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PARLIAMENTARY DEBATES  
(HANSARD)

HOUSE OF LORDS  
OFFICIAL REPORT

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

*Monday, 23 November 2015.*

2.30 pm

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

### Introduction: Lord Beith

2.37 pm

*The right honourable Sir Alan James Beith, Knight, having been created Baron Beith, of Berwick-upon-Tweed in the County of Northumberland, was introduced and took the oath, supported by Lord Steel of Aikwood and Lord Shipley, and signed an undertaking to abide by the Code of Conduct.*

### Introduction: Lord Willetts

2.43 pm

*The right honourable David Lindsay Willetts, having been created Baron Willetts, of Havant in the County of Hampshire, was introduced and took the oath, supported by Lord Lawson of Blaby and Baroness Evans of Bowes Park, and signed an undertaking to abide by the Code of Conduct.*

## Northern Powerhouse: Airports

### Question

2.47 pm

*Asked by Baroness Randerson*

To ask Her Majesty's Government what is their assessment of the potential impact of additional capacity at either Heathrow or Gatwick airports on the Northern Powerhouse project.

**The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon) (Con):** My Lords, the Government are currently considering all the work of the independent Airports Commission before making any decisions about additional airport capacity. The northern powerhouse initiative aims to harness investment and drive economic growth in the north. Any activity under the Government's plan for the economy will be complementary in order to provide the best conditions for a successful economy across the United Kingdom.

**Baroness Randerson (LD):** My Lords, the south-east of England has one-third of the population of the UK and two-thirds of the flights, yet airports such as Birmingham and Manchester have significant spare capacity. Does the Minister accept concerns about the distorting effect of further airport expansion in the south-east? Is he worried that, when the chief executive of Heathrow appeared before a committee in the other place, he failed to provide any detailed strategy for reducing air pollution at Heathrow, which already breaches legal limits?

**Lord Ahmad of Wimbledon:** My Lords, on the noble Baroness's second point, as I am sure she is aware, the Airports Commission has detailed quite extensively—whatever proposal is taken forward—the issue of environmental considerations, including noise pollution. On airports in the north of England, as I am sure she is aware, while there have been capacity issues in the south-east, which are being looked at, we have also seen the expansion of services in the north. Manchester International Airport is now the UK's third busiest airport and will benefit over the next 10 years from another £1 billion of investment.

**Lord Soley (Lab):** Does the Minister agree that the key to this is to understand that we need a hub airport, wherever it is, and all regional airports need connectivity to that because, if they do not have that, they are at a severe disadvantage particularly to continental airports? We must have regional connectivity with an effective hub airport, wherever that is.

**Lord Ahmad of Wimbledon:** The noble Lord raises an important point. I agree with him: hub airports provide that connectivity and we are seeing that. I alluded to the growth of Manchester. We have seen Manchester become a hub airport for the region. Connectivity is about not just air connectivity but surface connectivity. As I am sure the noble Lord knows, I am glad to report that in terms of both road and rail we are providing just that connectivity across airports.

**Lord Spicer (Con):** My Lords, are the Government still fully committed to producing their decision about London's airports before Christmas?

**Lord Ahmad of Wimbledon:** My noble friend raises a question that he has asked before, and I will give him the answer that I have given before. My right honourable friend the Prime Minister has given an assurance that we will make a decision before Christmas. The other thing that my right honourable friend has underlined is that we need to consider the findings of the Airports Commission's report extensively. It is an extensive report. We need to look at it in a detailed manner to ensure that there is no subsequent judicial review on any proposal taken forward.

**Baroness Armstrong of Hill Top (Lab):** Does the Minister recognise that the north has already lost out because of slow decision-making over an airport in the south-east? Teesside's Durham Tees Valley Airport no longer has any connectivity with London and the connectivity at Newcastle has been severely reduced. This affects our economy. The north-east is still the largest manufacturing region in the country, but much of our work is with Japanese companies. They wonder how on earth they are to get there, when they cannot do so directly when flying into a London airport.

