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Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
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House of Lords

Wednesday, 21 October 2015.

3 pm

Prayers—read by the Lord Bishop of Bristol.

Diplomatic Missions: Parking Fines

Question

3.07 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what action they are taking to recover unpaid parking fines and London congestion charge payments from diplomatic missions and international organisations.

The Earl of Courtown (Con): My Lords, Foreign and Commonwealth Office officials regularly lobby diplomatic missions about outstanding debts. Debts are raised with new heads of mission when they first call on the Foreign and Commonwealth Office. Additionally, before the annual statement to Parliament, Foreign and Commonwealth Office officials write to all diplomatic missions and international organisations with unpaid parking fines of more than £500 and unpaid congestion charges of more than £100,000, urging them to settle their debts.

Lord Berkeley (Lab): I am very grateful to the Minister for that Answer, but it just shows that absolutely nothing is happening. The Written Statement on 16 July showed that the diplomatic community as a whole owed £87 million in congestion charges, for which the US won the prize for £9 million and the People's Republic of China owed £2 million. Why does TfL not get out and clamp all these Rolls-Royces? Better still, why did Boris not think of clamping the Queen's horse and carriage yesterday, with the president inside it? It might have taught him a lesson.

The Earl of Courtown: I have quite a short answer for the noble Lord. Diplomatic vehicles are inviable—no, I mean inviolable, which is a new word for me.

Lord Wallace of Saltaire (LD): My Lords, there are some more serious offences that various diplomatic missions commit. Some arise from mistreatment and sexual abuse of domestic workers, particularly domestic workers brought from other countries. Since the Government are so concerned about human rights in international relations, as we have seen from their conversations with the Chinese, are they considering pushing within the United Nations for diplomatic immunity to be modified in cases of severe human rights abuses? May I also ask, since Gulf diplomats are the ones who are often the most at stake, could we watch carefully the number of people from Gulf states in London claiming diplomatic status?

The Earl of Courtown: The noble Lord, Lord Wallace of Saltaire, makes a serious point. To be perfectly honest, I do not know what we are doing at the UN on this basis, but I will write to the noble Lord to find out if there is anything more that I can add. Here in the UK, we expect all foreign diplomats to abide by UK laws at all times. We take a firm line with diplomatic missions and international organisations whose diplomats commit offences.

Lord West of Spithead (Lab): My Lords, 210 years ago at this time Admiral Nelson lay dying on the orlop deck of HMS "Victory". I raise this because we are discussing international organisations, and Nelson had showed the value of a British battle fleet in negotiating with international organisations. This led to 100 years of Pax Britannica. Twice in the last century the Navy ensured the survival of the nation. Does the Minister feel that it is appropriate to wish the Navy good luck on the 210th anniversary of Trafalgar?

The Earl of Courtown: I could not agree more with the noble Lord, Lord West. I was wondering what the sting in the tail would be. As we joked beforehand, he was going to suggest that we tab No. 10.

Lord Wright of Richmond (CB): My Lords, will the noble Earl please tell the House whether there are parking or other fines which other people have tried to charge us for, for instance in New York, and do we pay them or not?

The Earl of Courtown: My Lords, as the noble Lord, Lord Wright of Richmond, is very aware, our staff from his old department, the Foreign and Commonwealth Office, pay their fines and abide by the regulations as much as they can.

Lord Geddes (Con): My Lords, I wonder whether my noble friend can tell me why diplomatic cars are—what was the word?—inviolable.

Noble Lords: Inviable!

The Earl of Courtown: Basically, My Lords, my noble friend asked about "inviolable"—I think "immune" is probably a better way of putting it—but this comes under the Vienna convention.

Lord Tomlinson (Lab): Is the noble Earl aware that this has been an ongoing problem for well over 60 years? I remember that in the 1970s the Foreign Office analysed not only who owed what, but where the cars were parked. Is it still the case that the majority of these cars that are clamped, or which noble Lords recommend should be clamped, would create a traffic jam outside Harrods?

The Earl of Courtown: This problem has been going on for many years. I think that there is a particular problem at the moment with the congestion charge, as

[The Earl of Courtown]
the noble Lord, Lord Berkeley, said, where some overseas diplomatic missions consider that it is a tax as opposed to a charge.

Baroness McIntosh of Hudnall (Lab): My Lords, if, as the noble Earl says, diplomatic cars and, presumably, their occupants, are inviolable, why is so much time and, indeed, parliamentary time, wasted on levying these fines in the first place?

The Earl of Courtown: My Lords, I do not think that parliamentary time is used in levying these fines. This is a matter for Transport for London.

Lord Swinfen (Con): My Lords, is there a maximum number of cars allowed to each diplomatic mission, or does this measure apply to all cars, some missions being bigger than others?

The Earl of Courtown: I do not know. I am sorry, my Lords.

Lord Christopher (Lab): If one should have the good fortune to earn a little money in America, you will find that you cannot escape from America until you have paid the tax. All we need to do, if I may suggest it, is to revise the names of these charges and call them a tax and the American ambassador could not leave until the tax was paid.

The Earl of Courtown: My Lords, as I said in my earlier Answer, we are in continual negotiation with the various missions, reminding them of their duty when they come to this country to obey the law and pay their parking fines and the congestion charge. Officials from the Department for Transport and Transport for London continue to press non-paying diplomatic missions to pay the congestion charge, and work to identify a solution to the legal impasse with non-paying missions.

Lord Winston (Lab): Does the fact that the Minister admits ignorance mean that the Front Bench is inviolable?

Civilian Translators and Interpreters

Question

3.15 pm

Asked by ***Baroness Coussins***

To ask Her Majesty's Government whether they will mark the United Kingdom's Presidency of the UN Security Council in November 2015 by tabling a draft resolution on the protection of civilian translators and interpreters in conflict situations.

Baroness Coussins (CB): My Lords, in asking the Question standing in my name on the Order Paper, I declare an interest as vice-president of the Chartered Institute of Linguists.

The Earl of Courtown (Con): My Lords, the Government consistently use the influence provided by our seat on the UN Security Council to urge all states to increase the protection of civilians in conflict situations. Interpreters and translators are, like all civilians, entitled to protection during armed conflict under international humanitarian law. The United Kingdom has no current plans to table a UN Security Council resolution on the protection of interpreters and translators during its presidency in November.

Baroness Coussins: My Lords, that reply is disappointing because interpreters and translators in conflict situations are not just like all other civilians. It is a hazardous profession and their vulnerability continues well after the conflict is over, as we have seen in Afghanistan. Do Her Majesty's Government accept that interpreters and translators deserve to be on the same footing as journalists in conflict zones, who already enjoy extra protection in international law? The UN resolution on journalists received unanimous support so if not in November, when will the UK support similar action to protect vulnerable linguists, such as the draft resolution being proposed by a global alliance of professional and voluntary organisations?

The Earl of Courtown: My Lords, the situation with journalists is different. We supported UN Security Council Resolution 2222 in May on the protection of journalists because of the unique role they play in building open and democratic societies and the increased dangers they face as a consequence. Freedom of expression and of the media are essential qualities of any functioning democracy.

Lord Hamilton of Epsom (Con): My Lords, the total net migration into the United Kingdom last year was 330,000 people. Why was it impossible to let in Afghan interpreters, whose lives were in great danger and who very often saved the lives of our servicemen? I think their total number was something like 130.

The Earl of Courtown: I think the figure my noble friend mentions is fairly close. Around 130 of the locally engaged staff have successfully come to the United Kingdom with their families, which amounts to 460 people.

Lord Avebury (LD): My Lords, are Ministers still unaware of any case of a translator or interpreter in Afghanistan being killed following intimidation, as they were in August? Might an alternative to the suggestion made by the noble Baroness be for the Security Council to invite the UNHCR to survey the schemes for the protection of civilian translators and interpreters that have been developed by the various NATO countries in Afghanistan, in order to identify best practice and make recommendations on meeting the obligation to protect?

The Earl of Courtown: My Lords, I cannot comment on any individual cases but I can say that we continue to lobby strongly at the United Nations for measures that will improve the protection of civilians as a whole in conflict areas. This requires a greater compliance

with international laws by state and non-state actors, an improved response and action by the international community, and support to states to develop their capabilities to protect their own populations.

Lord Anderson of Swansea (Lab): My Lords, again on Afghanistan, does the Minister accept that the British public may have doubts about the validity of claims for asylum from those coming from what are safe countries in the Balkans but that there is a great well of sympathy for those who have put their lives in danger to help this country?

The Earl of Courtown: I agree with much of what the noble Lord says. In Bosnia, for example, we provided our local staff with a financial payment on redundancy when their services were no longer required as the campaign drew on. In Iraq there was another scheme. Different countries require different schemes and it was not felt that the same scheme that was available in Iraq would have been suitable in Afghanistan.

Lord Alton of Liverpool (CB): Can the noble Earl return to the question that my noble friend raised with him a few moments ago, specifically as to why journalists are covered—as they are by the Geneva Conventions—but translators and interpreters are not? Do we have any plans to seek an amendment to the conventions so that they might be so covered?

The Earl of Courtown: My Lords, I do not think there is a great deal I can add to the answer I have already given to the noble Baroness. I am not sure whether the noble Lord is aware that 64 civilian journalists and support staff have been killed so far this year. The whole world grieved at the events in Paris earlier this year. It is important to remember that journalists and bloggers face intimidation and violence around the world as well.

Lord Cormack (Con): My Lords, I do not think anybody in this House would disagree with my noble friend in what he says about journalists. But we are talking about another, truly unique, category of people—those who assist us, sometimes when our forces are at the point of death, and who are giving of their services in an exemplary way. Can we not back, or even introduce, a resolution in the UN that will give them the same degree of protection as journalists rightly enjoy?

The Earl of Courtown: My Lords, I do not want to get repetitive on this subject but, as I have said, we continue to press other countries in the United Nations about civilians in danger. However, at the moment, we do not feel that it is right to treat interpreters in the same way as journalists.

Lord Collins of Highbury (Lab): My Lords, the Minister explained that different packages are offered in Iraq and in Afghanistan. Can he explain why there is a difference, bearing in mind the circumstances of conflict going on in both countries?

The Earl of Courtown: I thank the noble Lord for giving me an opportunity to explain the reason. In Iraq, our translators were recruited from the areas they were going to work in; in Afghanistan, they were recruited from areas away from where they were going to work.

Developing Nations: Technical and Vocational Education

Question

3.22 pm

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government what steps they are taking to encourage technical and vocational education and training to increase women's employability in developing nations.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, good-quality primary and secondary education deliver the highest dividends for poor people, especially girls. The UK Government are supporting 5.3 million girls in school in developing countries, to equip them with the skills for future learning and employment. For example, we are working with Coca-Cola in Nigeria to give 12,600 young women business skills. During 2014 in Nepal, the Employment Fund programme conducted skills training for more than 13,000 young people, of whom 56% were young women.

Lord Collins of Highbury (Lab): I thank the noble Baroness for that response. Following the recent African ministerial conference on this subject in Rwanda, can she say how involved the Government will be in this discourse to promote the involvement of girls and women in technical and vocational education in Africa?

Baroness Verma: My Lords, my department, DfID, has bilateral education programmes in 12 African countries where we support the priorities of our partner Governments. As the poorest children are still denied a quality basic education, that is where the majority of our support is focused. In Rwanda, we are the lead education donor and work closely with the German development agency which leads on support for technical and vocational skills.

Baroness Gardner of Parkes (Con): Can the Minister tell us why entrepreneurship is not included in that? When you give women in developing countries some eggs or newly hatched chicks, they turn themselves into businesswomen and are able to feed their families because they become poultry farmers. The same applies to many other things—they run a restaurant or something of that type. I was favoured enough to be chairman of Plan International UK for 12 years and saw this across the world, in Latin America, Africa and Asia. It is just as important to be sure that education includes the idea that they might run their own businesses.

Baroness Verma: My noble friend is absolutely right, but the starting point needs to be good education. My noble friend is right: we must increase female entrepreneurs' ability to flourish. I have just come back from Zambia, where I saw programmes on the ground where cash transfer schemes have worked and a little money or a little intervention goes a long way in ensuring that women have economic empowerment.

Lord Loomba (LD): My Lords, despite all the cuts announced recently, it is encouraging that the Government are continuing 0.7% in financial aid to developing countries. How much of that aid is being used or earmarked for increased women's employability through technical and vocational education and training?

Baroness Verma: My Lords, the noble Lord asks a really important question. However, we have made sure that women and girls remain at the heart of each DfID programme in each country in which we are working, so we have not disaggregated that amount. I can assure the noble Lord that, with the agreement of the new SDGs, we continue to place girls and women at the heart of those programmes. We are really pleased that we got the stand-alone women SDG within the agreed SDG goals this September. However, there is a lot of work to be done and we are encouraging our partners to step up to the mark, just as the UK is doing.

Baroness Northover (LD): My Lords, what is DfID doing to ensure that women with disabilities are included in any training? She just referred to the SDGs, which make the point that extreme poverty will not be eradicated unless we leave no one behind.

Baroness Verma: Absolutely. Again, the UK should be congratulated on the work that we are doing as a Government to ensure that disability features strongly in all our programmes. On disability in schools, we made a commitment in 2013, as the noble Baroness will be aware, that we will directly fund schools only where there is disability access. The disability review is coming up on 3 December, and, if the noble Baroness is interested, I would be very happy to share the outcome of that with her.

Baroness Uddin (Non-Afl): My Lords, I know that the noble Baroness is well aware of the work of BRAC in Bangladesh, in particular, in revolutionising women's employment and entrepreneurship. Can she tell us what work BRAC is doing to advance in that arena to diversify those women's employment opportunities through technical and vocational training—perhaps including computer training?

Baroness Verma: My Lords, I will not specifically go into that programme, because we should be proud of our programme across DfID. That is about increasing employment—productive employment—for women. As I said, they start from school, where we give them the opportunity to gain an education and skills. We can then develop to ensure that they are both productive economically and, where they are unpaid, able to use those skills to develop entrepreneurialism outside their workplaces. I read in a recent report that if we give women opportunities, we can add $28 trillion-worth of value to our global GDP.

Lord Howell of Guildford (Con): Is my noble friend aware that the Commonwealth is giving the highest priority to gender equality and full employability of women? That is based on the simple proposition that countries that do not give absolute equality to half their labour force will simply not develop—growth goes with gender equality. Is she aware that in Malta, at the Commonwealth Heads of Government Meeting in November, there will be a major conference on gender equality lasting four days which will be attended by all 53 nations of the Commonwealth?

Baroness Verma: I absolutely agree with my noble friend, and I will be attending to ensure that we again participate in those important debates. My noble friend makes the poignant point that unless we have everybody involved in economic productivity, we lose the value of 50% of the world's population.

Baroness Royall of Blaisdon (Lab): My Lords, I wholeheartedly agree with what the noble Lord, Lord Howell of Guildford, said about the Commonwealth, but I wonder what the Commonwealth is doing to ensure that LGBT people are also properly employed throughout the Commonwealth.

Baroness Verma: My Lords, the noble Baroness may rest assured that my noble friend Lady Anelay and I raise these issues all the time. Like her, we very much share the belief that accessibility should be for all people and that no one should be left behind.

Graham Ovenden: Art Collection

Question

3.30 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government whether they plan to intervene to save work from the collection of Graham Ovenden, including work by Pierre Louys and others, from destruction following the ruling made at Hammersmith Magistrates' Court on 13 October.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Baroness Shields) (Con): My Lords, this Question relates to a specific judicial matter. The Government have no power to intervene in the courts. However, for clarity, this decision relates to the public art collection of a convicted paedophile, which involves images that directly depict the sexual abuse of children. This does not affect the works of art of any public gallery or museum.

The Earl of Clancarty (CB): My Lords, apart from the potential fate of the art itself, does the Minister agree that this unprecedented judgment has disturbing

and huge implications for the protection of other work in the country—for instance, the Warren cup in the British Museum—as well as for the freedom of expression of many contemporary artists? Where is the consistency of this judgment in relation to others? Please will the Minister place a list of the art ordered to be destroyed, and the judgment, in the Library of the House as soon as possible?

Baroness Shields: The Government will definitely place a list of the art to be destroyed by this judgment in the Library as soon as possible. Sexually explicit art and its creation by artists in this country are not put at risk by this judgment. The judge in this case took into account the fact that this private collection features sexually abusive images, which in England and Wales it is a criminal offence to possess.

Lord Clement-Jones (LD): My Lords, I heard what the Minister said, but as a matter of principle is it not surprising that a district judge can make absolute moral and aesthetic judgments of this kind involving the destruction of artworks, some of which are more than 100 years old? Is not a much better solution to this to limit display rather than to destroy these works of art? Are we not confusing the artist with the art involved?

Baroness Shields: My Lords, this case relates to the artist's private collection. The trustees of the Tate decided no longer to display this art because some of the victims could have been part of the art display, so crime scenes would have been on display in the Tate. There is a statement about that. This case relates to the individual collection. The only person who can appeal is the convicted criminal.

Lord Stevenson of Balmacara (Lab): My Lords, there are 21 days for this appeal to be heard; therefore there is time to explore further some of the issues raised here. Are the Government really saying that it is all right to criticise totalitarian regimes elsewhere for destroying art but we are not prepared to take action within ourselves? What happened to our recollections of the Lady Chatterley case? What about the *OZ* prosecutions? Are there not lessons to be learned about civilised societies and the way they operate? I appeal to the Minister to call a meeting of interested parties in this House to see what options there are to try to rescue the art, accepting that the case of the artist must be left alone.

Baroness Shields: I would be happy to call a group to address this issue. In this case, it is up to the individual to appeal the judge's decision; I understand that the judicial process is for him to make that decision. If there is some way that an interested party could encourage him to make that decision, that would be the route I would suggest.

Baroness Bakewell (Lab): My Lords, I endorse what has been said about this matter of principle. The aesthetics of this country and its art cannot be determined by the magistracy. This is an important decision of principle regardless of what is in this collection. The collection does not have to go on display; it simply does not have to be destroyed. Do not forget that the magistracy ordered the seizure of paintings by DH Lawrence which are now collected and are of great value everywhere.

Baroness Shields: I agree that the optics of this are concerning. I think the best route forward is to convene a group and to come up with a creative solution, as the noble Lord suggested, because the Government cannot intervene in the judicial process. We need another route in order to protect and save the art. There are works of art in this collection that relate specifically to individuals and are child sexual abuse images. Noble Lords will agree that they should definitely be destroyed.

Energy Bill [HL]

Report (2nd Day)

3.35 pm

Relevant documents: 6th and 7th Reports from the Delegated Powers Committee

Clause 66: Onshore wind power: closure of renewables obligation on 31 March 2016

Amendment 78B

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

78B: Clause 66, page 38, line 5, leave out subsection (1)

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, as I discuss the amendments today, I want to remind noble Lords of what has already been achieved. At the end of April 2015 there were 490 operational onshore wind farms in the United Kingdom, with an installed capacity of 8.3 gigawatts—enough to power the equivalent of more than 4.5 million homes. Considering the projects that already had planning permission and so on, there is enough onshore wind in the pipeline to contribute to what is needed to meet our ambition of 30% of electricity from renewables by 2020. This is a significant achievement, made possible only by consumer subsidies. The Government have estimated that in 2015-16, £850 million of support will go towards funding onshore wind across the United Kingdom, with around £520 million, approximately 60%, going towards funding Scottish onshore wind farms.

It is too soon to predict what the best energy mix will be as we move beyond 2020 but, as we continue on our path to a low-carbon economy, it is absolutely right that we also protect the consumer. Government support is designed to help technologies stand on their own two feet, not to encourage reliance on subsidies. This means moving from demand-led schemes to competition-led schemes. Ending support under the renewables obligation early for new onshore wind in Great Britain, with appropriate provision for grace periods, balances the interests of onshore wind developers with those of the wider public. This Government

[Lord Bourne of Aberystwyth]
made a commitment to the electorate—no new subsidies for onshore wind, and giving local communities the final say on onshore wind farm applications—and the Government must deliver on this.

I have tabled government Amendments 78B, 78D to 78P, 78R and 82A, which seek to amend and supplement Clause 66 for debate at recommittal on 14 October. I withdrew the amendments to reflect on the points made in the debate, and committed to re-present them on Report today. I thank noble Lords for the useful discussion in last week's debate. As promised, I have reflected on that discussion and incorporated a number of changes into the clauses that we will be debating today. It is right that we took the time to do that, and I hope that noble Lords will accept that I have listened and reacted.

The substance, however, must remain the same. We are not all going to agree on what is being proposed by these amendments, but they have been developed following extensive engagement with industry and I am confident that they strike the right balance. They provide a grace period to protect investor confidence while protecting the public interest. Early indication from industry is that it welcomes these amendments. Although there will always be projects that just miss out wherever we draw the line, it is clear that the Government have a mandate to act and that is exactly what we are doing.

Before moving on to the detail of these amendments, I shall address the future of contracts for difference, as raised by noble Lords at our last session. The Secretary of State has been clear that we will make an announcement in the autumn relating to the next allocation round for contracts for difference. That position is unchanged; it is as it was. I realise that this is an important issue for all, but I suggest that we have set out a very clear position. The clauses that I present to the House today clearly deliver on the Government's commitment in relation to onshore wind while protecting investor confidence.

I shall address some of the points that were raised at recommittal stage by the noble and learned Lord, Lord Wallace, and echoed by others, including the noble Baroness, Lady Worthington. During that stage the noble and learned Lord raised a number of interesting points for discussion. I have responded to these in a formal letter to him, and will now respond to them in this forum for the benefit of all noble Lords.

The noble and learned Lord, Lord Wallace, asked for further detail on our reasons for including the provision for appeals in our grace period criteria. We have included these projects because, had the correct planning permission decision been taken in the first place, they would have had planning permission by 18 June. Projects where planning permission was granted on appeal in the circumstances covered by the amendments will have established a legal right to planning permission on or before 18 June and therefore we are including these cases within the approved development grace period criteria. It seems to be the right thing to do.

In the recommittal debate the noble and learned Lord, Lord Wallace, asked about projects that achieve consent after 18 June, following a delay to the decision which exceeded the statutory timeframe. Unless the projects utilised their legal right to challenge the delivery of consent within the statutory timescales, such projects would not fall within the scope of the approved development condition.

The noble and learned Lord, Lord Wallace, also raised the question of amending the grace period criteria to either allow all projects that had applied for planning permission access to the grace period or to consider extending the cut-off date to 8 October—the date on which the Government first tabled the amendments setting out the criteria for the grace period. The government amendments set out the grace period as originally proposed, which would allow those projects which as of 18 June had planning permission, a grid connection and land rights to continue to accredit under the renewables obligation until the original closure date of 31 March 2017. That is a reasonable expectation for them to have, and we have responded to it. Planning permission rather than application has been chosen because the grant of planning permission represents a very significant point in the progression to accreditation under the RO.

The government amendments strike the right balance. They deliver on our manifesto commitment while also seeking to protect investor confidence and the interests of onshore wind developers. For this reason I question the changes proposed by the noble and learned Lord, Lord Wallace. These changes would have a fundamental impact on our ability to deliver on the manifesto pledge and to manage our low-carbon spend. Based on the department's analysis, allowing all projects with only a planning application in place could mean that anything up to 7.1 gigawatts could accredit under the renewables obligation. This figure represents all projects that had submitted an application but not yet received planning permission as at 18 June.

Furthermore, I also question moving the qualifying date from 18 June to 8 October 2015 as, similarly, this would also serve to potentially increase the number of projects eligible to accredit under the renewables obligation. This would mean that we would remain at risk of deploying beyond the 11 to 13 gigawatts of onshore wind that we project is needed to meet our 2020 targets and what we can afford under our low-carbon spending cap, as well as being inconsistent with our manifesto pledge. This could therefore potentially add more costs to consumer bills. The Government's position is that projects must have had planning permission on or before 18 June in order to be eligible for the grace period. I hope that noble Lords can see that the line has been drawn here for a crucial reason.

Following questions raised in the recommittal debate I will also take the opportunity to discuss the position on variations. We are aware that projects that had planning permission on or before 18 June may subsequently need to vary that permission and that the Acts provide for this, for example under Sections 96A and 73 of the Town and Country Planning Act 1990 or under Section 36C of the Electricity Act 1989. Where consent is granted for development on or before 18 June and is subsequently varied as provided for by statute, the development will continue to fall within the proposed development condition set out in Section 32LJ.

On projects where a radar objection has been withdrawn, we understand that there are projects in a number of differing scenarios. For example, as the noble and learned Lord, Lord Wallace, stated, a project may have received objections to a planning application on matters such as radar. Where that project has managed to resolve the matter with the objector and subsequently has been granted planning permission on or before 18 June, it of course meets the criteria for the grace period provided that the other conditions are satisfied. If the resolution of those objections pushes the determination past 18 June, unfortunately it will not meet those criteria.

The grid and radar delay condition set out in the amendments maintains the intent of the original, existing grid and radar grace period, as set out in the Renewables Obligation Closure Order 2014. The intention is that projects which are delayed due to delays to work on radar stations or radar equipment, which are outside their control, should be eligible for the additional 12-month grace period.

3.45 pm

During the recommittal debate, the noble and learned Lord, Lord Wallace, proposed what he referred to as the "for the avoidance of doubt" amendment relating to this condition. This change would remove the requirement for a developer to show that there had been a delay in completing radar works. However, such a change would widen the scope of the proposed grace period and would be inconsistent with the existing grace period for grid and radar delays set out in the Renewables Obligation Closure Order 2014. Therefore, we would resist that change.

I understand that projects may have anomalies specific to their situation. The treatment of individual projects and their eligibility for the grace period will depend on their factual circumstances, so it is very difficult to react to specific cases. I would not want to compromise the position of those projects, and I hope that noble Lords will accept that this is the right approach.

In relation to the investment freeze condition, some very reasonable points have been made about the definition of "recognised lender". We are continuing to look at this, as some very valid points have been raised.

The noble and learned Lord, Lord Wallace, raised two additional questions, the first specifically on Section 36 projects and the second on projects where the planning committee was minded to approve a planning application, subject to a Section 75, relating to Scotland, or a Section 106, relating to England, agreement as at 18 June. I will speak to these questions later when I address the non-government amendments, Amendments 78RA, 78RB, 78RC, 78RF and 78RG. I thank the noble and learned Lord, Lord Wallace, for raising these useful questions, and I hope that my responses have clarified many of the questions raised at the recommittal debate.

Turning to the specifics, Amendments 78B, 78D to 78P and 78R would amend the Bill to introduce the proposed grace period criteria for the early closure policy, as outlined in the Secretary of State's announcement on 18 June. Amendments 78B and 78D to 78P would amend the Bill to make a number of changes to Clause 66, which introduces a new provision into the Electricity Act 1989 to implement the early closure of the policy. These amendments seek to remove the delegated power with a view to setting out the terms of the grace period on the face of the Bill.

Amendment 78R sets out the details of the grace period. The proposal was and—following both industry engagement and the debate at recommittal—remains to offer a grace period to those projects which, as of 18 June 2015, already have relevant planning consents, a grid connection offer and acceptance of that offer or confirmation that no grid connection is required, and access to land rights. In addition, in certain circumstances, projects which have been granted planning permission following a successful appeal will be eligible for the grace period. In particular, those projects which, via a judicial review or an appeal, have had overturned a negative planning decision made on or before 18 June will be eligible for the grace period, subject to satisfying the normal conditions. The reason is that, had the correct decision been made in the first instance, the project would have had planning consent on or prior to the cut-off date of 18 June. These key grace period terms are referred to in proposed new Section 32LJ and are referred to as the "approved development condition".

At recommittal, a number of noble Lords outlined concerns about the choice of having planning permission on or before 18 June 2015 as a criterion for meeting the approved development condition and the perceived injustice of the projects that fall outside this category. This is undoubtedly difficult but we have to draw the line somewhere and, wherever we draw this line, there will be some projects just the other side of it. Our assessment clearly shows that drawing the line here provides enough onshore wind deployment for us to meet our 2020 targets and protects consumers on affordability grounds.

I now turn to the investment freezing condition and the matter of investor confidence. As I outlined previously, following the announcement in June, the Government have conducted an extensive engagement exercise. We received hundreds of representations, including through face-to-face meetings with myself and the Secretary of State. We have listened to our stakeholders, including the devolved Administrations, developers, the supply chain and investors, who expressed concerns about the impact that legislative uncertainty was having on financiers' willingness to lend. We saw evidence that certain projects are experiencing difficulty securing funding and we have taken action to resolve this.

To ensure that projects which meet the grace period criteria and would otherwise have been able to commission and accredit under the renewables obligation by 31 March 2017 are not frozen out of the process, we are offering those projects which meet the "approved development condition" additional time to seek accreditation.

Lord O'Neill of Clackmannan (Lab): My Lords, before the Minister leaves this point, could he tell us, first, what sums are involved in these investment problems at present, how many of them have been prejudiced and how much they were worth in the first place?

[Lord O'Neill of Clackmannan]
Secondly, will he give us some idea of the global sums involved in the whole sorry procedure that we are having to go through?

Lord Bourne of Aberystwyth: My Lords, obviously much is dependent upon when the legislation goes through, and that is in the hands of this House and another place. Therefore, I think it is impossible to say with any certainty—or even to give an estimate—exactly how much is at stake. It relates to those projects that have already deployed, and so they are being given additional time to deploy. It is for individual projects that suffer from this investment freeze to come forward. We have done this in response to the engagement exercise. It will not deploy any more wind projects and it allows those projects that have deployed, following our proposals under the grace period, an added period within which to bring forward their projects and have the existing position.

Lord O'Neill of Clackmannan: I take it then that the Minister is unaware of the financial implications of what he is asking us to support this afternoon.

Lord Bourne of Aberystwyth: My Lords, it is not for me to determine whether the conditions are met. There is a process set out in relation to those projects that would be able to deploy and, if they have suffered a hiatus, for them to come forward with the claim in relation to how much it is. It is not going to cost any additional money, because it just gives them additional time in which to deploy. As I am coming to, it gives them approximately another nine months. It is not an additional amount of deployment; it is some projects that will deploy being allowed additional time to meet the conditions.

Baroness Worthington (Lab): My Lords, perhaps I can help the Minister out, if I may. We have had estimates from the independent renewable energy group to say that the projects that have fallen just the other side of this cut-off deadline that the Government have imposed have costs in the region of £350 million.

Lord Bourne of Aberystwyth: With respect to the noble Baroness, this is not about those projects that fall just the other side of the line; this is about those projects that can satisfy the conditions being given additional time. This does not bring any more deployment in. That is a quite separate point, if I may say so.

Lord Hardie (CB): I would like to ask the Minister about the extension of time. I fully understand and think it is fair that there has been an extension of time where planning permission is granted on appeal. However, did I understand the Minister to say that, where permission was refused on appeal, and if there were a judicial review that ultimately granted permission, that would be respected and it would be deemed to have been an appropriate permission? What concerns me is the timescale, if my understanding is correct. How many years down the line are we talking about beyond June 2015? Once we go down that line, for perhaps two years, that might have an impact on meeting the 2019 deadline.

Lord Bourne of Aberystwyth: My Lords, I am very happy to respond to that point, but it is a quite separate point from the investment freezing condition, relating, as it does, to the appeals process. The point of the amendments that we are putting forward is to say that if a project should have been given planning permission on or before the cut-off date of 18 June, and the appeals process demonstrates that, whether by an appeal or judicial review, it is reasonable, rational and right that they should be allowed to accredit under these proposals, and that is what would happen. That was done in response to the engagement exercise that we have been through. We have tried to do what is right, in considering very reasonable points. I do not accept that this would drag on indefinitely: I do not think that the legal process is in a Jarndyce v Jarndyce situation. There will, of course, necessarily be some sort of delay, but that is how the judicial process will operate. It is absolutely right to have that provision in relation to the appeals procedure.

To return to the investment freezing condition, the extension available in the circumstances that I have outlined will be approximately nine months—broadly equivalent to the period between the date of the Secretary of State's announcement and Royal Assent. To be eligible for this extra time, projects must be able to provide evidence that they have been impacted by a lack of investment during the period to Royal Assent.

This "investment freezing condition" has been designed specifically to protect the projects that were intended to be able to access the grace period as proposed on 18 June. It is not an extension of deployment, but an extension of the period for those that are able to deploy within the grace period. This condition is not about increasing the pipeline of onshore wind projects that are able to accredit under the renewables obligation.

