of the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 come into force, we will also complete implementation of the alternative dispute resolution directive. By ensuring that ADR is available in every sector, we will make it easier to resolve disputes between consumers and traders. This will help reduce costs for businesses by reducing the number of these disputes being brought before a court.

I would also like to update your Lordships on our review of product safety. In March this year, because of concerns about the effectiveness of consumer product recalls raised by the noble Baroness, Lady Hayter, and others during the passage of the Consumer Rights Bill in this House, the Government launched an independent review led by consumer campaigner Lynn Faulds Wood. This is looking at how we can make the product recall system more effective, with a proper understanding of what a good recall system looks like. A small stakeholder focus group met on 4 December to discuss 10 recommendations and we anticipate publishing the review's findings later this year.

As a result of amendments made in this House, the Consumer Rights Act includes new rules on the regulation of the online secondary ticketing market, which came into force in May. The first order enables the enforcement bodies to share information and work together more effectively to complement the investigatory powers that came in in May. BIS and the DCMS are still committed to reviewing the secondary ticketing market and we anticipate announcing the chair very soon. Given the level of interest in this matter and the presence of my noble friend Lord Moynihan, I thought that I should make that clear. The launch of the review will follow shortly, along with an invitation for interested parties to provide evidence on the market and consumer protection measures.

As part of our productivity plan, the Government are reviewing trading standards to ensure that our consumer enforcement capability effectively supports competition and better regulation goals. We have, however, decided to delay the coming into force only of the services provisions of the Act in relation to mainline rail, aviation and maritime consumer services until 6 April 2016. The DfT is rightly concerned about the interplay between the new Act and specific provisions, such as the arrangements for a refund due to train delays. Therefore, we will be consulting with businesses and consumers shortly to determine whether the detailed sector-specific consumer remedies should be retained and how the new Act might apply. The other chapters of the Act, including provisions on competition, will come into effect for these sectors on 1 October.

I now turn to the two orders themselves. As I mentioned, these orders form part of the implementation of the Consumer Rights Act. They simply make consequential amendments to the existing legal framework. First, the draft Consumer Rights Act 2015 (Consequential Amendments) Order adds the

[Baroness Neville-Rolfe]
Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 to the list of legislation in Schedule 5 to the Act. This will mean that public enforcers of those regulations have access to the investigatory powers that they need.

The order also amends the Uniform Laws on International Sales Act 1967. That Act implemented the convention on international sale of goods, which enables parties from different countries to decide that the standard terms set out in the convention apply to their contract. This means that, where the contract is for the sale of goods to a consumer, provisions of the Consumer Rights Act, such as the right that goods must be fit for purpose, will be treated as mandatory elements of the contract.

The order also amends Schedules 14 and 15 to the Enterprise Act 2002 so that public bodies have the power to disclose and share information obtained through, or for the purposes of, enforcing the unfair terms and secondary ticketing provisions contained in the Consumer Rights Act, as I mentioned. Lastly, the order amends Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 to enable a local authority to be a "primary authority" and take a role in co-ordinating enforcement of provisions of the Act.

The second order, the draft Enterprise Act 2002 (Part 8 Domestic Infringements) Order, amends the Enterprise Act 2002. This enables enforcers, such as trading standards, to use civil enforcement powers for certain breaches of the Consumer Rights Act where such breaches affect the collective interests of consumers. For example, trading standards could seek an enforcement order when a business refuses to give refunds to a number of customers where faulty goods are supplied.

I commend the draft orders to the Committee.

Lord Moynihan (Con): My Lords, I am grateful to the Minister for referring specifically to Chapter 5 of Part 3 of the Act and for the interest shown, both in Committee and in the House, in the subject of the secondary market for tickets. As I understand it, the powers that are proposed should be seen as complementary and, indeed, supplementary, because there will be greater information sharing as a result of the order, which is narrow in scope.

I would like to ask my noble friend whether the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply to the secondary ticketing market as well. If they do, they stand well alongside the proposals before the Committee and, indeed, the powers in the CRA 2015.