**Lord Ahmad of Wimbledon:** I do not agree with the noble Baroness's conclusion, although I do agree that there was a lack of investment in the north. The previous Government and now this one have given the commitment to ensure that there is investment, with £13 billion of transport investment going forward in

[LORD AHMAD OF WIMBLEDON]

this Parliament. As regards connectivity from north-east to north-west, the noble Baroness is aware that Transport for the North has extensive connectivity plans and I am sure that she welcomes the fact, as I do, that we now have regional airports such as Manchester serving not just the domestic European community—she throws her arms up, but I do not agree with her. The Chinese President himself made a positive announcement, which I think that she should appreciate.

**Baroness Kramer (LD):** My Lords, the Minister is well aware that any owner of a new runway in the south-east will need to fill it rapidly to repay the cost of having built it and that the fastest route is to persuade the international airlines not to fly directly to Birmingham, Manchester and other regional airports, but to come through Heathrow, with a hub relationship only with those airports. Has he examined what this will do to undermine the northern powerhouse, which is seeking international investment and needs direct international connectivity?

**Lord Ahmad of Wimbledon:** The northern powerhouse is not being undermined but supported by the Government, as the recent announcement about the link to direct flights to China indicates. As regards the decisions that airlines take, the noble Baroness is aware from her time as a Minister for transport that that is very much up to the airlines themselves.

**Lord Wigley (PC):** My Lords, the Minister mentioned the importance of rail connectivity for Manchester Airport. Can he confirm that it is still the Government's intention to ensure that there is a direct rail connection from north Wales and Chester through to Manchester without having to change train? This has long been on the agenda, but it has not yet been delivered.

**Lord Ahmad of Wimbledon:** The Government have repeatedly given their assurance not just about connectivity, as I said, on rail in the south-east, but also that the investment that we are making across railways throughout the country, including the new investment in HS2, will ensure greater connectivity between all parts of the country. I will look into the specific route that he has mentioned and write to him.

**Lord Rosser (Lab):** My Lords, the Minister has referred to the decision on the recommendation of the Davies commission report in respect of a third runway at Heathrow being made by Christmas. Can he confirm that that will be a final decision and not simply an interim one?

**Lord Ahmad of Wimbledon:** I think the noble Lord is clutching at straws. I have made clear the Government's position. A decision will be made on the Airports Commission's findings, and I ask him to wait until that is made.

**Lord Cormack (Con):** My Lords, I take it we are talking about this Christmas. Could we have an assurance from my noble friend that the announcement will be made to Parliament and not when Parliament has risen?

**Lord Ahmad of Wimbledon:** As I said, I am not going to give an absolute assurance at this point about the timing of the decision. My right honourable friend the Prime Minister has made it clear that a decision will be made. I also speak for the Secretary of State for Transport, who has also indicated that we will come back with that decision to Parliament, and I am sure that an appropriate Question or debate will be tabled right here in this Chamber as well.

## Air Quality Question

2.55 pm

Asked by **Baroness Jones of Whitchurch**

To ask Her Majesty's Government how they plan to satisfy the Supreme Court's ruling that United Kingdom air quality should be brought within legal limits as soon as possible.

**Lord Gardiner of Kimble (Con):** My Lords, the consultation on the draft air quality plans has now been concluded and we are assessing the 728 responses we have received. We are on track to submit the finalised plans for the 38 non-compliant zones to the European Commission by 31 December. We have already committed £2 billion since 2011 on transport measures which will address both particulate matter and nitrogen dioxide levels.

**Baroness Jones of Whitchurch (Lab):** I thank the Minister for that reply but I have to say that it lacks any of the urgency demanded by the Supreme Court. It cannot be right that the Government's response in the draft report would see pollution levels remain above legal levels until 2025. In the mean time, King's College has estimated that nearly 10,000 people a year are dying in London as a result of toxic air pollution. There are practical solutions available, such as better traffic controls, a diesel scrappage scheme and better incentives for clean cars. I urge the Minister to look again at these proposals and come back with a more radical and timely response to the Supreme Court's challenge.