Furthermore, as a result of the helpful discussion at recommittal, a drafting change has been made to the amendment. Your Lordships will have seen that in new Section 32LK(4)(a)—some of you may have picked this up—the phrase "as at May 2016" has been replaced by the phrase,

"as at the Royal Assent date",

following representations made by the noble and learned Lord, Lord Wallace—representations that I think were entirely valid, and which have been echoed by the noble Baroness, Lady Worthington. Similarly, in consequence, new Section 32LK(4)(b) now refers to,

"the date which is 28 days after the Royal Assent date".

In addition, those provisions have been amended—again, following representations at recommittal—to make it clear that either uncertainty about whether the Bill will receive Royal Assent or uncertainty about the final wording of the Bill will be sufficient for the purposes of meeting the "investment freezing condition". We have made it absolutely clear in the Bill that it is not necessary to show both. I am grateful to noble Lords for the helpful debate that we have had on these points. I believe that this revised drafting now makes our intent perfectly clear, and has improved the Bill.

In order to provide a consistent approach to all onshore wind projects eligible to accredit under the renewables obligation, we also ensure through these amendments that a pre-existing grid and radar delay grace period will apply here. This condition entitles projects affected by unforeseen grid and/or radar delays to an additional 12-month period in which to accredit. This amendment, too, has been redrafted to provide clarity about when a project may benefit from a grace period for grid and/or radar works delays. The provision is now clear that either grid delays or radar delays, or both, will be sufficient for these purposes. Again, I thank noble Lords for the useful discussion that led to this amendment.

I am confident in the amendments, and in the proposed grace period. I have listened to noble Lords, and I believe that I have responded positively on various issues. Again I thank them for their helpful suggestions which have been incorporated to improve the clarity of the clauses. We have listened actively to stakeholders and worked to ensure that the final policy strikes the right balance between the interests of onshore wind developers and those of the wider public. I hope that your Lordships will agree that these amendments should stand. I beg to move.

4 pm

Lord Wallace of Tankerness (LD): My Lords, I think that the noble Baroness, Lady Worthington, will say something about Scotland when she comes to speak to her amendments. As I said in Committee, the onshore wind industry in Scotland directly employs 5,400 people and contributes £9 million per annum in community benefit. I think that the work which I would like to claim my noble friend Lord Stephen and I started when we were in the coalition Government in Edinburgh and which has been carried on by the present Scottish Administration, and the work done by previous Secretaries of State at DECC, has resulted in onshore wind power being an increasingly cheaper source of power. However, the position as I set out in Committee on the Scottish dimension was that if the Scottish Government choose to extend the period, as was first envisaged when it was agreed with them that the renewables obligation would end, that is something that they should be able to do.

On the grace periods, which were the substance of the Minister's amendments, I first and foremost acknowledge his engagement both before last week's recommittal and subsequently, in terms both of meetings and phone calls. It might also be fair to acknowledge his private office, because I received an email from it timed at 00:54 on Saturday morning, which is quite remarkable. I know from experience just how hard private offices work.

While I welcome some of the changes which the Minister has referred to, with regard to the investment freezing condition and to making it clear that it was grid or radar and not cumulative, that is as far as the Government have gone, and the rest of the government response has been more than a little disappointing.

Lord Foulkes of Cumnock (Lab): Is the fact that the Minister, who is well respected in this House, has had to work so hard—his private office has to work past midnight—not illustrative of the chaotic way in which the Government as a whole have dealt with this Bill?

Lord Wallace of Tankerness: My Lords, I think that everyone who has dealt with this Bill would agree that it has not been a satisfactory process. We have had late tabling of amendments; even the amendments before us were tabled only on Monday, meaning that if we wished to table amendments to amendments we were under considerable pressure to do so.

Perhaps I may put in context what we are discussing by drawing to the House's attention what was said yesterday in the Select Committee on Energy and Climate Change in the other place. My right honourable friend the Member of Parliament for Orkney and Shetland asked the noble Lord's ministerial colleague, Andrea Leadsom, "So what is the purpose of the grace period, then?" To which she replied, "As I say, to ensure fairness—to ensure that those who have spent money in a significant investment and achieved everything technically to meet the cut-off date, but through reasons beyond their control have not actually made it, are not penalised for reasons beyond their control". It is with these words in mind that we must examine the Government's position and the amendments that have been put forward. As the noble Baroness, Lady Worthington, said, an estimated £350 million has been put in to take forward projects which may not now proceed.

Our amendments relate in one respect to all applications which were in train at the time of the somewhat arbitrary date of 18 June—that was the date that the Secretary of State made a Statement; it has no more magic than that—and which had received planning committee approval. The reason for emphasising committee approval was that, in an earlier clause in the Bill, the Government set great store by the fact of local determination. A local determination means that, after considerable discussion, debate and consultation, the local planning committee has approved a particular proposal. It may just be that it is due to the cycle of planning meetings that the application has not yet gone to the full council for endorsement. I refer back to what the Minister, Ms Leadsom, said about applicants achieving everything technically to meet the cut-off date, but through reasons beyond their control, not actually making it. A lot of developers do not have control over the cycle of meetings of a local authority and it seems very unfair that, if they have passed muster after scrutiny by a planning committee, they fall foul because the full council has not ratified that decision.

Our Amendment 78RA contains a provision that it should refer to planning applications that were in place and had been accepted 16 or more weeks before 18 June. The reason for that is that after 16 weeks it is possible, if the local authority has not made a determination, for the developer to say that there has been a non-determination, so it is a deemed refusal and to appeal to Ministers on that basis. But the noble Lord and others who were at the Committee debate last week will remember that I gave an example from, I think, Tayside where extensive work had been done in terms of discussions between the developers, local communities and the planning authority to try to

[Lord Wallace of Tankerness]
ensure that concerns had been meet and the opportunities to work with other environmental projects going on in the area were maximised. I believe, along with I am sure most Members of your Lordships' House, that it is good practice for developers to work alongside the planning authority and try to get an agreement and outcome that is satisfactory to all. And yet, if the developer did that and missed the 18 June cut-off date, it will be penalised for it, whereas those about whom it might be said that they are not using best practice—I would not necessarily say that it was bad practice—might take a slightly legalistic view and say, "Well, it has been 16 weeks, so that is it. We are going to appeal because there has been a deemed refusal". If that is subsequently granted on appeal, their applications will be satisfied. That does not appear to be a fair way of proceeding. If we are looking for an element of fairness in this, where is the fairness in penalising those who have demonstrated good practice?

Also with regard to Section 75 and Section 106, the Minister said in his letter to me that, where the planning committee could have been minded to approve on or before 18 June subject to Section 75 or Section 106 agreements but no formal consent was granted on or before 18 June, unfortunately, there is no legal consent given that they are minded to approve and we understand that the negotiations can be lengthy and not always successful. People from the industry who have been talking to me find that an unduly legalistic approach. The industry has been working with planning authorities for some 10 years on the Section 75 or Section 106 agreements that emerge in these situations. By and large they are already negotiated, but it may take time to put in place some of the detailed provisions. For example, if it is part of the development that there has to be a new habitat on neighbouring land—not the land on which the development is to take place—it has to be shown that the developer has the right to undertake the building of the habitat on that land. That is part and parcel of what happens and it is both practical and common sense that it should be recognised. Again, reminding us of what the Minister's colleague said, it is to ensure fairness so that people are not penalised for reasons that are beyond their control.

Perhaps I may also take up what the Minister said on the question of variations. He helpfully stated in his letter to me and then repeated it in the House just a moment ago that, where consent is granted for a development on or before 18 June and is subsequently varied in this way, it will continue to fall within the approved building condition in proposed new Section 32LJ. I raise this because it is helpful that the Minister has now put this on the record, but I have also had representations from those who have taken legal advice that they do not necessarily believe that it does what the Minister says. I would ask him to look at it again. The fact that we have something that could be referred to in a Pepper v Hart way is helpful, but some would find greater reassurance, and it would be clearer to me, if there is something on the face of the Bill.

I refer to Amendments 78RA and 78RB with regard to Section 36 of the Electricity Act 1989. The purpose and effect of these amendments is to address what we believe is an anomaly by applying the principle of proposed new Section 32LJ(4)(b) to an analogous position under the Section 36 regime. Under Section 36 of the 1989 Act, the relevant planning authority is not the decision taker, but it can object to the proposal, after which there must be a public inquiry and then a decision by the Secretary of State. That is closely analogous to refusal under local planning followed by an appeal, and indeed for around half of the affected projects DECC's renewable energy planning database describes the projects as being at appeal. Indeed, the last time that the people briefing me looked at the DECC website they were described as being at appeal. However, the proposed provisions cover the local planning version of this process but not the Section 36 version. This means that small extensions of larger sites, which have to follow the Section 36 route, are going to be treated less favourably under these grace period provisions than some sub-50 megawatt, stand-alone developments which go ahead under the local planning process. Reverting back to the question of fairness, there should be consistency in the Government's approach. This amendment seeks to ensure that, and I hope the Minister will think again on it.

I also draw the Minister's attention to the fact that, because of the Planning Act 2008, which has superseded Section 36 in England and Wales, that section mainly affects plants in Scotland. The functions of the Secretary of State under Section 36 and Schedule 8 are transferred to Scottish Ministers under Article 2 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, so far as they are exercisable in or as regards Scotland. Accordingly, the amendment does not explicitly refer to devolved Ministers. Would the Minister look and see if it is the case that they are not covered? I am sure he would not wish to put Scottish developers in any less favourable position than those in England and Wales.

We have proposed a relatively simple amendment regarding grid works, with a different cut-off date for grid works agreements. In Committee and subsequently, I raised with the Minister a case involving a joint venture between an energy company and a private individual. The energy company carried on the transmission entry capacity for a substation but the joint venture finished and the private individual carried on himself. Transmission entry capacity has therefore been lost and has to be reapplied for. It has had that connection for five years in the past but, crucially, did not have it on 18 June. It seems very unfair that they should lose out in a very bureaucratic process. We tried to find a way to capture that in an amendment and we thought we would do this by putting in a different end date, because you cannot just conjure up a grid connection agreement. It would not have taken any more capacity than was already the case, but this might give some clarity.

In another circumstance which has been drawn to my attention, changes were made. Grid capacity that was for one developer was then to be shared and this required a new agreement to be made. There was a clerical error and the developer sent the agreement back to get this sorted. Unfortunately, it was sent just before 18 June and did not come back until after that date. It would be reassuring to know whether that counts as a variation or whether it could be addressed by extending the period for grid connection.

In the recommittal, I made a point about radar and the problem developers are finding with the length of time it is taking the Ministry of Defence to process applications. The grace period that has been given may, therefore, not be effective because of the time it takes to get agreements reached. One developer who has made representations has said, about a particular mitigation which the MoD is looking for: "There are no guarantees that the work programme will deliver mitigation at this stage. In any event, the current MoD position is that the first part of the variation condition allowing development to commence cannot be discharged before 2018. There are some ongoing discussions between onshore developers and the MoD, seeking to find ways of earlier condition discharge but this is proving problematic. Overall, the costs and timescales of this ATC radar mitigation programme do not fit with any of the onshore projects". It would be perverse if delay on the part of the Ministry of Defence meant that the grace period which the Government have sought to give does not actually cover these circumstances. This is why we have put in a particular date, though it may be that March 2018 is too early. I hope the Minister will take that serious point about trying to get agreements out of the Ministry of Defence if he wishes to give substance to what he sought to do with the radar works part of his amendment.

I am sorry to take up time but I had a lot of important points. I hope that the Government will move. I do not believe that they have met the letter or the spirit of what Andrea Leadsom said yesterday to the Select Committee in the other place.

4.15 pm

The Lord Bishop of Chester: My Lords, I did not speak in Committee, although I attended it, partly because I found almost a sense of the ground moving under my feet as all the amendments were produced. This, of course, was a recommittal in Committee under these clauses. At the end of the debate, the clauses were removed. I think that it was the noble Lord, Lord Foulkes, who referred to "liquid legislation". There is a phenomenon emerging in the Church of England called "liquid worship". I can only say that when I am told that that is what I am to expect on a Sunday when I go to a parish, my heart does not leap with joy at what might be in prospect for me.

In Committee, I began by thinking that the Government had done a deal with the industry through withdrawing the clauses and bringing them back in the recommitted meeting of the Grand Committee. But then I listened to the noble and learned Lord, Lord Wallace. If Members of the House think that we have just heard a tour de force, they were not there in Committee, which saw an even greater tour de force, complemented in a different style by the noble Lord, Lord Foulkes.

The noble Lord refers to the need to "draw a line". He mentioned that phrase five or six times in his contribution. The problem is that the line was drawn at March 2017. It is a redrawing of the line by the Government which has put us into this situation and raised the question of how one does it in a way that is reasonably fair all round given the complexities of the planning process, which have been so well described.

At this stage, I simply ask: what are the real benefits of this liquid legislation, which may prove to be even more liquid in the coming weeks and months? What savings will be made by trying to redraw the line from March 2017 to a date somewhat in advance of that? As I understand it, it is a somewhat moving and shifting date. What is the game worth? Given the vast subsidies that are to be paid out over coming years for wind turbines, what will the savings be in comparison with those subsidies that are being paid out?

I must emphasise that I speak as someone who has been critical of that subsidy regime from the beginning. As some noble Lords will know, I was a founding trustee with the noble Lord, Lord Lawson, of the Global Warming Policy Foundation, which seeks to scrutinise policy from that perspective. I sometimes say that my real title here is that I am chaplain to HMS "Lawson", although I do not speak with the authority of the captain. I would be interested to know what the anticipated saving is and whether the game is really worth the candle, given the complexity that has emerged.

Baroness Young of Old Scone (Lab): My Lords, I had not thought that what we were dealing with was liquid legislation. I thought we were dealing with piecemeal transitional arrangements dreamt up on the hoof as we go through the process. But I am quite prepared for the right reverend Prelate to give us this liquid legislation definition in perpetuity. It is a rather splendid phrase.

This has been a really unsatisfactory Bill and we must not allow ourselves to see this as an argument about onshore subsidy protectionism. It is not about that at all. I think that everybody in the House recognises that the period of subsidy for onshore wind may well come to an end at some point in the nearish future. It is much more about what it is that we want to try to do to send signals about our climate change intentions and to adhere to our own regulatory principles. I have been a regulator three times on behalf of the Government and on each occasion I have absolutely worked my socks off to make sure that we are as fair as possible to British industry. Fairness means giving clarity of policy and adequate times for industry to adjust, meaning that companies are not caught with their foot on the wrong side of a piece of change and penalised as a result of their previously sensible decisions in line with what previously had been government policy. Even with the very welcome changes to the grace periods that the Minister has laid before us, we are still not there.

The noble and learned Lord, Lord Wallace, talked about the statement made yesterday by the Energy Minister in another place. I was a bit distressed to hear the Minister here say that we have made lots of concessions and we now have enough renewable energy from onshore wind in the pipeline. I do not think that that is the point. The point is, have we dealt fairly with British industry and given anybody who could reasonably consider themselves not to have been fairly dealt with the benefit of the doubt in this circumstance, where, all of a sudden, policy has shifted? The Minister said that there had been extensive consultation with the companies and stakeholders, yet many noble Lords will have been lobbied and briefed by players in the

[Baroness Young of Old Scone]
energy business, who, even this morning, have been listing a series of situations where, through no fault of their own, they continue to be penalised by the graceperiod arrangements.

I simply ask the Minister to consider some of the circumstances that the noble and learned Lord, Lord Wallace, aptly summarised in such an eloquent fashion to ensure that the statement made by the Energy Minister yesterday about fairness is adhered to and that we do not continue to see liquid legislation that is simply piecemeal, illogical and very damaging, both to our climate change image in the world and the image in terms of British industry about whether reliable frameworks in which companies can realistically work will continue to come from this Government.

Lord Howell of Guildford (Con): My Lords, I was not going to intervene at this stage, but the right reverend Prelate's intervention and his association with my noble friend Lord Lawson's Global Warming Policy Foundation prompted me to pursue the point that he raised. A lot of our discussion has been on the penalties —in other words, the removal of subsidies from people who thought that they had a chance of the subsidy when they started their projects. That is aside from whether the project is environmentally okay or whether they get local government approval for planning reasons and so on; it is simply the question of whether they were caught by various delays and, therefore, would not get the subsidies that they thought they would get when they set out.

We are not in any way trying to stop the development of the very successful parts of the onshore windfarm industry. As the noble and learned Lord, Lord Wallace, reminded us, electricity from wind power is getting cheaper. If it is getting cheaper, it will in due course need less subsidy. Remarks from outside this country—particularly an ill-informed remark by the UN adviser, Professor McGlade, that somehow Britain was putting a stop to its movements towards low-carbonisation by putting a stopper on all wind power and so on—are way out of kilter and far from representing where we stand.

It is no less interesting to work out to what extent these grace periods will help the situation—I thoroughly approve of all the amendments that my noble friend has brought forward with such assiduity. Presumably, as a result of these grace periods, we will see slightly more subsidy paid out, which has to come from the consumer—the industrial consumer in particular—than we would have done before he introduced the amendments. The money that was not going to come from somewhere has to come from somewhere. Somebody will have to pay for it. This is on a day when we are staggering under the colossal redundancies that have been announced throughout the steel industry—including the steel industry in Scotland—which, we are told, are overwhelmingly the result of very high energy costs. Apparently, for electricity, we are paying twice the German level. In turn, of course, energy costs for the steel industry of Europe are leading people to predict that the entire industry will be wiped out. At a time like this, we need to watch with needle sharpness what is happening to the costs that are falling on the industries where all these jobs are being destroyed. How much more of that cost is still going to persist in meeting all the grace period conditions which the noble and learned Lord, Lord Wallace, with his massive legal knowledge and detailed grasp of the situation, has described as being necessary and fair? How much more will this kind of fairness cost in the end in burdens on the electricity users of Scotland and the rest of the United Kingdom in ways which will precipitate even further these appalling redundancies? We need to keep that side of the argument very clearly in our minds.

Baroness Worthington: My Lords, I am grateful to the Minister for introducing the government amendments. I will speak to those and also to Amendment 78C in my name, and in support of the amendments tabled by the noble and learned Lord, Lord Wallace.

As we enter the second day of Report, I do not feel that the Bill has been well handled, as has already been referenced. This may stem from the fact that the Bill was not ready when it was presented to us. Significant areas of policy were still being developed. It was a very fluid situation. In fact, the term "liquid legislation" will probably stay with us for many years to come. It was coined by the noble Lord, Lord Howell, in the recommital stage of Committee and describes very accurately how we have been dealing with a set of moving parts as we have gone through the Bill. Here we are on Report, but it still feels very much like a Committee stage, and that is regrettable. We should not be in this situation where we have so many controversial issues still unresolved.

Throughout the Bill's passage, I have pressed the Minister to give me a justification and a sound argument why the Government have chosen the route that they have in this Energy Bill of introducing what is now Clause 66 regarding the early closure of a renewables support scheme that was already closing 12 months early—and, in fact, not closing it to everybody but just to one subsection of technology: onshore wind. Why do we find ourselves in a place where the Government appear to have singled out for special treatment a single technology from all the low-carbon technologies available to us, and where that special treatment is so damaging and corrosive to investor confidence? I am afraid that I have not received a suitable answer to that question throughout the passage of the Bill. Now the answer given boils down to a very few words that appeared in the Tory Party manifesto, that the Conservative Party would put an end to—

Lord Bourne of Aberystwyth: I am most grateful to the noble Baroness for giving way at that point, which is a very material point. The measure was in a manifesto which was taken to the country and a Conservative Government were elected in May. As the noble Baroness will know, the Salisbury convention has previously indicated that what is in a manifesto is allowed passage through the House of Lords. I value the House of Lords and its traditions and I fear that if we refer in a rather dismissive way to something that was in a party's manifesto as somehow not being important, in the way that she did, that is a very serious pivotal moment for the House of Lords. I hope that she will consider that.

Baroness Worthington: I am grateful to the Minister for that intervention. Of course I am aware of the Salisbury convention, but in this case we have a very ambiguous set of words which I am sure were thought about with care but certainly were not consulted on and no detail was applied. We are referring to a very short sentence. There are great ambiguities here. The actual phrase is,

"we will end any new public subsidy",

for onshore wind. The word "public" is interesting because, strictly speaking, the payments come out of bills, not from the public purse. The word "new" is very interesting and open to very great interpretation. This was an existing support scheme and one that was already closing, and one on which, during the passage of the Energy Act 2013, in which I took part, there was a huge amount of consensus built, as well as engagement with industry, proper consultation and pre-legislative scrutiny to arrive at a suitable arrangement for winding-up the RO. That took many weeks and months of deliberation, and arrived at a line being drawn. The Government say that they need to draw the line somewhere. Actually, that line was drawn. It has now been moved and the process by which it was moved did not pay enough tribute to or treat with enough respect the investors in British industry whose confidence this is now undermining. It is for that reason that I do not interpret the Salisbury convention as applying to Clause 66.

We can have that debate when we come to the next amendment because although in this group we are discussing the amendments on the grace periods, when it comes to the next amendment we reserve the right to vote to delete this clause from the legislation for the reasons that I have begun to outline. Throughout the passage of the Bill I have not received an adequate explanation of why this particularly damaging clause has been introduced by the Government in the way that it has, with such little attention to detail and so little public consultation on the implications.

4.30 pm

Lord Foulkes of Cumnock: I endorse what my noble friend has said. She is absolutely right. When we come to the next amendment, which she is going to move, I will make it absolutely clear, in endorsing my noble friend, that we have been misled by the Government in relation to the manifesto and the interpretation of the manifesto. The Minister is shaking his head but my noble friend is absolutely right and I will underline that in more detail when we get to the next amendment.

Baroness Worthington: I am grateful to my noble friend for his support. The concerns that I have raised consistently throughout the passage of the Bill relate to the Government's analysis which concludes that we simply do not need any more onshore wind. This is based on false projections of how we are doing in relation to our legally binding EU renewable energy targets. Those targets relate to power, heat and transport. It is true that we are doing reasonably well on power but we are not on track for delivery of our targets on transport or heat. The projections that the department is now having to produce to pretend that it will get to those targets stretch credibility. There is a hockey stick of deployment expected in the other two sectors which is simply not credible. We are tying our hands behind our back, removing from our low-carbon armoury one of the cheapest, safest and most easily deliverable technologies—onshore wind.

I almost feel that I ought to be presenting a eulogy for the wind industry in the UK because it deserves respect. It has a 25-year history. The House almost certainly knows that it was first supported by Margaret Thatcher in 1990. The first support mechanisms were brought in for wind around that time. She recognised the science of climate change and she knew that we needed to address it. She also knew that it would be sensible for the UK to make the most use of its assets. We happen to be one of the windiest countries in Europe, something we should celebrate. In fact, we have been one of the best markets for wind technologies. Our shores have seen innovations and the development of new technologies that we can be very proud of. We have seen investment in jobs and infrastructure, particularly in those parts of the country that need inward investment—I am referring to Scotland and Wales—a great pouring-in of interest and money that has helped to generate jobs at a time when they are sorely needed.

I am not saying that wind farms need to be put everywhere and that everyone should accept them. I actually think that the Government's other manifesto commitment that local people should have a say in them is a sensible measure. That is something that the Government have sought to introduce through planning. The closure of the support mechanism has to be taken in the context of the other things the Government have done to stop onshore wind, including quite significant changes to planning.

Viscount Ridley (Con): Before the noble Baroness gets to the end of her eulogy for the wind industry, will she confirm that this is the new Corbyn Labour Party's policy—to eulogise an industry that is particularly good at rewarding rich people, including landowners, by loading the bills that hurt poor people most?

Baroness Worthington: We can debate who benefits most from our low-carbon agenda—possibly it is the Chinese at this particular juncture. However, in the context of closing the RO early, it is some of the smaller schemes—the independent developers and the independent renewable companies—that are suffering the most, and it is the larger companies that seem to be getting the grace period amendments that they need. It is the smaller guys who are losing out. This is not about rewarding the richest or the most powerful lobbyists—that is not what we are seeking to do.

As the noble Baroness, Lady Young, pointed out, this is about fairness and a common-sense test of whether, when you read those words in a manifesto in May, you then think, "Ah yes, I know what that means; it means that in about the middle of June, I will see an announcement from the Government that closes a scheme in which I have invested hundreds of millions of pounds, which is already closing with no consultation". I hesitate to say that that passes the common-sense test, as I do not think it does. Indeed,

[BARONESS WORTHINGTON]
we know it does not, because we have had a large number of investors come to us to say that this is not the way that they should be dealt with.

Normally, a consultation exercise is undertaken and then the results of that consultation are published. In this case, because we have been racing since 18 June to get everything ready in order to close the scheme early, even though it is closing anyway, we have not had a proper public consultation or publication of the results of any consultation. Therefore we are flying blind and having to work with large numbers of people contacting us to express their concern and dismay at being handled in this way by the Government.

The specific issue raised under Amendment 78C is another important one. As I have said before, I do not think this House will discuss this, but it will certainly be discussed, with far greater passion potentially, when it moves to the other place. Amendment 78C would simply repatriate the closure of the RO to Scottish Ministers. The reason for this is that during the passage of the Energy Bill in 2013, the Government had to take a power to repatriate the renewables obligation back to Westminster. We were told at the time that this would be a technical amendment and that this had to be done simply to make the closure easier, tidier and more efficient. However, we now see that this was not the case: this was a cynical move that gave the Government the power to close a scheme for Scotland without due consultation with Scottish interests. It flies against the spirit of the Smith commission agreement, which is seeking to repatriate more powers to Scotland and allow Scottish people to determine what they want to see built to provide them with clean energy in the future.

That brings me on to the question of fairness and whether the Government's amendments, and their proposals for grace periods, are fit for purpose. It should be noted that although the announcement was made on 18 June—and a very hard guillotine introduced at that point—and some details were provided about potential grace periods, it was not until 8 October that we were given the full detail of the proposals. That is not a long period for us to consider them, and they are incredibly complex—I am very grateful to the noble and learned Lord, Lord Wallace, for his forensic and expert deconstruction of some of these issues. It is not appropriate for us to have to wait four months before we see the detail and, when we do see it, for it to be so substandard. This is a cause of great concern. It was of course quite a heated debate in Committee in the Moses Room the other week. That resulted in the withdrawal of the amendments, for which we were grateful. We hoped then that that would result in a bit of reflection and some clearer amendments coming forward.

I am grateful to the Minister for presenting the changes that were incorporated. By and large they were merely technical issues of clarification, but the biggest one, about planning and when you deem planning consent to have been given, remains unresolved. This is what is so strange about these grace periods. The anomaly here could not be more strange: because of the way the Government are interpreting this and putting it into legislation, if you are refused planning permission—if the local council signals that it is not content—and you then appeal and win that appeal, you will be able to get a subsidy. However, if you had consent from the local committee and it was clear that the community wished to see the development, but you were waiting for various formalities to be concluded which then came after the artificial 18 June deadline, you would not be eligible. That seems to fly in the face of the Government's manifesto commitment—they are evidently keen on their manifesto commitments, as I am sure is right and proper—which is that they want local people to have the final say. There are clearly still weaknesses and great anomalies within the grace periods. The provisions already run to many pages, but we still need the department to go back to think again and come forward with something workable.

I do not want anything that I have said today to be interpreted as our desire to see endless subsidies for particular technologies continuing indefinitely. That is absolutely not the case. As I have said on previous occasions, the issue we should look at on which the Government have refused to give any clarity is what is happening with the new form of support, the contracts for difference, which replace the RO. That is the pertinent question, but whenever I have asked it, I am told that the Government will make a Statement in the autumn. It is not a good answer for an industry with 25 long years of history to be proud of to be told, "We will tell you your fate in our own good time at some point"—presumably, after the Bill has passed its crucial stages. It is not appropriate to be closing one scheme and not giving any clarity over what is to replace it.

My final concern is that the Government have left us little choice but to object to the provision. It demonstrates a Government who put ideology ahead of evidence. There is no place for ideology in energy policy. If the Government have set their mind against onshore wind, as they are demonstrating—that is evident from all that they have done—they are no better than those who take an ideological principle against fracking or nuclear. We should not be singling out technologies; we need every technology to play its part. Some technologies are better than others in certain circumstances, but there is no reason to decide that we should cease to support one over another, especially when it turns out to be cheaper than many of the alternatives, has a proven track record of delivery and is sustaining investment in our country.

I look forward to hearing from the Minister, but I doubt that he will be able to reassure me on those points, and it is for that reason that I reserve the right to press the amendment that follows.

Lord Bourne of Aberystwyth: My Lords, first, a rare moment of agreement: I suspect that I will not be able to satisfy the noble Baroness with the points that I am about to make. Nevertheless, I thank noble Lords who have participated in this part of the debate on the Bill.

Perhaps I may deal first with the Scottish issue, as it were—the amendment relating to Scotland, which I think only the noble Baroness spoke to. We are keen to do what is fair for Scotland—but no more, no less. That is a fair position. I reassure noble Lords that we are committed to implementing the recommendations of the Smith agreement and are doing so through the

Scotland Bill. As agreed during the drafting of that Bill, the Government have and will continue to engage with the Scottish Government, as we do on a regular basis on energy issues, in line with the spirit of the Smith agreement, on all changes to the renewables obligation. That does not mean that we will agree; often we will not, sometimes we will. However, transferring legal authority to close the renewables obligation in Scotland to Scottish Ministers goes considerably further than Smith. That is nothing to do with the spirit of Smith; it is to do with the letter of Smith. As I see it, there was no suggestion that that should happen, but that debate—if there is a debate to be had—can no doubt happen on the Scotland Bill.

I turn to the issues raised other than the specific point on Scotland. As noble Lords have kindly acknowledged, I have sought to move on some of the issues. I thank the noble and learned Lord, Lord Wallace, for what he said—particularly in relation to my office. I can tell the noble Lord, Lord Foulkes, that my office often works those late hours, even when it is not dealing with the Energy Bill, as my staff will gladly tell you. I am very grateful for the massive efforts that they have made on the Bill and many other matters.

There seem to be two key differences between those on the Government and Opposition Benches. One is about subsidy. I noted what the noble Baroness, Lady Worthington, said about not believing in subsidy, but this is about subsidy. If she has not got that attachment to subsidy, that is the essence of this debate. It took considerable chutzpah to attack us for ideology on the Government's energy policy. Her leader is against new nuclear and, I believe, against fracking.

4.45 pm

Baroness Worthington: I do not wish the debate to descend into party politics, but since the Minister has raised it, it may well be the case that our leader is personally anti-nuclear and anti-fracking, but that does not mean that that is translated into a change in the position of our shadow DECC team. It would probably be sensible to discuss this with my honourable friend in the other place, Lisa Nandy, who is now the shadow Secretary of State and consult her on these matters. Jeremy's style of leadership is not that he would impose that on departments.

It is ideological to single out a single technology on no evidence and treat it in the way that the Government are doing. I remind the Minister that being in government is not the same as being a political party and that drafting manifestos is very different from drafting the law of the land.

Lord Bourne of Aberystwyth: I note what the noble Baroness says, but this comes back to leadership. If its leader has materially different views, it would be good to know the Labour Party position on those issues. On ideology, I reassure her that we are not against wind. We have wind deployed offshore, and I hope we will continue to have wind deployed onshore. It will just be without subsidy. That is rather different from saying "No new nuclear" and "No fracking". It is saying "No subsidy", which is very different.

Baroness Worthington: Perhaps the Minister can clarify something that appears in the Conservative Party manifesto: that there will be new nuclear without subsidy. Does that mean that contracts for difference are not subsidy, in which case contracts for difference can presumably be applied to onshore wind?

Lord Bourne of Aberystwyth: I have made the position on contracts for difference very clear, as I think the noble Baroness appreciates. We will set out the position on contracts for difference this autumn, not at an unspecified date in the future as she suggested in her contribution. That is not long to wait. We are in the autumn now, so I hope that she accepts that an announcement on that will be forthcoming shortly.

I do not want to go over old ground again. We have a cut-off date. I accept that cut-off dates are arbitrary. In Committee on recommital and today, the noble and learned Lord, Lord Wallace, made telling contributions, but he suggested that we were taking a legalistic approach to this. It is likely that we will. As he will appreciate, this is legislation. We want it to be certain and for businesses and others to know where we are on this. I accept that dates will be arbitrary, but we have selected a date. Noble Lords have been indicating that they want certainty. We are delivering certainty. We have a basic difference of opinion on these issues. I do not think it is capable of resolution, as it was on the Oil and Gas Authority where we had a basic unity of view. We have a different view on onshore wind. We believe that the Salisbury convention applies here. I disagree with the suggestion that there is something ambiguous about the position in the manifesto. It was made very clear and nobody should have been taken by surprise by this, so I differ materially from what I am sure is the opinion honestly held by the noble Baroness, Lady Worthington, but I cannot see that we can resolve some of these issues because of the basic difference between us.

