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

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House of Lords

Wednesday, 4 November 2015.

3 pm

Prayers—read by the Lord Bishop of Sheffield.

Tax Credits

Question

3.07 pm

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what is their assessment of the impact of the proposed reductions in tax credits on the number of children in working families living in poverty.

Lord Ashton of Hyde (Con): My Lords, the Government are committed to moving from a high-welfare, high-tax, low-wage economy to a lower-welfare, lower-tax, higher-wage society. As the Chancellor has made clear, the Government will set out in the Autumn Statement how we plan to achieve the same goal of reforming tax credits and saving the money we need to save to secure our economy while, at the same time, giving help in the transition, including to families with children.

Baroness Lister of Burtersett (Lab): When the leader of the Opposition asked the Prime Minister a question about this matter this morning, he made reference to increases in the minimum wage and personal tax allowance, due next year. Does the Minister accept that those measures will do little to prevent the 200,000 increase in child poverty figures, forecast by the Resolution Foundation, if the tax credit cuts go ahead? They cannot target support on children and will not, in any case, be of benefit to many of those affected by the cuts.

Lord Ashton of Hyde: My Lords, we believe that work is the best way to help children. There is evidence to support the fact that children in workless households do worse than those in working ones. In addition, we are helping families with children. We are doubling free childcare and, under universal credit, we will support the increase to cover up to 85% of childcare costs where all parents are in work, regardless of the number of hours worked. The early years pupil premium provides £50 million in extra funding. We are currently providing free school meals for all infant school pupils in the first three years and we are introducing tax-free childcare from 2017.

Baroness Manzoor (LD): My Lords, I thank the Chancellor for listening to the debate on tax credits. Will exemptions be made for the child element within tax credits, particularly in exceptional cases: for instance, where there is domestic abuse in a family with more than three children; where a family with more than two children face the bereavement of the person who is working; or a family where the third child is disabled? I would welcome the Minister's assurance that the Government are listening to this.

Lord Ashton of Hyde: My Lords, I am afraid that I am going to have to disappoint the noble Baroness. The Autumn Statement is when the Chancellor will announce what he is going to do about the transition and what will happen to the tax credit position following the events of last week. It is worth repeating what the Chancellor said.

A noble Lord: Oh!

Lord Ashton of Hyde: The noble Lord may not want to hear it but I will tell him anyway:

"We will continue to reform tax credits and save the money needed so that Britain lives within its means while at the same time lessening the impact on families during the transition".—[*Official Report,* Commons, 27/10/15; col 177.]

The Chancellor has said that he will set out those plans in the Autumn Statement.

Baroness Meacher (CB): My Lords, does the Minister have an estimate of the number of disabled children whose families will be driven into debt as a result of the planned tax credit cuts? Will he give the House an assurance that he will put pressure on the Chancellor to mitigate these quite appalling consequences in his Autumn Statement?

Lord Ashton of Hyde: My Lords, I am not quite sure what the planned tax credits are now, which is why we will wait until the Autumn Statement. However, I can say that for disabled people we have until now protected those benefits related to the additional costs of disability and we will continue to do so.

Lord Morgan (Lab): My Lords, is it not shown by the Social Mobility and Child Poverty Commission that 7 million children will suffer as a result of the cuts in tax credits and that the income of 45% of working families will go down? This is not a constitutional crisis, it is a humanitarian crisis, for which the savage and shameful policy of the Government is solely responsible.

Lord Ashton of Hyde: It is interesting that since we took over as the Government in 2010, 800,000 fewer people are in relative low income before housing costs and 300,000 fewer children are in relative low income.

Lord McKenzie of Luton (Lab): My Lords, is the Minister aware that, following an exchange in the debate we had last week, his noble friend, the noble Earl, Lord Howe, sent a communication to my noble friend Lord Campbell-Savours? I have permission to quote that communication, in which the noble Earl says:

"The plans in the draft regulations would mean that, from April 2016, a family with children who are in receipt of child tax credits would receive those tax credits elements at the same rate of payment as currently applies in respect of those children".

How does the Minister justify that as a true and fair view? What is paid in terms of tax credits reflects not only the various elements—the building blocks—but the net effect of applying the income threshold and the taper. The former has been dramatically lowered and the taper accelerated. So why will the Government not come clean? This does mean that there will be reductions in child tax credits and working tax credits.

Lord Ashton of Hyde: My Lords, the noble Lord is referring to a television programme with David Dimbleby. The PM said that,

"child tax credit, we increased by £450".

The presenter asked:

"And it's not going to fall?".

The PM confirmed:

"It's not going to fall".

The award has not changed. It is £2,780 and it was before.

Lord Farmer (Con): My Lords, can the Minister explain how the new focus on changing people's life chances will be more effective in addressing the root causes of poverty than the child poverty targets introduced by the last Labour Government?

Lord Ashton of Hyde: My Lords, my noble friend's question slightly moves away from tax credits on to the welfare Bill, which this House is going to consider in a couple of weeks' time. We are working to end child poverty, and until now, the talk about poverty has been caught up in the old mindset of an arbitrary limit, and this needs to change. The existing statutory framework, which was set around four income-related targets, is flawed because it focuses the government action on tackling the symptoms, rather than the root causes, of child poverty. This new system will focus on the root causes of poverty: there will be two new measures—educational attainment and the number of children in workless households—plus various non-statutory life-chance indicators. The Second Reading of the welfare Bill is on 17 November.

Teacher Training

Question

3.15 pm

Asked by ***Baroness Donaghy***

To ask Her Majesty's Government what steps they are taking to ensure the supply of adequately trained teachers, particularly teachers trained by university departments of education.

Baroness Evans of Bowes Park (Con): The Government believe that our best schools should play a leading role in training new teachers, so that they are fully equipped to succeed in the classroom. Many schools are actively choosing to work closely with universities in delivering teacher training, recognising the benefits that they can bring. We are committed to ensuring that the teaching profession can attract and retain the very best people. We now have more, better-qualified teachers in England's classrooms than ever before.

Baroness Donaghy (Lab): I thank the Minister for her reply, and I know that this is not her area of direct responsibility. However, she must be aware that we have an unstable teacher supply framework, that there are going to be shortages of teachers in some regions in both the short term and the medium term and that the unstable income stream for higher education might mean that some universities—particularly those in the Russell Group—will opt out of the connection with teacher education altogether. Does she really think that that adds up to a good policy for this Government?

Baroness Evans of Bowes Park: I thank the noble Baroness for her question. She is right that we are moving to a school-led teacher training system, but that involves collaboration between universities and schools. A teacher-led or school-led system does not mean a university-excluded system, and we are seeing great collaboration whereby, for example, 70% of School Direct places are actually being delivered by universities. It is improving the link between schools and universities, but also putting in charge of teacher training those who know best what they want in their schools—the head teachers.

Baroness Coussins (CB): My Lords, in light of the proposal to make the EBacc compulsory, and of the welcome inclusion of statutory foreign languages at key stage 2, what specific steps do Her Majesty's Government plan to take to reverse the shortfall of modern language teachers, which last year was 21% according to DfE figures? With the falling numbers of students taking a modern language degree, does the Minister agree that the supply chain for future languages NQTs needs urgent attention if government policies are going to be successfully implemented?

Baroness Evans of Bowes Park: We certainly recognise that teacher recruitment is challenging. As the economy grows, graduates are in ever-increasing demand, and there are certain subjects where this is particularly challenging. That is why we are taking a broad approach, offering training bursaries and salary grants to the best graduates and career changers, putting schools at the centre of teacher training and trying to tackle the problems that teachers tell us bothered them the most once they were in posts, which were unnecessary workloads and poor pupil behaviour. We recognise that there are challenges ahead, but we also recognise that teaching is an extremely attractive profession, and is very fulfilling for those graduates who decide to take it up.

Baroness Sharp of Guildford (LD): My Lords, in light of the answer that the Minister just gave, why have the Government cut the bursaries in some of the shortage subjects, such as design and technology and primary teaching?

Baroness Evans of Bowes Park: I reassure the noble Baroness that this year we recruited the number of primary school teaching graduates that we wished to. That is very good news. We are increasing bursaries in a number of key subjects. From next year, there will be £30,000 bursaries for graduates who are going into teaching in some of the most difficult subjects.

Lord Lexden (Con): How will the new national teaching service announced yesterday help to raise standards in schools that have difficulty recruiting teachers?

Baroness Evans of Bowes Park: The new national teaching service is looking to help those schools that are struggling to recruit teachers in some of our most challenging areas. By 2020, we intend and hope to recruit and relocate 1,500 outstanding teachers to help underperforming schools. They will relocate for up to three years to help to improve those schools and to offer inspirational teaching to young people in those areas.

Baroness McIntosh of Hudnall (Lab): My Lords, will the noble Baroness agree that it is as important to retain teachers once they have been recruited as it is to recruit them in the first place? I think she will, because she mentioned it already in one of her answers. Does she think that the current system of inspection and monitoring of teachers is conducive to their retention, and to their growing and developing into the kind of creative and innovative teachers that we need in the future?

Baroness Evans of Bowes Park: I entirely agree with the noble Baroness that teacher retention is crucial. I put on record that some of the scare statistics on the number of teachers leaving the profession are simply untrue. In fact, the latest figures show that 90% of teachers are still teaching after their first year. More than three-quarters are teaching after five years. This shows the dedication of our teachers and the great rewards that teaching can bring.

Lord Maginnis of Drumglass (Ind UU): My Lords, is it not a reality that, when we speak about adequately trained teachers, we are talking about a profession where 70% of teachers are not professionally trained? I do not want to decry those who, some after taking Mickey Mouse degrees, move into teaching and spend a year there when they cannot find anything else to do—there are many good people who have moved—but there are many failures who move in through the one-year supplementary course. Our primary schools are being abandoned by professionalism.

Baroness Evans of Bowes Park: I am afraid I do not recognise the figures that the noble Lord used. In fact, 96% of teachers in the state sector are qualified. It is also right that head teachers have the chance to ask a RADA-trained actor to teach some drama to their young children, or perhaps have Premiership sports coaches come and teach PE. We want teachers who inspire young people. Of course they have to be trained and have the skills to do it, but anything that encourages a love of learning is something we should welcome in our schools.

Employment

Question

3.22 pm

Asked by ***Baroness Seccombe***

To ask Her Majesty's Government what change there has been in the number of British nationals employed between (1) May 2005 and May 2010, and (2) May 2010 and the most recent month for which statistics are available.

The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con): My Lords, between May 2005 and 2010, the number of British nationals employed fell by 455,000. Since 2010, the number of employed British nationals has risen by 1.1 million.

Baroness Seccombe (Con): My Lords, that is excellent news, as I am sure all Members of the House will agree. My particular interest is the position of women. Will my noble friend tell the House exactly what the position over the same period was for women?

Baroness Altmann: I would be delighted to tell my noble friend. Since 2010, the number of women in work has risen by 920,000. The female employment rate has increased by 3.3 percentage points to a record level of 68.8%. By contrast, between 2005 and 2010, the employment rate for women fell by 1.3 percentage points.

Lord Wrigglesworth (LD): My Lords, however good those figures are, is the noble Baroness aware that the black cloud of unemployment hangs like a shroud over thousands of families, and the whole community, in Redcar on Teesside? Is she aware that this is a huge site of eight square miles, with a blast furnace as big as St Paul's Cathedral, and that it will take a great deal to bring it back into use after the facilities have been demolished? There is a site next door—also of eight square miles—with another steelworks whose future is also in doubt. Down in Ebbsfleet in Kent, the Government have given £200 million to rehabilitate the site. Will they look at the figure given for the Redcar site of £80 million, £20 million of which is going on redundancy payments, to see if it can be increased, and bring together a task force to do something for that community?

Baroness Altmann: My Lords, we understand that the position in Redcar is terribly distressing for all the families involved, and the Government are already addressing this issue. There are measures already in place to help the workers affected to retrain. The Government are committed to full employment, and there are record numbers of people in work. We have had tremendous success in helping people back into work and we will continue to do that for Redcar and around the country

Baroness Sherlock (Lab): My Lords, the Minister did not mention that over a third of the new jobs created between 2010 and 2014 were people becoming self-employed, and that those jobs tend to be less secure and lower paid. Will the Minister therefore confirm that self-employed people will not benefit from what the Government call the new living wage—the higher minimum rate for the over-25s—and yet will still lose through the changes to tax credits? What are the Government doing to compensate them?

Baroness Altmann: My Lords, self-employment is a very important route into work for many people, particularly many women, and we have set up, under Julie Dean, an independent review of any barriers to self-employment that may exist. We will also continue to work with the noble Baroness, Lady Mone, in supporting start-ups for disadvantaged communities.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend agree that the problems of the steel industry have been greatly exacerbated by our inability to deal with dumping from China because of our membership of the European Union and the huge levies imposed on high-energy businesses as part of the green agenda, promoted by the Liberals with such vigour?

Baroness Altmann: I think the issues for the steel industry go wider than that; there are macroeconomic factors as well.

Lord Christopher (Lab): My Lords, I listened carefully to the figures that the noble Baroness gave. Of course, they sound very creditable. However, can she comment on the fact that six million—about 23% of the workforce—are below the current acknowledged living wage?

Baroness Altmann: When Labour was in power, it did not increase the national minimum wage to the national living wage, and pay is increasing rapidly. There has been a 3% increase in average earnings, the fastest rate for many years.

Lord Dobbs (Con): Does my noble friend agree that the great success this Government have had in creating new jobs goes wider than simply the economy? Does she also agree that rising employment is the only permanent way to tackle poverty, that it is the best way to keep families together, and that there is a distinctive, powerful and important moral reason for continuing this Government's successful economic policies?

Baroness Altmann: I certainly agree with that. The Government are on the road to achieving their target of full employment. The employment rate is at a record high, and there are nearly 740,000 vacancies in the economy, which is much higher than before the recession. We therefore have a record to be proud of in this regard.

Baroness Armstrong of Hill Top (Lab): My Lords, perhaps I can assist the Minister by giving her the opportunity to acknowledge that the Labour Government actually introduced the minimum wage—let alone anything else—and when we introduced it, we were told it would finish off industry because companies would not be able to afford it. However, I want to push her on other things she has been talking about. I agree that economic opportunity is at the core of good family and community life. Redcar, which we have been discussing, is in the north-east, which still has the highest unemployment in the country and will suffer, I suspect, more from changes in the tax credit regime—whatever they are—than anywhere else in the country. The Government are therefore piling on top of each other lots of things that will bring my region real problems. What are she and the Government going to do to tackle them?

Baroness Altmann: My Lords, as I said, the Government are rolling out their policies, which have created and will continue to create new jobs at a record rate. The northern powerhouse will be powerful in ensuring that the benefits are spread more widely. As to the initial point, we were talking here about the national living wage rather than the minimum wage.

Criminal Justice: Transgender People

Question

3.30 pm

Asked by ***Lord Marks of Henley-on-Thames***

To ask Her Majesty's Government what assessment they have made of the current policy on the treatment of transgender individuals in the criminal justice system.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, criminal justice agencies are mindful of their duties under the Equality Act 2010. In particular, the National Offender Management Service policy on the care and management of transsexual prisoners states that prisoners are normally placed according to their "legally recognised gender". The guidelines allow, however, some room for discretion and in such cases senior prison management will review the circumstances with relevant experts to protect the prisoner's safety and well-being, and those of other prisoners.

Lord Marks of Henley-on-Thames (LD): My Lords, Tara Hudson—a woman, after six years of gender reconstruction—was originally imprisoned at HMP Bristol, a tough prison for 600 men, causing her great distress. She was moved to a women's prison only after the judges considering her appeal suggested that the Prison Service reconsider. How can prison allocation be so insensitive to transgender offenders, particularly in the light of the Minister's Answer? Will his department ensure that in future, if a transgender defendant is at risk of a custodial sentence, full and careful thought will be given to allocation before sentence rather than after placement?

Lord Faulks: I am slightly surprised that the noble Lord has commented in such detail on Tara Hudson; he will be aware of the obligations under the Data Protection Act and the Gender Recognition Act 2004, which place restrictions on the disclosure of information relating to prisoners. As noble Lords will be aware, it is the policy of the Ministry of Justice and its executive agencies never to discuss individual cases. However, without breaching any of the obligations under those Acts, I can assure the House that she is being held in an appropriate environment and is receiving the care that she needs.

Lord Cashman (Lab): My Lords, I agree entirely with the Minister on the approach to anonymity but, in this and other cases, there is deep concern about treatment within the criminal justice system. There are, however, good works being undertaken, such as at Her Majesty's Prison Stafford. Will he reassure the House that there is ongoing training and awareness-raising of the issues of transsexuality, particularly when aspects of the criminal justice system are outsourced?

Lord Faulks: The noble Lord makes an important point. There is an emphasis in the prison officer training, which has been extended in its length and its content refreshed, on respecting the needs and rights of each individual prisoner in their care. There is a component of the mandatory training that addresses the Equality Act and the nine characteristics protected under that legislation, of which gender reassignment is one. Probation officer training has a consistent emphasis on meaningful engagement with individual offenders to support their rehabilitation.

Lord Scriven (LD): My Lords, if the key issue is legal recognition, why, in the care and management of transsexual detainees for immigration purposes, does the Home Office manual state that it is appropriate to place transsexuals in the estate of their acquired gender, "even if the law does not recognise them in their acquired gender", and why can that not be applied to the Prison Service as well?

Lord Faulks: As I indicated, the Prison Service tends to—correctly, I suggest—allocate prisoners according to their legally recognised gender, but there is a discretion to respond to the individual circumstances of a case, which is often as a result of a thorough risk assessment involving both the prisoner and other prisoners. Often, a multiagency panel will be involved. It is indeed the policy of NOMS to make sure that these matters are dealt with sensitively.

Baroness Hayter of Kentish Town (Lab): My Lords, returning to what the noble Lord, Lord Marks, said, the Minister seemed to suggest that this happens at the point of prison, which really is too late. Surely, when a person is leaving court, they need to be in the right van to go to the right prison. Should the decision not be taken earlier, before they leave court? Can he assure us that the staff there are properly trained and that the decision is taken at the right point?

Lord Faulks: The noble Baroness makes an important point and the National Offender Management Service is currently looking at ways to facilitate the proper recording of this information through the introduction of an equalities self-declaration form to be completed by all defendants who are adjourned for the preparation of a pre-sentence report. These details are very difficult to obtain while adopting appropriate sensitivity and recognising the obligations under the Gender Recognition Act.

Baroness Hussein-Ece (LD): In light of some of the comments on previous cases, will the Government review the medical and bureaucratic hurdles for securing a gender recognition certificate under the 2004 Act?

Lord Faulks: The Gender Recognition Act is generally considered to be working well. It is not something to be undertaken lightly. Gender recognition certificates are granted by the gender recognition panel and I understand that there is no great criticism of the process. It is an important step forward from where the law was reluctant to recognise change of gender hitherto.

Lord Patel of Bradford (Lab): Does the Minister agree that, while all the issues he has put forward are very practical and implementable, the problem is that the prison system is bursting at the seams? We have more than 86,000 prisoners and staff numbers have been cut year on year. How will officers prevent the homophobic attacks that have been occurring a lot in prisons, and how will they support the systems the Minister has put forward to help?

Lord Faulks: Our prison officers face a great many challenges and they perform their duties with admirable resolve and skill in often challenging circumstances. They have duties to all prisoners but particular duties to those who may be undergoing gender recognition. They are particularly aware of those challenges and will treat those prisoners with appropriate sensitivity.

Lord Harris of Haringey (Lab): My noble friend Lord Patel raised an important issue about overcrowding in prisons. Under those circumstances, the sensitive consideration of to which prison a prisoner is to be allocated is made much more difficult simply because there are not enough vacant prison places for the allocation to take place.

Lord Faulks: In deciding on the appropriate allocation, there must sometimes be a period of hiatus. Where it is unclear what physical and anatomical risks an individual may present in their contact with other prisoners, they are often held in a secure environment away from other prisoners while their circumstances are clarified, so that a considered decision may be made after advice has been received from appropriate professionals.

Bank of England and Financial Services Bill [HL]

Order of Consideration Motion

3.37 pm

Moved by ***Lord Bridges of Headley***

That it be an instruction to the Committee of the Whole House to which the Bank of England and Financial Services Bill [HL] has been committed that they consider the bill in the following order:

Clauses 1 to 13, Schedule 1, Clauses 14 to 16, Schedule 2, Clause 17, Schedule 3, Clause 18, Schedule 4, Clauses 19 to 30, Title.

Motion agreed.

Energy Bill [HL]

Third Reading

3.37 pm

Clause 7: Contracting out of functions to the OGA

Amendment 1

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

1: Clause 7, page 5, line 12, leave out "This section" and insert "Subsection (2)"

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, before I address the government amendments, I thank the Bill team, my Whip, my noble friend Lord Younger, and the ministerial team in the department for their help and support. I also thank all those who have scrutinised the Bill. I am extremely grateful to noble Lords for their participation in our proceedings in discussions in the Chamber and indeed outside the Chamber, which have been very helpful.

Although I know that there are points on which some of us do not agree, the debate on the content of this Bill has greatly benefited from the wisdom, experience and insight that a number of noble Lords, sitting on all Benches, have brought to deliberations. I also thank specifically the noble Baroness, Lady Worthington, for her contribution to the debate and wish her well in her future endeavours as she steps down from the Opposition Front Bench. She has shown incredible commitment and great brio and has made many very valid points, and I am sure that she will continue to do so from the opposition Benches.

This is an important Bill and although, as I say, we have not agreed on key elements—particularly the early closure of the renewables obligation for onshore wind—we have agreed on many issues, including the need to tackle the threat that climate change constitutes to the environment, our security and our economic prosperity. The Government will decarbonise the economy and will do so cost-effectively.

We have had a substantial measure of agreement on carbon capture and storage. If nothing else, I think I can take great credit for bringing together my noble friends Lord Ridley and Lord Deben and Members of all sides of the House on the importance of carbon capture and storage. I am most grateful in particular to the noble Lord, Lord Oxburgh, for agreeing to head a parliamentary advisory group on carbon capture and storage. This will provide advice to my right honourable friend the Secretary of State for Energy and Climate Change, Amber Rudd, within 12 months of the Act coming into force. I would feel less guilty if I did not know that if I am taking him away from anything, it is from orienteering with his family in his spare time. I know just how busy and able he is, so I am most grateful for that.

Government Amendment 1 is a minor and technical amendment to Clause 7, which reflects an error that has occurred as a result of other government amendments made on Report. The purpose of Clause 7 is to ensure that where functions are contracted out to the Oil and Gas Authority by relying on Section 69 of the Deregulation and Contracting Out Act 1994, they may be contracted out for a period exceeding 10 years. Clause 7 also provides that Welsh Ministers may enter into a contract with the Oil and Gas Authority, authorising that body to exercise the functions of Welsh Ministers.

Clause 7(1) limits the effect of the rest of the clause to circumstances where the Deregulation and Contracting Out Act 1994 has conferred functions on the Oil and Gas Authority. However, the subsections inserted by our amendments on Report are intended to deal with a set of circumstances where that Act does not apply—that is, a power for Welsh Ministers to enter into an agreement with the Oil and Gas Authority authorising that body to exercise the functions of Welsh Ministers. With that in mind, subsection (1) should apply only to subsection (2) rather than to the whole of the clause. This amendment corrects that error.

Government Amendment 2 is a minor and technical amendment to ensure that the levy to fund the Oil and Gas Authority is not payable in respect of functions that it carries out under agreement with Welsh Ministers. This is achieved by inserting wording into the list of matters in Clause 14 that the Secretary of State must ensure are not covered when making regulations on the levy. This provides consistency with the current provision which excludes the levy from being charged in respect of functions carried out under Section 69 of the Deregulation and Contracting Out Act 1994, for example on behalf of Scottish Ministers. It is also consistent with the approach taken towards fees under Clause 13, where the Oil and Gas Authority will not be able to charge fees for the exercise of functions that it is authorised to exercise either on behalf of the Scottish Government or by virtue of an agreement with Welsh Ministers.

Government Amendment 4 updates the Bill's Long Title to ensure that it complies with the parliamentary convention that Bills should leave this House and move to the other place in a proper state. I beg to move.

Lord Wallace of Tankerness (LD): My Lords, I do not wish to detain the House other than to respond to the opening remarks of the noble Lord, Lord Bourne, and to express gratitude and appreciation for his willingness to engage during the passage of the Bill. On many occasions he was left in an unfortunate position which was not of his own doing—for example, amendments coming in late and assessments not being available—but he has engaged, certainly with my party, in a most courteous manner. Although we were not able to agree on the earlier closure of the onshore wind renewables obligation, our discussions were nevertheless very useful and have no doubt paved the way for further discussions when the Bill reaches another place and comes back to your Lordships' House.

The amendments the Minister has just moved are technical and sensible updating measures, but very much appreciated. The first Part of the Bill implements the proposals of the review by Sir Ian Wood, which we were committed to doing when in coalition government. I welcome the fact that this is now taking shape in statutory form, and thank the Minister for his engagement with the Bill.

3.45 pm

Baroness Worthington (Lab): My Lords, I, too, thank the Minister for the way he has conducted the debate inside and outside the Chamber. It has been a genuine pleasure to work with him.

When the Bill arrived, it appeared relatively simple but did not seem to flow from the understanding we now have of the energy trilemma: having to balance the need for reliable, resilient energy systems with affordability and decarbonisation. The Bill focused

almost exclusively on extraction of fossil fuels—something we will continue to do—but contained nothing about the other elements of the trilemma, other than two short clauses on onshore wind. I hope that, following the scrutiny it has received, we now have a better balanced Bill, due in part to the contributions from all sides of the House but also to the way the Minister has engaged, so I thank him for that.

This is going to be my last official opportunity to speak as the shadow Minister, so I take this opportunity to thank all my colleagues who have worked with me not just on this Bill but on the previous one—this in fact is my second energy Bill. I particularly thank Catherine Johnson, of our research team. This has been a tricky Bill to work on, with lots of detail and condensed timescales, and she has dealt with everything we have thrown at her admirably. I also thank my Whip, the noble Lord, Lord Grantchester, all my colleagues on the Front Bench and my colleagues in the shadow DECC team in the other place.

Everyone knows that energy and climate change are passions of mine, and I have found it an absolute privilege to work on two significant pieces of legislation. We have not always agreed and we have differences, but there is a common core aim: to decarbonise our economy, as the Minister has reiterated. That, we know, is certain, and we seek to do so cost-effectively and with a reliable outcome. The challenge is in working out exactly how to achieve that, and the Bill now is testimony to the subtleties involved in that complex challenge. It has been a great privilege to be part of that remarkable process.

I shall be moving on, although not very far. I shall return to the Back Benches and follow the passage of this and subsequent Bills that will address this topic, because this is a multi-decadal challenge and no country has all the answers. We are at the forefront of trying to work through some of these difficult issues. As the Minister said yesterday:

"There is no silver bullet".—[*Official Report*, 3/10/15; col. 1591.]

There is no blueprint we can simply pick up and follow. We are inventing the rules as we go. We will make mistakes and will have to revisit issues, but I hope that this House in particular will do so in the spirit of shared endeavour, as we seek to decarbonise cost effectively and to create a reliable system. I hope that we will continue to revisit this issue, improve policy and, most importantly, send clear signals to the outside world, bringing investors with us, maintaining investor confidence and moving forward as a country, united in this endeavour.

The amendments the Minister has introduced are technical—I am particularly pleased to see that the Long Title is changing to reflect the more balanced approach to the energy trilemma we are grappling with—and I am very grateful to him for tabling them.

Lord Howell of Guildford (Con): My Lords, perhaps I may say how sorry I am to hear that the noble Baroness, Lady Worthington, is leaving the Front Bench; it is news to me. I have learnt a lot from listening to her. I do not agree with everything she says, but her grasp of climate issues is unquestioned and she has added a great deal to the debate.

I also thank my noble friend for the way he has conducted this complex debate. I hope that the Bill goes to the other place with the clear message from our debates on it, and from yesterday's debate on electricity resilience, that the whole of our energy policy needs rebalancing. Not that one necessarily wants a lot more energy Bills to come through your Lordships' House, but I hope that this is just the beginning of a move to a better balance than the current position, which has led to some quite serious muddles. The noble Baroness mentioned one of those last night: that, in our attempts to establish good capacity three, four and five years out, we appear to be ending up with a lot more diesel engines, which is the opposite of what was intended. That arises from the lack of balance between subsidies for wind, which we discussed, and the unwillingness of people to invest in new combined cycle gas turbines.

That is not strictly connected to the government amendments, but I thought I should register my admiration of the amazing grasp that the noble Baroness, Lady Worthington, has of this very complicated subject.

Lord Foulkes of Cumnock (Lab): My Lords, I think I speak on behalf of all my colleagues on the Back Benches who have sat through debates on the Bill when I say that we, too, will miss the enthusiasm and inspiration of my noble friend Lady Worthington on the Front Bench, but we know that she will still be with us in different ways, and we look forward to that.

As I am on my feet, I take this opportunity to ask the Minister to explain. Perhaps I have missed it, but I am still not exactly sure that he has explained when and how the Government will respond to the decision of the House of Lords on the former Clause 66, so that the uncertainty in the industry can be lifted. I hope that he will give us some indication of when and how the Government will respond when he replies.

Lord Bourne of Aberystwyth: My Lords, first, I thank the noble and learned Lord, Lord Wallace of Tankerness, for his most kind comments. It was a pleasure working with him and his colleagues, as it was with the noble Baroness, Lady Worthington. They were not difficult colleagues to deal with on the Bill, and I am sure that it is in many respects a better Bill than it was.

I also thank my noble friend Lord Howell for his comments and echo what he said about the noble Baroness, Lady Worthington. I am not sure that I can echo what he said about more energy Bills—I think I heard a thud from the Bill team behind me when he said that, as they thought of another energy Bill coming down the tracks—but we are looking at crafting a fresh approach on energy policy. This is a fresh Government, so you would expect that. At the moment we are in the middle of a spending review, but we are very conscious as a ministerial team of the importance of crafting a vision on energy policy bearing in mind the three issues that we need to address in the trilemma which is at the heart of our policy.

In response to the question of the noble Lord, Lord Foulkes, we responded immediately in a statement. The democratic House of Commons will look at it. I am not a Member of the House of Commons, and it is

[Lord Bourne of Aberystwyth]
a matter for the House of Commons. As I made clear, we regard this as a manifesto commitment and all noble Lords will agree that the elected House will express its will and the matter will come back to us in due course.

Lord Foulkes of Cumnock: The Minister is not naive; I have worked with him before he became a Minister and I know that he has a lot of experience and knowledge of these matters. He knows that whatever is put to the House of Commons will be put to it by the Government, and he is a member of the Government, so he must have some idea what they propose and how it will be dealt with.

Lord Bourne of Aberystwyth: My Lords, I cannot make it any clearer. It is very clear what we are proposing. It was what we proposed to this House and it is what we will be proposing to the other House, as a Government. It is then for the House of Commons to give its view as the democratic Chamber on that issue. I beg to move.

Amendment 1 agreed.

Clause 14: Levy on licence holders

Amendment 2

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

2: Clause 14, page 10, line 3, at end insert "or an agreement under section 7(3) of this Act"

Amendment 2 agreed.

Amendment 3

Moved by ***Lord Oxburgh***

3: After Clause 70, insert the following new Clause—

"Carbon capture and storage strategy

(1) It is the duty of the Secretary of State to—

(a) develop, promote and implement a comprehensive national strategy for carbon capture and storage (CCS) to deliver the emissions reductions required to meet the fifth, and subsequent, carbon budgets at the scale and pace required;

(b) develop that strategy in consultation with HM Treasury, the Department for Business, Innovation and Skills, the Oil and Gas Authority and other relevant stakeholders including the CCS industry; and

(c) have that strategy in place by June 2017 and report to Parliament on the progress of its implementation every three years thereafter.

(2) The strategy provided for by subsection (1) shall, amongst other things, include—

(a) the development of infrastructure for carbon dioxide transport and storage;

(b) a funding strategy for implementation including provision of market signals sufficient to build confidence for private investment in the CCS industry;

(c) priorities for such action in the immediate future as may be necessary to allow the orderly and timely development and deployment of CCS after 2020;

(d) promotion of cost-effective innovation in CCS; and

(e) clarification of the responsibilities of government departments with respect to the implementation of the strategy."

Lord Oxburgh (CB): My Lords, I, too, would like to pay tribute to the Minister himself for the courtesy and patience which he has displayed in dealing with the myriad matters that have been raised. I join the other speakers in expressing my gratitude to him. Equally I would like to offer my best wishes to the noble Baroness, Lady Worthington. She will certainly be missed. Her wisdom and her comments—sharp and to the point—will be missed as well.

The issues to which Amendment 3 is addressed remain important, but it is a tribute to the Minister's persuasive legal tongue that in the time between Report and now he has persuaded me that the same objectives can be substantially achieved by a different route. Although I prefer the approach that was proposed in the amendment, I will be happy to withdraw it.

Baroness Maddock (LD): My Lords, I also add my thanks to the Minister for the way in which he has dealt with us all through some tricky times, as is always the case with energy Bills in my experience. I also pass on my best wishes to the noble Baroness, Lady Worthington. We will certainly miss her knowledge and her boundless enthusiasm, whatever time of night we are here. We will certainly miss that.

I am really pleased, having heard the opening comments of the Minister, and the comments of the noble Lord, Lord Oxburgh, that the Government are taking seriously the issue of carbon capture and storage. I am not sure that we felt that that was the case when we began this Bill, so I am very pleased that the Minister has been able to move other minds as well on this. I hope that we will hear in due course very good outcomes from the proposals he has made.

Lord Howell of Guildford: My Lords, I add a final word on carbon capture and storage before the amendment is withdrawn. My noble friend Lord Oxburgh has been second to none in bringing home the huge significance of commercial CCS: this would be the way in which the fossil fuels could continue to be burnt without CO_2 emissions. That would be a great reassurance. We can look forward to the affordability, reliability and decarbonisation of our energy system.

I hope I will not strike too sour a note in noting that we learned in earlier parts of the debate that the amount of taxpayers' money being set aside by the Government for the promotion and experimentation and development of CCS was £1 billion—that is, £1,000 million. That is the most enormous sum of money. It is rather more than the entire budget of the Foreign and Commonwealth Office—and all directed, not to the generality of decarbonisation, but to one technology. It is a sobering thought, if my memory serves me right, that under the Labour Government before 2010 there was an intention to make that figure £3 billion or £4 billion. These are vast sums.

All I would add is the thought, as this Bill goes on its way, that we at least should remember not only the importance of the climate problem—the importance of achieving affordable and reliable energy and electricity resilience—but we should think about cost. We should always keep in mind that the costs are there and have got to be weighed all the time against the objectives we

are trying to achieve. A billion pounds is a lot of money in anybody's currency, in any language, and at any time—particularly at times when we are struggling in several other areas of public policy to find money desperately to help extremely worthy causes.

With that marker to this discussion of CCS, about which we have learned as much as we have given in the debates—it is a fascinating subject—I would just end by saying: please let us remember costs as well as benefits.

Lord Young of Norwood Green (Lab): I hesitated whether to enter into this debate but, on the basis of the last remark, I think that I would like to. I am certainly not rising to my feet to oppose carbon capture and storage, only to make the comment that it has proved an elusive goal, despite significant amounts of time and effort spent on research and development. I make no more comment than that.

4 pm

In this complex area of energy, I seek an assurance from the Minister on two points. On North Sea oil and gas, we have already lost something like 75,000 jobs in the past year, in the situation where the oil price has halved and the number of new wells—well, you could probably count them on the fingers of two hands. There are still something like 350,000 to 450,000 jobs across that sector, including the supply chains. I would welcome an assurance from the Minister that we will not lose an important focus on doing what we can to rescue a vitally important part of the industry.

We will still be reliant on fossil fuels for a significant period of time. I have a significant interest in gas; we know that we will require it for something like the next 30 or so years. We rely on most of it from overseas sources now, with a significant amount from a pipeline from Norway, and we are still reliant on Qatar for something like 20% of our supplies, which come in a liquid form—so it is not the ideal situation in terms of how it is produced.

That brings me back to the question of the importance of ensuring that we have secure energy supplies and make the most of developing those that occur naturally in this country—of course, I refer to fracking. I would welcome some comment from the Minister that we understand the importance of developing this part of our energy policy. If we take into account the recent situation at Redcar, we know that the cost of energy is an important factor in our ability to produce things such as steel, and for other vital industries. I welcome a ministerial response on that.

I join my colleagues in wishing our Front Bench spokesperson, my noble friend Lady Worthington, all the best for the future.

Baroness Worthington: I thank my noble friend and the noble Lord, Lord Oxburgh, for tabling the amendment and for pursuing this aspect of our discussions to this point. I am very grateful to hear from the Minister what I think will be a very effective way forward in the creation of an expert group that will report to the Secretary of State. That is a very welcome development. It seems to be the season of paying tributes, and I pay tribute to the noble Lord, Lord Oxburgh, who, not just through the passage of this Bill but for many years has been a fantastic champion of CCS and the group of technologies that falls within that. I know that he is stepping down as the chairperson of the CCSA fairly soon, but he has played a pivotal role in bringing this technology to the minds of policymakers and decision-makers. I thank and congratulate him for that.

It is right that we have a brief discussion about CCS in this debate today, because of the Redcar situation, as my noble friend pointed out, which illustrates how important it is that we get our energy and industrial strategy right. There is a risk to dragging our feet and there is an urgency involved in sorting out our policies on how we are going to not just maintain but actively attract industrial players back to the UK to reindustrialise our nation.

We are home to brilliant engineers and bright graduates, and we have a skilled workforce. We have and need the infrastructure that requires us to have a vibrant primary industry. There are ways in which we can rekindle that industry, but it will not be through trying to push back the tide of green policy, trying to deny that climate change is happening or blaming green taxation for our woes; it will be the reverse. It is like a judo role. We have to go into this subject in a positive way and not just accept that we are going to decarbonise but do so with conviction. If we do that, if we embrace the fact that of course there are engineering solutions that will allow us to continue to produce steel but without the emissions, we can go forward with a positive investment agenda, attract European money and external investment, and persuade Tata that this is the country where it should be developing the steel production plants of tomorrow, now.

We can do that, because we can act without fear of falling foul of state aid. With every rescue package we try to put together that denies the reality of climate change or seeks to bail out companies that are failing for global trade reasons, rather than anything to do with carbon pricing, we will fall foul of state aid. If, however, we embrace the fact that we need inward investment into zero-carbon and low-carbon production, Europe will be on our side. We can then draw down funds, apply our own funds, and recycle funds out of our carbon pricing policies into an inward investment programme.

We have a policy tool almost readily designed to do that, in the form of contracts for difference. As they were introduced in the Energy Act 2013, contracts for difference were designed for power investment and power projects. They can be adapted. We can create a contract for difference, strike off the carbon price and make it available to industrial investors. That would derisk the investment and give a guaranteed income to people, so that they could see for certain that they will be able to come to the UK and that at least one of the factors that controls whether or not they will be profitable will be taken care of. If we move with the agenda of Europe towards decarbonisation and take CCS seriously, that is the way out of this problem. To do anything else would simply be to stick our finger into a dyke that will burst: there is no escape from the inexorable move towards a low-carbon agenda. If we want to maintain our industrial activities and investment, we have got to have technologies that allow us to do that

[Baroness Worthington]
with low carbon—and that means CCS. It does not just mean CCS on its own; it can be combined with electrification, once we have a low-carbon power system. But CCS is going to play a huge role.

As we have discussed previously in this debate, by CCS we do not just mean one technology. It is very similar to renewables; a whole group of technologies falls under that category, some of which produce a usable product. Carbon capture and utilisation is also grouped within this. I am very much looking forward to the creation of this expert group. We could not have chosen a better chairperson for that endeavour, and I hope that I might be able to play a part in my new role as a Back-Bencher. We can explore these issues; we have an opportunity here and should grasp it. We are almost on our own in Europe in understanding how important CCS is and having a populace that supports us in that. Germany needs it but cannot deliver it. The only other countries that are close to us in terms of understanding are Holland and Norway. We can work with them to form a North Sea alliance to make this happen. There is huge potential: the UK is blessed in terms of its ability to embrace this technology. I hope that that endeavour, led by the noble Lord, Lord Oxburgh, will lead to concrete changes in policy, a new approach, with new vigour and energy, and ultimately to UK plc becoming once again the home of industrial innovation and engineering excellence that will lift people in those communities currently suffering job losses, give them hope for the future and bring all the social and economic benefits that come from that.

I shall not detain the House any longer, although I am tempted because this is one of the topics I like to talk about a lot. I wish the Minister well in the remaining stages of the Bill and in the associated regulations and legislation that will come his way. There is a lot more work to be done. Some of the topics we have touched on, including the recalibration of the capacity mechanism, are urgent and outstanding areas of work. We look forward to hearing more about the CFD allocations in the autumn. There are big challenges outside the UK that the Minister and his department will be grappling with. Paris is upon us, and I am looking forward to that being a historic move forward in the world starting to take this issue seriously and moving forward on a united front. Europe has a huge part to play in this.

My final word is that on energy policy the best way to engage with Europe is to engage positively with new ideas, take our vision to Europe and persuade it that our technology-neutral, all-of-the-above, focus-on-least-cost way is the right way to do this. We have some great tools and great examples of policies that work. We must work with Europe and persuade our colleagues that ours is the right path. We should not seek to disengage. We can benefit hugely from Europe, and it can benefit from us. I hope that that will be the basis on which we continue. For now, I say thank you and goodbye.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord, Lord Oxburgh. As has been indicated, the noble Lord is the right person to chair this group and I have no doubt that he will do so in the very fair way that he approaches all these proceedings. The remit of the committee has been worked through with the noble Lord, and it is for him to decide who goes on to it, but I am sure it will be done on a cross-party basis. I very much hope that the noble Baroness can be a part of it, but that is entirely a matter for the noble Lord, Lord Oxburgh.

I also thank the noble Baroness, Lady Maddock, for her kind comments. I agree with my noble friend Lord Howell that a lot of money is being put into carbon capture and storage. That is because the department regards it as a top priority. We have made sure that that is reflected in the Bill. I reassure the noble Lord, Lord Young, and I am glad he has come in with words of support for the main aim of the Bill which is to maximise economic recovery in the North Sea. That remains very much the thrust of what the Wood review sought to do, and it is an important part of moving us to a low-carbon future. We cannot get there instantly and we are going to have to depend on gas. It is far better that it is British gas with British jobs and all the safety features and so on that we ensure through the North Sea. It also provides us with an historic opportunity for CCS. We have already invested £130 million in this since 2011, and we are committed to spending a lot more during this Parliament. We already have two projects—White Rose and Peterhead—moving forward. CCS is a proven technology. There are 14 plants globally and a further eight under construction.

The noble Baroness's contribution was a typical tour de force. It is absolutely right that we have to see how we can provide incentives for the steel industry to decarbonise, but I am sure she recognises that the trilemma is never more evident than in dealing with the steel industry. I know because I have been at meetings where a lot of MPs of all parties, including the Labour Party, have been pressing us to do something about the energy price. It is a factor, but it is certainly not the only factor. The noble Baroness is right that there are many other factors in play and we have to move towards a low-carbon solution. I am sure that she understands that we have to do what we can through Europe to see how we can provide assistance, but she is right that this is not the sum total of what needs to be done. I believe that much more can be done on the procurement front. In the department, we are looking at what we can do about public procurement with the much more relaxed rules that are now adopted in Europe. I think the UK has been the first country to have its rules cleared through this new procedure.

4.15 pm

We have an opportunity to ensure that there is much more procurement of British steel. We also have some very good object lessons to which we can look. Crossrail, for example, has, I think, a supply chain that is 97% British. We are endeavouring, as a Government, to see what we can learn from that. Of course, there is also the National Infrastructure Commission headed by the noble Lord, Lord Adonis, which I am sure will be looking at issues of procurement.

There is much that can be done. Decarbonisation is important. That is now a feature of this Bill through CCS, but of course the Government have to grapple

with the everyday issues, which we touched on yesterday, of affordability and security as well as sustainability. It is a massive challenge. As I said yesterday, there is no silver bullet, but I am most grateful to the noble Lord for saying that he will withdraw his amendment. We very much look forward to his report and the advice that he will be providing to the Secretary of State and the ministerial team. I know that he will be meeting the Secretary of State in short order when we can organise that to ensure that we talk through this procedure.

I should say that the letter that I sent to the noble Lord, Lord Oxburgh, and the terms of reference are deposited in the Library, but I will also endeavour to ensure that they are sent to noble Lords who participated in the debate.

Lord Oxburgh: My Lords, I had not expected this amendment to give rise to the little discussion that we have had. It has of course reminded me that I ought, once again, to have declared my interest as president of the Carbon Capture and Storage Association.

I respectfully remind the noble Lord, Lord Howell, with whom I so commonly agree on these matters, that CCS is expensive, but if we turn our thoughts back to the report of my noble friend Lord Stern, the sum which is committed to CCS is a tiny fraction of the sums that will be at risk if we do not. It is not nice to have to spend money, but it is the lesser of two evils.

I conclude by thanking noble Lords on all sides for the kind remarks that they have made and by endorsing the comments of the noble Baroness, Lady Worthington. It is essential that we be seen in Europe and, more widely, abroad to have embraced the low-carbon agenda, and that we are not being dragged, screaming and kicking, into that area, because we will have much more influence in that case. Indeed, it will be much better for British industry, for which there will be many opportunities if we get this technology right, and get it right quickly.

A succession of Governments has not been, shall I say, all that dextrous in handling CCS in this country. I think that, had things been handled a little differently, not just by the previous Government but by the Government before that, we would not be in this situation today. However, we are where we are, and so we must press on with enthusiasm and good grace. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

In the Title

Amendment 4

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

line 8, after "power;" insert "to make provision about the crediting to and debiting from the net UK carbon account of carbon units;"

Title, as amended, agreed.

A privilege amendment was made.

Bill passed and sent to the Commons.

Draft Investigatory Powers Bill

Statement

4.18 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made by my right honourable friend the Home Secretary in the House of Commons earlier today.

"I should like to make a Statement about the draft investigatory powers Bill and our commitment to providing a new law consolidating and updating our investigatory powers, strengthening our safeguards, and establishing a world-leading oversight regime.

We live in a digital age. Technology is having a profound effect on society. Computers are central to our everyday lives. Big data are reshaping the way we live and work. The internet has brought us tremendous opportunities to prosper and interact with others. But a digital society also presents us with challenges. The same benefits enjoyed by us all are being exploited by serious and organised criminals, online fraudsters and terrorists.

The threat is clear. In the past 12 months alone, six significant terrorist plots have been disrupted here in the UK, as well as a number of further plots overseas. The frequency and cost of cyberattacks are increasing, with 90% of large organisations suffering an information security breach last year. The Child Exploitation and Online Protection Centre estimates that 50,000 people in this country are downloading indecent images of children.

The task of law enforcement and the security and intelligence agencies has become vastly more demanding in this digital age. It is right, therefore, that those who are charged with protecting us should have the powers they need to do so, but it is the role of government and Parliament to ensure that there are limits to those powers.

Let me be clear: the draft Bill that we are publishing today is not a return to the draft communications data Bill of 2012. It will not include powers to force UK companies to capture and retain third-party internet traffic from companies based overseas. It will not compel overseas communications service providers to meet our domestic retention obligations for communications data. And it will not ban encryption or do anything to undermine the security of people's data. The substance of all of the recommendations by the joint scrutiny committee that examined that draft Bill has been accepted.

Today's Bill represents a significant departure from the proposals of the past. Today, we are setting out a modern, legal framework that brings together current powers in a clear and comprehensible way. It is a new Bill that provides some of the strongest protections and safeguards anywhere in the democratic world and an approach that sets new standards for openness, transparency and oversight. This new legislation will underpin the work of law enforcement and the security and intelligence agencies for years to come. It is their licence to operate, with the democratic approval of Parliament, to protect our national security and the public's safety.

[Lord Bates]

This Bill responds to three independent reviews published earlier this year: the first from the Intelligence and Security Committee of Parliament; the second from David Anderson QC, the Independent Reviewer of Terrorism Legislation; and the third from the Independent Surveillance Review convened by the Royal United Services Institute. All three reviews made it clear that the use of investigatory powers is a vital part of protecting the public. They all endorsed the current powers available to the police and law enforcement agencies as both necessary and proportionate, and they all agreed that the legal framework governing those powers needed updating. While considering those reviews, we have engaged with technical experts, academics, civil liberties groups and communications service providers in the UK and overseas. I also met charities supporting people affected by the crimes that these powers are used to investigate.

Copies of the draft Bill will be available in the Vote Office. Our proposals will now be subject to further consultation and pre-legislative scrutiny by a Joint Committee of Parliament. A revised Bill will then be introduced to Parliament in the spring, where it will receive careful parliamentary scrutiny.

As the House knows, the Data Retention and Investigatory Powers Act contains a sunset clause which means that legislation will cease to have effect from 31 December 2016. It is our intention to pass the new law before that date.

This Bill will govern all the powers available to law enforcement, the security and intelligence agencies and the Armed Forces to acquire the content of communications or communications data. These include the ability to retain and acquire communications data to be used as evidence in court and to advance investigations; the ability to intercept the contents of communications in order to acquire sensitive intelligence to tackle terrorist plots and serious and organised crimes; the use of equipment interference powers to obtain data covertly from computers; and the use of these powers by the security and intelligence agencies in bulk to identify the most serious threats to the UK from overseas and to rapidly establish links between suspects in the UK.

It cannot be right that, today, the police could find an abducted child if the suspects were using mobile phones to co-ordinate their crime, but if they were using social media or communications apps they would be out of reach. Such an approach defies all logic and ignores the realities of today's digital age. So this Bill will also allow the police to identify which communications services a person or device has connected to—so-called internet connection records. Some have characterised this power as law enforcement having access to people's full web browsing histories. Let me be clear: this is simply wrong. An internet connection record is a record of the communications service that a person has used, not a record of every web page they have accessed. So, if someone has visited a social media website, an internet connection record will show only that they accessed that site, not the particular pages they looked at, who they communicated with or what was said. It is simply the modern equivalent of an itemised phone bill. Law enforcement agencies would not be able to make a request for the purpose of determining, for example, whether someone had visited a mental health website, a medical website or even a news website. They would be able to make a request only for the purpose of determining whether someone had accessed a communications website or an illegal website or to resolve an IP address, where it is necessary and proportionate to do so in the course of a specific investigation. Strict limits will apply to when and how those data can be accessed, over and above those safeguards that apply to other forms of communications data, and we will ban local authorities from accessing such data.

I have announced today our intention to ensure that the powers available to law enforcement and the agencies are clear for everyone to understand. The transparency report that I am publishing today will help, and copies of that will also be available in the Vote Office. However, there remain some powers that successive Governments have considered too sensitive to disclose for fear of revealing capabilities to those who mean us harm. I am clear that we must now reconcile this with our ambition to deliver greater openness and transparency. So the Bill will make explicit provision for all of the powers available to the security and intelligence agencies to acquire data in bulk. That will include, not only bulk interception provided under the Regulation of Investigatory Powers Act and which is vital to the work of GCHQ, but also the acquisition of bulk communications data, relating to both the UK and overseas.

This is not a new power. It will replace the power under Section 94 of the Telecommunications Act 1984, under which successive Governments have approved the security and intelligence agencies' access to such communications data from communication service providers. This has allowed them to thwart a number of attacks here in the UK. In 2010, when a group of terrorists was plotting attacks in the UK, including on the London Stock Exchange, the use of bulk communications data played a key role in MI5's investigation. It allowed investigators to uncover the terrorist network and to understand its plans. This led to the disruption of its activities and successful convictions against all the group's members.

I have also published the agencies' handling arrangements relating to this power, which set out the existing robust safeguards and independent oversight. These make clear that the data do not include the content of communications or internet connection records. The Bill will put this power on a more explicit footing and it will be subject to the same robust safeguards that apply to other bulk powers.

The House will know that the powers I have described today are currently overseen by the Interception of Communications Commissioner, the Intelligence Services Commissioner and the Chief Surveillance Commissioner, all of whom are serving or former senior judges. This regime worked in the past, but I am clear that we need to significantly strengthen it to govern how these powers are authorised and overseen in the future. So we will replace the existing oversight with a powerful and independent investigatory powers commissioner. This will be a senior judge, supported by a team of expert inspectors with the authority and resources to

effectively, and visibly, hold the intelligence agencies and law enforcement to account. These will be world-leading oversight arrangements.

Finally, I turn to authorisation. Authorising warrants is one of the most important means by which I and other Secretaries of State hold the security and intelligence agencies to account for their actions. In turn, we are accountable to this House and, through its elected representatives, to the public. As the House knows, the first duty of government is the protection of the public, and it is a responsibility this Government take extremely seriously. While there was a good deal of agreement in the three independent reviews I have referenced, all three reached different conclusions on the question of who should authorise interception warrants. The Intelligence and Security Committee supported authorisation by a Secretary of State; David Anderson said judges should carry out the authorisation; and RUSI said the authorisation of warrants should have a judicial element, but also recognised the important role of the Secretary of State. I have considered the very good arguments put forward by the three reviews. My response is one that I hope the House agrees will provide the reassurance of both democratic accountability and judicial accountability.