Before I may appear a little concerned about and critical of the pace at which a number of commitments that were given to the House seem to be progressing, I say straightaway that I could not be more grateful to the Minister personally for her commitment and the level of interest, time and diligence that she showed on this subject. However, as I hope she will be the first to agree, while investigative powers are clear, a prerequisite for those investigative powers to be effective is enforcement. If there is a lack of clarity over exactly what needs to be enforced, we have a problem. One reason why the review was due to be set up was to provide clarity over enforcement and how it would be implemented. As long ago as May, the Minister was hopeful that we would have that review. Many of us who are interested in the subject have waited with bated breath during the Summer Recess, week by week and month by month—May, June, July, August and now into September—and we are still hoping that the review will come very soon.

Under normal circumstances in Parliament, this might not be a major concern. The reason why it is such a concern is because this review was placed in the Act and was time-limited to a year. It concerns me that we are now into September and we do not have a chair for the review or terms of reference for it, nor do we have details of the expert committee that would support that review. All that is absolutely essential. One reason why the measure was pressed so rapidly and given such importance and prominence in Parliament was that having a chair in place to see exactly how the ticket-touting market or secondary ticket market worked during the Rugby World Cup was clearly going to be advantageous. It was going to be able to help that committee to assess the effectiveness or otherwise of the legislation that had been passed in Parliament, and it was also going to provide a good deal of detailed information so that recommendations could be made in the light of direct hands-on involvement with those organising the Rugby World Cup, which already, as we have read in the papers only in the last week, is a matter of great concern to the consumers, many of whom feel that they are being fleeced. In addition to that, we were looking for a strategy for monitoring compliance. The Competition and Markets Authority is clearly important in that context, but we have heard nothing. There is no information on how best to provide requirements for sellers, advice to buyers or recourse to consumers. I understand that the police numbers specifically to tackle touting and associated criminality are very low.

Many rugby fans feel that they are currently being fleeced for tickets, which is a result of the lack of enforcement. The position that they face today is bleak, to say the least. I hope that my noble friend the Minister will be able to give us a little more clarity on when this review is going to be established. I hope that there will be an announcement very soon of a chair for the review; it is imperative that that is done and that the review is set up as a matter of urgency. At the Rugby World Cup, so many fans have been unable to get tickets because those who have managed to sweep the market have immediately put those tickets back on at a massive multiple of their face value. When that is directly in contravention to the regulations and rules stated by the organisers of the Rugby World Cup, we have a serious problem, compounded when Parliament has spoken about this issue and when the Government came back with amendments to lead on this issue so that we could protect consumers and not see sports fans fleeced.

Lord Stevenson of Balmacara (Lab): My Lords, it was very good of the Minister to pay tribute to my hirsute appearance. I like to bask in the idea that I am fashionable at all, let alone fashionably bearded. Of course, it is entirely a summer beard, one of those that grow simply because one is too bored and lazy to take

the trouble to shave it off. In my case I had an ulterior motive—I am sorry to bore the Committee in this way—because my son has just reached the age of 20 and fancies himself as a bit of a lad around town, and felt that it would enhance his appearance and approach to the wider world if he was to grow a beard, and we agreed to do it together. I shall not say who has won yet, but it is a fine bonding environment. Also it proves that you do not have to be a former Labour leader or indeed standing to be a Labour leader to wear a beard of some distinction. I hope that does not get too widely circulated by *Hansard*.

I thank the Minister for giving us a very interesting overview of where things stand with the Bill. For those of us who sweated through the long stages of this issue, it is nice to be refreshed again as to where we have got to on some of these key issues—not least the digital area, which is my particular responsibility, but also in the wider context on which my noble friend Lady Hayter led for us with great skill and expertise. It is her birthday today, and perhaps the Minister might in a spirited moment refer to that.