The Lord Bishop of Chester: My Lords, I realise that this is Report, but I would like to press the question I put in my intervention. When all is done and dusted—leaving aside the allegations of ideology on all sides—in relation to all the subsidies that are likely to be paid out for wind turbines in the next 25 years, what proportion of that will be saved by this activity?

Lord Bourne of Aberystwyth: My Lords, I do not know the proportion, but I know that the upper end of the limit is £270 million over the period. That might seem like a small amount, but it is not a small amount to me and I am not sure it would be to anyone else. We have this basic difference, and with that I oppose these amendments.

Lord Wallace of Tankerness: First, I did not raise the issue of the definition of the recognised lenders because the noble Lord did not deal with it when he moved his own amendment. Did he give a commitment to go away and come back with a better definition that included, for example, organisations such as the Green Investment Bank? My second point, although there

[Lord Wallace of Tankerness]
are many others that I could make, is this: does he accept that with regard to radar issues, what the Government give the Government might also take away? Will he undertake to talk to the Ministry of Defence to see if it can ensure that whatever provision is made by this grace period for radar is not actually defeated by the tardiness of the MoD?

Lord Bourne of Aberystwyth: My Lords, on his last point first, I am very happy to speak to the MoD in the way that the noble and learned Lord suggests. On the former of the two points that he raised relating to the recognised lenders, I have indicated that we will look at this issue. I have not made any commitment about what the result of looking at it will be but I recognise, based on information given by the noble and learned Lord and others, that there is a case to look at it. I hope that is helpful.

Amendment 78B agreed.

Amendment 78C not moved.

Amendments 78D to 78P

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

78D: Clause 66, page 38, line 6, at beginning insert "In Part 1 of the Electricity Act 1989 (electricity supply),"

78E: Clause 66, page 38, line 10, leave out "which is accredited after that date"

78F: Clause 66, page 38, line 11, at end insert—

"(1A) Subsection (1) does not apply to electricity generated in the circumstances set out in any one or more of sections 32LD to 32LL."

78G: Clause 66, page 38, line 12, leave out "subsection (1)" and insert "this section and sections 32LD to 32LL"

78H: Clause 66, page 38, leave out lines 13 to 15

78J: Clause 66, page 38, leave out lines 22 and 23

78K: Clause 66, page 38, line 29, leave out "regulations under this section" and insert "sections 32LD to 32LL"

78L: Clause 66, page 38, leave out lines 34 to 36

78M: Clause 66, page 38, line 37, leave out subsection (3)

78N: Clause 66, page 39, line 7, leave out "accredited after 31st March 2016"

78P: Clause 66, page 39, line 9, leave out "accredited after 31st March 2016"

Amendments 78D to 78P agreed.

Amendment 78Q

Moved by ***Baroness Worthington***

78Q: Clause 66, leave out Clause 66

Baroness Worthington: My Lords, I am sure that people will be very pleased to hear that I do not intend to repeat the speech that I made in the previous debate. As noble Lords will be aware, we have tabled an amendment to delete Clause 66 from the Bill. The reason for this is that we do not believe this legislation is ready or has had the right consultation applied to it to ensure that it is fair. We do not find it satisfactory to be told that we will hear about the replacement mechanism in the autumn; it is the autumn now, and in the course of the Bill we should have information about what the Government are planning. As I have said, we have detailed concerns about the grace period.

I want to pick up on the issue of costs, which has been raised by the right reverend Prelate the Bishop of Chester and the noble Lord, Lord Howell. To be clear, in the Government's impact assessment the overall estimation of what the measure will save is 30p for a household for a year. The sum that the Minister was kind enough to present us with was £270 million overall, which is a tiny proportion of the amount of money that we are going to have to spend to decarbonise and renew our energy system. It is certainly less than the £350 million in capital that has been sunk into projects that are now falling foul of the artificial grace period. Overall, then, Clause 66 does not deliver a great deal of value to the country as a whole—certainly not to the wind industry, but it does not serve UK plc's purposes either.

Turning to the point made by the noble Lord, Lord Howell, about the steel industry, I completely accept that the situation is now very grave. The answer to the steel problem is about enabling it to invest in new, cleaner infrastructure. Not only is there a vast global oversupply of steel but we ourselves also have an ageing and inefficient infrastructure. We need reinvestment, and I believe that the way to do that is by helping the industry to invest in green infrastructure and carbon capture and storage. It will actually be through more green measures, not fewer, that we save ourselves. The steel industry's electricity bills are a tiny proportion compared with its process emissions; in fact, it is true to say that for nearly all the green measures that apply to electricity the steel industry receives compensation. Please let no one be under any illusion that anything we are doing today will help to bring about the demise of the steel industry—far from it.

Viscount Ridley: I am grateful to the noble Baroness for allowing me to intervene again. She and I have had an exchange on Twitter about this and now I am bringing it forward to this House. Is she aware of the comments made in July this year by Karl-Ulrich Köhler, the European head of Tata Steel, when commenting on European green emissions policies? He said,

"it is very difficult for the colleagues",

in India,

"to understand why Europe's politicians undermine the competitiveness of their steelmakers".

Baroness Worthington: I sometimes also wonder about the European policy and in particular why we have not moved further and faster on carbon capture and storage. It makes sense to me that that should be the technology that will enable us to have steel and still meet our climate change targets. As with many things in Europe, it all boils down to what Germany thinks, and unfortunately, Germany has set its mind against carbon capture and storage. We do not need to, thankfully, and we should press ahead.

To return to another form of low-carbon energy which has an important role to play—onshore wind—I have made it quite clear that I do not believe that this is good legislation, and I have not been reassured why it is being pursued other than it seems to be quite a

political move by the Government. The costs certainly should not be a reason for us to consider that this should be brought through. As regards meeting the EU targets, it is simply not true that there is no more room for onshore wind and that we should be throttling back.

We have greatly destabilised investment in the UK, which used to be one of the leading destinations for investment. The hasty, rash and poorly thought-through policies of this Government in their early months in government have produced shock waves. Many other people are also saying this, such as John Cridland at the CBI, and the Government's funder, Dennis Clark, has sounded an alarm that the Government's policy now appears to be having very little positive effect and a great deal of negative effect on investor confidence.

For all those reasons and for the reasons I have outlined with regard to it being inappropriate to proceed with this poor legislation, I suggest that we delete it, give the Government more time to consider this in the other place, where I am sure the debate will continue. I beg to move.

Lord Foulkes of Cumnock: My Lords, I have been wondering during the entire consideration of this debate why there has been such undue haste. This is a very important technical measure, yet great suggestions put forward by the noble Lord, Lord Oxburgh, and others that we might have pre-legislative scrutiny and bring some experts together to look at aspects of it have all been cast aside. This is being rushed and pushed through because of some ideological desire which the party opposite seems to have.

The Minister mentioned the manifesto again and again in his speech. I notice, because I was just checking earlier on, that Norman Smith of the BBC has been saying that this is another area where the Lords might challenge the Government on something in their manifesto, and the Salisbury convention is being held up and waved at us.

I therefore took the elementary step of going back, as my noble friend did and mentioned earlier, to what is included in the Conservative manifesto. Do all noble Lords opposite know exactly what was included? I wonder if they really do. It said:

"Onshore wind … makes a meaningful contribution to our energy mix and has been part of the necessary increase in renewable capacity".

That is a very positive statement. It continues:

"Onshore windfarms often fail to win public support, however"—

well, if they do not get public support, and are not supported by the local planning authority, they do not go ahead—

"and are unable by themselves to provide the firm capacity that a stable energy system requires".

No one is suggesting that "by themselves" they provide a firm capacity for a stable energy system—they contribute towards a diverse energy capacity. It goes on:

"As a result, we will end any new public subsidy for them"—

as my noble friend said—

"and change the law so that local people have the final say on windfarm applications",

which I agree with. But is it a new public subsidy? I argue that it is not. It is a public subsidy which we all knew about and which the investors understood was going to continue until the end of October 2017. It is not new. Presumably it was budgeted for by the right honourable Chancellor of the Exchequer. Presumably it was all taken account of in the department's budget and the department knew that it was happening, so it is not a new public subsidy. The Conservative manifesto is quite clear and our amendment to remove Clause 66 does not in any way go against it.

5 pm

Lord Spicer (Con): Does the noble Lord at least accept that because wind is unreliable, you have to double up in the entire system. That is the whole point about wind power—you have to double up in the system in order to have it.

Lord Foulkes of Cumnock: No. If we have a diverse energy supply, with nuclear, wind and a whole range of other ways of producing our electricity, we do not need to double up. When the wind is blowing, we take advantage of that; when it is not blowing, we do not need to take advantage of it. However, that is part of a much wider discussion. I am saying that the amendment does not in any way go against the Conservative manifesto.

In the House of Commons, a few Tory Back-Benchers got really agitated about wind farms, for one reason or another, and in the last Parliament a Private Member's Bill was introduced to abolish subsidies for wind farms in England and Wales only. Yet we are talking about abolishing subsidies for the whole of the United Kingdom when two-thirds of the proposed wind farms are in Scotland. As my noble friend on the Front Bench said earlier, Scotland is going to suffer immeasurably and disproportionately from what this Government are proposing. The Minister said that he listened to the devolved Administrations. Yes, he listened to them but he paid no attention to what they said; he did the opposite of what they said. That may be listening but it is not acting on what was said.

In an earlier intervention, the noble Viscount, Lord Ridley, said that this is all going to help the big landowners. I know that he speaks on behalf of the big landowners. Of course, if you want to deal with land ownership, that is another matter. I would support a major change in land ownership, and indeed that is being proposed in Scotland, although, as far as I am concerned, it does not go far enough. I would support such a change so that big landowners did not benefit from this. However, as my noble friend said, some of the schemes in Scotland, such as the one that we have had representations about from Skye, do not involve big landowners; there are community schemes that are also very important.

I hope that this House will exercise its judgment in relation to this matter by removing Clause 66 and, quoting from a well-known Scottish anthem, sending the noble Lord, Lord Bourne, and his Government "homeward tae think again". I hope that on Report or in the House of Commons they come up with something that takes account not of their political dogma but of the real needs and the real situation in the country.

Viscount Ridley: My Lords, in declaring my interests at the start, I reassure the noble Lord, Lord Foulkes, that my family benefits from one wind turbine but that I give the money away to charity. I thought that he might like to know that.

This is a manifesto commitment and I have never heard such extraordinary legal sophistry from the Opposition on this question. Under the "Foulkes convention", as we may have to call it, at the next election we will have to have a negotiation between lawyers representing both parties to get the exact wording of manifestos agreed or nothing will be able to get through the House of Lords. That is essentially what is being argued. It is a perfectly common-sense statement that was in the manifesto and we are committing to it—and we are facing a potential constitutional crisis in the way that the Opposition are treating the Salisbury convention.

It is an astonishing suggestion to hear that reducing a subsidy to an industry is an ideological objection to that industry. My objection to the wind industry is not ideological: it is economic and scientific. Wind is making a trivial contribution to our energy supplies—it supplied 4% of our total energy use last year—and an even smaller contribution to carbon dioxide reductions. At Second Reading, the noble and learned Lord, Lord Wallace, responded to my question about how much carbon dioxide emissions have actually been reduced by the wind power industry by very kindly sending me a link to a calculation that 1,800 tonnes of carbon dioxide emissions are displaced or reduced by each 2 megawatt wind turbine. Well, do the maths on that. That means that with 10,000 turbines of roughly that size in this country, 20 million tonnes or so would be reduced. But that is out of 700 million tonnes of emissions, so it is a reduction in carbon dioxide emissions of less than 3%—and that assumes that it is displacing grid average emissions, which it is not: it is mostly displacing gas. Nor does it take into account the intermittency or back-up—the point made by my noble friend Lord Spicer—which means that our total wind fleet that we have built up over 25 years, hugely subsidised, is giving us a reduction in emissions of about 2%. That is lost in the statistics. It is an Asterix—sorry, I mean an asterisk—and it comes at a huge cost. Wind subsidies cost this country about £4 billion a year. For that money, one could buy an extra 25% of electricity at the wholesale price, which is an enormous amount.

As I said earlier, in subsidising wind farms we are robbing the poor to pay the rich. It is a regressive subsidy. It hits poor people harder than rich people and rewards rich people more than poor people—not just landowners, but investors of other kinds. We are also killing jobs. We know that the high cost of electricity has killed a number of energy-intensive industries: for example, the aluminium smelter at Lynemouth, in Northumberland, to which I drew attention a number of years ago in this House.

Baroness Worthington: I am grateful to the noble Viscount for giving way. He makes a lovely speech, but actually we are debating the impacts of Clause 66, which, as I have pointed out, saves 30p on a household's bill. We can have a lovely debate about the role of CFDs and replacement subsidies, but we are here, on Report, looking at Clause 66, which is a very specific intervention that has destabilised investor confidence.

Viscount Ridley: I do not know where I was five or 10 minutes ago then, when I was listening to a lot of very wide-ranging remarks about whether our opposition to the wind industry was ideological.

I find it odd that the parties opposite are so keen to defend one particular industry—one that is really good at taking money from poor people and giving it to rich people while doing the square root of nothing to reduce emissions, killing eagles, hurting tourism, spoiling landscapes and killing jobs.

Baroness Young of Old Scone: The noble Lord is probably going to move on to it being conducive to falling arches and making children more delinquent. We are talking about correcting an administrative lash-up. Yesterday, I looked briefly at the words that the Government put forth on the consultation on the renewables obligation cessation and the transfer to contracts for difference. That was aimed at making a smooth, seam-free transition between the two subsidy schemes. What we are talking about here is the fact that the transition that came as a result of earlier closure is far from seam-free and smooth; that is all that we are talking about.

On the other hand, I cannot, while on my feet, not challenge the noble Lord on his assertions that any of the environmental or carbon reduction measures are the primary cause of a lack of competitiveness in some of our energy-intensive industries. Our energy-intensive industries have been helped, quite rightly, with the burden that has been placed on them by carbon reduction measures. However, if one looks at the range of factors that makes us competitive in the world compared with other countries, particularly the emerging economies, one will see that labour costs by far and away outweigh any impact that carbon reduction could have.

Viscount Younger of Leckie (Con): My Lords, I am ready to reply to the noble Baroness's speech, but I believe that that was an intervention on another speech.

Viscount Ridley: I had actually pretty well come to the end of my remarks anyway—but on the subject of energy-intensive users, we have good evidence from all sorts of people, including what we heard on the news last night from the head of Tata UK. He said that energy was a huge contributor to its decision. The cost of energy in this country is crucial. As I said before, if this is really just about a minor adjustment to the timing of the introduction of the measure, why are we arguing about the whole industry?

Lord Howell of Guildford: I did not want to make an intervention on an intervention, but may I say something now? I agree that we are talking about whether Clause 66 should stand, but the argument has constantly been widened, and the noble Baroness who just intervened raised again the question of what all

this does to energy costs, and whether energy costs are important. The noble Baroness, Lady Worthington, made some comments about that as well. The facts are the facts. The director of the Energy Intensive Users Group has said that,

"a third of the cost of industrial electricity bills in Britain is being spent on green energy taxes, such as the two-year-old carbon price floor support mechanism … and this would rise to about half of all bills by 2020".

The director of UK Steel has said that,

"rising energy costs were a critical reason for the crisis afflicting the industry, which also led to the collapse of the SSI steel plant in Redcar last month".

And so it goes, on and on. We cannot just dismiss all this. It cannot be pushed away. I agree that it should not be the central issue in the debate on this clause, but some of the remarks that have been made cannot be allowed to stand unchallenged, because they are just not true.

Lord Cormack (Con): My Lords, I strongly support the wise words of my noble friend Lord Ridley. I am one of those who believes that certain types of power are uneconomic, unreliable and unsightly. It is because of the latter point as much as anything else that the Prime Minister made a commitment during the general election campaign, which was given force in the manifesto, that we would not fly in the face of local opinion, as we often have in the past, and build wind farms where they were not wanted. The manifesto commitment is entirely clear, and it is indeed flouting the Salisbury convention to seek to delete it. I very much hope that your Lordships will not do that. We have a duty to examine and scrutinise legislation, and when we believe it is wrong, to ask the other place to think again—but here we are seeking to delete a fundamental part of the Bill.

I am a great admirer of the noble Baroness, Lady Worthington; I hope that does not embarrass her. She brings real distinction to our debates, and she speaks from true knowledge—but, by Jove, she was fishing around this afternoon. I was somewhat amused when she tried to call in aid Lady Thatcher; I am not sure that Lady Thatcher would have entirely endorsed her remarks. She then made a lovely remark about Mr Corbyn, saying that he probably did not agree with fracking or nuclear power—but that didn't matter, because it was not going to be reflected in Labour Party policy. We are clearly in a period of political anarchy at the moment, and it will be interesting to see how long Mr Corbyn lasts, and how long his party lasts with him—but that is not what we are debating this afternoon.

5.15 pm

What we are debating is a narrow issue. We do not need to fish around for strange arguments. I believe that we have a commitment, which was expressed in the manifesto. It was commented on during the election campaign by the Prime Minister and other members of the Conservative Party. I happened to be the president of the Protect Nocton Fen campaign in Lincolnshire. We were threatened with 20 wind turbines, twice the height of Lincoln Cathedral and within six miles of it. I campaigned vigorously and I hope that it played a small part in persuading the Prime Minister and others to ensure that the manifesto said what it said. I raised that issue many times on the Floor of your Lordships' House and we had unanimity among the Lincolnshire MPs on it, yet it would have been entirely possible for the local will to be overridden and now it cannot be, which is very important. The fact that the promoters, Vattenfall, a Swedish firm, have now withdrawn their proposal brought enormous joy to people. They do not like their countryside to be defaced in that way. They do not want centuries-old views of one of the greatest buildings in Europe to be ruined or obscured. What we are talking about today is paying some regard to the will of local people, and I very much hope that that argument will prevail if we are obliged to vote on this amendment.

Lord O'Neill of Clackmannan: It is a bit rich, this casting aside of planning legislation and saying that what local authorities' planning committees come to decisions on are somehow an affront to democracy. Equally rich is the Panglossian view that has just been expressed—or perhaps it is the reverse of Pangloss—that any windmill will be an offence to the eye and should not be allowed. There are a number of windmills, of the 10,000 that we have already spoken of today, which help the businesses on whose land they are located. These are not big landowners—I realise that Members on the other side of the House probably have closer knowledge of those individuals than do the ex-peasants on this side. In a number of instances, particularly in Scotland and particularly for hill farmers, were it not for the presence of the so-called subsidy to get the kit running, such farms would not be able to survive. In my own former constituency, in the Ochil hills, there is a big debate about windmills and their subsidisation, but the quality of the walking there, the attractiveness of the hills and the husbandry of those areas are down to the hill farmers. They depend on other subsidies, but they are never sufficient for them to make anything like a reasonable living. It has been said it is only the big, fat-cat landowners who benefit. Obviously, they will get their share and that is reprehensible; there might be other means of dealing with them in the future—Corbyn notwithstanding, I hasten to add. But it is a very one-sided argument to say that we should cast aside local democracy and ignore the economic benefit to vulnerable businesses engaged in agrarian activities.

Viscount Ridley: I thought that my noble friend Lord Cormack was saying the opposite: that we should not cast aside local democracy and should allow it to prevail without appeal.

Lord O'Neill of Clackmannan: The existing system may not be perfect and it is a source of frustration for many people, but it is tried and tested and it is seen to be fair. The implication of this legislation is that it is going to be set aside.

Lord Cormack: My Lords—

Lord O'Neill of Clackmannan: I am sorry. I realise that we are moving towards a vote and I do not wish to take much more of the House's time. All I want to say is this. It is very dangerous for people, first, to

[Lord O'Neill of Clackmannan]
reinterpret manifestos once they have been the substance of electoral victory; and, secondly, to use that as an excuse to undermine elected representatives and local government who have a sensible and fair means of determining the priorities of the planning requirements for all of the communities they represent.

Lord Wallace of Tankerness: My Lords, I do not wish to detain the House for long. When we engaged after the debate on recommital late last week, we hoped that the Government might have moved a lot further than they did. I acknowledge the amendments that have been made, but they do not go to the heart of many of the concerns of the industry. In fact, there is still a blatant unfairness for those who have observed good practice and have tried to work with local planning authorities.

On the point made by the noble Lord, Lord Cormack, that local democracy matters, developers have worked alongside communities and planning authorities, but because they did not take the route of having a deemed refusal, they are falling foul of this.

Lord Cormack: One of the things we have to bear in mind is that a number of wind farms were granted permission not by local authorities, but by being overruled from the top. Indeed, Lincolnshire County Council was against a number of wind farms that have been thrust upon the county.

Lord Wallace of Tankerness: I think that the noble Lord almost makes my point because, as far as I understand what is being proposed by the Government, local authorities which have refused an application before 18 June, but which was subsequently appealed successfully on a decision taken by Ministers, will actually qualify. But an agreement reached by locally elected people and a locally elected planning committee after debate, consideration and engagement with the local community, but where the subsequent consent as part of that route due to the cycle of meetings was not given until after 18 June will not qualify. Perhaps he has done so inadvertently, but the noble Lord, Lord Cormack, profoundly makes the point that we are making. There is an inconsistency and an unfairness in what the Government are proposing. There is inconsistency between Section 36 applications for smaller developments added on to existing developments and those which do not need Section 36 applications. I do not believe that the Government have made out the case for fairness of treatment, given the test which their own Minister articulated yesterday.

I am sure that we will debate the Salisbury convention at some stage, and I hope that we will take note of the report of the House of Lords and House of Commons Joint Committee on Conventions, which sat around 10 years ago. My noble friend Lord Wallace of Saltaire, who was then the deputy leader of my party in your Lordships' House, emphasised the Liberal Democrats' view that,

"'the Salisbury-Addison Convention was an historical negotiation between the Labour Party in the Commons and the Conservative Party in the Lords' and therefore not relevant to current circumstances".

We articulated that position almost 10 years ago, and I think that the report itself accepted that things had moved on.

The noble Baroness, Lady Worthington, said that it was an opportunity for the Government to think again. We certainly want to engage with them in thinking again, because I do not believe that what we have at the moment is fair to developers who had a reasonable expectation that a system which was due to close in March 2017 has been brought forward by a year. In the end, as the Government's own impact assessment states, the central estimate is around 30p on the electricity bill of the average household. Given the potential damage to the industry and the damage that this is doing to investor confidence in other areas of the renewable industry, it is important that the Government should think again. They have not been able to come up with satisfactory ways of addressing some of the many legitimate complaints that the industry has expressed.

Lord Hardie: My Lords, I also want to draw attention to the fact that this legislation is unfair. Contrary to the statement of the Minister in the other place referred to by the noble and learned Lord, Lord Wallace of Tankerness, I would point out that the noble Lord, Lord Foulkes, mentioned an example on the Isle of Skye. Perhaps I may give the House some more detail about it. There is a development on Skye called the Glen Ullinish wind farm which was granted planning consent in March 2015. That was before the general election and may even have been before the manifesto, and it was certainly well within the current deadline. The local community, with one exception, supported this proposal. The developers, Kilmac Construction, have had a grid connection contract in place since 2011 and have been making annual contributions to the grid to secure their position. They would otherwise have constructed the site and made connection to the grid before the deadline of December 2018, but they are not able to do so through no fault of their own. The connection date has been given as 2021 and the reason for the delay is that, to secure the supply in the west of Scotland, it is necessary to reinforce and upgrade 124 kilometres of line in the Highlands, which this project will facilitate. If the infrastructure had existed, the wind farm would have been constructed and connected in time.

These developers have invested over £1 million and a considerable amount of time and effort in securing the necessary planning permission, grid connection contract and land ownership permissions to ensure that they can comply with government deadlines. They have only been prevented from doing so by the grid infrastructure problem. The Secretary of State for Energy and Climate Change has been aware of this case since 1 September 2015, when the developers wrote to her explaining the circumstances in full. Will the Minister tell the House that the Government will extend the period of grace in this very exceptional case, where the developer is unable to comply with the timescale through no fault of its own? If he is unable to give assurance on this, the appropriate course would be, in the interests of fairness, to remove Clause 66 at this stage, to allow the Government time to reflect on

this anomaly and introduce an amendment in the House of Commons, if they wish. This would not, as has been suggested, wreck the Bill. It passes it on to the Commons, where proper consideration can be given to this matter which is so important for the people of Skye.

The Lord Bishop of Chester: My Lords, as I listened to this debate, I had one of those "Doctor Who" moments. You go into the TARDIS and it looks like a describable area, but it becomes bigger and bigger—each time someone speaks, you go into another room. There is a narrower issue about Clause 66 and that is fairness. I am one of those who regret that the level of subsidy for wind turbines has been as big as it has, and I am keen to get it closed as soon as possible. I am with the Government on that, but they have moved the deadline from March 2017 to March 2016 and then only given way to some extent. The noble and learned Lord, Lord Wallace, said that those who had expended significant amounts of money when the deadline was March 2017 had a reasonable or legitimate expectation. If the legislation goes through as it is now, will there be the possibility of judicial review for those who have spent considerable amounts of money but whose legitimate expectations were not fulfilled because the Government changed their mind? I would like reassurance that there is no legal problem in moving the goal posts when people have expended money under the old drawing-out of the pitch.

Lord Steel of Aikwood (LD): The noble and learned Lord, Lord Hardie, and the right reverend Prelate have focused on the issue of fairness. My only excuse for intervening briefly in this debate is that I have been asked to open a new centre for research and development of water power in my old constituency on Friday. I had never applied my mind to the issues of renewable energy until now. In the Bill, I find reference to wind power and solar power and I know that the Government have been encouraging these. For example, the wind scheme on Gigha was a great community effort which was crucial to the restoration of that island's economy. It is the suddenness of this measure that we are objecting to. My question, which I ask quite simply out of ignorance, is this: why do we devote money to sun energy and wind energy but not water energy? I cannot understand that. The old mills in my constituency used to be powered by water. This week, I visited two small schemes on the River Ettrick, which make their small contribution, as do these other sources of energy. It seems to me that we should be encouraging the development of water power, particularly in Scotland where we have plenty of rain. When there is no wind, there is no generation; when there is no sun at night, there is no generation; but water continues all the time, especially in the winter when the demand for energy is so high.

5.30 pm

Lord Mackay of Clashfern (Con): My Lords, I support the point made by the noble and learned Lord, Lord Hardie, about the situation in Skye, where the implementation of the arrangements already in place has been postponed simply because of the need for the connection. There is no point in having the development until the connection is in place. This was all set up before this Bill was put forward. It requires a degree of special attention. All I want is to be assured that it will have that.

Lord Bourne of Aberystwyth: My Lords, this has been a very wide-ranging debate, taking in issues which are beyond the scope of the Bill. Nevertheless, they are important issues. I hope that I can do justice to the quality of the debate and respond to the points made. I shall come back to the noble Baroness, Lady Worthington, at the end because her comments perhaps symbolise the crux of the difference. In no particular order, except that it is present in my mind, first, I say to the noble Lord, Lord Steel, that I will take up the point about water and write to him on that specifically. As he indicated, it is not within the Bill but I am very happy to look at that and respond to him by letter.

I will probably stand corrected on this but I do not think that solar comes into this legislation either. If it does, I will regret that comment. It could in passing but this Bill basically is concerned about oil and gas, and the onshore wind position. I say to my noble and learned friend Lord Mackay of Clashfern and the noble and learned Lord, Lord Hardie, that I will write to them on their specific point on Skye. I do not know the particular position, so, without commitment, if I can write to them ahead of Third Reading I will certainly do so.

The debate has exhibited a very clear difference of position in relation to onshore wind. I shall come to the Salisbury convention later. I remind noble Lords that it is the responsibility of the Government and the department to do three important things. We have to ensure that we have a supply of electricity that is affordable; that we have a supply of energy that is secure; and that we decarbonise. There is a danger that today this debate has focused on just one of those elements, almost to the exclusion of the other two. They are all important and attention is required to deal with those three, as I am sure noble Lords will appreciate. I will come back to the steel issue later.

The noble Lord, Lord Foulkes, suggested that we cast aside suggestions from the noble Lord, Lord Oxburgh, who is not in his place. That has certainly been far from the case. As regards the part of the legislation in which he was taking a particular interest and giving his experience on oil and gas, we have taken up a lot of his suggestions, as noble Lords will know. I have also ensured that he will head a committee, or perhaps an advisory group, which will report to the Secretary of State on CCS policy going forward. I must correct that point as it is not true.

Clearly, there is a difference of view in this debate. Perhaps I may come to the Salisbury convention. The noble Lord, Lord O'Neill, suggested that we were casting aside planning law. We are not. The grace period makes it very clear that if you have planning permission plus grid connection plus ownership rights, you qualify for the grace period. Therefore, we are far from doing that.

I come to the political point and the points made by the noble Baroness, Lady Worthington, who comes with particular knowledge and commitment. I understand

[Lord Bourne of Aberystwyth]
all that. She said at one stage that this is political. It is; I plead guilty to that. It is political in the sense that we believe that this is very clear in the manifesto and that it is protected by the Salisbury convention. To find a bit of wriggle room to oppose this while saying that you are upholding the Salisbury convention is not the way forward.

I also regret suggestions from the Liberal Democrats that they do not regard the Salisbury convention as important at all. They have gone a stage further. That is not a desirable place for this House to be in. As I said, I have been here a relatively short period of time, but I value the institutions of this House. I would say the same if a Conservative Opposition were opposing a different political party in government, which will happen at one stage. If we really wish to maintain the traditions of this House and the important role that we fulfil, we have to move very carefully in the territory that we are in. We have a very clear manifesto commitment. People know and understand that. It should be upheld.

Lord Reid of Cardowan (Lab): On the question of the Salisbury convention, I confess that I have not included recently the Conservative manifesto in my bedtime reading, but what does the Minister say to the point of substance raised by my noble friend Lord Foulkes? The commitment in the manifesto was to avoid or to reject any new subsidies, whereas we are talking about getting rid of existing subsidies. The noble and learned Lord who spoke about the legal issues involved said that these were legal niceties. They are not; it is the English language. Will the Minister tell us how it is that "new" in English has come to include "pre-existing"? If he cannot tell us that, then it is not a breach of the Salisbury convention because the promise was to end new subsidies, not to get rid of existing subsidies that had a preordained timeline.

Lord Bourne of Aberystwyth: The noble Lord is right on the wording—actually, it is "new public subsidy", but he is stressing "new". The point is that those already in receipt of subsidy will continue to have the subsidy. This is for people who have not yet got or applied for the subsidy. It is certainly new to them in a new Parliament. It is absolutely clear that that is within the Salisbury convention. Clearly we will disagree on this. I argue that we are in dangerous territory and that the Salisbury convention should apply.

I omitted to do so earlier because I wanted to finish on the Salisbury convention, but I will say something on affordability and steel. The noble Baroness made some relevant points on that. She said that electricity was a small part of their costs; it is not for all steel companies. If it is a blast furnace it is 3% of the costs; if it is an arc furnace, as it is for Celsa in Cardiff South, a Labour-held constituency, it is 12% of the cost. That is not insignificant. That point was made forcefully at the steel summit by many Labour MPs, as well as by other people. We have to take that on board. It is a complex issue. It is not just about electricity costs, but they certainly are a valid consideration from some steel companies.

With that, there clearly is a disagreement but, as I said, this is dangerous territory for the House. In my belief and the Government's belief, this is firmly protected by the Salisbury convention and I urge noble Lords to reject the amendment.

The Lord Bishop of Chester: Before the Minister sits down—I asked a specific question and I would like to encourage an answer. The noble and learned Lord, Lord Wallace, spoke of those who incurred expenditure under the March 2017 deadline who had, I think he said, a legitimate expectation that their investment could be carried through. Is the Minister saying that they do not have a legitimate expectation any more and that that can be changed by the legislation, or is it simply that the Government are legislating in the face of what might be regarded as a legitimate expectation?

Lord Bourne of Aberystwyth: It is neither of those, if I may say so. We have had an engagement exercise with industry, the devolved Administrations and others to look at those who would be prejudiced by the proposal as set out on 18 June. In consequence of that, the grace period that we have put forward—which I think we have agreed to as it stands—is that if you have a planning permission, a grid connection and land rights as at 18 June, you have additional time. We have also moved in relation to the investment freeze condition and appeals to try to achieve that. So, following the engagement exercise launched after the decision which was taken on 18 June, we have catered for those with a legitimate expectation of being able to deploy in this regard.