As now, the Secretary of State will need to be satisfied that an activity is necessary and proportionate before a warrant can be issued. But in future, the warrant will not come into force until it has been formally approved by a judge. This will place a double lock on the authorisation of our most intrusive investigatory powers: democratic accountability, through the Secretary of State, to ensure that our intelligence agencies operate in the interests of the citizens of this country; and the public reassurance of independent, judicial authorisation. This will be one of the strongest authorisation regimes anywhere in the world.

For parliamentarians, we will go even further. The Bill will for the first time put into law the Prime Minister's commitment that in any case where it is proposed to intercept the communications of a parliamentarian—including Members of the House of Commons, Members of the House of Lords, UK MEPs and the Members of the devolved legislatures—the Prime Minister would also be consulted.

The legislation we are proposing today is unprecedented. It will provide unparalleled openness and transparency about our investigatory powers. It will provide the strongest safeguards and world-leading oversight arrangements. And it will give the men and women of our security and intelligence agencies and our law enforcement agencies, who do so much to keep us safe and secure, the powers they need to protect our country.

I commend the Statement to the House".

4.31 pm

Lord Rosser (Lab): I thank the Minister for repeating the Statement made in the Commons earlier today on the draft investigatory powers Bill, which the Government intend should receive Royal Assent before the sunset clause in the Data Retention and Investigatory Powers Act 2014 comes into effect at the end of next year. An important stage in the consideration of this Bill will be undertaken by the pre-legislative scrutiny committee and its findings will, I am sure, be awaited with considerable interest.

We have also had a number of different reports on this issue in the last few months including from, but by no means only from, the Independent Reviewer of Terrorism Legislation, David Anderson QC, the Intelligence and Security Committee, and the review convened by the Royal United Services Institute. All three of those reports supported an overall review of the current legislative framework for the use of investigatory powers and the replacement of legislation such as the Regulation of Investigatory Powers Act 2000.

The Anderson report was commissioned on the basis of an opposition amendment when Parliament was asked to legislate very quickly to introduce the Data Retention and Investigatory Powers Act 2014. We argued then that it was the right time for a thorough review of the existing legal framework to be conducted as we, and others, no longer felt that the current arrangements were fit for purpose. Fast-developing technology and the growing threats we face internationally and domestically have left our fragmented laws behind and made the job of our police and security services, to whom we all owe a considerable debt of gratitude, harder.

We support the Government in their attempt to update the law in this important and sensitive area, particularly since the Statement appears to indicate that the Government have listened to at least some of the concerns that were expressed about the original proposed legislation put forward during the last Parliament. However, we hope that this Statement and the draft legislation does not prove to be a bit like some Budget speeches where it is only afterwards that some of the detail proves to put a rather less acceptable gloss on aspects of some of the changes and measures proposed.

Although it is becoming something of a cliché, the need is to secure the appropriate balance between the requirement to safeguard national security and the safety of our citizens, and the requirement to protect civil liberties and personal privacy, which is surely one of the hallmarks of a democracy compared to a dictatorship. The extent to which the proposals set out in the Statement, and in the draft legislation, achieve that difficult balance is clearly going to be the subject of much discussion during the consideration of the Bill. However, the Statement indicates stronger safeguards than were previously being proposed, including in the important area of judicial authorisation, and it appears as though in broad terms that difficult balance may be about right. We will examine carefully the detail of the Bill and where necessary seek to improve the safeguards to increase the all-important factor of public trust.

The proposals set out today do not of course relate just to national security. They also have relevance to preventing serious and abhorrent crimes and apprehending those who commit them, including murder, major fraud and child sexual exploitation. In that regard, can the Minister confirm that the far-reaching powers of content interception will be used only for the most serious crimes, as applies under RIPA? The Statement indicated that the detailed web browsing of individuals

[LORD ROSSER]
will not be accessible, which we support, but will the Minister set out precisely what internet activity of an individual will be accessible without a warrant?

Clearly, vulnerability of information has gone up the agenda of public concern in light of the attack on TalkTalk. Since data retention and bulk storage were referred to in the Statement, what steps do the Government intend to take to ensure the security of bulk storage of data by public and private bodies?

The Statement referred to the change of approach on encryption from the possible ban previously mentioned by the Prime Minister, and reference was also made to communication providers and legal duties. Are the Government satisfied that they can make any such legal requirements stick against some of the largest and most popular online names, many of whom have headquarters overseas?

The Statement also referred to the protection of communications for parliamentarians. Will that protection also apply to people communicating with parliamentarians, whether on personal matters or on providing information? What protection arrangements will there be for sources of information used by journalists? The Statement said that, if it were proposed to intercept the communications of a parliamentarian, the Prime Minister would also be consulted. What in this context does "consult" mean? Does it mean that the Prime Minister would have to give his or her agreement?

The Statement also addressed the issue of authorisation, and set out a two-stage process which is clearly intended to address the twin points of accountability to Parliament on the one hand and sufficient independence from the political process on the other in order to build trust—an issue referred to by David Anderson QC in his report. What will be the powers of the judges involved in the authorisation of warrants process in view of the reference in the Statement to a warrant being "formally" approved by a judge, and will judges have to sign off warrants in all cases? Will the information made available to the judge in order to make his or her decision be the same as the information made available to the Home Secretary? Will the criteria against which the judge will make a decision be the same as the criteria against which the Home Secretary makes her decision, or will the judge have a different remit? Who, or what body, will appoint the judges who will be involved in the authorisation of warrants process? How long is it expected to take to go through the double-lock authorisation process outlined in the Statement, and what will happen if there is an emergency requiring immediate authorisation of a warrant?

One of the key themes of the report by David Anderson was that a core objective for the renewal of legislation concerning investigatory powers ought to be public trust from all sections of our community in the use of those powers by government agencies, since public consent to intrusive laws depends on people trusting the authorities to keep them safe and not to spy needlessly on them. That in turn, as David Anderson said in his report, requires knowledge, at least in outline, of what powers are liable to be used, and visible authorisation and oversight mechanisms in which the wider public can have confidence.

The Bill will go through its stages in the Commons before coming to this House. It is, of course, a matter for the other place to determine, but one can only express the hope that a Bill of this importance will have received full and proper consideration before it gets to this House, although I am sure there will be no lack of willingness in this place to make up for any deficiencies in that regard and to ensure that the powers being sought are necessary and proportionate in relation to the issues and potential dangers they are intended to combat and address.

Lord Paddick (LD): My Lords, I, too, thank the Minister for repeating the Statement made by the Home Secretary in the other place. Clearly, we would like to be reassured by the Home Secretary's claim that the draft Bill is not a return to the draft Communications Data Bill 2012, which the Liberal Democrats in the coalition Government quite rightly blocked, and from which this Government now appear to want to distance themselves.

There are some clear and very welcome changes proposed, including judicial authorisation of interception warrants and a promise not to interfere with encryption, but we must look very carefully at the detail of what is being proposed, particularly in relation to what the Home Secretary calls, "internet connection records". Clearly, there has been a great deal of concern about communications service providers storing everyone's web browsing history and handing over this information to the police and the security services. While the Home Secretary says that the proposed Bill would not allow that, I will probe very gently whether that is the case, so as to dispel concerns that this is just smoke and mirrors.

Intuitively, the Home Secretary must be right that if the police can use mobile phone data to find an abducted child, they should be able to do so if criminals are now using social media or communication apps instead of cellular data. Our concerns are: first, whether this is technically feasible; secondly, whether it is technically feasible without prohibitive costs to communications service providers; and, thirdly, whether it is possible without the risk of disproportionate intrusion into innocent people's privacy, whether by the forces of good or by hackers such as those who breached TalkTalk's security, as the noble Lord, Lord Rosser, mentioned.

Talking to experts, I was told that communications service providers would be unable to tell the police or the security services whether someone had used the internet to communicate, as opposed to just browsing, without storing content. This requires billions of pounds of hardware investment, and even then it may not be possible to tell the difference between browsing and communication. Determined suppliers of applications that enable people to communicate covertly could disguise internet communication as passive browsing, for example. Will the Minister say whether the Government know that it is technically possible for internet service providers to provide a record of the communications services a person has used without a record of every page they have accessed? What would be the cost to communications providers? Has a risk assessment been undertaken of the possibility that, having stored sensitive personal information, that information might be accessed unlawfully?

Finally, in 2005 the police, backed by the then Labour Government, asked for a power to detain terror suspects without charge for up to 90 days—a power that the security services did not ask for and that Parliament, quite rightly, rejected. Will the Minister also confirm whether the requirement to store internet communication records has come from the police alone or from the police and the security services?

Lord Bates: My Lords, I thank the noble Lord, Lord Rosser, for his broad welcome of this. He is right to point to the antecedents of this whole process. It rests very much in a cross-party approach. We recognise the seriousness of the problems we face. This legislation is important to see in a context. Although it is very different from the draft communications data Bill in 2012, it is part of a long string and timeline of argument and debate that we have had. All of the recommendations in the report of my noble friend Lord Blencathra's Joint Committee on that Bill have been accepted here. More than 200 recommendations were made in the three reviews to which the noble Lord, Lord Rosser, referred. They are also reflected in the draft Bill. He is absolutely right on that.

I turn specifically to the questions that the noble Lord asked. He asked whether the serious crime threshold will still be there. The answer is yes, absolutely. Warrantry will be undertaken in the same way as it currently is. There is no change in that. Bulk storage of data is a critical issue currently being discussed with the communications service providers. That covers some of the points that the noble Lord, Lord Paddick, raised. I will come back to that. We are in constant dialogue with them. My noble friend Lady Shields, who is the Minister for Internet Safety and Security, plays a crucial role in that dialogue, as did Sir Nigel Sheinwald, who produced his report last year. That work with the industry is ongoing.

In respect of parliamentarians, there was the Wilson doctrine in 1966, which was about wire-tapping. I do not want to have a whole debate about that but it is quite interesting to go back and look at what the Wilson doctrine actually was: effectively a requirement, as I understand it, for the Prime Minister to make a statement when communications had been intercepted, at a time when it was appropriate for national security to allow him to do so. That additional element—requiring the Prime Minister to be consulted—is a very real safeguard. In terms of the appointment of judges, we are in dialogue with the Ministry of Justice, as would be expected, and also with the Lord Chief Justice, to ensure that the appointments process is done correctly and we identify the specific skills that we are looking for in the team of judges. We anticipate that about seven judges—judicial commissioners—will be required.

On the point raised by the noble Lord, Lord Paddick, about social media, what we are really getting at here—what the police and the security services are saying—is that wireless telephony, in the space of just five years, has gone from a position where a mobile phone was the way in which people communicated, to one in which they now use Skype, WhatsApp and other social media. A third of calls are made through internet service providers, and everything suggests that that proportion will increase. That is why the argument for going for the internet records—specifically which app or site they were using to communicate—is so important.

The noble Lord's question quite rightly referred to the fact that when David Anderson did his review he said, "If the case was made". The noble Lord is right to pick up on that point: we discussed it a lot. That is why the operational case for the powers that was put forward by the police is also being published today. It is available on the website, but I can make sure that copies are available in the Printed Paper Office, if that is helpful.

In regard to the costs of doing this, an impact assessment accompanies the Bill. That puts the cost to the industry at about £174 million over 10 years. Those costs, and the impact assessment, will be precisely the types of detail that the process of pre-legislative scrutiny should thrash out and test. I hope that it will do so.

4.47 pm

Lord King of Bridgwater (Con): My Lords, I start on a rather personal note by saying to my noble friend how pleased I am—I think that the House will be too—that he is still in the job that he was doing so well before the last election. The House knows the care and consideration that he gives to this extremely difficult issue. Those of us who have tried to accelerate the process to get to where he is trying to get to now recognise the tremendous efforts that he made at that time.

I think that the House had better be ready for a pretty busy July and October, because the interest in this Bill is going to be massive. If we have a joint scrutiny committee of both Houses, then it goes to the Commons and then comes to the Lords, I think that the end of the summer is the earliest we can expect to see it here. My worry all the way through has been about the delay this involves and the risks facing this country. I was struck by the fact that two speakers on the Front Benches opposite both referred to TalkTalk, as though this was an interesting new development illustrating a new problem. I wonder what else may have happened before July and October that will condition our thinking about the range and number of threats that we face. I hope that I am not being too pessimistic, but we know that this is an extremely dangerous world.

I support the introduction of judicial authorisation, but, as somebody who used to sign a number of these warrants in my executive capacity as Secretary of State, the judges will, without question, need help in the early stages in understanding some of the background issues about national security with which they may not initially be familiar.

Lord Bates: I am grateful to my noble friend. Of course, I recognise the work that he undertook, not only as chair of the Intelligence and Security Committee, which led a lot of the work on this area, but thinking back to those heady days earlier this year when we were taking through the Counter-Terrorism and Security Bill, which is now on the statute book. He is right about the urgency. DRIPA has a sunset clause of December. Sometimes I think that the House is at its best when its mind is focused. I think there is a general

[LORD BATES]
consensus that we need to get this in place so that those powers continue to be available and that they are strengthened and made more accountable. I believe the timetable that has been set out is quite achievable but it will require a lot of focus.

Lord Blair of Boughton (CB): My Lords, I echo the words of the noble Lord, Lord King, about the Minister. I am very glad that he is here. He has heard all the arguments before; he is familiar with the pressure from people who have been involved in these sorts of operations. The issue that the House will have to be absolutely clear on is the matter of trust. Do the public trust the idea that these data about internet access are safe? The worst thing that could happen is that those data could be penetrated and leaked. When we and the various committees come to consider this, that aspect of the security of the data that are being retained by the state or the internet service providers will be crucial in defining whether or not the public trust what the Government, the agencies and the police are doing. Without that public trust, we fail.

Lord Bates: The noble Lord is absolutely right, of course, and brings his wealth of experience to this area. That is why David Anderson was absolutely right when he titled his report, which has been so influential on our thinking, *A Question of Trust*. He said that that went to the heart of it. It is also worth noting that, on page 33 of that report, David Anderson reflected some opinion poll data, which showed that there was a very high level of public trust when it came to prioritising,

"reducing the threat posed by terrorists and serious criminals"—

71% supported the initiatives that were being taken. However, we cannot take that support for granted. The transparency and openness of the process through this stage of the legislation will be important in strengthening it.

Lord Hutton of Furness (Lab): My Lords, I think it is necessary that we take the new powers and I broadly welcome the additional safeguards that the Minister has outlined, but can I ask him specifically about the process of authorising interception warrants? Just like the noble Lord, Lord King, I have had responsibility for signing these warrants in the past, and I would like to know why the Minister and his colleagues in government have felt unable to accept the recommendations of the Intelligence and Security Committee in this regard. I believe that issues of national security are properly matters for Ministers, and I am not entirely sure that it makes sense to ask the judges to stand in the shoes of Ministers when it comes to important decisions about national security. Far from this being a double lock, it is quite clear from what the Home Secretary has said in the other place that in future it will be judges, not Ministers, who decide whether or not these warrants in relation to national security matters are going to be brought into effect. I am not persuaded that that is the right decision.

Lord Bates: In many ways, we are starting from similar positions. The noble Lord believes that the people who are accountable to the public for the decision, if it goes right or wrong, should be the ones who sign the paper. However, it was very clear through the process of the reviews, which we have listened to, and the other work that previous committees have done in looking at this matter that the level of public confidence would be strengthened if there was a judicial element to it. If there were an imminent threat, the Home Secretary would retain the right to be able to issue the warrant herself, but it would be subject to a judicial review within five days. That ability is there and the two-pronged approach is probably about the right level, considering where the public mood is at this time.

Lord Blencathra (Con): My Lords, I am grateful to my noble friend the Minister for his kind remarks about the Joint Committee I was privileged to chair four years ago. I think we were the first to point out that RIPA was not longer fit for purpose. It is clear from the Home Secretary's Statement, from glancing at the section headings in the Bill and from looking at the adoption of the Anderson report and the other independent reports, that this Bill is a far cry from the original Bill that we scrutinised. To me, the crucial thing is that any extraordinary powers we grant to the security services and the police are not wrapped up and hidden in some obscure clause so that we are not quite sure what we are voting for, but are set out clearly so that Members in both Houses have a chance to vote for or against them as the case may be. That transparency should reassure the public that we are giving the security services and the police the appropriate powers, approved by Parliament.

Will the Minister consider a couple of additions I have spotted at the moment? I think we need a technical advisory committee that will look rapidly for new technological or internet gizmos or whatsits and be able to recommend to the commissioners that the Bill needs to be amended. Then we need something, such as the super-affirmative procedure, to amend the Act rapidly. Otherwise we will be in the same position as with RIPA, which gets older and older and is not updated all the time. We need those changes, I suggest.

Lord Bates: My noble friend is right, but that might not be necessary. I appreciate that the Bill has only just been published and is 300 pages long, but it has been worded as far as possible to allow for future proofing of the legislation. My noble friend Lady Shields plays an important role as a Minister looking at this area with her immense technical knowledge. I personally have benefitted from that knowledge in preparing for the Statement. A final point is that we have a plethora of different powers spread across different bits of legislation and a key driver of the Bill is that it is a great opportunity to bring them into one place so that they can be subject to that kind of scrutiny. I think that that is another element that we will strengthen along the lines of what my noble friend proposed.

Baroness Ludford (LD): My Lords, I, too, welcome the continuity and the expertise that the Minister brings, as well as his charity fundraising. Perhaps I may just pick up on a point that the noble Lord,

Lord Rosser, touched on: what exactly will the judicial powers be, and what evidence will the judges have? It was suggested today that the judge will be able to reject only on judicial review principles—that is, to ensure that the procedure was correct—but will not be able to look at the substantive evidence available to the Home Secretary. Will the Minister please clarify that? Secondly, and continuing a point that my noble friend Lord Paddick made, what confidence do the Government have that all ISPs can maintain the security of data?

Lord Bates: In terms of the judicial role, the judge will have sight of the same information as the Secretary of State currently has—which is the justification. Of course, the judge will be able to subject that justification to testing and review in terms of the process and content and ask them to go back and get more if required. That is certainly what the Secretary of State does at present. Those elements will be important in strengthening that part of the process. Again, however, that can be fleshed out in the pre-legislative scrutiny.

Lord Tebbit (Con): My Lords, perhaps I may remind my noble friend and the House that there are four parliamentarians who would have wished to engage in these debates but are not able to do so: Airey Neave, the Reverend Robert Bradford, Tony Berry and Ian Gow. I hope it will be remembered by all Members of this House that they have no human rights whatever. They were all extinguished by a lack of the intelligence to prevent their murder.

Lord Bates: My noble friend is absolutely right. We talk a lot about liberty and security but in order to enjoy our liberty we must first have security. That is what this is about. I mentioned in the Statement that six terrorist attacks have been thwarted by the outstanding work of our security and law enforcement services over the past year alone. The transparency report which I am publishing here today shows that some 299 people have been arrested in the past year on terrorism-related offences. It shows that the threat is real and the powers are necessary.

Lord West of Spithead (Lab): My Lords, although I agree with the noble Lord, Lord King, that it is a delight to have the Minister in his post, I would have preferred to be in that post myself after the election—but that is a different issue.

This is not before time. It has taken a long time, but we should all celebrate today, as this is good news. We hopefully get rid of the old RIPA, which is discredited—not surprisingly, because it is so old—and of emergency legislation which we passed only because we got ourselves in such a muddle about this. Here is a real opportunity for us to set a gold standard in the ability to protect our people and ensure that we can track these ghastly people who wish to kill us and do us harm, but also to pay due regard to the privacy of the individual. With pre-legislative scrutiny of all the issues we have been discussing and a White Paper, and with sufficient time, there is no reason why we should not be able to do this. We have to realise that we must not delude ourselves: there are people out there who wish to kill us. We know they want to kill us, and there are a large number of them. This is a real threat. Not doing this would be madness.

I get annoyed, I am afraid, by some comments which seem to indicate that our own security forces and agencies are the bad guys and the ones who are threatening us. That is just not true. Some people use emotive language, such as "snoopers' charter". The emotive language I would use is that if we do not do something like this, those people are giving the people who wish to kill us a licence to kill—but let us not use emotive language and instead look at this in a balanced way. It has to be done and it is very important that it is done.

Have we really thought about some way of ensuring that there is better data protection, not just in this Bill, but more broadly? We are not as good at it as we should be, which is a real worry. We have to make sure we do it, because people are concerned when data are held anywhere. It is no reason not to do this, but we do need to have some way of making sure that is dealt with.

Lord Bates: The noble Lord is absolutely right. This is why it is important to work with communication service providers: this has to be a partnership between the industry, the law enforcement agencies and the Government to make sure that we get this right and that there is a way of doing it which is secure. He is right about the threat being real. I have heard some of the reports from meetings which the Home Secretary has had with families who have been victims of the online sexual exploitation of children. They feel exactly the same way as my noble friend Lord Tebbit feels in terms of the actions which could be taken to ensure that their children and their loved ones do not have to suffer the exploitation which they have suffered at the hands of these heinous criminals.

Baroness Jones of Moulsecoomb (GP): My Lords, this has been described as a tidying-up Bill, and the reason for it is that the security services and the police have overstepped the mark and misused their past powers. The noble Lord, Lord Blair, talked about trust. What guarantees can the Government give that the security services and the police will not overstep these powers as well?

Lord Bates: That is one of the reasons why we have put in place a much stronger, clearer and well-resourced investigatory powers commissioner. That will also give an opportunity for cases to be brought to the Investigatory Powers Tribunal. There will be more transparency and openness there for people to take advantage of if they feel that we have got the decision wrong.

Lord Pannick (CB): Can I press the Minister on what the Government intend by judicial authorisation? The Statement that the Minister repeated says that,

"in future, the warrant will not come into force until it has been formally approved by a judge".

However, in Clause 19 and many other places, the Bill speaks of a judicial review test, which, as has already been explained, is a matter of assessing reasonableness

[LORD PANNICK]
and the formality of procedures. The real question is whether the Government intend that the judge will have the power to countermand the initial decision of the Secretary of State if the judge considers that the warrant is either unnecessary or disproportionate.

Lord Bates: We have stated that there is a double lock, and it is just that. Without both the judge and the Secretary of State giving their approval, it simply cannot happen. Some details are being published today in terms of draft codes of practice, and more information will be fleshed out, in co-operation with the Ministry of Justice, the Lord Chief Justice and, crucially of course, the judicial commissioners themselves, as to how this process will work in an effective and speedy way.

Lord Campbell-Savours (Lab): If the judge, in the explanation just given by the Minister, can effectively veto the Secretary of State's decision, where does accountability lie?

Lord Bates: Accountability lies in that it was the Secretary of State, first, who made the decision and that is then checked by a judge. That would be the element of public accountability in that circumstance, but we are talking particularly about warrants which are required in relation to intercept, which is the most intrusive form of investigation power, not necessarily the communications data.

Lord Strasburger (LD): My Lords, shortly after being introduced to this House I had the temerity to start raising concerns about the plethora of unfit legislation covering digital surveillance powers and the ineffective controls and oversight over their use. Initially, my questions in this Chamber were met with a mixture of stonewalling by Ministers and ridicule from certain noble Lords connected to the security establishment.

Lord King of Bridgwater: Where is your question?

Lord Strasburger: It will come. I am gratified to see that all parts of the House now recognise that the current laws are hopelessly flawed and that we need to start with a clean sheet of paper to build a fresh legislative framework to cover this important and contentious area. When I start to read this 370-page document I shall do so in the hope that the detail can live up to the billing the Home Secretary gave it a few hours ago. From listening to her replies to questions, I know already that there are several concerns, including a forthcoming deadly embrace with the industry over encryption.

Noble Lords: Question!

Lord Strasburger: I shall save my questions for the Select Committee, but in the mean time I shall ask just one. What is the timetable for the forming of the Joint Committee and when do the Government hope to receive its report?

Lord Bates: The Joint Committee is in the process of being formed, through the usual channels. It is hoped that that will happen in the next few weeks. It is hoped that it will have produced its report by the spring and that a revised Bill, if it is necessary to revise the Bill, will then be published for consideration in the other place.

Lord Young of Norwood Green (Lab): We talked about trust and getting the balance right in the Bill, but it works both ways. Yes, of course, the public have a right to feel confident that there will be controls on the way in which these investigatory powers are used, but they are just as concerned, as the Minister said, to ensure that we understand the very real threats to the security of this country, not just from terrorism or paedophilia, but from significant areas of crime where the internet is being used almost unchecked at the moment. It is not a question of our security services overstepping the mark; with the current legislation they do not have the ability to deal with the very real threats. When we talk about balance and trust, it is on both sides. I would welcome the Minister's views.

Lord Bates: I totally agree—that is why the police have put out such a thorough operational case for this. It is very important that, as well as explaining the threats we face, whether they be terrorist, child sexual exploitation or financial crime, we point out that the process through which this legislation is going is almost unprecedented in its openness and transparency. What will come thereafter, should the Bill pass all its stages through the House, will be a much strengthened, much more clear and transparent approach in which we can all have trust and confidence.

European Union Referendum Bill

Committee (3rd Day)

5.10 pm

Relevant documents: 5th Report from the Constitution Committee, 9th Report from the Delegated Powers Committee

Clause 3 agreed.

Amendment 33

Moved by ***Baroness Anelay of St Johns***

33: Schedule 1, page 8, line 5, leave out "Schedule" and insert "Act"

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, I shall speak also to Amendments 41 and 42, 44, 47 to 49 and 62, which are all in my name. They all relate to the donations and loans controls that will apply to campaigners at the referendum.

Amendment 33 is a technical amendment which, alongside Amendments 47 and 62, ensures that the Bill will contain one definition of "referendum period" rather than multiple, identical definitions. These minor amendments are necessary as a result of a more substantive amendment, Amendment 48.

Amendment 48 addresses an issue with the rules relating to loans and other financial transactions that benefit political parties that register as permitted

participants at the referendum. To keep matters straightforward, I will henceforth refer to these transactions simply as loans.

Political parties are eligible to become permitted participants at referendums under the Political Parties, Elections and Referendums Act 2000—PPERA. If they do, they will be subject to the same controls on referendum spending as apply to other permitted participants, but the major parties will not be subject to the same controls on donations and loans. This is simply because political parties other than minor parties are already subject to ongoing controls on donations and loans under PPERA. The exclusion of these political parties from the donation and loan rules at referendums is not a reflection of their having a different status to other permitted participants at a referendum. It is merely an administrative measure to avoid double counting and excessive compliance burdens, given their ongoing requirements in relation to donations and loans.

Under PPERA, the list of those eligible to make donations or loans to political parties is the same as the list of those who are eligible donors and lenders in relation to permitted participants. However, for the EU referendum, the Bill adds to the list of those eligible to make donations to permitted participants. It does this at the recommendation of the Electoral Commission, to bring the list into line with the list of non-party campaigners who are eligible to register under PPERA for election purposes, as amended by the Transparency of Lobbying Act. The list has also been extended to take account of the inclusion of Gibraltar in the referendum. For example, Gibraltar electors will be eligible to make donations to permitted participants, as will royal chartered bodies and Scottish partnerships.

The Bill also introduces controls on loans to permitted participants. The list of eligible lenders is the same as that for eligible donors for the purpose of the referendum. As political parties are regulated separately, it is necessary similarly to extend the list of eligible donors and lenders to political parties that register as permitted participants. An amendment made in the other place effected this measure in relation to donations. This now forms paragraph 22 of Schedule 1. Amendment 48 completes this work by extending the eligibility to make loans to political parties acting as permitted participants to the newly added individuals and bodies. As with the rules for donations to political parties, this eligibility will be time limited and will apply only during the referendum period.

This is about having a level playing field in the run-up to the referendum. It must be right that political parties that register to campaign be able to accept donations and loans from the same sources that are available to other permitted participants.

Amendment 48 contains an additional control to prevent the terms of a loan agreement allowed under it being varied to increase the value of the loan. This aims to prevent political parties using loans entered into as a permitted participant as a means of borrowing more money after the referendum, which they would not normally be able to receive in their capacity as a political party under the ongoing party funding rules.

Amendment 42 relates to the changes made through Amendment 48, which I have just spoken to, and the similar amendment made in the other place in relation to donations to political parties. These ensure that the rules on who can donate and lend money to political parties that register as permitted participants are the same as for all other permitted participants. In effect, however, this means that during the referendum period, political parties that register as permitted participants will be able to receive funding from otherwise ineligible sources.

5.15 pm

Noble Lords will appreciate the risk that any money donated or loaned to political parties by the newly added individuals or bodies could be used for wider political purposes, rather than for referendum purposes. For this reason, Amendment 42 adds a safeguard. It prevents a political party accepting funding from the newly added categories of eligible donors or lenders that would, in aggregate, exceed the party's spending limit for the referendum. This follows the existing approach taken in PPERA for UK political parties that intend to contest European parliamentary elections in the South West Region, which includes Gibraltar. Amendment 42 will therefore help to preserve the integrity of the existing party funding rules through introducing proportionate, practical and sensible controls.

Amendment 49 relates to the regulations controlling who has access to the register of electors in England and Wales, Scotland and Northern Ireland. The relevant regulations control who can access the register and the purposes for which they can use it. These controls are necessary to ensure that people can access information in the register that they need to comply with election and referendum regulations, whilst ensuring that electoral data cannot be misused. It is a criminal offence to use information in the register for a purpose other than that specified in the regulations. This amendment will ensure that those who register as permitted participants for the EU referendum will have access to the electoral registers in England and Wales, Scotland and Northern Ireland for the purposes of complying with referendum donations and loans rules. Among those eligible to donate or lend to permitted participants are individuals registered on a UK or Gibraltar register. Permitted participants therefore need access to the registers to confirm a donor's eligibility. The Government of Gibraltar will be enacting similar provisions enabling access to the Gibraltar register.

Those amendments are technical, but I now turn to those that are perhaps even more technical. Amendment 41 ensures that, during the referendum period, the rules for bequests from Gibraltar electors to UK political parties that register as permitted participants are the same as for bequests from UK electors. Amendment 44 corrects some incorrect cross-references in the Political Parties, Elections and Referendums Act 2000 relating to the controls on donations that apply to permitted participants. This amendment has no effect on the policy that applies to donations to permitted participants. It will ensure that the policy is implemented properly and that campaigners are certain how they are expected to comply with the donations rules. I beg to move.

Lord Tyler (LD): My Lords, I ask the Minister to address one very simple point. She referred to the advice of the Electoral Commission in relation to Amendment 48. I am more concerned with Amendment 49, which is extremely important to all those who are going to be involved in this exercise. She will be only too well aware that, during the debate on Tuesday evening, various Ministers were extremely effective in rubbishing the advice of the Electoral Commission. Would I be right in thinking that, on this issue, they have taken the advice of the commission? This will be extremely important for all those involved in this exercise, and Amendment 49, on the face of it, is actually quite difficult to understand. I hope she can give your Lordships' House that reassurance.

Baroness Anelay of St Johns: My Lords, indeed I can. The amendment to which the noble Lord, Lord Tyler, refers is a matter of access to the register. I can give an assurance that we have taken full account of the advice provided by the Electoral Commission.

Lord Collins of Highbury (Lab): The Minister was relatively explicit about this, but I have a question in relation to Amendment 49 and the operation of the requirement to check registers in Gibraltar. I hear what she said about this being passed through the appropriate parliamentary procedures in Gibraltar, but it is a bit unique that we have another Government doing something. Of course, compliance with donations will require political parties to check properly. I wanted to be absolutely certain that we will be properly advised as to when that approval is given.

Baroness Anelay of St Johns: My Lords, that is a very reasonable point to make. As I mentioned earlier, with regard to Amendment 49, it is a matter on which the Gibraltar Government will bring forward legislation —not only in respect of this but on the wider issues of Gibraltar being part of the referendum franchise. I will happily undertake to inform the noble Lord by letter when that legislation goes through, and I shall pop it to other noble Lords who have taken an interest.

Lord Wallace of Saltaire (LD): My Lords, I had never realised before this Bill came along how important Gibraltar was, and I am impressed by the number of references to it in our amendments today, as in earlier days. I once spent an entire afternoon in Gibraltar and felt that I had got to know it rather well. There are some 22,000 voters in Gibraltar, so it is very good that we pay so much attention to them.

Amendment 33 agreed.

Amendment 34

Moved by ***Lord Hannay of Chiswick***

34: Schedule 1, page 12, line 8, at end insert—

"Designation of organisation for only one of the possible outcomes

Section 108 of the 2000 Act (assistance for designated organisations) has effect for the purposes of the referendum as if—

(a) at the end of subsection (2)(a), for "but" there were substituted "or"; and

(b) for subsection (2)(b) there were substituted—

"(b) may designate a permitted participant in relation to only one of the possible outcomes.""

Lord Hannay of Chiswick (CB): My Lords, I rise to move this highly technical amendment. Other Members of the House may have as much difficulty as I do in understanding the precise wording. As very often is the case when we are working with reference to other bits of legislation, it is a bit abstruse. However, rather than subject the House to yet another lengthy dissertation from myself, I shall read from the Constitution Committee's report on this point. The committee said that the 2000 Act,

"provides for a designated organisation to be appointed by the Electoral Commission as a lead campaign group for each side of the referendum debate. It does not allow the Electoral Commission to designate one organisation only; for there to be any designated organisations in a referendum campaign at least one from each side must apply … This arguably allows one side in a campaign to 'game' the system. If they are well funded but do not want the other campaign to receive the financial and other advantages of designation, then they simply fail to apply for designation. Notably, there was no designation in the Welsh referendum in 2011 because the Electoral Commission took the view that there were no lead campaigners that met the statutory test of adequately representing the 'No' side. The danger of gaming was also raised in the context of the Scottish independence referendum. The Scottish Independence Referendum Act 2013 attempted to overcome this potential problem by allowing for the designation of one side only, although in the end two campaigns did indeed apply for recognition … Whilst we consider it likely that there will indeed be applications for designation by each side, the House may wish to consider whether the Bill should be amended to avoid a situation where one side could, in effect, prevent the lead campaign group on the other side from being designated"—

and, of course, from getting funds.

My amendment simply uses the wording of the amendment in the Scottish Act, which the Government agreed to put into the Scottish Act; it is replicated here, I hope in the correct place and the correct way, to have exactly the same effect as took place in Scotland.

It will not have escaped your Lordships' notice that it never had to be used in Scotland. That is the purpose of moving this amendment. If it is accepted by the Government and put on the face of the Bill, there will not be a problem, because the certainty that one side can get itself designated even if the other side does not, and can therefore be a recipient of funds, will mean that the other side has no interest whatever in gaming the system. So I hope that this can be discussed on a totally technical, non-political basis, because I think that the Bill will be improved by the inclusion of this provision—and once we have included it, we can just forget all about it.

Lord Forsyth of Drumlean (Con): My Lords, I will speak to Amendment 37 in my name and that of the noble Lord, Lord Blencathra, and also to say how much I support the amendment just proposed by the noble Lord. I think that this might be a first in consideration of this Bill, but I think that it is a very sensible proposal.

Amendment 37 is following the same theme, which is ensuring that there is fairness in the conduct of the campaign. I was rather shocked this morning to read

Hansard from the other place, where Mr Chope asked the Deputy Leader of the House of Commons to,

"confirm that the real reason why three independently minded former Ministers are being purged",

from the Parliamentary Assembly of the Council of Europe,

"is because we voted in favour of a free and fair EU referendum with a strict 28-day purdah period, as recommended by the Council of Europe's Venice Commission and our Electoral Commission?".—[*Official Report*, Commons, 3/11/15; col. 887.]

I do not want to get involved in that particular row, except to say that Christopher Chope, Sir Edward Leigh and Cheryl Gillan are three very distinguished former Ministers, and I am very shocked that they should be removed from the Council of Europe, and even more shocked that it should be suggested that that is the reason for their removal.

I emphasise this point because, whatever the outcome of the referendum, it is important that at the end of it people feel that the Government did not abuse their position—whatever their position turns out to be—and that the campaign was conducted in a fair and balanced way. This, presumably, is why we have the Political Parties, Elections and Referendums Act 2000.

My amendment seeks to remove from political parties their ability, which arises from the 2000 Act, to spend money on the campaign itself. I thought that the whole point of having an Electoral Commission—which, incidentally, costs half the cost of the entire Royal Family—was to ensure that we had fair and balanced conduct of elections and referenda. That is what I thought it was about. I thought the whole purpose in having a designated campaign on each side with limitations on their expenses was to ensure fairness. But what do I find? I find that the Government have brought into the Bill the ability of the political parties to spend money in addition to the designated campaigns. In the case of the designated "in" campaign, it can spend £7 million; in the case of the "out" campaign, it can spend £7 million. That is fair enough; but then on the inside, the Labour Party can spend £7 million; the Liberal Democrats can spend £3 million; the Greens can spend £700,000 and the CBI and other organisations can spend £700,000.

The Conservatives have said that they will remain neutral—and it is very considerably to the credit of the Conservative board that it took that decision.

Lord Collins of Highbury: Did I not hear the noble Lord say that he thinks the amendment proposed by the noble Lord, Lord Hannay, is fair and reasonable because it is not right that people game certain situations? Political parties have a right to campaign on issues that they feel united about and on which they have had support from the electorate. If there is a problem with the Conservative Party, I do not see why the noble Lord should take that view and extend it to other political parties.

5.30 pm

Lord Forsyth of Drumlean: I thought the leader of the Labour Party was a certain Jeremy Corbyn, who wished to leave the European Union, but perhaps I am misinformed. Perhaps he has changed his position. The noble Lord knows perfectly well—

Lord Collins of Highbury: The noble Lord should not assert something that is not true.

Lord Forsyth of Drumlean: What is not true: that Jeremy Corbyn is not leader of the Labour Party or that Jeremy Corbyn was not in favour of leaving the European Union? I will give way to the noble Lord if he tells me which statement is not true.

Lord Collins of Highbury: The Labour Party's policy is perfectly clear. The problem we have in this debate is that the Conservative Party does not have a clear policy. I do not see why the noble Lord should impose, through his amendment, his problems on to other political parties, including the Scottish nationalists and other major parties.

Lord Forsyth of Drumlean: The noble Lord is suffering from the disadvantage of not having listened to what I am going to say. Perhaps when I have said it, he might want to come back on that point. I am simply pointing out that all these political parties have the ability to spend money in addition to the designated campaigns. If you add that up as it is set out in the Bill, those who wish us to remain inside the European Union will be able to spend £25.5 million and those who wish us to leave, together with the political parties—because UKIP will be able to spend £4 million—will be able to spend £11 million. That seems to me to be a tad unbalanced.

As the noble Lord knows, all political parties have people with different views on this matter. That is why we need to have a designated campaign, so that people of all political parties and persuasions can join together and make their case, whatever it is. This Bill, which raises the limits, makes the position even more unfair. Before the Bill, under the rules set out under the 2000 Act, the "in" campaign could have spent £20 million and the "out" campaign £10 million: twice as much for those who wish to maintain the status quo. As a result of this Bill, the figures are £25.4 million and £11 million—2.3 times as much. That simply is not fair. At the end of the day, as we know from American elections and elsewhere, the ability to spend money can have a marked effect on the result. If the campaign to stay in is successful, the last thing we want is people arguing that the referendum result was bought, that it was unfair and that it was led by big business and big money. I am surprised that the Labour Party, of all parties, is seeking to defend this position.

Lord Collins of Highbury: It is tempting to come back by asking what happened in the 2015 general election. Who had the most money? Do we call that into question? Who paid for it? I know exactly how much the unions gave the Labour Party, and I know how that money was collected. The corporate hedge funds gave money to the Conservative Party and enabled it to outspend every other party. Does the noble Lord not feel that that was unfair?

Lord Forsyth of Drumlean: My Lords, I know the noble Lord has never stood for election, so perhaps he is unfamiliar with this, but we have strict rules governing how much the parties can spend in general election

[Lord Forsyth of Drumlean]
campaigns. They are designed to ensure that we have fairness. What I am complaining about is that the rules in the Bill give an unfair and disproportionate advantage, and that the amendment to the Political Parties, Elections and Referendums Act makes that even worse. That seems completely unfair, which is why I suggest that we reduce the figures that can be spent by the various political parties. In the 2000 Act, that is done as a percentage of the vote. Originally, it was £5 million if a party exceeded 30% of the vote, £4 million if it exceeded 20% but not 30%, £3 million if it got 10%, £2 million if it got 5% but not more than 10%, and £500,000 if it got not more than 5%. If we reduce all these numbers to zero, we will have a fair and balanced campaign, which is what my amendment seeks to do. I would have thought that everyone in this House would be in favour of that.

Lord Collins of Highbury: The point is that the Conservative Party, under the PPERA, is able to spend up to £7 million on the referendum if it chooses to, as a registered participant. If it decides not to register, why should its decision impact on other parties which have policies and desires to campaign for in this referendum? That sounds undemocratic.

Lord Forsyth of Drumlean: I agree with the noble Lord, which is why I want to make sure that all parties cannot spend any money at all, and that the people who can spend the money are the designated campaigners, so that there is a fair basis. I beg to move.

Lord Lamont of Lerwick (Con): The amendment of the noble Lord, Lord Hannay, has a lot of logic. I was amused, however, when he referred to how difficult it is to understand legislation that refers back to previous legislation. Exactly—and that is what a lot of us complain about with the European Union. The noble Lord may remember that, when the constitutional treaty had to be ratified by national parliaments, no comprehensive single version was available. Everybody had to refer back to previous legislation. In the case of the Czech Republic, the relevant documents had not even been translated into the national language.

That said, I very much agree with the points the noble Lord made, and I support his amendment. I would, however, very much like to support my noble friend Lord Forsyth. I am somewhat bemused by the intervention from the noble Lord, Lord Collins, who does not seem to take on board that we are talking about funding: about limits laid down by Parliament on the funding of both sides of the referendum. What surprises me—this is the issue I would like my noble friend to address—is that the Government simply decided to consolidate the PPERA into this legislation and did not introduce their own. They have, after all, amended various parts of the PPERA; they do not have to accept what is written into it as if it were tablets of stone.

I followed the debate in the House of Commons, which touched on this issue. The Minister in the Commons said that it is a good thing—that this is the first time we have had such comprehensive and far-reaching limits. Okay, but if you have limits they ought to be fair to the two sides of the referendum. Otherwise, why have limits at all? Would it not be better to let both sides raise what money they can and spend it? It seems to me there is a fundamental flaw in the proposal. The whole point of referenda is to deal with issues that cut across political parties; that is partly why we have them. I very much doubt we would have referenda if there were not constitutional issues that cut across different political parties. It seems perverse to say, just because a political party in a general election some time ago got 30% of the vote, it is entitled to X amount of money; and another party, which came third the time before and second last time, is allowed Y proportion of money. Why?

Lord Collins of Highbury: My Lords—

Lord Lamont of Lerwick: I will give way in a minute. If you are going to impose limits on spending, let them be fair between the two sides. After all, the government grant is equal for each side, and the limit on what the designated organisations can do is equal, one with the other, so why bring in political parties? Why say that because the Conservative Party won 30-plus% of the vote it is allowed to spend £7 million, because the Labour Party scored about 30%, it is allowed to spend £7 million, because UKIP got above 10% of the vote it is allowed to spend £4 million and because the Liberals, scored somewhere around 10%, they are allowed to spend £3 million? Of course, as my noble friend Lord Forsyth said, when you add them all up—let us exclude the Conservative Party, because it has said it is not going to fund either side in the organisation—there is a huge inequity between the limit on one side and the limit on the other. I find it very difficult to understand how this can be justified. I do not see the necessity of it. It would have been extremely simple, if the Government insist on having a cap on spending in the campaign, to have it the same for both sides. The noble Lord wanted to intervene.

Lord Collins of Highbury: No, no.

Lord Lamont of Lerwick: I am glad that I have his agreement—or perhaps I have not, but we shall hear in a minute. The provision seems fundamentally flawed. I do not see why the Government just picked up that legislation and incorporated it into this. It seems not to make any sense whatever.

Lord Davies of Stamford (Lab): My Lords, Amendment 58 is in my name and that of my noble friend Lord Liddle, who apologises that he cannot be present today. Before I address the substance of the amendment, perhaps I may say how much I agree with the noble Lord, Lord Hannay, in his amendment and therefore agree with what the noble Lords, Lord Lamont and Lord Forsyth, said about it—that is an interesting axis of agreement across the Floor of the Chamber which does not often occur.

The noble Lord, Lord Forsyth, asked why we should bring in political parties. I was astonished by that. No one is bringing in political parties; political parties are there; political parties are part of our democracy; political parties are part of every sophisticated democracy in the world. Political parties expect to take part in

political campaigns, in elections or in referenda. It would be quite extraordinary if a political party was not interested in a major political campaign.

Lord Forsyth of Drumlean: I am sure that the noble Lord does not mean to misrepresent me. I was not suggesting that political parties should not participate—I defer to his experience of political parties, which is greater than mine—but I was referring to the fact that we should not have to bring in expenses from political parties.

Lord Davies of Stamford: I have an interesting experience of political parties. I have talked for some time about that in the past, but I shall not delay the Committee on that subject today.

I was actually quoting the noble Lord, Lord Lamont, who asked, "Why bring in political parties?". That was an extraordinary thing to say, because political parties are part of the structure of our system and part of our national life. It is inconceivable to me that you could have a body of men and women—

Lord Lamont of Lerwick: My Lords—

Lord Davies of Stamford: I will give way in a second, but let me just complete my sentence, or my paragraph.

It would be extraordinary if you had a body of men and women who were interested in public life and the choices facing the nation and who wanted to play their part in determining the future history of our country, and a big referendum of the importance which this referendum represents came along and they did not take part in that campaign or have any views at all. The Conservative Party has of course decided to opt out of this campaign, but that is because of the peculiar situation in which it finds itself where the leadership of the party is terrified by the Eurosceptics. That has been the history of our relationship with the European Union during the past five years: everything is vetoed by the Eurosceptics and the Government are often paralysed by them. The Government are continually coming up with some ploy to buy off the Eurosceptics and, on this occasion, the Government have decided not to have their own party take part in a campaign. It is an extraordinarily anomalous position, in which a major party is supposedly silent on the great issue of the day. Just because the Conservative Party has got itself into this mess and this absurdity is no reason to deny the important role of political parties generally in a democracy or to handicap other political parties that are in no way responsible for the shambles of the Conservative Party and prevent them doing what they should have a natural right to do in any democratic election or electoral campaign.

Lord Lamont of Lerwick: My Lords—

Lord Tebbit (Con): My Lords—

Lord Davies of Stamford: I will give way to both noble Lords but will do so first to the noble Lord, Lord Lamont, who has been trying to catch my eye for quite a long time.

Lord Lamont of Lerwick: I was not aware that the noble Lord was the Speaker yet, but I am grateful to him for giving way. It was a very long paragraph; perhaps he should have a few more paragraphs in his prose.

No one is saying in supporting this amendment that political parties should not campaign vigorously or be a very important part of the referendum argument. What we are saying is that the spending limits on either side in a referendum should not be related to political parties nor to some historic measure of how the parties fared in the previous election.

5.45 pm

Lord Davies of Stamford: That is not a sensible argument. If they are going to campaign, political parties need money. Campaigning needs money, so political parties will need money if they take part in it. If their members and supporters are willing to dig into their pockets and give them money, it would be quite absurd, in a democracy, if we used the legislature to try to prevent people campaigning in that fashion. The real problem is that the noble Lord cannot reconcile himself to the fact that there are more political parties in this country which support our membership of the European Union than there are which are against it. That is very unfortunate for him, but I have not created the situation, nor has he and nor has the legislature. It is a fact of life and it reflects the will of the people. They have decided to join parties, a numerical majority of which actually support our membership of the Union. They should be allowed to raise a reasonable amount of money in order to pursue the campaign and to continue to make sure that political parties play the part in our democratic life that they are entitled to. It ends up with the kind of arithmetic which he was quoting, except that the arithmetic used by the noble Lord, Lord Forsyth, was completely artificial because it left out the Conservative Party's potential use of £7 million. It is entirely a matter for that party if it decides not to use it and this cannot be blamed on anyone else.

Lord Tebbit: Does the noble Lord remember that the party to which he belongs had an election for its new leader not very long ago? It elected, overwhelmingly, a man who wanted to leave the European Union. How has it come about that the noble Lord now says that he belongs to a party which wants to stay in the Union?

Lord Davies of Stamford: That is an extraordinary question to ask me. I am the living embodiment of the fact that one can change one's mind. I believe that Mr Corbyn has, in the light of events, learned wisdom which he did not possess 10 or 20 years ago. I assure the noble Lord that that wisdom consists in supporting—I repeat, supporting—our membership of the European Union. That is the official position of the Labour Party and will, of course, remain so.

Lord Flight (Con): The noble Lord must be aware that a large number of members of the Labour Party—among those who are left—happen to have views about EU membership which are not that supportive.

[Lord Flight]
Although the Labour politicians at Westminster may or may not have strong views, they control the spend and the members of the Labour Party are not going to be very happy if the party spends all their money campaigning in a direction which they may not support.

Lord Davies of Stamford: I do not think that the noble Lord is a great expert on the views of the Labour Party. I would be delighted to take him to some party meetings in Lincolnshire where he would find enormous support for our membership of the European Union from people in all walks of life. The fact remains that the Labour Party supports our Members of Parliament in the other place who, by an overwhelming majority, have voted, and will continue to vote for our policy of believing that it is fundamentally in this country's interests to remain part of the European Union.

I must move on to speak to Amendment 58. If there is a discordant element in my sudden change of subject, I say, in anticipation of someone rising to complain, that I am not responsible for the grouping of amendments.

Lord Pearson of Rannoch (UKIP): Will the noble Lord enlighten your Lordships as to whether he would be taking the same attitude on the last amendment if the Labour Party was as split on this matter as the Conservative Party? UKIP got 8% of the electorate voting for it in the last general election, against 24% for the Conservatives—one third of their vote. We all know that the Conservative Party is pretty split on this issue. Would the noble Lord, Lord Davies, be taking the same attitude if his party was in the same position?

Lord Davies of Stamford: In relation to the principles of our public life and our constitution, I like to think that I take positions that are consistent. Therefore my answer to the question must be yes. Political parties have an essential part to play in our democracy and their position should be respected. They should not be in any way suffocated by being told that they cannot have any money for a campaign that they genuinely believe in and where their members are willing to support them financially.

As for the complaints that the noble Lord always makes about the treatment of UKIP, in this case he does not have the ground that he normally has for complaint, because the amount of money available to UKIP—

Lord Lamont of Lerwick: My Lords—

Lord Davies of Stamford: I must finish my sentence—and it will only be a sentence on this occasion. The amount of money available to the noble Lord's party in the referendum campaign will be a function of the votes cast for his party and not a function of the number of MPs elected with his party label. If that was the case, he really would be in a bad situation. I give way once again to the noble Lord, Lord Lamont.

Lord Lamont of Lerwick: I am most grateful to the noble Lord for giving way. Again I stress that this amendment I have been supporting has nothing to do with political parties participating. It has everything to do with spending limits. My question to the noble Lord is: if in a general election the laws provided that what each party could spend in a general election was related to how it had done last time, would he think that that was fair?

Lord Davies of Stamford: We could argue this for a very long time but we actually have a consensus. Until this issue arose, there was a general consensus in public life in favour of the 2000 Act. Therefore, it is quite right that we should base ourselves in this campaign on that consensus and on the practice over the last 15 years. With that, I will leave that subject—I will not take any more interventions on anything else—and turn to Amendment 58.

Amendment 58 is very important because it is all about the Government being straight with the public—which I do not think they are planning to be at the moment. They have launched a very complicated negotiation, which many of us have many thoughts about, and they hope that it will result in a deal. If it results in a deal, they intend to call a referendum and to advise the public to vote for that deal. If they do not get the deal, of course none of those things will happen.

I totally understand that while the Government are negotiating they do not want to give a running commentary—that is the Government's phrase, not mine. I even understand why they are a bit reticent about saying exactly what their aims are in the negotiation. In fact, Eurosceptics will always say that they are not aiming high enough and will always say that whatever they get is not adequate. So they are wasting their time, but I can understand why they have got themselves in this position.

However, I cannot understand any hesitation about the Government's duty, once they have a deal—if they have a deal—to be absolutely straight with the British public about what that deal is and to make an official, authoritative declaration to the British public of what that deal consists of. We cannot possibly have a situation in which knowledge of the deal comes out through unattributed and deniable press briefings from special advisers and spin doctors and so on. We need a clear government document when the day comes, if that deal arises.

Lord Forsyth of Drumlean: My Lords—

Lord Davies of Stamford: I will not give way for a moment. I will continue and give way later in my remarks. If, as a result of the deal, the Government call a referendum, they should give advice to the British public and the electorate. They owe to the public the duty of their judgment and the duty of declaring the facts. If they do that, it is important that they do that in a public, authoritative document and not by the back-stairs methods or spinning methods that are so beloved of this Government. That is the point of the amendment in my name and that of the noble Lord, Lord Liddle. When we come to the referendum campaign, if the Government recommend, as they did in 1975, a yes vote, they should explain to the British public in an authoritative document why they are making that recommendation and set out

what they consider to be the essential facts on which that recommendation is based. At this point, I will give way to the noble Lord.

Lord Forsyth of Drumlean: I am most grateful to the noble Lord and I know how passionately he feels about these matters. But does he feel that his case is so weak that he is arguing that it is necessary to rig the whole thing in favour of his point of view? Looking at Amendment 58, he is suggesting that a statement from the campaign to leave, a statement from the campaign to stay and a statement from the Government, which may be to leave or to stay, should be sent to every household. From the point of view of people receiving this material, it is unbalanced. Why is the noble Lord so concerned about his case that he feels that it is necessary to have an unbalanced position in respect of his own amendment and in his opposition to mine?