I have three points. I was intrigued by the announcement that there was to be a review of trading standards. I had not noticed that in earlier statements. When the Minister comes to respond, perhaps she could give us a little more on that. We made a point throughout discussions on the Bill that, while we admired the way in which the Bill set out to draw together and reshape our overall consumer protection, it was heavily dependent on the ability to police and exercise the powers that were being given. There were some doubts expressed by those who spoke in Committee and on Report who had knowledge and expertise in these areas of the difficulties being caused in local government as a result of cuts and changes there. I am interested in the broader approach taken by the review, in particular whether it will deal with the difficulties that have been caused by the reductions in manning levels and resources available, and by changes in local government, which are very complicated. That might take time to get together, but it would repay considerably on the success of the Bill.

6.15 pm

My second point echoes those made by the noble Lord, Lord Moynihan, on the secondary ticketing market. It is a complicated area. The point was well made that there is a bit of a problem with trying to carry out a review before enough experience has been obtained of the changes made by the Act. Obviously that will push the timing of this towards the end of the rather short period that has been allowed for it. The uncertainty is not helpful. When the Minister comes to respond, could she be a little more forthcoming about the timing and extent?

The noble Lord, Lord Moynihan, mentioned the possibility not only of an individual being responsible but of a group of people being asked to carry this out, led by a particular individual, and of an advisory committee. I would be interested to know to what extent thinking on that has solidified. If it is to be advisory to the review that is one thing; if it is advisory to the Secretary of State—or both Secretaries of State, since this is still meant to be a joint approach between DCMS and BIS—that would be interesting to know. We have come across that with the BBC review. I am anxious to have a little more detail sketched in on that if we can.

My third point was also mentioned by the noble Lord, Lord Moynihan. Towards the end of discussions in Committee those of us directly involved in this—in particular, those responsible for finally getting a new clause inserted in the Bill—were interested to discover that the CMA had been carrying out quite a considerable amount of work in this area in parallel to the debates going on in Parliament, but which was not shared with Parliament. It meant that those of us who had been lobbied and were in discussions with those involved with secondary ticketing were to some extent blindsided by the fact that elsewhere, and without knowledge available to us—I do not see how it could have been made available to us, but we did not know about it—undertakings were being offered and discussed, and arrangements were being made with secondary ticketing operations. Companies that had come to us with a particular line were clearly speaking from experience of discussions and debate with the then competition authority—it was the OFT; then it was transferred to the CMA.

We were put at quite a considerable disadvantage, but that is past history. Maybe that is how government works, but it would be helpful if the Minister would confirm without reservation what the situation with the CMA and the secondary ticketing market is as we go into this review period. Are any further discussions going on, or can we be assured that the matter will be stayed, at least until such time as the review is carried out? Again, it would be absurd to find that there were parallel, secret negotiations going on. It would be very bad to the public interest if that were to become clear.

I support entirely what the noble Lord, Lord Moynihan, said. I share his wish that this had been started earlier so that we could have looked at how the market was operating in relation to the Rugby World Cup, but there are other activities and there will be plenty of evidence around. Indeed, at the end of the previous Session the Minister and I commented on the interesting experience of walking from Wimbledon station to Wimbledon tennis ground, when one was met by a very large number of people who seemed to know an awful lot about whether one wanted tickets.

This process is alive and well. It destroys and upsets lots of consumers every time there is a big event. It is not always the case that the ticket touts make money, but they certainly devalue the feeling of trust that one should have in the organisers of events in terms of what tickets you are getting, whether you will have the right to attend when you have bought a ticket or whether that ticket will be vitiated by some other activity. The whole area needs to be cleaned up. We know there is evidence of money laundering and of criminality, but we will not get this sorted until the Act is given additional support from the review. We can then move forward with ensuring that the understanding, the evidence and the way that the Act could work in terms of penalties is clarified once and for all.

Lord Taylor of Warwick (Non-Afl): My Lords, I thank the Minister for her opening remarks and continuing work on this matter.

I appreciate that the Act to which the orders relate is a consolidation Act designed to simplify, and obviously I support that. There are challenges ahead and I hope that the Government will focus on them, in particular the internet. We know that the online retail market is the fastest-growing sale sector. It is now worth well over £100 billion.