Baroness Worthington: My Lords, I am grateful to the Minister for his response and, indeed, to all noble Lords who have participated in this debate. We always knew that it would be a very interesting debate and it certainly has been wide-ranging. I must start by apologising for not referring to Lady Thatcher by her proper title. I think that may be due to the fact that I was not here during her great tenure.

I do not propose to detain the House for very much longer. It is absolutely clear that we have a difference of opinion. Manifestos are brief, do not contain detail and therefore are open to interpretation, and opinion therefore plays an important role. We are not doing anything that we believe contravenes the Salisbury convention. I have read the Conservative manifesto and I am afraid that it is not that clear. There are some inconsistencies. It says that the Government support wind, which may come as terrible news to the noble Lord, Lord Cormack, and the noble Viscount, Lord Ridley. However, the manifesto says in black and white that the Conservatives think that it plays a valuable role. It also says that the Conservatives will deliver nuclear without subsidy. That is a very interesting phrase. I do not understand how that will work. The manifesto also says that the Conservatives are committed to least-cost decarbonisation and that they will stop new subsidies.

Noble Lords have said very eloquently that the nub of the issue is: does it pass the common-sense test that, if you read the manifesto commitment before the

election you would read those words and think, "Ah, yes, that will mean the RO is closing a year early"? You would not think that. That is not a common-sense response to reading those words. Had the Government been clear-minded and knew what they were about to do, why did they not simply say in the manifesto, "We propose to close the renewables obligation for onshore wind a year early"? That would have been very easily understood and everyone would have known where they were. However, that was not what was said. One could put a wide range of interpretations on what was said. Again, I come back to what is happening with the contracts for difference. We have heard nothing from the Government on this. In light of that, how weak this legislation is, and the concerns that have been raised on all sides of the House, I propose to press this amendment and wish to test the opinion of the House.

5.42 pm

Division on Amendment 78Q

Contents 242; Not-Contents 190.

Amendment 78Q agreed.

Division No. 1

CONTENTS

Adams of Craigielea, B.
Addington, L.
Ahmed, L.
Alderdice, L.
Allan of Hallam, L.
Allen of Kensington, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Ashdown of Norton-sub-Hamdon, L.
Avebury, L.
Bach, L.
Bakewell, B.
Bakewell of Hardington Mandeville, B.
Bassam of Brighton, L. [Teller]
Beecham, L.
Benjamin, B.
Berkeley, L.
Bhatia, L.
Blackstone, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Boothroyd, B.
Bragg, L.
Brooke of Alverthorpe, L.
Brookman, L.
Browne of Belmont, L.
Burnett, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Cashman, L.
Chidgey, L.
Christopher, L.
Clancarty, E.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clement-Jones, L.
Clinton-Davis, L.
Collins of Highbury, L.
Colville of Culross, V.
Corston, B.
Cotter, L.
Crawley, B.
Davies of Oldham, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Dykes, L.
Eames, L.
Elder, L.
Evans of Watford, L.
Falconer of Thoroton, L.
Falkland, V.
Falkner of Margravine, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Foster of Bishop Auckland, L.
Foulkes of Cumnock, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Gould of Potternewton, B.
Grantchester, L.
Grender, B.
Grocott, L.
Hameed, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Hardie, L.
Harris of Haringey, L.
Harris of Richmond, B.
Harrison, L.
Hart of Chilton, L.
Haskel, L.
Haughey, L.
Haworth, L.
Hay of Ballyore, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hilton of Eggardon, B.
Hollick, L.
Hollis of Heigham, B.
Howarth of Newport, L.
Howells of St Davids, B.
Howie of Troon, L.
Hoyle, L.
Hughes of Stretford, B.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Irvine of Lairg, L.
Janke, B.
Jay of Ewelme, L.
Jay of Paddington, B.
Jolly, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
King of Bow, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Loomba, L.
Low of Dalston, L.
McAvoy, L.
McConnell of Glenscorrodale, L.
McDonagh, B.
Macdonald of Tradeston, L.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Maclennan of Rogart, L.
McNally, L.
Maddock, B.
Manzoor, B.
Masham of Ilton, B.
Maxton, L.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Monks, L.
Morgan of Ely, B.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Newby, L.
Northover, B.
Nye, B.
O'Neill of Clackmannan, L.
Parminter, B.
Patel of Blackburn, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Prescott, L.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rea, L.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Sandwich, E.
Sawyer, L.
Scotland of Asthal, B.
Scott of Needham Market, B.
Sharkey, L.
Sharp of Guildford, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Clifton, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Steel of Aikwood, L.
Stephen, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Symons of Vernham Dean, B.
Taverne, L.
Taylor of Blackburn, L.
Temple-Morris, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Tomlinson, L.
Tope, L.
Tordoff, L.
Touhig, L.
Truscott, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Tyler, L.
Tyler of Enfield, B.
Uddin, B.
Wall of New Barnet, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Richmond, L.
Wheeler, B.

Whitaker, B.
Whitty, L.
Wigley, L.
Williams of Elvel, L.
Wood of Anfield, L.
Woolmer of Leeds, L.
Worthington, B.
Wrigglesworth, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Bates, L.
Bell, L.
Berridge, B.
Best, L.
Bew, L.
Bichard, L.
Black of Brentwood, L.
Blencathra, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browning, B.
Buscombe, B.
Byford, B.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chester, Bp.
Chisholm of Owlpen, B.
Colwyn, L.
Condon, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
Dannatt, L.
De Mauley, L.
Dear, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Weardale, L.
Faulks, L.
Fink, L.
Finkelstein, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Glentoran, L.
Gold, L.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greenway, L.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Hayward, L.
Helic, B.
Heyhoe Flint, B.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
King of Bridgwater, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Listowel, E.
Liverpool, E.
Lothian, M.
Lyell, L.
McColl of Dulwich, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Marlesford, L.
Maude of Horsham, L.
Mawhinney, L.
Mobarik, B.
Mone, B.
Montrose, D.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
Patel, L.
Perry of Southwark, B.
Phillips of Worth Matravers, L.
Polak, L.
Popat, L.
Prior of Brampton, L.
Rawlings, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Rogan, L.
Ryder of Wensum, L.
Sanderson of Bowden, L.
Scott of Foscote, L.
Seccombe, B.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Somerset, D.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Sutherland of Houndwood, L.
Taylor of Holbeach, L. [Teller]
Trees, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Verma, B.
Vinson, L.
Wakeham, L.
Wasserman, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Wolfson of Aspley Guise, L.
Wright of Richmond, L.
Young of Cookham, L.
Younger of Leckie, V.

5.59 pm

Amendment 78R

Tabled by ***Lord Bourne of Aberystwyth***

78R: After Clause 66, insert the following new Clause—

"Onshore wind power: circumstances in which certificates may be issued after 31 March 2016

(1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows.

(2) After section 32LC (inserted by section 66) insert—

"32LD Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2016

The circumstances set out in this section are where the electricity is—

(a) generated by an onshore wind generating station which was accredited on or before 31 March 2016, and

(b) generated using—

(i) the original capacity of the station, or

(ii) additional capacity which in the Authority's view first formed part of the station on or before 31 March 2016.

32LE Onshore wind generating stations accredited, or additional capacity added, between 1 April 2016 and 31 March 2017: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2016 and ending with 31 March 2017, and

(ii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2016 and ending with 31 March 2017, and

(iii) the grid or radar delay condition is met in respect of the additional capacity.

32LF Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2017: approved development condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited on or before 31 March 2017, and

(ii) in respect of which the approved development condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station on or before 31 March 2017, and

(iii) the approved development condition is met in respect of the additional capacity.

32LG Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 March 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 March 2018,

(ii) in respect of which the approved development condition is met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 March 2018,

(iii) the approved development condition is met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

32LH Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 December 2017: investment freezing condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 December 2017, and

(ii) in respect of which both the approved development condition and the investment freezing condition are met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 December 2017, and

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

32LI Onshore wind generating stations accredited, or additional capacity added, between 1 January 2018 and 31 December 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 January 2018 and ending with 31 December 2018,

(ii) in respect of which both the approved development condition and the investment freezing condition are met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31 March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 January 2018 and ending with 31 December 2018,

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

32LJ The approved development condition

(1) This section applies for the purposes of sections 32LF to 32LI.

(2) The approved development condition is met in respect of an onshore wind generating station if the documents specified in subsections (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.

(3) The approved development condition is met in respect of additional capacity if the documents specified in subsections (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) evidence that—

(i) planning permission for the station or additional capacity was granted on or before 18 June 2015, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(b) evidence that—

(i) planning permission for the station or additional capacity was refused on or before 18 June 2015, but granted after that date following an appeal or judicial review, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(c) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,

(ii) the period allowed under section 78(2) of the 1990 Act or (as the case may be) section 47(2) of the 1997 Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application,

(iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,

(iv) 1990 Act permission or 1997 Act permission was granted after 18 June 2015 following an appeal, and

(v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.

(5) The documents specified in this subsection are—

(a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms), or

(b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, no grid works were required to be carried out by a licensed network operator in order to enable the station to be commissioned or the additional capacity to form part of the station.

(6) The documents specified in this subsection are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 18 June 2015 a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010, with a relevant developer of the station or additional capacity)—

(a) was an owner or lessee of the land on which the station or additional capacity is situated,

(b) had entered into an agreement to lease the land on which the station or additional capacity is situated,

(c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or

(d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

(7) In this section—

"the 1990 Act" means the Town and Country Planning Act 1990;

"1990 Act permission" means planning permission under the 1990 Act (except outline planning permission, within the meaning of section 92 of that Act);

"the 1997 Act" means the Town and Country Planning (Scotland) Act 1997;

"1997 Act permission" means planning permission under the 1997 Act (except planning permission in principle, within the meaning of section 59 of that Act);

"exclusivity agreement", in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct an onshore wind generating station on the land;

"planning permission" means—

(a) consent under section 36 of this Act,

(b) 1990 Act permission,

(c) 1997 Act permission, or

(d) development consent under the Planning Act 2008.

32LK The investment freezing condition

(1) This section applies for the purposes of sections 32LH and 32LI.

(2) The investment freezing condition is met in respect of an onshore wind generating station if the documents specified in subsection (4) were provided to the Authority with the application for accreditation of the station.

(3) The investment freezing condition is met in respect of additional capacity if the documents specified in subsection (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the Royal Assent date—

(i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,

(ii) a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted, and

(iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the Royal Assent date, and

(b) a letter or other document, dated on or before the date which is 28 days after the Royal Assent date, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted.

(5) In this section—

"recognised lender" means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency;

"the Royal Assent date" means the date on which the Energy Act 2016 is passed.

(6) For the purposes of the definition of "recognised lender" in subsection (5)—

"investment grade credit rating" means a credit rating commonly understood by registered credit rating agencies to be investment grade;

"registered credit rating agency" means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

32LL The grid or radar delay condition

(1) This section applies for the purposes of sections 32LE, 32LG and 32LI.

(2) The grid or radar delay condition is met in respect of an onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(4) The documents specified in this subsection are—

(a) evidence of an agreement with a network operator ("the relevant network operator") to carry out grid works in relation to the station or additional capacity ("the relevant grid works");

(b) a copy of a document written by, or on behalf of, the relevant network operator which estimated or set a date for completion of the relevant grid works ("the planned grid works completion date") which was no later than the primary date;

(c) a letter from the relevant network operator confirming (whether or not such confirmation is subject to any conditions or other terms) that—

(i) the relevant grid works were completed after the planned grid works completion date, and

(ii) in the relevant network operator's opinion, the failure to complete the relevant grid works on or before the planned grid works completion date was not due to any breach by a generating station developer of any agreement with the relevant network operator; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant grid works had been completed on or before the planned grid works completion date.

(5) The documents specified in this subsection are—

(a) evidence of an agreement between a generating station developer and a person who is not a generating station developer ("the radar works agreement") for the carrying out of radar works ("the relevant radar works");

(b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works ("the planned radar works completion date") which was no later than the primary date;

(c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—

(i) the relevant radar works were completed after the planned radar works completion date, and

(ii) in that party's opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.

(6) The documents specified in this subsection are—

(a) the documents specified in subsection (4)(a), (b) and (c);

(b) the documents specified in subsection (5)(a), (b) and (c); and

(c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if—

(i) the relevant grid works had been completed on or before the planned grid works completion date, and

(ii) the relevant radar works had been completed on or before the planned radar works completion date.

(7) In this section "the primary date" means—

(a) in a case within section 32LE(a)(i) or (b)(i) and (ii), 31 March 2016;

(b) in a case within section 32LG(a)(i) and (ii) or (b)(i) to (iii), 31 March 2017;

(c) in a case within section 32LI(a)(i) and (ii) or (b)(i) to (iii), 31 December 2017."

(3) In section 32M (interpretation of sections 32 to 32M)—

(a) in subsection (1), for "32LB" substitute "32LL";

(b) at the appropriate places insert the following definitions—

""accredited", in relation to an onshore wind generating station, means accredited by the Authority as a generating station which is capable of generating electricity from renewable sources; and "accredit" and "accreditation" are to be construed accordingly;";

""additional capacity", in relation to an onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;";

""commissioned", in relation to an onshore wind generating station, means having completed such procedures and tests in relation to the station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that it is capable of commercial operation;";

""generating station developer", in relation to an onshore wind generating station or additional capacity, means—

(a) the operator of the station, or

(b) a person who arranged for the construction of the station or additional capacity;";

""grid works", in relation to an onshore wind generating station, means—

(a) the construction of a connection between the station and a transmission or distribution system for the purpose of enabling electricity to be conveyed from the station to the system, or

(b) the carrying out of modifications to a connection between the station and a transmission or distribution system for the purpose of enabling an increase in the amount of electricity that can be conveyed over that connection from the station to the system;";

""licensed network operator" means a distribution licence holder or a transmission licence holder;";

""network operator" means a distribution exemption holder, a distribution licence holder or a transmission licence holder;";

""onshore wind generating station" has the meaning given by section 32LC(2);";

""original capacity", in relation to an onshore wind generating station, means the generating capacity of the station as accredited;";

""radar works" means—

(a) the construction of a radar station,

(b) the installation of radar equipment,

(c) the carrying out of modifications to a radar station or radar equipment, or

(d) the testing of a radar station or radar equipment;";

""relevant developer", in relation to an onshore wind generating station or additional capacity, means a person who—

(a) applied for planning permission for the station or additional capacity,

(b) arranged for grid works to be carried out in relation to the station or additional capacity,

(c) arranged for the construction of any part of the station or additional capacity,

(d) constructed any part of the station or additional capacity, or

(e) operates, or proposes to operate, the station;"."

Lord Wallace of Tankerness: My Lords, we have already debated this. I think that Amendment 78RA would improve Amendment 78R, so I would wish to test the opinion of the House, but perhaps the Minister would clarify. Is he still insisting on his Amendment 78R, or is our amendment otiose?

Lord Bourne of Aberystwyth: Perhaps the noble and learned Lord can tell me what it is about.

Lord Wallace of Tankerness: My understanding is that Amendment 78R contains the new clause to embrace the grace periods. As Clause 66 has fallen, I am not sure whether he wants to insist on it. If he does, I will want to press our Amendment 78RA, but I want clarification, because there is no point dividing the House if he does not insist on his new clause, which incorporates the grace periods.

Lord Bourne of Aberystwyth: I am certainly not pushing this amendment.

Amendments 78RA to 78RG, as amendments to Amendment 78R, not moved.

Amendment 78R not moved.

6 pm

Amendment 78S

Moved by ***Baroness Worthington***

78S: After Clause 66, insert the following new Clause—

"Decarbonisation obligation

(1) Within six months of the coming into force of this Act, the Secretary of State must bring forward regulations for a "decarbonisation obligation".

(2) A "decarbonisation obligation" means the level of carbon intensity of electricity generation in the United Kingdom that a relevant supplier may not exceed in respect of the total kilowatt hours of electricity that it supplies to customers in England and Wales during a given year.

(3) In setting a decarbonisation obligation, the Secretary of State must first obtain and take account of advice from the Committee on Climate Change.

(4) Under this section, a "relevant supplier" refers to electricity suppliers supplying electricity in the United Kingdom."

Baroness Worthington: My Lords, in this group of amendments we are considering the wider implications of the Government's energy policy as set out in the Bill. We are again touching on issues to do with investor confidence. The amendments in this group relate to the need to preserve investor confidence in the UK's energy system and energy infrastructure so that we can continue to see the good work we have seen over the past few decades of reinvestment in modern clean energy systems that will propel us into the remaining years of this century and clean up the energy system in view of our climate change obligations.

During the passage of this Bill and during the passage of the Energy Bill 2013, we had many debates about the right way to incentivise investment in clean technology. As noble Lords are aware, the current policy is that contracts for difference administered by the Secretary of State are granted to contract owners to enable them to have a stable income. They have the wholesale price topped up to a strike price. That policy was put in place in the Energy Act 2013.

The first part of that Act relates to the setting of a decarbonisation target, which was seen as the clearest signal we could give that we will continue to move towards a cleaner energy system after 2020. The period after 2020 is important because until then we are propelled forward by EU targets, including specifically for renewable energy. In the consideration of energy policy beyond 2020, the European Union was persuaded, partly by Ministers from the UK Government, that it should no longer pursue renewables-only targets, and I supported the Government in that argument. We believed that we still needed to see decarbonisation in the power sector but that it was no longer necessary to state that it must be through a group of technologies classed as renewables and that a wider range of technologies could play a part. That is the situation we find ourselves in.

In the EU 2030 climate and energy package, there is no legally binding renewables target for member states from 2020. That leaves open what guidance there is that would give investors confidence that there will be a market or support for technologies that are not yet able to stand fully on their own two feet in competing in the market. The reason they are not able to stand fully on their own two feet is partly to do with the failure of another EU policy: the EU Emissions Trading Scheme. For many reasons which I will not bore the House with, the EU Emissions Trading Scheme has failings and has not been sending a strong enough carbon price signal to enable low-carbon technologies to compete with the more emitting technologies. So we have a potential signal in the form of the EU Emissions Trading Scheme, but that signal is not sufficient or stable enough to give investors confidence—hence the need for domestic policy and the UK Energy Act 2013 to supplement it.

We need something that supplements the contracts for difference process because it is held by the Secretary of State. One person administers oversight of the contracts that are awarded and the timing of the auctions of those contracts, and the department, in conjunction with the national grid, has to try to arrive at a set of technologies that it thinks will deliver our climate change targets. The problem is that it is very difficult to predict the future. Having spent time as a civil servant, I can say with confidence that it is very hard for the Civil Service to keep pace with all the information out there in the energy market, and that it would be far more sensible if we allowed the market to play more of a role in determining the mix of our energy.

I am a fervent believer in least-cost decarbonisation, and at the moment we run the risk of having a centralised system that is too political. There are too many levers in the hands of the Secretary of State and not enough in the private sector, which ultimately will have to raise the finance and do the projects. The Government are not doing that; they are simply governing the number of auctions they make available.

The amendments in this group attempt to address the problem of insufficient investor confidence in the period 2020 to 2030 in the light of the change in EU policy. Amendment 78S revisits an idea we looked at in Committee. I have retabled it because I believe it is a very important principle, and I hope that the Government are beginning to see its merit and take it seriously. It is that rather than have the administratively burdensome process of contracts for difference and the mechanisms underneath it, we should move to a simpler system where supply companies are responsible for delivering decarbonisation. They interface with customers and provide us with the electricity that keeps our businesses and homes powered, so they should take on the responsibility for selecting projects that will help decarbonise at least cost and do so through a framework in which they are given a target to reduce the carbon intensity of the power that they supply.

I think that this idea might be coming of age. Recently, OVO Energy, a welcome new entrant in the market, has declared itself to be coal free. I think that is probably the first example of a tariff that is structured to demonstrate a commitment to climate change by eliminating coal from the mix. OVO Energy has done that through the use of certificates that it purchases from gas stations. Through the certificates it can show that it is purchasing only gas and therefore keeping coal out of the mix and giving customers a low-cost option for demonstrating their concern about climate change. That announcement is based on the same principle as in Amendment 78S, which is that suppliers are able, through their choice of who they purchase from, to drive markets. They can support gas and perhaps disfavour unabated coal through the use of market mechanisms.

I hope that the Government will fully support this, because it is completely in keeping with their principle of having the private sector play more of a role in decarbonisation. Time has gone by. We have all, in a rather amusing way, reflected on how odd it was that the Energy Act 2013 oversaw almost the full renationalisation of energy policy—not quite, but it felt like that at times—under a Conservative Government. I am hoping that as the Government get into their stride in their current role, they will see the merit of shifting to a more market-based system. Then we will be able to avoid the kind of arguments that we have just had to endure over Clause 66, which is symptomatic of the fact that the Government are now in the driving seat and that it is not a really comfortable place to be. I think that the Minister may agree.

I am hoping to hear from the Minister some words of encouragement and reassurance that the idea in Amendment 78S is being considered seriously by the department, because I think it offers a good solution to our dilemma over how to achieve the things we want—reducing our carbon emissions and making sure that the lights stay on. The suppliers could play an important role here.

Amendment 78T relates to the concerns that I expressed in a previous debate—so I will not reiterate them—that at the moment contracts for difference are suspended. "Suspended" may be a strong word but there has been no auction this year for contracts for difference, despite the fact that we would have anticipated that there would have been by now if we had followed the pattern of previous years. We are left with something of a hiatus. We do not yet know whether the contract for difference auctions will be scheduled. I am sorry to keep asking this of the Minister, and I know I will get the same response, but it is important to have clarity on this. I hope that by the time the Bill reaches the other place we will have clarity, and certainly before it leaves that place I strongly encourage the Government to provide that clarity over what is happening to the contracts for difference regime.

Amendment 78T would require that auctions were held at least annually for as long as the carbon intensity of electricity was more than 100 grams per kilowatt hour. That is for as long as the contracts for difference regime continues: I am aware that should we adopt Amendment 78S, we would not very much need to carry on with Amendment 78T. This is designed to say that if we continued with the contracts for difference process, we would hold those auctions annually so that there would be certainty for investors and we would have a regular process by which people could plan—and that the guiding principle would be that we are trying to get our carbon intensity down to 100 grams. The reason for that, as noble Lords may know, is that our carbon intensity remains fairly stubbornly high at around 400 grams per kilowatt hour, despite all our good efforts in supporting renewable energy.

Renewable energy has actually made a considerable difference in displacing thermal power and reducing emissions—but instead, while that has been happening, we have burned more coal because coal prices have reduced relative to gas. That has meant that for every step we take forward on renewables we see ourselves taking a step back, because we are switching from gas, which is a phenomenally valuable and clean fuel that I am sure we will be using for some time, back to using inefficient old coal stations for prolonged periods. I am happy to say that the economics are shifting again and we are seeing coal playing much less of a role. That is partly to do with the introduction of the carbon price floor, which is helping gas to compete, but the truth of the matter is that we still have stubbornly high carbon intensity and we need to see it reducing. The reason why we need power in particular to reduce is that we need to have clean power in order to then power our vehicles and maybe provide heat to our homes in a low-carbon way. There is no point electrifying transport if our power remains dirty. It therefore seems logical and sensible that we should pursue power sector decarbonisation in a faster way and get that carbon intensity down to the point where electrification in those other sectors will then make complete sense.

I turn to Amendment 78UA. I must explain that this is a manuscript amendment, for which I apologise to the House. The reason is that we had tabled an original version in a previous Marshalled List but had been advised to change the wording. On reflection late last night, however—this has been one of those Bills on which we have been putting in rather late hours—we reverted to the original wording because I felt that the original wording should stand.

My apologies to the House if I descend into what may seem to be a level of detail that might perhaps not be of great interest to everybody. I suspect that

[Baroness Worthington]

I should declare that I was partly involved in the drafting of the Climate Change Act as a civil servant in the Department for Energy and Climate Change, so this is an area that I know in some detail and feel quite strongly about. I shall attempt to explain what we are trying to do here in a way that I hope will hold people's interest.

6.15 pm

The Climate Change Act, as we know, is a world-leading piece of legislation that I am immensely proud to have played a small part in. I am delighted that it received cross-party support when it was signed into law. At that period, the UK was at its best in demonstrating the degree of cross-party support for tackling climate change, and for the role that the UK could play in demonstrating leadership. The rationale we gave at the time was, "If we don't lead, who will?", and, "If we lead, others will follow". That is exactly what happened: we passed our Act and, I am glad to say, over 100 countries have subsequently passed their own versions of climate change legislation. Not all of them have followed our model exactly, and some have been much more partial in the issues that they have taken on, but climate change legislation is now proliferating around the world and that is in large part to do with the UK. I pay tribute to all noble Lords and Members of the other House who helped the UK to display that leadership; it has been having a big impact.

The Climate Change Act as envisaged creates carbon budgets in order to manage our emissions. The reason why it does so is that we were very keen on trying to convey the fact that in many ways, just as Governments and Treasuries try to balance the books financially for public spending in terms of income and outgoings, carbon emissions are very similar: you could give yourself an allowance to emit, and then you could use sound budgetary principles to ensure that you stayed within that allotted amount. It was the area under the curve of the emissions that we were hoping would be managed well by the Government. The carbon budgets were created for a five-year period, and three carbon budgets were then to be set in law at any given period. We have now set the fourth carbon budget and are about to set the fifth.

As we drafted the Act we were very aware that it does not really matter where carbon dioxide is emitted—it could be emitted anywhere in the world and it would have the same effect—so if you reduce carbon dioxide anywhere in the world, you can make a difference. Hence trading in carbon emission reductions has been an accepted part of climate policy. We were mindful of this and ensured that the Climate Change Act as a whole incorporated an element of trading to allow the Government flexibility to meet their targets.

That was how I left the situation when I left the draft Bill team, and subsequently it has been enacted and implemented. Along the way, an interpretation of the legislation has been accepted that says that, for just less than half of our emissions, that flexibility should translate into not actually counting our emissions in terms of what is emitted from the smoke-stack. It is actually the contribution that power and heavy industry make that is counted in relation to an EU scheme. Essentially, we are not required to reduce emissions at home as a result of carbon budgets; we can simply emit what we like and then settle the difference through the trading scheme at company level. This means that carbon budgets, while incredibly welcome, and they certainly provide confidence, do not actually have any influence over power sector decarbonisation in this country. That is a fact that few people properly understand; very often I get people coming up to me and saying, "Well, the Government can't do that, can they, because of our carbon budgets". If it relates to the power sector, I am afraid that the answer is yes, the Government can; strictly, the Government can do whatever they like because it is not the actual emissions that we emit that count towards our budgets.

I am sure that noble Lords will be glad to know that I am now getting to the point. Amendment 78UA seeks to turn the fifth carbon budget into a much more useful guide for investors, and certainly a much more useful guide for investors in the power sector, by making it no longer the case that those trading emissions from Europe count towards the meeting of our domestic targets. In doing so, we would be moving towards the system that other countries in Europe adopt, which is to measure our actual emissions. That would provide the backdrop and the backstop that we need to ensure that we continue from 2020 to 2030 in our efforts to decarbonise the power sector. This is, therefore, a simple surgical change in legislation, but it would have the effect of shoring up investor confidence and making sure that we decarbonise the power sector.

For those reasons—its simplicity, and that in this instance I feel confident that the Government will not say that it falls foul of their manifesto commitments, because it is not a new target on the power sector, as it is simply an accounting procedure within the existing Climate Change Act regulations—this is something we could come together on and agree. We could do so now because we will see the fifth carbon budget recommendations being made later in the year, before the end of the year, and next spring we will have the debate on the fifth carbon budget. It is therefore right and proper that we now consider on what basis we want that fifth carbon budget to be made. That budget covers exactly that 2018 to 2032 period, which is so crucial for investor confidence. This is, therefore, a timely moment for us to consider this.

I have also tabled this because I, like many people, I think, assumed that we might see with the fifth carbon budget the setting of a decarbonisation target as was set out in the Energy Act 2013. However, in the course of the Bill, it has become clear—I am grateful to the Minister for clarifying—that the Government do not intend to set the decarbonisation target for the power sector for 2030. The Government are perfectly within their right to choose to do so. However, here is another way of creating that investor certainty, solving some quite difficult accounting issues that the Committee on Climate Change has to do to do this net accounting—it is not an easy job to work out what the EU portion of our trading budget should be; it is a bit of a headache. With Amendment 78UA, we have the opportunity to do something quite precise but impactful, which would have the effect, as I say, of creating a much higher

degree of investor confidence. This is certainly the right time to think about this, before we go on to debate the level of the fifth carbon budget.

I hope that I have explained this, and not gone on for too long. The three amendments here are all designed to enable us to have a debate about the bigger picture of how we will proceed in helping investors to plan for the future. I look forward to the Minister's response, but certainly on Amendment 78UA we should seize the moment, because now is a good time for us to do this.

Lord Howell of Guildford: My Lords, I congratulate the noble Baroness on the ingenuity of the proposals in this amendment; they are fascinating and make one think very hard, because these are hugely complex issues. Perhaps I may put two questions to her and perhaps also to my noble friend.

First, will this switch to this way of trying to achieve our carbon obligations and decarbonisation lead to cheaper power in the power sector? That must be an important question. We discussed earlier the problems in the power sector and the fact that pushing it too far and too fast may not necessarily help decarbonisation but will have to be paid for in lost jobs. That is bound to be on people's minds when looking at this kind of amendment.

The second and even more obvious question is whether these arrangements will get the combined-cycle gas turbines built. At present speed, under the contracts for difference regime, and the capacity payments auction and so on, will they get them built in time? We are now entering a very worrying period, with a very low margin of safety in our electricity system—I believe that it will be down to 1.2 gigawatts. When I had some responsibility for these matters, years ago, it was 17 gigawatts. That gives noble Lords an idea of how far we have come down thanks to the rapid closure of many coal-fired stations and so on. Will this pattern lead to that result? These may be layman's questions addressed to a very complex issue but I would be interested to know the answers. If the implication is the other way, we will have additional costs on power and get further out of line with our competitors. We always have to remember that in the Climate Change Act—behind which the noble Baroness was one of the founding figures and driving forces—there was the reservation that we should not get too far out of line with our competitors. In some areas, we clearly have done; we are out of line. In the steel industry, as we were saying earlier, we have energy charges that fall on at least parts of that industry at twice the level of charges in Germany and, in turn, are far higher than those throughout Europe. I saw one figure showing that they are 10 times the levels in China—which might account for our present woes in the steel industry. In examining this, can we please be guided on whether this will deliver the goods? That is my question.

Lord Teverson (LD): My Lords, I particularly wish to speak to Amendment 78UA, to which I have added my name, but I will start with Amendment 78S, which is the decarbonisation debate. I was certainly very disappointed that the Minister confirmed—he was very clear, and I welcome clarity—that the Government will not take advantage of the opportunities opened to them under the previous Energy Act and declare a decarbonisation target. We have had a lot of discussion about the Conservative manifesto, and in fact the Minister referred to it in the context of saying why that would not happen. However, the words of the Conservative manifesto were completely clear. They suggest that a decarbonisation target would meet both the Government's objectives. The manifesto says:

> "We will cut emissions as cost-effectively as possible, and will not support additional distorting and expensive power sector targets".

That is very clear.

The point about a decarbonisation target—exactly as the noble Baroness, Lady Worthington, said—is that it moves on from the distorting targets that we had for renewables in terms of decarbonising our energy sector. In fact, because it brings in proper mechanisms in terms of markets and all of that, it is actually less expensive. So, it seems that a decarbonisation target will not only help us very specifically meet our Climate Change Act targets—which the Conservative manifesto fully supports—but provide a route for those targets to be met with a non-distorting and less expensive method than we had under the renewable targets under the EU's 2020 system and so on. This is therefore a very good and logical amendment. It is almost a vital amendment that the Government should be able to accept to fulfil their own manifesto commitments. I do not say that to make a clever lawyer's argument; I say it because it is how I read it. It is in plain English in the manifesto.

I move on to Amendment 78UA, to which I have put my name. I pay credit to the noble Baroness, Lady Worthington, for the great role that she played in bringing the Climate Change Act into being. I played a much more modest role in those days on the Front Bench of the Liberal Democrats in opposition—strangely, we are back in opposition again; but there we are. I was going to mention the noble Lord, Lord Taylor of Holbeach, and the fantastic work that he did with me and the noble Lord, Lord Rooker. We helped to deliver, right across the House, together with the Cross Benches, the fantastic Climate Change Act. The noble Lord, Lord Taylor, did a great piece of work.