**Lord Gardiner of Kimble:** My Lords, I do not think the noble Baroness has yet seen the plan—nor have I. It would be more appropriate if the draft plan was seen before any suggestions of that sort were made. It is very clear that the Government think that this is an enormous priority, not only because of the health issues but because it cannot be right that we continue to have the nitrogen dioxide levels that we have in parts of our country, and the Government are going to address this.

**Baroness Parminter (LD):** Given what the Minister has said about this being an enormous priority, can he explain why on 29 October in Brussels the Government voted to weaken limits on deadly diesel car emissions?

**Lord Gardiner of Kimble:** I am certainly not aware of any diminution of our resolve to ensure that we have the correct assessment in the European Union context. It is why we have been calling for very strong,

real testing, which is absolutely essential, and we will continue to do so at all levels. This will be cracked only if we deal with it at local, national, EU and international level.

**Lord Whitty (Lab):** My Lords, I declare an interest as vice-president of Environmental Protection UK. I have two questions for the Minister. First, in view of the cuts in Defra staff in this area—and more to come, no doubt, in this week's announcements—is he confident that he has sufficient resources not only to draw up a strategy on air quality but actually to deliver it? Secondly, in view of the previous question, does he agree with Boris Johnson that a third runway at Heathrow is “inconceivable” if the Government are to meet their EU targets on air pollution?

**Lord Gardiner of Kimble:** My Lords, the first thing to say is that the Government will consider all appropriate incentives that may be required to help secure delivery by local authorities through geographically structured measures set out in the plan. Clearly, I am not in a position, particularly this week, to say any more about the current level of spending review negotiations, but it is clear that everyone will need to work together to address this. As for the noble Lord's second question, I have every regard and respect for the Mayor of London; indeed, his important action with regard to non-road mobile machinery—announcing on 1 September that there are going to be much greater and stronger requirements for that—is the sort of practical thing that he is doing.

**Baroness Whitaker (Lab):** My Lords, what can the Government do to enable all local authorities to measure the air quality in their own areas, particularly outside schools?

**Lord Gardiner of Kimble:** The noble Baroness asks an important question. Obviously there are monitoring services, and Defra produces data so that everyone can know what the air pollution situation will be in various parts of the country. This is very important, not only near schools but so that people with health issues can make plans accordingly. It is very important that the monitoring work continues and is effective.

**Baroness Gardner of Parkes (Con):** Can the Minister reconcile for me the facts that although Knightsbridge is one of the worst polluted areas and has been in breach of all EU regulations for years, people apparently live longer there than anywhere else? Can he also reconcile the facts that when it introduced speed humps in Hyde Park pollution in the park went up tremendously, yet people want the option to reduce speed? Will that be at the cost of even more pollution?

**Lord Gardiner of Kimble:** My Lords, I am sure that as these matters develop, research will tell us a lot more, and it is important that we consider it. That is why real-world testing, for instance, will be of much greater benefit in the future. The health of the nation is one of the reasons why we are very conscious of this problem and of the need to address it. Wherever the

pollution is—whether it is in the docks at Southampton, in inner London, in Scotland or wherever else—we need to crack the problem.

**Baroness Ludford (LD):** My Lords, if 10,000 people a year were dying prematurely in London, and many others in the rest of the country, as a result of any health threat other than air pollution would the Government have a greater sense of urgency, rather than the complacency, and a degree of hypocrisy, that they have at the moment?

**Lord Gardiner of Kimble:** My Lords, I see no complacency or hypocrisy, if I may say so to the noble Baroness. I think that the officials who are working hard on this problem in local authorities might take exception to that description. Everyone here is in an honest adventure to ensure that we get this right. It is very important that we get it right. That is why we have to get everyone working together in local authorities, and at EU and other international levels. By bringing forward real-world testing, we will get a much better result.

**Baroness Farrington of Ribbleton (Lab):** My Lords, would the Minister care to inform the House how many air-monitoring devices at local level were in operation five years ago and how many are now? It is my understanding that many have been closed down, so our ability to tell what is happening is being reduced by Government policy.