The expansion of click-and-collect services and mobile-phone commerce has played a large role in this. Only last night a lady from America sent an e-mail to my website, wanting to know what my opening hours are, because she wanted to buy some clothes. She confused me with Lord & Taylor, the clothing department store in the USA. She was quite happy, however, that I was not in fact Lord & Taylor. This just goes to show that many consumers now are dealing with companies that are outside the jurisdiction and that in many ways the Government are playing catch-up with the internet. They still have to wage the battle against that.

Paragraph 7 of the guidance notes states that the Government consulted extensively on reforming consumer law, and that this was based on broad support for reforms from business and consumer stakeholders. But for many start-up firms the owner is also the person who makes the tea and puts out the rubbish. Keeping abreast of changes in consumer law is a challenge too far. I still feel that there is too big a gap between small business and government, and indeed between consumer and government.

One must look at what the consumer can do when things go wrong. I appreciate that this was in essence a consolidation Bill, but the Government have to be a champion of the consumer. Some argue for a consumer ombudsman, just one person. I do not share that view, but I feel that companies owe more of a duty of care to consumers to advise them on what to do when things go wrong. Caveat emptor, or buyer beware—there is still consumer law, but it is the new language of the internet, not Latin, that is fast taking over. So the Government must take into account that that changes, almost by the minute, the way in which we buy and sell goods.

Baroness Hayter of Kentish Town (Lab): Well, we are back again. I thank the Minister for not just introducing the draft orders, but for the update on progress on the product safety review, which is of particular interest to me. We had not formally seen it but I had obviously heard about it. The decision that she or whoever made it to appoint Lynn Faulds Wood to chair the review was a brave one, as she is very much her own lady. I have worked with her before, on bowel cancer, which was rather different, but I know that she will take no prisoners. We look forward to that report and trust that it will be out this year.

The EU directive on alternative dispute resolution in a way touches on the area, just raised by the noble Lord, Lord Taylor of Warwick, about whether there should be a consumer ombudsman. In principle, I am more or less with him on that. If you have an ombudsman it is compulsory for the industry covered to allow a consumer to take its complaint there. The problem that we have with the ADR directive, to which the Government signed up in only the most minimalist way, is that there will be alternative dispute resolution organisations in existence. For example, if you were John and Taylor—a wonderful firm, I am sure—but it was in Warwick and you were selling clothes there, you would in future have to say that the clothes-selling ADR provider is that well-known company, Stevenson and Hayter. However, we will not necessarily accept that a consumer should take their complaint there. So we have a very odd situation now which falls short of what the noble Lord would want: basically, anyone can set up an ADR and, as long as it is approved by the trading standards people, it exists but consumers cannot necessarily take their complaints there.

When she replies, perhaps the Minister will confirm when the full implementation of the ADR directive, although it is very minimalist, will take place. I know that it is later than was originally intended, but I missed the date. How many of those ADR schemes have been approved and what proportion of the consumer market does she now consider is covered by some sort of ADR scheme?

I turn to another issue on which the Minister helpfully updated us, which was the announcement made by the Minister in the other place on 29 July—which was, strangely enough, just when we were all going off on holiday and had packed our buckets and spades—of the six-month delay in the services provision of Chapter 4 of the CRA for the rail, aviation and maritime services. It may be that the Government had foreknowledge of what was going to happen at Calais over the holiday and were absolutely sure that they did not want consumers to be able to use their new rights under the Act. I hope that that was not the case.

What concerned me, not in what the Minister said today, but in the letter of 29 July from the Minister in the other House, was the suggestion that the passenger transport sector might be exempted permanently from the Act in certain respects. We would have very serious questions about any suggestion of completely removing the rail sector from the Act. The existing consumer protections under the national rail conditions of carriage are much narrower than those introduced in the new Consumer Rights Act. They basically cover only delays and cancellations, not quality of service, passenger assistance, on-board wi-fi, which gets more and more important, and cleanliness. In fact, they do not cover what the Minister referred to in the rest of the Act: whether the service could be said to be fit for purpose.