One of the things that I did then was to try to bring to the attention of the Bill team and Ministers the fact that although those carbon budgets were great, they excluded 50% of the country's emissions because they took into account the EU ETS trading. So, in effect, government policy only controlled, or had an effect on, about 50% of UK emissions. The Bill team did not seem to understand this—albeit that at the time the department was not DECC but Defra—and nor did the Ministers particularly take an interest in it. I think that the trouble was that, once those in the Treasury understood it—at least, they certainly understood it well ahead of anybody else—they decided that they did not want this at all. Ironically, that was under a Labour Government. However, as the noble Baroness said, the Climate Change Act was a great thing.

6.30 pm

This amendment provides an opportunity to put right something that was wrong then. As I see it, it aligns our international obligations with how we measure

[LORD TEVERSON]
our own carbon budgets and our own Climate Change Act targets. They come into one in that they mean what everybody would understand them to mean—that is, what the emissions of UK plc are. It would get rid of all those strange accounting distortions and bring us back to common-sense accounting and what people would understand carbon budgets and our own carbon emissions to be.

That is why I am delighted that the amendment has been brought forward. It concerns a matter that I have felt strongly about since 2008, when the Climate Change Bill became an Act and, at the time, was a world leader. This gives us an opportunity to cement that leadership in this area, even if, unfortunately, we are rather backtracking in others.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on this part of the Bill. I shall take the amendments in the order that they are marshalled.

With regard to Amendment 78S, we are committed to ensuring that the UK continues to do its part to tackle climate change, in line with the Climate Change Act, but we want to do so as cost-effectively as possible to make sure that our energy is secure and affordable, as well as lower carbon. We believe that locking ourselves into an expensive and inflexible target for the power sector is not the way to do that. There are just too many things that we cannot predict about how the energy system will develop up to 2030, and the costs of getting it wrong would be picked up by consumers for many years to come.

The amendment would, in effect, require the Government to introduce an additional power sector target in the form of an obligation on electricity suppliers in the United Kingdom. As has been referred to, the Conservative manifesto, upon which this Government were elected, stated that we will not support additional distorting and expensive power sector targets, but it is our belief that this is what the amendment would lead to.

Noble Lords will know that setting a decarbonisation target for the power sector, which would be the effect of the amendment, was debated in this House during the passage of the then Energy Bill 2013, which has been referred to, and the then Infrastructure Bill 2015. The topic of power sector decarbonisation targets was also discussed during the Committee stage of this Bill. In that discussion, I set out the Government's intention not to set a power sector decarbonisation target, following that manifesto pledge. As has been confirmed, I also wrote to noble Lords after that further reiteration of the position, explaining that, instead, the Government have already committed to set out totals for the levy control framework beyond 2020, providing a basis for electricity investment into the next decade. I shall not restate the position on contracts for difference, as I think it is already clear that we are committed to making a statement on that this autumn. Therefore, I know that noble Lords will be familiar with the arguments against setting a target such as this.

We have an extensive range of targets at the domestic, EU and international levels. These require action across the economy to meet targets in 2020, 2030 and 2050 on carbon, renewables and energy efficiency. Domestically, we have a legally binding target to reduce greenhouse gas emissions by 80% by 2050. We have carbon budgets setting out targets to 2027 and will be setting a further budget next year, covering the period to 2032. We are also subject to EU targets on carbon, which cover 2020 and 2030. On renewables, these run to 2020 and include interim milestones along the way. Internationally, we are subject to the requirements of the Kyoto Protocol and the compliance periods that these set up.

These targets are comprehensive, far-reaching, and mutually reinforcing. What makes the United Kingdom unusual by comparison with our European partners is the fact that we have a carbon budget system with comprehensive reporting and independent scrutiny. Investors want to know that we have clear, credible and affordable plans. The CBI has said that clarity on future financial support for low-carbon electricity will be more important than targets in driving investment. That is why we have said that we will set out totals for the levy control framework beyond 2020, providing a basis for electricity investment into the next decade, as well as setting out plans in the autumn in respect of future contract for difference allocation rounds.

In relation to Amendment 78T, I acknowledge that it is important that developers and investors have some foresight as to the frequency of CFD allocation rounds. However, this must be balanced with LCF budget availability, which, as noble Lords know, is funded by a levy on consumer bills. The function of the levy control framework is to limit the amount paid by consumers. It is therefore crucial that the Government are able to take decisions in the light of the latest evidence around deployment projections and costs.

The United Kingdom is continuing to make progress towards the 2020 renewables target of 15% of final energy consumption from renewable sources, with provisional 2014 figures showing that we are on target to meet the 2020 target. No carbon intensity targets for electricity generation have been set in order that we retain flexibility around how we achieve our 2050 target. Committing to annual CFD allocations, even only in certain circumstances, would inhibit the Government's ability to respond to evidence around levels of deployment in renewable electricity generation, costs to consumers and opportunities in other sectors, such as heat and transport.

The noble Baroness's amendment would unnecessarily commit the Government to a course of action that would neither benefit the consumer nor provide any certainty to renewable energy generators or investors. We are committed to our energy targets and continue to make progress towards meeting them. For this reason, I do not accept the amendment.

Amendment 78UA seeks to make a fundamental change to the Climate Change Act which—as, in fairness, I think the noble Baroness acknowledged—runs contrary to how the carbon budget regime was designed and implemented by the last Labour Government. The noble Baroness played a significant part in that, I know. I think that this is much more than a small, technical amendment and it has huge implications for the Climate Change Act. It changes the focus of the United Kingdom's approach to decarbonisation and, I believe, sends a wrong message about our faith in the

EU emissions trading system. I may have misquoted the noble Baroness in terms of it being a radical change. If I did, I apologise. I think that it is a radical change. She is shaking her head, so I have misinterpreted her position and I apologise for that.

We believe that the amendment would make a fundamental change to the basis of carbon budgets and, if it were accepted, it is likely that we would need to revisit the levels of all current budgets. It would be an unnecessarily and overly burdensome process, as carbon budgets reflect the EU ETS.

Instead, we want to focus on driving the action to deliver decarbonisation at least cost. We are committed to ensuring that the United Kingdom continues to do its part to tackle climate change in line with the Climate Change Act and international obligations. However, we want to do this as cost-effectively as possible to make sure that our energy is secure and affordable, as well as lower carbon.

The EU emissions trading system is a central component of the United Kingdom Government's policy for delivering emissions reductions in the UK and further afield in a cost-effective and technologically neutral way. The EU emissions trading system is designed to deliver least-cost decarbonisation of particular sectors across the EU, and we are supportive of this approach. We are also supportive of international efforts to price carbon, such as the EU emissions trading system, which is the first, and largest, cap-and-trade system of allowances for emitting greenhouse gases in the world.

We recognise that the EU emissions trading system requires reform, and the United Kingdom has been one of the leading advocates of measures to strengthen the scheme, such as negotiating the market stability reserve. However, on what is, I think, at the very least a significant change, we need to beware of throwing out the baby with the bath-water. We do not want to imply a loss of faith in the EU emissions trading system as a means of achieving least-cost decarbonisation by decoupling our carbon budget regime from it. Instead, we are focused on continuing to work with other member states to strengthen the EU emissions trading system.

Finally, it must be noted that our approach is in line with the Committee on Climate Change's advice on the use of emissions trading system allowances. It renewed its advice in 2013 that we should include emissions trading system allowances in the net carbon account and proposed an approach for doing so, which the then Government broadly accepted.

My noble friend Lord Howell made significant points during the debate about ensuring that we keep energy affordable. I think that this would jeopardise that, at the very least.

In the light of those comments, I hope that the noble Baroness and the noble Lord have found my explanation reassuring and will not press their amendments.

Baroness Worthington: My Lords, I am grateful to the Minister for his response and to the noble Lord, Lord Teverson, for his support for this amendment and for lending his name to it.

I am afraid that I am not reassured. I have listened to and understood the argument. However, it is not a radical change but an important change—there is a distinction there.

In answer to the specific question from the noble Lord, Lord Howell, about whether it will be cheaper to do it this way, I honestly believe that, for UK plc, it will be. At present, the way the budgets work is that, essentially, we pay other people to decarbonise and then we import the certificates. That can be done for a while, and it makes economic sense to do so. In fact, for the first three carbon budgets, while the system has been bedding down, it probably made sense to use a traded system—the rules and the allocations from Europe were clearer and we were all finding our way to see whether the EU ETS would deliver. The closer that we get to our 2050 target, the more that that approach starts to be a false economy. We find then that, potentially, we are repeatedly paying other countries to decarbonise and not investing in our own country.

Lord Bourne of Aberystwyth: I can follow the argument that the noble Baroness is making very clearly. However, does she not agree that the great danger with the proposal is that it takes away the flexibility of being able to use the trading system? At the moment, it does not have to be used but it can be used if it is appropriate. If we were to go down this path, we would be throwing away that tool.

Baroness Worthington: I am grateful to the Minister for that question. However, that is not the case. There are two versions of flexibility in the Climate Change Act: there is an overarching flexibility created by the budget system, and there is a flexibility that the Government maintain to settle their accounts using credits that they can then take from the EU budget that they are given, by simply not auctioning them, or purchase from offsets that are relatively cheap. There is always a limited amount of offsetting that the Government are able to do if they find themselves out of an account. This would not change that; it simply changes how we count emissions and what counts towards the budget. In this sense, we are saying that actual emissions—what happens in our territorial waters—is what we count. Then, we do the settling up, using credits, to a certain extent, as the budget management system. That is an important point and I hope that people can follow it.

As to whether this would take us out of step with other countries, as I have said, other countries use actual accounts for their targets. Germany is the most obvious example, where there are domestic climate change targets that go beyond European targets. There is a reason for that: Germany is investing in business, infrastructure, companies and enterprise that will be future proofed and provide an export market long into the future. Germany has been very smart about that. We, on the other hand, have a slightly more liberalised market view. In this case, because the ETS is not working as it was meant to, that is potentially damaging our ability to stay within our targets, to do so cost-effectively and to drive investment here. We want to see jobs here and money flowing here, not necessarily pass money overseas for the abatement that someone else has invested in.

For those reasons, I believe that this is an important but not radical move that squares the circle. In response to Amendment 78S, the Minister said that we do not

[Baroness Worthington]
want to set any more distorting new targets in the power sector. I am happy to concede that point. However, this is a very good way of doing what we all agree that we need to do, which is to create investor certainty that this is an enterprise that we remain committed to. As we get closer and closer to that 2050 target, we need to start looking not just at what is happening Europe-wide but at what is happening in the UK economy, so that we are benefitting from the supply chains, the investment and the projects happening here.

I hope that I have made it quite clear why I think this is important, why it is timely and why it has arisen in the course of this Bill. I am encouraged by the support that I have seen from the House. I feel confident that I can answer the question from the noble Lord, Lord Howell: this will be cheaper in the long run; it will be cheaper for UK plc to do this in a way that enables us to drive investment here. For those reasons, I am minded to test the opinion of the House on Amendment 78UA.

Amendment 78S withdrawn.

Amendments 78T not moved.

Amendment 78U withdrawn.

Amendment 78UA (in substitution for Amendment 78U)

Moved by ***Baroness Worthington***

78UA: After Clause 66, insert the following new Clause—

"Emissions trading: United Kingdom carbon account

In section 27 (net UK carbon account) of the Climate Change Act 2008, after subsection (2) insert—

"No carbon units deriving from the operation of the EU Emissions Trading System may be credited to or debited from the net United Kingdom carbon account for any period commencing after 31 December 2027.""

Baroness Worthington: I beg to move, and I seek the opinion of the House.

6.47 pm

Division on Amendment 78UA

Contents 189; Not-Contents 166.

Amendment 78UA agreed.

Division No. 2

CONTENTS

Adams of Craigielea, B.
Addington, L.
Allan of Hallam, L.
Allen of Kensington, L.
Alli, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Ashdown of Norton-sub-Hamdon, L.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bassam of Brighton, L. [Teller]
Beecham, L.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Brooke of Alverthorpe, L.
Brookman, L.
Browne of Belmont, L.
Burnett, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Cashman, L.
Chidgey, L.
Clancarty, E.
Clark of Windermere, L.
Clinton-Davis, L.
Collins of Highbury, L.
Corston, B.
Cotter, L.
Crawley, B.
Cunningham of Felling, L.
Davies of Oldham, L.
Davies of Stamford, L.
Dean of Thornton-le-Fylde, B.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Dubs, L.
Dykes, L.
Elder, L.
Falconer of Thoroton, L.
Falkner of Margravine, B.
Farrington of Ribbleton, B.
Faulkner of Worcester, L.
Foulkes of Cumnock, L.
Gale, B.
Garden of Frognal, B.
German, L.
Gibson of Market Rasen, B.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Gould of Potternewton, B.
Grantchester, L.
Greaves, L.
Grender, B.
Grocott, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Harrison, L.
Hart of Chilton, L.
Haworth, L.
Hay of Ballyore, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hollis of Heigham, B.
Howarth of Newport, L.
Howells of St Davids, B.
Howie of Troon, L.
Hoyle, L.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Irvine of Lairg, L.
Janke, B.
Jones, L.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kinnock, L.
Kinnock of Holyhead, B.
Kirkhill, L.
Kirkwood of Kirkhope, L.
Kramer, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Lister of Burtersett, B.
Loomba, L.
Low of Dalston, L.
McAvoy, L.
McDonagh, B.
McFall of Alcluith, L.
McIntosh of Hudnall, B.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
McNally, L.
Maddock, B.
Manzoor, B.
Marks of Henley-on-Thames, L.
Maxton, L.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Monks, L.
Morgan of Ely, B.
Morgan of Huyton, B.
Morris of Handsworth, L.
Morris of Yardley, B.
Newby, L.
Northover, B.
Nye, B.
O'Neill of Clackmannan, L.
Parekh, L.
Patel of Blackburn, L.
Pendry, L.
Pitkeathley, B.
Prescott, L.
Prosser, B.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Reid of Cardowan, L.
Rennard, L.
Richard, L.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rosser, L.
Rowlands, L.
Royall of Blaisdon, B.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sharp of Guildford, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Stephen, L.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Symons of Vernham Dean, B.
Taverne, L.
Temple-Morris, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Tope, L.
Tordoff, L.
Touhig, L.
Truscott, L.
Tunnicliffe, L. [Teller]

Tyler, L.
Tyler of Enfield, B.
Wall of New Barnet, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Watson of Invergowrie, L.
Watson of Richmond, L.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wood of Anfield, L.
Woolmer of Leeds, L.
Worthington, B.
Wrigglesworth, L.
Young of Old Scone, B.

NOT CONTENTS

Aberdare, L.
Ahmad of Wimbledon, L.
Altmann, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor, V.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Bates, L.
Berridge, B.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browning, B.
Byford, B.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Chester, Bp.
Chisholm of Owlpen, B.
Colville of Culross, V.
Colwyn, L.
Cooper of Windrush, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Crickhowell, L.
De Mauley, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Dunlop, L.
Eaton, B.
Eccles, V.
Eccles of Moulton, B.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Faulks, L.
Fink, L.
Fookes, B.
Forsyth of Drumlean, L.
Fowler, L.
Framlingham, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L. [Teller]
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Glentoran, L.
Gold, L.
Goodlad, L.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greenway, L.
Hamilton of Epsom, L.
Harding of Winscombe, B.
Hayward, L.
Helic, B.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
King of Bridgwater, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Listowel, E.
Liverpool, E.
Lothian, M.
Lyell, L.
McColl of Dulwich, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mancroft, L.
Marlesford, L.
Masham of Ilton, B.
Mawson, L.
Meacher, B.
Mobarik, B.
Mone, B.
Moore of Lower Marsh, L.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Cathain, B.
Perry of Southwark, B.
Polak, L.
Popat, L.
Prior of Brampton, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Rogan, L.
Russell of Liverpool, L.
Ryder of Wensum, L.
Sanderson of Bowden, L.
Seccombe, B.
Selkirk of Douglas, L.
Selsdon, L.
Sharples, B.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Skelmersdale, L.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Trees, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Verma, B.
Wakeham, L.
Wasserman, L.
Wellington, D.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

6.59 pm

Amendment 78V

Moved by ***Baroness Worthington***

78V: After Clause 66, insert the following new Clause—

"Capacity mechanism

Fossil fuelled generating plant granted 15 year capacity contracts under the capacity mechanism established under the Energy Act 2013 shall be subject to—

(a) a carbon price;

(b) a requirement to fit best available technologies to mitigate air pollutants; and

(c) the Emissions Performance Standard as established in the Energy Act 2013."

Baroness Worthington: My Lords, I reassure the Minister that this is not a matter on which I intend to seek the opinion of the House. It is an issue which I believe we need to discuss in the context of an energy Bill, but I hope that a discussion can be had outside the Chamber. I just wanted to alert the House to the issue because it is materially relevant to the energy policy as it is being played out.

One pillar of the Energy Act 2013 was the introduction of a new support mechanism to help fund extra capacity in the market, designed to complement the contracts being signed for low carbon. It is a very detailed policy with many aspects.

It has come to my attention that the annual auctions of new capacity under the capacity mechanism are bringing forward rather a lot of applications for 15-year contracts from distributed, very small-scale generating plant. Many of those plants are diesel-powered and many others are open-cycle gas turbines of a small scale which are much less efficient than the full-scale CCGTs that are normally built for capacity.

The amendment was tabled to enable us to have a debate on the Floor of the House on an issue which is time-critical, because the next auction will take place in December. Three gigawatts' worth of small generating plant are prequalified. That is on top of a number of megawatts that were granted in the previous auction that took place last year. So my fear is that, over time, we are starting to see a substantial amount of distributed thermal energy coming forward under the capacity mechanism. Of course, the capacity mechanism creates

[Baroness Worthington]
an incentive to new-build. Having read the Government's gas strategy, I believe that the Government intended those 15-year contracts to be made available to larger-scale, very efficient, state-of-the-art gas turbines to be there as back-up and to provide us with base-load power. Instead of that, we are seeing coming forward, as a result of significant market distortion, investment in much smaller kit that is far less efficient and much more polluting. The danger is that this drift towards distributed diesel generators and open-cycle gas will significantly affect our ability to decarbonise.

One argument that will be made will be that such generators are there just to catch the peaks and will not operate more than that. However, there is nothing in government policy or legislation that prevents them operating for far longer periods. My fear is that, because of the scale of these plants, they will not be paying a carbon price: they are not subject to the EU carbon price, nor are they subject to the Government's carbon price support mechanism, which tops up the EU price. That is a significant distortion that we should be mindful of. Markets are nothing if not efficient and nothing if not good at finding loopholes. It will be an unintended consequence of the capacity mechanism rules as they are currently drafted that this will be the market's answer to our capacity issues.

I visit my mother-in-law in India. Building an energy system in which diesel generators are providing back-up is not a modern-economy solution. There are many other ways to provide safe and reliable power. We should not rely on diesel generation, which is much more what you would find in developing countries that have fewer options and are not able to deliver secure and stable supplies of electricity. We have been doing that for decades and have a world-class grid that enables us to do it. So we are concerned that while we are not letting contracts for clean power, we are continuing to let contracts for traditional fossil-fuelled power, and that there is this loophole in the capacity mechanism rules which allows a far greater volume than anyone would have anticipated of small distributed diesel generators.

In addition to paying no carbon price, such generators also have very loose air-quality standards applied to them—far looser than are applied to larger plant. I do not need to bring the House's attention to the fact that we have had a rather high-profile problem with diesel in the past few months. "Dieselgate" and VW's cheating on the standards is a serious issue which helps to explain why we might be struggling to hit our legally binding air-quality standards in the European Union, because if everyone is cheating it is no wonder that our emissions are higher than we thought they should be according to our inventory calculations. So we have an air-quality issue; in fact, the Government have been taken to court over their failure to comply with those air-quality standards. Having a large number of distributed diesel generators operating potentially for long periods through the winter months will not do anything to alleviate our air-quality problems. There is a definite correlation between exposure to the particulates that emerge from diesel and ill-health, especially in younger and older people. So, not just for climate reasons but for air-quality reasons, we should not allow a huge proliferation of this very inefficient and very polluting smaller generating plant—and that we should be giving them 15-year contracts really concerns me.

We know that all Governments in the UK hold as sacrosanct the fact that if you sign a contract with the private sector, you will not then go back on it. That is a tenet that we hold dear in order to preserve our investor credibility. Once those contracts are signed, there will be nothing we can do for 15 years, which worries me greatly. I am not expecting a full and detailed response from the Minister today; I hope that I can just convey the reason for my concern. I hope that I will hear some reassurance that the department is alive to this problem, that it is indeed seen as an unintended consequence and a loophole, and that we are not simply saying, "Ah, well, that's what the market's delivering". That is not sufficient, especially as there are distortions in relation to carbon and not paying the carbon price, and especially in relation to air quality.

Amendment 78V would therefore require that any fossil fuel-generating plant granted a 15-year capacity contract under the capacity mechanism created under the Energy Act 2013 would be subject to a carbon price, so that the Government would apply a taxation policy to such plant; that such plant would be required to fit best-available technology to mitigate air pollutants; and that the Government's emissions performance standard as was introduced in the Act would apply as well, which would act as a constraint and a break on the number of hours that such stations could run—it would not be a full answer to the problem because it would still allow them to run for considerable periods, but certainly it would not allow them to run unimpeded for an entire year.

Given the position of leadership that the UK rightly enjoys in terms of our sensible policies for decarbonisation and our Climate Change Act, the idea that the energy policy in front of us should lead to us relying on diesel generators fills me with alarm. I hope that we can do something collectively, across all sides of the House, to address this issue before the contracts are signed in December. I think that I have said enough. I do not wish to detain the House any further and I look forward to hearing a response from the Government.

Lord Teverson: My Lords, I shall not detain the House very long. I am not sure that the amendment as written is precisely right, but the important principle that comes out of it—I come back to what I said briefly at Second Reading—is that, at the end of the day, the UK economy has to crowd out coal by other generating fuels. Before the election, the Prime Minister, the then Deputy Prime Minister and the then leader of the Opposition together bravely pledged that coal should come out of UK generating capacity. For whatever reason, after the election only one of those people is left in office—the Prime Minister—so on his shoulders rests that responsibility as our Prime Minister to achieve that pledge.

I do not see a great deal of movement from the Government in fulfilling it. It needs to be addressed and this amendment goes some way towards that. But it is a much larger issue which we could solve so easily, probably by using an active emissions performance

standard rather than one that is fixed, as it is at the moment, in primary legislation. I hope that the Government—indeed, the Prime Minister and the Cabinet Office—will bring forward proposals to deliver this. In Scotland, they talk about vows; I see this as a vow that is fundamental to our climate change obligation not just to the UK but to the rest of the world.

The Lord Bishop of Chester: My Lords, once again very briefly, could the Minister also make some comment in his response about what the cost to the consumer will be of electricity which is generated by plant under contracts under the capacity mechanism?

Lord Bourne of Aberystwyth: My Lords, I thank all noble Lords who have participated in the debate on Amendment 78V and the noble Baroness, Lady Worthington, for introducing it. We missed each other late last night to discuss this amendment, but I am grateful that she rang before breakfast this morning so that we could discuss it then. That is how seriously we both take our jobs. Again, I am grateful to the noble Baroness because otherwise it would have taken us on the blind side that the amendment was coming up today. I am also grateful to the noble Baroness for what she has said in relation to this issue and for confirming that she will not push it to a vote. The comments made by the noble Lord, Lord Teverson, are right, but as framed there would be difficulties with the amendment anyway.

Perhaps I may say something about the purpose of the capacity market for the benefit of the House and then say something about the particular issue that has been raised. The purpose of the capacity market is to ensure security of electricity supply by providing all forms of capacity with the right incentives to be on the system and to deliver energy when it is needed. The first capacity market auction was successfully concluded in December 2014, contracting 49.3 gigawatts of capacity at a clearing price of £19.40 per kilowatt—and with that I have addressed the particular and very valid point raised by the right reverend Prelate. The outcome was great news for consumers, as fierce competition between participants drives down costs. The results will ensure that enough of our existing capacity will remain open at the end of the decade, as well as unlocking new investment.

I accept that there is an issue about emissions. Other government policies that were referred to by the noble Baroness, Lady Worthington, including the emissions performance standard and the carbon price floor, limit potential emissions from thermal plant for larger producers in keeping with our aims of decarbonising the power sector. For example, the emissions performance standard for larger generators limits carbon emissions to around half of that produced by unabated coal. The carbon price floor obviously provides an incentive for investment in low-carbon electricity generation. I accept that, as things stand, small generators are not covered by that. The department is aware of the issue, but we believe that the EPS represents the best way of looking at the smallest generators, perhaps within the review cycle for the EPS rather than in the context of the capacity market alone because that clearly seeks to ensure that the capacity we need is delivered. I am happy to discuss this further outside the Chamber. It is worth recognising that, at least at present, most of the small generators in the capacity market run for only a limited number of hours per year, but I appreciate that there is no guarantee on that. However, I recognise that this is an issue.

I turn now to what might have been the point that, given his background, the noble Lord, Lord Teverson, was referring to. There is not a state aid issue here. The capacity market state aid clearance is based on the current design of the mechanism, including the concept of technology neutrality, so accepting the amendment in its present form would have required state aid renotification, which as we know typically takes nine months or longer. That would have introduced uncertainty into the market and would have caused problems. But I am happy to continue a discussion on how to tackle what is a very real issue, and I thank the noble Baroness for her comments.

Baroness Worthington: I thank the Minister for his response, and our conversation was welcome just so that this did not come completely out of the blue. I am reassured by his comments and I think that this is something we can work on together to try to find a solution. I am certain that the wording I came up with was not perfect.

I would just say that state aid absolutely does require technology neutrality, and it is something that we need to think about in general for the whole of the EMR Bill. State aid clearance was on the basis of technology neutrality and that relates to the CFDs that we let as much as the capacity mechanism. I am grateful to the noble Lord for indicating that we can continue to work on this, and I am happy to withdraw the amendment.

Amendment 78V withdrawn.

7.15 pm

Clause 67: Regulations

Amendments 79 to 82

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

79: Clause 67, page 39, line 24, leave out paragraph (b)

80: Clause 67, page 39, line 25, at end insert "or

( ) regulations under section (Disclosure permitted after specified period)(1),"

81: Clause 67, page 39, line 25, at end insert—

"( ) regulations under section (Disclosure by OGA to certain persons)(6),"

82: After Clause 67, insert the following new Clause—

"Regulations and orders: disapplication of requirements to consult the OGA

(1) This section applies where the Secretary of State is required by this Act, the Petroleum Act 1998 or the Energy Act 2008 to consult the OGA before exercising a power to make regulations or an order.

(2) The requirement does not apply in relation to the first exercise of the power in the period of one year beginning with the date on which section 1 comes into force."

Amendments 79 to 82 agreed.

Clause 68: Commencement

Amendment 82A

Tabled by ***Lord Bourne of Aberystwyth***

82A: Clause 68, page 39, line 34, leave out "This Part comes" and insert "Sections 66, (Onshore wind power: circumstances in which certificates may be issued after 31 March 2016) and this Part come"

Lord Bourne of Aberystwyth: My Lords, in view of the earlier defeat of Clause 66, I shall not move this amendment.

Amendment 82A not moved.

Amendment 82B not moved.

Clause 69: Short title and extent

Amendment 83

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

83: Clause 69, page 40, line 3, after "amendment" insert "(other than an amendment of Part 1A of the Petroleum Act 1998)"

Amendment 83 agreed.

After the Schedule

Amendment 84

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

84: After the Schedule, insert the following new Schedule—

"Schedule

Abandonment of offshore installations

Petroleum Act 1998

1 Part 4 of the Petroleum Act 1998 (abandonment of offshore installations) is amended as follows.

2 Before section 29 insert—

"28A Restriction on abandonment

(1) A person to whom a notice may be given under section 29(1) in relation to an offshore installation or submarine pipeline may not abandon, or begin or continue the decommissioning of, the installation or pipeline unless an abandonment programme approved by the Secretary of State has effect in relation to the installation or pipeline.

(2) A person who without reasonable excuse contravenes subsection (1) is guilty of an offence."

3 (1) Section 29 (preparation of programmes) is amended as follows.

(2) After subsection (1) insert—

"(1A) The power to give a notice under subsection (1) is exercisable—

(a) on the Secretary of State's own motion, or

(b) at the request of any person to whom the notice may be given (whether or not the notice is given to that person)."

(3) After subsection (2) insert—

"(2A) A person to whom a notice under subsection (1) is given—

(a) must consult the OGA before submitting the abandonment programme to the Secretary of State, and

(b) must frame the programme so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying it out is kept to the minimum that is reasonably practicable in the circumstances.

(2B) When consulted under paragraph (a) of subsection (2A) the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) how to comply with paragraph (b) of that subsection."

(4) In subsection (3), after "such" insert "other".

4 (1) Section 32 (approval of programmes) is amended as follows.

(2) After subsection (2) insert—

"(2A) The modifications or conditions may (in particular) include modifications or conditions—

(a) which are intended (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) to reduce the total cost of carrying out the programme, provided that they do not increase the total costs to be met by any person who is to be subject to obligations under the programme or under any other abandonment programme;

(b) requiring the persons who submitted the programme to carry out and publish or make available to the Secretary of State and the OGA a review of the programme and its implementation including, where relevant, recommendations as to the contents and implementation of future abandonment programmes."

(3) At the end insert—

"(6) Before reaching a decision under this section the Secretary of State must—

(a) consult the OGA, and

(b) take into account the cost of carrying out the programme that has been submitted and whether it is possible to reduce that cost by modifying the programme or making it subject to conditions.

(7) When consulted under subsection (6)(a), the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) whether section 29(2A)(b) has been complied with and, if it has not been, modifications or conditions that would enable it to be complied with."

5 In section 33 (failure to submit programme), after subsection (3) insert—

"(3A) When preparing an abandonment programme under this section the Secretary of State must—

(a) consult the OGA, and

(b) frame the programme so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying it out is kept to the minimum that is reasonably practicable in the circumstances.

(3B) When consulted under paragraph (a) of subsection (3A), the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) how to comply with the requirement in paragraph (b) of that subsection."

6 (1) Section 34 (revision of programmes) is amended as follows.

(2) After subsection (4) insert—

"(4A) A person who makes a proposal under subsection (1) that is likely to have an effect on the cost of carrying out the programme must frame it so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision

for collaboration with other persons, or otherwise) that the cost of carrying out the programme as proposed to be altered is kept to the minimum that is reasonably practicable in the circumstances.

(4B) Where the Secretary of State makes a proposal under subsection (1)(a) the purpose of which is to reduce the total cost of carrying out a programme, the proposal may not increase the total costs to be met by any person who is to be subject to obligations under the programme or under any other abandonment programme."

(3) After subsection (7) insert—

"(7A) If it appears to the Secretary of State that what is proposed under subsection (1) is likely to have an effect on the cost of carrying out the programme, the Secretary of State must, before making a determination under subsection (7)—

(a) consult the OGA, and

(b) take that effect into account.

(7B) When consulted under subsection (7A)(a) the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) whether subsection (4A) applies and, if so, whether it has been complied with."

7 After section 34 insert—

"34A Amendment of programmes

(1) This section applies where an abandonment programme approved by the Secretary of State includes provision by virtue of which the programme may be amended.

(2) A person who proposes to make an amendment under such a provision that is likely to have an effect on the cost of carrying out the programme must frame the amendment so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying out the programme as proposed to be amended is kept to the minimum that is reasonably practicable in the circumstances.

(3) If it appears to the person who proposes to make the amendment that subsection (2) applies, the person must consult the OGA before making the amendment.

(4) When consulted under subsection (3) the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) whether subsection (2) applies and, if so, whether it has been complied with.

(5) Any person who has the function of approving amendments made under a provision mentioned in subsection (1) must, when exercising the function, take into account the effect of the proposed amendment on the cost of carrying out the programme."

8 After section 36 insert—

"36A Reduction of costs of carrying out programmes

(1) This section applies where an abandonment programme approved by the Secretary of State has effect in relation to an installation or pipeline.

(2) The Secretary of State may, for the purpose of reducing the total cost of carrying out the programme, by written notice require any person who submitted the programme to take, or refrain from taking, action of a description specified in the notice.

(3) The notice may, in particular, require—

(a) changes to the times at which the measures proposed in the programme are to be carried out;

(b) the persons who are under a duty to secure that the programme is carried out to collaborate with other persons.

(4) The programme, and any condition to which it is subject, has effect subject to any notice given under this section.

(5) A notice given under this section may not increase the total costs to be met by any person who is to be subject to obligations under the programme or under any other abandonment programme.