**Lord Gardiner of Kimble:** I am not aware of that, and I will look into the matter more thoroughly. However, we have a daily air quality forecast, for instance, and we work with Public Health England and its adviser the Committee on the Medical Effects of Air Pollutants. I have plenty of information on what is available for everyone to see. There is a five-day air monitoring forecast, which is very important. I will get back to the noble Baroness on the finer detail.

## State Pension: Equalisation Question

3.03 pm

Asked by **Baroness Bakewell**

To ask Her Majesty's Government what plans they have to compensate the women deprived of their expected pensions by the increase in the state pension age under the Pensions Act 2011.

**The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con):** My Lords, removing state pension age gender inequality by 2018 and increasing pension age to 66 by 2020 was voted on in both Houses, and there are no plans to change it. The more than £30 billion cost of retaining the previous timetable could not be justified, and the Government made a concession in 2011, worth more than £1 billion, limiting maximum increases to 18 months.

**Baroness Bakewell (Lab):** I thank the Minister for that Answer. There are 700,000 women caught in this brutal pensions trap, and they are already in their 60s.

[BARONESS BAKEWELL]

They had hoped to be drawing their pensions, but in some cases, even after 45 qualifying years, they currently have no pension, no pensioner benefits, often no job—having been made redundant—and no right to claim jobseeker's allowance. What does the Minister suggest they live on?

**Baroness Altmann:** My Lords, I do have sympathy with the women affected. However, I assure the House that they are eligible for the same in-work, out-of-work and disability benefits as men of their age, and for the new state pension.

**Lord Foulkes of Cumnock (Lab):** My Lords, I declare an interest as vice-chair of Age Scotland. I recall the Minister saying exactly the same as my noble friend Lady Bakewell only a year ago, and arguing that something should be done about it in the most strident fashion. Why has she changed her mind?

**Baroness Altmann:** My Lords, this is about correcting a long-standing inequality. It is also about democracy. We put all the arguments to both Houses of Parliament. This issue was properly and thoroughly debated and the decision was democratically made. To be fair, most of the women affected have accepted this, as have I.

**Lord Stoneham of Droxford (LD):** Can the Minister explain to the House why she is delaying the implementation of her predecessor's policy on the portability of pension pots, given that that policy could best protect women with low pension savings?

**Baroness Altmann:** My Lords, the policy of merging and transferring pension pots will be addressed but, at the moment, there is a significant amount of increased regulation and changes in legislation for the pensions industry to cope with. By 2018, when auto-enrolment is fully rolled out, we will know much better what are the appropriate and required measures for automatic transfers.

**Lord McKenzie of Luton (Lab):** My Lords, the Minister will doubtless recall one of her contributions to *Saga* magazine where she wrote:

"A group of older women are very angry. Many of them have written to me, some have written to their MPs, and others say they don't believe it is worthwhile writing to their MPs, as the Government will not listen to them anyway. They remember that it was the Conservative Government in 1995 who increased their pension age, which they quietly accepted, but they now feel taken advantage of and treated like a 'soft target' because they have been given such short notice of another major change. They feel the move is discriminatory and manifestly unfair".

She went on:

"The plans demonstrate a lack of understanding of the realities of many of these women's lives. They feel betrayed that the Conservatives have hit them a second time and by far more than men".

Does the Minister stand by those words?

**Baroness Altmann:** My Lords, as I have said, this matter was properly and thoroughly debated by Parliament. All those arguments were put to both Houses of Parliament and a majority voted for the legislation more than four years ago. This afternoon, I checked quite carefully and it is clear that this issue

was missing entirely from the Labour Party's manifesto before the general election. No party committed to doing anything about the billions of pounds that it would cost to change any of these plans.

**Baroness Howe of Idlicote (CB):** My Lords—

**Lord Christopher (Lab):** My Lords—

**Noble Lords:** Cross Bench!

**Baroness Howe of Idlicote:** My Lords, I hope that the Minister will forgive me for going back, as I do, a long way in the history of equal opportunities for women. I would like to press her once again on this point. Does she really believe that MPs would have voted for the accelerated rise in 2011 had they known that many women had not been notified or given sufficient notice of the rise in the state pension age under the Pensions Act 1995? This really has not been a fair process all the way through, and women have been disadvantaged at an amazing number of levels.