Lord Davies of Stamford: For the first time since I debated on these matters with the noble Lord, Lord Forsyth, I am very surprised at the gaps in his historical knowledge, which normally is extremely extensive and accurate, and often brought to bear very effectively in debates in this House. He seems to have forgotten what happened in 1975, which I am old enough to remember. I had my first political campaign; I was part of the City in Europe campaign, and I am very proud of it. I have not rigged or invented anything. In this amendment, I am following precisely the wording we had in the Act which set out the basis for the 1975 referendum and entirely the practice that was followed. I am being the most rigorous constitutionalist. I hope that the noble Lord will approve of that—I think he normally does. I am following precedent and I am suggesting that precedent lays down the basis for fairness, and is always a good basis for credibility and legitimacy in public life. I will give way again, although I cannot go on giving way or I will be trying the patience of the House with the time that I am taking up.

Lord Forsyth of Drumlean: The noble Lord will never try the patience of the House. Perhaps he is a little older than me. I can just remember the 1975 campaign and voting in it. But is he suggesting that during that campaign, every household got a leaflet from a campaign to stay in the European Union, a leaflet from a campaign to leave the European Union and a leaflet from the Government saying that we should stay in the European Economic Community, or the Common Market, as it was then, all at public expense? I do not think that that is what happened at all. But that is what his amendment proposes.

Lord Davies of Stamford: It is very unusual that I am able to answer a quite lengthy intervention from the noble Lord, Lord Forsyth, more than satisfactorily with a single word—yes. That is exactly what happened in 1975, exactly what my amendment calls for and exactly what I think is required on this occasion. I will give way to the noble Lord.

Lord Greaves (LD): I merely intervene to say that I must be older than the noble Lord, Lord Forsyth, because I played an active part in the 1975 referendum. It was not a leaflet that was put out from each side and from the Government: there were three little booklets. Does the noble Lord, Lord Davies, agree with that?

Lord Davies of Stamford: I am most grateful for that intervention. I know that the noble Lord has a very long history of public life in local government before he came here and takes a great interest in these matters. He is absolutely right. Exactly what I have in mind is something that is an intelligent summary of the case which sets out the essential facts. There is far too much spin in the political world in which we live. We know that there is far too much dishonesty, suppression of material fact for the convenience of Governments and far too many back-stairs, deniable, non-attributable briefings and so on.

We want a situation in which any household in this country can have access if they wish to intelligent arguments both ways and can make up their own minds on that basis. Not only do I think that this would be an important element in the campaign and a great contribution to democratic transparency and democratic involvement, it would be a very good thing to go back to some of those first principles which we had in 1975 and make sure that this campaign involves serious consideration by as many people as possible of the real issues—albeit that we know that some people will be influenced by prejudices and emotive language, and some by the tabloids. But we hope that the number of those people is small in relation to our total democracy and that we have intelligent discussion, debate and consideration before we take a dramatic decision about our nation's future.

Lord Blencathra (Con): My Lords, I have listened to my noble friends Lord Forsyth and Lord Lamont. I say to my noble friends that if my preamble takes more than 11 minutes, please move a Motion that I no longer be heard ever again. This is a relatively simple matter. In any United Kingdom election involving the four countries of the union, there will be about a dozen major political parties and thousands of fringe candidates. Between them, the major parties will offer hundreds of different policies, and it is right that they have spending limits and are able to advance their arguments for all those hundreds of policies. That is why the political parties need to spend money arguing totally different cases.

However, in the case of this referendum, there are only two campaigns: one to remain and one to leave. In those circumstances, I cannot understand why the political parties will also get money to spend on campaigns. There is nothing to stop the Labour Party or the Conservative Party or any other party campaigning: let them join the "remain" campaign or the "leave" campaign. Let them put all their effort into helping those two options: leave or remain. In those circumstances, it is grossly unfair and illogical that the political parties are getting money to spend, based on their last election results, to campaign on a simple question: do we remain in the European Union or do we leave the European Union? Let the political parties weigh in behind either campaign, and keep it simple and fair.

6 pm

Lord Stoddart of Swindon (Ind Lab): My Lords, I was not going to intervene but I really felt that I had to do so to support the noble Lord, Lord Davies of Stamford. He will be surprised at that, perhaps—but he was absolutely right when he said that three documents were issued at the 1975 referendum. One was from the in campaign; one was from the out campaign; and one was from the Government, with a preface by Harold Wilson. The Government recommended that we should remain in and, of course, they gave their reasons for it. Unfortunately, the Government's reasons turned out to be rather suspect, because one of the claims that they made was that they had ruled out the prospect of economic and monetary union. We now know that that was a false statement because we have got economic and monetary union. Although we are not members of the euro, we are, in fact, members of EMU. I hope that that was a little help to the noble Lord, Lord Davies.

Lord Forsyth of Drumlean: I hesitate to put words into the noble Lord's mouth, and I freely acknowledge that I was wrong on the matter that, in the 1975 campaign, there were two leaflets that argued the position in favour of remaining in the European Community and only one against. The noble Lord says that he will support the noble Lord, Lord Davies, but he has spent almost a lifetime arguing that the wrong decision was made and that people were misinformed about the position. Was it not wrong, actually, for there to be two leaflets on one side as opposed to one on the other?

Lord Stoddart of Swindon: Yes, I agree with that. I was only confirming that the noble Lord, Lord Davies, was correct in saying that there were three pamphlets. At the time, the Labour Party was in favour of coming out. Unfortunately, the Labour Government were in favour of staying in. We are almost getting into the same situation now, although in reverse, as we approach the next referendum. That is all I wish to say about it.

Lord Pearson of Rannoch: My Lords, as we are in Committee, I do not think that the noble Lord, Lord Davies, can prevent me from saying what I wanted to say at the end of the first part of his recent peroration. I would just like to confirm that I was not complaining about UKIP's possible position, and I would like to correct the record. Of the votes cast at the last general election, the Conservatives got 36.9%, the Labour Party got 30.4%, UKIP got 12.6%—not a mere 10%, as the noble Lord, Lord Lamont, suggested—and the Liberal Democrats got all of 7.9%. Those are the correct figures.

Turning to the present amendment of the noble Lord, Lord Davies, I have to disagree with him in his suggestion that there should be a statement from the Government, not only for the reasons just put forward by my noble friend Lord Stoddart, but also, more generally, because I do not think that the British people are going to be able to trust the Government's statement on this referendum any more than they could on the last one. I will add another example to the deception that my noble friend Lord Stoddart mentioned as regards the last referendum. In 1975, the Labour Prime Minister, Harold Wilson, made a promise that if we voted to stay in the then Common Market,

"there would be no loss of essential national sovereignty".

Of course, we all thought that he meant that there would be no loss of sovereignty whatever, because we all thought that all sovereignty was essential. However, in a somewhat subtle—to put it politely—way, he did not mean that at all. What he meant was that there would be no loss of any sovereignty that he thought was essential. Since then, the British people have discovered that we have lost most of the sovereignty that he promised we would retain. So I really do not think that we want a statement from the Government, as in this amendment, but it would be perfectly in order to have a statement from each side.

Lord Collins of Highbury: I just want to correct a figure. It has been mentioned several times that the Labour Party will have the ability to spend £7 million, but, of course, the figures on the popular vote are slightly adjusted because of the Labour and Co-op Members, where there are joint parties standing. Therefore, the figure for Labour, according to the Electoral Commission, is 29.3%, which would give it £5.5 million. According to this, UKIP would have the ability to spend £4 million. Am I to understand that the noble Lord is in favour of his party, UKIP, being limited to spending £10,000?

Lord Pearson of Rannoch: My Lords, my party would like to spend as much money on this campaign as it can. I was looking at the suggestion that we should have 12.6%'s worth, that being our share of the votes cast in the last election. Personally, I am in favour of that, of course.

Lord Kerr of Kinlochard (CB): I want to lower the temperature with a deeply nerdy amendment, Amendment 55, which concerns purdah. I apologise for not following the noble Lord, Lord Pearson—

Noble Lords: Wrong group!

The Earl of Courtown (Con): It is in the next grouping.

Baroness Smith of Newnham (LD): My Lords, we have heard a lot of history this afternoon. Although the lessons of 1975 might be of interest, they are, in fact, history, and we are debating a Bill for a future referendum, rather than the past. I am speaking on behalf of the Liberal Democrats to support the amendment in the name of the noble Lord, Lord Hannay, as this amendment fits with the views of the Constitution Committee and appears to be very sensible. As to the role of political parties and how much they are funded, although it is very easy to look back and say, "Well, in 1975 this happened, that happened and the other happened", since that time we have passed the Political Parties, Elections and Referendums Act. The Bill relates to and amends that legislation. My party has no objection to the Government's position on that.

The final amendment that I want to speak to in this group is Amendment 58, tabled by the noble Lords, Lord Liddle and Lord Davies. Although I can see an intuitive allure in the amendment, there is another issue here which goes back to the PPERA question and pre-empts Amendment 55, in the name of the noble Lord, Lord Kerr, on purdah. It is clearly in the interest of everyone to understand the Government's position. At Second Reading in the other place, the right honourable Philip Hammond, the Foreign Secretary, talked about wanting to suspend Section 125 of the Act because the Government would want to come back and sell the deal that they had renegotiated. In practice, if purdah is in place the assumption will be that circulating three documents—remain, leave and the Government putting forward their own case—is in danger of breaching purdah rules. Although Amendment 58 sounds intuitively interesting, it is quite difficult to support it as currently drafted.

Lord Tebbit: My Lords, what the noble Baroness says is right. This would offend against the purdah rules. Even more, how will the Government produce a leaflet to set out their position? Would they set out the position of the majority in the Cabinet, or the position of two groups in the Cabinet? It would be a jolly task, would it not, to set out the views of the Eurosceptics in the Cabinet, as well as the—

Lord Davies of Stamford: I am grateful to the noble Lord. The honest answer to his question, and certainly the answer that I have always envisaged, is that we should follow the precedent of 1975, when a single, coherent pamphlet was produced by the Government, justifying their recommendation of a yes vote.

Lord Tebbit: The noble Lord is terribly attached to this precedent. It is only one precedent from one occasion ever. To suggest that we cannot change anything that was done then because that set the precedent is totally absurd. I am a Conservative, but even I would not suggest that what had been done once would always have to be done again and again in vaguely similar circumstances. It is quite improper.

Lord Collins of Highbury: Is the noble Lord suggesting that the Prime Minister, when he goes to negotiate on behalf of the United Kingdom, will say to the other Governments, "By the way, I'm only representing half my Government; the other half may have a different view"? How does he expect the Government to conclude negotiations?

Lord Tebbit: I am terribly sorry, but I am afraid that the noble Lord misunderstands it. When the Prime Minister negotiates he speaks for the Government as a whole, but his evaluation of whether the negotiation is sufficiently good for us to remain in the European Union is another matter.

There will be views and views within the Cabinet—we are pretty sure about that. It is highly likely, is it not? We would have to have a leaflet that said, "The position of the majority of the Cabinet"—or the majority of Ministers, perhaps. I do not know whether it would include PPSs and all sorts of other people. Perhaps we could add in the spads, I do not know. However, it would have to say that there are others who take a different view. It is total nonsense. It is the product of a mindset that wants to set the thing up to be biased in one direction time and time again. Lord knows that the Bill as drafted is bad enough, but it would be a darned sight worse if we were to accept the amendment from the noble Lord, Lord Davies.

Lord Flight: My Lords, I campaigned in the 1975 referendum to stay in the Common Market. To criticise the precedent, I well remember that we thought we had been rather clever because we had the establishment onside and we had 2:1 of the brochures sent to people. The whole objective was to marginalise the campaign of those who were not in favour of staying in. It was, in essence, a scheme to rig the whole vote.

Lord Hamilton of Epsom (Con): I very much agree with my noble friend Lord Flight. Just because Harold Wilson rigged the 1975 referendum so that my noble friend Lord Forsyth and I—and indeed my noble friend Lord Flight—were conned into supporting staying in the EU, is that a reason for rigging this one? That is the question we have to ask.

The House will have noticed Amendment 40 in my name. Even my closest friends advise me that this amendment is rubbish. All I say to my noble friend the Minister is that I will not press my amendment. She will not have to spend any time telling the House that my amendment is rubbish because I agree with that anyway.

6.15 pm

The point of my amendment—here I pick up on my noble friend Lord Forsyth's amendment—is that we need to cap the expenditure of both sides. It is absolute nonsense to talk about the percentages of votes that people had in the last election. Let us be honest: this referendum will be decided roughly half and half by the voters of this country. Some 10% either way will make the decision. Ultimately, some Labour voters will vote to come out; even some UKIP voters will vote to stay in. A lot of Liberal Democrats in the West Country will vote to come out because they vote Liberal Democrat because they are anti-establishment. Their chapel is nothing to do with the Eurofanaticism their leaders have in this place.

Lots of people will vote in different directions. It will ultimately be quite a close vote; very roughly, it will split down the middle. So why do we not just divide the expenditure that can be spent by either camp equally? I tabled a £20 million cap in my amendment. I do not have any great feeling that it should be £20 million, £30 million or £10 million, but it should be equal on both sides.

All the way through this legislation the Government have gone out of their way to say that they are trying to level the playing field. As we noted earlier, it is not level. If the Government decide to recommend to the country that we stay in—it is still possible that they will not—they have the choice of date when that should happen. That slants the playing field in favour

[Lord Hamilton of Epsom]
of those who want to stay in anyway. Why are we further slanting this by having a funding formula that gives so much money to the in campaign to the detriment of the out? This is not fair. It will not be seen by the country to be fair. If we have a result that the country votes to stay in, I can tell noble Lords now that all those who wanted to come out will cry foul and not accept the verdict of the referendum.

Lord Wallace of Saltaire: My Lords, I am well aware that the political definition of a level playing field is a field in which, when the ball is placed in the centre, it rolls naturally towards your opponent's goal. That is one of the problems with trying to define a level playing field.

I am fascinated to hear so many Conservative Peers speaking in favour of an expenditure cap to ensure that one side in a campaign does not spend more than another. I look forward to the speeches that will come from those Benches the next time we discuss political party funding. Perhaps they will support a similar principle then. The Conservative Party spent a great deal more than any other party in the recent election. I do not recall any complaints from Conservatives on that—whatever position they take on the European Union—either then or since.

Lord Hamilton of Epsom: Is the noble Lord saying that the general election principle is unfair because one party can raise more money than another, and that this unfairness should continue in the referendum?

Lord Wallace of Saltaire: I am simply remarking that principles should apply across the field. I am strongly in favour of greater control over political parties' spending, which the Conservative Party has resisted extremely strongly. I just remarked that we need to be a little more consistent than we were being.

I will make one other point relating to this group of amendments and to the next.

Lord Lamont of Lerwick: Will the noble Lord give way?

Lord Wallace of Saltaire: May I continue? I will give way to the noble Lord in a minute or two.

There is a principle that we have a Government. We are not like the United States, where Congress can stop the Government taking everything through if it wants As we were told with reference to the House of Lords' vote last week, the principle is that the Government must be allowed to get their business through and must be able to say what they think is in the national interest. At the end of this negotiation, the Prime Minister has to be able to say, on behalf of the Government, what he now considers to be in the national interest. I note that a number of noble Lords think that the Prime Minister should not be able to make that case. That seems to me to be moving towards the sort of deadlock between Congress and the presidency seen in the United States, where what the President says has no impact at all. This is a renegotiation. At the end of the renegotiation, the Government are entitled, under our constitutional arrangements, to say what they think is in the national interest. I trust that they will do so.

Lord Lamont of Lerwick: My Lords, I am most grateful to the noble Lord for giving way. I actually said that I would be perfectly happy with no cap: I was not talking about caps and supporting them in the way that he suggested. However, would the noble Lord be quite content if there were caps in the general election and the Liberal party were capped at less than half the spending allowed to the Conservative and Labour parties because it got less than half the votes of those parties at the previous election?

Lord Wallace of Saltaire: My Lords, I have some familiarity with the previous negotiations on political funding and whether there should be a state contribution. The discussions on whether there should be public support for political parties had indeed taken on board the issue of how many votes each party got in the previous election, so the principle might well be taken, but the issue of caps on expenditure is not really one for a referendum which, I think, the out camp fears it may lose. It is a wider issue.

Lord Collins of Highbury: My Lords, it has been an interesting debate. One of the problems with referenda is that they assume there are simply two sides to an argument, when actually there are often lots of different opinions and reasons why people may wish, in the case of the European Union, to stay in or to leave. The interesting thing in this debate is that we have heard that UKIP will wish to argue its case strongly as a political party. We have heard the Conservative Party saying no, we are not going to do that. In effect, the amendment from the noble Lord, Lord Forsyth, will limit UKIP to £10,000—it will not be able to spend more than that—while if, for example, Unite registered as a participant, it could spend £700,000, as could any other organisation or individual if they registered properly as a participant.

The real issue here is how we have a fair political debate: how we ensure that all the different views in favour of remaining or leaving are properly expressed. It is clear, as we have heard, that there is a problem among those who want to leave. They do not appear able to reconcile their differences and come together as one—perhaps because they have absolutely different views about why Britain should leave. The Conservative Party has clearly not been very keen to sit on platforms with UKIP to argue its case, and certainly individuals within the party have not been keen to join in. The idea that political parties should absent themselves from this campaign is purely ridiculous.

Lord Forsyth of Drumlean: The noble Lord keeps repeating this. Nobody is suggesting that political parties absent themselves. I am listening carefully to his argument. If you decide to have a cap on expenditure, it has to be fair to both sides. If the noble Lord is arguing that there should be no cap, that is an entirely different position. The Government's position—arising from the 2000 Act—is that there should be a cap. Therefore, it is not that the political parties cannot

participate, but that the vehicle through which they participate consists of the two campaigns. If the noble Lord is arguing that there should be no cap, I can see where he is coming from, but he seems to be arguing that there should be a cap and that the available expenditure should be unbalanced. That is ridiculous.

Lord Collins of Highbury: Actually, I am arguing that all participants in the referendum should properly account for what they raise and what they spend, and that that be recorded and sent to the Electoral Commission. That is what I am arguing for. We have heard in the debate that somehow you can create a level playing field by setting a cap on the total amount spent. What, then, is the noble Lord saying: that the "remain" campaign and the "leave" campaign agree beforehand exactly what they are going to spend and then say that is what they are going to do?

I know what caps do. I, too, have had a debate about political funding, and some dialogue with the Conservative Party about funding election campaigns. The caps on spending were important in trying to stop this continual outbidding of each other, but no political party has ever reached the cap that has been set in general elections. The Conservative Party has consistently outspent the Labour Party in general elections. There certainly has not been a level playing field. There is only one way to achieve a level playing field: by saying that £20 million from the government purse will be provided for this campaign and that it should be divided equally and then spent.

I do not, however, think that that is what noble Lords want. What noble Lords want is a fair and open debate. Political parties have an important role in that and the idea that you can cap the Labour Party's spending to £10,000 on arguing its policy—and it does and will have a policy—is absolutely ridiculous. It is not right or fair to the democratic process. My opinion is not simply that of my party; it is also that of the Electoral Commission. The commission says, first, that, irrespective of the cap, there can be no certainty that there will be equal resources. This is a bit like a general election, where we have had caps on spending but there has been no level playing field in respect of the money that can be spent.

The other aspect of this is that everybody's talking as if £7 million, and £5 million, is going to be available. Political parties, however, will have to raise the money. They will have to account for it. This is what all the amendments in the first group were about: transparency. The public will be more interested in transparency than the notional caps that the noble Lords opposite are talking about. People will certainly want to know who is funding the yes campaign, but they will also want to know who is funding the no campaign—who is behind it: perhaps the hedge funds or the businesses that simply see an interest in being outside.

All these things are important, but, as the Electoral Commission has said, the number of participants on each side should not be artificially limited by rules. We have seen that UKIP will want to play its part in the referendum campaign and to put its case, irrespective of whether it participates in a joint campaign. I know that the Labour Party will want to put its case strongly in respect of the social dimension to Europe and how Europe has defended workers' rights. I do not think that the Prime Minister will necessarily wish to be part of that campaign. We will put our case, and the idea that you simply limit the Labour Party's spending to £10,000 is not acceptable.

I strongly support the amendment from the noble Lord, Lord Hannay, not least because—this is the strongest case for it—when this was considered previously it was thought appropriate to put it in the Scottish referendum. If it was appropriate for Scotland, why is it unnecessary for this referendum? Clearly, it is.

Regarding my noble friend's amendment—we raised this issue in Committee on Monday—the Government will come to a decision. They will need to report that decision to the people of this country. It is important that the Government's decision is not mediated solely through these campaigns, which noble Lords opposite seem to think will have a clear view about the reasons for leaving or staying. It is really important that the Government communicate with the electorate, so they understand what the Government have negotiated and can come to a conclusion. The argument that it can be mediated only through a yes campaign or a no campaign is not acceptable. The Minister may not accept my noble friend's amendment but I hope the Government will think seriously about how the conclusions of the negotiations are communicated properly to the electorate without being mediated through a third party.

6.30 pm

Lord Forsyth of Drumlean: Can the noble Lord explain where he gets this £10,000 figure from?

Lord Collins of Highbury: If you are not a permitted participant in the referendum, under PPERA you are limited to £10,000. That amount is also recorded in the Electoral Commission's briefing, and I know that the noble Lord is very keen to support the role of the Electoral Commission.

Lord Forsyth of Drumlean: I would have thought that,

"£500,000 in the case of a person or body falling within section 105(1)(b) but not designated under section 108",

might apply.

Lord Collins of Highbury: Political parties are treated differently, as the Minister indicated at the outset. The fact is, they are different. They are covered, as she said, by separate elements of PPERA. If political parties do not register as participants in the referendum, they will be limited to spending £10,000. I do not have to answer for the Conservative Party but, in effect, by advocating this amendment noble Lords are saying to local Conservative associations, "You cannot use your office, your staff or your resources in this referendum campaign because if you exceed £10,000, the Conservative Party will be acting illegally".

Lord Lamont of Lerwick: I have tried very hard to follow the noble Lord's speech. I still do not understand the £10,000 figure, but going back a bit in his speech,

[Lord Lamont of Lerwick]
he expressed himself as being strongly in favour of caps in general elections—fair enough. If we are to have caps in general elections, should they not be the same for all political parties?

Lord Collins of Highbury: I do not know that I strongly expressed my support for caps. I said I thought they had a function and a role. Actually, what the public demand of our political parties is greater transparency. The noble Lords opposite constantly refer to the trade union movement supporting the Labour Party. Every single penny of that money is properly accounted for under a range of legislation, including the trade union Acts that cover the establishment of political funds, but I am not so sure that is clear in the case of some company donations, the origins of which can be obscure and unclear. For me, the most important thing in funding is transparency.

I am a strong advocate of capping donations, which is far more effective than having a cap on spending. Caps on spending have not been particularly effective. As we have seen in every general election since PPERA was enacted, no political party has got anywhere near the spending cap. But capping donations—limiting how people might influence policy—is much more effective. When the Committee on Standards in Public Life held an inquiry into the funding of political parties, I argued that we should have a cap of £500 on political donations because members of the public would understand that amount. Most members of the public would find it incredibly difficult to raise £50,000, which was the amount suggested by the Conservative Party. Not many members of the public would be able to donate that amount. But if you had a cap of £500, most members of the public would say, "Yes, that is a reasonable amount". But that is the debate: it is more effective to have caps on donations than on spending. No doubt we will return to that debate some other time.

Lord Pearson of Rannoch: My Lords, I think I heard the noble Lord say that he assumed UKIP would want to take part in the referendum campaign, and of course it will, but I should just confirm what my great leader Nigel Farage has said: he sees UKIP as an important but cohesive part of the eventual campaign to leave the European Union. That is where UKIP is on that one.

Lord Collins of Highbury: I am glad to hear that but at the moment it does not look as though there is a single campaign. If the Conservative Party and UKIP unite as one, so be it. The public will no doubt take account of that. But the business currently before this House is an amendment that says to UKIP, "If you register as a political party, you will limited to £10,000". I am not sure that would cover Nigel Farage's flights around the country, so I think he will be concerned about that.

Lord Hamilton of Epsom: On the question of the designated organisation for leaving, does the noble Lord not accept that there are members of the Labour Party who are members of this? It is not a Conservative organisation; it is completely cross-party.

Lord Collins of Highbury: I have no doubt that individuals within political parties will wish to campaign one way or the other. I have absolutely no problem with that but I do have a problem with the idea that the Labour Party—like UKIP—is not entitled to have a policy or to be able to campaign on that policy and articulate its own message. I admire the Prime Minister. I admire his ability and I hope very much that he will use his extensive negotiating skills to achieve a settlement that will be in the best interests of this country. But that will not stop the Labour Party arguing its own view about Britain's national interests, which will not be related solely to the reasons that the Prime Minister has. That is why it is really important that political parties have the right to campaign properly.

PPERA sets limits on what political parties can spend on a specific campaign. I am familiar with the requirements of PPERA. I am familiar with the quite onerous responsibilities of political parties, not least that they have to make sure that every single donation received is from a permitted donor; they have to double-check and cross-reference. Errors have been made in the past, I know. But we have to understand that this debate is about a cap on the ability of parties to campaign and that is why it is so important that we resist it.

As for all the questions about who has what, I am sure the Minister will clarify all the positions that I have set out. It is not for me to argue—this is a government Bill—but I am sure she will do so well.

Baroness Anelay of St Johns: My Lords, Amendment 34 in the name of the noble Lord, Lord Hannay, would allow the Electoral Commission to designate a lead campaigner for one side of the argument at this referendum without having to appoint one for the other. This would override the current rules that apply for designated lead organisations. These provide that the commission must designate a lead campaigner on each side, or not at all. The reason for this is clearly, as noble Lords have argued tonight, that in such matters there should be as fair a playing field as possible.

In the case of multiple applications for designation as a lead campaigner, the Electoral Commission must appoint for each side the applicant which represents "to the greatest extent" those campaigning for a particular outcome. This is intended to ensure the designation of organisations which represent the broad spread of opinion on each side. The benefits then available to the designated lead organisations ensure that each side of the argument has a fair opportunity to put its case to the wider voting public. Taken together, these provisions aim to ensure informed voting after a vibrant debate.

However, the rules for this referendum must also ensure that the referendum is run fairly and that we do not create any perception of bias. The principle that the Electoral Commission cannot designate on just one side is intended to support that objective. The benefits available to the designated lead organisations are significant. I am talking not about political parties per se—they may not end up being designated as lead organisations—but organisations designated by the Electoral Commission as lead organisations.

Allowing public funds to be used to create a distorted campaign with only one designated lead organisation would naturally raise public concern. This would clearly

be the case where the commission receives applications from both sides but does not consider that those on one side meet the statutory tests. Under the amendment of the noble Lord, Lord Hannay, in this circumstance the arguments of the side that does not get appointed would not get a fair hearing. The administrative failings of those who failed to meet the statutory test should not invalidate the right of both sides to an equal opportunity to make their respective cases.

There is, of course, the view that this amendment may help avoid a circumstance where one side deliberately refuses to apply for designation to prevent the other side receiving its benefits. This could occur, for example, if one side lacks the funding to take advantage of the benefits, particularly the higher spending limits, or wishes to avoid debate on an issue of low public interest. I do not think any noble Lord is going to suggest that this case will be a matter be of low public interest. That is not going to be a feature of this referendum. Given the public interest in the referendum, a more cynical attempt to deprive the other side of the benefits of designation surely would be widely reported and deeply harmful to a campaigner's own cause—it would be seen as being a cheat.

Lord Hannay of Chiswick: The noble Baroness seems to have come to the end of a passage which contains no explanation of why the Government legislated in the case of Scotland to deal with this potential problem, and no recognition of the fact that by so legislating they ensured that there was no problem. All her suggestions that this might seem to be unfair will not come about if this amendment is accepted, because there will then be two designated organisations and no interest whatever in gaming.

Baroness Anelay of St Johns: My Lords, the noble Lord's amendment does not achieve that. It allows for one-sided designation. The noble Lord referred to Scotland. That was a matter for the Scottish Government and the Scottish Parliament, not the UK Government. In respect of the Scottish referendum, the Electoral Commission commented that the approach of having one-sided designation possible was appropriate in the specific circumstances of the independence referendum to reduce the risk of,

"a tactical decision not to apply for designation".

However, it says that in other circumstances that does not necessarily pertain. So we would certainly argue that having one-sided designation could unduly damage proper and fair treatment of the arguments that need to be put forward.

6.45 pm

Amendment 37 in the name of my noble friend Lord Forsyth would severely restrict the ability of political parties to take part. My noble friend sets the spending limits for all non-minor political parties that register as permitted participants to zero. We have had a very passionate debate this afternoon about whether there should be caps, how caps should operate and how spending should be carried out by political parties. There was an exchange with the noble Lord, Lord Collins, with regard to the fact that if one is not a permitted participant one may spend up to £10,000. That is the case here. What my noble friend seeks to do in his amendment is to say that if one registers as a permitted participant, one's spending is capped at zero. If one does not apply to become a permitted participant, one's spending ceiling is £10,000. I think that is why there was a bit of an exchange on that.

Surely political parties should be able to campaign at a referendum. That was established in the Political Parties, Elections and Referendums Act 2000. My noble friend Lord Lamont asked a general question, which I think is fair, which is: why use the Act as the basis for this legislation? Why not have a new piece of legislation? But the Political Parties, Elections and Referendums Act was introduced following recommendations from the fifth report of the Committee on Standards in Public Life, chaired by the noble Lord, Lord Neill of Bladen. In part it contains a framework for national referendums, which avoids the need to build a new legislative framework every time. Since PPERA was introduced, several referendums, including those on AV and, of course, Scottish independence, have taken place built on PPERA. In this country we seek to use existing law where appropriate and this is exactly what we have done. PPERA does what it says on the tin. It is the Political Parties, Elections and Referendums Act and therefore is appropriate as a model for us to use, with some amendments which make sure that people cannot get round some of the provisions.

Lord Forsyth of Drumlean: Is my noble friend not trying to argue two contradictory things at the same time? In rejecting the amendment of the noble Lord, Lord Hannay, she said that it would be wrong to allow funds to create a distorted campaign. The argument was that if you had one side only gaining funds it would create a distorted campaign. My amendment may not be perfect in its drafting, but does the Minister accept that it must be wrong to allow political parties to spend sums such that one side is able to spend 2.3 times what the other can spend? It is not consistent with her principle that we should not allow funds to create a distorted campaign.

Baroness Anelay of St Johns: My Lords, I think there is some confusion between the issue of a political party carrying out a campaign and a designated lead campaigner. If my noble friend is saying that there should be a level playing field with regard to the sums of money to be spent on each campaign, that would be saying that the designated lead campaigners, if they were not a political party, would have to have a total sum of not only what they spent but what every single other person in the country who agreed with them spent. I really do not think that that is what he is trying to achieve. I accept that my noble friend is trying to introduce a discussion about apparent unfairness in the funds available to political parties. I think that that is a debate for a wider issue as to what political party funding may comprise.

Lord Collins of Highbury: I am seeking explanation only because the Minister referred to the designated campaigns earlier. This debate seems to be solely about the ability to spend money, but other things

[Lord Collins of Highbury]
come with being a designated campaigning group, not least the right to free mail and other access. Can the Minister explain that, so we understand the importance of it?

Baroness Anelay of St Johns: My Lords, I will jump to a little later in my speech and just say that the designated lead campaigners are entitled not only to the spending limit which has been the subject of this debate but to a grant from public funds of up to £600,000, free delivery of mailings to every household or every elector, eligibility to make referendum broadcasts and the use of public rooms. I hope that is helpful.

Lord Forsyth of Drumlean: I accept the point that my noble friend is making about there being a certain degree of confusion because of the way in which PPERA intersects with this Bill. However, we are talking not about spending but about a cap on the amount that can be spent. The reason for having that cap is, surely, to ensure fairness. Where is the fairness in having a cap which is 2.3 times higher for one side of the campaign than for the other?

Baroness Anelay of St Johns: My Lords, my noble friend is, again, conflating spending by a political party—which may not end up being a designated lead campaigner—with spending by a designated lead campaigner. To do that, we would have to change the whole nature of how this country allows its elections to be run. All I can say is that before PPERA was put into statute, matters such as this were considered, and the resulting Act tried to come to the fairest conclusion. With regard to the changes my noble friend referred to, the increase in the total amount reflects the fact that the Act received Royal Assent in 2000. The amount has merely been raised in line with inflation. No remarks were made about that in another place.

My noble friend Lord Hamilton cast scorn on his own amendment, Amendment 40. I appreciate that he tabled it because of the concern—expressed firmly here today but also in another place—about the capacity of well-funded individuals and organisations to use their spending power to influence the outcome of the referendum, as indeed might be the case in any election. My noble friend invited me not to go into too much detail on his amendment, and many of his concerns were aired in the debate on my noble friend Lord Forsyth's amendment, so I am grateful to him for that.

The Bill includes additional controls on campaigners acting in concert, which means that where expenses are incurred as part of a common plan, they will usually count towards the spending limit of each campaigner that is party to the plan. This is supported by the Electoral Commission and aims to prevent groups of individuals or bodies colluding to circumvent spending limits. This is a well-established approach which is practical and enforceable but which also, most importantly, encourages participation.

The noble Lord, Lord Davies of Stamford, spoke to amendments on behalf of his noble friend Lord Liddle. I will explain the import of the amendments, were they to go into the Bill, and then address his pertinent point about how the Government should make their case in a statement and get information to the public. Amendment 58 would provide for every individual elector to receive a statement from each of the official lead campaigns, as well as a statement of the Government's position through the post, although the amendment does not specify that the Government's position must be contained within the same document. PPERA already confers a significant number of benefits on the designated lead campaigners. As I mentioned a moment ago when I was invited to list them by the noble Lord, Lord Collins, they include a free mail delivery to every household or every elector. We expect, naturally, that this opportunity will be taken up by the lead campaigners. In that respect, the noble Lord's amendment duplicates existing provision.

However, I appreciate that the noble Lord perhaps intended his amendment to do something else: to hold the Government to account by requiring them to make a statement about what had happened in the negotiations and what the results were. We had a discussion about this on Monday in Committee in the three or four groups relating to information. The noble Lord's amendment puts the Government in a position where they would be required to provide the statement during the period of purdah, which is not the Government's intention. Our discussions on Monday made it very clear that the Committee wanted the Government to consider carefully how we should make a statement about our position. I made a clear commitment on Monday to look at these matters and to see what I could bring forward on Report by way of an amendment that would apply to the information being provided before the essential period of purdah.

My noble friend Lord Forsyth had the lead amendment in the last group we debated on Monday, which I think gave us a very good starting point to have a fair description of what the Government have achieved without using it as a campaigning document. I happily give way to the noble Lord if that does not answer his point on Amendment 58.

Lord Davies of Stamford: The noble Baroness will have understood that the important thing in my mind is that the Government state clearly to the public what they think about these things. In my view, if there is a deal, there should be a clear document setting out the Government's description of that deal. During the campaign, a document should be made available setting out the authoritative case the Government are making in favour—if they are making such a case—of our remaining in the European Union. We should not be in a situation in which we just have to refer to ministerial speeches, or to this, that or the other kind of leak or suggestion. There should be one authoritative document, to which everybody in the campaign can refer. The Government seem to be shying away from that, which I very much regret. It is rather like the chairman of a company refusing to make a statement to shareholders about an important event for the company at an EGM. It is an abdication of the Government's responsibility. In my view, that statement should be made. It could be made just before the purdah period—29 or 30 days before the vote. That would be perfectly acceptable and would get round the purdah point.

Baroness Anelay of St Johns: My Lords, I obviously did not make it clear: we are proposing to do exactly what the noble Lord requires. That was my commitment on Monday, and we are in negotiation with noble Lords about what an amendment to that effect might look like. It is clear that any amendment from the Government must be acceptable to both Houses of Parliament and not just one, because it will have to go into the Bill. This is a matter we take very seriously, because of course the public should receive this information. There is no abdication of responsibility whatever. We are on the front foot on this, albeit carefully. Perhaps I should say we are on both front feet—trying not to fall over—so that it is an even playing field.

Amendment 59 would provide that the designated lead organisations for "leave" and for "remain" would receive a full-page advertisement in each UK national newspaper in the last 10 days of the campaign. I have already explained what the lead campaigners are entitled to. Appointing lead campaigners and providing them with these benefits seeks to ensure that both sides of the argument in a referendum are given an opportunity clearly and effectively to make their cases. The benefits, most notably broadcast and the mailings, represent well-established electoral tools to ensure that voters have information from both sides.

The noble Lord's amendment suggests that the current benefits are insufficient to achieve this outcome and need to be expanded to include adverts and newspapers. For the amendment to be consistent with the provisions relating to the other benefits that campaigners receive, the benefit would have only to extend to avoiding the cost of placing the advert in the newspaper. All expenses incurred in designing and producing the advert would fall to be met by the campaigner and count against the spending limit. I make it clear that there is nothing in PPERA or the Bill which prevents campaigners taking out adverts in newspapers if they so wish. The noble Lord's amendment would require them to do it and to incur the costs of preparing the advert.

7 pm

Campaigning these days takes many forms; it is not necessarily by way of advertisements in newspapers, online campaigning being at the forefront of planning and expenditure. This is not to say that campaigners will not still choose to take out newspaper adverts—they may—but it does not seem right that the rules for the referendum should require campaigners to spend what may end up being a significant amount of money preparing a campaign product that they may not see as integral to their campaign. There may be other, more effective ways of getting their views across.

I urge the noble Lord, Lord Hannay, to withdraw his Amendment 34 and other noble Lords with amendments in this group not to move them when they are called.

Lord Hannay of Chiswick: The noble Baroness has not made a very persuasive case for me to withdraw my amendment. I am not referring to other amendments in the group. She has spoken, if I understand her rightly, as if Scotland were a faraway, foreign state with which we had nothing to do. When the legislation was passed to enact the referendum in Scotland it was felt that this provision needed to be put in to prevent any possibility of gaming. Our own Constitution Committee has warned the House—and that includes the Minister—that there is a risk of that here, and the Government appear not to wish to take any account of it.

When it is suggested that to put such a provision in would make the playing field less even, that is to ignore the fact that if there were gaming which resulted in there being no single designated organisation on one side, that would mean there would be no funds for the other side and there would be a level playing field: it would be nuclear winter. That would not be, I suggest, a satisfactory playing field on which to play, any more than nuclear winter is satisfactory. If we deprive an organisation that has properly designated itself of any possibility to get funds in the campaign, I do not think the Minister would think that that would be a very fair way to proceed. I do not quite know how we are to move forward on this.

Baroness Anelay of St Johns: May I intervene?

Lord Hannay of Chiswick: Yes, please.

Baroness Anelay of St Johns: I was trying not to force my way in, as I must sometimes do: I know that noble Lords have been lively today. I sought to point out earlier that the Government have evaluated the risk with regard to the referendum on the European Union, remain or leave, and put it in the category where we feel that there is enough public interest that there will be somebody who will apply—and not just one, perhaps more—to be considered as a designated lead campaigner. So that will not arise. Clearly, I did not make enough of an effort to explain it in full, but I hoped I had set out the dangers there would be if the Electoral Commission appointed only one lead campaigner and the voice of another could be stifled to the benefit of one.

Lord Hannay of Chiswick: The noble Baroness is ignoring a risk. It may not be a very high risk and if this amendment were accepted it would be a nil risk. She seems to be saying that the Government would prefer to run even a very small risk of this situation occurring than put a provision in the Bill which made it absolutely certain that it would not occur. I feel that that is a little unreasonable.

The noble Baroness will have noticed that my amendment has been supported on all sides of the Committee and both sides of the argument. Is she really unable to say two things? The first is that if the Government's view on this prevails and the amendment is not accepted, she will give a commitment that if, sometime in the next few months, it becomes clear that there is not going to be a properly designated organisation on both sides, the Government will then legislate, in emergency legislation, to ensure that the other side will not be deprived of any funds. If she gave that undertaking, it would be very helpful. If she cannot give that undertaking, will she at least take this away and look at it a bit longer? We have a space between

[Lord Hannay of Chiswick]
now and Report and I do not believe that this amendment is open to the suggestion of unfairness. As far as I know, nobody in Scotland complained.

Baroness Anelay of St Johns: My Lords, I do not think that the Committee would wish to contemplate even further legislation, but I can certainly contemplate further consideration on the basis of what the noble Lord has said. I have to say that I thought we had considered properly before today, but of course I always listen to the points made by the noble Lord and am prepared to do so before Report.

Lord Collins of Highbury: I have a question for the noble Lord about the potential risk. My understanding is that the risk is not simply gaming on the part of one side to deprive the other of funding. We constantly talk about funding when, actually, it is access to broadcast, access to free mail and all the other things that go with being a designated organisation. In evaluating the risk, does the noble Lord recognise a difficulty? Say, for example, there is no consensus among the leave campaign, so we end up with three, two or four organisations. Is the Electoral Commission, in those circumstances, permitted to decide on the merits of two or three, or does it have to say there is no lead designation?

Lord Hannay of Chiswick: I am not knowledgeable enough to answer the noble Lord's question. I shall come to the Minister's last intervention, which was helpful, in a minute, but I think she underestimates the range of possibilities.

Of course, our own Constitution Committee has raised the issue of gaming and that must be one risk, but I think there are other risks. One concerns whatever attempt the Electoral Commission makes to come to a conclusion about the designated organisation on the leave side. I do not think there will be any problem on the remain side—I cannot be certain about that, but I do not think there will be; it does not look as though there will be—but on the other side there is obviously the potential for a really serious problem. There are already two organisations, a third is said to be going to enter the fray, and if these organisations go on slugging it out and the Electoral Commission tries to adjudicate, the matter could then go to judicial review. The decision of the Electoral Commission could be appealed on judicial review. That would mean, as the present law is drafted, that the remain campaign would be deprived of all the advantages that exist for a designated organisation. That is pretty serious, frankly. What I feel is unreasonable about this is that, were this amendment accepted, none of that would happen.

I accept the noble Baroness's offer to take this away and reflect further; she is always extremely fair in her dealings with the House. She has said she will go away and consider this further and that there will be further contacts with various noble Lords who have tabled amendments. We have a little time before Report, but I honestly think that the risk, even if it is a 1% risk, should be dealt with here and now. The case for that is pretty strong. Having said that, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendment 35

Moved by ***Baroness Anelay of St Johns***

35: Schedule 1, page 12, line 19, leave out sub-paragraph (3)

Baroness Anelay of St Johns: My Lords, I shall speak also to my Amendments 36, 43 and 46. This group of amendments deals with the restrictions on the Government and publicly funded persons and bodies under Section 125 of the Political Parties, Elections and Referendums Act 2000 and Clause 6 of the Bill. My amendments ensure that, for the purposes of the referendum, the definition of public funds in PPERA encompasses Gibraltar public funds.

In addition, government Amendment 45 ensures that the provision on restrictions on the Government and publicly funded persons and bodies publishing material in the 28 days ending with the poll also applies to the Government of Gibraltar and other bodies that are funded from Gibraltar public funds. Finally among my amendments, government Amendment 51 ensures that exclusions in any regulations made under Clause 6 would also apply to the Government of Gibraltar and other bodies funded from Gibraltar public funds.

The issue of Section 125 and Clause 6 has been the subject of much debate already. I take this opportunity, before I conclude my words on my amendments, to set out clearly to the Committee the Government's position on the issue, having carefully considered the views expressed at Second Reading.

I can assure noble Lords that the Government do not intend to bring forward amendments to the Bill in relation to the restrictions on the Government publishing material in the final 28 days of the campaign. We have, however, as I said, put amendments before the Committee that ensure that the restrictions apply to the Government of Gibraltar and publicly funded bodies in Gibraltar. Nor do we have plans to bring forward regulations under Clause 6. The Government have accepted the outcome of the debate in another place and the arguments put forward at Second Reading, and are not seeking to disapply Section 125.

In the Commons, we highlighted the risk that Section 125 may give rise to legal challenge because it is so widely drawn. We sought to reduce that risk of challenge by putting it beyond doubt that business as usual is not in scope of Section 125. However, another place did not accept the Government's amendment to the section.

We agree with another place that Section 125 cannot have been intended to prevent the Government acting as the Government in carrying out routine business, including in the EU, in the last 28 days before the date of poll. We think this gives the Government a strong argument to defend against any legal challenge to wider EU business carried out in the final 28 days.

Let me be clear: we have no plans to bring forward any regulations to provide exemptions from Section 125. It remains our view that it would be wise for Clause 6 to remain in the Bill, but the issue is clear. There could be some completely unforeseen eventuality when the House would consider it appropriate that regulations

should be brought forward. The Bill is clear on that, if it were to happen, but we do not foresee it and it is not our intent. We could not rush Parliament or the public with proposed changes at short notice. Any regulations would need to be made at least four months ahead of the poll, in consultation with the Electoral Commission.

The addition of the power was the considered view of another place and the Delegated Powers and Regulatory Reform Committee, which said that the approach of using regulations to specify exceptions was appropriate.

I know how much interest there is in this subject, and I shall listen very carefully to the debate this evening. I know that there was a little error in the PA report of something I said on the first day of Committee, when I said that we were not going to have a snap poll. The report left out "not", which caused a little frisson in one or two newspapers. I repeat that we have no plans to bring forward any regulations to provide exemptions from Section 125.

In the light of that, at this stage, I wait to hear the views of other noble Lords on their amendments which lie in this large group, but I beg to move.

7.15 pm

Lord Hamilton of Epsom: My Lords, I shall speak to Amendments 38, 39, 52 and 54 in my name and that of others. Amendment 38 is designed to strengthen the controls on public money and resources during the purdah period. As my noble friend will know, Section 125 of the 2000 Act only prevents the Government publishing certain materials. It does not apply to general government activity during the final four weeks of the campaign, which remains regulated by constitutional convention, not by statute.

The amendment would prevent the Government campaigning and trying to promote a leave or remain vote in the purdah period, and restrict taxpayer-funded special advisers—who, we must remember, are civil servants and paid civil servants—from assisting in referendum campaigns during the purdah period.

Amendment 39 would prevent EU institutions incurring referendum expenses or doing anything to procure a remain vote during the referendum period. Both the Government and the Electoral Commission accepted that principle when similar amendments were tabled in another place. However, they claimed that the law was sufficient to prevent EU campaigning. That is mistaken. The law referred to is the European Communities Act 1972, which provides EU institutions with full authority to engage in activities authorised by EU law. The 1972 Act must be specifically disapplied for the EU institutions to be made subject to the same campaign controls as other foreign Governments.

Amendment 52 is a short amendment to do with the Electoral Commission. At the moment, the Bill advises that Ministers should "consult" the Electoral Commission. The amendment adds "and obtain the consent", which is an important adjustment, because we must be bound by the Electoral Commission.

Amendment 54 would leave out subsection (8), which means that Section 4(1)(c) could enable the Government to abolish purdah together. I am sure that is not their intention in the Bill, and therefore I commend the amendments.

Lord Spicer (Con): My Lords, I am very relieved that my noble friend Lord Hamilton did not say that his amendments were nonsense this time, because I support them. I do so because I am concerned about a situation where the prospectus being put to the country is not exactly false but uncertain—where, not necessarily through any fault of their own, the Government have reached an agreement which all sides think is fine but where there is an endemic structure within it that makes it unstable. I can best illustrate the situation by very briefly going through what I understand to be the four objectives of the Government in their negotiations.

The first objective is to stop the ever-closer union. One has to say that although all sides might be able to agree to that in words, there is the acquis communautaire —the acquis communautaire is endemic within the treaty. It is there to self-implode in this context, particularly as it has always supported the move towards a centralised Europe, the European Union, by the court.

The second objective is more competition. The European Union is a trade bloc. Trade blocs exist to protect themselves against foreign competition outside the trade bloc, otherwise there is no point in having a trade bloc in the first place. A trade bloc is and always will be anti-competitive.

The multicurrency objective—that we should be allowed to have lots of currencies—is next. When we were discussing the Maastricht treaty in the other place I always felt that an endemic feature of a single European Union is that there will eventually have to be a single currency. That is always put the other way round—that a single currency means that you will have to have a single Government—but the converse is also true: that to have a single union you will ultimately have to have, if the union is to mean anything at all, a single currency. The fourth objective is to deal with immigration. I cannot think of any union, market or trade bloc that does not ultimately have freedom of movement of the people within it.

I have to say that, through no fault of the Government's own—the various countries may well establish an agreement in the negotiations—the agreement will be unstable for the reasons I have just given. We therefore need the kind of spending restrictions implied in my noble friend's amendments.

Lord Kerr of Kinlochard: My Lords, I speak to Amendment 55, which stands in my name. It seems to me that the problem that we are facing comes from the very wide language of the PPERA, which clearly was not intended to deal with the problem that I am drawing attention to. No Minister or servant of the Crown can publish any information which deals with any of the issues raised by the question during the 28 days—and "publish" is defined very widely as making,

"available to the public at large, or any section of the public, in whatever form and by whatever means".

My worry is whether that might prove obstructive to the conduct of government business in Brussels. Ministers will continue to go there, European Union committees and the Council will continue to meet, and the myriad working groups will continue their work. It seems to me that it would be possible to construe that everything said—such as a document or briefing note passed to Members of the European Parliament, a document

[Lord Kerr of Kinlochard]
sent to the Commission or a pleading before the court—could be said to be relevant to the issue of the question of the referendum and could be caught by this 28-day ban.

I am sure that that was nobody's intention, and I quite understand why the Minister does not wish to go back and reopen the language that we are confronted with. I am sure that people such as Mr Bernard Jenkin, who spoke on the purdah issue in the Commons, had no intention of making it impossible for the Government to carry out their business in Brussels. These are honourable people making a completely different point.

I am puzzled by the noble Baroness saying that she is confident that the Government would have a sufficient defence if challenged during the 28-day period. I am concerned about that. It seems to me that a judicial review—a challenge in court—could be disruptive to business, even if that challenge was successfully resisted in court. It seems to me that the possibility of the challenge might be an inhibition on our people in Brussels who are working in the national interest, doing the job they are meant to do. I am therefore very puzzled by what I think I heard the noble Baroness say—that she did not envisage making any regulations on this issue. I do not know whether we can be sure. If I were the Permanent Representative, I would be very uncertain whether I would be able to do what I am paid to do with the threat of legal challenge.

I may be exaggerating the problem but it is certainly a real one. Mr Lidington, Minister of State in the Foreign Office, told the European Union Committee in evidence in July that Section 125 of the PPERA would make it,

"very difficult if not impossible for us to undertake a whole range of routine EU business in the four weeks leading up to the referendum date".

I admit that Mr Lidington said that in the context of the presidency. The hypothetical question was: "Suppose that the referendum date and the 28 days fell within the second half of 2017, during the UK presidency of the EU". He was talking about how very difficult if not impossible it would be to undertake a whole range of routine EU business as the presidency. However, it seems to me that if it would be difficult to advance and defend the EU interest, as the presidency is meant to do, it would be just as difficult to advance and defend the UK interest, which is the daily business of our representatives in Brussels.

Lord Lamont of Lerwick: I am listening very carefully to what the noble Lord is saying—and of course he has huge knowledge of this—but Section 125 refers to "promotional material". That is what it talks about. It says that it specifically excludes material which is requested by a member of the public. If the Scotch Whisky Association or somebody wanted a particular copy of something that had been discussed, they would still be able to do that. What this prohibits is promotional material. Surely that is wholly right—that promotional material should not be allowed in this way.

Lord Kerr of Kinlochard: If the noble Lord is right, I am delighted. If the meaning of Section 125 of the PPERA is that only material of a particular kind defined as "promotional" is caught, my problem is much smaller; in fact; it disappears. But it seems to me that the language of the Act says that any Minister of the Crown, government department or local authority may not "publish", which,

"means make available to the public at large, or any section of the public, in whatever form and by whatever means"—

for 28 days, any material bearing on the issue that is in the question. If that is to be the case, then for 28 days we are going to be saying, "Stop the world while we consider whether we want to get off". I worry that the answer to that is to say, "Don't be silly; we would defend ourselves in court". The atmosphere might be quite febrile. There might be legal challenges brought. I think there would be a considerable inhibition on the public service doing its job.

I ask the Minister to look at my amendment, which would not require the making of any regulations. It would simply create a small carve-out, an exemption, for the normal business of the Government with the European Union, in and with the Council, with the Commission, with the Court and with the Parliament. It seems to me that that is much safer ground on which to rest than the thought of defending challenges in court. I am quite sure that when they drafted the PPERA nobody intended Section 125 to have effect on the pursuit of government interests and policies abroad. I am sure that that was not what they had in mind. I am sure that nobody in the other place, in the great debates that took place there over purdah, had it in mind to make it more difficult for the Government to defend the national interest in Brussels. I would argue for my amendment as the simplest way in which to deal with that problem.