(6) The Secretary of State may not give a notice to a person under this section without first giving the person an opportunity to make written representation as to whether the notice should be given.

(7) A person to whom a notice is given under this section who without reasonable excuse fails to comply with the notice is guilty of an offence.

(8) If a notice under this section is not complied with, the Secretary of State may—

(a) do anything necessary to give effect to the notice, and

(b) recover from the person to whom the notice was given any expenditure incurred under paragraph (a).

(9) A person liable to pay any sum to the Secretary of State by virtue of subsection (8) must also pay interest on that sum for the period beginning with the day on which the Secretary of State notified the person of the sum payable and ending with the date of payment.

(10) The rate of interest payable in accordance with subsection (9) is a rate determined by the Secretary of State as comparable with commercial rates."

9 In section 37 (default in carrying out programmes), after subsection (1) insert—

"(1A) If it appears to the Secretary of State that the proposed remedial action is likely to have an effect on the cost of carrying out the programme, the Secretary of State must—

(a) consult the OGA before giving a notice under subsection (1), and

(b) take that effect into account when deciding whether to give the notice.

(1B) When consulted under subsection (1A)(a), the OGA must consider and advise on the likely effect of the proposed remedial action on the cost of carrying out the programme."

10 In section 40 (offences: penalties)—

(a) after "section" insert "28A,", and

(b) after "33," insert "36A,".

11 (1) Section 41 (offences: general) is amended as follows.

(2) In subsection (1)—

(a) after "section" insert "28A,", and

(b) after "33," insert "36A,".

(3) In subsection (2)—

(a) after "section" insert "28A,", and

(b) after "33," insert "36A,".

(4) In subsection (3)—

(a) after "section" insert "28A,", and

(b) after "33," insert "36A,".

(5) In subsection (5), after "section" insert "28A, 36A or".

12 (1) Section 42 (validity of Secretary of State's acts) is amended as follows.

(2) In subsection (2), after paragraph (e) insert—

"(ea) the giving of a notice under section 36A(2);".

(3) In subsection (5), after paragraph (e) insert—

"(ea) in relation to the giving of a notice under section 36A(2), means the requirements of section 36A(6);".

Energy Act 2008

13 (1) Section 30 of the Energy Act 2008 (abandonment of carbon storage installations) is amended as follows.

(2) In subsection (1), after "subsections" insert "(1A),".

(3) After that subsection insert—

"(1A) For the purposes of subsection (1), the amendments made to Part 4 of the 1998 Act by Schedule (Abandonment of offshore installations) to the Energy Act 2016 are to be disregarded."

(4) For subsection (4A) substitute—

"(4A) The power in subsection (4)—

(a) may (in particular) be exercised to make modifications corresponding to the amendments made by Schedule (Abandonment of offshore installations) to the Energy Act 2016, and

(b) is subject to section 30A.""

Amendment 84 agreed.

In the Title

Amendments 85 to 87

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

85 line 2, after "infrastructure;" insert "to make provision about the abandonment of offshore installations, submarine pipelines and upstream petroleum infrastructure;"

86 line 2, after "infrastructure;" insert "to extend Part 1A of the Petroleum Act 1998 to Northern Ireland;"

87 line 2, after "infrastructure;" insert "to make provision about the disclosure of information for the purposes of international agreements;"

Amendments 85 to 87 agreed.

English Votes for English Laws

Motion to Take Note

7.17 pm

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

That this House takes note of the Government's proposals on English Votes for English Laws.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, as always I am pleased to be able to open a debate in your Lordships' House. The debate this evening is about the Government's proposals for English votes for English laws. The last time we convened to discuss this subject, I made it clear that I was keen for the House to have a further opportunity to put its views on the record before the other place makes its decisions on the proposals, and that is what we are here to do. Noble Lords will know that the Government are passionate supporters of the Union. We are determined to strengthen it and secure its future, and greater devolution to all parts of the country is part of that plan. It runs alongside measures and the commitments and promises we have made to the people of Scotland and the other powers that we are devolving to other parts of the United Kingdom. We believe that for this settlement to be fair and lasting, it means giving English MPs a decisive say on matters that affect only their constituents.

That is what our proposals for English votes for English laws will do. It will give the English a strong voice on English matters while at the same time respecting the right of every MP from every part of the United Kingdom to debate and vote on every piece of legislation in the House of Commons.

Lord Foulkes of Cumnock (Lab): My Lords, I am sorry to intervene at such an early stage. The noble Baroness will recall that this House divided on a Motion to set up a Joint Committee of the Commons and the Lords. I wonder if she can tell the House what response we have had from the Commons to that proposal.

Baroness Stowell of Beeston: The noble Lord is quite right and I can assure him that I will come to that matter in my remarks. There is no way that I would seek to ignore that important point.

As I have said, our proposals will give the English a strong voice on English matters and we will respect the right of every MP from every part of the UK to debate and vote on every piece of legislation in the House of Commons. What we would argue is that our approach is pragmatic and proportionate. As noble Lords know, we do not propose to give English MPs a Parliament or the right to initiate legislation alone. What we are proposing instead is simply that where legislation affects England or England and Wales only, it cannot progress against the will of English or English and Welsh MPs. Just as the proposals are pragmatic, so they are flexible. Before the Summer Recess, Members of both Houses called for more time for reflection, and my right honourable friend the Leader of the House of Commons pledged to take the proposals away and consider them further, and that is what he has done. In that time he has listened to representations from a variety of sources, and has given evidence to and engaged with several committees in the other place. He has now come forward with his revised proposals which take account of the concerns raised. The end result is a workable and sensible model to deliver English votes for English laws.

Lord Wallace of Tankerness (LD): My Lords, I have raised the question before of what happens when your Lordships' House passes an amendment to a Bill which then goes, in the normal way, to the House of Commons and the House of Commons agrees with the amendment, but English, or English and Welsh, Members do not. As I understand the proposals, that would not then become law. However, we have a piece of legislation—a clause, perhaps—that has been passed by both Commons and Lords. What are the implications of the Government's proposals for the sovereignty of Parliament; and what actually constitutes law?

Baroness Stowell of Beeston: Your Lordships are asking questions that I am going to cover: I can assure you that this speech will not take me long. We have all had a busy day and want to crack on. The simple answer to the noble and learned Lord is that this House will consider legislation in exactly the same way as we do now, and when the Commons considers our amendments it will send us a message. I will deal with the noble and learned Lord's point in a moment, when I come to precisely how things are going to work.

This is the fourth time that we have debated these proposals. I do not want to go through them all again in great depth, but I will remind noble Lords of the four main stages where they bring about changes to the work of the other place. The first is the certification

process, where Mr Speaker will decide whether these new provisions are engaged when a Bill reaches the House of Commons. In previous debates, some noble Lords were concerned about the burden that that might place on Mr Speaker, as well as the procedure in the Commons. In response, the proposals have been revised to allow him to draw upon the advice of two members of his Panel of Chairs, nominated for the purpose, enabling him to call on assistance where he thinks it is required.

The second significant element of these proposals is the introduction, for Bills which wholly affect England only, of an England-only Committee stage. We consider that to be a simple, effective way to strengthen the voice of English MPs in the legislative process and so that element remains unchanged.

The third is the inclusion of a new step in the legislative process—a legislative Grand Committee—for Bills affecting England, or England and Wales only, before Third Reading. This will ensure that such legislation can pass only where a majority of English, or English and Welsh, MPs agree to it. However, our revised proposals set out explicitly that although only English, or English and Welsh, MPs may vote in legislative Grand Committee proceedings on Report, all MPs will be able to speak and contribute in that Committee. Members of the other place were concerned to make it absolutely clear that that was the case and my right honourable friend the Leader of the Commons has revised the proposals to do just that.

Finally, returning to the point made by the noble and learned Lord, where our amendments are considered in the other place, and the English votes for English laws procedures are engaged, although all Members of Parliament will vote on them where they affect England, or England and Wales only, they will need the support of a double majority in the House of Commons of both the whole House and of English, or English and Welsh, MPs in order to pass. This too remains unchanged.

Under these proposals, MPs from across the United Kingdom will continue to vote at Second Reading, in most Committees, on Report and at Third Reading and when considering Lords amendments.

Lord Forsyth of Drumlean (Con): My Lords, I am most grateful to my noble friend for giving way. Would the English issues which this English Grand Committee would deal with include English income tax?

Baroness Stowell of Beeston: That is something which we have clarified. The English votes for English laws procedures will relate to English tax measures. My noble friend asked this question last time we debated the subject. The amended procedures, which the other place will debate tomorrow, will clarify that English votes for English laws procedures will apply on taxation matters which relate only to England. The way in which MPs consider supply estimates remains unchanged: all MPs will be involved in supply estimates in the same way in the future as they do now. My noble friend rightly made the point about English taxation when we debated this last time, and the greater devolution powers that will be in place for Scotland. We have clarified this for those who quite rightly want to know that that is the case.

Lord Forsyth of Drumlean: What if a Government have to raise taxation through income tax? If we had a Labour Government who relied on Scottish MPs for their majority but did not have a majority in England, would they be unable to get their income tax proposals through the House of Commons because there would, in effect, be a veto from the English MPs? Does that not drive a coach and horses through the whole system?

Baroness Stowell of Beeston: What I would like to do, if my noble friend will allow me, is to finish laying out the basic provisions and propositions as they have been put forward by the Government and will be considered tomorrow. I will wind up this debate and will be absolutely clear in my closing remarks.

As well as being pragmatic and proportionate, these proposals are being introduced in a way which allows some flexibility. Should they be approved by the House of Commons tomorrow, they will be subject to a rigorous process of review to make sure they work as intended. That reflects just how much we want to get them right and how the spirit of careful consideration and reflection shown so far will continue as we move forward. That review process will not be a matter just for the House of Commons. I said before the summer—and I say again now—that these proposals are not intended to make any changes to the procedures of this House. The powers we have, and our role in the legislative process, will remain exactly the same. Yet our debates before the summer demonstrated the concerns of noble Lords, which were properly rooted in the desire to preserve the important role that this House plays in the legislative process. I see it as my duty to reflect that within the Government and that is why I am pleased to say that, after consultation with my right honourable friend the Leader of the Commons, he has invited the Constitution Committee of your Lordships' House to feed in its views on these changes. I am pleased to hear that that committee has considered the invitation and intends to take up the opportunity. I note that my noble friend Lord Lang will speak this evening and he may want to expand on this in his contribution.

I know that some noble Lords hoped to set up a Joint Committee to examine these issues, as the noble Lord, Lord Foulkes, has highlighted. I recall that there were very strong feelings expressed in your Lordships' House when we debated this in the summer. The House divided on the matter and that made it clear that noble Lords felt strongly about it. However, I see that an amendment has been tabled in the other place to the proposed English votes for English laws Standing Orders which proposes to agree to the Lords' message about a Joint Committee. Whether that amendment is selected will be a matter for Mr Speaker, but the Government's view about the Joint Committee could not be more clear. As I said during our previous debate, we were elected with a clear mandate to take forward English votes for English laws as part of a fair and balanced settlement in the United Kingdom. Just as we are getting on with devolution elsewhere, we believe that we have a clear mandate to get on with English votes for English laws as well. There will never be a perfect solution, which I said when we debated

[Baroness Stowell of Beeston]
this previously. This matter has been around for a long time. It has been debated for many years and considered in many forms.

As I said in the summer, there has been a lack of political will to see progress in this area. That is no longer the case. This Government want to get on with the job that we have been elected to do. I assure noble Lords that the involvement of the Constitution Committee is a good part of the review process. It is clear that that contribution will be important to the review process taking place next year. No one will be more vigilant than me in ensuring that any potential effects of these proposals on this House will be considered when we look at that review process. I will be mindful of the responsibility on me, not just as a member of Her Majesty's Government but also as the Leader of this House. I hope very much that I have been able to give noble Lords an opening. I will of course respond at the end of this debate with the assurance that noble Lords are looking for that we will have an opportunity to feed into the process of review in due course. I beg to move.

7.31 pm

Baroness Smith of Basildon (Lab): My Lords, I listened carefully to the noble Baroness and I have to say that I had a sense of déjà vu. I had heard a lot of the content of that speech before because it was similar to previous ones. I do not intend to raise all the constitutional arguments that I have raised before. Other noble Lords are far better qualified that I am to address such issues. Perhaps I may say that the concern of this House is not how these measures will operate in the House of Commons. A lot of the noble Baroness's speech was devoted to how they affect how legislation is dealt with in the House of Commons. The concern expressed by your Lordships' House is how it impacts on how we address issues and our role. I do not consider that that was addressed properly.

When the noble Baroness came to the end of her comments, she did not address the remarks made by the noble Lord, Lord Forsyth, which are of enormous concern. As she knows, any Government have a right to get their legislation through. They are unable to do so if they lose the right over their taxation powers for the UK. I suggest she comes back to that at the end of her comments because it was rather confused. She used the word "clarify" a number of times. She said that the proposal was pragmatic and proportionate, which has left me feeling rather puzzled.

The noble Baroness will recall our conversations in September just prior to the September sitting, for which this debate was originally scheduled. She made a decision to remove the debate on this issue from the September sitting and instead have a debate on the size of your Lordships' House. We did not concur with the judgment on that but she explained that one of the reasons she did not want this debate during that sitting was because we had not yet had a response from the House of Commons to our request for a Joint Committee to look at this issue. Last Friday, I wrote to the noble Baroness—the letter was delivered to her office—to ask her whether I was right to assume that a response was now available since the debate had been rescheduled for today. I have not had a response. Neither am I aware of there having been any response from the House of Commons to your Lordships' House on that request. I know that there is a debate tomorrow but that is not the issue. Why are we having the debate today? What has changed since September? Perhaps I can answer my own question: if we are very clear about it, the only reason we have this debate today is because tomorrow there is to be a debate in the House of Commons and the Government have tabled pages and pages of amendments to the Standing Orders to be voted on. Therefore, this convoluted and complicated measure will be voted on in the House of Commons tomorrow, without any response having been received by this House to our request for a Joint Committee.

I note what the noble Baroness said about Graham Allen's amendment on the setting up of a Joint Committee and how that would inform this House, but that will be tomorrow. We will not have the benefit at all of knowing the view of the House of Commons on this debate. I ask her to explain why the debate was scheduled for today when we have no response from the House of Commons and it is not debating the matter until tomorrow. I do not think that her response was good enough. I presume that she talks and liaises with Chris Grayling, the Leader of the Commons. It is very unfortunate that the Government's choice of timetable for debates in the House of Commons has not provided the opportunity before this debate to have the debate on the specific issue of whether it would have a Joint Committee with your Lordships' House to look at the implications. Why could that not have been done before now and before our debate? It would have been very helpful for informing this debate.

As the noble Lords, Lord Butler and Lord Lisvane, have said previously, there is no urgency about these changes. That is what I do not quite understand about why there is this rush for the debate tomorrow. The changes proposed by the Government will not make any difference in this Parliament. It would have been courteous to this House, as well as for good governance, for the Government to have allowed the House of Commons a full debate at our request. That worries me because it appears that we have a Government who do not like scrutiny or challenge, which are very important in ensuring good governance and good legislation.

I would be very happy to be corrected on this and I hope that the noble Baroness can do so but I am pretty sure that the Government will be whipping their MPs to vote against a Joint Committee when this is debated tomorrow. If she can tell me otherwise, I would be very grateful. I would give way instantly to allow her to correct me on whether the Prime Minister is whipping his Members to vote against a Joint Committee with your Lordships' House.

Baroness Stowell of Beeston: The noble Baroness is asking me to provide information on whipping arrangements in the other place. The point I make to the noble Baroness and to the House—I have already made it—is that I was very clear when we debated this matter in the summer that we as a Government did not support a Joint Committee to look at the constitutional implications of these measures. We felt,

and still feel, that there is no perfect solution to English votes for English laws, and that it is of great importance and goes to the heart of delivering fairness within the United Kingdom. We have come forward with a set of proposals which build on the many different debates that there have been on this matter. We want to implement them and ensure that they are properly reviewed after they have been tested in real time in this Parliament. That was our position then; it remains our position now. Clearly, it is for the House of Commons to consider the message that we sent and I am pleased that an MP has tabled an amendment in order for the House of Commons to consider that issue. But it is the Government's position that we do not support a Joint Committee.

Baroness Smith of Basildon: I always like to be helpful to the noble Baroness and give way when she asks, although it might have been better for her if I had not given her the opportunity on that occasion. Without being too unkind, she consistently refers to "we" and the Government. I understand that. But in this case—the proposal for the Joint Committee—the "we" in question is her role as Leader of this House. I say that in all sincerity. All I was asking was whether the Government were whipping their Members to vote against a Joint Committee, which would be very helpful to know. It was not a party-political issue when it was raised. It was raised by all parties and no parties.

Lord Tyler (LD): I wonder whether this is the right moment to remind the House and the Leader of the House that what happened after she made that Statement by the Government about their lack of support for this proposal, was that this House, of which she is a servant, voted by 320 votes to 139 votes to express clear support for that mechanism. Is she now saying that she is ignoring a vote of this House?

Baroness Smith of Basildon: I am not quite sure that that was an intervention on this speaker. The point I want to make to the noble Baroness is that, when a Motion is passed, it is the property of this body, of which she has the great opportunity to be Leader. I think she is probably not the only person in your Lordships' House who aspires to that.

I want to go back to this. If there had been such a debate in the House of Commons, it would have given some comfort to the noble Lord, Lord Butler, that it had been properly considered by Members of the House of Commons, even if it had been rejected. It would have given us some confidence that it had been considered and that it was their considered judgment that they did not think it necessary. If it had been rejected, the House of Lords would have been able to say, "Right, what should we do? What processes should we go through to reassure ourselves that we can properly investigate and assess whether those measures have any impact on how we operate?". That is all that was being asked. It would have been preferable to work together, for both Houses to examine this, rather than just one House—your Lordships' House—looking at it alone. A debate in the other place on this issue prior to today would have helped inform our deliberations and discussions this evening. Very important constitutional issues are being raised. If any constitutional issue is rushed when it is not essential or necessary to do so, every opportunity should be taken to consider it properly.

I ask the noble Baroness a very specific question: has she at any time raised the request from the House of Lords for a Joint Committee directly with the Leader of the House of Commons or the Prime Minister, either in Cabinet or in a Cabinet committee? I appreciate that it is not always straightforward and easy. As the noble Baroness indicated, she has a responsibility as a Cabinet member, as a member of the Government and as the Leader of the Government in your Lordships' House. However, she also, as she has been reminded by noble Lords, has a role as Leader of your Lordships' House across the parties. I appreciate that it can be difficult; every Leader has to navigate that. However, the point was made by the noble Lord, Lord Tyler, that the majority in favour of a Joint Committee was 101.

Lord Foulkes of Cumnock: It was 181.

Baroness Smith of Basildon: Sorry, it was 181. I am glad to be corrected on that. When the noble Baroness commented, she said that "some" noble Lords would have preferred a Joint Committee. More than 300 Lords wanted a Joint Committee. It was a massive majority. I do not recall another majority like that. She should have heard those voices loud and clear. All she said at the Dispatch Box today was, "We in the Government don't think it's a good idea". Actually, we in the House of Lords think that it is a very good idea.

The Government are suggesting a significant and unprecedented change to Standing Orders. As a House, we should not comment on the effect of the Government's proposed changes on the other place other than on how it affects the Government as a whole, not on how it affects debates in the other place. I know that the noble Baroness used the word "clarity", but there is a distinct lack of clarity as to how it affects us and in what way.

I listened carefully to what the noble Baroness said when she said that Chris Grayling, as Leader of the House of Commons, has invited our Constitution Committee to, in I think her exact words, "work with" the Commons Procedure Committee to monitor the working of the new Standing Orders in the first year. What does that mean? If he wants the committees to work together, what is so wrong about having a Joint Committee to look at these issues? If she is talking about looking at how the new Standing Orders work in the first year, can she tell the House which Bills the Government expect to be affected in the first year so that the committees will have an opportunity to evaluate how they will work?

I am disappointed to say this, but this whole saga is becoming symptomatic of the Government's approach more generally. It is not good government to rush such matters through without proper consideration. I would like to see much greater analysis of the constitutional position, as well as examination of the consequences, intended and unintended, so that any potential problems and difficulties are addressed now. As I said to her before, I would much rather know early on whether there are potential difficulties and problems so that

[Baroness Smith of Basildon]
they can be dealt with and addressed, rather than, two or three years down the line, having a constitutional crisis that nobody has thought how to address.

In raising this issue, as in others, it seems that the Government see any opposition as a threat or challenge, not as an opportunity to improve legislation or to get things right. I am convinced that the only reason why your Lordships' House raised this is because it was concerned that the Government should make good legislation and not get into a constitutional crisis over this. All Governments have the right to get their promised legislation through Parliament. That is an absolute. However, we have seen half-baked and half-formed legislation put before this House. I understand that that happens. I was a government Minister myself; we all know that these things happen. However, my serious concern, which is relevant to this debate and to the wider operations of your Lordships' House, is that the Government either seek to ignore what we do or overreact to the House of Lords expressing a different view and offering advice or suggestions to the Government.

On Monday evening, we had the Government briefing journalists that if this House voted against the tax credits statutory instrument then the House would be "suspended". That is nothing short of outrageous and appalling. Parliament does not belong to the Government and the Government cannot dictate how Parliament acts, just as the House of Lords does not and should not dictate to the Government how they act. We know our role—you could say we know our place—but we have a duty and a responsibility sometimes to get the Government to think again or look at something again. There needs to be a much greater understanding of our respective roles and respect for them.

Your Lordships' House made a simple, moderate request to the House of Commons that a Joint Committee be established to examine any possible effects of the proposed changes they are considering in the other place on the way we operate our business. That does not stop the Government proceeding with the proposals or hinder them from going ahead with them. It merely asks that we work together, in a Joint Committee, to find a way through any potential problems. What could possibly be so dangerous or difficult about that?

I have raised this simple question to the Leader of the House before in a different way: can she tell us what action she has taken to advocate and express the views of this House on this issue of how English votes for English laws affects the House of Lords? Can she tell me what response we have had, in the absence of any response to our request to the Commons so far?

Lord Forsyth of Drumlean: The noble Baroness made a very passionate speech, much of which I agree with, explaining the importance of maintaining the conventions between the two Houses of Parliament. Should that not extend to the convention that we do not vote on secondary legislation?

Baroness Smith of Basildon: If the noble Lord looks at the various documents in your Lordships' House from the committee on conventions, he will find that there are circumstances where it is appropriate to vote on secondary legislation—not many, I grant him; it is not something that should be done easily, regularly or without great thought. This is the point I am making: these are things that we have to look at, consider and not ignore in looking at our respective roles. I can assure him that we remain signed up to the Salisbury/Addison convention, but we also look for opportunities where we should act within those conventions and the guidance we have to challenge the Government to say, "Think again, look again; you do not always get it right first time".

7.47 pm

Lord Tyler: My Lords, I can respond directly to the noble Lord, Lord Forsyth, because I served on the Cunningham committee on conventions. There is no such convention on secondary legislation. Indeed, I recall a number of occasions when the Conservatives moved fatal, wrecking amendments to SIs during a Labour Government. His point can be dealt with quite quickly.

Normally my noble and learned friend Lord Wallace of Tankerness would lead for these Benches, but as Members will know he took a leading part on the previous debate on the Energy Bill. Since he has unique experience in this House, the other House and Holyrood—and in government at both ends of the country—I have benefited from his wisdom in preparing my contribution.

I and my colleagues have long argued that we need proposals for devolution within a federal constitutional framework, so we accept that there is a question to answer. We are not people who think that the English question is best not asked. Indeed, we gave evidence to the McKay commission on that basis—I was involved in that myself. We also acknowledge that the Leader of the Commons and the Procedure Committee in the other place have attempted to meet some of the concerns expressed in debates both in this House and in the other place during July. However, a number of other, very fundamental concerns remain. I shall touch on them speedily. Whether this is the only or best way to resolve them is still a matter for debate. I share the concerns of the noble Baroness, Lady Smith, and I will return to this point later.

Meanwhile, we should dispel some of the myths that grew up during the summer and were expressed in your Lordships' House. First, there was an illusion that somehow these proposals affect only the House of Commons, are entirely discrete to that House and are appropriately dealt with by a simple introduction of new Standing Orders. Frankly, that has been blown to smithereens, not least in your Lordships' House but also in the other place. I illustrate that by the fact that the revised proposals from the Leader of the Commons have now expanded the consideration of certified Motions or amendments relating to Lords amendments and other messages from one page to two. The proposed Standing Order 83O—not 830—which the Commons will consider tomorrow, is now very extensive. Page 27 of the new Explanatory Memorandum contains this firm statement:

"Paragraphs (2) to (6) ensure that English, or English and Welsh, MPs have the opportunity to veto Lords amendments that may make changes to the bill or parts of the bill that relate to England or England and Wales".

Colleagues will recall that we were told there was no veto. It is now very firmly there. As the noble Lord, Lord Forsyth, has already indicated, this could relate to some extremely important decisions of Parliament. But what this does is to provide for a veto by a subset of that House. For the first time, one House of Parliament is to be overruled by a devolved mechanism in the other. Members of your Lordships' House will note that there is now no hesitation in using the word "veto". Members of the Government are fond of quoting the core importance of the sovereignty of the full Westminster Parliament—that is, the full House of Lords and the full House of Commons. Here we have an example of where a subset has a veto over the full Westminster Parliament. If that does not raise important constitutional issues, what does? Indeed, perhaps we should reflect that, topically, Holyrood, Cardiff and Stormont could ask: "What are the implications for us of this change?". That brings me to my second major concern.

These proposals alter the delicate balance of power and responsibility between the two Houses of Parliament. Ministers have suggested—and it has been suggested again this evening—that in addition to monitoring and review undertaken by the Commons Procedure Committee at the end of this process, not in preparation for it, our own Constitution Committee might be involved in some way. I am the first to respect the work of the noble Lord, Lord Lang of Monkton, and his colleagues on our Constitution Committee. I just ask: what would happen if there were two quite separate investigations, monitoring and reviews of these processes, and they came to different conclusions? What do we expect will happen then? The Constitution Committee of our House reports to our House. The Procedure Committee reports to the House of Commons. What happens if they are not clearly in complete agreement? The noble Baroness has said that there will be a rigorous attempt to look at what has happened. I suggest that this is just a recipe for duplication, confusion and conflict between the two Houses.

I see that the noble Lord, Lord Young, is present. I am not sure what his new title is. He and I have sat on a number of Joint Committees. I think that they are an extremely important vehicle for the two Houses to reach sensible conclusions on all sorts of matters. Here is a classic case for this. The case for a Joint Committee of Peers and MPs proposed by the noble Lord, Lord Butler, and endorsed by a huge majority of your Lordships on 21 July, to which I have already referred, is clearly the sensible parliamentary way to approach this issue, with the whole of Parliament in mind, and to avoid the confusions that could otherwise occur.

As has already been said, tomorrow MPs will be invited to respond positively to the Motion of 21 July in your Lordships' House, which was carried by a large majority. Sadly, this will not take the form of a proper response from the Leader of the Commons on behalf of the Government. No doubt the Leader of this House will be able to explain in her response at the end of this debate why we have not had the courtesy of a proper response from the other House. Instead, as has again been referred to, there will be an amendment endorsed by, I gather, several Members of several parties. I have counted six who have signed up to this amendment in the name of Mr Graham Allen, which reads as follows,

"this House concurs with the Lords Message of 21 July, that it is expedient that a joint committee of Lords and Commons be appointed to consider and report on the constitutional implications of the Government's revised proposals to change the Standing Orders of the House of Commons in order to give effect to English Votes for English Laws, and that the committee should report on the proposals by 30 March 2016".

That is not kicking the issue into the long grass but is a very sensible approach, not least, of course, because the Government have already said that there is no huge urgency for this. They are not anticipating in the immediate future that there will be any Bill which raises these particular concerns and different issues for different parts of the United Kingdom. That brings me to my third point.

This is a classic case of the dangers of piecemeal, ad hoc attempts to deal with apparent anomalies in our only partially written and codified constitution. Remove one anomaly and you create a potential host of others. If any Member of your Lordships' House still thinks, after listening today, that this can be resolved in isolation, I suggest they look back at the debates in your Lordships' House and, indeed, the other place in July which contain a wealth of practical experience. I refer to just a few who contributed in your Lordships' House—the noble Lords, Lord Butler of Brockwell and Lord Lisvane, the noble Baroness, Lady Boothroyd, the noble Lord, Lord Reid of Cardowan—I hope I have pronounced that name right—and my noble and learned friend Lord Wallace, all of whom have a right to be heard by the Government, given their past responsibilities in Parliament and in government. If any Member still has further doubts, they should read the contribution of the former Attorney-General, Mr Dominic Grieve, in the debate in the Commons on 15 July. That leads me to my fourth point.

There is such a head of steam now for a constitutional convention of some sort. I am not suggesting that there is any one model. It is supported on all sides of your Lordships' House and is evidenced by the Bill introduced by my noble friend Lord Purvis of Tweed. Surely the Government must agree to see these proposals in their wider context. I confess that in the past I have been something of a sceptic of the sort of all-purpose constitutional convention—put it all in the pot, stir it around and hope consensus comes out at the other end—but the confusion over these proposals over the past few months surely adds strength to the argument heard regularly from the other side of the House that too many of these ad hoc piecemeal attempts to update our constitution are neither coherent or comprehensive. My noble friend Lord Purvis, whose service here and in Holyrood, and in the Scottish body politic generally, gives him special experience, will deal with this aspect in more detail later.

Therefore, I believe that there is some urgency now for agreeing to set up some form of constitutional dialogue which looks at the relationship between the different parts of the union and their various political institutions. I accept that to make it a success we should be clear about how that convention—whatever

[Lord Tyler]
form it might take—should begin its work. There are all too often false parallels drawn between vague ideas about a constitutional convention for the United Kingdom and what happened in Scotland in 1996, but, as both my colleagues here will confirm, the Scottish convention was a process which started with some measure of agreement on the outcomes that the parties wanted. Indeed, the Conservative and Scottish National parties refused to take part precisely because neither would commit to that level of agreement, so we should seek some agreement on principles before setting up a convention. It is, of course, no coincidence that many Conservative Members are now ardent advocates of EVEL, when so much of their support comes from England, while, on the other hand, it is no particular coincidence that Labour Members are more prone to cavil about EVEL, when so much of their historic support was in Scotland. Therefore, a public element of any such discussion, or any other form of widespread consultation, must involve putting these political prejudices on a sort of jury trial. It could then be hoped that the outcome would command public confidence.

But if the Government are to achieve any consensus—indeed, any unanimity—in their own ranks, they cannot continue to adopt a narrow, partisan, piecemeal approach to these great issues. Today, I have reread Command Paper 8969, *The Implications of Devolution for England*, introduced by the now much regretted departed Leader of the Commons, William Hague, who claimed:

"Both the parties to the coalition wish to continue this major process towards decentralisation in England".

The present proposals do not meet that challenge.

I note that my right honourable and honourable friends in the Commons have today tabled a further amendment to the Leader's Motion as follows:

"This House believes that a constitutional convention should be established to report by the end of 2016 to ensure the legitimate demand for English voices to be heard on English matters is delivered within the context of a carefully considered settlement for the UK, Scotland, Wales, Northern Ireland, England and the authorities participating in the Government's devolution agenda".

That should surely be the context for these discussions, not a little bit of ad hocery. It is certain that the proposals that will go before the other House tomorrow simply do not rise to the challenge of the White Paper of Mr Hague, as he then was. As a result, they will satisfy nobody. Those who favour an English Parliament—with the inevitable English Executive that would be required to implement its decisions—will attack them as a weak and weedy bureaucratic jungle. Incidentally, I do not know how many Members of your Lordships' House have looked at the revised proposals but it is significant that the Leader of the Commons has not dared to produce a revised flow chart this time—I think it would look like somebody's inadequate attempt at knitting. Those others, like many Members of your Lordships' House, who identify constitutional hostages to fortune will plead for a more considered, comprehensive and consensual approach.

I think many Members of your Lordships' House will join us in appealing to Ministers to listen to your House; to agree to a Joint Committee to examine these proposals more fully before experimenting with the current draft; to incorporate a sunset clause in the eventual changes to the Standing Orders; and, most important of all, to accept in principle the case for some form of convention to discuss the future of our part-written constitution in this era of post-devolution settlement.