Although there are some improvements under the national rail conditions of carriage regulations, in that there is now provision for cash compensation rather than just a rail voucher—which is no use at all if you do not want to go back to where you have been—that compensation is still essentially limited to delays, not those wider issues. We obviously want the Consumer Rights Act to apply to passengers.

The Government had initially reassured the Committee in the Commons that the national rail conditions would be excluded only when they offer equivalent protection to that in the Bill—which is not currently

the case. At that point, we were reassured that there was to be no undercutting of what is now the Act. However, the letter from the Minister in the Commons worries us slightly. We know that even with the present level of protection, which is not as good as the CRA, the Office of the Rail Regulator found that more than three-quarters of rail passengers know not very much or nothing at all about their rights to a refund or compensation when trains are delayed or cancelled.

We believe it is vital that the travelling public get the full rights under the Act. Given that the Conservative manifesto pledged,

"to improve compensation arrangements for passengers",

will the Minister confirm that there is no intention to provide lesser rights for passengers than those in the Bill to which I think she can quite proudly put her name? Will she also undertake that in that six-month pause Transport Focus and other consumer groups are fully consulted and that it will not be just the industry deciding what rights it will deign to give its customers?

6.30 pm

On secondary ticketing, the noble Lord, Lord Moynihan, and my noble friend Lord Stevenson have put across the main issues. But I ask the Minister—whether wearing her BIS hat or her DCMS hat—to update the Committee on the implementation of Chapter 5 on secondary ticketing. We would like to know whether there is any truth in the rumour that the Business Secretary wants to repeal the 2015 Act reforms regarding the reselling of concert and sports tickets. It was written up in the *Guardian* and there has been no refutation yet from the Government, which of course makes us a little suspicious. Lack of progress on the review has already been mentioned, and when I hear the words "very soon" I get a little worried. My noble friend Lord Stevenson and I were doing one of the Finance Bills or an enterprise Bill and we kept being told that the review on LIBOR was going to be very soon, it was going to be in the spring, it was going to be in the summer. Certainly if we could know if it was days rather than weeks, that would be helpful.

I would also be very interested to know who is going to publish the review. Will it be a DCMS review or will it be BIS? We would like to know which Secretary of State will get their sticky hands on it because we know about the particular interests, shall we say, of the two Secretaries of State. As has been said, we are interested in what preparation has already been made for guidance for enforcement authorities, event authorisers and traders—the secondary platforms themselves as well as the fans. I am sure some thought has already gone into that.

It has also been reported that the Culture Minister in the other place, Tracey Crouch, has said:

"The Government believes that prices should be set by supply and demand in the secondary ticketing market",

which is another cause for concern. It sounds as if they will pre-empt the review, but I also hear a certain noise of rapid backtracking. It is very hard to believe it is Tracey Crouch's own personal view, given her renowned love of sports and her enthusiasm for the fans. So it may be more the sound of broken arms. Certainly the secondary ticketing industry seems to have got wind of a possible government U-turn; for example, StubHub is ending the transparency which showed the full purchase price that you would pay rather than the tempter price to get you in before more is added on. It looks as if the industry may be confident that it is not going to have to make many changes. We await with interest the Minister's response to these various questions.

Baroness Neville-Rolfe: I thank my noble friends Lord Moynihan and Lord Taylor, the noble Baroness, Lady Hayter, and the noble Lord, Lord Stevenson, for their intelligent contributions to today's debate. On the subject of beards, two of my sons have grown beards this summer. Of course, I congratulate the noble Baroness, Lady Hayter, on her birthday. We will not sing "Happy Birthday" to her because I think it would be against the rules of this distinguished place. I also thank her for her kind words about the product safety work that we are doing and about the chair. I will of course pass on her comments.