7.30 pm

Lord Forsyth of Drumlean: My Lords, I should like to speak to Amendments 53, 56, 61A and 61D, in my name. First, I say thank you to my noble friend the Minister for her decision to abandon making regulations under Clause 6(2). That is a fantastic step forward. Many of us expressed concern about that at Second Reading. It makes my Amendment 53, which simply required notice of any change, look a bit feeble, so I am extremely grateful. Given that my noble friend has undertaken not to make any regulations modifying Section 125 for the purposes of the referendum, I wonder whether she might be amenable to removing it from the Bill altogether, so there is no ambiguity about the position, thus ending the concerns which have been expressed. I commend the notes prepared on the PPERA, which makes it clear that Section 125, as my noble friend Lord Lamont pointed out, is concerned with promotional material. Although I have tried very hard to support the amendment of the noble Lord, Lord Kerr, I do not think it is necessary, given that the Government are not planning to make regulations under Section 125, the fear having been that it would be used as a back-door route to get round purdah. That is a great step forward.

The noble Lord, Lord Hannay, referred to the Scottish referendum campaign. In considering the amendment proposed by the noble Lord, Lord Kerr, one thing that I recalled was extremely irritating in the Scottish referendum campaign was how, in the last few

days, the Government suddenly published, in concert with the other political parties, a vow, which has caused us endless difficulties subsequently. An amendment such as that of the noble Lord, Lord Kerr, would open the door to that kind of activity, which is thoroughly unhelpful. The noble Lord is groaning, but I am sure he takes the point.

At Second Reading, I asked whether the restrictions and purdah imposed under Section 125 would apply to the Scottish, Welsh and Northern Ireland Governments and to the European Commission. My noble friend said that, yes, they would apply to any person and there was no cause for concern. As my noble friend will see, I have tabled Amendment 56, which restricts the promotion of promotional material by the Scottish and Welsh Governments, the Northern Ireland Executive and the European Commission. That is not because I thought my noble friend was wrong in the assurances she gave, but because it relates to Amendment 61A, which introduces a personal surcharge on anyone who incurs expenditure in breach of these rules. This may not be the best way to do it, but I tabled the amendment because I was astonished to discover that, although Section 125 imposes purdah and restrictions, if anyone chooses to breach that purdah there is absolutely no penalty for doing so. Therefore, we have a paper tiger. All that can be done is to seek judicial review of that action, by which time the train will have left the station. The notion that a referendum could be rerun because there was a breach of purdah is stretching credulity to the point of fantasy. We had this great argument about purdah and Section 125—it has been through the other place and come here—but there is actually no penalty.

The Electoral Commission thinks that my amendment might go a bit far. However, there are precedents; I remember Dame Shirley Porter being personally fined no less than £20 million. The surcharge rules have since been taken out of local government legislation, but they certainly existed—and it would certainly concentrate the minds of the Scottish Government or anyone else tempted to breach purdah if there was some kind of sanction. I propose this in the hope that my noble friend will respond to the concerns expressed by the Electoral Commission—if not by me and others—and consider what sanction could be put in place to ensure that the purdah rules are observed.

Then, of course, we have the European Union and its institutions. It is difficult to see how we could have any sanction as, of course, we are mere vassals of the European Union. How could we possibly punish it for, or indeed prevent it, breaching purdah? Amendment 61D is an attempt to reach a negotiation—an approach that I know the Prime Minister is keen on to deal with the difficulties we have with the European Union. It proposes that there should be a negotiation now to,

"conclude an agreement between the Government and the institutions of the European Union, to the effect that the institutions will … abide by the provisions of section 125",

and not be tempted to take on a promotional or campaigning role during the referendum.

My noble friend will no doubt tell me that that is very unlikely. However, I happened to read a piece in a newspaper a fortnight ago—I assumed it was some kind of joke—suggesting that in Scotland, the European Union was going to require farmers to put up in their fields posters indicating that they were supported by the European Union, and that the size of the posters would be determined by the amount of subsidy they received. The prospect of all the fields in Scotland being adorned with European flags and messages telling the public how generous the European Union had been in spending the money which we gave them in the first place, while we were in the sensitive period of a referendum campaign, seemed rather chilling. That makes my Amendment 61D rather important, because I would interpret suddenly providing new publicity to mislead the public about the extent of the support provided by the European Union to those farmers as an example of exactly the thing I am concerned about—and, of course, something the Government can do nothing about.

Even if my noble friend does not accept the substance of these amendments, I hope she will take them away and consider how we can strengthen the position in respect of Section 125—and perhaps even consider removing Clause 6(2) from the Bill altogether, or even Clause 6 itself, although she has said that that would be a step too far. I am most grateful to my noble friend, who has responded to the concerns expressed in the other place and delivered what it wanted, and responded to the concerns expressed by many noble Lords on Second Reading.

Lord Pearson of Rannoch: The noble Lord referred to the notices that our masters in Brussels have required to be erected all over the countryside. I have an idea for the farmers in question. Alongside the notice that gives the great news that our masters in Brussels have given us so much money, they could put up a notice saying, "PS. Of course, for every pound they give us, we will have given them £2.66"—which I think is the present amount. Perhaps that would put those notices into perspective, because there is no such thing as European aid to this country, as I am sure all noble Lords will agree.

Lord Hamilton of Epsom: Does the noble Lord not agree, though, that if somebody did something as impudent as that, measures would be taken to take their grant away?

Lord Pearson of Rannoch: I do not think they would be in a position to do that. If farmers were forced to do that, it would be a very good thing for those of us who wish to leave the European Union.

On Amendment 61D, tabled by the noble Lord, Lord Forsyth, he worries about the provision not having enough teeth to ensure that the European Commission behaves itself—which, of course, I forecast it will not. One could add on Report a clause which says that any money the European Union does spend in this regard can be deducted from the £12.5 billion net that we are sending to Brussels at the moment. Perhaps we can get the money back that way.

Lord Forsyth of Drumlean: I was concerned not about the money but about the expenditure taking place within the campaign, which was breaching the rules of purdah—that is, the use of the money, rather than the actual amount.

Lord Pearson of Rannoch: I accept that; but if they knew they were going to lose the money if they spent it, they might be less inclined to spend it.

Lord Collins of Highbury: Of course, in the other place the Opposition resisted strongly the disapplication of purdah provisions and the other place agreed with that. Therefore, our position is quite clear. Obviously, however, Clause 6 was agreed to in the other place. I hear what the noble Lord, Lord Forsyth, is saying, but I am not sure that I quite understood his interpretation of the noble Baroness's remarks. There is clear indication that there is no intention to lay regulations. There may be a risk, but we do not know: there are unforeseen circumstances. I am assuming that Clause 6 will be retained, and we would support that if it enables the Government to respond to something unforeseen. I assume that is what the noble Baroness is saying, and that is why we would support that. I am certainly sympathetic to the views expressed by the noble Lord, Lord Kerr.

Lord Forsyth of Drumlean: Before the noble Lord leaves that point, could he give one example of something that might justify making the regulations?

Lord Collins of Highbury: I fear I might sound like Donald Rumsfeld if I did—talking about the unknown unknowns and the known unknowns—and I will resist the temptation. I will leave it in the capable hands of the Minister to give those examples.

However, this group of amendments gives rise to some issues, including how we define the actions of Ministers and special advisers, and the question of acting in a personal capacity. I fear that all these things are incredibly difficult to prescribe, not least: when is a Minister not a Minister; when is a spad not a spad? What about when they are working at home at weekends? The situation is clear with matters such as having no government transport, or no paid facilities when campaigning.

Lord Hamilton of Epsom: The noble Lord asks, when is a spad not a spad? A special adviser is paid as a civil servant, so surely he should never get involved in matters such as a referendum.

7.45 pm

Lord Collins of Highbury: The difficulty is in the name itself. A special political adviser is not like a civil servant, though they are governed by certain Civil Service rules. Let us talk about Ministers—when is a Minister not a Minister? Such things are very difficult to legislate on, so there are problems. When special advisers are members of political parties, they are often engaged in political discussions. It seems very difficult to legislate in this Bill about how we govern them.

A good point is being made about the question of EU institutions. The Electoral Commission, which the noble Lord, Lord Forsyth, has quoted, has said that although we cannot necessarily legislate about these things, we can ensure that there is clear guidance agreed between the parties. That is a good idea.

On Amendment 55, we would appreciate the Minister repeating her assurances that normal business can be conducted and that the requirements of Section 125 will not impinge on that. The noble Lord, Lord Forsyth, has quoted the Electoral Commission, which is satisfied that the Scottish and Welsh Governments and the Northern Ireland Executive are covered by the requirements of Section 125. However, the noble Lord made a very good point about regulations and sanctions. In fact, the perpetrators do not get fined—it is the victims who get fined and the taxpayers who pay for the offence. That is something we need to look into, but I am pretty certain that clauses in a Bill are not the appropriate way to do so. We have had debates recently about the Ministerial Code. Perhaps we could table another quick amendment to ensure that what is required of Ministers is clear. That could also apply to Civil Service codes. It is within the powers of the Government to act on what the noble Lord, Lord Forsyth, is seeking, without necessarily supporting his amendment.

Baroness Anelay of St Johns: My Lords, in my opening speech to this group of amendments I set out the Government's position on Section 125 of PPERA and Clause 6 of the EU Referendum Bill. This is a complicated group of amendments, so I suggest that I take them sequentially as much as possible. I will further elucidate the position on Clause 6. In particular, the amendment tabled by the noble Lord, Lord Kerr of Kinlochard, has assisted the debate today and I am grateful to him—I know that it was his intention to facilitate a debate in the House in a constructive way.

Amendment 38, tabled in the name of my noble friend Lord Hamilton, relates to the involvement of Ministers, departments and local authorities in activities for referendum purposes in the 28 days before the referendum. I can assure my noble friend that his proposed amendment duplicates to a certain extent provisions already included in the Bill.

Section 125 of PPERA places restrictions on publicly funded bodies and persons from publishing certain material in relation to the referendum in the final 28 days of the campaign. The restrictions of this section will apply, in full, following an amendment made on Report in the other place, which was referred to by noble Lords. These restrictions will apply not only to Ministers, government departments and local authorities, but also to other publicly funded persons and bodies. The Government have consistently been clear that we will not undertake any campaigning activity during the 28-day restricted period.

In addition, Ministers and civil servants, including special advisers, are subject to purdah guidance which will be issued in advance of the restricted period. This guidance will reflect the statutory provisions. Special advisers are covered. In line with long-standing precedent and convention, this guidance will make it clear that Ministers and civil servants, including special advisers, will not undertake campaign-related activity during the 28-day period. I hope my noble friend will understand that we do not support his amendment as it specifically relates to special advisers. It is already there—it is dealt with by Section 125.

Ministers acting in their official capacity, advised by special advisers and other civil servants, will be prohibited from publishing certain material in relation to the referendum in the final 28 days of the campaign. A publication by a special adviser on behalf of a Minister would also be covered by the prohibition. The role of special advisers is set out in the special advisers' code of conduct. This code includes clear provisions in respect of special advisers' involvement in national political activity. They will be subject to the purdah guidance that will be issued to departments ahead of the 28-day restricted period. Any campaign activity that might be undertaken by special advisers must be in their own time, outside office hours and without the use of government resources. They cannot think they can do it while on annual leave; that does not work. If a special adviser wanted to campaign full time or publicly, they would first have to resign from their government post. It is right that special advisers are able to undertake other activity in their own time and without the use of official resources. My noble friend's Amendment 38 would inhibit their ability to do so and we believe it would place unfair restrictions on this particular group. I hope my noble friend will understand that I do not support his Amendment 38.

My noble friend's Amendment 39 relates to the role of the EU institutions. It seeks to prevent the EU institution donating to permitted participants or directly campaigning at the EU referendum. Turning first to the issue of donations, I understand my noble friend's concerns. This is a debate about the UK's membership of the EU, and we need sensible controls on who can spend money to influence the outcome. As we have already discussed on previous groups, PPERA provides controls on spending and on foreign funding of permitted participants. Broadly speaking, the list of those eligible to donate to permitted participants is the same as the list of permissible donors to political parties as set out in PPERA. However, we have extended the list to take account of the inclusion of Gibraltar in this referendum and to include the bodies that since the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act have been eligible to become third-party campaigners at elections. Significantly, this means that permitted participants cannot accept donations of more than £500 from anyone who is not a permissible donor. The list of permissible donors does not include the European institutions. My noble friend referred to the European Communities Act 1972, but the provisions of that Act have no bearing on this. I can assure my noble friend that it does not provide the European institutions with a get-out. Permitted participants cannot accept donations of more than £500 from the EU institutions. It is banned.

My noble friend's amendment aims further to prevent the EU institutions, including the European Commission, campaigning at the referendum. I am sure my noble friend is aware that under the European Union Referendum Bill the EU institutions are not on the list of those eligible to register as a permitted participant. In relation to campaigning, the Bill does not place controls on the activities of the EU institutions directly, which I know is my noble friend's concern. That is because our national legislation does not regulate behaviour outside our jurisdiction, but also because if the institutions are operating within our jurisdiction, they are afforded immunities and privileges under EU law. We recognise my noble friend's concern, which is shared by others, but we believe that the best way to prevent the EU institutions influencing the outcome of the referendum is through a process of constructive dialogue. I can assure the Committee that Ministers are already deeply involved in just that.

I now turn to the amendments which relate to Clause 6. I shall again go sequentially for the moment and then deal with Clause 6 as a whole. I have already explained the history of what happened to Clause 6, so I shall not weary the Committee by doing it again. My noble friend Lord Hamilton has expressed further concern about the clause. He explained that Amendment 52 provides that the Government must obtain the consent of the Electoral Commission before making regulations under Clause 6. The clause as it stands requires Ministers to consult the Electoral Commission prior to making regulations. This is consistent with other provisions in electoral law that require the Electoral Commission to be consulted on proposed legislative changes. However, Ministers are not obliged to obtain the Electoral Commission's agreement, and we do not think it is necessary to take a different approach for the EU referendum.

My noble friend Lord Hamilton tabled Amendment 54, which removes subsection (8), to ensure that we do not go back on our word that we will not reintroduce the exemption from purdah. As I understand it, he thinks that subsection (8) would give the Government the opportunity to reinstate the original exemption from purdah. I assure him that the way Clause 6 is drafted means that the subsection he is worried about would give powers to act only in matters not related to Section 125 or to matters of purdah. We do not intend to abolish purdah. Subsection (8) simply does not give the Government the power to do that.

My noble friend Lord Forsyth kindly indicated that he would not proceed with Amendment 53, so I hope he will allow me not to cover that now. He asked me for clarification on my statement at the beginning with regard to the proposals about Clause 6. I repeat that we do not plan to bring forward any regulations under the provisions of Clause 6. At the moment, we do not see the eventuality where we would wish to do so. We have considered this very carefully, and I will refer to that again when I refer to the amendment of the noble Lord, Lord Kerr. I shall subsume the two amendments.

Amendment 55, tabled by the noble Lord, Lord Kerr, seeks to ensure that normal government business, including business between the Government and the EU institutions, is not covered by the restrictions that will apply to the Government in the final 28 days. The noble Lord has given the Government the opportunity again to look very carefully at the estimate of the level of risk to government business. I can assure the Committee that the Government have been considering these matters very carefully since the consideration in the House of Commons at Third Reading earlier this autumn. We have considered this in great detail from that moment, we continue to do so and we listened to this House at Second Reading. The Government agree that there is a risk that Section 125 may give rise to legal challenge

[Baroness Anelay of St Johns]
because it is so widely drawn. That is still our position. We tabled an amendment in the other place, which was not accepted, and we live with that decision by another place.

8 pm

The noble Lord, Lord Kerr, in being helpful, is trying to achieve the same result as the Government's amendment in another place by another route, by teasing out what other amendment might be acceptable. I have to say to him that I have no reason to believe that his amendment would be accepted by the other place because it would be seen as trying to achieve the same result. I regret to advise the noble Lord that his amendment is unlikely to help the Government's position in terms of legal risk, but it was essential that we had his amendment and the opportunity to look at it carefully.

As I explained, the Government consider that Section 125 cannot have been intended to prevent the Government acting as the Government in carrying out routine business in relation to the EU in the last 28 days. We consider that this is a strong argument for us to be able to defend against any legal challenge to wider government business carried out in the final 28 days. I fully appreciate the point of the noble Lord, Lord Kerr, that he is trying to give the Government an opportunity to avoid having to defend a legal challenge. He is trying to get into that first stage. However, having given it very careful consideration, we do not believe that is the way that we should proceed. We feel that, as matters stand, we have been able to give the commitment that we do not plan to bring forward any regulations.

I should also, for completeness, comment that the amendment of the noble Lord, Lord Kerr, would raise uncertainties and areas of challenge about what is meant by "normal business". However, I appreciate that this was a matter he brought forward for debate.

Noble Lords have asked why, then, Clause 6 should remain in the Bill. It is our view that any Government who are careful of the security of government and the security of their people should enable themselves to have access to a course of action if something unexpected happens. However, it would have to be something pretty unexpected, and that is why we are not able to forecast it at the moment. Clearly, in something as important as an election campaign for a European referendum, when so many different groups are involved, it would be important that we did not seek to disrupt that unnecessarily. Our position is that we would retain Clause 6, but we have no plans to bring forward regulations with regard to Section 125.

Lord Forsyth of Drumlean: Can my noble friend give us an example of something unexpected that might happen that could justify using these powers?

Baroness Anelay of St Johns: My Lords, I just referred to the fact that a Government must have care for the security of their public. I therefore think it would be unwise to venture into any speculation on what that might be.

I ought to say, out of courtesy to my noble friends Lord Forsyth and Lord Hamilton, a word about Amendments 56 and 57—more than a word or two, by the look of this. Both Amendments 56 and 57 provide that the restrictions on publications and certain material in Section 125 also apply to the Scottish Government, the Welsh Government and the Northern Ireland Executive and to Welsh and Scottish Ministers as well as Ministers in Northern Ireland.

Amendment 61A, tabled in the name of my noble friend Lord Forsyth, provides for the Electoral Commission to propose a surcharge. I beg his pardon; my noble friend explained that he tabled his amendment because of Amendment 61A. I will come to his amendment later because it is rather different from that of my noble friend Lord Hamilton.

I can assure my noble friends Lord Forsyth and Lord Hamilton that we do not believe there is a need for clarification because Section 125 already applies to the devolved Administrations and Ministers in those Administrations, because they fall within the definition of persons or bodies whose expenses are met wholly or mainly from public funds. Therefore, Section 160 of the PPERA provides a definition of public funds that includes payments made out of the Consolidated Fund of the United Kingdom, the Scottish Consolidated Fund, the Welsh Consolidated Fund or the Consolidated Fund of Northern Ireland. Therefore, it really is clear that there is no need for this amendment.

I know that my noble friend Lord Hamilton referred to Amendment 57—which seeks to place restrictions in Section 125 on the Government of Gibraltar—as being for the avoidance of doubt, but Amendment 45 in my name, which refers to the Government of Gibraltar, modifies Section 125 for the purposes of a referendum so that the restrictions apply to the Government of Gibraltar, a government department of Gibraltar or any other body wholly or mainly funded from Gibraltar public funds. Therefore, my Amendment 45 should please my noble friend because it delivers what he wants. I can assure the Committee that the Government of Gibraltar, like the devolved Administrations and their Ministers, will therefore be subject to the restrictions in Section 125.

My noble friend Lord Forsyth also seeks to place restrictions under Section 125 on publications by the European Commission. Amendment 61D, in my noble friend's name, seeks to achieve a similar end and place a dialogue between the Government and European Union institutions on a statutory basis, rather than the procedure I have already outlined. My noble friend would require the Government to seek a voluntary assurance from the EU institutions that they will comply with the provisions of Section 125.

I am not convinced that it is appropriate to make a statutory provision for voluntary assurance, but I can assure my noble friend that the Government will continue, as I mentioned earlier, to work with the EU institutions to prevent undue influence. Decision on our membership of the EU is rightly a matter for us—for the British public alone. Some of my ministerial colleagues and officials have been engaging with their counterparts in the European Union to explain that this is a question for the British people. The Bill makes that clear by

omitting the institutions and foreign Governments from the list of permissible donors. I can say to my noble friend that we have received reassurances that the European Commission understands that this is a matter for the British people, and they will take no active part in the campaign.

Lord Forsyth of Drumlean: My noble friend said I want to make Amendment 61D statutory. All it says is that the Government should have discussions with the European Union's institutions—which my noble friend says we are doing—but that the Secretary of State should lay before each House of Parliament a copy of any agreement that could be concluded. Can my noble friend give an undertaking that the terms of the agreement that has been reached with the European Union should be made available to both Houses of Parliament?

Baroness Anelay of St Johns: The reason I say that my noble friend's provision was intended to be statutory is in the very nature of an amendment; if it were go to go into the Bill, it would become statutory. My noble friend makes a request about what information may be available from the European Commission. I will look very carefully at that, to see what is already available and what we may achieve over the coming months. It is a reasonable request from my noble friend, and I will see what may be done. Clearly, there are circumstances in which discussions are going ahead from which a public document has not been produced, but if we are in a position where there is a public one, I will certainly do my best to provide that to my noble friend and to other noble Lords who are interested.

I ought to add, in parenthesis, that European officials are clearly aware of how counterproductive an intervention from Brussels might be, whatever it is. They will be taking clear account of that.

Amendment 61A, in the name of my noble friend Lord Forsyth, provides that the Electoral Commission should impose a surcharge if any body or person to which Section 125 applies breaches the restrictions in that section. I understand entirely what my noble friend seeks to do. He feels that there should be an immediate punishment rather than judicial review, but I say to him that the Electoral Commission has no role in the enforcement of Section 125. The Electoral Commission has made it absolutely clear that it does not welcome such a role. We consider the current arrangements sufficient—that where a breach of Section 125 might happen it should be subject to judicial review—but I certainly hear what my noble friend says. Even if I am not able to come to a conclusion that helps him, I will certainly look at that again to see if there is something that can avoid judicial review.

These matters have already been considered on many occasions, and it has not yet been possible to find a way of doing it succinctly. I can see that my noble friend wishes to intervene.

Lord Forsyth of Drumlean: I am most grateful to my noble friend for that offer. She is being a little selective in quoting the Electoral Commission. It is true that it does not want the task of surcharging elected people, and one can see why it might recoil from that, but it is also true that it has said that the present position, where there is no sanction for people who breach purdah, is unsatisfactory and it has suggested that the Government should consider that. I would be grateful if my noble friend could come back on Report, because, clearly, if the Electoral Commission is saying that this is a paper tiger, it is certainly not acceptable.

Baroness Anelay of St Johns: My Lords, as I have said, we always listen very carefully to the views of noble Lords and consider the results of debates here. I hope I have been able to reassure noble Lords that we are trying to deal with the concerns that they have expressed. I know that it has been a long debate but it is one about which noble Lords felt very deeply. I therefore commend Amendment 35, which is in my name, and invite other noble Lords not to move their amendments when they are called.

Amendment 35 agreed.

Amendment 36

Moved by ***Baroness Anelay of St Johns***

36: Schedule 1, page 13, line 25, at end insert—

"14A Schedule 13 to the 2000 Act (expenses that are referendum expenses where incurred for referendum purposes) has effect for the purposes of the referendum as if in paragraph 2(a) after "public funds" there were inserted "or Gibraltar public funds"."

Amendment 36 agreed.

Amendments 37 to 40 not moved.

Amendments 41 to 46

Moved by ***Baroness Anelay of St Johns***

41: Schedule 1, page 18, line 2, at end insert—

"( ) In relation to a donation in the form of a bequest sub-paragraph (3)(a) is to be read as referring to an individual who was, at any time within the period of 5 years ending with the date of the individual's death, a Gibraltar elector."

42: Schedule 1, page 18, line 29, at end insert—

"Financial limit on certain donations etc to registered parties other than minor parties

23A (1) This paragraph applies where the permitted maximum is exceeded by the aggregate value of—

(a) relevant donations which are received and accepted, and

(b) relevant regulated transactions which are entered into,

during the referendum period by a permitted participant that is a registered party other than a minor party.

(2) Each of the relevant donations and relevant regulated transactions falling within sub-paragraph (3) is to be treated for the purposes of Parts 4 and 4A of the 2000 Act (as modified by paragraphs 22 and 23 of this Schedule and paragraphs 10 to 13 of Schedule 2) as if—

(a) it had been received or entered into, as the case may be, at the end of the period of 3 months after the end of the referendum period,

(b) in the case of a relevant donation, it had been received from a person who was not a permissible donor at the time, and

(c) in the case of a relevant regulated transaction, it had been entered into with a person who was not an authorised participant at the time.

(3) A relevant donation or relevant regulated transaction falls within this sub-paragraph—

(a) if—

(i) it is the first of the relevant donations received or is the only one,

(ii) no relevant regulated transaction has previously been entered into, and

(iii) the value of the donation alone exceeds the permitted maximum,

(b) if it is the first of the relevant regulated transactions entered into or is the only one, and the value of the transaction alone exceeds the permitted maximum, or

(c) in a case not falling within paragraph (a) or (b), if the aggregate value of the relevant donation or relevant regulated transaction and the relevant donations and relevant regulated transactions previously received or entered into exceeds the permitted maximum.

(4) But—

(a) in the case of a relevant donation within sub-paragraph (3)(a), only so much of the donation as exceeds the permitted maximum is a donation falling within sub-paragraph (3), and

(b) in the case of a relevant donation within sub-paragraph (3)(c) where the aggregate value of the relevant donations and relevant regulated transactions previously received or entered into does not exceed the permitted maximum, only so much of the donation as exceeds the difference between that aggregate value and the permitted maximum is a donation falling within sub-paragraph (3).

(5) In this paragraph—

"authorised participant" means an authorised participant for the purposes of Part 4A of the 2000 Act;

"permissible donor" means a permissible donor for the purposes of Part 4 of the 2000 Act;

"permitted maximum", in relation to a permitted participant, means an amount equal to the limit imposed on that permitted participant by paragraph 1(2) of Schedule 14 to the 2000 Act (as modified by paragraph 21 of this Schedule);

"relevant donation" means a donation which is received from a person who is a permissible donor in relation to that donation by virtue of paragraph 22 of this Schedule;

"relevant regulated transaction" means a transaction which—

(a) is a regulated transaction for the purposes of Part 4A of the 2000 Act (see section 71F of that Act), and

(b) is entered into with a person who is an authorised participant in relation to that transaction by virtue of paragraph 10 of Schedule 2.

(6) In this paragraph—

(a) references to a donation and to the value of a donation have the same meaning as in Part 4 of the 2000 Act (see sections 50 and 53 of that Act), and

(b) references to the value of a regulated transaction have the same meaning as in Part 4A of that Act (see section 71G of that Act)."

43: Schedule 1, page 19, line 4, at end insert—

"

24A Paragraph 4(1) of Schedule 15 to the 2000 Act (payments etc not to be regarded as donations) has effect for the purposes of the referendum as if after paragraph (a) there were inserted—

"(aa) any grant provided out of Gibraltar public funds;"."

44: Schedule 1, page 20, line 4, at end insert—

"(b) before paragraph (b) there were inserted—

"(ab) section 56(2) shall have effect as if for the words from "by virtue" to the end of paragraph (b) there were substituted "by virtue of paragraph 6(1) of Schedule 15, or which it is decided that the party should for any other reason refuse, then—

(a) unless the donation falls within paragraph 6(1)(b) of Schedule 15, the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on his behalf, and

(b) if the donation falls within that provision, the required steps (as defined by section 57(1)) must be taken in relation to the donation,"; and", and

(c) at the end of paragraph (b) there were inserted "; and

(c) section 58(1) shall have effect as if in paragraph (a) for the words from "by virtue" to "party" there were substituted "by virtue of paragraph 6(1)(a) or (b) of Schedule 15, the party"."

45: Schedule 1, page 23, line 33, at end insert—

"Application to Gibraltar public bodies of restriction on publication of promotional material

31A (1) Section 125 of the 2000 Act (restriction on publication etc of promotional material by central and local government etc) has effect for the purposes of the referendum with the following modifications.

(2) Subsection (2) has effect for those purposes as if after paragraph (a) there were inserted—

"(aa) the Government of Gibraltar or any Gibraltar government department; or".

(3) Subsection (2)(b) has effect for those purposes as if for the words from "wholly or mainly" to the end there were substituted "wholly or mainly—

(i) out of public funds or by any local authority; or

(ii) out of Gibraltar public funds."

(4) Subsection (3) has effect for those purposes as if after "Sianel Pedwar Cymru" there were inserted "or the Gibraltar Broadcasting Corporation"."

46: Schedule 1, page 27, line 26, at end insert—

"Interpretation

38 Section 160 of the 2000 Act (general interpretation) has effect for the purposes of the referendum as if the following subsection were inserted after subsection (4)—

"(4A) References in this Act (in whatever terms) to expenses met, or things provided, out of "Gibraltar public funds" are references to expenses met, or things provided, by means of—

(a) payments out of—

(i) the Gibraltar consolidated fund; or

(ii) monies voted by the Gibraltar Parliament; or

(b) payments by the Government of Gibraltar or any Gibraltar government department.""

Amendments 41 to 46 agreed.

Schedule 1, as amended, agreed.

Schedule 2: Control of loans etc to permitted participants

Amendments 47 and 48

Moved by ***Baroness Anelay of St Johns***

47: Schedule 2, page 45, line 23, leave out paragraph (b)

48: Schedule 2, page 47, line 21, at end insert—

"Persons with whom certain registered parties may enter into loan agreements etc

10 (1) Sub-paragraph (2) applies if—

(a) a permitted participant—

(i) is a party to a transaction which is a regulated transaction for the purposes of Part 4A of the 2000 Act, or

(ii) derives a benefit from a transaction which is a connected transaction for the purposes of that Part,

(b) that transaction is entered into during the referendum period,

(c) the permitted participant is a registered party that is not a minor party,

(d) any of the other parties to the regulated transaction or any of the parties to the connected transaction (as the case may be) is a person ("the unauthorised person") who, in relation to that transaction, is not an authorised participant for the purposes of Part 4A of the 2000 Act by virtue of section 71H of that Act, and

(e) the unauthorised person is a person within sub-paragraph (3).

(2) In relation to the transaction mentioned in sub-paragraph (1)(a)(i) or (ii), the unauthorised person is to be regarded for the purposes of Part 4A of the 2000 Act as an authorised participant.

(3) The persons within this sub-paragraph are—

(a) a Gibraltar elector;

(b) a body falling within any of paragraphs (b) to (g) of section 54(2A) of the 2000 Act;

(c) a body incorporated by Royal Charter which does not fall within section 54(2) of that Act;

(d) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008;

(e) a Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10);

(f) a partnership constituted under the law of Scotland which carries on business in the United Kingdom.

(4) In this paragraph "Gibraltar elector" has the same meaning as in the 2000 Act (see section 160(1) of that Act).

11 Where paragraph 10 applies in relation to a transaction to which a permitted participant is a party, or from which a permitted participant derives a benefit, paragraph 2 of Schedule 6A to the 2000 Act (details to be given in quarterly reports) has effect as if—

(a) in sub-paragraph (1) for "(10)" there were substituted "(10C)", and

(b) the following sub-paragraphs were inserted after sub-paragraph (10)—

"(10A) In the case of a body within paragraph 10(3)(c) of Schedule 2 to the European Union Referendum Act 2015 (body incorporated by Royal Charter) the report must give—

(a) the name of the body, and

(b) the address of its main office in the United Kingdom.

(10B) In the case of a body within paragraph 10(3)(d) or (e) of that Schedule (charitable incorporated organisation) the report must give—

(a) the name of the body, and

(b) the address of its principal office.

(10C) In the case of a body within paragraph 10(3)(f) of that Schedule (Scottish partnership) the report must give—

(a) the name of the body, and

(b) the address of its main office in the United Kingdom."

12 (1) This paragraph applies to a variation of a regulated transaction if—

(a) the regulated transaction was entered into by a permitted participant during the referendum period,

(b) the permitted participant is a registered party that is not a minor party,

(c) one of the other parties to the regulated transaction is an authorised participant in relation to the transaction by virtue of paragraph 10 of this Schedule, and

(d) the variation has the effect of increasing the value of the regulated transaction or enabling it to be increased.

(2) It does not matter for the purposes of sub-paragraph (1)(d) when the variation is entered into or when the increase takes effect or could take effect.

(3) The variation is to be treated for the purposes of sections 71I(2) to (4) of the 2000 Act as a regulated transaction in which another participant is not an authorised participant.

(4) An order made under section 71I(4) of the 2000 Act in relation to a variation to which this paragraph applies may in particular—

(a) require that any amount owed as a result of the variation be repaid (and that no further sums be advanced under the terms of the variation);

(b) where any additional security is provided under the terms of the variation, require that security to be discharged.

(5) In this paragraph—

(a) "authorised participant" means an authorised participant for the purposes of Part 4A of the 2000 Act;

(b) "regulated transaction" and references to the value of a regulated transaction have the same meaning as in Part 4A of the 2000 Act (see sections 71F and 71G of that Act).

13 (1) Section 71L of the 2000 Act (offences relating to regulated transactions) has effect with the following modifications.

(2) In each of subsections (1)(a), (2)(b), (3)(a) and (4)(a), the reference to entering into a regulated transaction of a description mentioned in section 71F(2) or (3) in which another participant is not an authorised participant includes a reference to entering into a variation to which paragraph 12 of this Schedule applies.

(3) In relation to such a variation—

(a) subsection (3)(b) has effect as if for the words "that the other participant is not an authorised participant" there were substituted "of the matters mentioned in paragraph (a)", and

(b) subsections (3)(c), (4)(c) and (10) each have effect as if the reference to the transaction were to the variation.

(4) In subsection (9), the reference to a regulated transaction with a person other than an authorised participant includes a reference to a variation to which paragraph 12 of this Schedule applies."

Amendments 47 and 48 agreed.

Schedule 2, as amended, agreed.

House resumed.

Atrial Fibrillation

Question for Short Debate

8.13 pm

Asked by ***Lord Black of Brentwood***

To ask Her Majesty's Government what action they are taking to improve the diagnosis and management of atrial fibrillation.

Lord Black of Brentwood (Con): My Lords, I am honoured to have the opportunity to lead a debate on an issue which affects hundreds of thousands of our citizens, and I am grateful to all noble Lords who are taking part.

I have an interest to declare in this subject, but not one you can find in the register. It is that for many years I have had a form of AF known as paroxysmal atrial fibrillation. It is brought on by a significant rush of adrenalin—not the sort, of course, which comes

[Lord Black of Brentwood]
from listening to debates in your Lordships' House but the sort which comes from sudden exertion. I am lucky, however. A doctor diagnosed AF when I was in the midst of an episode and referred me to a specialist. Regular monitoring and medication ensure that, so long as I am careful, I have no problems. Today's debate is about those who are not so lucky, either because they are not diagnosed or because they are not getting the right treatment.

Atrial fibrillation is a heart condition that causes an irregular and often unusually fast heartbeat. It happens when abnormal electrical signals fire from the top chambers of the heart in a way which overrides the heart's natural pacemaker. The causes of AF are not fully understood, but it affects up to 1.5 million people in the UK, including around one in 10 people aged over 65. It often runs alongside other cardiac conditions such as high blood pressure or clogged arteries.

There are various ways to manage the condition, including drug therapy, cardioversion from electric shocks and, if all else fails, ablation, where areas of the heart causing the abnormal heart rate are destroyed by radio frequency pulses. The use of one or all of these methods makes AF a condition that is manageable provided it is diagnosed—and that is a key point for this debate. For while AF can be extremely uncomfortable, producing palpitations, chest pains and dizziness as a result of the heart racing at well over 100 beats a minute, it can present no symptoms at all. That is when it is at its most dangerous. Undiagnosed and untreated, a heart that is not beating regularly can lead to the formation of blood clots inside it which can then enter the general circulation in a way that blocks arteries in the brain; in other words, the cause of a stroke.

Diagnosis of AF is therefore a crucial public health issue, as many people—perhaps up to 750,000 in the UK—are simply not aware they have it, significantly increasing their risk of a stroke. According to NICE, around 7,000 strokes a year, and 2,000 premature deaths, are likely to result from the failure to detect AF and treat it with anticoagulant drugs. As Professor Mark Baker, NICE's director of clinical practice, said:

"This needs to change if we are to reduce the numbers of people with AF who die needlessly or suffer life-changing disability as a result of avoidable strokes".

A good deal of progress has been made in recent years in dealing with this problem and I know how seriously the Department of Health and NHS England take it. I was enormously grateful to the former Health Minister, the noble Earl, Lord Howe, who met me to discuss it last year. I know that the Minister will take that work forward, and I look forward to hearing from him this evening what progress has been made in a number of areas, three of which I will highlight.

The first is improving diagnosis. In many ways, this could not be simpler, because it can be done through a plain old manual pulse check at an ordinary GP appointment. The irregular heartbeat is easy to feel; the examination takes seconds to do; and it is of course completely painless—one of those genuine occasions when, when the GP says, "This will not hurt", it does not.

Given that there is nothing like a practical demonstration, I can even show noble Lords how quick and easy it is. Next Tuesday morning, I shall host a drop-in event in association with AntiCoagulation Europe and Bayer HealthCare, where parliamentarians can come and get their pulse checked by an expert doctor who will be able to talk about this issue and advise on any irregularities in colleagues' pulses. I hope that there will not be many of them, but it pays to be on the safe side, so I invite noble Lords to come along to Room G between 10 am and l pm to see what I mean.

Given that diagnosis is so easy and effective, why is a manual pulse check not routine, especially for over-65s? The reason is that the UK National Screening Committee, part of Public Health England, recommended in a report in June 2014 that it is,

"uncertain that screening will do more good than harm … because … treatment and care for people with AF is not optimal".

Given that we are talking about a simple test that saves lives, I do not believe that the quality of existing services—which have been improving but perhaps not rapidly enough—should be cited as a compelling reason not to introduce screening for AF. We need to do what we can, of course, to ensure that care becomes "optimal", but, in the mean time, we should not endanger people who are unaware that they have this condition by failing to test them. Will the Minister join me in calling on Public Health England and the National Screening Committee to review this recommendation?

Once AF is diagnosed, it needs effectively to be treated. Some patients with AF need anticoagulation therapy to stop their blood clotting and reduce their risk of an AF-related stroke. Identifying those patients is not always straightforward but has been made much easier by the introduction of a new tool for GP practices called GRASP-AF, which helps identify patients at risk by assisting GPs to interrogate their clinical data. GRASP-AF is being rolled out across England, but data suggest that only about one-third of GP practices are using it. I would be grateful if the Minister could update us on the rollout of this programme and on what his department is doing to ensure that GPs most effectively assess AF patients' risk of stroke.

My final point relates to the anticoagulant drugs that are used to treat AF where this is judged necessary by a GP or consultant. The most widely used treatment option in this area is warfarin, which has been deployed for over 50 years and has undoubtedly saved many lives. However, as many noble Lords will know, it is not an ideal drug, as it requires regular monitoring and dose adjustments to ensure that it is working properly, usually in a specialist anticoagulation clinic. This is a problem for those in full-time work, and often difficult for elderly or immobile people. My late father was on warfarin for the last few years of his life, and, as he was to all intents and purposes housebound, his regular tests became very complex and stressful for both my parents.

On top of that, many foods can interfere with warfarin or alter its effects, along with alcohol and some medicines. In other words, it is far from ideal. Warfarin is one of the most common causes of drug-related adverse events and is responsible for about 6% of all fatal and severe drug-related incidents. This

is a terrible cost in lives and a substantial financial cost to the NHS. Many GPs therefore do not like prescribing it, and I can understand why. As a result, they either do not treat the condition at all—and audit data suggest that 46% of AF patients who should be on treatment to prevent blood clots are not—or they treat it with aspirin, which is not recommended by NICE.

Yet there is an effective alternative to warfarin in the form of novel oral anticoagulants, or NOACs. These drugs were developed specifically to overcome the limitations of warfarin which I have just described and are recommended by NICE as clinically effective for stroke prevention in AF as well as being cost-effective for the taxpayer. Treatment of AF through NOACs significantly improves a patient's quality of life because it does not require routine monitoring or ongoing dose changes; it does not entail dietary restrictions; and it provides predictable, stable and regular levels of anticoagulation. Against that background, it would be advantageous both for patients and for the taxpayer if the use of NOACs was more widespread. However, at the moment, data from NHS England show that only 11% of anticoagulants prescribed are NOACs—possibly because of lack of clinical awareness and confidence in using them rather than warfarin, or because NICE guidance is being implemented too slowly.

Under the NHS constitution, patients should have access to the full range of treatment options recommended by NICE, but at the moment that does not seem to be the case. Will the Minister tell us what action is being taken to ensure that more patients have access to NOACs, in line with NICE guidance, and to reduce variations in their use across the country? For instance, might he consider providing specific support for clinical commissioning groups with the lowest rate of NOAC use, to ensure that patients in those areas have better access to treatment?

I greatly look forward greatly to the contributions of noble Lords this evening. This is no peripheral health issue, but one of real importance to the lives of hundreds of thousands of individuals and their families. Great progress has been made in recent years, but, thanks to the development of new drugs and new technology, more can be done. This is an occasion when a tiny hand on the tiller by my noble friend could mean significant further advances in diagnosis and treatment, with real public health benefits. I hope that our debate tonight will gently nudge the noble Lord in the direction of that tiller and lead to life-saving changes.

8.23 pm

Baroness Murphy (CB): My Lords, I am delighted to support the noble Lord, Lord Black of Brentwood, in his campaign to get better recognition for the causes and treatment of atrial fibrillation. I am interested because I have spent a good part of my professional life as a psychiatrist working with elderly people suffering the emotional and neuropsychological aftermath of serious stroke. It makes me hopping mad to come across people who still have atrial fibrillation after they have been treated for their stroke and have then come on for further psychiatric treatment. It is a tragedy to recognise that they still have the atrial fibrillation that could be treated to prevent a further stroke.

I am now retired from clinical practice and I understand that things have improved. It is now much more likely that patients will arrive with appropriate treatment. I congratulate this Government, the previous coalition Government and the Government before that, on supporting the major stroke initiative that has led to much better targeted care of people with stroke, from access and recognition of stroke right through to focused centres and better outcomes in mortality and morbidity. We are making good progress, but there is still much more to be done.

Atrial fibrillation is extremely easy to diagnose, as the noble Lord, Lord Black, said. If you are treating a lot of elderly patients every day, it is very nice to sit down and gently feel their pulse, right at the beginning. This breaks the ice and is a very good way of making contact with an elderly patient you might not know very well. We are now getting to the point when we are joining the elderly generation. Some of us are already well into that period of life. The time has come when we are the patients who need to know about atrial fibrillation and know when we have an irregular pulse. We are the ones who need to understand. The population increasingly understands the causes of stroke and what to look for. We can teach people, with education and public information, how to feel their own pulse. Most people already know; it is so easy, so there is no problem there.

I agree that there is a problem with the drugs. I went to see an elderly friend of mine who was also a doctor in her time and is now 90. She has a touch of atrial fibrillation and she said, "I will take anything except that rat poison". I told her that she was taking a bit of a risk but she said, "I have discussed it with my doctor, but my next-door neighbour has just died of a cerebral haemorrhage. Are you really going to subject me to that risk as well?". There are now four new drugs on the market, some of which have been around for about two years, but the problem is that they do not diminish the risk of haemorrhage. We need to discuss the risk with individual patients, but patients are still having to think through whether or not they really want a drug when the side-effect risks are huge.

I have been speaking for four minutes, so I will shut up, but my final point is that we need to take heart from some of the newer treatments. Left atrial appendage ablation, which is available in the States now, and is coming here, is the way forward for the future.

8.27 pm

Lord Rennard (LD): My Lords, I draw the attention of the House to my entry in the Register of Lords' Interests. I also congratulate the noble Lord, Lord Black of Brentwood, on securing this important debate. Approximately 900,000 people in England have been diagnosed with atrial fibrillation, or AF, and there are perhaps half a million people here with the condition who have not yet been diagnosed. The condition causes an irregular heartbeat and it is one of the most important risk factors for stroke, contributing to one in five strokes. If left untreated, AF increases the risk of stroke fivefold.

[LORD RENNARD]

AF-related strokes are often more severe, with higher mortality and greater disability arising from them than from other strokes. The Global Burden of Disease Study in 2013 suggested that atrial fibrillation and atrial flutter resulted in 112,000 deaths in 2013, compared to 29,000 in 1990. So it is a growing problem. Treatment with anticoagulants significantly reduces the risk of stroke in people with AF, but according to the Stroke Association, almost half of all the people in the UK with AF are not receiving the full anticoagulation treatment which significantly reduces the risk of stroke.

The issues for us to consider, and for the Minister to respond to, must therefore begin with the question of whether greater attempts at screening, which could enable early diagnosis, could be justified in terms of lives saved. Patients often do not feel any symptoms when their heart rate changes. There are many causes of this but not all of them are obvious. Can we simply rely on many people turning up at their doctors with other concerns leading to the identification of this condition? For those who are diagnosed, is enough being done to promote these anticoagulation treatments, including those most recently developed?

Surveys suggest that patient access to novel oral anticoagulants is lower than should be expected, highly variable across the country and much lower than in other European countries. The National Institute for Health and Care Excellence produced an excellent atrial fibrillation quality standard in July, which was endorsed by the Department of Health. But there is real doubt over whether that standard is being properly applied uniformly and in a timely fashion. The evidence suggests not.

An NHS Improving Quality report estimates that just over half of people with AF are getting drug treatment in line with the recently updated best practice guidelines. A year ago, it produced a report which suggested that better care of people with AF could help prevent an additional 11,600 strokes and save the NHS as much as £124 million per year. It also suggested that full implementation of new best practice guidelines could prevent almost 28,000 strokes each year and lead to overall savings of £293 million for the NHS in England.

I hope the Minister will respond positively by telling us that there will be rapid progress towards full implementation of these best practice guidelines.

8.31 pm

Baroness Masham of Ilton (CB): My Lords, I thank the noble Lord, Lord Black of Brentwood, for this debate and for his ongoing questions to the Government on atrial fibrillation. Both my late husband and one of my best friends had irregular heartbeats. I used to check their pulses and told them that they must get checked out for atrial fibrillation, but their doctors did not take these abnormalities seriously. This is why I strongly support this debate on improving the diagnosis and management of AF.

I declare an interest as the vice-chair of the All-Party Parliamentary Group on Atrial Fibrillation. I am pleased to tell your Lordships that there is to be a meeting tomorrow in Portcullis House on transformation of AF services following NICE clinical guideline 180 and what it will mean for patients. It is good to have these specialising all-party groups to help to make Parliament aware of the many needs.

My husband had a stroke while watching a cricket match on TV and I knew exactly what was happening. Neglect in the local hospital, bleeds, clots and diabetes followed. It was a nightmare. If strokes can be avoided, that must be a priority. Prevention is much better than cure because so often there is not one. We need to prioritise prevention. Sadly, many people with AF are not diagnosed and many who have been diagnosed do not receive the anticoagulation treatment that they need. It has been estimated that as many as 700,000 people in the UK may be undiagnosed. Improving access to the full range of anticoagulation therapies would bring benefits to patients and the NHS.

For many years, I have felt that basic first aid should be taught in all schools to pupils above a certain age. Taking the pulse manually should be commonplace. I have been amazed that so many people cannot take their pulse. With so much talk about self-management and self-care, surely it is time to show everyone the way with basic training. Does the Minister think that all GPs have read the NICE guidelines on AF? If they have, why are they still prescribing aspirin?

I congratulate the Stroke Association on all that it is doing to help with AF. If all the estimated 1.4 million people with AF in England were detected and adequately treated, an estimated 16,000 strokes could be prevented every year. In addition to reducing mortality and severe disability, additional health and social care costs could be avoided. The NHS alone could save £130 million with appropriate detection and treatment of AF. I hope that the Minister will give us some encouragement. It is a very important issue.

8.35 pm

Baroness Gardner of Parkes (Con): My Lords, I suppose I should declare an interest. Some years ago I was told that I had mild atrial fibrillation—it might have been named intermittent. Now, it is clearly stated that I have permanent atrial fibrillation. I am aware of this diagnosis and the fact that it means my heart is less efficient. Noble Lords have heard everything from everyone else about that. I take Warfarin daily to keep my international normalised ratio within appropriate levels recommended by my cardiologist. It seems to be effective, but regular monitoring through blood tests is required to ensure that my INR remains as it should. The test is straightforward and involves a finger prick to obtain a blood sample, which is put into a reading system that provides the answer. The dosage of tablets is then increased or decreased to correct an unsuitable reading. It is the sort of test that people with diabetes—particularly type 2—need to carry out several times a day.

Yesterday, I discussed this with a distinguished Member of your Lordships' House who has been in exactly this position—as a type 2 diabetic—for some years. He said he gets warnings: when he feels that he is getting muddled, that means that his blood sugar is low and it is time for another test. If he is feeling

slothful and lethargic, his blood sugar is high. He has to do this test up to five times a day and carries out these procedures himself; he has no problems with this. Why is it that individuals requiring very similar blood tests for atrial fibrillation are not able to do their own tests in this same way?

Over the years, I have raised this question, especially with my noble friend Lord Howe. In his days as Health Minister, he told me that it would be logical for those who wished to self-test to do so. I was informed that this would help to reduce National Health Service workload, and sure enough, the INR clinics are always very busy and in demand in most of the major hospitals and in many general practices. The NHS supported self-help, according to my noble friend. In that case, why is there not more self-monitoring for atrial fibrillation? Is this still the case?

For some years, manufacturers of self-test appliances have provided demonstrations in the House of the simplicity and effectiveness of the process. There would be considerable savings for the NHS if patients bought their own machines—I believe that many would—and the NHS provided the small disposable items needed for the tests, such as finger-prickers and solutions. At present, different areas of the NHS provide others with different items. In some areas, the situation is very unsatisfactory for those who feel they should have access to these items. If there were just one system and all the patients therefore had the same choices, there would be a considerable saving.

Mention has been made of the drugs that could be taken instead of Warfarin. My cardiologist said, "Don't do that", because the good thing about Warfarin is that its effects are reversible if you suddenly find that your reading is much too high or too low. However, the effects of these new tablets—which have been referred to as NOACs—are not reversible. You have to wait until the body gets rid of them, so there is a time-lag and the situation could become quite dangerous.

In Australia, children born with heart conditions have such machines loaned to them, so that all the treatment can be administered at home. Again, that is very important. My noble friend Lord Black mentioned the difficulty a lot of people face in getting to a hospital. I hope the Minister will support the view that there should be access to self-monitoring.

8.40 pm

Lord Rea (Lab): My Lords, I congratulate the noble Lord, Lord Black: he has done us all a service by bringing atrial fibrillation before us. It is not the first time it has been debated in the House, but it is very relevant. Like him, I suffer from the condition of paroxysmal atrial fibrillation. What he and many other people have said more or less follows what I have prepared; I agree with nearly everything that has been said so far. Atrial fibrillation is on the increase and is a really serious problem, in that it can cause a stroke.

It is also relevant that I am a former GP who has treated a number of people with atrial fibrillation, but that was some years ago and we did not have the tools and medications—the drugs—that we have now. Some of my information, therefore, has been gained through reading rather than practice.

Atrial fibrillation increases with age, so it is not surprising that a number of your Lordships suffer from it. Some of us may not even be aware of it, as has been said, since it gives rise to quite mild symptoms and sometimes none. Sometimes it is continuous, but sometimes it is episodic or paroxysmal. Treatment consists of measures to detect and, as far as possible, correct any conditions that might underlie the atrial fibrillation—and there are quite a few—and then to restore normal rhythm, if possible, with drugs, electrical cardioversion, or surgical ablation, as has been mentioned. Most important is the prescription of suitable anticoagulants to minimise the formation in the left atrium of clots, which can be carried around the body, block an artery and deprive an area of the brain of its blood supply, leading to an ischaemic stroke. A stroke caused by atrial fibrillation is often more serious than one from other causes, so it is particularly important to detect it as soon as possible and start treatment with effective anticoagulation. Until recently, this was not emphasised adequately by clinicians and the standard drug used was inadequate—low-dose aspirin.

Trials have shown that more powerful anticoagulants have a measurably better effect than aspirin in reducing embolic stroke. The first of these, as has been said, is Warfarin—rat poison—which inhibits vitamin k action, an essential part of the clotting process. It is remarkably cheap, and its cost is amply repaid by the savings incurred by the National Health Service that it gives rise to through stopping atrial fibrillation-related stroke. I take warfarin, like the noble Baroness, Lady Gardner. My condition is under control, but having to be tested from time to time is a nuisance. I thoroughly agree with the suggestion that self-monitoring should be made available. The instruments cost about £200.

The main trouble with warfarin is that it takes some time for its effects to cease, and it can cause internal bleeding. If such bleeding occurs and cannot be brought down quickly, that is a worry. Despite what the noble Baroness, Lady Masham, said, NOACs allow the clotting time to increase quite rapidly after stopping taking them, so they are safer than warfarin.

On detection, it is very important, as has been said, to find the cases that do not have much in the way of symptoms. I will say a few words on that. Sadly, detection has been woefully inadequate up to now. That may be simply because the doctor or nurse has failed to take the patient's pulse.

Baroness Chisholm of Owlpen (Con): Order.

Lord Rea: Yes, I understand. I back the suggestion from the noble Baroness, Lady Murphy, that people should always learn how to take their own pulse.

The other thing that I wanted to ask the noble Lord quickly—

Baroness Chisholm of Owlpen: I am sorry, but time is up.

Lord Rea: May I ask him afterwards?

Baroness Chisholm of Owlpen: Yes.

8.46 pm

Lord Colwyn (Con): My Lords, everything that could be said probably has been. I declare an interest as a member of both the AF APPG and the stroke APPG. We have meetings tomorrow, as we have heard. I also have personal experience of living with AF for many years.