**Baroness Altmann:** My Lords, I have also been checking up on this point. I am assured by the department that any woman who had asked for a state pension statement since 1995 would have known what her pension age had been changed to under the Act. Given the uncertainties around the amounts of state pension that any woman could receive under the very complex system that we have at the moment, if a woman had planned her retirement on the basis of that, she would surely have got a pension statement and known about her state pension age change.

**Lord Wallace of Tankerness (LD):** Given that the noble Baroness has done work on this, how many women have actually applied for pension statements since 1995?

**Baroness Altmann:** I do not have those figures, but I can try to find out for the noble and learned Lord and write to him.

## Cyclists

### Question

3.10 pm

Asked by **Lord Wills**

To ask Her Majesty's Government what action they are taking to increase compliance by cyclists with traffic laws and regulations.

**The Parliamentary Under-Secretary of State, Department for Transport and Home Office (Lord Ahmad of Wimbledon)**

**(Con):** My Lords, like all road users, cyclists have a duty to behave in a safe and responsible manner. The enforcement of cycling offences is an operational matter for chief officers of police. Depending on the offence, officers can issue verbal warnings or fixed penalty notices, or report the road user for formal prosecution. The Government support any action taken by the police to deter and reduce the number of cycling offences.

**Lord Wills (Lab):** I am grateful to the Minister for his reply. When I was in the other place, cycling on pavements—terrorising pedestrians—was the issue that incensed my constituents most in regular open meetings, apart from dog mess. The situation seems to be getting worse. As record numbers of cyclists take to the roads in big cities, we see increasing examples of this sort of behaviour. Just a few weeks ago I was on Marylebone Road and I watched a cyclist jump a red light and weave off down the pavement between pedestrians, talking on his mobile phone as he went. When I said that perhaps he should not be doing that, he got off his bike and asked me to fight him. When I declined the invitation and pointed out that he was breaking the law, he said, “I know I’m breaking the law and you can’t do anything about it”. However, the Minister could. I would be grateful if he could tell the House what more he could do to stop these bully boys on bikes terrorising pedestrians and bring some law and order to our pavements.

**Lord Ahmad of Wimbledon:** My Lords, the noble Lord describes an experience that I am sure we have all shared. When I was on the Back Benches in this House, I served in the City of London. I often said that the biggest challenge for a commuter in London was avoiding not trucks and cars but the cyclists who were possibly jumping red lights or riding on the pavements. I am sure the noble Lord is aware of some of the initiatives that we have taken forward. Road safety is primarily the role of the police. Most recently, Operation Atrium was launched in July 2015, when the London police issued tickets to cyclists breaking the rules. They were then invited to look at the challenges faced not just by pedestrians but by lorries in London as well, which can quite easily miss cyclists. Other initiatives such as THINK! Cyclist and Bikeability will help us to educate cyclists, not just about the law but also about their responsibilities.

**Lord Robathan (Con):** My Lords, can my noble friend inform the House how many motorists are killed or severely injured by cyclists in a year; how many pedestrians are killed or severely injured by cyclists a year; and how many cyclists are severely injured or killed by motorists and pedestrians in a year?

**Lord Ahmad of Wimbledon:** My noble friend raises a very important point about statistics. I will write to him on the first two issues. I think we acknowledge that the number of cyclists injured on the roads is increasing, but when we compare 2008 to 2014, the number of deaths on the road has not significantly increased. For example, 104 cyclist deaths were reported in 2008 and 113 in 2014, which is an increase of four on 2013 figures. Nevertheless, it is 113 deaths too many and we need to eradicate this problem.

**Lord Taverne (LD):** My Lords—

**Lord Hughes of Woodside (Lab):** My Lords—

**Baroness Stowell of Beeston (Con):** Order! It is the turn of the Lib Dems. Could I urge noble Lords to allow the Minister to sit down before they stand up and try to ask questions?