I shall start with transport. I reassure the noble Baroness and the noble Lord that there was no conspiracy in relation to the transport provisions. Our concern is about the interaction between the existing provisions, to which the noble Baroness referred, and the new provisions in the Act. The delay in the order until April next year will allow us to consult widely and we feel that it would be wrong to pre-empt that consultation. The scope of any exemption will be limited and will relate only to the ability to limit liability to less than the ticket price. All other protections under the Act will apply. The consultation will involve both business and consumer groups. Of course I undertake to pass on the points that the noble Baroness has made during this debate to ensure that my colleagues doing this work in the Department for Transport are well aware of noble Lords' concerns.

As my noble friend Lord Moynihan helpfully said, the provisions are complementary and supplementary to what we did in the Act and to the investigation powers that are already in place. I think that his question was, "Do both orders affect secondary ticketing?". My answer to that is yes, so, as he says, that is helpful. However, I emphasise that the main provisions have already come in, including those relating to the investigatory powers. We remain committed to these and to the review, whose object is to make sure that the market works properly. The terms of reference have still to be finalised once the chair can confirm that the ideas that have been put forward are in the right place. I hope that that gives some reassurance. On enforcement, in the mean time consumers who have problems should contact Citizens Advice, which will pass information to trading standards for enforcement. Individuals can also challenge in court terms that they believe to be unfair. Therefore, the provisions are fully in force and there is no reason for anyone in the market not to comply with them. Doing so could attract a financial penalty.

Baroness Hayter of Kentish Town: It would be interesting to know who has been consulted on the terms of reference. Certainly we have not seen any

[Baroness Hayter of Kentish Town]
draft terms of reference. Again, I trust that it is not just the secondary ticketing people who have been consulted.

Baroness Neville-Rolfe: I am grateful to the noble Baroness for that intervention. I think that before the election we sent an outline to some of the noble Lords who have been involved in the debate. If those did not come their way, I will make sure that they do. As I am sure noble Lords agree, it will be important that the chair looks at the terms of reference, but a working document was prepared and I can certainly arrange for your Lordships to receive it. We have been making progress in establishing the terms of reference so that we are ready to roll.

I am sure that noble Lords will agree that it has been important to find an appropriately skilled chair and, obviously, the necessary support, on which I think there is more detail to follow. I can confirm that the review will report to both Secretaries of State. As I said, we expect an announcement soon. The review will take evidence from the Rugby World Cup, as it should do, and we remain confident—this is perhaps the most important point—that it will report on time. As my noble friend explained, there is a time-limited window. We have legislated already and we will be responding to the concerns that have been expressed particularly vociferously in this House and elsewhere.

On the CMA, the noble Lord, Lord Stevenson, said that this was history. However, the CMA, which is an independent organisation, will be contributing to the expert group, will provide evidence for the review, and consider its conclusions alongside the Government and other enforcers when considering action in this sector.

Lord Moynihan: I am grateful to my noble friend for that comment because that is the first time we have heard formally that there will be an expert group supporting the chair of the review. Can she take on board—I do not expect her to respond today—and come back later to confirm that the expert group reflects the key interested parties? That means that the arts promoters and event promoters, who have been particularly concerned for many years about abuse within the secondary market, as well as the leading spectator sports that are keenly interested in this issue, will be represented on the expert group.

Lord Stevenson of Balmacara: To continue that point, it would be helpful to know how this is to be shaped and organised. I agree that there is a lot of expertise out there but it has not always been brought in. It would be useful if we could be reassured that the range of representation on the expert group will be sufficient to make sure that all the points are picked up.

I am grateful to the Minister for what she has said about the CMA. It is perfectly appropriate for it to carry on its work independently. However, it is the lack of transparency about where it is in the game that causes us the most concern. We were completely unaware that negotiations were taking place between the CMA, or its predecessor body—probably the OFT—and the secondary ticket market. That meant that everything we thought we were hearing needed to be refocused because it was untrammelled by other people's considerations. The point that I was trying to make was, without in any sense trespassing on the independence of the CMA, it would have been helpful to know whether a programme of work was going on at the same time. The fact that the CMA will be an adviser to the expert group, which presumably will report to the Secretary of State, will make matters a lot easier. I suspect that that is where the matter should lie but I should like confirmation from the Minister.