Atrial fibrillation is the most common sustained cardiac arrhythmia and estimates suggest that its prevalence is increasing. If left untreated, atrial fibrillation is a significant risk factor for stroke and other morbidities. Men are more commonly affected than women and prevalence increases with age.

It has been suggested that AF can be detected by a simple pulse check. I have found that a pulse check should be verified with an oximeter. It is difficult to self-diagnose irregular cardiac rhythms that are often in excess of 150 beats per minute without the use of an oximeter. Perhaps that is what the GRASP machine is; I had not heard of it before. AF affects around 1 million people in the UK. Sometimes the condition does not cause any symptoms and a person with it may not be aware that their heart rate is irregular. It is important that AF is diagnosed so that medical practitioners can decide when active treatment is needed.

The aim of treatment is to prevent complications, particularly stroke, and to alleviate symptoms. Drug treatments include anticoagulants, to reduce the risk of stroke, and antiarrhythmics, to restore or maintain the normal heart rhythm or to slow the heart rate in people who remain in atrial fibrillation. Non-pharmacological management includes electrical cardioversion, which may be used to shock the heart back to its normal rhythm, and catheter or surgical ablation to create lesions to stop the normal electrical impulses that cause atrial fibrillation. I have had both of these techniques.

There are also new updated guidelines that address several clinical areas in which new evidence has become available, including stroke and bleeding risk stratification, the role of new antithrombotic agents, and ablation strategies. The recommendations apply to adults—those aged 18 years or older—with atrial fibrillation, including paroxysmal, persistent and permanent atrial fibrillation, and atrial flutter. They do not apply to people with congenital heart disease precipitating atrial fibrillation.

Sadly, many people with AF are not diagnosed and many who have been diagnosed do not receive the anticoagulation treatment that they need. Between April 2014 and March 2015 only 38% of patients with diagnosed AF who were admitted to hospital with a stroke were being treated with anticoagulants. It has been estimated that as many as 700,000 people in the UK may have undiagnosed AF.

In recent years several anticoagulants, known collectively as non-vitamin K antagonists, have been recommended by NICE. Under the NHS constitution, patients should have access to the full range of treatment options recommended by NICE. However, data from NHS England reveal that only 11% of patients being prescribed anticoagulation are receiving these treatments. Improving access to the full range of anticoagulation therapies would bring benefits to patients and the NHS. The Government have estimated that up to 7,100 AF-related strokes could be prevented annually if everyone with AF were appropriately managed.

Since 2012 four novel oral anticoagulants have been recommended by NICE as both clinically effective and cost-effective for the prevention of strokes in patients with AF. These treatments should now be available to all patients whose doctors wish to prescribe them. Their use is increasing, but it is lower than expected. All healthcare professionals caring for people on anticoagulation therapy should be familiar with the full range of treatment options. Despite having a NICE recommendation as being clinically effective and cost-effective, many GPs appear to lack confidence in the use of NOACs to prevent AF-related strokes.

8.50 pm

Lord Plant of Highfield (Lab): My Lords, most of what needed to be said has been said. I echo everything that noble Lords have said about the initiative by the noble Lord, Lord Black, and I am very pleased that he called for this debate. Like other noble Lords, I have had AF for a very long time—20 years or more—and I have been taking warfarin every day, along with a low-dose aspirin, for 20 years. This medication was changed recently and I was rather nervous about it. The aspirin was replaced by clopidogrel. So far no adverse effects have been detected, but it is a bit of a big thing when you move from one medication to another.

I am pleased that in its guidance NICE says that there should be proper consultation between the patient and the cardiologist about any sort of medication. I wonder whether an organisation such as the British Heart Foundation could produce one of its short pamphlets explaining the action—the function—of these drugs in a fairly straightforward way. I hope that I am a person of at least moderate intelligence, but I did find parts of the NICE guidelines completely incomprehensible. It would be worth having a leaflet setting out the pros and cons of different kinds of therapy.

Given that a lot of people—most people, probably—will stay on warfarin for the foreseeable future, I am worried by its prescription into quite old age and the risk of falling. If you fall and your blood is very thin, the chances of having some kind of bad event are quite strong. I remember—as will many members of this House—our friend Donald Dewar, the former Secretary of State for Scotland, who fell over in a frosty street in Edinburgh and died as a result of a brain haemorrhage. He was on warfarin: it was a contributing factor. So it is important that we consider knocking off warfarin for elderly people and perhaps replacing it with some of these NOAC drugs, so long as they do not have the same sorts of risks. Perhaps they do.

There is another thing that happened to me recently that perhaps the Minister could think about, although not necessarily today. It is where you have atrial fibrillation and you have a stroke. I had a stroke in November 2014, which badly affected the sight in my right eye, and almost immediately after the stroke, which was caused by AF—they knew that because I was in hospital at the time and my heart was in atrial fibrillation

when I had the stroke—I had a carotid artery endarterectomy. That was a slightly alarming operation, to put it mildly, but it seems to have helped things along. How routine is offering carotid artery surgery to otherwise fit patients who have had an AF-induced stroke? It would be useful to know whether it is pretty routine or an exceptional thing.

I have been fortunate since I have had all this trouble to have lived in Oxford, where there is an exceptional cardiology department, and now Southampton, where there is a regional centre for cardiology. I just wonder how far the ease with which my symptoms and the carotid artery operation were dealt with was due to the fact that Southampton is a regional centre, or whether you could get that kind of treatment in a much smaller hospital. It would be useful to have some indication of that. If the Minister could write about that, I would be very pleased.

8.55 pm

Baroness Wheeler (Lab): My Lords, I, too, congratulate the noble Lord, Lord Black, on securing this debate and pay tribute to his work highlighting the importance of early detection and effective management of AF. I also very much welcome the important walk-in clinic initiative he is promoting within Parliament, with AntiCoagulation Europe providing pulse checks to help prevent strokes and blood clots for people with AF, and hope that as many MPs, noble Lords and Parliamentary staff—if they are included—as possible will go along on 10 November.

I am also very grateful for today's debate because it sets the scene for my own debate on 18 November on the updating of the now eight year-old national stroke strategy. The strategy runs out in April 2017 and today's focus on AF underlines the priority it needs to have in the future strategy for preventing stroke and reducing the number of people who have strokes that could have been avoided.

As a vice-chair of the All-Party Group on Stroke, as well as being the carer of a disabled partner who had a major brain haemorrhage stroke in 2008, I am sure that noble Lords will understand why most of my remarks on AF will focus on stroke-related aspects. Better diagnosis and treatment through early detection and effective management of AF with an anticoagulant would result in the prevention of more than 4,500 strokes and 3,000 deaths across England each year. Untreated AF is a contributing factor in 20% of strokes in England, Wales and Northern Ireland, and, as we have heard, more complex disability can result from AF-related strokes.

We have heard a number of figures about the scale of the problem. The Stroke Association's figure, cited by the noble Baroness, Lady Masham, is that an estimated 16,000 strokes could be prevented every year. The association hears many accounts from stroke recoverers about the devastating consequences of poor detection of AF, so it is worth putting on the record just two of those case histories.

David had a stroke at 62 which had a considerable impact on his life. He now has reduced mobility and this impacts on his job as an electrical engineer. David was not diagnosed with AF until after he had the stroke, and when discussing how to reduce the risk of having another stroke caused by AF, his GP seemed keen for him to take aspirin rather than an anticoagulant; that is, clot-reducing medication. However, David conducted his own research and then pressurised his GP into prescribing an anticoagulant drug.

Another stroke recoverer, Brenda, suffered a stroke thought to be caused by AF. She initially had a mini-stroke and was told by the hospital she was taken to that she had had an arrhythmia; there was no mention of AF. She went on to have a stroke 18 months later. Often AF is discovered only after patients are admitted to hospital with a stroke, and obviously by then it is too late. The Sentinel Stroke National Audit Programme found that only 28% of stroke patients known to have AF when admitted to hospital were on the anticoagulant medication they should have been on. The noble Lord, Lord Colwyn, gave this figure as 38%, I noticed.

Significant underdiagnosis and undertreatment remain, despite the incentives mentioned by noble Lords in the quality and outcomes framework, last year's reissued NICE guidelines and the new quality standard on AF. It is imperative to address the low level of knowledge among GPs of the importance of early detection and the appropriate treatment of AF. The toolkit *AF: How Can We Do Better?*, developed by the Stroke Association for GPs and others in primary care, is one of a number of key actions that would lead to the increased awareness and understanding that are needed, particularly about the link between AF and stroke. Government support for NHS Improving Quality's new GRASP-AF guidance on AF risk assessment and stroke prevention within GP practices would also make a significant difference.

How will the Government be supporting these initiatives? Does the Minister acknowledge that if swift and routine pulse checks were included as part of every GP visit, huge progress could be made and thousands of lives saved? Does he agree that the current low levels of awareness among health professionals are not conducive to developing better understanding among the public? Finally, I support the inclusion of indicators on detection and treatment of AF in the public health outcomes framework. Local health trusts need to be assessed on the efforts they are undertaking to prevent strokes and other major conditions that can arise from AF to ensure that vital opportunities to save lives are not missed.

9 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I thank my noble friend Lord Black for initiating this debate. It has been very interesting for me. I did not know anything about atrial fibrillation until I researched it for this debate. What always strikes me is the extraordinary depth of the contributions noble Lords make to these debates.

I shall draw out four themes that we often come across in these debates before I respond in detail. The first is how expert patients or carers of patients have become and what a contribution they can make to helping NHS England and clinical commissioning groups in structuring the right kind of care pathways

[Lord Prior of Brampton]
for these serious illnesses. The second point is the variation around the country, from GP to GP, from CCG to CCG and from one region to another, every time we debate almost any disease in this Chamber. The third point, which was made strongly by the noble Lord, Lord Rennard, is the correlation always between quality and cost. We often think of them as separate and in opposition to each other, but good quality is usually also achieved at lower cost. The fourth point is the growing role of self-care. My noble friend Lady Gardner and others mentioned that as technology develops self-care will become an increasing part of how we deliver care. On education, the noble Baroness, Lady Masham, talked about basic first aid, such as learning to take your pulse at school. It is so obvious that you would not think it needed saying, but I have never done a first aid course and I am not proud of that fact.

I start with diagnosis of AF. Around 18% of cases of AF remain undetected. That means a lot more needs to be done. NHS England is encouraging clinical commissioning groups to work with local practices to target people at risk of AF. In addition, the NHS Health Check programme's best practice guidance recommends that a pulse check is carried out as part of the process of taking a blood pressure reading. People found to have an irregular pulse rhythm should then be referred to their GP for further investigation. Other innovative approaches are being used to identify AF in older people, such as pulse testing at flu clinics and by some dentists.

There is also research under way. The National Institute for Health Research is funding a study into how a hand-held device can be used in primary care to provide an automatic diagnosis of atrial fibrillation. The National Institute for Health and Care Excellence—NICE—published an updated guideline on AF in June 2014 which includes recommendations on diagnosis. I looked at the care guideline before I came here. I did not find it as complicated as the noble Lord opposite but no doubt it could be simplified.

My noble friend Lord Black stressed the importance of screening. I do not think I have a very good answer. I have a response here on screening but I am not sure it will satisfy him—it did not entirely satisfy me. There are calls for screening for AF, as we have heard today. Ministers are advised by the UK National Screening Committee. In 2014, it recommended that a systematic population screening programme for people aged 65 and over should not be offered. This is because, based on the evidence in the review, the committee was not convinced that such a programme would bring more good than harm to the population offered screening. This position will be reviewed in 2017-18, or earlier if new evidence emerges. I am very happy to meet the noble Lord, Lord Black—or any other noble Lord—and the people from Public Health England responsible for the decision if he would like to understand more fully the reasons why. I am not saying they are wrong—they may well be right—but I should like to understand in more detail the reasons they believe that screening is not appropriate. I think the noble Baroness, Lady Murphy, suggested a reason in her speech. Maybe we should depend more on people taking responsibility for themselves and less on a screening programme, although I am not sure whether that was the point she was making. In any event, it is an issue that I would like to explore further with the national screening programme people.

As for the treatment of atrial fibrillation, NHS England has identified the improved management of AF as a priority for reducing premature mortality. NICE's updated guidance suggests the use of anticoagulants unless there is a reason not to do so. I know there are concerns—they have been mentioned this evening—that aspirin is still being prescribed instead of anticoagulants, but NICE makes absolutely clear that aspirin on its own should not be used for stroke prevention in people with AF. There is NICE technology appraisal guidance recommending the use of newer anticoagulants for some people, which a number of noble Lords have mentioned this evening. NICE also published a quality standard on AF in July 2015, which sets out what a high-quality AF service should look like and will help drive improvement locally. The QOF contains indicators for the management of AF which cover the use of anticoagulation therapy. That provides a further incentive for doctors to ensure that AF patients receive anticoagulation where appropriate to manage their stroke risk. These actions should help ensure that people receive the anticoagulation treatment that is right for them.

I know there are concerns that some people with AF are not able to access the newer anticoagulants that NICE has approved for certain patients. There is a legal requirement on commissioners to provide funding for treatments and drugs recommended in NICE technology appraisal guidance within three months of that guidance being published. This is enshrined in the NHS constitution. The need to reduce variation and to strengthen compliance with and the uptake of NICE technology appraisals was identified in *Innovation Health and Wealth*, published in December 2011. In response, NHS England and the Health and Social Care Information Centre have developed an innovation scorecard, published on a monthly basis, to enable commissioners to benchmark their own position and increase transparency to patients and the public. This will assist the NHS in the identification of variation and the adoption of treatments such as NOACs that are recommended in NICE technology appraisals.

Some progress is being made. The uptake of newer anticoagulants—the NOACs—across England in 2014-15 was more than double that in 2013-14. In 2013-14, the figure was 45,708 per 100,000 of the resident population; that had risen to 126,845 in 2014-15. In addition, NHS IQ is promoting the use of GRASP-AF within GP practices in England. This audit tool, which was mentioned by the noble Lord, Lord Black, and other noble Lords this evening, simplifies the process of identifying patients with AF who are not receiving the right management to help reduce their risk of stroke. NHS IQ continues to support the use and rollout of this audit tool. In answer to the noble Lord's question, I understand that, to date, 2,938 GP practices across the country have used the tool and have voluntarily uploaded their data to the online database. The database now contains information on the management of more than 327,000 patients with AF.

As to self-monitoring, when patients are taking warfarin, they need to have regular blood tests to monitor their internal normalisation ratio—their INR—which measures how fast blood clots. It is important that this remains in the correct range. Understandably, some patients find having to make regular trips for blood tests to monitor their INR disruptive. I am running out of time but it is worth just saying that NICE has recently recommended two point-of-care devices in diagnostics guidance for people taking long-term anticoagulation therapy who have AF or heart valve disease, if they prefer to use this type of monitoring.

To conclude, I hope that some of what I have said reassures noble Lords that we and the NHS take this illness extremely seriously. I am pleased that we are coming back to talk about stroke in more detail later in November and I reiterate my offer to have a meeting with the national screening people if noble Lords would like to find out more about their reasoning behind the decision not to screen for AF.

I am told I have three minutes; I thought I had to finish. I apologise. Having concluded, it is rather difficult to start again. At the beginning of the debate the noble Baroness opposite talked about stroke. I think we are coming back on 18 November to talk about stroke care in more detail. There have been enormous improvements over the past five years in the way that stroke has been treated in this country, in part because of the work done in London to concentrate stroke care in a smaller number of hyperacute hospitals where they can provide thrombolysis—clot-busting drugs—much more quickly. Certainly, in the hospital I was involved with in Norfolk we have seen a huge change in the quality of stroke care in the past three or four years. Before that, stroke had been a very poor relation compared to heart attacks or cancer, for example. In many parts of the country, if you had a stroke after 5 pm on a Friday your care was very poor. We are able now to provide stroke care on a much better basis.

It is hard to start again when you have finished, but my 12 minutes are up. The noble Lord, Lord Black, said that he is supervising a walk-in session on Tuesday for people who would like to have their pulse taken to see whether they suffer from AF. Sadly, I will not be able to make that walk-in session, but I encourage noble Lords to do so.

European Union Referendum Bill

Committee (3rd Day) (Continued)

9.12 pm

Schedule 3: Further provision about the referendum

Amendment 48A

Moved by ***Lord Greaves***

48A: Schedule 3, page 53, line 3, at end insert—

"(1A) The steps mentioned in subsection (1) must include taking action, as soon as the date of the referendum has been announced, to bring to the attention of eligible electors who are not registered what they must do in order to register in time to vote in the referendum.

(1B) In carrying out the action provided for by subsection (1A), the Electoral Commission must in particular take steps to promote the registration of—

(a) young voters, and

(b) eligible United Kingdom electors who are resident in other member states of the European Union."

Lord Greaves (LD): My Lords, this amendment moves back one stage, from talking about how to get people to vote, and how to get them to vote in different ways, to the question of registration, which is how to make sure that people are actually on the electoral register so that they have the opportunity to make a decision whether or not to vote.

The House got terribly excited about registration last week when we were talking about the statutory instrument, and a decision was made. As a result of that decision, the new system of individual registration will come in from December this year and something like 1.8 million names will be removed from that register. What nobody really knows, as far as I can see, is how many of those names are genuine voters who should be there and how many are not. However, it is very clear—from talking to some of these people locally and helping them to get registered—that many of the 1.8 million are people who should be on the register and, indeed, many of them are people who voted in the elections in May this year. I do not think anybody knows exactly how many of the 1.8 million voted this year. There is a problem and a challenge there now for everybody to try to make sure that as many of them as possible who are real voters get back on the electoral register.

In addition, according to the Electoral Commission, throughout the UK there are something like 8 million voters who ought to be registered but are not. Although some of them may be people who have no interest, do not want to be registered and never will be, whatever the law may say, quite a few of them are people who ought to be registered and, if they were, might take the opportunity to vote.

The purpose behind the amendment is to probe the Government and the Electoral Commission about what they are going to do and what they think should be done specifically to get people on to the electoral register for the referendum, when it comes. Of course, we also have elections in May next year, but this is specifically about the referendum.

In the amendment, I have highlighted two groups of people who are underregistered: young voters and eligible voters who live in the rest of the European Union—although many eligible voters who live abroad live in other parts of the world and would have the right to vote in the referendum if they were registered. They are eligible if they are UK citizens living abroad and have not lived abroad for more than 15 years—or whatever period we end up with in the Bill; at the moment, 15 years.

I had a very useful letter about the amendment from the Electoral Commission, which rightly points out that there are other underrepresented groups that it will wish to target. It points out that the two groups that I have mentioned are two among several more groups that it targeted before the general election with some success—different levels of success, I think. They include people who have moved house recently, people in private rented accommodation—in areas

[Lord Greaves]
where private rented accommodation is pretty well at the bottom of the housing market, they are often the same people who are moving around all the time—and some BME groups, not all, but some, which are underrepresented.

I want particularly to focus on the question of people living within the European Union, because these are clearly British citizens who have a particular personal, direct interest in the outcome of the referendum, whatever they may think about it. According to the Electoral Commission, something like 100,000 overseas voters were registered at the general election. Whatever the total number of British citizens abroad eligible to vote in UK elections, 100,000 is a small proportion of them. It was higher than it has ever been before—three times as high as it was at the previous election, I think —but still very low.

It is said that there are 2 million or more United Kingdom citizens resident in the EU. I do not know how many of those are entitled to vote under the 15-year rule, and I do not know how many of them are adults—not children, who cannot vote—but it is clear that there is a large number of British citizens living in the EU who have a direct interest in the referendum who are not registered at the moment. I have seen estimates from other people suggesting that the figure of 2 million is on the low side, because it is based on people who are registered as living in other European countries, and there are lots of British citizens who do not register with the local authorities. Many of these people have dual addresses; they have an address in this country, and they spend part of the time in the rest of Europe. They ought to be registered here, where one of their homes is. So perhaps 2 million is the figure to consider.

Anecdotal evidence from people I have talked to in other EU countries—including people I talked to in the south of France when I was there fairly recently—is that if you live outside this country, registering to vote as a UK elector is not as easy as it ought to be. I have spoken to people who tried to vote at the general election but failed the double obstacle that they have to go through. The first obstacle is registering to vote and the second is applying for and receiving a postal vote—getting on the postal voters register.

The electoral registration can now be done online, and that applies wherever you live in the world—so that is okay. But what if the national insurance number that you have to give now in order to be put on the electoral register is not validated by the DWP? That happens with lots of people. I do not know why that is the case; I have not got to the bottom of it. However, there is no doubt at all that the validation has not worked for lots of people, which is one reason why there are many among the 1.8 million coming off the register who are genuine voters and genuine people. They have not been able to match up their national insurance numbers and not provided other means of identification to replace the NI number. Providing those other means of identification is more difficult and messy if you live abroad The anecdotal evidence is that, before the general election this year, local authorities were not always quick enough in processing and dealing with these applications.

Secondly, the postal vote applications have to be in writing. There must be a piece of paper which is sent off, or it can be scanned and sent by email—and perhaps by fax as well. That is a more complicated process. I have talked to people who managed to get on the electoral register but did not manage to get through the hoops of getting a postal vote when they were up against the deadline shortly before the elections. There seem to be some bureaucratic obstacles in this situation which are causing more difficulties for people in Europe than for some of the people here.

Registration for people whose NI numbers do not match with the DWP and are not validated is sometimes a nightmare in terms of getting the appropriate documentation in. It is not easy—and I have been dealing with some specific cases back in Lancashire where I live. In addition to what the Electoral Commission tells me it will do—that is, conduct a similar campaign to the one it held to get people registered before the general election; it had something called a "boats and planes" campaign for people outside this country—it will have to make very special efforts indeed, together with the Government, starting as soon as possible, if people living in other European countries are not to be deprived of the vote in the referendum to which they are properly entitled. I beg to move.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, Amendment 48A, in the name of the noble Lord, Lord Greaves, would require the Electoral Commission to inform unregistered eligible voters of the steps they need to take in order to vote in the referendum. The amendment requires the commission to do this as soon as the date of the referendum is announced, and to take particular steps, as the noble Lord says, to approach two groups of people. He acknowledged in moving his amendment that other groups also need to be alerted to their right to vote in the referendum. Of course, the Committee will understand that I am sympathetic to the noble Lord's underlying aim, which is to ensure that people understand that they can vote and know how to register to do so. It is important in any democratic society that it is a duty of us all to be engaged in that, whether we are a voluntary worker in a political party, a paid politician, a member of the Electoral Commission or working in the community. It is part of what we should do to enable people to take part in the democratic process.

I can assure the noble Lord that provisions are in place to set in motion what he hopes to achieve. His amendment is unnecessary because the duties it imposes are already encompassed in paragraph 11(1) of Schedule 3, which requires the Electoral Commission to take,

"whatever steps they think appropriate to promote public awareness about the referendum and how to vote in it".

As the noble Lord said, he has heard from the Electoral Commission, and it is fully seized of its duty and the actions it should take.

I am sure we all agree that this is about all eligible voters, not just making specific groups aware of their right to vote—not just those British citizens living in the other 27 countries of the European Union, but those who live more widely abroad. The Electoral Commission has made it clear that it will take prompt action to alert people of their right to vote, and has

made clear exactly what it plans to do. It plans to produce public information that explains the voting process, and to run a UK-wide campaign through TV, radio and digital advertising which highlights basic information about the referendum, such as the date and how to register to vote. This campaign will inform eligible voters in the United Kingdom of all ages of their right to vote, and additional steps will support this.

For example, the Cabinet Office continues to work closely with civil society organisations, including Bite The Ballot, to encourage underrepresented groups to register. The Electoral Commission is also working closely with officials in the Cabinet Office and my officials in the Foreign and Commonwealth Office to ensure that eligible voters overseas are made aware of their voting rights and can vote with ease. This work includes ensuring that postal ballots sent overseas are correctly addressed and include the correct postage—details that have sometimes been overlooked. I appreciate the points made by the noble Lord, Lord Greaves. Alongside this, online registration is making registering to vote far more convenient, accessible and simple for young and overseas voters—far better than ever before. A person can register to vote on their smartphone, tablet or PC in as little as three minutes, as long as the link is working. The systems are there.

As the Bill already requires the Electoral Commission to take the action set out in the noble Lord's amendment, and as clear progress is already being made in achieving its aims, I invite him to withdraw it.

Lord Greaves: My Lords, I am very grateful to the Minister for setting that all out. It is all absolutely true. She talks about the duty set out in the Bill, which is absolutely right, but the problem is carrying out that duty with regard to overseas electors. If only just over 100,000 were able to be on the register for the general election, clearly, the system up to now has not worked. My point is that, because of the very nature of this referendum, particularly as it impacts on British citizens in Europe—the Minister referred several times to people in the UK, but these people are not in the UK—more needs to be done than was done last time, and in different ways.

9.30 pm

The report that the Electoral Commission published in July, on the effect and success of its campaigns, is called *Promoting Voter Registration At The May 2015 Elections*. It clearly shows that it did a lot less for overseas electors than for some groups in this country and was a lot less successful—even though the figure was increased by three times. Three times not many is still not many.

I am grateful to the Minister, but would like to ask her whether she could make further inquiries between now and Report. I will have some more direct communication with the Electoral Commission, and if I can be persuaded that something a bit better is going to be done this time for overseas electors, I will not bring back the amendment on Report. However, if I am not so convinced I will bring it back, in the hope that that will encourage the Government to do more. Having said that, I beg leave to withdraw the amendment.

Amendment 48A withdrawn.

Amendment 49

Moved by ***Baroness Anelay of St Johns***

49: Schedule 3, page 53, line 36, at end insert—

"Supply and use of register of electors

12A (1) The Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) have effect for the purposes of the referendum with the following modifications.

(2) Regulation 106 (supply of full register etc to registered political parties etc and restrictions on use) has effect for those purposes as if—

(a) in paragraph (1)(c), for ", other than a registered political party" there were substituted "which either is not a registered political party or is a minor party within the meaning of section 160(1) of that Act", and

at the end of paragraph (4)(b)(ii) there were inserted ", and

(iii) the purposes of complying with the requirements of Schedule 15A to that Act (control of loans etc to certain permitted participants), and

(iv) the purposes of complying with the requirements of paragraphs 32 and 33 of Schedule 1 and paragraphs 5 and 6 of Schedule 2 to the European Union Referendum Act 2015."

12B (1) The Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) have effect for the purposes of the referendum with the following modifications.

(2) Regulation 105 (supply of full register etc to registered political parties etc and restrictions on use) has effect for those purposes as if—

(a) in paragraph (1)(c), for ", other than a registered political party" there were substituted "which either is not a registered political party or is a minor party within the meaning of section 160(1) of that Act", and

at the end of paragraph (4)(b)(ii) there were inserted ", and

(iii) the purposes of complying with the requirements of Schedule 15A to that Act (control of loans etc to certain permitted participants), and

(iv) the purposes of complying with the requirements of paragraphs 32 and 33 of Schedule 1 and paragraphs 5 and 6 of Schedule 2 to the European Union Referendum Act 2015."

12C (1) The Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741) have effect for the purposes of the referendum with the following modifications.

(2) Regulation 105 (supply of full register etc to registered political parties etc and restrictions on use) has effect for those purposes as if—

(a) in paragraph (1)(c), for ", other than a registered political party" there were substituted "which either is not a registered political party or is a minor party within the meaning of section 160(1) of that Act", and

at the end of paragraph (4)(b)(ii) there were inserted "; and

(iii) the purposes of complying with the requirements of Schedule 15A to that Act (control of loans etc to certain permitted participants); and

(iv) the purposes of complying with the requirements of paragraphs 32 and 33 of Schedule 1 and paragraphs 5 and 6 of Schedule 2 to the European Union Referendum Act 2015.""

Amendment 49 agreed.

Schedule 3, as amended, agreed.

Clause 4: Conduct regulations, etc

Amendment 50 not moved.

Clause 4 agreed.

Clause 6: Power to modify section 125 of the 2000 Act

Amendment 51

Moved by ***Baroness Anelay of St Johns***

51: Clause 6, page 4, line 3, leave out "( )" and insert "31A"

Amendment 51 agreed.

Amendments 52 to 55 not moved.

Clause 6, as amended, agreed.

Amendments 56 to 59 not moved.

Amendment 60

Moved by ***Lord Blencathra***

60: After Clause 6, insert the following new Clause—

"Creation of EU Referendum Broadcasting Impartiality Authority

(1) The Electoral Commission shall establish, for the purposes of the referendum on whether the United Kingdom should remain a member of the European Union only, an authority to rule on the impartiality shown by the sound and vision broadcasting media based in the United Kingdom regarding all news and media stories relating to the referendum.

(2) The authority shall be created by the Electoral Commission and be operational within 3 months after the passing of this Act, and shall cease to operate when the polls close on the day of the referendum.

(3) The authority, for the duration of its existence, shall assume and exercise all the impartiality functions currently vested in OFCOM and the BBC to the extent necessary for the fulfilment of its functions.

(4) The decisions of the authority shall take precedence over any decision by OFCOM or the BBC.

(5) The authority shall adopt all the rules on neutrality and impartiality currently applied by the BBC and OFCOM during General Elections but shall be authorised to amend them as it sees fit in relation to the referendum.

(6) The authority shall publish its neutrality and impartiality guidelines as soon as practical after its creation.

(7) It shall be a criminal offence for any relevant broadcaster to breach the guidelines or fail to follow instructions from the authority.

(8) The cost of the authority shall be kept to under £50 million and the costs shall be met from public funds."

Lord Blencathra (Con): My Lords, I beg to move the amendment standing in my name and those of my noble friends. I think that the new clause tabled by the noble Lord, Lord Pearson of Rannoch, is superior to my version, so I will not go into detail on mine.

I have found it a bit of a long and tiring day, so I ask permission to conclude my remarks from a sedentary position.

An *Evening Standard* report in April 2012 had extracts from a leaked report carried out by the BBC when my noble friend Lord Grade was in charge. It admitted bias on a range of topics. In that report Andrew Marr is quoted as saying:

"The BBC is not impartial or neutral. It's a publicly funded, urban organisation with an abnormally large number of young people ... It has a liberal bias, not so much a party political bias. It is better expressed as a cultural liberal bias".

As Mr Rod Liddle, a former "Today" editor, repeatedly says in his splendid column in the *Sunday Times*, BBC staff do not set out to be biased and believe utterly that they are neutral and represent middle England. They take their guidance from the *Guardian*, which they think is an absolutely centrist paper, with the *Times* a bit to the right and the *Telegraph* off the right-wing scale. I believe that recently some senior BBC insiders, such as Robin Aitken and Peter Sissons, have also confirmed that there are still institutional prejudices prevalent in the BBC. Of course, when accused of bias, the BBC denies it; but I can recall at least two occasions in the last 10 years when the BBC has said, "Well, yes, we looked at our coverage of immigration issues in the past and it was a bit biased but it's all okay now". I think it also said, "We looked at our coverage of the welfare debate and yes, it was biased in the past but we are getting it right now". So that is the standard defence: we were biased in the past but we are perfect now.

When an organisation called Minotaur Media Tracking measured the level and content of the BBC Radio 4 "Today" programme's coverage of the European Union, it found that the BBC gave less coverage to EU issues than the newspapers, gave roughly twice as much coverage to pro-EU voices as anti-EU voices and consistently presented the Eurosceptic case as wanting to leave Europe instead of the European Union. I read somewhere recently, but I cannot find it now, that the BBC has concluded that its past coverage of EU issues was slightly biased, but it is going to be okay in the future. In that case, I look forward to interviewers referring to the BSE campaign as the "Britain Stronger in the European Union campaign"—but I do not hold my breath for that.

The EU's transparency website shows that £20,152,000 was disbursed to the BBC from EU funds between 2007 and 2012. A lot of that went to so-called research and development projects and to creating programmes to bring about change in countries outside the EU. In 2009 alone, the BBC got almost £1 million to,

"provide support for media capacity in the area of EU integration".

Noble Lords may say that I am biased on this, but surely there is an element of conflict of interest somewhere which calls into question the ability of the BBC to police itself on EU matters when it is receiving funding from the EU.

My new clause suggests that broadcast coverage of this referendum is too important to be left to a combination of Ofcom and internal BBC policing. Everybody trusts the Electoral Commission for its impartiality. I suggest that for the duration of the referendum only, all media monitoring of TV and radio currently carried out by Ofcom and the BBC should be transferred to a unit under the control of the Electoral Commission. Noble Lords can read the subsections for themselves, and I will not bore the Committee by reading and explaining them. Indeed, I will go further: I know that this new clause is going nowhere, so I do not expect, and the whole Committee would not want, my noble friend to spend a long time demolishing the eight subsections and pointing out their inconsistency, inappropriateness, illegality and everything else that is wrong with them.

My intention is to highlight to the Government that there is a track record in the BBC of bias on EU issues and it would be intolerable if it continued right up to referendum day. No one wants to interfere with the independence of the BBC, but I believe that we should interfere with the bias of the BBC, since I believe it exists. All I want to hear from the Minister—my noble friends may wish for other things—in her wind-up tonight is what the Government will do to ensure that the broadcast media are absolutely fair, impartial and unbiased in all their reports, news and programmes leading up to polling day. As soon as the exit poll is issued, I do not care what happens. I beg to move.

Lord Pearson of Rannoch (UKIP): My Lords, my Amendment 61BA is similar to Amendment 60, to which I have also put my name and which has just been moved by the noble Lord, Lord Blencathra. I suppose the inspiration for both these amendments—I confirm that my amendment is also a probing amendment—is that we do not entirely trust the broadcasting media to be impartial throughout the referendum campaign, so we feel that they need a little extra assistance in this regard in the shape of the temporary broadcasting adjudicator suggested by this amendment. The noble Lord's amendment suggests a temporary broadcasting authority.

My experience of the BBC's EU coverage goes back to 1999, since when I and others have been sponsoring independent analysis of that coverage, to which the noble Lord, Lord Blencathra, was good enough to refer. I had a debate in your Lordships' House on 11 March 2002 which revealed the early results of our initiative, and another on 7 May 2014. Both debates are relevant to these amendments and suggest the need for them. Both amendments require the impartiality of broadcasters in dealing with the conflicting claims made by each side of the argument. However, my Amendment 61BA goes further and requires the new adjudicator to judge whether the BBC has covered a sufficiently broad scope of subjects about our EU membership to allow the electorate to reach an informed opinion about their future. Broadcasting bias is not only bias about the subject in question; there is of course also bias by omission.

I have singled out the BBC because only the BBC, under its charter and guidelines, has the duty to educate and inform. That duty would still apply to areas which may not have been raised by either side of the referendum debate. Your Lordships may feel that every conceivable argument under the sun will be raised by one side or the other during the campaign, but I am not so sure.

For instance, I suppose it is possible that neither side will deal with the founding big idea behind the project of European integration, which was that European nations had caused so much bloodshed that they had to be gradually emasculated and put under a new form of technocratic government—hence the EU's claim to have brought peace to Europe since 1945. Hence also the almost unbelievable powers of the European Commission at the expense of national Governments. I am not sure that either side will go sufficiently into all this, and so I feel it should be the duty of the BBC to do so if they do not.

It can be difficult to know where you want to go if you do not know why and how you have got to where you are—the direction of travel. Even if the campaigns do touch on these areas, I fear they do not lend themselves to soundbites, and so they may be covered inadequately. If so, I suggest the BBC should examine them dispassionately and in some depth—and very interesting it would be, too.

In conclusion, I am happy to report that the BBC's coverage of EU matters has improved recently. We have had John Gray delivering a learned critique of the euro on "A Point of View". We have had an Icelandic politician assuring us that the UK would be welcome and better off in EFTA. We have had a Nissan executive explaining why his company would not necessarily relocate outside the UK if we left the EU. We have had Nigel Farage being interrupted only by rapid fire instead of his usual machine-gun treatment. Best of all, the wonderful Labour MP Kate Hoey has even been allowed to make some of the case, on the "Today" programme, for the UK to leave the EU.

These are all absolute firsts for the BBC. Nothing like them has ever happened before. I trust that they are the first signs that the BBC is at least going to try to be fair in the forthcoming campaign. But old habits die hard, and so I trust that it and the other broadcasters will welcome the additional encouragement proposed by these amendments.

9.45 pm

Lord Wallace of Saltaire (LD): My Lords, these amendments are totally without merit, but I just want to remark that the noble Lord, Lord Pearson of Rannoch, has suggested that we need controls on the broadcast media. I assume he means we should be as tough on Sky as on the BBC, or perhaps he wishes to take on only the BBC under that heading. Perhaps we should take on all the media. We had a great debate about how much we need tougher press regulation. I am sure noble Lords would want to consider the biases of the *Daily Mail* and occasionally the *Daily Telegraph,* whose Brussels correspondent for many years was a joker called Boris Johnson, who used to make up the most wonderful stories, most of them entirely without basis, about what was wrong with the European Union. Is it perhaps that we are having an attack on just the BBC?

I have read in the *Spectator* and various other publications that, because the BBC has received a certain amount of money over the years, amounting to a maximum of 0.3% of BBC income for any given year—largely to fund the development of broadcasting in Serbia, Moldova and other eastern neighbourhood countries—it is unavoidably biased in favour of the European Union or perhaps has almost become a vassal of the European Union, which is the phrase used by the noble Lord, Lord Forsyth.

The BBC does have a certain bias: it is a bias in favour of evidence—that may be the liberal bias, I say to the noble Lord, Lord Blencathra. I know that evidence is sometimes a little difficult for some. The part of the "Today" programme that I find to be biased is its tendency to take the headlines in the *Daily Mail* as the basis for some of its stories. That is a bias with which I am rather unhappy.

[LORD WALLACE OF SALTAIRE]

The BBC has had two reviews in the past 10 years on accusations of bias, the Wilson review in 2005 and the Prebble review in 2013, both of which were thorough and both of which said that the BBC did not display a deliberate bias. I have seen Nigel Farage on "Question Time" more times than I really wanted to in the last 18 months. They have given him a fair crack of the whip. I do not see that the BBC should be pushed further in one direction or another. We understand what is going on. While the right-wing press's dominance in the print media, with the competitive broadcast media interest that the *Daily Mail* and the Murdoch press have—hence their constant attacks on the BBC—is acceptable, the BBC, because it is seen to be prepared to explain how globalised the world has become and how difficult it sometimes is to manage national economies without a degree of international co-operation, must necessarily be biased. As I have said, there have been BBC reports; they have both cleared the BBC of bias. The accusation that the BBC has been significantly funded by the European Commission and is thus dependent on it is not valid.

Lord Blencathra: I was not suggesting that the BBC is so heavily funded that it is dependent on EU funding. The funding of £20 million over the past five years, running at around £3 million per annum, is not to be sneezed at. Floating voters, or the public, get 75% of their information from the broadcast media, not from the press. The press is largely irrelevant in influencing elections because it is read by people who are already committed. As far as press balance is concerned, the *Mirror*, the *Guardian*, the *Independent* and the *Financial Times* will be rabidly pro staying in Europe. That leaves the *Times* and the *Sun* sitting on the fence until Mr Murdoch does his opinion poll to decide who is going to win. The *Telegraph* will probably be against staying in and the *Daily Mail* probably will be as well. Finally, I respect the intellect of the noble Lord, but if he seriously thinks that the editors of the "Today" programme are spouting *Daily Mail* propaganda or taking that for their lead stories, he is living in another world.

Lord Wallace of Saltaire: My Lords, I merely observe as a frequent reader of the *Daily Mail* that the broadcast media, in particular the "Today" programme, take their cues from the stories that are in the morning press, particularly the *Daily Mail*, which, as we all know, is the most influential printed newspaper in this country and we all follow it.

I think I have said enough. I see no merit in this amendment. I know where it is coming from. I have read those who have suggested that the BBC is significantly dependent on the EU as a result of this—that is part of the paranoia of the Bruges Group right. I note that the noble Lord, Lord Blencathra, used the expression "rabidly" for those who are pro-European and "moderate" for those who are not. Again, that is a perhaps a matter of unintentional bias on the part of the noble Lord, but I leave it there.

Lord Blencathra: I applied "rabidly" to the *Financial Times*, which is more rabid than the *Guardian* in wanting to stay in Europe—and being wrong.

Lord Pearson of Rannoch: My Lords, may I ask the noble Lord, Lord Wallace, whether he has actually read either of the two debates I referred to, from 11 March 2002 and 7 May last year? Is he also aware that the Wilson report of 2005, which was inspired by our analysis, found that the BBC was biased, both in its coverage and in what did not cover? It did not think it was deliberately biased but it was, nevertheless, biased at that time. Has the noble Lord also read the Civitas report on the Prebble whitewash of the BBC's EU coverage, which was so incestuous as to be dishonest?

Finally, has the noble Lord read—and, if not, will he do so—the News-watch website, which goes into great detail and irrefutable fact on all these matters, and which comes to the conclusion that the BBC has been biased in favour of the project of European integration? I hope he will appreciate that I end my remarks with the hope that some small shoots are growing that give us the possibility that the BBC will be fair during the forthcoming campaign. However, I feel it needs some encouragement, at the very least from the noble Baroness when she responds to these amendments.

Lord Wallace of Saltaire: I deeply regret that I have not read the noble Lord's debate from 2002 and I shall, of course, try to dig it out before I go to bed.

Lord Kerr of Kinlochard (CB): I am fascinated by these two amendments and by the name of the noble Lord, Lord Pearson, being on both of them. They seem to call for completely different courses of action. I am reminded of the story of a crash between two Concordes in mid-Atlantic, with Henry Kissinger being found in both. The noble Lord should make up his mind. Is he in favour of an impartiality authority and a criminal offence, as proposed by the noble Lord, Lord Blencathra? I am particularly against that one: the creation of a new criminal offence requires a fair amount of thought. Or does he prefer, as I do, his own amendment? Actually, I am not really in favour of either of them. This is all a bit over the top.

Lord Collins of Highbury (Lab): My Lords, these amendments are not so much probing as having a go. Their purpose is clear: this is a warning shot. I was stunned by the telling possibility that, instead of the campaigns themselves determining the issues, we should leave it to the BBC to decide which campaigns were admitted. In moving the amendment, the noble Lord once again rated the Electoral Commission highly. However, the commission has looked at the amendments and said they are unnecessary. Ofcom believes they are overkill and the BBC has also set out how it will develop its own specific guidelines. I have no doubt that the issue of bias will draw attention from both sides during the campaign. Listening to the "Today" programme may annoy me on some occasions and make the noble Lord just as annoyed on others, but we may have heard completely different arguments. It is in the nature of things that we do not approach these issues without bias ourselves. Clearly, we are all committed. The important thing is that provisions to ensure fair reporting of the campaign do exist. The BBC will also

set up specific guidelines for the referendum and will constantly run impartiality reviews during the campaign so that it can ensure delivery against its editorial standards. That all happened during the Scottish referendum. These amendments are having a go rather than probing. I hope the Minister will support that view.

Baroness Anelay of St Johns: My Lords, Amendments 60 and 61BA deal with the crucial question of bias. Both noble Lords have made it clear that that is the basis of the views they put forward. How should one and how can one ensure fair and impartial broadcast media coverage? Noble Lords have approached the matter in slightly different ways. However, it is absolutely right that the public will expect and demand of its broadcasters that news and current affairs coverage of the EU referendum and of all other issues should be balanced and impartial, and must enhance the democratic process through informing the public. This will of course be pivotal to the public debate ahead of the referendum. Therefore, it is the right thing to demand.

Given the unique reach and impact that the broadcast media have on our lives, members of the public can and do complain that broadcasters sometimes miss the mark in terms of the impartiality of their coverage and the balance of their output. Certainly, from time to time, there have been errors of judgment. Considering the importance of the media to forming opinions, it is right that we should consider modes of redress where mistakes are adjudged to have been made. These issues are too important to leave such errors to hang unchallenged or uncorrected. However, I do not believe that these amendments are the right way to address the issue.

It is the Government's position that the existing regulatory framework is robust and well understood, and that the establishment of a new authority in this specific circumstance would not be workable or proportionate. But I do appreciate that noble Lords were trying to draw attention to bias rather than creating new bureaucratic structures.

My noble friend's Amendment 60 puts a duty on the Electoral Commission to take on the role of establishing a new authority. As the noble Lord, Lord Collins, has alluded to, the Electoral Commission does not currently have the power to set up such an authority; nor does it have any expertise in policing the impartiality of broadcasting. That expertise is in the BBC Trust and Ofcom. The Electoral Commission has made it clear that it would not welcome such a role even if it were possible to legislate for it.

Even so, both amendments contain important points which demand serious attention on the matter of bias. My right honourable friend the Secretary of State for Culture, Media and Sport wrote to Ofcom and the BBC Trust on 15 June asking them to explain how, as the responsible regulators, they will look to deliver prompt, proportionate redress where lapses in editorial judgment are adjudged to have been made. Ensuring that redress is made, and made promptly, is, I think, the overriding intent behind the new clauses.

Both the BBC Trust and Ofcom have responded, underlining the strict enforcement of the rules on impartiality and the additional steps that the BBC and Ofcom take to expedite the handling of serious complaints during an election or referendum period. Ofcom also confirmed that it will be reminding broadcasters of their responsibilities ahead of the referendum. If it would be helpful to noble Lords who have taken part in this debate, I would be happy to supply them with copies of those letters.

Issues, both recent and historic, have been raised over the impartiality of our broadcasters' coverage of important issues and events. The review of the BBC's coverage in 2005 by the noble Lord, Lord Wilson of Dinton, highlighted several issues; for example, that the BBC's coverage needed to be more demonstrably impartial and that while there may have been no deliberate bias in BBC coverage of EU matters, there were perceptions that the BBC suffered from certain forms of cultural and unintentional bias.

Although the BBC implemented several changes following the noble Lord's report, more recent complaints about the media's coverage of the election and the Scottish independence referendum, and accusations of bias, have come to light. The speed at which today's news media move and the potential for content that is not duly impartial to gain, by the very speed of it, an unwelcome, detrimental foothold in the minds of the public, means that we should all recognise the need for prompt, effective redress where mistakes are made.

It is vital to the high regard in which the UK's broadcasters are held that their independence, impartiality and even-handedness are beyond question. In a world of increasing dominance of state broadcasters in other nations, where blatantly partial voices are gaining increased power and reach, it is critical that the integrity and impartiality of our broadcasters in the UK cannot be called into doubt or undermined. The quality and independence of our news coverage in the UK is a calling card for democracy, and carries huge weight in terms of our soft power abroad. We have debated that in relation to Foreign and Commonwealth Office policy issues over the past year.

10 pm

As such, it is right that both the BBC and Ofcom put in place enhanced complaints-handling mechanisms for the referendum period that can provide swift and effective redress to serious concerns, as they have set out that they will do in writing to the Secretary of State for Culture, Media and Sport. On the basis of that response, I request that my noble friend withdraw his amendment, and invite the noble Lord, Lord Pearson of Rannoch, not to move his Amendment 61BA when it is reached in the list.

Lord Blencathra: My Lords, I am most grateful to the Minister for that incredibly robust response: it is a tougher response than I anticipated when I tabled my amendment. I say to the noble Lord, Lord Collins, that I was not "having a go" or probing: it was more a shot across the bow, or rather flagging up a very important issue, because we cannot have biased reporting in this campaign from any broadcasting media outlet.

Lord Wallace of Saltaire: If this is to be brought back at Report, can we be assured that Sky and other broadcast media will be included in the coverage?

Lord Blencathra: I do not intend to bring it back on Report, now that I have heard my noble friend's response —but if I do bring it back on Report, it would be a very detailed clause that is much more accurate than the one we are discussing at the moment.

I was going to say that I had no idea that my right honourable friend John Whittingdale had actually written to the BBC, the other broadcast media and Ofcom, and I had no idea about the reply. That might explain why the noble Lord, Lord Pearson, says that he has identified—as I have as well—that the BBC has been more neutral on EU issues over the last few months. That is all that we wanted to achieve: we want that neutrality.

This very important little debate has taken only 30 minutes, and it is on the basis of two new clauses that were shot full of holes to begin with, but we have got some very important answers. As a little aside, I see my noble friend Lord Tebbit in his place; he has, in the past, as Conservative Party chairman, complained about BBC bias. Perhaps if he had bunged them £3 million a year from the Conservative Party, he might have got more favourable coverage. I am very grateful to my noble friend for her response tonight; I look forward to reading the letters and I beg leave to withdraw my amendment.

Amendment 60 withdrawn.

Amendment 61

Moved by ***Lord Wigley***

61: After Clause 6, insert the following new Clause—

"Count for votes cast

The count for votes cast in the referendum shall be carried out and declared separately for—

(a) Scotland,

(b) Wales,

(c) Northern Ireland, and

(d) England."

Lord Wigley (PC): My Lords, in the unavoidable absence of the noble Lord, Lord Liddle, it falls on me to move Amendment 61, which, fortuitously, has my name attached to it. The amendment does what it says: it provides for the result of the referendum to be declared for each of the four constituent nations of these islands. It may well be that this amendment is not necessary to ensure that the people of each of the four nations know the referendum vote in each of their respective territories, but it puts the matter beyond doubt. It recognises the right of each nation to know how it has voted, and for the world to know that as well.

That brings me to the linked amendment in this group, as we come to the end of our Committee Stage debate. Amendment 61C, standing in my name, relates to one aspect on which we have only just touched, and perhaps have deliberately skirted around because of its far-reaching implications. That is the consequence if there were a split vote across the countries of Britain, with one or more of the constituent nations of the UK voting in a different direction from the UK as a whole.

The main focus of attention in this context has been Scotland voting to stay in the EU and the UK voting to leave. However, the arithmetic could equally apply to Wales or—perhaps in a different way—to Northern Ireland. I accept, for better or worse, the constitutional reality that the context of this referendum is the United Kingdom as a whole, for the simple reason that the UK is the member state of the EU which is contemplating leaving the Union. Therefore, it is a decision that has in the first place to be taken by the UK as a whole. If the UK as a whole votes to stay in the EU, even if one constituent nation voted to pull out, it would be extremely difficult for that nation to do so without erecting border controls between itself and the rest of the UK, and between itself and the rest of the European Union. I have not heard that option being seriously argued. If noble Lords feel to the contrary, they are clearly at liberty to put forward their own amendments to deal with that somewhat remote possibility.

However, we are all aware of the very real prospect that Scotland could vote to stay in the European Union and the UK could vote to leave, and that that could reopen the debate about rerunning the independence referendum in Scotland, with the real possibility that this time—for a variety of reasons, of which the EU dimension is just one—Scotland could vote for independence. If it did so, the Scottish Government might well aim, over the same period of time it might take for the UK to negotiate our departure from the EU—heaven forbid—to negotiate their own continuing membership. That road would clearly have its challenges. I do not intend to go down the highways and byways of that possibility at this late stage of the evening.

Incidentally, this is not a question that immediately arises in Wales because at present there is nothing like the same level of support for independence in Wales as there is in Scotland. At present in Wales, there is a widespread desire to secure greater autonomy, some of which is being addressed by the draft Wales Bill, which was recently published. There is certainly a feeling in Wales, and further afield, that the countries of the UK need a new relationship—a balanced partnership, if I can call it that, between the nations of these islands—but that does not manifest itself in the type of momentum towards independence we have seen in Scotland. However, the principle is equally valid in Wales, as it would be in Northern Ireland—or, indeed, in England. If England voted by a very small margin to stay in the EU, and the overall UK result was in favour of pulling out because of the votes of Scotland, Wales or Northern Ireland, I believe that the same question would and should arise in an English context.

That brings us to the heart of the issue: what is to be the future relationship of the four nations of these islands? On 8 September, former Prime Minister Gordon Brown gave evidence to the panel chaired by the noble Lord, Lord Kerslake, inquiring into better devolution for the whole of the UK. It was set up by the All-Party Group on Reform, Decentralisation and Devolution, co-chaired by the noble Lords, Lord Foulkes of Cumnock and Lord Purvis of Tweed. Gordon Brown and I have not often seen eye to eye. I would never imagine myself turning to him for words relevant to my argument in the context that we are debating tonight. However,

in his opening remarks before answering questions, he made a statement of immense significance. I quote directly from a transcript that has been cleared by his office:

"The UK is a voluntary association of nations and I would stress that if the UK is to exist in the future, then it has to do so for a clear and stated purpose".

Those were his words in a Committee Room upstairs here.

I add that one such valid purpose is to work together within the EU. It is an immensely important vision and one on which the future relationships of our four nations should be built, for I believe that there is not a person in this House who does not realise that there must be an evolving relationship if the United Kingdom is to survive as a meaningful constitutional unit. If we are to consider ourselves a family of nations, that has implications for the responsibilities we have, one towards another. All happy, functional families intuitively realise that this is the case. There is give and take. It is not a matter of father laying down the law and everyone else doing what they are told.

There was a good example in our extended family a short while ago. The father wanted to move house. He had seen a property that appealed considerably to him some 15 miles away. His wife was willing to go along with the move, although undoubtedly it would cause her much additional work. However, the two children, who attended primary school in their home village, were horrified. They would have to move school, leave their friends and lose the out-of-school activities that were a key part of their lives. They were beside themselves with grief. The father realised the pain he would be inflicting on them if he imposed his will, as he had the authority to do. He wisely decided to forget his plans, in the interests of the happiness and cohesion of the family as a whole. That is the situation we potentially face in this referendum. If we are indeed a family of nations, we should behave as a family. This is the time to face such questions, not in the acrimonious aftermath of a knife-edge referendum result.