**Lord Taverne:** My Lords, I hope the Minister will provide the figures that he says he will provide and make them available in the Library, although the serious injuries caused by cyclists must pale into insignificance when compared to those caused by motorists. Does he not agree that everything possible must be done by the Government to encourage and support cycling, as was splendidly shown recently with the opening of the cycling superhighway route in London? After all, bicycles are the most efficient machine yet invented for turning energy into motion. Indeed, the bicycle has been accurately described as a kind of green car, which can run on tap water and tea cakes and, moreover, has a built-in gym.

**Lord Ahmad of Wimbledon:** The noble Lord raises the benefits of cycling, about which I agree with him. I am sure he recognises that the Government have committed more than £100 million between now and 2021 in improving investment in both walking, for example through walking paths, and cycling. I have already alluded to the schemes that the Government are supporting, such as Bikeability.

**Lord Hughes of Woodside:** My Lords, I am not quite sure what figures the Minister has promised to give, but can he say how many cyclists have been issued with fixed penalty notices, how many cyclists have been prosecuted and how many prosecutions have been successful?

**Lord Ahmad of Wimbledon:** If the noble Lord is asking about all the statistics from England, I will need to follow up in writing as that will be quite a detailed answer. I will write to the noble Lord.

**Lord Trefgarne (Con):** My Lords, is it not the case that cyclists are not required to carry identification and therefore all they have to do is give a false name to the police officer and tear up the fixed penalty notice?

**Lord Ahmad of Wimbledon:** My noble friend raises the issue of identification and is right to do so. As I said, we need to encourage education for cyclists and responsibility in cyclists. When they ride on pavements or jump red lights, they break the law, and there is a need to review with the police how we can apply the law effectively to cyclists as well as to any other road users.

**Lord Davies of Stamford (Lab):** My Lords, we have had a continuing string of tragedies involving cyclists being crushed by lorries, often while turning at traffic light intersections. What progress is being made—I think the European Commission was considering a directive at one point—in making it a matter of law that all lorries should be fitted out in such a way that the driver has vision of the full length of his or her cab from the cab itself?

**Lord Ahmad of Wimbledon:** Again, we have seen investment being made in this. The noble Lord points to a particular type of mirror, which is being encouraged by the Government. Right here in London, we have

[LORD AHMAD OF WIMBLEDON]  
seen separate areas created for cyclists to ensure their security and safety. As I said, any death on the roads, whoever it is—whether a cyclist, a pedestrian or any other road user—is one death too many. We should seek to ensure safety and security for everyone.

## Business of the House

### *Timing of Debates*

3.18 pm

*Moved by Baroness Stowell of Beeston*

That, in the event of the Northern Ireland (Welfare Reform) Bill being brought from the Commons, Standing Order 46 (No two stages of a Bill to be taken on one day) be dispensed with on Tuesday 24 November to allow the Bill to be taken through its remaining stages that day.

*Motion agreed.*

## National Insurance Contributions (Rate Ceilings) Bill

*Committed to Committee*

3.18 pm

*Moved by Baroness Altmann*

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

*Motion agreed.*

## European Union Referendum Bill

*Report (2nd Day)*

3.18 pm

### *Amendment 24A*

*Moved by Baroness Anelay of St Johns*

**24A:** After Clause 5, insert the following new Clause—

“Duty to publish information on outcome of negotiations between member States

(1) The Secretary of State must publish a report which contains (alone or with other material)—

(a) a statement setting out what has been agreed by member States following negotiations relating to the United Kingdom’s request for reforms to address concerns over its membership of the European Union, and

(b) the opinion of the Government of the United Kingdom on what has been agreed.

(2) The report must be published before the beginning of the final 10 week period.

(3) In this section “the final 10 week period” means the period of 10 weeks ending with the date of the referendum.

(4) A copy of the report published under this section must be laid before Parliament by the Secretary of State.”

**The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con):** My Lords, in moving Amendment 24A I shall speak also to government Amendment 24B. I shall also give a view on the other amendments in this group, all of which raise the issue of information which must be published by the Government prior to the referendum period.