8.02 pm

Lord Butler of Brockwell (CB): My Lords, I apologise to the Leader for having missed the first moment or two of her speech. I contribute to this debate more in sorrow than in anger—but with an element of anger. The Leader promised that the House should have an opportunity to express views. This debate is providing that opportunity; I welcome that. What I do not welcome is that the Government are going ahead with their Motion for changes in the Standing Orders tomorrow, when they will hardly have had the opportunity to read in *Hansard* what has been said in this evening's debate. Nothing could make it more clear that the Government do not propose to take any serious account of your Lordships' views on this matter.

As has been pointed out, on 21 July this House passed by a very large majority a Motion inviting the Commons to set up a Joint Committee to look into the constitutional aspects of these proposals. We have not had a reply from the Commons to that proposal. As she has said, the Leader made it very clear in that debate on 21 July that the Government were opposed to a Joint Committee. But this is not just a matter for the Government. This was a message from the House of Lords, which the House of Lords passed by a large majority, to the House of Commons—and the House of Commons has not replied to it. The Leader said that such a reply might be provided tomorrow as a result of the House of Commons voting on an amendment put down by Mr Graham Allen, a Back-Bencher. But that is not adequate. The Leader herself said that the amendment might not be selected by the Speaker. The House of Commons should have replied to this proposal from the House of Lords. It is a gross discourtesy that it has not and that the Government have not made sure that it replied.

There is a precedent for the House of Commons to go ahead without taking any account of a Motion from the House of Lords proposing a Joint Committee. The precedent was in 1911. Not for 104 years have the Government proceeded without taking any notice of a proposal such as this from the House of Lords. Why are the Government treating your Lordships' House with such disregard? Mr Grayling has made clear his reasons on a couple of occasions. In reply to a question in the other place on 15 October, he said that,

"this is a debate about the Standing Orders of the House of Commons and it would be quite a big step for us to take a move towards inviting the House of Lords to rule, consider and act on our own Standing Orders".—[*Official Report*, Commons, 15/10/15; col. 506.]

That is an obtuse answer and I am afraid that it is deliberately obtuse. These proposals are about the constitutional relationship between different parts of the United Kingdom. As the noble Lord, Lord Reid, said, that is a matter on which the Government should proceed with extreme caution—and they are not doing so.

However, blessed is he who repents. We hear tonight that the Leader of the House of Commons has asked the chairman of the House of Lords Constitution Committee to take a part in monitoring the constitutional aspects of the operation of the Standing Orders. The Leader has played some part in achieving that repentance—but it is merely satisfactory as far as it goes, and the discourtesy to this House has not been removed.

The Government propose to go ahead tomorrow regardless with their changes to the Standing Orders. I have said from the outset that I welcome the Government's seizing the nettle of the West Lothian question. I advised the Conservative Party's task force under the right honourable Kenneth Clarke, which proposed one of the three solutions rehearsed in the White Paper of Mr Hague, as he then was, at the end of the previous Parliament. That solution was better, in my view, than the one now put forward. I note that in addition to the comments of the noble Lord, Lord Tyler, about a diagram that would look like knitting, even the Procedure Committee in the other place described the Government's proposals with adjectives such as "complex", "rococo" and "over-engineered". For that reason, the Select Committee had great reservations about them.

The Government have not explained why a simpler solution has not been proposed. My objection to the Government's proposals is, as the noble Lord, Lord Tyler, said, that for the first time it gives a veto to a group of MPs in the Commons—English or English and Welsh MPs—over legislation that Parliament as a whole wishes to pass. That is unprecedented. The proposal of Kenneth Clarke's Democracy Task Force put it the other way round. It gave English or English and Welsh MPs the opportunity to amend a Bill in Committee and on Report and then the whole House the final say on accepting or rejecting the result. That seems both simpler and more in line with our parliamentary traditions than a veto.

Why does the difference matter, apart from a veto being a constitutional innovation? I suggest it matters for this reason, among others. If a veto is to be given to English MPs, or English and Welsh MPs, over legislation affecting only their areas, is a similar veto to be given to Scottish MPs on legislation in the Westminster Parliament that affects only Scotland? There is such legislation. An example which was brought to my notice is the Partnerships (Prosecution) (Scotland) Act 2013. If such a veto is not going to be given to Scottish MPs, why not? What is sauce for the English and Welsh goose should be sauce for the Scottish gander. If the Government do not give similar rights to Scottish MPs to those that they propose to take for English and Welsh MPs, they are giving Scotland a legitimate grievance. In the current state of the union, that is a dangerous and unwise thing to do.

There are many other questions about the Government's proposals, which other noble Lords have raised. The Hansard Society has produced a paper entitled *Five Early Questions* about them. Why are the Government rushing into these proposals without waiting for the Public Administration and Constitutional Affairs Committee, the Scottish Affairs Committee and the final report of the Procedure Committee in another place to give their advice on these issues? It is very unwise of the Government to be doing so. Their answer is, "Let's give our proposals a try and review them in a year's time". We have heard that sort of argument before. It is like saying, "We will jump over the cliff and grab a bush on the way down so that we can review our decision about whether we were right to do so".

As has been pointed out, there is no need for this impetuous rush. The current position is that there is both an overall majority for the Government, and a majority in England and Wales for the Government, in the House of Commons. The Government can easily afford to allow their proposals to be properly considered by both Houses of Parliament. They are acting like a bull in a china shop—if that is not an inappropriate analogy in this particular week. However, it is clear that whatever we say tonight, the Government will push ahead with their proposals in the Commons tomorrow. There is only one chance that prudence will prevail and that this House's invitation to the House of Commons to set up a Joint Committee will be adopted, which is that the House of Commons passes Mr Allen's amendment tomorrow and accepts our proposal for a Joint Committee. The matter is now in their hands.

8.13 pm

Lord Lang of Monkton (Con): My Lords, I hope your Lordships will forgive me if I do not enter into the heat of this debate this evening, tempted though I was by the intriguing announcement by the noble Lord, Lord Butler, that he has discovered that rare nugget, a new Scottish grievance—I thought we had mined them all pretty well. I will not even rise to that particular fly because there are other Scottish Members of this House to speak later, and the noble Lord, Lord Foulkes, for example, does grievance far better than I can.

However, I thought it would be helpful to the House if I sought to explain the context of the Constitution Committee's proposed involvement in monitoring, for a period, the operation of the reformed Standing Orders for the other place, which I understand are to be brought forward tomorrow—assuming, of course, that they will be passed. I do so because it is an unusual matter for our committee to become involved in, and it is not a task that we would have sought. Normally, we never comment on the internal procedures of the other place. However, when one is expressly asked by the Leader of the House of Commons to undertake this task—reflecting, I suppose, the fact that this House had sought, through the Motion it passed in the summer, to be involved in further scrutiny and consideration of EVEL through a Joint Committee with the other place—that changes things. It would, I believe, be wrong to refuse such a request. So in the expectation that the Joint Committee will not now materialise—and conditional on that and on the other place approving the proposals of the Leader of the House of Commons—our committee agreed at its meeting this morning to accept the task. The Procedure Committee and the Committee on Public Administration and Constitutional Affairs in the other place will also, I understand, be involved, although separately from our committee.

[Lord Lang of Monkton]

We will not of course be involved in assessing or commenting on the merits either of the amended Standing Orders or indeed of the policy of English votes for English laws itself—that is not our function. We value the independent, non-partisan nature of our all-party committee. We will, however, proceed with our inquiry over the next few months in our usual way—calling for evidence and interviewing experts and practitioners, including, very possibly, Members of your Lordships' House—as the new arrangements start to deliver legislation or other business to this House through the use of EVEL. We shall seek to identify any constitutional implications and anomalies that may emerge and, in our usual way, we will draw them to the House's attention as deserving of further consideration in a report that we will publish thereafter. I hope that my giving that background and clarifying what I see as our role in this business has been helpful to the House.

8.16 pm

Lord Reid of Cardowan (Lab): My Lords, first, I will say that I understand the strategic objective of the Government, which is to enable a fairer system of sharing decision-making throughout the United Kingdom. Indeed, the statement that was made by the Prime Minister, with the support of the other leaders, the week before the referendum—which in my view had no purpose and no effect—made the discussion of these issues inevitable. That is my starting point, but I have grave concerns about the Government's approach in addressing those objectives, especially the political implications. I will put my concerns as simply as I can.

The Government are rushing this issue when there is no need to do so. They have five years ahead of them—if you believe some of the more cynical commentators, perhaps an extended length of time in government even beyond that. As result of rushing, they are avoiding the reflection and consultation that are necessary, in absence of which they will inevitably produce a flawed solution. This in turn will lead to dispute and to grievances where none existed before. As the noble Lord, Lord Lang, said, grievance is the platform on which the Scottish nationalists produced almost every strategic objective they have. But if he believes that it is not possible for them to discover new grievances, I say to him that we should not help them in that task by mass-producing potential grievances out of a flawed scheme such as this. That is the politics of it. If I am right, in attempting to solve one political dilemma—the West Lothian question—the Government will introduce another more dangerous one, satisfying neither the English nor the Scottish, and further prising apart the union. In short, where they set out to establish a level playing field, they are actually laying a potential minefield, politically. That is my concern.

I will just deal with a couple of those issues. I cannot for the life of me understand the haste with which the Government are trying to rush this through. Indeed, if anything, they are increasingly dealing with the issues presented in an offhand fashion. Several other noble Lords have mentioned this as well. I welcome the involvement of the Constitution Committee but the reality is that, a few months ago, as the noble Lord, Lord Butler, pointed out, this House voted by an overwhelming majority for the consideration by the Commons of a Joint Committee on these issues. That would have been a wise course in my view, yet the Government did not even deign to respond to that advice from this Chamber, as has been pointed out. I would like to believe that they were too busy. I would like to believe that it was delayed in the post. I would like to believe that there was some serious reason why they found it impossible over those few months to respond to us. I suspect, however, that their position was more influenced by the old adage that it is easier to seek forgiveness after the event than to ask permission before it.

Everything that the Government have done suggests to me that that is not only discourteous but extremely unwise, because consideration of this issue would benefit from the wisdom and experience of those of us who have for 40 to 50 years been through the question of the British constitution and the politics of nationalism —including English nationalism.

Lord Tyler: As the former Leader of the other place, will the noble Lord confirm that the Government could redeem themselves now if they ensured, as they are in a position to do, that Mr Graham Allen's amendment, which is supported right across all other parts of the House, is not only tabled but accepted for debate in the House tomorrow and they persuade people to vote for it?

Lord Reid of Cardowan: Indeed, that would be extremely helpful. It is no coincidence that the potential alibi has been presented tonight, but we may well discover tomorrow that it is a non-existent alibi.

I make no personal attacks on the Leader of the House. She assured us tonight that she would be ever vigilant in monitoring what was going on. I believe her. I recall that some 50 years ago, we had a Scottish goalkeeper called Frank Haffey who was ever vigilant. He carefully monitored the ball as it entered the Scottish net nine times in a game against England. There is a difference between monitoring and vigilance on the one hand and action on the other. The action is necessary to address the questions that arise.

I will raise only a couple of the questions on the current proposals tonight. The first is on stage 1, the certification procedure, which was mentioned by the Leader of the House. The new procedure is intended to apply to government Bills, individual provisions and secondary legislation which are certified by the Speaker as containing English and Welsh provisions only. Under the revised Standing Orders, the Speaker of the House will have an important role in certifying whether a Bill or part of a Bill relates exclusively to England or to England and Wales.

I have to say that that is an enormous, onerous responsibility. In the interests of good governance and public transparency, it would seem appropriate that the Speaker in that case should be obliged by Standing Orders to publish the criteria, the principles and the legal advice that he will apply in reaching such determinations. However, no such provision is presently made. Anyone who is experienced in deciding such

issues from a Scottish point of view knows that they are extremely complicated and will be more complicated when it comes to deciding on this provision.

On the question of whether the Speaker has the necessary advisory resources to address such a task, I have grave doubts. I have to say that they are not dispelled by the most recent revisions to the proposals, which were mentioned by the Leader of the House. She mentioned the revised proposals after consultation on the question of certification: how the resources and expertise available to the Speaker would be enhanced. Let me just read from the briefing on what the proposals amount to. I will not go through all the clauses, but it states:

"These new additions enable the Speaker"—

it says here with authority—

"to consult two backbench MPs to assist him in the process of certifying bills, clauses and schedules as relating exclusively to England or England and Wales, should he wish to do so".

So the action after the consultation on the vital issue of resources is to extend to the Speaker the facility of the advice of two Back-Bench MPs—should he wish to use it. Well, there you are. We can all expect that that will add definitive expertise to the Speaker to make such decisions. That does not hearten me that the Government have learned from anything that has been said.

Secondly, on the test, of course revised Standing Order 83J sets out the consideration and certification to be given by the Speaker but, as I said, it is not an easy task to determine that a Bill, clause or schedule relates exclusively to England or to England and Wales and is within devolved competence. Whether a Bill applies only to England is not determined simply by looking at the extent provisions. It requires a significant constitutional and legal assessment of the measure, how it may operate in practice and what its legal effect may be.

At present, the proposal contains two tests: a territorial test and a content test. A number of serious questions arise even before we consider the omission, which is the purpose test, because the purpose is a third area that ought to be an essential element in deciding whether or not the proposals apply. Let me ask the question simply: would it include an English Bill or clause analogous to a Bill, or a clause which concerns a reserved matter but which applies, whether exclusively or not, to Scotland? The example was already given by the noble Lord, Lord Butler, of the Partnerships (Prosecution)(Scotland) Act 2013. Would it exclude all Bills or clauses which, under the current definition of the Sewel convention, would require the consent of the Scottish Parliament, such as the Scotland Bill, which affects the competence of the Scottish Parliament or Government?

I confess that I am not a lawyer. I am not complaining about that, nor am I boasting about it, but as far as I can see the revised Standing Orders do not clarify those essential questions, nor do they set out the criteria and principles by reference to which the Speaker will determine whether a Bill or clause falls within the proposals. As I said, these are elementary questions which are outside the omission of the purpose test, which is essential, as the noble and learned Lord, Lord Wallace of Tankerness, outlined in our July debate.

The Government have obviously decided that it is worth countenancing all those risks: that they will lay the minefield and then we will all walk through it for years to come. I hope that they will weigh those risks heavily, because it is at least questionable whether the game is worth the candle as regards these proposals.

A House of Commons Library standard note of 4 December entitled *England, Scotland, Wales: MPs & Voting in the House of Commons* observed the statistics on voting on Bills in the House of Commons. Of approximately 3,600 Divisions between June 2001 and September 2014, a total of 22—that is, 0.6%—would have concluded differently had the votes of Scottish MPs not been counted. It may be proper to address this question, as I said at the beginning, but to rush ahead with the present proposals and all the risks when there is no major practical problem to face on the basis of those statistics seems irresponsible for a Government who supposedly stand for the retention of the United Kingdom. You cannot discuss the constitutional aspects of this without the context of the politics. Do not wittingly mass-produce grievances which could otherwise be avoided.

I will not say much about scrutiny but, at the very least, the Government should provide for the utmost scrutiny of the operation of this through the Procedure Committee of the House of Commons. That should be done in a more formal fashion. Even before that the Government should be willing to embark on the widest possible consultation so that these proposals are placed within the wider constitutional objectives.

The Government may consider all these matters trifling details. They may consider them small mines in the minefield, but their potential number is so huge that it will produce the political basis for the grievance politics of the SNP and friction between England and Scotland over an extended period of years. If we are going to address the question of fairness to the English, no one in this House would object, but we need to do it in the context of the wider constitutional settlement and the political implications of what we are doing. I hope that even at this stage the Government may be persuaded to change their approach because the constitution of this country, the country itself—the United Kingdom—and its unity deserve better than we are being provided with at present.

8.31 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, the principle of EVEL was not only a specific manifesto commitment of this Government; it appears to command widespread popular support. Like the noble Lord, Lord Butler, I support the principle, but I support it only if it is implemented in an appropriate way. That surely must be by way of primary legislation after full debate, in both Houses, of all the various matters that we have brought up today, not merely by rule changes in the House of Commons, as is now proposed. To create, as the Government propose, two classes of Members of Parliament, one with more extensive powers than the other—essentially a power of veto over the other in certain circumstances—is a measure of such obvious constitutional importance and sensitivity as to demand legislation.

[Lord Brown of Eaton-under-Heywood]

There are basically two different ways to resolve the long-outstanding West Lothian question to reflect the fact that, logically, in devolved areas of law, Scottish MPs should have a lesser input than English MPs or, as the case may be, English and Welsh MPs, given that legislation in these devolved areas has no effect—put aside the possibility of some purely incidental effect through the operation of the Barnett formula—on their constituents. Scottish MPs' constituents' interests in these devolved areas are taken care of by Members of the Scottish Parliament. One possible approach is that which has been advocated in earlier debates by, as I recall, the noble Lord, Lord Forsyth, and, I think, also the noble Lords, Lord Lawson and Lord Cormack. It is based on the Irish precedent and is to reduce the number of Scottish Members of Parliament to reflect the fact that, because of a measure of devolution, their constituents have fewer interests being decided by the Westminster Parliament. The intended reduction of Westminster MPs from 650 to 600 and the existing requirement for a new Boundary Commission report surely offer a good opportunity to deal with the problem in that way. Clearly, as in the past in the case of Northern Ireland devolution, this would need, as it attracted in Ireland, primary legislation.

The alternative way of implementing EVEL is essentially the one now proposed by the Government—although inappropriately proposed by way of rule change—limiting in some ways the powers of Scottish MPs in respect of such legislation as following devolution will apply only in England or, as the case may be, in England and Wales. For simplicity's sake, let us just call the dichotomy England/Scotland. Logically, on this approach, Scottish MPs' powers should surely be limited no less in respect of their ability to vote down fresh legislative proposals affecting only England—for example the proposed modification of the existing fox hunting laws, as was proposed earlier in the year—than in respect of their ability to promote legislation which is otherwise opposed by a majority of non-Scottish MPs. The rule change currently proposed would limit Scottish MPs' powers only in this latter respect. In other words, it would give non-Scottish MPs what effectively amounts to a veto over legislation proposed by a majority which is dependent on the votes of Scottish MPs. Perhaps that is because the proposal was originally devised in order to combat what seemed during the election campaign to be—as some certainly saw it—the threat of a Labour Government dependent upon support from Scottish MPs. It must be recognised that the current proposal would not enable a Government to pass legislation which Scottish MPs could help to defeat. There seem to be obvious pros and cons to each of these two basic ways of limiting the powers of Scottish MPs in respect of devolved matters—respectively, reducing the number of such MPs or reducing their ability as Members to influence certain new legislation. The latter method is more nuanced and targeted to particular cases, but it is of course hugely more complicated.

The latest Cabinet Office document from October 2015 extends to no fewer than 31 pages, seeking to set out and explain the proposed revised changes to the House of Commons rules. Indeed, this scheme still leaves a number of unresolved problems, many of them identified today, including of course that canvassed earlier by the noble Lord, Lord Forsyth. I wonder whether the answer to his question is that if these changes are indeed achievable simply by a rule change, as proposed, then a Government in the position that he postulates would simply change the rules to revert to where they are, so we would not at all have the permanence that we would hope to get with primary legislation.

For my part, because of these obligations and difficulties, I prefer the solution, imperfect though it is in turn, of limiting the numbers of Scottish MPs, as happened in Northern Ireland. Crucially, though, whichever of these solutions is adopted, it really should be by way of legislation. I, too, deplore the fact that the Government seem simply to have discourteously presented us with a fait accompli. In common with others, I hope that the House of Commons may in fact thwart the Government's desires in that tomorrow.

8.39 pm

Lord Forsyth of Drumlean: My Lords, this is probably going to be the only occasion in my lifetime when I can get up and say that the person who has just made the speech that I was going to make is a former distinguished member of the judiciary. The noble and learned Lord, Lord Brown, has made all the points that I would have made. Indeed, so has everyone else; I agree with all the speeches that have been made so far.

I confess to a sense of weariness because I am running out of new things to say. I am also coming to the conclusion that it does not matter a damn what I say or what this House does; it is just going to be ignored and the Government will charge on regardless. The fact that it is more than 100 years since the House of Commons failed to respond to a Motion from this place—and a Motion that was passed by such a majority—is a scandal of the first order. I just wonder why we are here and what we are doing at 8.40 pm. What is the point?

The annunciator says, "The Government's proposals on English votes for English laws". These proposals are not about English votes for English laws; if you want English votes for English laws, you need to set up a Scottish Parliament. I am sorry, I meant an English Parliament. Of course, by setting up a Scottish Parliament, we provoked the situation that we are in today. However, English votes for English laws imply an English Parliament, an English First Minister and an English Executive. So if the point of all this is to satisfy the feelings of resentment that have occurred in England because of the existence of the Scottish Parliament, a false prospectus is being sold to the British people and to the English people.

For me, it is really quite weird that a Conservative Government with a majority—in the past I could have blamed the Liberals, but this is a unionist Government—are bringing forward proposals of this kind. If on the annunciator we had proposals for "Scottish votes for Scottish laws", I suspect that people would be a little more careful in considering the implications for the United Kingdom as a whole—a point that was made by the noble Lord, Lord Tyler, and others.

The last time we debated this, my noble friend the Leader of the House denied that there was an English veto—but the word "veto" has now been accepted. I would be opposed to a Scottish veto in the United Kingdom Parliament, and I can see what Mr Salmond and his colleagues will argue when this goes through: that the Sewel convention—which we probably need to rename, in the circumstances—should actually be enshrined in statute, and that the Westminster Parliament should not be able to do anything that would be covered by the Sewel convention. That would be a very retrograde step.

I have been sitting for some weeks now on the Economic Affairs Committee; we have had extra sessions. We are taking evidence on the implications of devolution for the fiscal and other arrangements of the United Kingdom as a whole. I have to tell the House—I am sure that the noble Lord, Lord Kerr, who is also on the committee, will confirm this—that the advice we are getting from academics has on occasion reduced the committee to laughter because of the incoherence with which all these constitutional changes are coming together, and the inability of our expert witnesses to give assurances.

For example, one distinguished professor pointed out, on the subject of the impact of the changes that are proposed in the forthcoming Scotland Bill:

> "If you do that, changes to English taxes affect the Scottish block grant, which I think is appropriate. However, if that is the case, you cannot possibly tell Scottish MPs that they are not allowed to vote on English income taxes, because there is no such thing as an English income tax that does not affect the Scottish block grant".

In other words, the combination of the new powers being given to the Scottish Parliament, the retention of the Barnett formula and this new proposal to allow an English vote on English income tax will create a problem if you have English votes for English laws, in so far as the Scottish MPs who are not allowed to vote on English income tax will be able to say, "But that affects the block grant and so the Barnett formula, and therefore we are being disenfranchised". That is a very important grievance of the kind that the noble Lord, Lord Reid, suggested.

I have been trying to think of an analogy to explain the Government's piecemeal approach to constitutional reform and the difficulties and complexities it is creating. It is a bit like having an Uber driver without a sat-nav. We are going from one destination to another, not sure of where we are trying to reach and without the road map that is required—which could be produced if we had had a constitutional convention, and which might be available if we had agreed to a Joint Committee of both Houses to deal with some of the anomalies that would have arisen.

For example, my old constituency in Stirling, which I used to represent, is now represented by a Scottish nationalist MP. I have had him here for tea in the House so that he could be made aware of the excellent work that we do here, and a very fine chap he is. However, under these proposals, we will get to a situation in which he is elected and not allowed to vote on matters on which I am allowed to vote as an unelected Member of this Chamber. I feel a bit uncomfortable about that—it seems slightly anomalous. A lot of my former constituents who went to the polls to get me out—albeit that was many years ago; those of them who are still alive—might feel a sense of grievance that I am voting on matters which their elected Member is excluded from voting on.

I therefore say to the Leader of the House: I know that we do not have much of a majority here, but is the proposal that I should abstain on all these matters—that all Peers who come from Scotland should not vote on matters which have been determined in the other place? There is no such thing as a Scottish Peer—constitutionally that is right—but try telling that to people in Scotland if these proposals go ahead: you will get short shrift. That may be a narrow debating point. But we are faced with a situation where, in Scotland, thanks in part to the way we fought the general election campaign, almost all the seats are now occupied by one party, which every day sets out to find a reason why Scotland is being damaged by its relationship with the United Kingdom as a whole.

I do not want to repeat arguments that were made by others or that I put previously. However, I recall that the noble Baroness, Lady Boothroyd—who is not in her place—whom I voted for as Speaker, who did a fantastic job in the House of Commons and who has a very good understanding, warned about the difficulties that would be created for the Speaker. My noble friend says that this has been addressed, because he will be able to talk to two other MPs. What happens if those elected MPs have different and perhaps opposite views? The Speaker will have to take a decision, and the very position that the noble Baroness, Lady Boothroyd, referred to, of putting the Speaker in a position where they are politicised, comes into being.

Lord Kerr of Kinlochard (CB): I agree, but it is even worse than that, because it is clear that the certification decision that the Speaker is required to take will be justiciable. That seems to make an enormous change, which will affect not just the House of Commons but the constitution as a whole.

Lord Forsyth of Drumlean: I remember the days when the noble Lord used to tell me what to do at European Council meetings. As always, he sees the wood when I could only see the trees. That is a very important constitutional change. It is a diminution of the status of the High Court of Parliament.

All the issues may seem to be anorak issues for constitutionalists but I say to my noble friend that this is not something of little importance, and it is a matter of great distress to me that the House of Commons should rush ahead with it by amending Standing Orders. In an earlier intervention, I pointed out the implications for income tax and what would happen under a Labour Government. I suppose that, as was said earlier, if things were done just by Standing Orders, then if a Labour Government had a majority in the House of Commons, they could simply alter the Standing Orders to remove the position that had been established in order to create a constitutional balance as a result of the extra powers being given to devolved institutions. That is wholly and absolutely unsatisfactory, especially in the context of a situation where there is no consensus among the parties as to how this could be achieved.

[Lord Forsyth of Drumlean]

That is my final point, which I think I made on a previous occasion. I really do think that constitutional change should carry consensus. If we proceed on the basis that we think it would be a good wheeze to make a constitutional change or that it might advantage one party or another, then other parties will do the same when they are in power. As a result, people will lose faith in the integrity of the institution and it will be greatly damaged.

The Constitution Committee is going to look at these proposals and apparently we will have a year to consider whether they work—although, given our legislative programme, quite how we are going to do that remains to be seen. Will my noble friend consider once again whether it would be a good idea to set up some kind of body—we do not have to call it a constitutional convention—to look at all these issues? Will she also look at the implications of the Scotland Bill, which will be coming to this House, and how that will be affected by English votes for English laws, as they are being dubbed? All the evidence that I have seen indicates that there will be real and serious problems, which have not been resolved and which will do great damage to the relationships between the countries of the United Kingdom.

8.52 pm

Lord Foulkes of Cumnock: My Lords, I had better not start by saying that I agree with almost everything that the noble Lord, Lord Forsyth, has said, because we will both then get attacked by the cybernats. Incidentally, that is a word that I coined, although the *Oxford English Dictionary* has not yet got round to including it. I keep telling these people who tweet obnoxious things from time to time that even a Tory can get it right sometimes, and the noble Lord, Lord Forsyth, has it absolutely right today.

I want to start off by not disappointing the noble Lord, Lord Lang: I have a wee grievance, which he anticipated I might raise. It is a great pity—I am very glad to see the government Chief Whip here because this refers to him—that we are discussing a major constitutional issue such as this at this hour, following a major debate on energy. This is a matter of great importance. It was listed on our business programme as being the subject of a whole day's debate, but for some reason or another the Government took it off the agenda and put in a debate on the size of the House. I was here for that debate and it was the most useless waste of a debate that we have ever had. We could have had a proper debate on English votes for English laws.

The Leader of the House said that the whole purpose of this debate is to inform the debate that the House of Commons will be having tomorrow. I am not sure how that will happen. The noble Lord, Lord Butler, said that Members of the other place will be able to read *Hansard*. However, I do not see all 650 of them scurrying up in the morning to get copies of our *Hansard* and reading them assiduously. I noticed that my honourable friend Chris Bryant was here earlier for a large part of the debate, so he will be well informed, but perhaps the Leader of the House can tell us how she, as Leader, is going to make sure that the House of Commons is informed in its debate tomorrow about what has happened here today. If not, as the noble Lord, Lord Forsyth, said, we will begin to feel very frustrated and wonder whether we are wasting our time.

However, there is genuine concern. It has been coined by some people, because of Tam Dalyell's concern, the West Lothian question. I call it the English democratic deficit. I really sympathise with people in England; whereas we in Scotland, along with the Welsh and the Northern Irish have had genuine devolution—it is nice to see the Welsh nationalists here—the English have not. Many years ago, my noble friend Lord Prescott suggested the setting up of English regional government. That was one of the right solutions but before its time, and he was not able, because of other Secretaries of State, to give it the right kind of powers. However, that is something that needs to be looked at properly. As so many people have said, we do not need to do it in this piecemeal way.

The Leader of the House said that a grievance had existed for many years. There is certainly a grievance, and it has existed for about 16 years, since 1999. But for more than 300 years, peculiarly Scottish legislation—on Scottish education, the Scottish health service and Scottish local government—was decided here by English votes. It was English votes that decided the poll tax. I am sorry to find a little bit of disagreement with the noble Lord, Lord Forsyth—although perhaps it is a good thing—but it was he and his colleagues who imposed the poll tax on Scotland against our will and a year earlier than in England. Look at local government reorganisation. To take one small example, the majority of Scottish Members wanted an all-Ayrshire authority, and yet it was imposed upon us to have three local authorities for Ayrshire.

Lord Forsyth of Drumlean: The noble Lord will recall that the poll tax was created in Scotland as a direct result of Scottish legislation that required a revaluation, which sent valuations sky high, and was driven by Scotland. If it was imposed on anyone, it was imposed on England in order to sort out a Scottish problem. I am very distressed that the noble Lord should be using nationalist arguments at this stage, given that his party has been wiped out north of the border.

Lord Foulkes of Cumnock: That was the argument that the noble Lord put forward at the time. It did not go down very well then and it is not going down very well now. However, I am glad that we have disagreed, because that will show the cybernats that we do not agree on every occasion.

We need to look at how we can solve the English democratic deficit. Incidentally, one thing I did agree with the noble Lord, Lord Forsyth, on is that it is going to be difficult for us as Scottish Peers. There is a Scottish Peers Association, and all of us who are Scottish Peers are members of it. We have a territorial designation, although we do not represent a Scottish constituency. People know that there are Peers who come from Scotland and have Scottish designation. It is strange that I would be able to vote on English laws and Ian Murray, or whoever is elected to the House of

Commons, would not. The House of Lords has no democratic legitimacy, but we would be taking part in a greater way than elected Members of Parliament. For them to have less say is really quite wrong.

As my noble friend Lord Reid rightly said, we are playing into the hands of the SNP. I do not think it does any harm to spell out to people south of the border that we will be building up resentment in Scotland because there will be two classes of MP. It beggars belief that Members of Parliament would be elected and then put into two classes, with some having more responsibility than others. That undermines the whole principle of our elected democracy.

I could understand that this might be forced upon us or something be done to deal with the democratic deficit—although as noble Lords have said, it is not urgent and does not need to be done for next month or next year—if there was no alternative. But there are alternatives, and there is one in particular. Again and again, I have taken part in debate after debate—with the noble Lord, Lord Forsyth, others who have spoken today and some who are sitting quietly—where the support for a UK constitutional convention has been growing and growing. The clamour has been getting louder and louder. Things are moving. The noble Lord, Lord Purvis, has introduced a Bill to set up a constitutional convention. An all-party committee has been set up, and an all-party panel chaired by a Member of this House—the noble Lord, Lord Kerslake, a former head of the Civil Service who is now president of the Local Government Association. That panel—the noble Lord, Lord Wigley, is also a member—is going to work out what the noble Lord, Lord Forsyth, would call a road map towards a constitutional convention, to set up a structure that will deal sensibly with the English democratic deficit.

Whether the result is an English Parliament, or regions of England, or the cities and the counties, or a combination of any two of those, is something that should be decided by the people of England. That is what a UK constitutional convention would do. Would it not be much better to put all this EVEL talk on ice and take the initiative?

To take another example, the leader of the Opposition, my right honourable friend Jeremy Corbyn, has appointed a shadow Cabinet member with specific responsibility for the constitutional convention. Would it not be better to grasp this opportunity, to take advantage of these initiatives and move in that direction, instead of down the cul-de-sac of EVEL, which will cause so many problems and threaten the United Kingdom? I fear that if we take the course of action proposed by the Government, we shall be like lemmings going unthinkingly towards the cliff. That is the last thing we should be doing.