Amendment 61C provides for a quadruple lock that defines the basis on which the outcome of the referendum can be perceived as a vote to quit the EU. It would require a vote to do so not only by way of the aggregate outcome of all the votes cast in the United Kingdom, but also within each of the four nations which make up the United Kingdom. It provides that all four members of this family of nations should concur on such a far-reaching move. I am putting this forward to give the Government an opportunity to tell the House how they would handle the situation in which, for argument's sake, Scotland had voted to stay within the EU while the total aggregate vote in the UK was in favour of leaving. With respect, it would not be good enough to say, "Well, we will cross that bridge when we come to it", because by then it may be too late. Events will have gathered their own momentum. We would inevitably be facing another Scottish independence referendum. Is that what the Government, and this Chamber, really want?

There may be other formulations of words that would better achieve my objective in proposing this amendment. If so, let us have an improved wording from the Government at Report. All I say, in conclusion, is that if we are indeed living in a family of nations which is a voluntary association, this issue has to be addressed, and I hope the House can agree with that sentiment. I beg to move.

Lord Forsyth of Drumlean (Con): My Lords, as the noble Lord is perfectly entitled to move his amendment, and although this late hour is probably not the moment to discuss some of these matters, I am just amazed that the noble Lord, Lord Liddle—I apologise as I am criticising him while he is not in his place—has put his name to at least part of this debate in support of having separate results announced in separate parts of the United Kingdom. We had a referendum in Scotland which we were assured by the nationalists would decide the matter for a generation. The Scottish people decided to remain part of the United Kingdom and within days the nationalists broke their word. Now we have the leader of the nationalists in Scotland, Nicola Sturgeon, talking about another referendum being inevitable.

The polls still show that a majority of people in Scotland wish to remain part of the United Kingdom. The issue is for the United Kingdom to decide. It is the United Kingdom that is a member of the European Union. I am appalled at the noble Lord, Lord Liddle, and at the Opposition—I hope that the opposition Front Bench will distance themselves from this argument—for embarking on this nationalist language. It is what has destroyed the Labour Party in Scotland. They have talked about the Tories throughout the 1980s as not having a mandate in Scotland. They used the rhetoric of nationalism and they have been surprised to find that they themselves, as unionists, have been destroyed by it. Here we go again, arguing that this is somehow a decision that Scotland, Ireland, Wales and England should have representations on and that there should—as this amendment suggests—have to be a consensus between the four parts of the United Kingdom. It is a nationalist, or regionalist, argument, and should be no part of the consideration of these matters.

I understand why the nationalists in Scotland—and in Wales, it would seem—are scratching around for a reason to justify breaking their word. The Labour Party's argument has been that we need to have a referendum quickly because of the uncertainty. The damage that is being done to jobs and investment in Scotland because of the uncertainty about the future of Scotland created by this irresponsible nationalist rhetoric, is immense. We took a decision in the referendum and I very much hope that when we have this referendum, whichever way it goes, that is the end of the matter and it is decided and we can get on with the business of creating wealth and jobs in our country. The exploitation of this referendum by the nationalists as a way of trying to create division and dissent in our country is reprehensible.

I know that the noble Lord, Lord Wigley, is a decent and honourable man but he should go to Scotland and look at the division that has been created there by the intimidation that the nationalists were responsible for in the campaign, and the need for healing. The very last thing we need is a further attempt to create divisions between the peoples of this United Kingdom.

10.15 pm

I just wonder what the reaction would have been if, prior to the referendum in Scotland, I had argued that because we are a family, the English ought to have their referendum and they ought to say what they think about Scotland leaving the United Kingdom, and that as a family we all have to agree upon this. The Scots would have been absolutely outraged. What is sauce for the goose is sauce for the gander. In this case it is absolutely a United Kingdom decision and it will be the votes in the United Kingdom as a whole that will decide whether or not we remain in the European Union. Anything less than that is striking at the heart of the United Kingdom and breaking up this family, which the people of Scotland voted—not narrowly but overwhelmingly—to reject. So I suggest, if I may, that the nationalists should get on with the job of persuading people in Scotland that they can deal with health, education, housing and all the other issues on which both Wales and Scotland are now falling way behind England in terms of performance, and stop trying to create division within our country, especially on an issue as important as this.

Lord Kerr of Kinlochard: As so often, I wish that we had a Scottish nationalist in this Chamber to respond to the noble Lord's points, with most of which I agree. I bow to no one in my respect for the noble Lord, Lord Wigley. His was a very moving speech and I agree with his description of the difficulties that could arise were different results to occur in the different parts of the kingdom. I think he is correct about that. I think his solution is absolutely wrong. I cannot support his amendment.

The amendment in the names of the noble Lords, Lord Wigley and Lord Liddle, is probably unnecessary because I suspect that the votes will be counted separately in any case; I would hope so because there will certainly be rumours about what the result has been if it is close and it would be far better that there should be something on the record. With respect to the noble Lord, Lord Forsyth, it is a little harsh to accuse the noble Lord, Lord Liddle, of being a violent Scottish nationalist because he has put his name to that amendment.

There is a fundamental issue with Amendment 61C. The noble Lord, Lord Wigley, proposes a quadruple lock in the situation in which, say, England has voted to leave the European Union and Northern Ireland has, by a very narrow majority, voted to stay in. If the noble Lord's amendment was carried and became the law, we would stay in. That seems an unacceptable situation. I agree with the noble Lord, Lord Forsyth: it is a United Kingdom decision.

It is important to note that we have no threshold requirements in this referendum and we have had no amendment in Committee proposing that there should be a threshold. That is constitutionally quite surprising for a decision as big as this. The precedent would lead one to think about a threshold. I would not have wanted a threshold. I would not have wanted a supermajority, as in the precedent in Scotland in the 1970s. I do not like referenda but the essence of a referendum is that you win or lose. It is clean; it is 51% to 49%, for example. If 51% are in favour of our leaving the European Union, we will leave, and we should not create any fudge round that. This is a yes/no decision, and if you decide to go, you go. The double referenda theory attributed to Boris Johnson, which he appears to have come off—that if the decision was to go, there would be another negotiation in which the foreigners, astonished and timorous, would come creeping, offering us far better terms to stay in—is nonsense. If the country votes to leave the Government will be required to invoke Article 50 and start the process of coming out. It has to be clean. I say to the noble Lord, Lord Wigley, that I think he is correct in his description of the difficulties that would arise, but the difficulties which would arise if his amendment were the law of the land would be much greater.

Lord Forsyth of Drumlean: The noble Lord said that if the country voted to leave the Government would invoke Article 50, but surely that does not follow. It would be possible for us to remain in negotiations having voted to leave and then subsequently invoke Article 50, would it not? He is the expert.

Lord Kerr of Kinlochard: I do not know what form these negotiations would take. I think that the position of a Government who said, "Okay, we have heard the nation speak, but now we are going to go and negotiate something else with Brussels. We are not acting on the decision the country has taken"—

Lord Forsyth of Drumlean: My point is that if you invoke Article 50 you are then no longer a member and it does not necessarily follow that that would be the most appropriate way of dealing with it. You could remain as a member and negotiate our withdrawal and then use Article 50.

Lord Kerr of Kinlochard: Actually, you are a member while the Article 50 negotiations are proceeding. You are a member of every council. Your MEPs do not leave the European Parliament, your judges do not leave the court and your Commissioners do not go home. The only difference is that in the Article 50 negotiations you do not have a vote on the position of the EU—the position that it has in its negotiation with you. That is all. You remain a member throughout the period of the Article 50 negotiations unless you decide unilaterally to go home. You do not have to do Article 50 at all. If you want you can just stop paying the bills, stop turning up at meeting and in due course it will be recognised that you have gone. It is not the case that once you invoke Article 50 you are no longer a member of the European Union.

Lord Hamilton of Epsom (Con): Surely the key to the decision taken in the referendum is that it is advisory and not mandatory, so therefore it would not be necessary at once for the United Kingdom to apply for Article 50. We could merely carry on with the negotiations with absolutely nothing changing whatever.

Lord Kerr of Kinlochard: Technically, that is correct. It is advisory. But it seems to me that anybody who thinks that the Government could do other than act fairly quickly on the advice they had received from the entire country is in cloud-cuckoo-land. The noble Lords, Lord Forsyth and Lord Hamilton, are right in

a sense in that our influence in the councils of the European Union would go into very rapid decline. We would still be there but we would not be listened to a great deal if we were heading for the exit door. That is certainly true. However, we would be members, and the idea—with all respect to the noble Lord, Lord Hamilton—that the Government might consider whether they were going to act on the advice of the country or going to try some form of new negotiation is nonsense. If the country votes to come out, we come out.

Lord Tebbit (Con): My Lords, it seems to me that this is a piece of nonsense. Wales is not a member of the European Union, nor is England, Scotland or Northern Ireland. The United Kingdom is the member of the European Union. Therefore, it does not matter a damn whether some region or another—whether it is Wales, London, Ponders End or wherever—votes one way or another. The only thing that matters is which way the United Kingdom votes.

I do not intend to be provocative at this time of night—good lord, I never intend to be provocative—but it is worth remembering that there is considerable doubt over whether, if Scotland had voted to leave the United Kingdom, either it or the remainder of the United Kingdom would have continued to be a member of the European Union. The state which entered the European Union was the United Kingdom; if the United Kingdom had ceased to exist, then probably neither Scotland nor the remainder of the United Kingdom would have been a member of the European Union. It would have been up to the Scottish—and possibly the Welsh at some time or another—to negotiate entry into the European Union. We could all have a bit of a chuckle about how that would have gone, but essentially this is just a piece of nonsense which is not even worth discussing at this time of the evening.

Baroness Smith of Newnham (LD): My Lords, I do not want to detain the Committee for long. I am aware that the last two evenings I have said I would be brief but then was not; this evening, I really do want to be brief. As for Amendment 61, as the noble Lord, Lord Kerr, has said, the assumption is that we will hear the results by region and possibly by constituency. Therefore, including in the Bill the idea of counting by nation, rather than state or region, is unnecessary—although we will all be delighted to know what the result is in Gibraltar, given that we have spent so much time talking about it. So many of the amendments and briefings seem to talk about Gibraltar.

Amendment 61C is the more substantive. Although it is clearly important that we listen to the views of all four nations—I suspect the Cornish, if they were standing here, would be saying that they wanted to be heard too—and that all parts of the United Kingdom are heard, in practice, as we have heard from most parts of the Chamber, if not from the noble Lord, Lord Wigley, this is a vote by the United Kingdom. Amendment 61C seems, in that sense, inappropriate.

Lord Collins of Highbury: My Lords, I begin by saying just how much I agree with the noble Lord, Lord Tebbit. The question is about the United Kingdom's membership—there is no other question being asked and therefore the answer will be that we remain or that we leave. There is no doubt about that, but I will pick up just one point.

No matter how tempting it would be for me to enter into a long discussion about the history and politics of Scotland, I will resist that. However, I think the first amendment, tabled by my noble friend Lord Liddle, is unnecessary. I cannot be certain about the exact process, but what we all want is a very clear, transparent declaration of a result. I can assure all noble Lords that nobody would be satisfied with a computer output saying, "In the United Kingdom, X million voted this way". We must have transparency: every voting area must declare and we must be able to see how that result is made up. That is how we have always done things and I cannot see any reason for changing that. I therefore think my noble friend Lord Liddle's amendment is a bit unnecessary. However, this still does not avoid the point that whatever the result, it must be the result for the United Kingdom. One possible scenario is that England will vote, potentially by a small minority, to leave, while the rest of the United Kingdom will vote by large majorities to stay. That could happen, but it would not change the result. The result would be very clear: if we vote that way, even by a majority of one, we leave the European Union.

10.30 pm

Baroness Anelay of St Johns: At this time of night, it is tempting simply to say, "I agree with the noble Lord, Lord Collins of Highbury", and thereby with my noble friends Lord Tebbit and Lord Forsyth, but I have a duty to put on record the reasons why the amendments are not welcome.

Amendment 61, moved by the noble Lord, Lord Wigley, on behalf of the noble Lord, Lord Liddle, seeks to ensure that votes cast in the referendum are counted and declared separately for Scotland, Wales, Northern Ireland and England. I can give an assurance that, under the Political Parties, Elections and Referendums Act 2000 and the Bill, that is already the case. Counting officers will declare separate results for Northern Ireland and Gibraltar. Regional counting officers will declare separate results for Scotland and Wales. In addition, the chief counting officer will declare results for the combined UK and Gibraltar, which will then be the overall result of the referendum.

It may assist the Committee if I set out briefly how the 2000 Act already achieves this, just to put to bed—so to speak, at this time of night—any remaining questions. The Bill provides for the UK and Gibraltar to be divided into different voting areas and for groups of voting areas in Great Britain to be treated as different electoral regions. The referendum will be administered on the ground by counting officers, one for each voting area. In England, Scotland and Wales, these will be the returning officers who act at local elections and the voting areas will mirror local authority areas. Northern Ireland will form a separate voting area and its counting officer will be the Chief Electoral Officer for Northern Ireland. Gibraltar will also form a separate voting area and its counting officer will be the Clerk to the Gibraltar Parliament.

[Baroness Anelay of St Johns]

The chief counting officer may also appoint a regional counting officer for each electoral region in Great Britain. The electoral regions mirror those for the European parliamentary elections. Scotland and Wales will each form an electoral region; separately, clearly. England will be divided up—I prefer that to "broken up"—into nine regions. Regional counting officers will co-ordinate the actions of counting officers and deliver the referendum in their region. Under the 2000 Act and the Bill, each counting officer must count the votes cast and make a declaration as to the votes cast in his or her voting area. Each regional counting officer must do the same in his or her region and the chief counting officer must make a declaration of the votes cast across the whole of the UK and Gibraltar.

Lord Blencathra: Does that mean that we will not have individual declarations in each district council area but that they will be aggregated and we will hear a declaration from a European region? I presume that we will still get access the next day to the figures for each district council.

Baroness Anelay of St Johns: The short answer is pretty much yes—there will be local reflection of that. The effect of the provisions is that there are separate results declared for the regions that are the subject of this amendment; Scotland and Wales separately, because they are electoral regions and that is their process; Northern Ireland and Gibraltar, each of which is called a voting area, separately; and further declarations will be made by the regional counting officers in each of the regions of England. It will be possible to add together all the published information to produce the result for England as a whole. So we get there in the end.

Amendment 61C, in the name of the noble Lord, Lord Wigley, seeks to impose a so-called double majority lock. Under this amendment, the chief counting officer could declare that a majority had voted in favour of the UK leaving the EU only if there is a majority for that result in each of England, Wales, Scotland and Northern Ireland. I have made it clear that I agree entirely with my noble friends Lord Forsyth and Lord Tebbit and the noble Lord, Lord Collins, that that is not at all appropriate. It is a decision for the whole country. The people of Great Britain, Northern Ireland and Gibraltar will have a vote, and each vote will and should count equally. That is the only fair way to take a decision of this magnitude. We are one United Kingdom. The referendum will be on the United Kingdom's membership of the EU and it is right, therefore, that there will be one referendum and one result. I invite the noble Lord, Lord Wigley, to withdraw Amendment 61.

Lord Wigley: My Lords, I am very grateful for the response and for the interest that this debate has generated among a number of noble Lords. I cannot say that I am entirely surprised at the tenor of the debate or the comments that have been made, but before withdrawing the amendment, I will say just two things. First, I passionately want all four nations of the United Kingdom to stay part of the European Union because I believe that both our local family of nations and the greater family of nations are apposite for such a relationship.

I also ask noble Lords to think, between now and Report and as this campaign goes on, what will be the consequences were that to happen. The noble Lord, Lord Forsyth, said that he very much wanted to see the end of debating an independence referendum again. I am sure that he would accept that there is a greater danger of that referendum coming closer if those two results are different and the consequences of the referendum are taken for the UK as a whole.

If that is not the case, it flies in the face of what has been happening in Scottish politics—the fact that 56 out of 59 Members of Parliament are SNP. That surely has a message, and we should be thinking about how we respond to it. I am trying to put forward ideas and grasping at some ideas that Gordon Brown is putting forward about a new association of family members within these islands. We have a commonality of interests in many ways, and we have our distinctive differences as well. There is a need to build on that basis for the future, and the European referendum is one of those contexts.

Lord Forsyth of Drumlean: The noble Lord is right: 56 out of 59 of the MPs were elected as Scottish nationalists. They stood in the general election on a platform that the referendum had decided the matter and that the election was not about the issue of independence. During the referendum campaign, their party gave an assurance that this was a once-in-a-generation decision. So it is quite wrong to suggest that that result in any way vindicates the idea that you can rerun the referendum if something else happens which you may or may not agree with.

Lord Wigley: I understand entirely what the noble Lord is saying; all I am saying is that if the outcome was as I postulated, and as he accepts is a possibility—not a probability, but a possibility—there are consequences which, unless we think our way through them ahead of the referendum, will come back to haunt us. I put the amendment forward in a constructive spirit, not to try to pull things to bits. I am sure that the words of the noble Lord, Lord Tebbit, will be heard loud and clear in Scotland. I am not trying to pull things to bits; I am trying to feel a way forward so that we can work together. Even if this is not the formula, there needs to be some formula.

On that basis, I beg leave to withdraw the amendment.

Amendment 61 withdrawn.

Amendment 61A not moved.

Amendment 61B had been withdrawn from the Marshalled List.

Amendment 61BA not moved.

Amendments 61C and 61D not moved.

Clauses 7 and 8 agreed.

Clause 9: Definitions

Amendment 62

Moved by ***Baroness Anelay of St Johns***

62: Clause 9, page 6, line 9, at end insert—

""the referendum period" has the meaning given by paragraph 1 of Schedule 1;"

Amendment 62 agreed.

Clause 9, as amended, agreed.

Clauses 10 to 12 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 10.40 pm.

Grand Committee

Wednesday, 4 November 2015.

Enterprise Bill [HL]

Committee (4th Day)

3.46 pm

Relevant document: 9th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, if there is a Division in the Chamber, the Committee will adjourn and we will resume after 10 minutes.

I must draw the attention of your Lordships to the groupings list. The first amendment should be Amendment 52R, not Amendment 53R.

Amendment 52R not moved.

Clauses 24 and 25 agreed.

Amendment 53

Moved by ***Baroness Neville-Rolfe***

53: After Clause 25, insert the following new Clause—

"UK Green Investment Bank

Omit Part 1 of the Enterprise and Regulatory Reform Act 2013 (UK Green Investment Bank)."

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, this is the Government's only amendment tabled for Committee. It has the effect of repealing Part 1 of the Enterprise and Regulatory Reform Act, which is the legislation controlling the Green Investment Bank. I apologise that this matter has had to be introduced by amendment and that we were not therefore able to debate this issue at Second Reading. Its inclusion in this Bill at this stage is as a result of late developments during our work to introduce private capital into the Green Investment Bank, which we announced in June.

I will explain a bit of the background and set out the rationale behind the amendment. The Green Investment Bank was, I believe, a real success of the last Government. I am sure that the noble Lord, Lord Stoneham, will agree with me on that. Indeed, I hope that all noble Lords will agree.

The Green Investment Bank was set up, in 2012, to mobilise private sector investment in the green economy. It is doing its job remarkably well. So far it has committed £2 billion to 55 green projects and seven funds, alongside £6 billion of additional private investment. So for every £1 that the GIB invests, it is mobilising an additional £3 from the private sector, and it is doing it all on fully commercial terms, showing that green investment can be profitable. It is helping to bring new investment from long-term institutional investors, such as pension funds, into green projects. For example, last month it announced that an additional £355 million was being committed to its offshore wind subsidiary fund, bringing the total in the fund to £818 million. That is all private sector money, albeit managed by the public GIB.

No doubt your Lordships will ask why the Government want to change something which is already so successful. The simple answer is that government ownership is holding back the GIB's ambition. All the while it is owned by government, it is limited in what it can do. It is limited in the amount of funding it can access, because it must compete for its funding alongside schools and hospitals, and it may not borrow freely on the capital markets while on the Government's balance sheet. It is limited in the range of sectors in which it can operate as it is constrained by state aid rules. Moreover, it is limited to operating within the UK all the while it is funded with taxpayers' money. It is currently undertaking a pilot with the Department of Energy and Climate Change to do some international work, but we believe that it could do more. The GIB has been going from strength to strength, and because of this, its ambitions are beginning to outstrip the supply of capital that the Government can and should provide. Our policy aim is to get the market to work in tackling green policy challenges. Bringing private capital directly into the GIB is the natural next step for the company rather than leaving it to rely on public funds.

The repeal proposed in the amendment is not something that the Government have decided upon lightly, but it has now become apparent that it is a necessary step if we are to move the GIB into private ownership. If the GIB is to enjoy the benefits of private ownership, including having the freedom to borrow and raise capital, it must be declassified from the public sector. If it remains in the public sector, it could not raise equity or debt without impacting public sector net debt. The decision on whether an organisation is classified to the public or private sector is made by the Office for National Statistics on the basis of EU-wide rules. In making its decision, the ONS will look at a number of factors, including any relevant legislation, to determine whether the Government have control over the organisation, so control is the key point. The legislation in the Enterprise and Regulatory Reform Act 2013 is highly likely to constitute government control over the GIB, even if the bank is no longer owned by the Government.

The Government understand that people will be concerned about how the Green Investment Bank will continue its green focus without the statutory lock controlling it. I will not pre-empt those questions as I would like to hear what your Lordships have to say, but I will say now that the Government want and expect the GIB to maintain its clear focus on the green economy, and we are confident that it will do so. Indeed, that is precisely the reason why investors will be buying it.

I will bring my remarks to a close by saying that the GIB's management and its independent board is fully supportive of the Government's intention to bring in private capital and understand the need for this repeal. This includes the noble Lord, Lord Smith of Kelvin, who is the chair of the GIB, located of course in Scotland. I hope that your Lordships will be able to support this amendment. I beg to move.

Amendment 53ZA (to Amendment 53)

Moved by ***Lord Stoneham of Droxford***

53ZA: After Clause 25, line 3, at beginning insert—
"(" 1) Subject to subsection (2), "

Lord Stoneham of Droxford (LD): My Lords, our first concern is that this is a blunt instrument to amend the previous legislation. In fact, it brings to my mind the son of Stalin taking up residence in BIS to obliterate all evidence of this institution, so I am grateful to the Minister for saying that the Green Investment Bank has been a great success and was one of the achievements of the last Government. From our side and for the record, we are not going to see it written off, eliminated or wiped clean. There is too much at stake and quite a significant government investment has been made into it.

Let me express our concerns. This is a long-term investment institution. The projects take two to three years to build and begin to earn any operational return, at which point they start to provide a long-term profit stream. We hope that the Government will be trying to take a long-term view and not resort to the short-term thinking which is too common in the City and in the market. It has been very successful. We have already seen £2 billion loaned, matched by £6 billion of private funds, and it is beginning to look as though the bank is a successful operation. But nobody will invest at a premium when we have had less than a year of profit. If the Government are to get their return and the bank is to be put into safe hands, our view is that they should not rush into this. The bank cannot really realise its potential until it has been in operation for at least five years. Having said that, we also recognise that the Government are not really fully committed to it. I suspect that one of the reasons that the executives have been supportive of this proposal is that they have been told that there is no further government funding, so if they do not go down this route they will hit a dead end.

Our final concern is that anybody with the slightest experience of setting up an organisation like this, which has been in place for only three years, will know that it is at its most critical stage when it is trying to approve projects with profitable streams and manage projects that it has already set about investing in. We are now going to have a huge distraction for the executive team over the next six months, as to how it is going to be sold and who is going to buy it. This is another case of where the Government should be setting an example and seeing something through, just as we should be telling the Stock Exchange that it should see more companies through in long-term decision-making and investment, rather than simply trying to get a quick return.

Those are some of our longer-term concerns. Turning to the future, I hope that the Government will confirm that they are going to freeze future funds so that there is no alternative to what they are doing, which is to privatise this organisation. In those situations, we are more understanding: if the Government have limited interest in the green economy then it is better for the bank to go it alone.

There are three objectives in the amendments that we have put forward. We do not think it is good enough simply to amend past legislation without saying what will be in its place, and what restraints on investment there will be in the Green Investment Bank. This organisation has had a central role in promoting green technology, innovation and supply-chain development. How do the Government intend to protect its purposes? The bank has shown that it is sustainable and has long-term objectives. How are we going to make sure that it does not lose its green focus? We do not want it to be like a different organisation, 3i, which was set up by the banks a long time ago. 3i was set up to support businesses but became yet another sort of investment bank. In my view, it lost some of its focus. Are we going to allow that to happen to the Green Investment Bank? We certainly should not when it is there with a specific purpose, set down in the original legislation. We want that protected somehow but it will not be easy.

Inevitably, whoever takes control of the Green Investment Bank—unless there is some controlling shareholding—will find it quite easy to change the articles and objectives. We want to ensure some ongoing green focus which continues the purpose of this organisation, and we have to ensure that the Government get the best return from their investment. There have been some pretty poor examples of this in the past, even in the recent past, and there has been criticism. If necessary, we want the Government to have an ongoing stake in this organisation so that they can get the return and exert some control over an organisation that is only three years old.

We accept that this bank has had real success. It has mobilised investment, shown that green investment can be profitable and set down a marker that we want to see it continuing. We therefore think that before the Government invoke the obliteration of the previous legislation they must set out exactly what they will do, what controls they will insist on and how they will maintain the success of the investment that the Government have already put into this and should see coming forward in future.

4 pm

Lord Teverson (LD): I shall also speak to our amendments and to the government amendment. I thank the Minister for having gone through the Government's motivation here in some detail. I am not completely against privatisation; I understand why the Government might want to do it. However, I think it is a great shame because it is too early and, as my noble friend Lord Stoneham has mentioned, the taxpayer will not get full value if we do this at the moment.

I am afraid that our own amendment is very imperfect. In a way, it is a probing amendment. I had rather hoped that the Government's amendment was also probing because it is about something that is far too fundamental to bring to a Grand Committee, where we cannot vote on the subject or the amendment. There is a real problem there about scrutiny.

As my noble friend said, the Green Investment Bank has been a huge success. I went along to its third annual general meeting when the Secretary of State announced the Government's intentions, and heard

about the great things that the bank is doing. Indeed, the Conservative Party should take great credit for it; the bank was in its 2010 manifesto, which said:

"We will create Britain's first Green Investment Bank, which will draw together money currently divided across existing government initiatives, leverage private sector capital to finance new green technology start-ups".

That was a great vision, which was taken on in the coalition agreement after the Wigley commission, which was set up by the Conservative Party. It was in our manifesto and possibly in the Labour one as well. Anyway, there was consensus that it would be an excellent institution, as it has turned out to be. I have talked to the chief executive, Shaun Kingsbury, on a couple of occasions, one of them fairly recently, and the first thing I did was to congratulate him and his team on everything that they had achieved.

However, the fundamental problem here, even if we accept that privatisation is going to have to happen—that is not all bad, even if it is slightly early—is that we have no idea how slowly or fast there will be mission creep, in terms of the way that the objectives or the memorandum and articles of association of the company might change in future. The government amendment takes away all restraint in terms of legislative boundaries and replaces them with nothing. I deal with companies, most of which are private limited companies as opposed to public limited companies, but it is my understanding that any constitution of a company can be changed, certainly by resolution of 75% of the shareholders. Nothing can be done about that. So I am very concerned that we are taking out the five principles within the previous Act that laid down very precisely what should happen, and which indeed have been the basis of the success of this organisation, its vision and motivation. The question is: how do we keep those principles and that direction for the long term?

I was particularly interested in my noble friend's example of 3i. I have some experience of 3i, as someone else who was in that field for a while. It was set up under the Bank of England soon after the war as the Industrial and Commercial Finance Corporation, mainly with private bank money but very much under the purview of the Board of Trade. In 1983, it was let loose into the market to carry on its work. Originally, it was established to deal with SMEs but its current website features very large mid-cap companies. Its investors will probably not get out of bed for a deal worth less than £50 million to £100 million. It closed all its regional offices as time went on and has a very strong international portfolio. In fact, it rightly brags that it has teams in some nine or 13 countries across the globe, yet it was set up to stimulate SMEs within the United Kingdom. Many years later, this is where it has got to.

I also question whether it is necessary to take this section out. I have talked to staff at the Office for National Statistics and looked at the websites and at the *European System of Accounts—ESA 2010*, as I am sure the Minister has. If she has, she probably fell asleep after the second paragraph, as I almost did. One of the things that came over to me from looking at *ESA 2010* was its impreciseness and the degree of interpretation that was possible. When I looked at the Postal Services Act 2011, which privatised Royal Mail, strangely enough I found articles of special legislation that restrain what the Royal Mail can and cannot do. Section 29 of that Act is headed "Duty to secure provision of universal postal service". Section 30 talks about the details of the "universal postal service" provision and Section 31 even talks about detailed minimum requirements of that provision. It seems to me that Act deals with exactly the same thing, in that a constraint could be imposed by a regulator in that instance but a constraint could be imposed in this instance by one of the many successors to the Financial Services Authority, which is now the FCA. I am sure that provision could be transposed into this legislation.

This boils down to two things. First, for this to move ahead we have to have an anchor to make sure that this organisation stays within the role it is meant to fulfil. I completely agree with my noble friend that we need value for taxpayers' money, although that may be difficult to achieve given the speed at which the Government are proceeding. Secondly, as shown by the Royal Mail privatisation, which is no longer a public body and does not appear on the public accounts, there is no certainty at all that the provision I am discussing is not needed. I ask the Minister to provide us with the advice that she and the department have received from the Office for National Statistics so that we can assess it for certainties, uncertainties or probabilities. I understand entirely why this has happened but I reiterate that it is unfortunate that such an important government amendment has been brought forward in Grand Committee, when we cannot vote on it. That is a fundamental problem and we need to consider how we move it forward in this Committee.

Lord Cope of Berkeley (Con): My Lords, I disagree with the last point the noble Lord made. If the Government wish to propose an amendment of this kind, the Committee stage is exactly the right place to do it. That is where it can be discussed in detail and at length. If it were not introduced until Report, I think that people would complain about that and about the more restricted nature of the debate that would take place. Therefore, I do not think that my noble friend the Minister should apologise for introducing it in Committee. On the contrary, she should be congratulated on that.

Lord Mendelsohn (Lab): My Lords, I declare an interest in that I have a corporate finance business. We have not commercially done any work in this sector, although we informally provided some advice on this area.

I welcome the discussion and the introduction of this amendment. I will preface my comments by saying that we on this side take a very questioning view of these provisions in Grand Committee, and we are more than happy to adapt our view to explanations that are forthcoming. We may take a different view on Report, but we have far more questions now than we are comfortable with as regards this provision. I thought that the contribution of the noble Lord, Lord Stoneham, was very good, and I share a lot of the reservations that the noble Lord, Lord Teverson, just expressed.

I will give a sense of where we are coming from on this. Our overall concern at this stage is that this is all tactics and no strategy. Our query is whether there is a strategy, but this tactic does not tell us what it is.

[Lord Mendelsohn]

Our concern is that as a tactic in and of itself it is probably incorrect. We understand the Government's stated objectives, which are that they want to grow the business and make it possible to take on a wider range of sectors, to have a multiplying impact on mobilising investments and to encourage private sector enterprises to get the green investment tide rolling. Of course, nothing makes that happen more effectively than beneficial public policy, and I am not sure that we have had a great deal of that or that it is encouraged in a lot of the areas that the Government had previously wished to encourage, but that is another matter that I may return to later.

There is also no doubt that the Green Investment Bank has indeed had some successes. I will also state that its structure, the recruitment of the staff and many of the aspects of the operation that exist are to be commended. It is a good team and a good group of people, and they have played a very good role in triggering great attention and focus, trying to lever investment and interest in green investment. The costs of the bank are not inconsiderable; I think the run rate is now probably something in the region of around £30 million, which is covered by a grant from the Government. That will soon fall on its operating budget, which does not currently exist, although with the establishment of its most recent fund it now has some management fees to be able to offset that.

However, we take a different view about the green investment market, and the notion that things are all hunky-dory and that things have completely changed is patently not the case. It is absolutely clear that the green funds are underperformers, and it is certainly true that a number of green investments have vanished; the participation of an institution such as the Green Investment Bank has provided reassurance and time for investment professionals to be able to work out a number of the details which other commercial organisations do not have the time or ability to do. It is also true that the investments are quite hard to sell and that in many cases the funds will end up being recurring revenue streams and will be sold on that basis. It is also true that the price of oil is still low, having tumbled, which means that exploration becomes less economic, reducing supply and increasing the problems with the viability of renewable markets. Indeed, fairly recently Jan-Willem Bode, the director of one of the largest green energy organisations in the UK, said that many shareholders,

"feel like pulling the plug right now because it is just too much negativity thrown at the sector".

That was in relation to the Government's approach to green subsidies. Dwindling demand and low supply in the energy market have not boded well for a floundering alternative in the energy investment market. It is therefore not entirely accurate to take the view that everything is absolutely fine.

I believe that the bank has had a tremendous success most recently with its most recent subsidiary, the Green Investment Bank financial services fund, which is focused on offshore wind. I want to make the point that offshore wind is in a different category—it has a totally commercially viable fund capacity. The new generation of offshore wind equipment is larger and much more efficient and is something the market can already take up. I do not want to undermine the success of the bank; it is good that it did it, but that success is not an exemplar, nor does it prove a variety of other things. In fact, it is the exception which, in many ways, proves the rule.

The key to the Government's argument is that this is a technical amendment needed to satisfy the Office for National Statistics. In another place, there was recently a debate on this and there was assurance that this amendment does not change or alter the objectives of the Bill, or even close in the articles for assisting in other green projects. There was assurance that these objectives will remain and that the bank will be fully committed to them. Our analysis is that this is clearly not the case.

4.15 pm

There is too little detail and there is no proper business model. The bank's profit is anaemic. It is £100,000. This is based on the fact that the money comes from a grant. The £100,000 does not even include the bonuses that would normally be provided for such an institution to carry its investment professionals. Then there is its portfolio claim.

Our broader analysis is also troubling. This issue goes back to the 2010 election. At that time, the global financial crisis had created an obvious barrier to raising high levels of private capital for investment in renewables and low-carbon industries and our ability to meet the UK's climate change targets was in severe danger. The obvious solution was a public infrastructure bank able to lend to worthy green projects while leveraging private sector cash—a very traditional model. That is a variant of what was pursued. But, as we said, the market has not changed as much as people anticipated. While there are different conditions, the investment environment continues to face many challenges. The Green Investment Bank has proved that public sector banking, free from the short-termism and bonus culture of the City, can be a successful model. The Green Investment Bank is the most active investor in the UK green economy. It has invested, I think, £2 billion in 50 or so projects across the UK. These investments have been in a whole range of different things on a commercial basis with a reasonable return, but we suggest there is a weakness.

There are a variety of different options for what we do next. We are not inherently opposed to privatisation. Putting the bank into the private sector is not an unnatural step and is a legitimate option. But it is not inherently the natural next step and it is only one of many options. Even if it is decided that that is what is going to be done, the options available are much wider than the Government are suggesting.

In another place, the Parliamentary Under-Secretary of State in the department said that £2 billion had been invested in 55 projects and that another £6 billion had been put in by the private sector. I would like to know the basis on which that £6 billion was calculated. What was the bank's role? It was not the arranger and it did not always have the principal role. How did it pull the money in and what is the nature of what has been pulled in? That, in and of itself, provides part of the conclusion to what its strategy should be.

It has also been argued in another place that the bank has been able to attract new sources of finance into green sectors for the first time. It is certainly true, within the context of a fund structure, that other forms of investment have come in. It has maintained the commercial capacity of a long-term infrastructure fund with a very similar investable pattern to roads and other things. Are there other areas where the Government can suggest this has been the case?

As I say, the Government can argue that the bank should grow and develop its balance sheet, gain access to private capital markets and borrow. But we would be grateful if they would be clearer about their sales objectives. What are they? Are they being established on the basis of price or on the Government's future role? We are in the middle of a spending review assessment. Is there a view on what the Government's long-term financial commitments or options are? Have options been excluded that would provide further cash, even if that means bridging finance? Will they provide cash for the deal with the private investors that they are doing? They are market testing to private investors. They have decided to dismiss an IPO because they say that its profits are anaemic. An IPO is a legitimate option on a portfolio, particularly as the Government have been fairly silent on what return they expect for the £2 billion already invested.

There is no view on what is happening with the rest of the money that has been provided and on whether it can be called or is going to be taken back by the Government. There is no view on what the shareholder position should be. There is no view on the shareholder agreement or on the size of equity. Even if the Government wanted to have a shareholder agreement—I must just compliment the UK; we have the greatest minority protections for shareholders—what could they possibly get in a shareholder agreement that would be beyond what was available under current statutory provisions? Is there anything specific that the Minister can suggest? Is there going to be an attempt to maintain a mission for this investment bank? What will the long-term government participation in it be? What are the incentives for the advisers? It is important that the Government answer all those questions and satisfy us before we can be entirely happy that this can move forward.

Our suspicion is that this is really about the way in which the Government will test the market, looking to maximise price, getting the largest sum and withdrawing from this as an investment, with no overall clarity on the shareholding retained, on how the mission is generated or on what sort of provision, underwriting, deal or other sorts of expenses will be given over to a private investor. We would like to know what other structuring options were considered. The noble Lord, Lord Teverson, was absolutely clear and we are absolutely convinced that other structuring options are available. I should like to know whether the Government feel that they have exhausted every last option, and I may be mischievous enough to suggest one at a later date. I should like to know whether there is clarity on a combined commercial view and strategy, whether there is a government view on the market structure and whether it will be able to meet the Government's targets, and whether there is a price that the Government consider acceptable, given that the book value has increased by a certain amount. Crucially, how do the Government intend to maintain the bank's mission? It is far too easy for this to change—effectively from the day of the private investment—into a different sort of institution and a different sort of bank. How do they expect to maintain its mission?

There is indeed a way to maintain it that deals with the ONS and with a variety of issues. As I said, we may be mischievous but we are loath to suggest it at this stage because it is for the Government to come forward with a much clearer view of their strategy and intentions, as well as of the detail. As I said, we are not opposed to taking a different view on Report but, at this stage, one can only think that we have been given a very limited understanding and a rather limited—how do I best describe this?—window on what the consequences are of allowing this amendment to go forward on the basis of a rather poor technical argument about how to deal with the ONS. We would be grateful if the Government could come forward with a much greater level of detail.

Baroness Neville-Rolfe: My Lords, I thank noble Lords for this useful discussion. The noble Lord, Lord Stoneham, talked about "son of Stalin"; I think that it is more "son of Thatcher". This is an enterprise Bill, after all, and we all seem to agree that the GIB is remarkably entrepreneurial. That is why we want to free it up. I am glad that the noble Lord, Lord Mendelsohn, is not opposed in principle to privatisation. Indeed, I agree with him about a lot of the positives that he mentioned concerning the framework in the UK, with shareholder rights and so on. I think that we have a very good base here. He brings a lot of expertise to the debate. He has rather naughtily asked a few commercial questions and I am not sure that I can answer every single one. However, we understand that this is an important issue that is of interest to a great many people, beyond the confines of this room today. There are a number of points raised to which we will give careful consideration.

I will now move on to the amendments and will answer questions as I go through. Amendments 53ZA and 53ZB would require the Government to lay a report in both Houses detailing the proposal to dispose of shares in the GIB, before the repeal of the existing legislation contained in the 2013 Act could take effect. I welcome the intention behind these amendments, which is to ensure that Parliament is kept informed of the Government's move to introduce private capital into the GIB. That, frankly, is entirely right and fair, not least because of the level of interest. However, I would be concerned that these amendments, as drafted, might prevent the Government ensuring that the legislation is repealed at the appropriate point in a transaction process, if that were to fall at a time when the House was not sitting. As your Lordships will understand, the Government need to retain the flexibility to manage the complicated sale process.

However, it is our intention to keep Parliament fully informed. I am happy to commit today that the Government will be sure to provide Parliament with much of the kind of information suggested by noble Lords as soon as possible after any sale has taken place and at the appropriate time in the future, should the Government retain a stake that might be sold later, which obviously is an option.

[Baroness Neville-Rolfe]

Moving to the Government's amendment, I hope that I can reassure noble Lords on a number of specific points that they have raised today. The noble Lord, Lord Teverson, asked whether it was too early for privatisation. I believe that the answer is no. We feel that moving GIB into private ownership is the natural next step for the business. The company itself, as I have already said, fully supports the move. There is strong interest in acquiring a stake in the bank from a number of larger-scale institutional investors, as could be confirmed by some comments. In his evidence to the Environmental Audit Committee last week in the other place, the CEO, Shaun Kingsbury, expressed his support for government plans to seek private ownership for the bank.

To answer the question from the noble Lord, Lord Mendelsohn, the Government will explore all options for a sale and, as I will emphasise, our decisions will reflect the outcome that we believe is in the best public interest. Obviously the proceeds will depend on how big a stake is sold and the outcome of negotiations with investors about the value of the company. We will need to be satisfied that any transaction represents value for money for the taxpayer.

Noble Lords are interested, understandably, in the transaction details, in particular whether the Government intend to retain a stake. The Government intend to sell a majority of the bank, as we have made clear, so that could involve retaining a minority stake. Our decision will depend on the outcome of the discussions that we are having and will have with potential investors. Some investors might welcome government retaining a stake, while some might want to buy 100%. To respond to the noble Lord's point, whatever we decide to do, we will be driven by the public interest and our goal of achieving the best outcome for the Green Investment Bank itself. However, I must point out that if the Government retain a sizeable minority stake—by which I mean one that would allow them significant control over decisions made by the company—we may not achieve our objective of ensuring that it could be classified to the private sector.

Lord Mendelsohn: I will ask the noble Baroness a quick question. She said that this would be in the interest of the Green Investment Bank. The Green Investment Bank is a commercial institution which the Government are about to sell, so the terms of its commercial operations are very different—they are not inherently in the public interest because the public interest is defined as the mission which they gave it, and the members of the Green Investment Bank and its management have an obvious alternative economic interest. When she uses the terms "public interest" and "the Green Investment Bank's interest" they are two entirely different things which may conflict in many ways when it comes to a transaction. Could the noble Baroness please be a bit clearer about what she means when she uses those terms?

Baroness Neville-Rolfe: I will come to that as I come to my final paragraph, if I may. Perhaps I could first clear up one or two points that have been raised. The first was about the advice from the ONS, which I think the noble Lord, Lord Teverson, asked for. We are satisfied that unless all the legislation is repealed, there is a real risk that the GIB could not be classified to the private sector. We have come to that view based on our understanding of the European statistics authority's guidance, which the noble Lord has also had a look at. I was also asked whether the Government will freeze future funding.

4.30 pm

Lord Teverson: I will not interrupt the Minister regularly but should I understand it that this is a government interpretation of reading the ONS material and the European statistical material, or have the Government received any advice from the ONS? The way I read the Minister, it was the Government's interpretation.

Baroness Neville-Rolfe: The Government have been in discussion with the ONS but this is a serious matter involving a major transaction, and the Government have to take their own view of the rules as laid down. That is the view we have come to after very serious thought. As your Lordships can imagine, we would not lightly have added this provision to the Bill, enterprising though the GIB is. We are convinced of the need to do so, for the reasons that I set out because of our interpretation of the ESA rules.

Lord Teverson: Can I ask the Minister one follow-up question on that? If the Government found that it were possible to keep those five principles in legislation, would they wish to do so?

Baroness Neville-Rolfe: The noble Lord makes a good point. It is clear to the Government that we cannot retain control over the Green Investment Bank if it is to be declassified from the public sector following a sale. I do not think that really answers the question about the five objectives, which I will reflect on and come back. I think the Committee can understand the basic point that we are making and obviously, as I will come on to explain, we want the Green Investment Bank to continue to be a Green Investment Bank and to operate effectively.

Perhaps I could therefore move on to the question of the remit and reiterate the point that I made in my opening remarks. It is the Government's policy to move the bank into private ownership and we cannot retain control over its operations. That has to be interpreted in law and is the challenge that we are working with. However, I would like to give a bit more detail on how the bank will, as we see it, retain its mission.

Lord Mendelsohn: Just to be absolutely clear: is the Minister saying that the principal, driving objective is to transfer the Green Investment Bank into largely private ownership? If that is so, everything else is entirely secondary. If those are the terms, that is why there will be variations as to whether the Government have a long-term commitment or wish to do any funding. Is that the principal and overriding concern, more than anything else? Because if that is the case, it means that everything else is willing to be thrown under the bus.

Baroness Neville-Rolfe: We want the package to look right, so "thrown under the bus" is the wrong metaphor. But we said clearly in June that we want to privatise the Green Investment Bank and when we came to do the work, we discovered that the ESA/ONS rules would not allow us to do that in this form. That is why we have taken the step of bringing this amendment to the House.

Lord Stevenson of Balmacara (Lab): I hesitate to cause more pain to the Minister but my noble friend Lord Mendelsohn has hit the nail on the head. If you are selling more than 50% of the stake then you are not in control of the bank. But control is exercised in public corporations at a variety of levels, as the Minister knows all too well from her own commercial experience. It would not be possible for a government shareholder holding around or less than 30% to make any impact on the overall management and control of the company because it would be down to the majority shareholders. The point is: what are the Government trying to do here? Is it just 51% to 49% or would they accept, in favourable circumstances, 71% to 29%? Those are the two options and, within that, the Government have a very limited role to play.

Baroness Neville-Rolfe: I think I made it clear that there are a number of options regarding the share, but I had also made it clear that we are looking to sell only a significant stake. The heart of the problem is that if we could keep the legislation without prejudicing the bank's status we would, but the advice we are working on is that we cannot do that.

Lord Teverson: That is an excellent response and I welcome it. I hope that we can find a way of showing the Minister that it is indeed possible, and in that way help the Government to achieve their objectives. That would be an excellent solution to find.

Baroness Neville-Rolfe: I am glad we are making progress. Green investment, which I am not an expert in, as all noble Lords know, is what the Green Investment Bank does. As I see it, that is the brand of the Green Investment Bank—after all, it is called the Green Investment Bank—so the parallel with 3i is not entirely fair. Because of that, the Government fully expect that potential investors will wish to maintain the bank's green focus and values; they will know what they are buying into.

Lord Mendelsohn: On that point, is an absolute assurance or guarantee required? Would the Government fetter their ability to do it, or would that lead them into the same problems during the sale process?

Baroness Neville-Rolfe: I think I will have to answer as I have before: we cannot prejudice the bank's status. I think that our heart is in the right place but we are in some difficulty here. As part of any sale discussions, potential investors will be asked to confirm their commitments to these values and set out how they propose to protect them. We envisage that this would involve the new shareholders agreeing to retain the green objectives in the Green Investment Bank's articles of association, to which the noble Lord, Lord Stoneham, referred at the beginning, and to ensure that the bank continued to invest in a way that achieved a positive impact. I hope that that helps. We also expect that new shareholders will agree to continue the GIB's existing standards of reporting on its green investment performance, and provide independent assurance of that. I understand that these commitments are not as strong as a statutory lock, but it is simply not an option to impose more binding conditions that would require the business to act in a particular way since that would have exactly the same effect as this legislation. The GIB would very likely have to remain in the public sector, with the problems that I described before.

Lord Mendelsohn: I am trying to hone this down to one particular point. The Minister has said that these are expectations, not commitments that we can readily accept. An expectation is not a commitment in the first place. I am trying to work out what thresholds any potential investor has to pass in order to meet her expectations.

Baroness Neville-Rolfe: My Lords, I am in some difficulty because we are still designing the sale process. I know that the noble Lord has been in meetings where we have tried to explain the situation, and he has asked lots of questions. We have to try, with the House's help, to find a way through. I have tried to explain some of our expectations and what we are trying to achieve, which I do not think is a million miles away from what others here want to achieve.

The noble Lord, Lord Teverson, rightly asked a question about the Royal Mail and whether the controls over it helped us in terms of a precedent. Actually, his comments show how valuable it is that we have introduced this amendment in Committee rather than leaving it until Report because he has asked some very good questions, and the Bill will of course go on to the other place. The simple answer on the Royal Mail is that it is regulated because it is designated as a universal service provided by Ofcom; it is not itself controlled by legislation. The same is true for other utilities, such as water companies, that choose to operate in a specific sector.

I understand that noble Lords will want to reflect on our discussion. The Government too will of course reflect on the discussions raised and on the amendments proposed. I note that noble Lords wish to debate this on the Floor of the House.

I said that I would respond on the question asked by the noble Lord, Lord Mendelsohn, about public interest in the GIB. The public interest lies in the GIB having a strong and secure future in the private sector as a green institution, and securing the best value for money for UK taxpayers.

I agree with my noble friend Lord Cope of Berkeley that it was right to raise this in Committee. In view of today's discussion and the points made by noble Lords, I will withdraw my amendment for now and the Government will retable it on Report.

Lord Stoneham of Droxford: Can I just clarify one thing? I accept that the Minister says that she will withdraw her amendment. She said that she agreed with most of the points in my amendment, and that

[Lord Stoneham of Droxford]
Parliament will be properly consulted. Given the uncertainty, what is the problem with putting some procedural amendment—I took my drafting from the Postal Services Act—in the Bill? Why cannot something like this be considered? I ask her, with due respect, please to consider coming back with a fuller amendment rather than something that gives the Government a complete blank cheque, which will not be acceptable in this House or the other.

Lord Teverson: I agree with the noble Lord, Lord Cope; he was absolutely right that this debate should have come to this Grand Committee. What concerned me was that the Government might try to make us agree the amendment, and I am grateful to the Minister for not doing that. It is an excellent step that I fully welcome.

Lord Mendelsohn: From this side, we thank the Minister for her approach to this. We want to be clear that we believe that it is possible to structure this so that the mission can be protected and there can still be a transfer into the private sector. If the Government come forward with such a proposal, it will have our wholehearted support.

Baroness Neville-Rolfe: I am grateful to noble Lords for their courtesy. It is a bit like going to the gym, this afternoon, but I am glad that we have had the discussion. Of course I will consider before Report what we can do to meet the concerns expressed. As I said, I am as keen as noble Lords to find a way forward that allows this privatisation to go ahead and does not lead us into this rather surprising cul-de-sac. We will have a think about process, given that there is agreement—not on everything but on some aspects of issues that we have discussed this afternoon.

Amendment 53ZA (to Amendment 53) withdrawn.

Amendment 53ZB (to Amendment 53) not moved.

Amendment 53 withdrawn.

4.45 pm

Amendment 53ZC

Moved by ***Lord Whitty***

53ZC: After Clause 25, insert the following new Clause—

"Report on the Pubs Code

(1) If the Pubs Code Adjudicator identifies a pattern of cases of pub-owning businesses selling tenanted pubs in order to exempt their business from the Pubs Code to the detriment of the tenant, the Adjudicator shall write a report to the Secretary of State outlining recommendations of action to be taken.

(2) The Secretary of State shall issue a statement within three months of receiving any report under subsection (1) outlining what action he or she intends to take to protect the tenant and if none is to be taken the reasoning for that decision."

Lord Whitty (Lab): My Lords, we are about to move not to the gym but to the pub. After my previous exertions on this matter, I had hoped that I could resume my normal relationship with pubs as a consumer rather than going into the details of tenancy arrangements. However, I am afraid that the Government have forced me to bring it up again in this Bill.

To understand the context of these amendments I need to take the Committee back to the related predecessor Act—the Small Business, Enterprise and Employment Act, passed only earlier this year, and in particular to the proceedings of the Grand Committee in this Room on 28 January. There is unfinished business here concerning the relationship between large chain pub companies and their tied tenants. This is often quite a fraught relationship. Sometimes it is quite happy but it is always pretty unbalanced. The 2015 Act led to the establishment—or should have—of a Pubs Code and the Pubs Code Adjudicator. When I tabled the first two amendments in this group, my intention was simply to give the Government a gentle nudge. I was trying only to work out why it had taken 11 months for any proceedings on the Act's provisions to come forward to fulfil the changes agreed at that time. However, only on Thursday of last week, all that changed. The department issued a consultation document which purported to be the basis for bringing forward the intention of the previous Act to provide a market-only rent option and a process for assessing the choice for tenants, as had been promised in Committee and later stages of the then Bill in this House. However, the consultation document that emerged last week is a complete travesty. It dilutes and distorts the Act's intentions and goes directly against assurances given by Ministers, including those given in this Room. It is such a distortion that my charge against the Government is not just one of delay but the rather more serious one, I am afraid, of a degree of bad faith.

I need to take the Committee back to the history of the earlier Bill. It is quite an unusual history because during the Bill's passage through the House of Commons, the Commons included in it the then Clause 42 establishing the right of a tied tenant of a large pub chain to move to the market rent only form of tenancy free of tie. The clause was proposed by a Liberal Democrat Back-Bencher but had widespread support on the Back Benches of all the major parties. It was opposed in the Commons by the Government but the Government were defeated. It seems to me that the Government have not got over that defeat, although we have a slightly different Government now.

When that Bill came to the Lords, the department and Ministers argued that the Commons clause was unworkable as it stood. They said that the Government accepted the principle of the clause, which the Commons had supported, but that it would need to be substantially redrafted and put into effect by secondary legislation. In Committee in this Room on 28 January, they tabled a complex series of amendments to replace the Mulholland clause. I think that the discussion on those amendments went on for even longer than did the discussion on the previous amendment this afternoon. No doubt the noble Baroness remembers it.