In Committee, we had a vigorous debate on the subject of the information to be made available to the public ahead of the referendum. I recognised that although it will be for the designated campaigners to lead the debate on both sides, the Government would have a role in providing information to the public. As the Prime Minister said, this Bill sets the stage for one of the most important decisions that the British public have been asked to make in a generation. It is absolutely right to say, therefore, that they will expect to be able to make an informed decision, based on authoritative and balanced information in which they may put their faith.

The Electoral Commission in its research into the question identified that there is an appetite among the general public for information on both what remaining in and leaving the EU would mean. Also, the Electoral Commission made it clear that much of the information that voters desire will not be factual in nature but will sit at the heart of the campaign arguments put forward by those on both sides of the referendum debate. Therefore, the commission has recommended that it is also for the campaign groups to include answers to questions of this nature when they put up their respective websites. But today we are looking at the question rightly raised by the House in Committee about the role of the Government.

In Committee I committed to give careful consideration to what I could bring forward at this stage by way of government amendments—amendments that would command the support of both Houses. Today I will speak to those two amendments, Amendments 24A and 24B, which we have tabled after that due consideration. In setting out requirements for the Government to provide information, we must clearly set out a distinction between what the Government should provide and what will be the role of the designated lead campaigners. My belief is that the most useful role for the Government is to give information about the nature of membership to aid understanding and inform the public. The designated lead campaigners will interpret this information and provide strong arguments—on both sides, no doubt.

We have given consideration to what suitable government amendments should be. I have therefore listened very carefully to the calls around the House for the Government to provide useful evidence-based and authoritative information. It is my belief that it would therefore be most appropriate to commit the Government to providing concrete information grounded in reality as opposed to speculating on the possible consequences of withdrawal or the types of possible arrangement that could be negotiable with the EU at some future date.

The first amendment in my name, Amendment 24A, builds on the amendment that my noble friend Lord Forsyth tabled in Committee and again on Report. However, he has subsequently withdrawn it because I understand he is content—it was very kind of him to send an email saying that he is content—with government Amendment 24A. The first amendment sets a requirement for the Government to report on the outcome of the renegotiation not less than four months before the poll. Building on this, I have tabled a government



amendment that will require the Government to report on what has been agreed by EU member states as a result of the renegotiation and to give their view on this no later than 10 weeks ahead of the referendum.

We amended the Bill—earlier in the process here, in Committee—to specify that the regulated referendum period must be a minimum of 10 weeks long. This is an appropriate length of time that will require the Government to publish any report ahead of the most intense period of campaigning. This is also well ahead of the final 28-day *purdah* period provided under Section 125 of the Political Parties, Elections and Referendums Act—during which, of course, there are restrictions on government publications. So my amendments have no effect on the restrictions provided for in that period.

The second of my amendments, Amendment 24B, seeks to address amendments tabled both in Committee and on Report by the noble Lords, Lord Hannay and Lord Kerr, the noble Baronesses, Lady Morgan and Lady Smith of Newnham, and others. It requires the Government to publish a report setting out information about the rights and obligations that arise under EU law as a result of the UK's membership of the EU. This will enable us to describe what EU membership means for the UK and what it means to be a citizen of, or a business established in, the UK, as a country which is an EU member state. I propose to spend a little time setting this out, in perhaps more detail than might usually be the case, because I would like to give some reassurances to the noble Lords who tabled the amendments that I have sought to cover all the pertinent issues that they referred to in their subsequent amendments.

By “rights”, we refer to rights that the United Kingdom has as a member state, and also the rights that are granted to individuals and businesses as a result of our membership of the European Union, such as our opt-ins and opt-outs, the four freedoms, access to the single market and customs union, and rights to receive structural funds. By “obligations”, we are referring to those things that our membership of the European Union commits us to doing—most obviously at the level of the member state, but also as businesses or individuals. The most obvious examples are our obligation as a member state to transpose EU law in particular areas, including social and environmental law, and things that this obliges businesses and individuals to do. This could therefore include consideration of the balance of obligations and competences between the EU and the UK institutions. Of course, the information must be useful to the public, as well as to those looking at it in a more specialised way, and relevant to the context of the referendum, as far as is possible.