Baroness Neville-Rolfe: I am grateful for those helpful interventions. We are nearly there. I will reflect on the point about lack of transparency and pass it on to the CMA. I will take away the points that noble Lords have made about the expert group. There is not a lot extra that I can say today but we will make an announcement soon and bear in mind the helpful contributions that have been made.

I shall move on to trading standards. The noble Lord, Lord Stevenson, asked about the review. It was announced as part of the productivity plan published by the Chancellor and the Secretary of State for Business, Innovation and Skills in July. Noble Lords will remember that the plan called for more open and fair markets. Following the Raine review, we have said that we are reviewing trading standards' ability to deliver the Government's aims. We aim to make recommendations for a more efficient and effective trading standards service, which will ensure suitable consumer protection in an efficient and financially sustainable way so that business has confidence to invest and grow. That is the link with the productivity envelope and the context in which the review was published. We will not be carrying out a formal consultation but would welcome views from public bodies that rely on trading standards to deliver enforcement, as well as from consumer and business representatives, and local service providers in England, Wales, Scotland and Northern Ireland, to inform our review. The review will report in the autumn, working alongside the LGA.

The noble Baroness, Lady Hayter, asked supplementary questions about the ADR directive, in particular about when it will fully be in force and how much of the consumer market will be covered. The ADR will be fully implemented on 1 October as a result of these various provisions.

6.45 pm

I welcome my noble friend Lord Taylor to the debate. I wish we had had the benefit of his intelligent comments while we debated the Bill last year. I thank him very much for coming this evening. He was rightly concerned about the rules governing sales on the internet from overseas. Obviously, seismic changes, as my noble friend described, are taking place in the retail world as more and more sales go online. The answer to his question is relatively simple. If a trader pursues its activities in or directs its activities to the UK, whether the trader is in the UK or not, and the contract covers

those activities, the Rome I regulation provides that a contract with a consumer habitually living in the UK will be governed by UK law. So consumers will have access to remedies under UK consumer law.

For completeness, I should add that the European Commission's proposals on the digital single market include consideration of whether a common set of consumer rights for cross-border purchases across the European Union could be beneficial to business and to consumers. We are trying to be proactive with our paper on the digital single market and not just play catch-up, as was suggested, partly in the light of the expertise that we developed here during the passage of the Bill. I am actively engaged in the discussions in Brussels and look forward to reporting on the outcome in due course.

My noble friend Lord Taylor also asked about ADR and whether there should be a consumer ombudsman, although I do not think he was advocating that.

Lord Taylor of Warwick: I was not.

Baroness Neville-Rolfe: I agree with him. The answer is that we do not believe that that is the right approach because there are lots of existing ombudsmen who are experts in their area.

Lord Taylor of Warwick: The problem is that there are several ombudsmen and they all have different procedures.

Baroness Neville-Rolfe: That is a fair point, which we ought to reflect on. We have been impressed by the way that the private sector has responded to the ADR directive. An increasing number of ADR providers are entering the market, which will be good for business and for consumers. That will increase choice and drive down the costs of ADR.

Baroness Hayter of Kentish Town: It will increase choice only for the provider. The consumer will not be able to choose which ADR provider to go to.

Baroness Neville-Rolfe: I thank the noble Baroness for making that point. I will reflect on it and come back to her, and to my noble friend Lord Taylor on the general point on ADR. He made a point about how we can align processes so that it is easier for the consumer, a point that I note.

We have had an interesting and helpful debate. I conclude by commending the two orders to the Committee.

Motion agreed.

Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2015

Motion to Consider

6.49 pm

Moved by ***Baroness Neville-Rolfe***

That the Grand Committee do consider the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2015.

Relevant document: 1st Report from the Joint Committee on Statutory Instruments

Motion agreed.

Committee adjourned at 6.49 pm.

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