It has to be said that campaigners and the proponents of the then Clause did not initially agree with the position of the Government on this issue. However, the Government argued strongly that they accepted

the principle, and that therefore their amendment reflected the principle more accurately and was more workable, and that the provision to introduce secondary legislation would achieve exactly that—make it more workable. Some of us in this Committee—the noble Lords, Lord Stoneham and Lord Snape, and my noble friend Lord Berkeley, who is not in his place, and, indeed, my own Front Bench—expressed concerns about that position. Others, however, to put it gently, probably represented more the views of relatively large brewing chains.

For my own part, on that day I went into the Committee thinking that I would oppose the Government's amendment and shout "Not-Content". That is quite an unusual thing to do in Grand Committee but I felt that strongly about it. Therefore, the relevant amendments would have fallen and the Mulholland amendment would have stood. However, that day, the assurances which were given by the Minister herself of the Government's good intentions, which she beguilingly argued, convinced me that I ought to accept the Government's good faith, as well as the fact—there was another fact, of course—that if we did not accept the Government's amendment they might have removed the whole clause at a later stage, and we would have been slightly over a barrel. Nevertheless, I came out of that meeting thinking that there was good faith all round. Indeed, in the early stages thereafter there were discussions between the department and the various industry and tenants' organisations and so forth, and that faith seemed justified.

However, then we all got tied up with an election, changes of ministerial responsibility within the department and changes in the civil servants responsible for this area, which of course I understand. Therefore there was a delay in producing the consultation, and communications with the tenants' organisations and the campaigning organisations virtually ceased. Then, as I say, after some months of virtual silence and with no consultation on the text, two days after I submitted my first two amendments in the group, the consultation document was issued to an astonished world last Thursday—astonished, and pretty alarmed.

One person in all this context who has not changed, apart from some of my noble friends and others on this side of the Room, is the Minister herself, for whom I have great respect, even affection. She is in no way personally to blame for this, in the sense that she has never had the executive responsibility within the department for this area. Having been a Minister myself, I know that we sometimes have to take legislation through this House that has been concocted by our colleagues and which we may not entirely understand or indeed agree with. In this case, I understand that her colleague Anna Soubry is responsible for this area. Anna Soubry is marketed as the Small Business Minister, but in this context she appears to have acted entirely on behalf of the large brewery companies rather than the small businesses which the tied tenants represent. The fact remains that the Minister, on behalf of the Government, gave certain assurances on the 28 January proceedings.

To boil it down, there are two key ways in which the consultation document appears to negate the intention of the original Commons amendment. There are significant limitations on the triggers for a market rent option, and there is a complete deletion of the provisions for a parallel rent assessment, which would give the information to tenants of all sorts on which to base their decision as to whether to go for an MRO or not.

On the first of those, on that day in January, the Minister said:

> "Our amendments will provide tied tenants with the right to a market rent only agreement at a number of trigger points, including at a rent review; at a lease renewal; when there is a significant and unexpected price increase; or if a local economic event occurs that is outside the tenant's control".

However, in the consultation document the Government limit this to when there is a rent change that increases the rent above inflation, or to a situation where tied beer goes up by over 5% or tied services and other products go up by over 30% or 40%. Clearly, this greatly limits the trigger points for the MRO to be sought, and is contrary to the assurances made.

In the same debate the Minister went on to say:

> "Although prospective tenants will not have the right to the market rent only option, our amendments provide that they will have the protection of the parallel rent assessment—PRA—which will show them how their tied deal compares with a free-of-tie deal".—[*Official Report*, 28/1/15; col. GC 92.]

However, in the consultation document, the PRA is deleted entirely. Its new, prospective or indeed long-standing tenants who are not affected by the limited triggers for MRO will not be able to find out if their rents are fair before they go down that road through the PRA process because that process is now dropped. This is a rather sorry state of affairs. Given that there is no easy place in the text of the Bill to hang these amendments, I hope that we can resolve this in some way before we end the proceedings on it.

My Amendment 53ZC, which of course was drafted before the consultation document appeared, would simply require the adjudicator to report on any manoeuvres of pub-owning businesses trying to circumvent the effects of MRO by selling off or otherwise disposing of pubs. Amendment 53ZD is in the same area, really; it revisits the discussion that we had last time on the threshold issue so that pubcos gaming the system to avoid inclusion in the MRO rights for tenants by changing the status of some of their pubs, to bring their total of pubs below the 500 threshold, would be changed by making the 500 threshold apply to pubs of any kind. On present numbers this would probably affect only one pub chain, but you could conceive that it could happen in future. Also, it may be only one chain but there are rather a lot of tenants involved.

My third amendment, however, goes to the heart of the matter. It reflects my concern at the consultation paper, and tries to reinstate and require the right to parallel rent assessment for all tenants and therefore restore the original intention of not only the Mulholland proposal but the final amendments that the Government put into the Bill in Committee and on Report in this House. I imagine that the Minister might have been advised to soft-soap us and say, "Well, all this is in the consultation and we can reply to it". It is interesting, though, that while the consultation is long, as are many consultations, and we are asked to reply on 22 specified questions, not one of those questions refers to the PRA. The dropping of the PRA is simply

[LORD WHITTY]
stated. True, people can reply on the totality of the document, but most people's responses will be based on those questions, not on the Government's pre-emptive strike of saying that they are not going to proceed with part of the Act that they themselves put in.

There has of course been another change: a change of Government. There are no Liberal Democrats now in BIS. I have to take account of political realities, even here in the House of Lords, but it is a pity that consistency did not run through this, nor indeed does respect for the will of the House of Commons. I presume to advise the Conservative Party that it should not go back to a position that it very much held in the early years of the last century—namely, that it was essentially the political front of the large brewers. That is what this is about, because the balance of power between the tenants and the large brewery companies is very much in favour of the latter. The Mulholland amendment was designed to change that in an important way, and I and other noble Lords thought it had achieved a degree of consensus politically in both Houses. However, the Government, through their consultation paper, now appear to have sabotaged that.

In my view, the best solution would be if the department decided quietly to jack this consultation paper and withdraw it. There is another stage of consultation to come on other parts of the Act, and the department could relatively easily present us with a different consultation paper. If it does not, although I cannot press these amendments today, this is something that we will have to find a way of returning to on Report. Meanwhile, I beg to move.

5 pm

Lord Snape (Lab): My Lords, I support these amendments so ably moved by my noble friend. Like him, I hesitate to lower the temperature of the Committee. As he put it, earlier we had amicable discussions that did not please everyone making representations to noble Lords on both sides of the Committee about the future. We thought, after our discussions on 28 January, that we had an agreement and that we could rely on the good faith of the Minister. As my noble friend says, although the Government have changed since 28 January, we have the same Minister as when we discussed the previous Enterprise Bill.

I hope that I will not need to get too personal in the course of this debate about ministerial responsibility and accountability. However, I remind the Minister that she made certain pledges during those deliberations on 28 January and that we expect those pledges to be confirmed today, rather than her simply sticking to the terms of the consultative document. Like my noble friend, I was shocked to see this. My first indication that the consultative document had been issued was when I received a phone call asking if I had seen the front page of the *Morning Advertiser*. Surprisingly enough, that is not a publication that I normally enjoy over my breakfast cornflakes, but I made a point of looking at the content of the front page online and, like my noble friend, I was shocked at what I saw. It appears that those pledges that were given on 28 January are to be cast aside because we have a new Government, and I feel that people who made representations about the previous Bill and the present one will feel betrayed—I choose my words carefully—if the words in the consultation document are to become law.

On 28 January, I said in Committee that:

"At Second Reading, the Minister accepted on the part of the Government the will of the Commons and said, basically, that the Government would adopt the principles that the Commons had advocated with regard to pub codes and publicans."—[*Official Report*, 28/1/15; col. GC 141.]

All that has been cast aside. The Minister replied in her pleasant and emollient way that she would listen to what the Committee had said and that we could in effect rely on her to bring forward legislation that would meet at least some of the points that we had made. However, as we heard from my noble friend when he moved his amendments, the PRA aspect for the future has been dropped completely.

I ask the Minister what connection there may be between the publication of the consultation document last Thursday, in such an apparently hurried fashion, and the notification from my noble friend and others that various amendments would be tabled to the Bill to ask about progress so far on these matters. It will not have escaped the attention of noble Lords on both sides that the normal procedure for legislation like this, if the House of Commons had voted in the way that it has and the House of Lords had accepted the view of the House of Commons, would be a Bill that would have incorporated the changed views that had been agreed by both Houses. We accepted from the Minister in good faith the need for a consultation period lasting up to a year, and we accepted the assurances that the will of both Houses of Parliament would be respected in the future. That is not what we have here.

I await with interest the Minister's explanation as to why, other than the fact that the Government has changed. Some former House of Commons Whips more senior than I are present in the Committee today, and I realise that there is a convention that one Parliament cannot bind another. However, I hope that there is also still a convention that ministerial promises are worth the paper that they are written on. We in this Committee expect those promises that were made on 28 January to be kept this afternoon.

Lord Hodgson of Astley Abbotts (Con): My Lords, those of us who sat through the long reaches of the night on the Small Business, Enterprise and Employment Bill earlier in the year may feel like the football manager being interviewed on "Match of the Day" who says, "I have a sense of déjà vu all over again". We are repeating the arguments and, although it is almost a year later, I should say that two years ago next February I was a director—I should not say that I was a director, but that I had an interest in it—of one of the pubcos that is covered by the code. At some point I think I ceased to have an interest, but for the purposes of the debate I think I should put that on the record.

Behind the thinking of the noble Lords, Lord Whitty and Lord Snape, about parliamentary procedure is really the question of pub closures and the impact on tenants in particular, along with the reasons why our pub sector is contracting. This is what parliamentary procedure promises and it may be the hook to hang it on, but that is what we are concerned about, wherever

you stand on the argument. Underlying the noble Lords' arguments is the belief that the basic reason for the accelerated rate of closures in the pub sector is the activities of the larger pub-owning companies. It may be argued that they are often predatory and inimical to the rights of tenants. I have to argue with that because I am afraid I think that that is too simplistic an approach to a very complex matter. It is more complex than those who have moved this group of amendments appear to comprehend. Indeed, I argue strongly that if the Government were to accept the amendments, the danger is that it would accelerate rather than slow the rate of pub closures.

If the noble Lords are right about pubcos predating on tenants, the rate of closures in the tied sector would be much higher than in the independent sector, whereas the CGA Strategy analysis shows that the rate of closure is broadly the same—perhaps slightly higher in the independent sector but, as I say, about the same. In those circumstances, it is strange that it is being argued that the pubcos are the cause of it. It seems to me, given that the rate of closure is the same across both sectors, that it is about something much more deep-seated than merely the activities of three or four companies. The reality is that the whole pub sector is under the most terrific pressure. It is not the operators that are causing it—they may have done in some places, but I will come back to that in a second—rather, it is the market.

The market can be looked at in various ways. The brutal fact of the matter is that we can leave this House and buy a pint of lager for 75p, 80p or 90p a pint. It is available in the local supermarket. Many people would prefer to pay that price than pay £3 for a pint in a pub. They take the drink home and drink it there. Along with the fact that some young people buy "a slab", as it is called, in the supermarket to drink in the street and then go into the pub to watch the football, that is one of the reasons why pubs are struggling. Moreover, there has been a regulatory impact on pub operators, owners and tied tenants, whether it is licensing, smoking, drink-driving, the increase in council tax or the late night levy for pubs that wish to extend their financial take by opening for longer. Not one of these issues on its own is back-breaking; they are all straws, but together they make the life of a pub operator in whatever form very difficult. The sector is not profitable enough now and it is under pressure wherever it is. Unsurprisingly—if I was a tenant I would think this—tenants think that somewhere there is a hidden pot of gold that they cannot get their hands on and is somehow being hidden from them.

There is another, psychological reason for disapproval of larger pubcos. For many people, taking on a pub is a lifestyle choice—a second career. As they undertake it, they leave the pressure of a nine-to-five job and have visions of themselves as cheery landlords dispensing pints and homespun philosophy over a bar as the evening sun goes down. However, tonight there is not much sun going down. You will be sitting in your pub dispensing not many pints to not many people and wondering why on earth you are there. In reality, running a pub is grindingly hard work and not everybody is cut out to be a landlord. None of us, wherever we are, likes to accept that the failure lies with ourselves in whatever we are trying to achieve. We think that there must be some external reason that has caused us to fail, and who better to blame than our landlord or pubco? If they could help us more, we would be in a position to make sure that everything was all right.

When the inevitable problems happen—and happen they do—there is a very sympathetic reaction among the community. The community believes that there are three essential ingredients: a post office/shop, a pub and a church. People do not want to use them much but they will go to the post office and shop when they have failed to buy a pint of milk at Tesco; the rest of the time they do not go at all. They will go to the church for what are vulgarly called "hatches, matches and dispatches", and occasionally they will go to the pub. They like it to be there and, if they see it disappearing, they are upset and believe that it should be preserved. Unfortunately, you have to use a pub or you lose it, and too often, to be candid, pubs are not being used.

Also behind the noble Lords' thinking is the CAMRA belief that if you could remove the dead hand of the big pubcos there would emerge a range of independent pubs that would provide new, independent opportunities for beer brands. I am afraid that that is misplaced optimism.

Lord Snape: Perhaps I may tell the noble Lord that I am not a member of CAMRA and that I do not even like real ale very much. That will probably get me denounced in some political circles. The noble Lord is giving a highly polished speech, which it should be as he has delivered it two or three times already. It is a rather—if I may say so without offending him—Second Reading speech. Would he like to talk about the matters before the Committee at present, particularly the difference between the consultative document and the agreement that both sides of this Committee thought we had with this Minister in January this year?

Lord Hodgson of Astley Abbotts: I am afraid that I have to disagree with the noble Lord. I am explaining why the background to these amendments is the rate of pub closures. That is what we are seeking to consider. That is the whole background to the amendments. I am sorry if the noble Lord feels that I am making a Second Reading speech but I am just trying to set out the status of the pub sector at present. In about a minute and a half, I will come to the treatment of the three amendments that the noble Lord, Lord Whitty, has tabled, and I shall certainly tackle them straight on. However, I need to do that against the background of the reasons for the problems in the sector. Those are not merely to do with the operation of the Mulholland amendments but are part of a bigger societal change.

Going back to CAMRA for a moment, I think that this is misplaced optimism. There is not the demand for a wide range of specialist beers changing week by week—Old Boot Polish one week and Sheep Dip the next. Some pubs will be interested in selling those but, for the most part, demand is for the well-known lagers such as Stella Artois, Peroni and so on. That will be the profitable and sensible way for landlords to trade.

I would not want the Committee to think that I was arguing that everything in the sector was rosy. In a sector with 20,000-plus tenants, there are bound to be

[Lord Hodgson of Astley Abbotts]
pubcos—and, dare I say, tenants—who do not behave quite as well as they might. I freely admit that in the tied sector that conflict of interest is most acute.

Lord Mendelsohn: Given this rather large view of returns on the market, I have a quick question. If there were not the unsustainable leverage and the change in the business models of the companies concerned, would the noble Lord be making the same speech?

5.15 pm

Lord Hodgson of Astley Abbotts: Certainly. The noble Lord is a businessman to his bootstraps. He knows perfectly well that if you are running a public company, you will be required and encouraged by your shareholders to take on a certain level of gearing. He would; I am sure that he does in his own businesses, which no doubt he looks after splendidly. The idea that somehow a business should be run with a completely different model because it happens to be in the pub sector does not hold water. It is bound roughly to march to the beat of the same drum that applies to public and private companies generally.

I promised the noble Lord, Lord Snape, that I would get to the specific amendments, of which there are three. Amendment 53ZD is obviously concerned with introducing all pubs. That really has absolutely nothing to do with anything that the Minister has said or any part of our discussions earlier in the year. Managed pubs are an entirely different matter and are run in an entirely different way. They are run by employees, who have a bonus system and a wage system. To say that this is a way of gaming the system, as was said by the noble Lord, Lord Whitty, is not accurate at all. If the amendment were passed, some companies that have no tied pubs at all would be caught, so the tied pub area would not even be further dealt with. I cannot see that Amendment 53ZD has any relevance to what has gone before, to what the Minister said, or to tackling the basic problem that we have been considering.

Amendment 53ZC has exceptionally vague wording. One important aspect of maintaining pubs is for there to be some effective secondary market. Pub companies rebalance their portfolios where they have too many pubs in one part of the country and want exposure in others. To be perfectly honest, some pubs will operate better with individual ownership and should therefore be sold to individual proprietors. An acceptance of this amendment, with its broad powers and imprecise determinations, would freeze up that secondary market and make it almost impossible for new entrants to come to the market, or indeed for existing pubcos to operate effectively.

Amendment 53ZF is about parallel rent assessments. Although the noble Lord has specified Section 43(5) I think that he means Section 42(5), but we do not need to worry about that. As I understand it—if my noble friend does not support me on this, I shall go down in flames—when the market rent option is triggered, there will be an opportunity for the PRA to be introduced. That is provided for in the consultation. Therefore, no tenant undertaking the MRO route can be precluded from the parallel rent assessment. He or she can make a judgment as to which is the best route to follow. That answers the point about the dangers of the PRA being unduly sidelined.

Finally, I think that the noble Lord, Lord Snape, believes that somehow big pubcos want to close pubs. I was the director of an integrating brewery; we wanted to sell our beer. We wanted good pubs because that meant that we managed to sell more beer. We wanted to find every way to make our pubs do better. The same may not be true of the pure pubcos that do not have brewers in them, but I urge noble Lords to be careful what they wish for. There is now the concept of a real estate investment trust, or REIT. It would be perfectly possible for a pubco to create a REIT to remove all the support from their pubs. They would make quite a lot of money in the short run because quite a lot is spent on supporting their pub chains. Over time, some or many pubs would fail and they would close them down and sell them off. They could do so within the very tax advantageous structure of a REIT.

We have not even reached the stage of implementing the results from the last set of consultations and already people are starting to think about how things should be tightened up, changed and altered. We should at least allow some time for the structure to settle down so we can see how things develop. Creating further uncertainty in a sector that is under extreme pressure, as I have explained, would be a grave error. It would not help all of us who would like to see the maximum number of pubs maintained in a way that is fair to all parties.

Lord Berkeley (Lab): The noble Lord said he wanted to have good pubs and that he was worried about uncertainty in the sector. I recall that in the Committee and Report stages that my noble friend referred to, the noble Lord repeated that but could not answer the questions of so many landlords who are working very long hours for very little money. There seems to be a turnover of landlords in many pubs of not much more than a year or 18 months. That does not make a good pub and it creates uncertainty. There may have been one or two cases when landlords were not performing but probably the financial pressures from the pubcos were so high that they could not cope. Does the noble Lord not recognise that that is at least as much of a problem as the one he is talking about?

Lord Hodgson of Astley Abbotts: Of course I understand the pressure on tenants. But the noble Lord must agree that the pressure on the sector is terrific. If your primary product can be bought down the road at 25% of what you sell it for you are under pressure. You will find it exceptionally difficult to buy a pint of lager for less than £3 in a pub. But I will take the noble Lord out, when Committee ceases to sit this evening, and we will find lager at 75p a pint within two miles.

Lord Snape: Does the noble Lord realise that he has just made a very effective case for the argument we are putting from this side of the Committee?

Lord Stoneham of Droxford: My Lords, the arguments have been very well put by the noble Lord, Lord Whitty. I support them and there is no point repeating them. These provisions are largely probing because the events of the last week mean that we are going to have to give

greater attention to this. I had the inevitable job of dealing with the Member for Leeds North West on the basis of the assurances I had from the Minister. I hope she will be helpful in her reply so that when I go back to him he will not tell me, "I told you so".

Lord Mendelsohn: My Lords, we first intended to introduce these amendments as an expression of our happiness at the collaboration and assurances that we had had. Our intention was to give the Minister a full toss, applaud her from the rafters, and say how wonderful it was that the Government were progressing with the work, because it was not contained in the Bill. This was a free hit for applause and I thought that it would compensate for many of the things we had said on other provisions, where we had taken a more questioning view. There are, of course, issues with some of the actions of companies, which I will come to in a second. To be in this position is a massive source of regret. The noble Lord, Lord Whitty, gave an outstanding oration on the issues in speaking to the amendment; the noble Lord, Lord Snape, too, gave an outstanding recitation of what is important about it. I also share the view of the noble Lord, Lord Stoneham.

I have agreed with the noble Lord, Lord Hodgson, on quite a bit of the Bill, but on this issue I feel an extraordinary sense of profound disagreement. I simply cannot believe that, in this day and age, someone is suggesting that there should be some sort of state meddling to maintain a market and that we should set ourselves completely against the operations of the free market, changing consumer tastes and increased competition. That is the wrong approach.

There is a problem with the pub sector. As the noble Lord rightly says, the causes of that are, more than anything else, changing consumer tastes and supermarket prices. Closures have come as a direct result of the choice of business model to go for unsustainable levels of leverage. I hope that, in my professional practice, we advise companies on what are sustainable levels of leverage. It was always clear that these would be very aggressive business models. It is important that we should not accept the beating-up of small businesses to maintain the capacity of large businesses. That is utterly wrong, but it is what we have to deal with.

The source of most regret relates to the fact that, over the last period, as companies were announcing their results, I was seeing some encouraging signs, unlike the noble Lord, Lord Hodgson. One company identified like-for-like growth over the year. It reported higher levels of underlying EBITDA. One company was able, on revenues of around £450 million, to look at levels of underlying EBITDA approaching £200 million. That is a fantastic achievement and it has allowed it to pay down debt. It is encouraging to see, in interim statements, companies saying that actions have already been taken to provide a more flexible business model "in light of the anticipated reduction of the market rent only option in 2016". Companies have taken proper account of what was said and they have adapted their models. This is a case of the Government putting a cost on business by totally going against what they said before.

It is not enough to say that this is just a consultation. There is a sense of bad faith, which I will express in these terms. In commercial arrangements, when you have two positions, you come to a deal called a "heads of terms", which is the overarching structure under which you define the agreement. I suspected that the Act, as the overarching heads of terms, accepted by all sides of the House, would be followed, but this consultation follows nothing like it in how it deals with conditions on the market rent only option and the parallel rent assessment—all that has changed. Even where there are provisions on market rent only options, they are not consistent with the terms that were there before. This is wrong. It is not unfair to say that we expected better.

I do not want to detain the Committee, but I have a few pages of this. The Minister previously expressed strongly the points on which we came to agreement on all sides of the House. There is even a complimentary reference to the noble Lord, Lord Hodgson, which I draw to his attention—I do not say that it is all bad. The noble Baroness said on Report, on 9 March 2015:

> "I come to the parallel rent assessment itself. Following the introduction of market rent only in the other place, the Government sought to restrict the scope of this assessment so that it applied only to prospective tenants, as they will not have the right to market rent only. This was an attempt on our part to reduce bureaucracy and increase simplicity. However, it is clear from discussions since Committee that tenant stakeholders actually like the parallel rent assessment and feel strongly that it should be retained for existing tenants. There are tenants who have no wish to exercise market rent only but who want to ensure that they have a fair tied deal. They would far prefer to gain this reassurance by requesting a parallel rent assessment, rather than by starting the market rent only process. There are also arguments that the transparency of the PRA may help a tied tenant to decide whether market rent only is for them."

The noble Baroness continued:

> "Therefore, Amendment 33J"—

a government amendment—

> "seeks to reinstate the parallel rent assessment. We will consult on how best to streamline this with the market rent only provisions so that, as far as possible, the processes are integrated to help both pub companies and their tenants and to minimise bureaucracy. I know this is something that my noble friend Lord Hodgson is very keen to ensure."—[*Official Report*, 9 March 2015; col. 451.]

I have four or five pages of this. It was really a summary of where everyone was, and it was said not just in this House. Jo Swinson made comments in another place that were very similar. Something has clearly gone wrong.

5.30 pm

I really hope that the Minister's speech, which will come later, will make all of us look fairly silly. I hope it will become clear that we have jumped to terrible conclusions, that we are entirely wrong and that our fears are entirely misplaced. I hope she will say that this consultation document has been a huge and grievous error, and that it is being withdrawn and reissued. I do not always get what I hope for in any walk of life and it may well be that that will continue. However, I think that the Minister has a duty to address the points that have been made, demonstrating that we should have less concern about the process than about the eventual outcome. We are asking for a degree of transparency and a degree of reassurance. I would be very grateful if the Minister would set out all the meetings that officials and Ministers have had in relation to this consultation with any and every stakeholder. We would be happy to receive that in a letter if those details are not to hand. We would also be grateful to receive the figures on the

[LORD MENDELSOHN]
volume of correspondence between each stakeholder and officials and Ministers, and we would certainly be happy to receive those in a letter if at this stage they are not at the noble Baroness's fingertips.

Lord Hodgson of Astley Abbotts: Before the noble Lord concludes, can he explain why we are going back over the managed pub issue? We have covered that already. We agreed that there was an issue with tied pubs, but Amendment 53ZD takes us back to stuff that we cleared away before. I accept the arguments and discussions about the parallel rent assessment, but it was perfectly clear that we were not going to include managed pubs, because they do not operate in the same way as tied pubs. Nor indeed did we talk about further reports on people wishing to sell tied pubs. People are free to sell tied pubs. Why should that be something that applies particularly to the adjudicator?

Lord Mendelsohn: I thank the noble Lord, Lord Hodgson, for that intervention. I shall make it very clear. We introduced these as probing amendments to test a variety of things. The context is that that was prior to the publication of the consultation, and the debate that we have had is very different from the one that we would have had. I and, I suspect, some others in this Room would have tickled the noble Lord, Lord Hodgson, on some of those issues in other circumstances, but these are the circumstances that we are presented with: we are focusing on the consequences of the consultation.

It will come as no surprise to anyone to hear that I was always sceptical of the legal advice—we are going back to the constants of "may" and "must"—but I also presented in meetings counsel's views, which have turned out to be rather prescient. I would be very grateful if the noble Baroness, who will always resist publishing the advice, would at least give us a much greater recitation of what legal advice has been given and whether the Government have taken effective external advice, as well as advice on whether the consultation was consistent with the Act. Will the Minister give a timetable for the Government to come forward with a proper impact assessment of the consultation proposals, as opposed to the proposals that we all agree to? We would also be grateful if she would set out whether existing legislation will allow the Pubs Code Adjudicator to deal with the pubcos gaming the system. If this measure goes through in the form it is in now, it will mean that the pubcos can game it to their hearts' delight.

We would also be grateful if the Minister could give us an indication as to whether the Minister in the department directly responsible for signing off this consultation gave direction to the officials to draft the consultation on the basis of the proposals not contained in the Act and whether there has effectively been a change of policy to ignore the Act and introduce a different form. This more consistently follows what was proposed previously as opposed to the Act, and we would be very grateful for some assurance that such directions were not given by the Minister responsible.

Baroness Neville-Rolfe: My Lords, I thank noble Lords for triggering this debate with their amendments and for taking us back—unexpectedly on my part—to pubs. I am very glad that the noble Lords, Lord Whitty, Lord Snape and Lord Berkeley, are all here to explain very clearly their concerns. I also welcome back my noble friend Lord Hodgson. I very much take the point that he made about the complications of this area and the risk of pubs closing—which I think we all want to try to avoid—and the fact that we must not get this wrong. Although the noble Lord, Lord Mendelsohn, agreed with the concerns of others on his side, he also pointed out the importance of the consumer in all this, which we must never forget.

I can understand why some noble Lords are disappointed by the Government's decision not to implement the parallel rent assessments. I assure noble Lords that I made my previous commitments in good faith, as I am sure they know. However, noble Lords will recall that the pubs measures in the Small Business, Enterprise and Employment Act were agreed at great speed towards the end of the last Parliament, and of course since then, as has been said, the Government have changed, and we have reviewed the best way to achieve the objectives. I will come on to that in more detail later if the Committee will allow, but the key point is that the Government are trying to strike the right balance, delivering fairness for tenants and stability for the industry. I cannot accept what has been said about my right honourable friend Anna Soubry, who is a great advocate for small business and is genuinely trying to find the right answer, as I will try to explain when we go through this in more detail.

Our proposals are out for consultation at the moment, and my officials are meeting tenants' representatives and pub companies next week to discuss this matter in great detail. There was a blank space on page 66 of the consultation document for people to add comments. I have just looked at that document and it makes it quite clear on page 12 that there has been a change on the PRA point. We are not trying to hide that there has been a change of policy here. However, I will explain the current approach later on.

I add that we are fully focused on meeting the important May 2016 deadline for implementation. There was agreement that we should get on and implement this and not leave it for years and years. Obviously, the consultation process is very conscious of that deadline. I also wish to reassure the noble Lord, Lord Whitty, that there was stakeholder engagement over the summer, which was carried out by officials. It was balanced and they listened to views from across the sector. My right honourable friend Anna Soubry visited Burton-on-Trent on Monday and met with pub companies, and she will be meeting tenants' representatives later this month.

I will take the amendments in turn. I know that there is most concern about the third set of amendments but, for the record, I will answer the points raised on the others.

Lord Mendelsohn: Does the noble Baroness mean that her right honourable friend met people prior to the publication of the consultation or afterwards?

Baroness Neville-Rolfe: My understanding is that she met with the pubs after the consultation, as, in turn, she will be meeting the tenants once the consultation was published. I have to reject the underlying implication

that somehow we are not balanced on this. Consultation is a serious matter for business. You have to put things out in draft and you have to listen to what is said, which is what we always do.

I turn now to Amendment 53ZC. I understand the concerns about potential manipulation of the ownership of tied-pub estates but I am not convinced that this amendment is the way to address the issue. It would place an additional burden on the adjudicator by requiring him or her to monitor all pub sales, to make a judgment as to whether they reveal a pattern of divestments, and to assess whether their effect is to exempt the pub companies concerned from the jurisdiction of the Pubs Code, thereby causing detriment to the tenants concerned. While one large pub company sold around 150 tied pubs earlier this year to a company that will not be covered by the code, another has recently purchased more than twice as many tied pubs that were previously outside the scope of the code. Purchases and sales of this order have been a feature of the sector for at least 15 years. However, the Secretary of State has a duty under Section 46 to review the operation of the Pubs Code every three years, and that will present an opportunity to look again at issues around sales and acquisitions.

Amendment 53ZD was debated in Committee on the 2015 Act. Parliament's decision to define the threshold for the Pubs Code in terms of tied pubs reflected more than a decade's worth of evidence that the problem in the pub sector related to abuses in the tied sector. We talked about this at the time. It is those abuses that the Pubs Code Adjudicator has been introduced to address, and I remain of the view that Parliament was correct to define the threshold solely in terms of tied pubs. At present, the amendment would bring within scope just one company with tied pubs—Mitchells & Butlers, which has in total around 1,800 pubs in England and Wales but fewer than 60 tied pubs. Bringing these few extra tied pubs into scope would create the anomaly of leaving a number of companies owning several hundred tied pubs outside it. Such an anomaly would have risked legal challenge—noble Lords will remember that we discussed this before—possibly imperilling all the pubs measures, which was something that we were keen to avoid.

Section 69 gives the Secretary of State the power to amend the number of tied pubs required to meet the threshold. That is the right safeguard for ensuring that the code delivers its overarching principles.

I turn now to Amendment 53ZF. I know that it is a disappointment to some noble Lords that the Government have decided not to proceed with implementing the PRA, if I may call it that. As noble Lords will recall, it was the previous Government's intention during the passage of the Bill to introduce PRA and to streamline it with the market-only option. We have had a change of government and the incoming Government have looked again at the commitments that their predecessors made in order to get the legislation on to the statute book. We have looked at the best way of achieving the objectives of this policy. Our focus has been on providing a robust Pubs Code and adjudicator that deliver fairness for tenants and stability for the industry within the timeframe set out in the Act. It became clear, when working through the details over the summer, that the complexity of introducing PRA alongside MRO would put unnecessary burdens on the industry. Having two processes which can be triggered separately but on the same bases, which are not administratively connected and which follow different timetables and rules is not a practical or sensible proposition. We want to minimise the burdens on business. Not taking forward PRA at this time would reduce the regulatory burden of the pubs measures by £600,000 a year. These are burdens that we would have to compensate for by a reduction in another regulatory area, so it is a big figure at a time when pubs are closing.

Lord Snape: Was that figure not available on 28 January when the noble Baroness made that pledge? She said that,

"our amendments provide that they"—

that is, the tenants—

"will have the protection of the parallel rent assessment—PRA—which will show them how their tied deal compares with a free-of-tie deal".—[*Official Report*, 28/1/15; col. GC92.]

That appears to be a specific pledge. Did it not cost £600 million then and, if it did, why did she make that pledge?

Baroness Neville-Rolfe: I am sure that we had some measure of the costs available at the time. I am not trying to dispute that. What I am trying to explain is why we have changed the situation. The costs are not the only matter. I am trying to explain how the two measures sit together and how we have sat down to have a look at these things. Perhaps I may proceed.

5.45 pm

Lord Mendelsohn: I am probably unnecessarily confused here. Is the Minister saying that the burden on business was £600,000?

Baroness Neville-Rolfe: It is £600,000 for having the PRA in addition. I am sorry if I gave the figure incorrectly. I felt that it was helpful to share that figure of £600,000 with the Committee.

Lord Snape: In the context of government expenditure, we are grateful for that but it does not really amount to a great deal, does it?

Baroness Neville-Rolfe: Every little helps, as they say.

Lord Mendelsohn: What assessment has that figure taken into account? As I read a statement from a company's report of what it has currently spent, does it mean that that £600,000 includes the fact that it has now wasted a large amount of management time and money to that effect? Is that included or is it outside it? Has the company calculated that number?

Baroness Neville-Rolfe: This is a figure for the burden on business, so to that extent there is a parallel. Perhaps we can move on but there is a cost, and a complexity, in having a double system. We want to try to do this the right way. The market rent only option is the central plank of the Pubs Code. It is a fundamental change for the industry and, I believe, a powerful new tool for tenants. I do not think that there is any disagreement there.

[Baroness Neville-Rolfe]

The noble Lord, Lord Whitty, was concerned that the significant increase in price thresholds had restricted the access of tenants to the MRO trigger. We have taken the advice of stakeholders from across the industry on the definition of a significant increase in price. Our draft code reflects the advice we received: that the primary focus should be on the price of beer and that the threshold should be in the order of 5%. We are consulting on this and the percentage increases for other tied products and services. As I said, we welcome the views of stakeholders.

It is vital that we get this right for all concerned. The market rent only option will ensure that tied tenants are no worse off than free-of-tie tenants. That is the actual principle in the Act. Tied tenants will be able to request a market rent only offer when certain trigger events take place. The Government have published draft provisions that allow for the request by the tenant of an MRO in all the circumstances required by Section 43, mentioned by the noble Lord, Lord Whitty. There are four circumstances, which I will not go into again because noble Lords in this Committee are extremely familiar with this.

When we discussed these provisions before, there was a view that giving tenants access to a variety of comparators was of itself a good thing. That was what was being said in the Chamber, but the conclusion we have come to is that that is not really necessary. What really matters is that the tenants are given meaningful comparisons so that they can make the right business decision. We believe that MRO provides that. They will not be committed to accept the MRO offer but can compare it with the tied terms they are being offered. They can use the MRO offer to negotiate a better tied deal, if that is their preference, or choose to take up the MRO offer. They will not need a PRA to do either of those things. I reassure the noble Lord, Lord Whitty, that there is scope for comparison when a tenant requests an MRO, as he or she can request a tied rent assessment. That allows the comparison process to happen.

However, if experience of the Pubs Code in action produces evidence that the introduction of the PRA provisions would be a useful addition to the options available to tenants, this is something that the Government can of course reconsider. The point has been made. It is in the legislation. The power to introduce PRA remains in the Act but it is the Government's view that we should focus first and foremost on introducing the MRO-only option and the other key provisions of the code on transparency, with the new adjudicator to enforce them.

Lord Snape: Before the Minister leaves that point, how was it possible without PRA for a tenant to demonstrate that they would be worse off? The purpose of PRA was to allow them to prove it one way or the other, was it not, so how can they do that without PRA?

Baroness Neville-Rolfe: My Lords, I am sure we will come back to this. I will take that point away and go through it again myself. There is scope for a comparison in the way that I have described, so the tied tenants should be able to look at the options easily and clearly. We are trying to bring in a system that is simple, clear and well understood. We have looked at the provisions in the Act and come forward with a consultation that we feel is fair, right, simpler, easier and better.

Lord Mendelsohn: My Lords, the idea that this is a good thing for small business and that a burden of £600,000 stands in its way utterly beggars belief. This provision was set up specifically in order to deal with the power and information asymmetries affecting smaller businesses with regard to larger ones. Again, it was the Minister who said on Report that,

"we have decided to reinstate PRA for existing tenants for a specific reason: because some tenants who do not wish to be free of tie would prefer the PRA, as they consider it a less confrontational way to secure a fair tied deal".—[*Official Report*, 9/3/15; col. 464.]

Has any calculation been made about the cost to small businesses of not being able to have that provision, and indeed of the unfairness? Can the Minister say to me today that that cost would be significantly less than £600,000 if this was allowed to happen? I do not think she can.

Baroness Neville-Rolfe: My Lords, I am not sure that there has been a complete understanding of what we are proposing. They will have a free-of-tie rent and a tied rent assessment, and they consider this in the context of their own business planning, which is in their own best interests. Stakeholders and officials have sat down through the summer and done flowcharts and so on to try to work out how this will best work. Obviously I am listening to what noble Lords are saying today. We have come forward with proposals that we would like to be considered in the context of the consultation that we launched last week. Obviously, I understand—

Lord Stevenson of Balmacara: Is it not ironic that in working together with the previous Government to achieve a package that could get through on a tight timescale, to protect the Bill that the Minister was in charge of at the time, we have ended up in a worse position today than we were then? We should have learned that Governments are not to be trusted and gone with our instincts, which were to ensure that all these points were in primary legislation. Does the Minister not feel a scintilla of shame about the way in which we are now being dealt with? This is a real traducing of all our best endeavours and the support that we gave to her over that period. I personally feel very betrayed by it. I also feel betrayed by us not being told—in the spirit of openness that we tried to engender between ourselves in approaching legislation—that this was in the air, because the Minister must have known about it for some considerable time.

Baroness Neville-Rolfe: My Lords, I think that we have been through the arguments. I understand the disappointment. Noble Lords need to understand that the Government are trying to do this in a way that is less bureaucratic and more effective. That is the basis of the consultation. However, I understand the strength of feeling that has been expressed today. We want to get the implementation of the Pubs Code, the adjudicator and the provisions right. We are genuinely consulting on the proposals that we have put forward. There will

be a meeting of representatives of tenants' groups and pub companies as early as next week to discuss the proposals in detail and to take them through our thinking. This subject is on the table, so it can be discussed. I very much hope that by Report we will have satisfied the obviously genuine concerns raised today. In the mean time, I hope that in the light of my comments noble Lords will feel able to withdraw the amendment.

Lord Berkeley: The noble Baroness has talked an awful lot about the consultation that has gone on this summer with the different groups. Did any of them express a view on PRA and whether they wanted it or not, particularly the tenants, or was it not discussed?

Baroness Neville-Rolfe: My Lords, my understanding is that PRA was not discussed but I will engage further in the process and ensure that it is discussed in the context of the consultations going forward next week. As I pointed out, it is mentioned in the consultation paper, so obviously it can be on the agenda of the discussions taking place this month.

Lord Whitty: The noble Baroness played an effective defensive game on a very sticky wicket with a fair amount of hostile bowling. However, I do not think that she actually scored any runs. She is in a difficult position, as we all recognise. The fact of the matter is that she has clearly admitted that there has been a change of policy. As far as I can see from her responses to the various questions from my colleagues, that change of policy was not conveyed to the participants in this industry. In effect, it changes the legislation, which certainly was not communicated to us as legislators. That is a failure on behalf not of the Minister but of the department. We are therefore faced with a rather difficult situation regarding this issue between now and Report on this new Bill.

In terms of my two amendments which relate to the threshold, yes, we have discussed this at great length before but I do not agree with the noble Lord, Lord Hodgson, or the noble Baroness. I put them down so that we could look at this again but they were at that point probing amendments. The real issue before us is the nature of the consultation document and the degree to which it differs from what our understanding was prior to the election—in this Committee, in this House on Report and in the House of Commons—and from the position that is reflected in the current legislation and the understanding of most of the parties in this industry.

The central issue here is not the economic state of the industry. We all deplore what faces most pubs. There are one or two pubs that I would not mind closing but I would prefer most pubs to stay open. Irrespective of the state of the industry, there is an imbalance between the individual tenant and a large brewer or pub chain organisation. This legislation was designed to redress that imbalance. Whatever view we may take, the MRO was seen as one way of redressing it. We would see the PRA and the MRO not as alternatives; they are complementary. However, what has happened with the consultation paper is that the triggers for the MRO have been limited, as has the availability of the PRA to those who might not necessarily want to go for the MRO but need to understand how the situation with their rent arrangements would compare with going for an MRO. It would therefore inform their discussions and relationships with their landlord.

That is fairly straightforward but we have limited the triggers and dropped entirely the provision for any tenant to get hold of that comparative information. That is a restriction on where we were under the previous Bill. It is a restriction on the discussions that we had just before the election involving all aspects of the industry to try to reach consensus. I understand why people feel betrayed. It is an emotive thing when people feel that the Government have not played straight with them.

Lord Snape: Is the position not even worse? How is a tenant able to request a rent review under MRO without a rent increase? Is it not presupposed under the Government's proposed legislation that all current rents to tenants are fair and that only if they are increased can a tenant make this application under MRO? Am I right in thinking that? I asked the Minister but she did not give me a straight answer. Perhaps my noble friend can help me.

Lord Whitty: Perhaps I can answer for the Minister.

Lord Snape: If only!

Lord Whitty: As I understand it, some of the triggers that were outlined by the Minister at the previous stage were dropped. Triggers remain if there is a rent increase, or if the price of the supplied tied goods goes up beyond a certain level. There are now therefore only two triggers, whereas we previously had four or five. If you add to that the drop in the PRA, then access to information by tenants of all sorts has been seriously limited.

6 pm

Baroness Neville-Rolfe: I demurred from reading out the triggers because I did not want to labour the Committee with too long a speech. I do not think they have changed or been reduced to two.

Lord Snape: I am as anxious as ever to help the Minister out but I put the same question to her as I did to my noble friend: do the conditions that the Government have attached to MRO under these proposals not mean that a tenant could apply for a rent review only if he or she received a rent increase, and that they could not apply on the basis of the existing rent?

Lord Berkeley: Or if the price of beer goes up.

Lord Snape: Or if the price of beer goes up.

Baroness Neville-Rolfe: My Lords, given the disappointment and concerns expressed and the lack of complete clarity as a result of my not having read the consultation paper in detail—I have tried to do so and my understanding is that there are actually four triggers—I suggest that we come back to some of these issues in a meeting, outside Committee and formal debate, between now and Report. In the mean time the discussion should continue at a technical

[Baroness Neville-Rolfe]
level. We are trying to get a good outcome that will help tied tenants and will help the industry go forward in a prosperous manner. We have put out a consultation paper that was designed to try to do things in a simpler way. It is a genuine consultation. Noble Lords have raised concerns and we will obviously look at those. We will try to clarify the various points raised from the perspective of the concerns that have been expressed.

Lord Whitty: I thank the Minister for that. It would be useful if some of what she said was conveyed to us in writing. More importantly, it should be conveyed to the representatives of tenants, with whom her colleagues will be consulting over the next week or two. If there is misunderstanding about what the changes mean then we need to clarify that rapidly because there are some very hurt feelings out there, let alone among ourselves in this House. We can take it but they should not have to. We will have to think again about what we do between now and Report, and any information that the Minister could convey to us would be helpful.

Amendment 53ZC withdrawn.

Amendment 53ZD not moved.

Amendment 53ZE

Moved by ***Lord Mendelsohn***

53ZE: After Clause 25, insert the following new Clause—

"Protecting small businesses online

(1) The Secretary of State, after consulting the relevant bodies, shall publish advice and guidance to businesses in relation to keeping their business safe and protecting it against online threats.

(2) The guidance published by the Secretary of State under subsection (1) shall include but not be limited to advice on protecting computer-based equipment and information from unintended or unauthorised access, change, theft or destruction.

(3) The City of London Police is a relevant body for the purposes of subsection (1)."

Lord Mendelsohn: My Lords, I am pretty sure this will be significantly briefer. This is largely a measure to highlight a particular issue and should certainly engender less confrontation. We are very supportive of the Government and other institutions on matters of cybercrime. This is a nudge. It is our attempt to add some measures to an important part of enterprise: sustaining effective and secure business, and the ability to secure cyberspace.

The ONS crime survey established that during the period surveyed there were 5.1 million frauds, of which 2.5 million were cybercrimes. These are crimes committed under the Computer Misuse Act. Their detection is based on footprints—that is, looking at devices affected by viruses, hacking, denial of services and virus proliferation, all those sorts of elements. Surveys, as I am sure the Government are aware, have indicated that 74% of small business and 90% of larger business have identified some form of cyber breach. In recent times there have been prominent cases where people who have been breached have suggested that they have the problem under control. We wish to raise this point because we do not believe this to be the case.

I personally participated in what I think outside America is the western hemisphere's largest conference on cybersecurity, which took place in Tel Aviv with participation by chief information security officers—a term I had not heard of 18 months ago but these individuals are now very significant in their companies—law enforcement, intelligence services and government representatives, who were able to identify that the vast majority of offences actually are detected. It is easier to introduce a virus that is undetectable afterwards. In fact, cyber thieves produce around 250,000 novel variants of viruses every day, which is a huge amount, and I will come on to other aspects that impinge on this. We are seeing massive problems that we have to address.

It was instructive to learn during the course of the conference that the Sony cybersecurity breach that gained great prominence was identified only because they purposely left an imprint to make sure that people understood. Despite the fact that it had the participation of the most powerful cyber nation on this planet, you could not identify what the source was or its full extent. You could not even identify that it was North Korea by any form of examination of where it had been penetrated. It was only via the means of the traditional intelligence services that they were able to identify that it was North Korea. What hope, then, do businesses have in these circumstances?

Furthermore, there is a huge imbalance in the spend between larger and smaller businesses. Government figures that were published some time ago suggest that small and medium-sized businesses with 100 or more employees spend £10,000 a year on cybersecurity, but the smallest firms with fewer than 20 employees spend around £200 a year. This is highly problematic to the aim of having markets that are fully protected.

Over the past few years cybercrime has evolved, and it is now an enormous industry. The City of London Police estimate that it is a £39 billion industry, most of which is recycled into other forms of criminality. It is a hugely circular flow. Actually, it is an incredible market with suppliers, merchants and service providers. There are all sorts of things going on. It used to be said that armed robbery rates went down because if you wanted to be a criminal it was easier to sell drugs. Now, why carry a gun when you can make more with a laptop? The massive infrastructure of cybercrime is hugely problematic.

What I found most interesting at a different session of the cybersecurity conference was where it was identified that there is a massive penetration of companies' customer details. Those details are blended and traded so that no company can ever detect that their particular security was breached. The details are sold in batches and strips. Even if your security is breached, no one actually knows the extent of the customer payment details that have been penetrated. In any blended list, you are not likely to have more than 2% of any particular company's list in any list that is used for a cyber hack. I found this to be of extreme concern.

Mobile has been less prone to these sorts of attacks largely because Apple, Google and BlackBerry are the ones that integrate their encryption systems—this is relevant to a debate in other areas. The internet of

things is now extremely vulnerable. The disaggregation of security is a huge problem and some fundamental strength is needed.

Criminals are able to recruit from security, intelligence and private sector organisations because they can pay more than the others, so I think that we have a massive issue here. As I say, the Government have not done enough. They have done quite a bit and many good initiatives are in place, but we are suggesting these amendments to try to give greater prominence to and amplify what they are doing, as well as to prod them to move in a couple of directions. I wish that we could have tabled an amendment that we were not allowed to, which would have been to try to encourage more small businesses in this country that are actually creating cybersecurity products. We wanted to table an amendment that would have mandated government departments to spend 8% of their entire IT spend on cybersecurity, because that would generate an ecosystem of cybersecurity firms. We have some good ones, although in this country really only in Cambridge, but imagine what a boost it would be to our cybersecurity capacity if we were able to do that.

Instead we believe that there is a role for government to set standards. In particular, we should promote our best: the City of London Police are outstanding. They are utterly world-leading on this and I pay a massive tribute to Adrian Leppard, who has been an outstanding commissioner. He is a world-leading and well renowned figure and the City of London Police are undoubtedly seen as one of the most significant, important and expert agencies in this. We would be very encouraged if the Government were to consider providing more prominent advice to businesses, which do not really know how to deal with this or know the right sort of things, and promoting the best in practice that we have—that of the City of London Police. I beg to move.

Baroness Neville-Rolfe: My Lords, this amendment is designed to protect small businesses from cyberattacks. I was really pleased to hear about the knowledge of the noble Lord, Lord Mendelsohn, on this issue. I wish I had been at the conference which he described and I agree with his objective of amplifying the issue, especially in relation to small business. I also agree with him about the role of the City of London Police.

When I worked in business, an attack on personal data held by the company was one of my top risks and concerns. Recent events demonstrate that businesses need to take action on cybersecurity and can benefit from external advice and guidance. I think it is fair to say that the Government are doing a great deal in partnership with industry on cybersecurity. We have a strong strategic programme in place, which is right. There is a five-year plan for an £860-million national cybersecurity programme to provide a range of advice and guidance to businesses of all sizes, including a specific guide, *Small Businesses: What you need to know about Cyber Security*. I have copies of that guide.

We have stepped up this activity recently by relaunching the "Cyber Streetwise" campaign, which offers small businesses clear and simple advice on how to protect themselves. There is information in the press and the Committee may have seen advertising at train stations or on the tube. In addition, the Government's "Cyber Essentials" scheme shows small businesses how to protect themselves against common cyberthreats. Since October 2014 the Government have required their suppliers to hold a Cyber Essentials certificate if they are handling personal data or sensitive information. That is all increasing awareness by amplification. There are more than 1,000 Cyber Essentials certificates, which have been issued to big organisations such as Vodafone, JCB, Barclays, the Royal Mail and BAE, as well as to colleges, universities and so on. We are working to get thousands of companies and their supply chains to adopt the scheme.

Our approach is to work with a range of law enforcement and other bodies to build partnerships with businesses, representatives and trade bodies, and to use these to increase awareness. We do not believe that the suggested amendment, which I think is mainly probing, goes beyond the existing approach in ambition or effectiveness. Putting guidance into legislation could result in a tick-box approach where guidance is merely published without the associated awareness-raising, partnership-building and behaviour change that is completely essential in this area.

We want to avoid unnecessary regulation. The amendment would create uncertainty as to what businesses were legally required to do and what was best practice, possibly even giving rise to litigation. It could also reduce our flexibility in dealing with what is, frankly, a very fast-moving issue. I think we were all astonished by the Sony leak and by recent events in the UK. We are not convinced that legislating in this Bill is the right thing to do. Following the information leak at TalkTalk, though, a committee of the National Security Council is now looking at this. Cyber Ministers are looking as a group at what further changes are needed. In addition the Digital Economy Minister, Ed Vaizey, promised last week that we would meet the Information Commissioner.

Lord Hodgson of Astley Abbotts: As my noble friend is talking about the broad range of plans that the Government have, could they address something with the European Commission? As the noble Lord, Lord Mendelsohn, pointed out, cybercrime is no respecter of boundaries. The Commission has located a cybersecurity centre in Heraklion in Crete, a place that you cannot fly to in winter because you have to go via Athens. In this very fast-moving area, it would be sensible to find a way of placing the centre more centrally where people would be prepared to work and operate. I mention that in passing because it is something that needs to be looked at. I underline absolutely what the Minister says—the Government are doing a very great deal here—but this is something that just does not fit with our plans, because the European convention is so important.

6.15 pm

Baroness Neville-Rolfe: I am grateful to my noble friend, and I shall certainly make sure that people are aware of the point that he has made. There is something of a carve-out in the EU institutions. I was at OHIM in Alicante a couple of weeks ago. The cybersecurity office, in the days when it was rather less central, was put in Heraklion. However, the key thing is that member states, as well as cyber Ministers in the UK, should get

[Baroness Neville-Rolfe]
together because the cybersecurity industry is no respecter of boundaries, and a lot of visits, meetings and decision-making are made outside Heraklion.

I will not delay the Committee any longer. I wanted to give a feel of the fact that things are being done. I agree with the sentiment of the amendments: we need to make sure that small businesses, as well as big businesses, which of course suffer bigger reputational damage from leaks, are doing the right thing. That is why we have a strong strategic approach, along with targeted action to help small businesses. I hope that noble Lords have found that somewhat reassuring. I am sorry that we cannot really spend any longer on this important area this evening.

Lord Mendelsohn: I want to make the following staccato points. First, we spend £856 million. Unfortunately, that is spent principally on national security and too little is given to the other side. It would be nice if the Government could give that more consideration. We welcome the appointment of the former British ambassador to Israel, Matthew Gould, who will have a key role in cybersecurity inside the Cabinet Office—a very useful and important position.

The noble Lord, Lord Hodgson, made a very important point. We are being targeted by criminals, not from various parts of, or cities in, this country but from every part of the world. That is very easy to do and it is a significant factor. I want to make a very simple point. The scale on which this activity can multiply is absolutely extraordinary, and it goes up by factors. We cannot afford to believe that simple awareness campaigns will work; much more effective measures are needed. There is a great deal of concern about this, and discussions have taken place between a number of countries, including our own—which was represented at the conference—on how you deal with the fact that there is an information lag and that you become the weakest part of the chain if you do not deal with it. It was entirely inappropriate for the proposal to be put forward in an amendment. Of course this is a much broader issue, but we just wanted to highlight it.