9.02 pm

Lord Hope of Craighead (CB): My Lords, I should like to contribute a few words in the gap. One or two others may wish to do so as well, so I shall be as brief as I can. I am sure that the Government are right to address the West Lothian question—or the English democratic deficit, as the noble Lord, Lord Foulkes, called it—but what has puzzled me all along is why they seek to do it in this way and not by primary legislation, or at least under the cover of primary legislation. I should be grateful if the Leader of the House would explain why primary legislation is not being resorted to.

It seems to me that if the Government are to step outside the established procedures for legislation, which have the protection of the principle of the sovereignty of Parliament, they will do so at their peril. There are people outside here—we know who they are—who will seek to undermine, by means of judicial review, legislation that does not have the security of the established procedures. The noble Lord, Lord Kerr, hinted at that point a moment ago.

The problem that I see goes back to a point that the noble Lord, Lord Forsyth, raised about taxation. I do not see how a Government can rely on legislation passed by this new procedure, which is subject to the risk of challenge in the courts, until the procedures have worked their way through the courts. I do not say that anybody who seeks to challenge the legislation is bound to succeed; that is not the point. The point is that so long as there is the risk of challenge, and the delay of waiting for the courts to resolve the issue, the legislation cannot be brought into effect, because of the risk of having to unravel everything if, by some mischance, it is declared to be invalid.

Leaving aside the problems of conventions and so forth, it has always seemed to me that if the Government wish to proceed now, and if they want to take the safest course, they should do so by means of primary legislation. I shall not elaborate on that, but it is an absolutely fundamental point. I should be grateful if the noble Baroness would explain why that route has not been taken, in view of the risks to which the present solution seems to give rise.

Those risks were highlighted by what the noble Lord, Lord Reid, said about the problems of certification. I know from sitting in such cases how difficult it sometimes is to determine whether something is a devolved issue or a reserved issue. These are tricky points of law, and to solve the problem in the way that is being proposed seems to increase the risk of challenge, which is the last thing one would want in the case of legislation that the Government wish to pass to enable them to run the country according to the established procedures.

9.04 pm

Lord Kerr of Kinlochard: The noble and learned Lord, Lord Hope, has just made the main point that I wanted to make and did so much more authoritatively than I could have done. But I will take the opportunity to add two more: first, I would not want your Lordships to think that there is unanimity on the Cross Bench that the West Lothian question needs to be addressed. In my view, the West Lothian question should be looked at and left. I profoundly believe that it does not need an answer. In any unbalanced—in population terms, not in talent terms of course—union like ours, the 85% needs to remember the maxim that magnanimity in politics is not seldom the highest wisdom.

My only other point is that I want to spring to the defence of the Leader of the House. I know her well. It is an almost impossible task to combine these two

[Lord Kerr of Kinlochard]
functions. She does it extremely well. I have absolutely no doubt that she very clearly delivered the message that we sent in July by such a large majority and that she advocated at least that we get the courtesy of a reply. I would like her to know that what is being said critically of the Government and of their handling of the House of Lords is in no way personally addressed to her.

9.06 pm

Lord Hunt of Kings Heath (Lab): My Lords, I must apologise, too, that I shall speak in the gap. This has been an excellent debate and I hope that the Leader will be able to respond to the substantive points raised.

Like the noble Lord, Lord Kerr, I pay tribute to the Leader—I do not think that she has an easy job—but she needs to convince us tonight that the Government are at least paying some attention to the points raised by your Lordships, because, so far, there is scant evidence of it.

I do not want to go into the circumstances of the failure to respond to our request that a Joint Select Committee be established, but it is a very serious matter that there has been no response. The Leader has prayed in aid Mr Allen's amendment. Although it may be considered tomorrow, there is no guarantee that the Speaker in the other place will choose it. The noble Baroness prays in aid the amendment as a reason for not responding to your Lordships, but of course her colleagues in the other place will then do everything they can to determine that, even if it is called, it will be defeated. That is not a satisfactory response.

I have noted the point that Chris Grayling made, that he wishes to see our Constitution Committee work with the Commons Procedure Committee, but what does this mean and what if the two committees disagree? If he wants the committees to work together, why on earth not establish a Joint Select Committee?

Of course, we are very grateful to the noble Lord, Lord Lang, who made a helpful intervention informing us that his committee has agreed to accept the task that it has been asked to do.

Lord Lang of Monkton: It is not being suggested that we work together with one of the committees in the other House; we all work independently and we would be more concerned with the output that came through to this House rather than what goes on down there.

Lord Hunt of Kings Heath: My Lords, I fully understand that, but the question I am raising is: what happens if the two committees reach different conclusions? That is why I think it would have been much better if there had been a Joint Select Committee. From what the noble Lord has said—and I hope that the Leader will agree with me on this—it is clear that accepting this proposition and agreeing to do the work does not mean that the committee is saying that it endorses EVEL or the way in which the Government have chosen to do it.

So many risks are involved in the changes—so many risks to our constitution and so many risks to the union—yet the noble Baroness describes them as simply a matter of procedure and the property of the other place. It is a terrible precedent to use Standing Orders in the other place to make what is a huge constitutional change. We have heard that the contrast between the position of Scottish Members here—the noble Lord, Lord Forsyth, was very clear on this—and in the other place is not simply a matter of procedure, and nor is the role of the Commons Speaker. The noble Baroness, Lady Boothroyd, spoke eloquently about the problems of a Speaker being embroiled in hugely controversial political decisions. The 31 pages of memorandum from the Cabinet Office that we have seen are mostly about the Speaker's role. There are dangers in involving the Speaker—even with the aid of two wise people, as the health docs used to say—and sharing that decision does not fill one with confidence.

The noble and learned Lord, Lord Wallace, raised an important point. A Bill passed by your Lordships' House goes to the Commons and is passed there, but is vetoed by English MPs because of the lack of a double majority. The constitutional implications of that are profound.

The noble Lord, Lord Butler, made a pertinent point on whether Scottish MPs are to be given a veto in the circumstances he described. My noble friend Lord Reid gave us wise words about the dangers of establishing a series of grievances that put the union at risk, and they should be a warning to us all.

My time is up. I would simply ask the noble Baroness to really convince us that the Government are going to listen. The profound threat to our union and the integrity of the United Kingdom is very apparent in the debate tonight. Procedures in the Commons are not the way to do it.

9.11 pm

Lord Purvis of Tweed (LD): My Lords, I agree with the noble Lord, Lord Hunt of Kings Heath, that this has been an interesting debate—if for nothing less than the fact that, in the two years to the week that I have been a Member of your Lordships' House, I have not seen a government debate led by the Leader of the House which has not had a single member of her own party speak in support of the position of the Government. In fact, if it had not been for the noble efforts of the noble Lord, Lord Kerr of Kinlochard, in the gap saying that this was not a personal reflection upon her, there would have been no support from this House in the entire debate for the position of the Government. That is worth the Government Front Bench reflecting on too.

The noble Baroness, Lady Smith of Basildon, made a strong case of complaint, illustrated by my noble friend Lord Tyler, that this House made its view clear that very careful consideration of the implications of the Government's proposals should be done in a Joint Committee. There are implications for the wider constitution, but there are implications for this House as well. We have heard quite a bit of bluster in the press this week about how mandates should be respected and the apocalyptic consequences if they are not. This

House gave the Leader quite a considerable mandate in a majority of 181, and it is disappointing that a Joint Committee will not be considering this, which I will return to in a moment.

Equally to be reflected upon is a good article published during the summer, on 21 August, by Professor Adam Tomkins, who will be known to some noble Lords. He based the article on evidence he submitted to the Commons Procedure Committee. He said that:

"On one level the Government are right that their proposed Standing Orders are 'a relatively modest step' … But even relatively modest steps can have profound consequences—the ripple effect of these proposed Standing Orders may be significant, and may not yet be fully understood".

I agree. He went on to refer to the potential consequences for the Select Committees of Parliament which cover areas of jurisdiction that apply only to England or to England and Wales, such as health, education and so on. Adam Tomkins's views should be taken into very careful consideration because he was the Conservative nomination for the Smith commission and he is the constitutional adviser to the Secretary of State for Scotland. This is not simply our Benches saying that we need to consider it carefully. He went on to say in his article that:

"If the Government want their 'relatively modest proposal' to stand the test of time, they would be well advised to proceed with less haste and more care".

I agree with him entirely. It is therefore reasonable for us to argue the case for more care and less haste.

I say with respect to the Leader of the House that these are not proposals which should be, as she put it in her opening remarks, tested in real time. This is not a software program; it is the British constitution. We should not be creating a beta form of Parliament where we only see it operate in real time. As I will comment on later, the legal consequences should also give the Government pause for thought.

I understand the politics: we saw clearly the day after the referendum that Professor Tomkins and others should be heeded. How do we monitor success in this real-time evaluation? Is it about opinion polls or the views of voters in England about English votes for English laws; or is it about the proper functioning of Parliament and its impact on legislation? The impact on Parliament is under strong consideration. My noble and learned friend Lord Wallace of Tankerness made the point that if this House amends a measure which goes to the other place and is vetoed by only one part of that House, what status does that give to legislation that should be from all parts of Parliament? I use, as an example, our consideration of the Energy Bill today. There are parts of that Bill which, under the Government's proposals, would be certified as English-only. If, on considering English wind farms, for example, and seeing the wider impact of the proposals on other parts of the United Kingdom, this House amended the legislation because it believed that the whole of the United Kingdom should be taken into consideration, that would change the whole aspect. That could be vetoed—using the Government's language—by only one part of the House of Commons. If that would not create constitutional friction, I do not know what would.

This was not sufficiently addressed in the Leader's speech, nor in the proposals for the Standing Orders. However, it draws into focus the complexities to which noble Lords have referred in this debate. The real difficulty will be when it comes to certification. The noble and learned Lord, Lord Hope, the noble Lords, Lord Reid of Cardowan and Lord Foulkes, and many others have commented on this difficulty. It is not going to be at all straightforward to easily separate out measures that the Standing Orders suggest are,

"relating exclusively to England or to England and Wales".

The fact is that no reasoned arguments for the certification need to be forthcoming and it will not be sufficient for there to be some form of reflection for only two individual MPs. This will add even more pressure to the concern, expressed by the noble and learned Lord, Lord Hope of Craighead, that this is now opening up a new approach where the decisions of the Speaker could be challenged. They will certainly not be exempted under this area.

When the Scottish Parliament was established as a primary legislature, it was no accident that the certification process was given a statutory footing and clarity in the Standing Orders under Section 32 of the Scotland Act and in other areas. The Government should reflect very carefully on the response of the Scottish Parliament's lawyers to the Commons Procedure Committee. Their argument was that, even under the 1999 agreement—which had a statutory footing and clarity—there remain areas where it is not easy to distinguish between the two. It is not going to be a purely benign area and if the Leader of the House thinks it is not going to be subject to challenge then, with the greatest respect, the Government are naive. I was a Member of the Scottish Parliament; I have been a Borders MSP. My whole political experience has been involved in cross-border, cross-competence and cross-jurisdiction areas. My home town of Berwick has changed hands between England and Scotland 13 times. Perhaps as a Berwicker I have a genetic disposition to be warning the Government, but it will not be straightforward.

The position held by the noble and learned Lord, Lord Hope, should be heeded very carefully because of the significant transfer of powers to the Scottish Parliament that will be coming by 2018. I am strongly in favour of these unprecedented welfare and tax powers. They may not be universally supported across the House but, whether you are in favour of them or not, this is what the Government are proposing and the Leader mentioned it in her opening remarks.

If I may offer any advice from a humble, newish Member of this House, it is to take care and to pause until the implementation of these powers is in place. As the noble Lord, Lord Forsyth, indicated, the tax powers will be significant. It may mean that the Finance Bill in the Commons will have to be stripped out; there are specific aspects as regards the ways and means measures in the Finance Bill. The decisions on the rate of personal allowance will effectively be UK-wide decisions—one may wish to call it a federal tax—but the rates and the application will be applicable to England. I think that the splitting of the income tax between the areas that cover the Scottish rate for income tax payers and others has not been considered

[Lord Purvis of Tweed]
in any great detail and there needs to be additional clarity. If the Government think that an area of certification or simply Standing Orders that are lifetime-tested, which the Procedure Committee in the Commons considers to be an experiment, are not vulnerable to tax law and potentially to cross-border fraud and tax competition issues, with the greatest of respect, they are naive.

I do not think that the Leader of the House appreciates that we are entering a new constitutional era with welfare. The Government's own measures being debated in the Scotland Bill in the other place—they will be coming here—propose that UK Ministers will be exercising powers concurrently with Scottish Ministers. I would be interested to know how the Leader of the House can believe that powers that will be exercised concurrently with Scottish Ministers under legislation, and will explicitly cross competence between the two, can be certified straightforwardly.

In conclusion, the time is right for this to be looked at within the wider context of the constitution through a convention. As the Commons Procedure Committee called this "an experiment", I do not believe that it is appropriate enough to be governing primary legislation in this Parliament. Surely it is better to approach it through a constitutional convention. I would even welcome amendments proposed by the Government to make the specific remit of this issue to be part of such consideration.

I have mentioned my home town of Berwick, which was famous for giving one word to the English language from when the Scots landowners gave their fealty to John Balliol as the protector of Scotland. They had to sign the Ragman Rolls. Over the centuries, "Ragman Rolls" has become "rigmarole". As they stand at the moment, the proposals of EVEL are a rigmarole and they should be put on a better footing through a convention where we all debate a much more coherent way forward.

9.23 pm

Baroness Stowell of Beeston: My Lords, this has been a very good debate with a lot of serious contributions by serious Members of your Lordships' House. I scheduled this debate to allow for views to be expressed before tomorrow's debate in the other place. Normally we do not refer to individuals who are not in the Chamber and may be standing below the Bar, but the noble Lord, Lord Foulkes, highlighted that Mr Bryant had been listening to the debate. I do not know whether noble Lords noticed, but the Leader of the other place was also sat on the steps of the Throne for a good part of the debate. I know that, by coming here tonight, he was keen to hear what noble Lords had to say on this very important matter.

Many sincere views are held and many serious points have been made. In responding, I will approach the debate in two parts: I will address the substance of the proposals put forward by the Government and then come to the relationship between this House and the other place. First, I just want to say that, as much as I acknowledge the serious and sincere contributions that noble Lords have made tonight, we as the Government are also very sincere about this matter and how serious this issue is. As I have already said, but it stands up to repetition, there is currently a sense of unfairness among many people in England and a desire for that unfairness to be addressed and addressed sooner rather than later.

As we have heard acknowledged several times, this matter has been around for a long time. We have tried collectively, in different ways, to come up with an answer to the West Lothian question. As I said at the start of the debate, I am not sure that there is a perfect solution and answer to that question. We feel, having been clear in our manifesto that this is something we will address and get on with addressing, that our approach in amending Standing Orders in another place and allowing for a review in a year's time allows us to do so in a way that addresses the important substance of the matter, but also means that we can start to look at it in practice, not just in theory. The noble and learned Lord, Lord Hope, asked why we are not using primary legislation, and that is one of the reasons why we are not doing so at this time. However, we think that one of the things that we should look at when this is reviewed is whether primary legislation should be used. One of the benefits of addressing this matter by amending Standing Orders rather than through legislation—this has not been raised tonight, but was in earlier debates on this, I think by the noble Lord, Lord Lisvane—is that parliamentary privilege is protected.

I will move on to the substance of the proposals put forward by the Government, starting with the points raised on the role of the Speaker. The noble Lord, Lord Reid, my noble friend Lord Forsyth and others questioned whether the Speaker would be put in a very difficult position in terms of the responsibility added to his role in the other place. I argue that the Speaker is already required to take some often complex decisions and apply a judgment in a political environment and in difficult situations. Our revised proposals—we have adapted them since the summer, having listened to points made by Members of this House and the other place—give the Speaker discretion over whether to provide reasons for his certification. The judgment is his to make.

On the addition that the Speaker can consult members of the Panel of Chairs, these are not random Back-Benchers. They are Members who can already advise him on things such as money Bills. These are Members of the other place who already exist for a specific purpose. They would offer that advice and additional advice should the Speaker need it in this context.

My noble friend Lord Forsyth raised questions on spending and taxation matters, as did other noble Lords. I shall run through some of the specific issues in this regard. As I have already said, all MPs will be able to vote on all legislation, the Budget and supply estimates. MPs from across the House will continue to make all legislation together. The process for deciding the level of the block grants awarded to the devolved Assemblies will remain unchanged. All UK MPs will continue to vote on the Budget and all aspects of income tax but, additionally, English MPs will be able to approve changes to some taxes in the future. That is

the same as for MSPs, who will have the final say on the relevant income tax after the Smith agreement has been implemented.

The noble Lord, Lord Butler, and the noble—

Lord Forsyth of Drumlean: I am sorry to interrupt my noble friend, but will she deal with the following point? If English MPs are going to vote on English tax, and if they decide to reduce income tax, that will have implications for the block grant because, if they reduce income tax, less money will be available for the programmes; and the Barnett formula, which the Government wish to retain, would mean that they would get a proportion of that. So it is not true to say that decisions taken by English MPs on English tax have no effect on Scottish MPs' constituents, or, indeed, on the decisions which the Scottish Parliament would then have to take. So how will that be resolved?

Baroness Stowell of Beeston: The process for deciding the block grant remains unchanged. All Members of the other House will continue to have the same powers as they have now in deciding that matter.

Lord Reid of Cardowan: I am grateful to the noble Baroness. Following on from that, and with great respect, I do not think that she understands the question or the formula. The Barnett formula will allocate a proportion of government moneys to the Scottish Parliament. If, as a result of a decision of English MPs on English taxation, that reservoir is reduced, then the block grant by the formula under Barnett will be reduced. Therefore, the money going to the Scottish Parliament, and through it to the various constituencies, will be reduced. So here is an example of what appears to be an English decision that has direct financial implications for the Scottish Parliament and the Scottish constituencies. How is that to be resolved?

Baroness Stowell of Beeston: The noble Lord is not being unfair when he says that we are now going beyond my level of knowledge of the way in which the Barnett formula works. While I am on my feet, I will see whether I get any additional information to assist me in responding to the noble Lord on this matter. For the moment, it is probably best for me to move on from that rather than try to guess at an answer to the specific point.

Lord Purvis of Tweed: I am conscious of the time, but before the Leader moves on from tax, perhaps I may ask whether the consequence of what she has just said is that, going forward, all taxes will have to be certified. If there are to be separate votes for English MPs on taxes—which are equivalent to those to be devolved to the Scottish Parliament, on the rates of income tax and all the other taxes within the Smith agreement that the Scotland Act is delivering—the consequence is that every single tax will have to be certified by the Speaker as to its competence; otherwise the system cannot work. Will that be the position?

Baroness Stowell of Beeston: The process that the Speaker has to follow in order to certify Bills will apply. As regards Bills being subject to the certification process, there is no separate arrangement for a separate kind of Bill. Each Bill that is introduced into the House of Commons will be subject to that certification process. If there are aspects of a Bill which concern only England or England and Wales, they will follow the respective process which will allow for the English, or English and Welsh, MPs to have a greater voice and say on the decisions that affect only their constituents. That is what the English votes for English laws arrangements mean.

This is probably a good time for me to move on to the point raised by the noble Lord, Lord Butler, and others about the veto of English MPs and other matters of that kind. The important thing to stress is that what these provisions do is give a stronger voice to English MPs. We are not removing power from any Members of the other place. It is about giving a greater voice to English MPs. As far as a veto is concerned, the point that I have made in previous debates, and I stress again, is that what English MPs will not be able to do is initiate something without the approval of the whole House. They cannot overrule the whole House but neither can the rest of the House overrule them. It is about a power to stop something which directly affects their constituents and nobody else's. It is not about them having a power to introduce something which would be for the benefit of their constituents only, without the support of the rest of the House.

Lord Tyler: Dancing on the top of pins at this time of night is not a happy experience. What is the basic difference in principle between a veto that stops something happening and, in the terms that the Leader has been explaining, one that prevents something from being initiated by a group? It is playing with words. It is semantics. If there is a veto, there is a veto, and that veto is going to be exercised—for the first time ever in the Westminster Parliament—by a smaller group than the whole Westminster Parliament, including, as we discovered earlier today, matters that come from this House to the other place.

Baroness Stowell of Beeston: I will come in a moment to ping-pong and how amendments made by this House are considered by the other place, but I disagree with the noble Lord about his interpretation of what I am saying. I am very clear that there is a difference between somebody having the power to stop something and somebody having the power to force something through that others are not in agreement with.

Moving on to this House, and to pick up the point raised by the noble Lord, Lord Tyler, as I have already said, our powers remain exactly the same and our procedures are not affected. We will be able to consider legislation in the future in exactly the same way as we do now. When we amend legislation and we send a Bill back to the other place, the Speaker will have to certify our amendments again. He will certify whether the amendments that have been made—

Lord Hunt of Kings Heath: The Leader says that what has been proposed does not change anything in this House. My question is: why not? I go back to the point raised by the noble Lord, Lord Forsyth. This is a

[Lord Hunt of Kings Heath]
most extraordinary situation, where his MP will not be allowed to take part in key decisions, whereas he, as a Member residing in Scotland, is. We have yet to hear any convincing argument about why the two Houses are being treated differently.

Baroness Stowell of Beeston: Although my noble friend does not agree with the reason why the two Houses are being treated differently, he answered his own question, which is that we are all Peers of the United Kingdom. We do not represent any particular part of the United Kingdom. As I said when I first repeated the Statement that introduced these proposals a few months ago, as much as I am proud to come from Beeston and wanted to take Beeston in my title, I do not represent Beeston. None of us represents any particular part of the country, so that is why we are treated differently.

When our amendments go to the other place, the Speaker will be asked to certify whether they apply only to England or England and Wales. The other place will consider our amendments in the Chamber in exactly the same way as they do now: the whole House of Commons will consider the amendments made by your Lordships' House. When MPs come to vote on any such amendments, the votes will be counted for a double-majority. If the amendments that we have made to legislation affect only England or England and Wales, it will be necessary for those MPs to approve our amendments as well as the whole House of Commons.

The noble Lord says, from a sedentary position, that that is a veto. But we have to take a step back for a moment and remember that what we are introducing here is English votes for English laws. We are saying that we want Members of Parliament who represent English constituencies to have a stronger voice. It would make a mockery of that if MPs from those constituencies were not able to have a stronger voice when asked to consider amendments that affect only their constituencies.

This is not the process for amendments that apply to the UK as a whole, but for those that apply to England or England and Wales only. If the House of Commons as a whole votes in favour, but the English or English and Welsh MPs do not support measures that apply only to their constituencies, we will receive back a message that says the House of Commons does not agree with the amendments that we have made. The key point is that we will receive a message in exactly the same way as we do now, with a reason why the House of Commons has decided not to accept the amendments. It will be up to the Government, as they are now, to consider very carefully what has been said by the House of Commons and to consider what we might want to put forward to this House. This House will then decide what it wants to do. If this House still does not agree, it will send the message back again—so our amendments will be considered in exactly the same way. But we cannot introduce English votes for English laws without the MPs who represent English or English and Welsh constituencies having the stronger voice that they deserve when this House wants to introduce something that will affect only those places.

Baroness Smith of Basildon: I apologise for detaining the House and to the noble Baroness for intervening—which I rarely do—but I want to make sure that I understand this for the sake of clarity. She talks about the voice of English MPs being heard, but it seems to me that this is about significantly more than that. An amendment passed by your Lordships' House, whatever the size of the majority—such as the one on a Joint Committee which passed by 101 votes—would go to the House of Commons. It could be passed by the House of Commons, but a subset of MPs—the English MPs—would then have a veto. It is not just a voice—that would be an extra Committee stage, a discussion or a debate. This is a veto, and they would be able to say, "No we do not accept that", even though it would have gone through the House of Lords and the entire House of Commons, and send it back to the House of Lords. So it does impact on your Lordships' House. It is not just a case of being sent back by the whole House of Commons to be reconsidered; it is a subset of MPs who have a veto—not a voice—who send it back. It does impact on how we work, as we would be asked to reconsider something that we would not otherwise have been asked to reconsider.

Baroness Stowell of Beeston: The House of Commons as a whole clearly needs to consider what this House has put forward, and I am sure that we will want to know, when we are considering what comes back to us, not just what the English are saying. We will want to hear.

I come back to what I said earlier. We have come forward with a set of proposals which build on the many different forums that have considered how to implement English votes for English laws. We believe that it is a pragmatic proposal that will allow that to happen. We will review it once it has been operating; we cannot wait for ever to find a perfect solution—I am not sure that one exists—but I believe that we have come up with a clear way forward.

Lord Forsyth of Drumlean: I promise my noble friend that this is my last intervention. It is on this point and the point made earlier by the noble and learned Lord, Lord Hope. I am not a lawyer, but it seems to me a serious point that if a matter has been passed without the support of both Houses of Parliament, where one part of Parliament has created whatever outcome it is, it loses the protection of sovereignty and is open to legal challenge. Can my noble friend deal with that point?

Baroness Stowell of Beeston: I just do not accept that argument. The House of Commons will consider our amendments. If we have decided to make amendments that affect only a certain group of constituencies, the English MPs, it will be for them to be able to send them back to us. The key thing which addresses the sovereignty point is that, in the end, both Houses have to agree. We will keep ping-ponging until we reach agreement.

Please let me make some progress, because I think that noble Lords want me to move on. On the issue of a Joint Committee, I fully accept and understand that when this matter was debated earlier, in the summer,

this House was absolutely clear in its view that it wanted a Joint Committee of both Houses to look at the constitutional implications of English votes for English laws. As has been highlighted, I am the Leader of the House as a whole as well as the leader of the party in government and a member of the Government. I assure noble Lords that of course I made it clear that that was a firm view, resoundingly expressed by your Lordships' House but, as I said earlier, and as I said when we debated this matter a couple of months ago, the Government are clear in their view about not wanting to delay the implementation of English votes for English laws.

My right honourable friend Chris Grayling has replied by approaching the Constitution Committee, as was outlined. Several committees in another place have been looking at the Government's proposals: the Procedure Committee, the Public Affairs and Constitution Committee, and the Scottish Affairs Committee. The Government do not feel it necessary to create yet another committee to examine the matter, but I am grateful that the chairman of the Constitution Committee in your Lordships' House, my noble friend Lord Lang, and his colleagues, have agreed to consider what the constitutional implications of the proposals may be and to feed in to the review to which I referred. I am grateful to my noble friend for what he said this evening about that work.

Lord Tyler: I think that all Members of your Lordships' House appreciate the difficulties with which the Leader of the House is faced on this issue. I have one very small suggestion. In my experience, if the Government were to say that they wish the particular amendment which responds to the Motion from your Lordships' House, the Speaker would be bound to ensure that there was an opportunity to vote on it. That is surely the very minimum that we should be asking the Leader of the House in the other place to do: simply to make sure that there is a proper response by the whole House of Commons to the whole House of Lords.

Baroness Stowell of Beeston: That matter now sits in the House of Commons. I am the Leader of the House of Lords. I am not the Leader of the House of Commons, as is very clear. That is something that we will now have to leave with the House of Commons and see how it wishes to consider it.

I shall draw to a conclusion and make a couple of brief points. Several points were made this evening about noble Lords feeling that this House is being ignored by this Government and that we are not taking seriously the need for our legislation to be properly scrutinised and debated in your Lordships' House. I absolutely reject that opinion. Although we are no longer in coalition and this is a new Government, it is worth remembering that in the previous Parliament 21,000 amendments to government legislation were tabled in this House and 6,000 of them were passed or accepted. That is a measure of how seriously this House is taken and of the importance of its work. In the past few weeks, acknowledging the need for greater time to be applied for debating government legislation, we recommitted parts of the Energy Bill when we wanted to bring forward government amendments to it. The Government responded to the Secondary Legislation Select Committee when it asked for more information on a piece of secondary legislation. So I can assure noble Lords that I take very seriously indeed the role of this House and the need for it properly to scrutinise government legislation, and I will continue to do that—and I am very grateful to the noble Lord, Lord Kerr, for his remarks.

Points were made about the need for a constitutional convention for this and other matters to be considered. Noble Lords will have heard other members of the Government say from this Dispatch Box that we do not believe that a constitutional convention is the right way forward. We were very clear in our manifesto about the changes we want to make to provide greater devolution to all parts of the United Kingdom, and we made much of that during the general election campaign. Having been elected, we are seeking to deliver those commitments in our manifesto—and they include English votes for English laws.

Lord Reid of Cardowan: I am very grateful to the Leader of the House, and I do not want to prolong this. She said that she would come back on the question raised by the noble Lord, Lord Forsyth, and me. I do not know whether the cavalry has arrived with the answer to that question or whether the answer arrived but was unintelligible. I say that with great sympathy. It has not been a habit in my life to feel sorry for Conservative Ministers, but I do. I think that she has been given what in sport is called a hospital pass on this one. So I quite understand if she, or indeed the Government and the Civil Service, cannot answer tonight. However, will she write to all those who have spoken today, not just the noble Lord, Lord Forsyth, with the definitive answer to that specific question? Although it is specific, it has huge implications for the politics of the relationship between the two major countries, in terms of population, of the United Kingdom.

Baroness Stowell of Beeston: The noble Lord, Lord Reid, is always very timely in providing opportunities for me to respond, and by intervening when he did he gave me the opportunity to quickly read the note that had come to me from the Box. I shall share with him what I have learned this evening. English MPs will not be able to reduce the income tax rate in England without the approval of the whole House. English MPs can only prevent the whole House imposing an English rate without their consent, not the other way around. All MPs are involved in all legislation, including on tax. I hope that that has clarified the matter, but it looks as if it has not.

Lord Reid of Cardowan: I am very grateful, although this may extend the discussion. I did not quite understand the noble Baroness's reply. It may be a lack of mental capacity on my part, but I think that the second thing the noble Baroness said was that English MPs would be able to stop an increase in English income tax. Did I understand that correctly? I was not aware that there was such a thing as English income tax; I thought that there was just income tax. Perhaps she could explain that to me or have a quick word with her officials later.

Baroness Stowell of Beeston: What I shall do is read out the note a little more slowly, and then I will happily commit to sending the noble Lord and others a letter. The noble Lord actually has huge mental capacity; I have read this note and I understand it, so if I understand it then I know for a fact he will.

Lord Reid of Cardowan: Not necessarily.

Baroness Stowell of Beeston: He has no idea how much of an idol he is to me in terms of his mental capacity, so I do feel that this is not a concept that he cannot cope with. Let me try again. English MPs will not be able to reduce the income tax rate in England without the approval of the whole House. This is about all MPs being involved in legislation, including on tax. English MPs can only prevent the whole House imposing an English rate without their consent.

Lord Reid of Cardowan: Veto.

Baroness Stowell of Beeston: The noble Lord, from a sedentary position, shouted the word "veto". I am afraid that that brings me back to the beginning.

Lord Reid of Cardowan: The second sentence is exactly what I am questioning—that they can prevent an increase in the English rate of income tax. That slightly confuses me since I assumed that the rate of income tax was a UK rate, and I do not quite see how we are now envisaging a potential increase in the English rate of income tax.

Baroness Stowell of Beeston: Because once we have implemented the full Smith proposals, some tax powers will be devolved to Scotland in future. So as far as income tax is concerned, in Scotland they will have devolved power in future, so what English MPs will have will be the power to change rates of income tax that affect only England. This will be a result of the greater devolution. I will give way one last time and then I think the House's patience will probably have been exhausted.

Lord Reid of Cardowan: I think that the noble Baroness had better write to me, because I disagree with her on the second part of what she said. A power will be extended to Scotland to increase or decrease its rate of tax, but that will not in any way relate to the power of England to set the basic rate of tax on which the Scottish adjustments will be empowered. However, I will be happy for the noble Baroness to write to me.

Baroness Stowell of Beeston: I will write to the noble Lord but will say one last thing. Income tax and budget provisions will be considered by all MPs in the House of Commons in the future, as they are now. This is about changes to specific income tax rates as a result of greater devolution. We will have a situation in the future in which, because of greater powers being devolved to other nations, when there are changes to rates of income tax that apply only in England, English MPs should be able to prevent changes being made that they do not agree to. But I will stop now. I have enjoyed this evening, even if no one else has. I thank all noble Lords once again for their contributions on what is a very serious matter, and I am grateful to them for their contributions this evening.

Motion agreed.

House adjourned at 10.02 pm.

Volume 765
No. 53

Wednesday
21 October 2015

CONTENTS

Wednesday 21 October 2015