My final point is that the real problem about TalkTalk is not so much that the hacking happened. All the comments about how absurd it was that a company of that nature could run a system like that are fairly irrelevant. The extraordinary thing is that most of these serious crimes go undetected. That is the bigger problem, rather than the problem of the crimes that are detected. I beg leave to withdraw the amendment.

Amendment 53ZE withdrawn.

Amendment 53ZF not moved.

Amendment 53ZG

Moved by ***Lord Mendelsohn***

53ZG: After Clause 25, insert the following new Clause—

"Broadband: rollout

(1) The Secretary of State may by regulations set targets for electronic communications bodies to roll out, to businesses and commercial organisations, more than 95% coverage of—

(a) basic broadband,

(b) superfast broadband, and

(c) mobile phone coverage

by the end of 2016.

(2) The Secretary of State must prepare and publish an annual report assessing the progress that has been made on the targets provided for by subsection (1), and the impact of basic broadband, superfast broadband and mobile coverage technology on enterprise and growth in the rural economy.

(3) The report provided for in subsection (2) should be laid before both Houses of Parliament."

Lord Mendelsohn: I am going to go for the record for the briefest-ever introduction of an amendment. This amendment seeks to set stronger targets for the rollout to businesses of basic broadband. There is a range of issues concerning broadband, not least in the UK. One area that we are most concerned about is allowing companies to market speeds that they can never attain or sustain—they are unable to do the work to achieve that. However, we have a whole range of concerns about how the market works, and I would set them out if I had more time. Some very effective comments were made in the Chamber by someone who occupies an exulted position here today. That person has been a doughty champion of broadband.

I want to focus on one element here. Most of this is really about trying to find additional funds to supplement the rural broadband rollout. In that regard, our main question is: is what has already been developed a failure? Are the providers that have been entrusted to do this, and which have previously assured us that the funds were available, wrong? Has there been a mistake? What would be the benefit of being able to do this? Has money been apportioned to this purpose, or will we be waiting for the spending review to find out what it is?

Lastly, I think that we will return to this on Report but I feel rather foolish as I spent too little time reading about the Industrial Development Act and these amendments are consequential to it. In this year's annual report on that Act, under this wonderful gem, "Other Current Section 8 Schemes and Miscellaneous Section 8 Awards", I notice that the Industrial Development Act, which we are essentially amending, was used to support the Prompt Payment Code. That was a rich treasure that I failed to fathom, and I hope to return to it on Report. I beg to move.

Lord Stoneham of Droxford: I do not want to delay the Committee. I think the Minister knows of my ongoing interest in the subject, and indeed she herself has shown great interest over the years. I must declare my interest as someone who has inadequate broadband; only one mobile company operates in my area, and the parliamentary system operates only upstairs in my house. As I do not live too far from two quite important industrial city centres, I regard this as completely inadequate.

I simply do not believe some of the figures that we have supposedly achieved with super broadband. Obviously, though, the big issue coming is what happens after 2016. The Government have to address that because it is very important, particularly to remote rural areas where quite important businesses can operate and must have access to these facilities. I look forward to the Minister's reply.

Lord Deben (Con): Could the Minister help me on this, too? I have had exactly the same experience. I think that people around the country always find the figures very difficult to believe, because if you happen not to be in the section that is provided with broadband, you do not believe that anyone else is getting it. You form your opinion from your own experience. I wonder whether there is a possibility of helping those who are still waiting for broadband or, as in my case, are told that they have broadband but it does not actually work, which I think is what happens in much of Suffolk. I wonder whether there is a better way of helping us to feel that there might come a day in which we could operate our businesses more effectively from home than we can at the moment.

Baroness Neville-Rolfe: I very much agree with noble Lords that it is important for consumers and businesses to have transparent information on how mobile and broadband coverage is improving. I am glad that my noble friend Lord Deben has joined the discussion. He is right: the truth is that perception in this area is lacking reality. It was a slow start, there is more to do and there are lots of individual problems with broadband, but the Government's plans are now beginning to yield impressive dividends.

We are of course committed to ensuring that the benefits of improved broadband and mobile services are felt right across the nation. That is why we made a universal service commitment to provide minimum service levels of at least 2 megabytes per second by the end of 2015. Basic broadband is already available to virtually 100% of UK premises, and by the end of this year only about 1% of premises will receive less than 2 megabytes per second.

To deal with the remaining 1%, which in a sense is where we are, all premises will have access to at least 2 megabytes per second through the option of satellite broadband connections. They will have the capability of delivering superfast broadband for those who want it. Noble Lords may not know that the satellite scheme is currently being trialled in West Yorkshire and Suffolk, close to my noble friend's home, and a national scheme is due to go live in December. We are very pleased with the results so far.

We remain on track to provide 90% superfast broadband coverage by early 2016, and we are aiming for 95% of UK premises—the number in the amendment—to have access to superfast speeds by December 2017.

As I think I told the noble Lord, Lord Stoneham, superfast is already available to over 83% of homes and businesses in the UK. Importantly, that is up from 45% in 2010. So that was a good effort by the coalition Government. That is the highest coverage among the top five European economies.

Recognising problems in rural and remote areas, the Government have made available up to £8 million to support pilot projects to extend superfast broadband beyond 95% of UK premises, using satellite and wireless, as I said, and will publish further lessons from those pilots later this year.

Improving mobile connectivity is also a priority. Around 94% of the UK's land mass has coverage from at least one mobile network operator and 69% has coverage from all four. But we want to go further. To this end, a landmark agreement was reached with all four operators in December to ensure that 90% of the UK's landmass will have voice and text coverage from each MNO by 2017. What this also means is that 97.7% of the UK will have a signal from at least one mobile operator.

These are relentless and concrete measures that the Government have taken to improve coverage. We are striving every day to make improvements so that everyone can benefit from the digital economy. I share the frustrations of everybody at the time that this has taken, but we are committed to ensuring that we have the infrastructure we need for this fourth utility.

The noble Lord proposed a requirement to report on progress being made in improving broadband and mobile coverage. This is already widely available from lots of different sources. I can make the list available to noble Lords so that they know what is being done. I am not convinced that the information gap is there; what I think is there is the need to continue getting this fourth utility fully across the UK. I hope that the noble Lord will feel able to withdraw this amendment.

Lord Mendelsohn: I thank the Minister for her comments. The one thing that comes across very strongly in this Committee is that in many ways one of the real crises we have in business is that far too often too much is said and marketed. It has become very apparent that trust in business is continuing to fall, and on very reasonable grounds on the part of the consumer. I have a lot of kids so I have two broadband connections into the house, neither of which provides consistency of service or provides anywhere near the advertised level of service. I would be interested to know whether at some point the Government will consider making it a condition that you can market only the minimum guaranteed and consistent service; that could be attractive rather than these pie-in-the-sky numbers. It is not acceptable to put in a fibre-optic cable to one point and then market it to a whole area with no consideration being given to whether you will put in a superfast connection.

We have to be able to say, "We do not want to be followers. We want to be leaders". This rollout has become very difficult. I hope that the Minister takes note of the following. I know this is an area in which she has a personal and keen interest and that many members of the Government are also very interested in it. It would be a good and positive move to encourage the commercial operators in this sector to do more and to do it faster and harder. That inevitably makes sense. The Minister talks about using satellite or wireless. Given the money we have invested and the provisions we have made, we might just as well have given the cash to Google and Facebook—I declare an interest in that my wife works for Facebook—to use their drones or balloons because we probably would have been able to do the whole thing a lot faster and quicker with those mechanisms. We should not be in the position whereby the provision of this service is so slow. I am more than happy to withdraw the amendment but hope that the Minister will be consistent in her efforts to make sure these operators deliver.

Baroness Neville-Rolfe: I am delighted to say that our efforts continue. We are trying to make sure that, as it were, reality goes faster. It has been a huge investment programme. I agree with a great many things that the noble Lord has said. I think there is a feeling right across the House that investment in this area is really important, which is one of the reasons I am so pleased that everybody supports the amendment we have put forward to the IDA, which obviously would allow extra spending in areas beyond things like the code that the noble Lord referred to.

Lord Mendelsohn: I beg leave to withdraw the amendment.

Amendment 53ZG withdrawn.

Clause 26: Restriction on public sector exit payments

Amendment 53ZH

Moved by ***Baroness Hayter of Kentish Town***

53ZH: Clause 26, page 44, leave out lines 7 to 9

6.30 pm

Baroness Hayter of Kentish Town (Lab): My Lords, Amendment 53ZH is in my name and that of my noble friend, Lord Stevenson. I will also speak to the other amendments in the group, which go to the heart of the exit payment problems.

It is not that we are particularly against what the Government said that they wanted to do in curtailing the very large exit payments made to a tiny handful of public servants who then re-enter the service of the state, albeit in a different guise. Indeed, as I am sure the Minister does not need reminding, the original words in the Conservative Party's manifesto—on page 49, I think, if she has a copy here—were:

"We will end taxpayer-funded six-figure payoffs for the best paid public sector workers."

Best paid? No, the cap will affect those with long service rather than those on the highest pay—hence our probing amendment to discover what exactly the Government are out to achieve. This is not aimed at the "best paid" of our public servants. The Cabinet Office confirmed that some earning less than £25,000 a year could be affected because of their long service—that is, serving the public, often for salaries below those in the private sector.

We assume that this was not the Government's initial intention, especially given that they said in their memo to the Delegated Powers and Regulatory Reform Committee that the regulations would only prevent "vast benefits" being paid to "a few individuals". That is not what we have, so why has it changed? Has the Government's intention changed or is this just poorly thought-out legislation, which ends up hurting long-standing rather than highly paid staff?

Will the noble Baroness give the explanation that I think is due to us and, indeed, to all public servants? Does she consider that £25,000 equates with "best paid"? Has the intention changed, so that the Government want long-serving workers to be caught? Is this just a rather nasty, crafty little device that they have alighted on simply to help to reduce the deficit, given that the Chancellor seems to be having difficulty with it, by hanging that deficit around the neck of their own employees? Or is this just mistaken drafting, which the Minister will be happy to amend on Report?

As I suggested, the impact assessment suggested that the cap could save "low hundreds of millions" over given years, as if anticipating relatively small numbers being caught. However, no formal impact assessment was undertaken,

"as there are no obligations or costs imposed on business".

Of course, an impact assessment is always possible and the impact on the people concerned, or indeed on the efficiency of government, should have been a central concern, although it was clearly not to Ministers.

We will come later to the particular impact of "strain payments", but in the mean time we would like some clarification of why the particular figure was chosen. Was it simply to be under the "six-figure" that had been mentioned in the press? What thought was given to the impact across the public service? Were medium-or even lowish-income employees meant to be caught by it? Also, why is there a disparity with the NHS figure?

Furthermore, if the Government are really intent on dealing with the mischief of some super-payouts in this rather crude formulaic way via a cap, then not only should the Minister consider whether the figure is correct, but she should also give a commitment to index-link the amount before even Foreign Office cleaners are included. The Local Government Association supports the amendment to ensure that the figure is re-evaluated on an annual basis, so as to take into account differences in pay increases in separate areas of the public sector.

I am sure that the Committee is familiar with the figures as to who could be caught by the cap. According to the Cabinet Office, more than 20,000 in the main Civil Service and many more in arm's-length bodies would be. It is the combination of age, and length of service rather than high pay that trap these people. The examples given have included a librarian, with a career average salary of £25,000—perhaps 34 years with the council when its library closes—and she is redundant at 55. It is a bit late to start a new career, and there are not a lot of private libraries to which she can move. She will be caught by the cap. Similarly, a 52 year-old tax inspector, or indeed a prison warder, who has worked for 25 years, or a 50 year-old health and safety officer with 20 years' experience, or a 56 year-old school inspector after 16 years with Ofsted, or perhaps with FOS, if PPI ever got sorted.

Other groups include educational psychologists, mostly employed by local government, earning between £40,000 and £50,000 a year. They do not consider themselves the "best paid" in society, and I share their view. However, again, they will be caught, not because of their pay rate but because, if they are over 55, of the so-called strain payments—money which, of course, does not go to the person concerned but to the pension scheme, as we will come on to in later amendments. Can the Minister therefore say what thought the Government gave to the public servants who do such valuable work for all of us?

The cap as it is in the Bill at present covers compulsory redundancies, where of course the individual has no choice as to whether to walk and no opportunity to weigh up the pros and cons of leaving the service, but will simply lose the rights and reasonable expectations built up over a career. They—and we—deserve to know why this figure was chosen, and whether it really was aimed at these "good and faithful" colleagues. I beg to move.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I inform the Committee that if this amendment is agreed to I cannot call Amendments 53ZJ to 54BC inclusive by reason of pre-emption.

Baroness Donaghy (Lab): My Lords, Clause 26 sits rather oddly in a Bill about enterprise, a bit like a carbuncle on the end of a nose. I am not sure whether it belongs here; however, as I want the whole clause deleted, I will not suggest where it should go, except through the door market "Exit". After a minimal consultation, a misleading manifesto statement and an all-round rubbishing by the Delegated Powers and Regulatory Reform Committee, the Government still seem to want to go on to attack public service workers. One thing I ask—plead, even—is that if this clause is not deleted, the Government must announce the date when the cap is to be applied. This uncertainty is causing anguish to a lot of individuals and uncertainty to the reorganisation plans of employers.

Possibly one of the most surprising elements of Clause 26 is that there is no impact assessment—or at least, it took me two days and the support of the Printed Paper Office to find a small footnote contained in an annexe to the main impact assessment. It is the size of an office ruler—that is the impact assessment for this clause. As my noble friend Lady Hayter already indicated, this very brief reference said:

"No Impact Assessment required as there are no obligations or costs imposed on business".

This is extraordinary. Even with the legislation on dangerous dogs there was a 50-page impact assessment. This tiny statement goes on to say that,

"the cap could result in savings in the low hundreds of millions of pounds over the course of this Parliament. This is about ensuring tax payers get a fair deal".

That is as scientific, objective and factual as this impact assessment gets.

The Delegated Powers and Regulatory Reform Committee has made its view clear. It recommends that,

"the affirmative procedure should always apply to regulations made under new section 153A(1) to (3) of the 2015 Act (inserted by clause 26 of the Bill)".

The committee indicated that:

"Given that the regulations could potentially affect large numbers of persons, we believe that the affirmative procedure should always apply".

The committee accepted that it was,

"feasible that the … powers would apply only to a relatively few public sector employees leaving their jobs in closely defined circumstances, and that the type of exit payments prescribed may be very limited".

It went on to say:

"However a future Government could recast the regulations so that they applied to all or most types of public sector employees and exit payments".

In response to the Delegated Powers Committee, the Government suggested that the regulations would operate only to prevent "vast benefits" from being conferred on "a few individuals", as my noble friend Lady Hayter has already said. The committee disagreed and thought that the number of individuals affected was,

"potentially far more significant than implied".

Lastly, the committee did not agree with the Government's statement,

"that Clause 26 … merely raises 'questions of management of public service workers that have traditionally been a matter for Ministers'. The regulations could override accrued contractual or legislative entitlements to exit payments calculated in a particular way. This is not, we believe, simply a management of personnel issue that requires only a modest level of Parliamentary scrutiny".

I add that Clause 26 is proposing to amend an Act that is less than a year old. The Delegated Powers Committee's statement that a future Government could recast the regulations more widely could also apply to this current Government, if they are constantly going to amend new legislation before it has had time to take effect. The Government want to give themselves and future Governments Henry VIII powers to overturn negotiated agreements, renege on current ones, create anxiety and stress among thousands of public service workers and make it more difficult for employers to reorganise.

I turn to the consultation document. The consultation that took place did not adhere to the Cabinet Office principles, which state:

"Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action".

The footnote to this principle makes it clear that the "holiday period" includes August. The consultation was launched on 31 July 2015 and concluded on 27 August 2015. That covers the entire holiday period. The Government have said several times in their response to the consultation that few alternatives to their proposals were put forward. That is hardly surprising when most people would not have seen the significance of the proposed cap in many industries, or how complex contractual or pension rights might be affected.

It is a credit to those organisations that did respond—over 4,000, according to the summary document—and it was clear that a significant number were not in favour of a cap, given other reforms to public sector terms and conditions. It was also clear that a significant number of respondents disagreed with the Government's intention to include early access to unreduced pensions within the scope of the cap. Having had some experience of these consultation exercises that Governments in power, irrespective of party, indulge in, I know that the statement that "a significant number" object to something usually means that a proposal is very unpopular indeed.

[Baroness Donaghy]

I welcome the fact that the Government intend to exclude payments for untaken annual leave within the scope of the cap, just as I welcome the fact that the Government are currently minded not to include individuals with protected TUPE terms. However, they will include payments in lieu of notice. This gives employers less and less flexibility to deploy their staff, particularly during periods of constant reorganisation. It also means that employees may not budge until they are thrown out by means of compulsory redundancy because of the inflexibilities that this provision provides. It will be a game changer in most public services and there is bound to be a reaction, but perhaps that is what the Government want. I believe that the Government set out with the intention that the headline severance figures for the top brass in some sectors should be curbed, if only as a DMA—a *Daily Mail* appeaser. All the public statements made seem to point that way. I am beginning to wonder if the Government have changed their focus and see this as a golden opportunity to impose another hit on public service workers and public services, and thus to undermine national agreements and clawbacks on central control, with quite shocking Henry VIII powers.

I have been involved in collective bargaining in the public sector for more than 40 years and I know for a fact that every agreement reached in the public services is crawled over by the home department. It knows to a farthing how much a deal will cost. To adopt a shock-horror approach now to deals that have previously been agreed by government departments is disingenuous. The Government pretend to represent working people, but that is a hollow boast, and will be seen as such by thousands of loyal and long-serving public servants in their fifties whose life plans will change dramatically as a result of this clause. Far from representing working people, the Government are in danger of undermining them both in terms of their morale and their bank balances. Moreover, public sector authorities are crying out for an announcement by the Government on when the cap might be introduced. As the Local Government Association has said, workplace restructuring plans for 2016 and beyond will already be under way in local authorities, and any further delay on this will restrict councils from taking important decisions.

I should just say that the figure I suggested in one of my amendments simply reflects a set of agreements already negotiated in the National Health Service. It has taken two years to reach and would probably solve quite a lot of the problems that we are talking about here. Alternatively, of course, if some indication can be given about longevity of service, that might provide peace of mind to some people. Finally, I urge the Minister to give us some reassurance about annual re-evaluation. Given the earlier discussion on pubs and the difficulties in that area, again, having something in the Bill to that extent might go a long way to relieving some of the individuals affected.

6.45 pm

Lord Stoneham of Droxford: My Lords, as housing associations have been designated as part of the public sector, I ought to declare my interest as the chairman of Housing and Care 21. I will refer to the housing sector in the course of my remarks on these amendments. Personally, I have deep concerns about this. We know that it was a manifesto commitment of the governing party. It was a good selling point for them because it was populist, but I fear and know that it will result in poor legislation and will have unintended consequences.

I am one of those who is immensely worried about management capability in the public sector with all the demands to reform, change and improve it. But here we are, again putting public sector staff at a disadvantage as against the private sector at a time when, frankly, that sector remains rampant in terms of its conditions, benefits and even its pay-offs, certainly for high-level staff. We will find as a result of this change that we have further difficulties getting the managers that we want for these very difficult jobs, where we are trying to get change and reform. It is not easy and the very best people are needed. I have said this before but 100 good managers are worth £1 billion in public spending. This puts them at a disadvantage.

The noble Baroness, Lady Donaghy, said that this does not affect just the high paid. It also affects some of the lowest paid in the public sector, for all the reasons she set out. This is not simply a populist measure because it deals with the high paid; it affects others. Pensions are the main problem here. There are generous aspects of public sector schemes but we have recently been through a renegotiation on a lot of these and we are now going to break them once again. What is the Government's word going to be worth in these situations where contractual obligations are being overruled by legislation?

I will give one example from the housing sector. The most difficult job in my career is making changes where people have to be made redundant. I always find it painful, but I have always ensured one thing—you have to show other employees that when you make changes you look after the people who are vulnerable in that situation. Whether we like it or not, we are going to face those situations in the next five years. We have never before seen the reform and change that is going to come in the public sector on the scale that is coming. We will know more when we see the public spending commitments but it is huge. At this precise moment we are undermining morale and will increase resistance to change.

In every housing association I have chaired we have had to make changes and we have sometimes had to make payouts in excess of £100,000. However, I have never regretted doing so because we have saved millions in return. If we give up these opportunities for change by putting in inflexibilities which make change more difficult, it will hold up reform and improvements that need to be made.

It is absolutely essential that there is some flexibility here. Normally, there would be a ministerial guideline that all payments above a certain level should be approved. That should be a normal management guideline instruction, and if this was not part of a populist general election commitment, it is what would happen. It would be the best thing for the public sector. It would provide restraint and a guideline on what is appropriate. Above all, it would provide flexibility for those who deserve payment and need to be protected.

That is what should happen, so anything we can do in this legislation to provide a loophole and some flexibility must be welcomed. Ministers will regret not doing it in a year or two when they are finding it difficult to get change in the public sector or when they are trying to get people to believe agreements they want to make. People will say, "Well, you made an agreement a year ago and you broke it. It was on pensions, something that is pretty important, and you just it let it go, so why should we trust you now when you are trying to make even bigger changes?".

Equity, sensitivity and trying to get change are important issues and are going to be very important in the next five years. Any Government that go into these changes wearing these handcuffs will find it very difficult to get change and improvements, nor will they deserve to do so. At the end of the day, change is painful and difficult for the employees in the sector where it is being done. They need to be able to say that the people who are being sacrificed for change are being well protected and that their agreements are being honoured. That will actually help achieve change quicker. I hope the Minister will assure us that on Report they will look at giving themselves some flexibility. That will be welcomed.

Baroness Neville-Rolfe: I am grateful to noble Lords for their comments. At the outset, I shall address the point that the noble Baroness, Lady Hayter, made about whether the cap had been extended deliberately. First, £95,000 is a large exit payment, whatever the level of an individual's former salary. The Government do not believe that the taxpayer should continue to fund exit payments larger than that. The clause allows for the cap to be relaxed, including to take account of exceptional individual circumstances. The large majority of workers are not affected by these arrangements; for example, less than 2% of recent exits in local government would have exceeded the cap. But where generous early retirement provisions are offered that include immediate payment of unreduced pensions, some lower-paid staff with very long service can currently be eligible for exit packages above the level of the cap.

The Government recognise the importance of exit payments in providing workers with support as they get back into employment or enter retirement. However, the fundamental point is that the Government do not believe that it is fair for taxpayers to continue funding the small minority of exit packages that cost over £95,000. The Government made a clear commitment in their manifesto—the source of the figure—to end six-figure exit payouts for public workers.

The noble Baroness, Lady Donaghy, asked about consultation; she said that it had been inadequate. The measure has been public for a long time. We announced the intention to legislate in May, I think, in the Queen's Speech. We received over 4,000 responses, and do not believe that that suggests that there has been insufficient time to comment. Obviously, the measure will go through full parliamentary scrutiny during the passage of this Bill; we discussed it at Second Reading, are discussing it today, and I am sure that it will be discussed again. I express my thanks to the noble Baroness for her positive comments about some of the exclusions, which she has rightly highlighted. She also asked about the impact assessment. It is not a private sector impact, so it does not go through the RPC. There was an impact assessment as part of the consultation, which followed the usual criteria set out in government guidance. I do not know whether she has seen that; if not, obviously I will send it to her. I understand that the public had an opportunity to comment on it.

It is currently possible for employers to use taxpayers' money to fund excessive exit payment, as a substitute for good management practice. I remember the noble Lord, Lord Stoneham, saying at Second Reading how important management was. I think he said that 100 good managers were worth a billion pounds. The availability of very large payments can lead to issues of poor performance. The possibility of redeployment is not always given adequate consideration, which we would all like to see. The cap and the additional scrutiny it brings to payments will encourage employers to act with discipline and proportionality in considering public sector exits, and will help to ensure that good management practices are embedded in decision-making.

Amendment 53A seeks to increase the value of the cap to £145,000, a much higher figure. It would require taxpayers to continue to fund six-figure exit payments for public sector workers. Statutory redundancy pay is of course capped at £14,250. Exit payments of £145,000 would of course represent payouts of 10 times that amount. A cap even at the level proposed by the Government will not affect the large majority of public sector workers, as I have said. For the few who receive such payments, the cap does not reduce their compensation to an unreasonable amount and still compares favourably to the private sector. In addition, as I have said, the clause applies for a waiver power to allow the cap to be relaxed in exceptional circumstances.

7 pm

Amendment 54A seeks to subject the level of the cap to annual revaluation, presumably by reference to a factor such as inflation or earnings. This amendment is not necessary, as the value of the cap can already be altered in secondary regulations, which allow for the value of the cap to be reviewed and amended in a flexible manner. The LGA recently commented that,

"it is vital the proposed exit cap is flexible and updated on a regular basis to take into account differences in pay increases in separate areas of the public sector".

The Government agree with that. However, annual revaluation would fail to offer the flexibility that the clause provides for. As it stands, the Government can amend the level of the cap to take into account all prevailing circumstances, and with the additional scrutiny of the affirmative resolution procedure.

Finally, the amendment in the name of the noble Baroness, Lady Hayter, seeks to remove the power to make regulations implementing the exit cap from the clause, which has the effect of leaving the cap unenforceable and the clause redundant. I note that, in a similar spirit, the noble Baroness, Lady Donaghy, gave notice of her intention to oppose the Question that Clause 26 stand part of the Bill. By removing this power to make regulations to implement the cap, this amendment seeks to ensure that this manifesto commitment cannot be delivered. The Government have clearly set their

[Baroness Neville-Rolfe]
intention to end six-figure exit payments and believe that the cap of £95,000 is the appropriate means of achieving this. The level of the cap can be changed in response to changing circumstances, after parliamentary scrutiny. I am glad to say that I agree with the noble Baroness that we should look at the procedure and how we might achieve an affirmative resolution procedure when we come back on Report.

To respond to a further question, the cap will take effect after Royal Assent. We expect this to be in summer 2016, all being well.

The Government have a mandate for these proposals, and I respectfully urge noble Lords to resist any attempt to frustrate that commitment in this House. I will of course look at *Hansard* to see if we can provide any further clarification on points of detail before Report. However, I hope that the noble Lords and Baronesses will not press their amendments and will engage constructively with the Government to ensure that this manifesto commitment can be delivered.

Baroness Hayter of Kentish Town: I am desperately trying not to use the word "shameful", but I am afraid that that is what I think it is. It is fine to use taxpayers' money to bring umpteen new Peers into this House, which costs around £100,000 per year, and it is fine to use taxpayers' money for ministerial redundancy, but somehow paying someone a reasonable amount that they had reasonable expectations of receiving—which I think may be challenged in court—because of their length of service is not acceptable. I do not accept that there is a manifesto commitment on this. That was for the very best paid. I think I am right in saying that at least the Minister accepts that some lower-paid people will be covered by the cap, but that was not the manifesto commitment.

I think that the Minister said that fewer than 2% of recent payments would have exceeded the cap, but 2% involves a lot of people. Those people would not have got what they would have genuinely earned because of their long service. There may now be a rush to get out before the summer, knowing that otherwise something that one has earned over one's life will suddenly be taken away. If the private sector were doing it, they would find themselves in court fairly quickly. The Minister said that this could be reviewed under regulations, but of course the fear is that the figure could come down. The whole point of having it reviewed to ensure that it keeps up with inflation is that it is a one-way movement. The Government could suddenly decide that £80,000 or £70,000 was the right figure, or they might not want to pay their employees at all.

I am afraid that I find this fairly shameful. The idea that you can be redeployed in a high area of unemployment at the age of 57 is fanciful. The idea that someone who has been a specialist worker can be retrained at that age is a nice thought; some of us have managed it after the age of 60 but we are the very lucky ones in life. Most people are not like this.

I regret that the plea from the noble Lord, Lord Stoneham, about giving us guidelines and flexibility to enable the public sector to be flexible and provide what is best for all their staff—those remaining and those going—and for the management structures has received no response. This is not one of the Government's best days. I beg leave to withdraw the amendment.

Amendment 53ZH withdrawn.

Amendment 53ZJ

Moved by ***Lord Borwick***

53ZJ: Clause 26, page 44, line 8, leave out from "of" to "does" in line 10 and insert "a relevant public sector exit"

Lord Borwick (Con): My Lords, this amendment does not try to amend the purpose of Clause 26; rather, it would change an ambiguity in the final line of new Section 153A(1) inserted by Clause 26, where the qualifier,

"any period of 28 consecutive days",

could be said to refer to payments rather than to exits. It might be possible for a generous employer to pay £95,000 every month, which I presume is not the intention of the clause. My amendment would change the wording so that it would clearly refer only to the exits and ensure that duplication of payments could not be made.

Baroness Neville-Rolfe: I thank my noble friend Lord Borwick for his support for the cap and for his interest in helping us to ensure that the provisions that implement it are clear and understandable to those who will be affected. To cut the cackle, I am happy to accept his amendment.

Amendment 53ZJ agreed.

Amendment 53A not moved.

Amendment 54

Moved by ***Baroness Hayter of Kentish Town***

54: Clause 26, page 44, line 9, at end insert "except in the case of exit payments for potential claims under Part IVA of the Employment Rights Act 1996 (protected disclosures)"

Baroness Hayter of Kentish Town: My Lords, I apologise on behalf of my noble friend Lord Wills for his absence, which was completely unavoidable. On behalf of him, the noble Lord, Lord Low, and myself, I shall move Amendment 54. It is a simple amendment and I think that the case is fairly clear. The public, consumers, other workers and, indeed, very often the Government need whistleblowers if the public sector is to perform to the standards that we all expect of it in serving the community, protecting both its clients and employees and indeed ensuring that we as taxpayers get value for money from every part of the public service. Uncovering mismanagement or fraud, risks to vulnerable people or poor governance—all these sorts of things are in the public interest. Those who see things from the inside that quite rightly need to be known outside their coterie must be encouraged to whistleblow, but safe in the knowledge that they will have proper protections.

In supporting the amendment, the Association of Educational Psychologists, to give but one example, considers it vital to exempt whistleblowers from the cap. To quote the association:

"If one's whole career is to be risked then an exit payment limited to £95,000 or less might act as a deterrent resulting in less whistleblowing".

That would be a loss to all of us. I trust therefore that the Minister will accommodate this exemption, if not today then by bringing something forward herself on Report. I beg to move.

Lord Low of Dalston (CB): My Lords, I put my name to these amendments and I am very happy to support them, but I confess that the forces in their support are in some disarray today. We have already heard about the unavoidable absence of the noble Lord, Lord Wills—prevented from attending by a rival speaking engagement to which he was committed. I myself am less fully briefed and more underpowered than I would wish, having literally stepped off a plane this morning from the United States to find that the amendments were coming up today. I had been expecting them on Monday; indeed, for some time this afternoon it seemed as though they would not be reached until Monday, such was the Grand Committee's rate of progress, but here we are. I am most grateful to the noble Baroness, Lady Hayter, for riding to the rescue and moving the amendment.

The concern is basically that those settling claims where they might have got unlimited damages had they gone to tribunal will be disproportionately prejudiced if the amount at which a claim may be settled is capped. This is certainly the case with claims under PIDA, the Public Interest Disclosure Act, but it may just as much be the case with discrimination cases. The Minister might care to comment on that, as we may wish to take it up on Report. A second concern is that capping settlements where there is no limit on the level of damages that may be obtained at tribunal can operate only as an incentive to go to tribunal—to go to litigation rather than settle.

The noble Baroness spoke to the amendments very ably and, given the hour, I do not think I need say anything more about them, save that I fully support them.

Baroness Neville-Rolfe: I thank noble Lords, including in his absence the noble Lord, Lord Wills, for tabling this amendment. I was able to have a good discussion with him last night, and I hope that there will be some positive news for noble Lords.

I reiterate that the amendment has three components: a regulatory referral system for whistleblowing, access to legal advice for whistleblowers receiving exit payments, and the publication of guidance. If an exit payment relates to a potential whistleblowing disclosure, that would need to be agreed by both parties under a settlement agreement or following conciliation through ACAS. I assure noble Lords that no such agreement can prevent an employee from making a public interest disclosure as stipulated in the Employment Rights Act 1996. Any provision that sought to do so would be void, so a regulatory referral system is unnecessary to enable proper investigation of any malpractice. Any employee entering into an agreement that involves waiving the right to take such an issue to employment tribunal should be fully advised of the impact that would have.

There have been a number of recent developments on whistleblowing, including new guidance. The guidance for employers recommends that they confirm in their whistleblowing policies that settlement agreements cannot prevent workers from making disclosures in the public interest. The guidance for workers clarifies this point. So, too, does guidance published by the Cabinet Office in February this year for Civil Service organisations and their arm's-length bodies on severance payments and settlement agreements.

Finally, I hope that what I say in relation to Amendment 54 will be good news. The amendment seeks to exempt payments to whistleblowers from the cap on public sector exit payments. I assure the Committee that, where a whistleblower successfully brings a case to an employment tribunal, the cap will not apply to the award made. Under the indicative regulations, which set out how it is proposed to implement the cap and which the Treasury has made available, any payment made under an order of any court, including employment tribunals, would be outside the scope of the cap.

I hope that noble Lords have found that explanation reassuring. The noble Lord, Lord Wills, certainly did, and I hope that on that basis the noble Baroness will agree to withdraw the amendment.

7.15 pm

Lord Low of Dalston: It is not in dispute that the awards which may be made at tribunals will not be capped. The concern is that the settlements will be capped, and I am not sure that, from that point of view, the Minister has met the point of the amendment.

Baroness Neville-Rolfe: I am grateful to the noble Lord, Lord Low, for raising that point. It is important that I check the situation and, if I may, I will write to him. I think that our objectives in this area are the same, but it is important that I understand precisely the interplay of this provision and other legislation. I will come back to him.

Baroness Hayter of Kentish Town: The noble Lord, Lord Low, calls himself underpowered and then he understands every jot and tittle. The point that he has just raised is the key one. Where these sorts of things happen, it is much better if they can be dealt with by settlement rather than involving expense and coverage for the employer and everyone else. I, too, will want to look at this carefully and to take advice from my noble friend Lord Wills. However, for the moment, I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

Amendment 54A not moved.

Amendment 54B

Moved by ***Baroness Donaghy***

54B: Clause 26, page 44, line 9, at end insert "except where exit payments are made under existing public service agreements"

Baroness Donaghy: In order to save time I will speak to the next group of amendments, if that is all right. There is a lot of overlapping, not because I am boring but because the amendments are all intended to try to elicit from the Government what their intention is regarding the salary level that is going to be affected and to ask whether they think that honouring national agreements is sufficiently important to allow those agreements to take their course, perhaps introducing a two-year period if those agreements are already in place.

These are probing amendments. I will cut down considerably what I was going to say but I want to come back to the question of what the acceptable line on the impact of the exit cap is. We want moderately-paid employees with long service to have peace of mind. I ask the Minister whether the Government have gone back on the statement made by the then Treasury Minister, Priti Patel. In January 2015 she said:

"This commitment, which will be included in our 2015 General Election manifesto, will cap payments for well-paid public sector workers at £95,000. Crucially, those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants".

The impression given is that the cap applies to well-paid public sector workers and not to low-earning, long-serving employees. What has happened to the figure of £27,000 that was quoted? Is this another example of reneging on a promise?

The manifesto said that:

"We will end taxpayer-funded six-figure payoffs for the best paid public sector workers".

Not the better paid, not the moderately paid, or the averagely paid, but the best paid. How misleading is that? Will the Minister clarify what the Government mean by "low earning" and "best paid" and how they will deal with the vast majority in the middle? Does she believe that the manifesto referring to the "best paid" would have rung alarm bells for thousands of public sector workers in their fifties? I do not think so. Some noble Lords may have received correspondence from people who will be affected. I will read some lines from Leona Parker, who said:

"I work at Dungeness A site, one of the original civil nuclear reactor sites where many of my colleagues have worked many dedicated and proud years of service",

and,

"are being faced with the prospect of long-standing agreements being reneged on. What kind of Government would say this is fair?"

I had other examples that, to save time, I will not use.

In the consultation response, the Government referred to the waiver process and included the line,

"the full council to take the decision whether to grant a waiver of the cap in cases involving local authorities and for local government bodies within their delegated powers".

There is no reference to this in the Bill. I know that certain assurances have been made about this, but there is no reference in the Bill to the waiver. Ministers are given powers to do something, but there is no indication in the Bill at the moment. I would feel more assured if this could be done.

The Local Government Association is also concerned about how the proposed waiver process will apply in schools, where governing bodies have their own decision-making powers. It is important that the Government make a clear statement that they plan to include regulations that will allow the full council of local authorities, which is a full public meeting of the council, to choose to waive the cap in circumstances of their choosing. Clearly, authorities would be required to publish a policy on the limited circumstances in which they would consider the granting of an exemption. That is only right and proper. I would prefer to see this in the Bill but I will listen with interest to what the Minister says to reassure us. I beg to move.

Baroness Hayter of Kentish Town: My Lords, the amendments in this group are pretty crucial. In part, they take forward what we said in the first group about exit payments and helping the good management of the service at local and national levels. There are clear examples of where existing rights and agreements should not be undermined, such as payments in lieu of notice where they are part of a contractual entitlement of employment, which, as has been said, is often a useful tool for employers in managing exits.

In the Civil Service the proposed cap cuts across the negotiating of an agreement. The then Minister for the Cabinet Office, now the noble Lord, Lord Maude of Horsham, described the agreement reached in 2010 as one that would be lasting. He said that it would provide,

"a fair balance between the interests of taxpayers and the interests of civil servants and protect those approaching retirement and the lowest paid".—[*Official Report*, Commons, 14/12/10; col. 849.]

This Bill should not undermine that agreement, whatever one thinks about the desirability of the principle of the cap itself. Nor, as we have heard, should the cap hamper the reorganisation and modernisation of public services, as suggested earlier by the noble Lord, Lord Stoneham, and as wanted and supported by other parts of the Government. As my noble friend has said, the Local Government Association is particularly worried that the cap would threaten its future staff restructuring because it is such a rigid cap and because of its particular impact on long-serving employees who may be exactly the ones whose tasks or skills are now less in demand. It would also exclude some staff from early retirement who might otherwise have been part of a headcount reduction exercise, with strategic restructuring now hampered as councils are perhaps forced to keep on their highest-paid staff instead of allowing them to retire and bringing in lower-cost replacements.

The cap, of course, once it is in, will also act as a disincentive to those considering voluntary redundancy. That is likely to mean there will end up being more compulsory redundancies as well as difficulties in modernising the service. This matter is of particular importance to local government, which is partly why we have tabled Amendment 54H to include in the Bill rather than in secondary legislation the ability to make exemptions where the full council of the local authority decides to grant a waiver of the cap. The Government have now published their draft statutory instrument allowing for a waiver where the full council so agrees. However, as my noble friend Lady Donaghy said, this ability could be swept away if it is only in secondary legislation, with local government having no guarantees in this regard. That makes future planning very difficult. We therefore hope that Amendment 54H will be

considered a better way forward as the principle has already been signed up to by the Government, but the amendment would give everyone confidence in it.

The amendments containing specific figures that we have now brought into this group seek to push the Government to define the words that we all keep using—that is, what is meant by "the best paid"? Is it people on a salary of £30,000, £35,000 or £40,000 a year? It is important to be clear about that. It is hard to imagine the Government not accepting that anyone earning below the national average wage should be excluded from this provision. Therefore, we hope that Amendment 54BA will be accepted.

We also think it important to exclude from the provision people with long service. That is important not just for their sake, and what they have earnt during their career working for all of us, but because of the advantages that this offers to management. After all, those people have earnt those benefits. We do not consider that the Conservative manifesto wanted to catch people who have given long service to this country. Those are the people we would like to see excluded from this provision. I imagine that the Minister concurs with that objective and hope that she can find a way to accept that amendment.

Baroness Neville-Rolfe: My Lords, this group seeks to delay the implementation of the cap, create exemptions or introduce an earnings threshold. I am very grateful to the noble Baroness, Lady Donaghy, for grouping these together.

Amendment 54B seeks to ensure that the cap cannot stop payments of more than £95,000 if they are already allowed under current arrangements. The effect of this would be that employers would have to make amendments to compensation schemes, or to make changes to existing contractual entitlements before the Government could stop such payments. This would have the effect, I fear, of making the exit payments cap ineffective, or delaying it indefinitely.

Amendment 54G seeks to put in place a transitional period of two years after Royal Assent during which the cap would not apply in cases of what she describes as "institutional reorganisation". The Government do not accept that it would be appropriate to frustrate the intention of the cap by delaying its full introduction for two years. However, the Government recognise that workforce restructuring can be a lengthy and complex process. There may be instances where exits that have long since been agreed will not take place until after the £95,000 cap comes into force. We recognise that there may be instances where it would be appropriate to give effect to such agreements after the cap comes in.

Amendment 54H concerns the power to relax the restrictions imposed by the cap. The clause provides that this is exercisable by Ministers of the Crown, and ensures that any exercise of that power is subject to scrutiny. The Government agree that it is appropriate that the power to relax restrictions be vested outside Ministers in relation to certain bodies outside central government. This includes local authorities. The draft regulations, which noble Lords will now have seen, provide that the power to relax restrictions on exit payments may be exercised by full councils of local authorities in respect of payments that they make. However, we need to ensure that the level of scrutiny and reassurance remains the same so whoever exercises the power must do so by reference to guidance issued by the Treasury, and must of course keep a record of the exercise of that power.

7.30 pm

I turn to the big group of amendments including Amendment 54D and Amendment 54BB. I obviously recognise that this is an emotive issue and that there will be cases of hard-working, long-serving public servants who may receive less as a result of the cap than they otherwise would have received. Whatever an individual's level of earnings, however, the Government believe that £95,000 is a generous limit to impose on exit payments, and that payments of more than this cannot be allowed to continue unchecked. As I have already highlighted, the Government recognise that there may be exceptional circumstances where it would be right for a payment to be made of a value greater than the cap. To address this, the clause explicitly provides for the cap to be relaxed in appropriate circumstances. However, we are worried about things such as cliff edges. I reassure the noble Baroness, Lady Donaghy, that local authorities will also be provided with the powers to relax restrictions on exit payments, as I may already have said.

Amendment 54BB would exempt those who have worked for one employer for their whole career but would discriminate against those who perhaps, out of no fault of their own, have had an interrupted career or have chosen to move between employers. Equally, the Government do not believe that it could be right to impose a blanket exemption based simply on a definition of long service. There will also be individuals with long service on very high salaries who, under current rules, can receive payments far in excess of £95,000. I do not think that there is any dispute between us on that today. Regarding Priti Patel, I do not recognise that comment so I cannot answer what she was saying in particular. We have a commitment in the manifesto but I will of course take the point away and find out the exact circumstances and its timing.

The Government's proposals allow every individual's circumstances to be considered, whatever their salary or length of service, and guidance will be provided as to when it is right and proper to exercise discretion to relax the restrictions. We do not think it is right to try to limit that in the way proposed in these amendments this evening and, in the circumstances, I hope that noble Lords will feel able to withdraw or not press their amendments.

Baroness Donaghy: I thank the Minister for dealing with all those amendments so quickly. First, I think that the flexibility is entirely on the Government's part. The exercise of Henry VIII powers will increase the uncertainty and the lowering of morale among public servants. It will increase litigation and encourage people to go to employment tribunals. The Minister gave no indication whatever as to the level of salary that the Government had in mind beyond which they did not think this would have an impact. I thought that was interesting. We gave her several opportunities and quoted several figures, including one from a former

[Baroness Donaghy]
Treasury Minister, not just as bait but to get a rough idea of what the Government had in mind. We have not had a single indication, so this will be railroaded through. I do not believe that that summer consultation allowed adequately for people who will be affected. The Minister herself said that hard-working, long-serving public service workers will be affected. I do not believe they knew that when that consultation document came out in the summer. In the circumstances and in view of the time, though, I beg leave to withdraw my amendment.

Amendment 54B withdrawn.

Amendments 54BA and 54BB not moved.

Amendment 54BC

Moved by ***Lord Borwick***

54BC: Clause 26, page 44, line 9, at end insert—

"(1A) Where provision is made under subsection (1) it must also secure that if, in any period of 28 consecutive days, two or more relevant public sector exits occur in respect of the same person, the total amount of exit payments made to the person in respect of those exits does not exceed the amount provided for in subsection (1)."

Amendment 54BC agreed.

Amendment 54C

Moved by ***Baroness Donaghy***

54C: Clause 26, page 44, leave out lines 22 to 24

Baroness Donaghy: This will take three minutes. At least I hope I can be as quick as that. Not because this amendment is not important—it is probably the most important aspect of the discussion on exit caps.

The purpose of this amendment is to exempt pension costs from the exit cap. My objective throughout these debates on Clause 26 is to protect those employees on lower income with long service. If pension strain costs are included in the exit cap it will affect thousands of people in the public services. I will use local government as an example.

The local government pension scheme, LGPS, has approximately 4.6 million members. Recent changes to the pension scheme rules, as a direct result of pension legislation, mean that an employee over the age of 55 years who is made redundant is automatically entitled to early retirement without any reduction in pension. It is important to remind ourselves that in these circumstances the redundant employee would not be receiving a lump sum of money. He or she would simply be entitled to access their pension early. While the redundant employee will not have earned as much pension as they would have if they had remained employed for more years, there would normally be a significant reduction to the pension for accessing it before the normal retirement age. As part of the agreement, the employer pays the pension fund a lump sum to compensate the scheme for having to pay an unreduced pension much earlier than anticipated. This is known as the strain payment.

The employee benefits indirectly because they receive an unreduced pension. They do not receive a direct pay off in the sense normally understood by the high-profile cases. Those with long service, say 20 years, on a moderate salary who are made redundant at 55 could easily be affected by the provisions in the Bill. To give a hypothetical example, a career librarian with an average salary of £25,000 per year reaches 55 and is made redundant after 34 years of service. Her pension would be calculated at £17,346.93 per year. The librarian would receive this 11 years earlier than her normal retirement age, so the initial strain payment would be £190,816. To offset that, money would have been saved in salary and salary increases for 11 years and other factors such as local longevity would also be taken into consideration. So, the strain payment is always lower than the initial calculation. Nevertheless, a cap of £95,000 would almost certainly be breached and the employer would be unable to make the member redundant without either breaching the proposed cap or the current local government pension scheme regulations. These were recently negotiated and would not have been cleared without the Government's consent. Multiply that by the 99 pension funds which exist and have their own actuarial methods of calculating the actual strain payments.

In Schedule 4 to the Bill it is very clear that the pension regulations will be amended to allow for this cap. This makes a nonsense of the previous Government's statement that there would be no more meddling with public service pension schemes for 25 years. To renege on an agreement is bad enough. However, the schedule also makes it clear that where a pension strain payment would breach the cap the consequences would either be a reduced pension or that the member would have to find a lump sum in order to buy out that reduction. I remind the Committee of what I said earlier: the member will not receive a lump sum on redundancy in this instance. They would have to find the lump sum from their savings. I do not know how many public sector employees on £25,000 a year have substantial savings. More importantly, neither do the Government. I say that because I am still looking for the impact assessment and I look forward to receiving the copy that I have been promised.

This is an extremely serious issue for all people in public sector pension schemes. It will be treated as if it is going back on very recently negotiated agreements on pension changes.

Baroness Hayter of Kentish Town: My Lords, this is the amendment that the Government really ought to grab hold of if they want to achieve their stated objective of stopping big payments to the highest paid rather than to the longest serving of their own employees. It is this amendment which would prevent the longer serving, albeit lower earning, workers from being caught. As my noble friend has said, it is so unfair because these strain payments do not even go to the individual, it is an actuarial change from what is at the moment available from their current employer to the pension scheme. However, it will reduce the amount that they are able to take as their pay.

We have already heard of examples from my noble friend and we are talking about this becoming a bigger problem. We could have someone with 35 years' service

earning perhaps £30,000, but because of the later retirement age now of 65, a person on that salary will undoubtedly hit the cap and not be able to take a well-earned and justified amount of money. It can also happen with much smaller sums in terms of long service. This is going to hit older workers, and to me it feels discriminatory towards them. I do not know whether any challenges will be made on this basis, but they are the people who will be caught—it is not by virtue of their pay, but by virtue of their age.

I will add one more point. As the Bill stands at the moment, it will affect those who, under the present arrangements, can take a non-reduced pension on compassionate grounds. I assume that that is also going to go out of the window. This is an absolutely crux amendment. Solve this on pensions and we will have gone a long way to solving what is between us on this matter.

Baroness Neville-Rolfe: I thank the noble Baroness for her amendment. It is late but I will try to respond because the noble Baroness and her noble friend have both made important points about a key area. The amendment seeks to exclude any pension top-up element from the scope of a cap on exit payments. The Government do not believe that such an exclusion would be desirable for reasons that I will explain.

Let me be clear: the Government's proposals, as I said at Second Reading, do not involve taking away people's group pension rights, so the cap will not affect in any way an individual's right to their earned pension, nor does it engage the 25-year guarantee on pension rights. It is focused on limiting the amount that a public sector worker can receive from an employer when leaving employment. The cap is intended to cover all the various types of payment that an employer may make, and the Government think it right that it should include payments made to a pension scheme to fund early access to that payment, otherwise you will have a different problem.

Noble Lords will be aware that where an individual takes early retirement, pension payments are normally reduced to reflect the expectation that they will be paid for longer, and the amount of the reduction is calculated by the scheme actuary to ensure that the consequences for the scheme and for the individual are cost-neutral. In cases where the individual is retiring early on the basis of ill-health or redundancy, certain pension and compensation schemes may allow an employer to make a payment into the pension scheme to buy out any reduction so that the individual can have immediate access to the unreduced pension. These additional costs to the scheme, those of providing a pension of greater value than the individual would otherwise be entitled to, are met by the employer and, ultimately of course, by the taxpayer.

I can make it clear that these provisions do not alter the position in relation to early retirement for ill-health and injury, but I am not sure about compassion, so I will have to look into that. As I alluded to earlier, it is only where such a payment forms part of a redundancy package in place of or additional to a lump sum redundancy payment that it will be within the scope of the cap. The Government do not accept that as a rationale for excluding this type of payment from the cap. Payments of this type are sometimes some of the most expensive and place the greatest burden on employers and taxpayers. I would also like to reassure noble Lords that the Government believe that redundancy packages should still retain flexibility to allow early access to a pension where employers have the ability to top up an employee's pension. These proposals will simply ensure that any top-up is within the limits of the cap, and Schedule 4 to the Bill gives a power whereby the employer can still make a payment into the pension scheme to reduce the actuarial reduction that would otherwise have been made.

I note the points that have been made and I understand the emotion behind and importance of this issue. It is serious, but the Government have brought forward a scheme. It involves picking up these extra payments that are made to top up pensions, and I hope that, in the interests of time, the noble Baroness will be prepared to withdraw her amendment.

Baroness Donaghy: I thank the Minister for her response, but she has not convinced me by one iota. However, in view of the time, I beg leave to withdraw the amendment.

Amendment 54C withdrawn.

Amendment 54CA

Moved by ***Lord Borwick***

54CA: Clause 26, page 44, line 33, leave out "(1)" and insert "(1A)"

Amendment 54CA agreed.

Amendments 54D to 54H not moved.

Amendment 54J

Moved by ***Baroness Hayter of Kentish Town***

54J: Clause 26, page 46, leave out lines 12 to 27 and insert "any regulations made under section 153A"

Baroness Hayter of Kentish Town: My Lords, this group of amendments has been spoken to in part by my noble friend Lady Donaghy. I am taking up the incredibly good and thorough work of our Delegated Powers and Regulatory Reform Committee, and in fact I will draw completely on its insights, experience and recommendations. Without these changes, it is possible—from something the Minister said earlier as a slight aside—that she may accept it. If so, I shall save myself from making a speech. If she is likely to do so, I will move the amendment formally. If not, I beg to move.

Baroness Neville-Rolfe: My Lords, we have received the committee's report, and I take this opportunity to thank the committee for its detailed scrutiny. This is a last-minute amendment, but of course we appreciate the spirit in which it has been made. We are giving close consideration to the committee's recommendations, including the need to ensure that we reflect the devolution position correctly. Perhaps I may therefore revert to this on Report with a proposed amendment on the subject.

Baroness Hayter of Kentish Town: I am sorry if this has not been done in quite the right order, but in view of what the Minister has said it sounds as though we are very close on this. I look forward to seeing an amendment on Report, and I beg leave to withdraw the amendment.

Amendment 54J withdrawn.

Amendment 55 not moved.

Clause 26, as amended, agreed.

Schedule 4 agreed.

Clause 27: Consequential amendments, repeals and revocations

Amendments 55A and 55B not moved.

Clause 27 agreed.

Clause 28 agreed.

Clause 29: Commencement

Amendments 56 and 57 not moved.

Clause 29 agreed.

Clauses 30 and 31 agreed.

Bill reported with amendments.

Committee adjourned at 7.49 pm.

Volume 765
No. 62

Wednesday
4 November 2015

CONTENTS

Wednesday 4 November 2015