That is the primary purpose of government Amendments 24A and 24B. The duty does not, therefore, require the Government to set out information about every single right and obligation—indeed, neither does the amendment in the names of the noble Baroness, Lady Morgan, and the noble Lord, Lord Hannay. We agree that the focus should be on important rights and obligations. Where appropriate, we will set this information in its context. We have created quite a broad requirement

in our amendment, but we have tried not to be overly prescriptive, because that would have amounted to setting out the contents page of the whole report in the amendment, and that is simply impractical.

Turning to the amendment in the names of the noble Lord, Lord Hannay, and others, it is clear that the large part of the important rights and obligations to which it refers would be covered under the broad heading of rights and obligations. Where there are two slight variations—I will not call them exceptions—I will explain why I think that they are still covered and that I have met the requests from the noble Lord and others. The important rights that the amendment sets out, such as the rights of EU citizens, employment rights, the right to apply for financial support from the EU in the form of structural funds, and support for agriculture and research, would be covered under the report required by government Amendment 24B. Important areas of EU law which the noble Lord, Lord Hannay, and the noble Baroness, Lady Morgan, reference in their amendment, such as social and environmental legislation, law enforcement, security and justice would also be covered to the extent that we have opted into such obligations at present.

The way that we have crafted the amendment grounds the information requirement in the reality of EU membership in a way that should be useful to the public. We are not committing to setting out the possible consequences of a withdrawal from the EU in the language used in the amendment in the names of the noble Lord, Lord Hannay, and the noble Baroness, Lady Morgan, but I do not think that that is core to what they intend. They are trying to get the Government to give a commitment about what is covered, which is what I seek to do. We have previously rehearsed the issue about hypothetical positions; I do not propose to address that now, because I do not think that noble Lords are seeking to press it at this stage.

From the approach taken by the government amendment, I believe that readers will be able to infer from the Government's report information on rights which it might well be within the Government's power to determine for the future and what will be dependent on negotiation in the event of a vote to leave the EU. In terms of any substantive differences, although the government amendment requires us to set out the UK's current arrangements on important rights and obligations, it does not require us to set out particular consequences of withdrawal for a couple of areas—the devolved Administrations and Gibraltar. I would like to say a little more about each of those to give some assurances on those matters.

On the consequences of withdrawal for Gibraltar, Gibraltarians are rightly enfranchised in the referendum because the EU treaties largely apply there. Gibraltar's place in the European Union flows from it being a European territory for whose external relations the UK is responsible and the UK's membership under the 1973 treaty of accession. Any vote for the United Kingdom to leave the EU would directly affect Gibraltar. It is therefore important that Gibraltarians have enough information on which to base their vote, which is also important in the UK. The Government's Amendment 24B leaves it open to either the UK Government or the

[BARONESS ANELAY OF ST JOHNS]

Government of Gibraltar to set out what EU membership means for Gibraltar in this report or separately. This means that we should not provide for a statutory obligation for the UK Government to report on what membership means specifically for Gibraltar and should instead ensure that the decision on what course to take on this important matter rests where it properly should: in Gibraltar.

3.30 pm

I shall give a further explanation of what I mean. The Government will engage with the Government of Gibraltar as soon as possible on these matters and agree a way forward. We will listen to what they say and they will have an opportunity to feed their views into any report that the Government may then publish. We need to recognise, however, that the Government of Gibraltar could publish separately their own reports separately.

I give that commitment not only with regard to our engagement with Gibraltar but with regard to the devolved Administrations. The amendment leaves it open to the devolved Administrations to undertake their own assessments about their nation or on specific devolved issues, and the Government will engage with the devolved Administrations on the subject of public information. We will listen to their contributions and feed them in to the process of producing reports. Again, because of the nature of devolution, it would be for the devolved Administrations, if they so choose, to publish a report separately.

Amendment 24B has a second part which requires the Government to describe some of the existing arrangements that other countries, which are not currently members of the European Union, already have with the EU. This part of the amendment seeks to address the core of the amendment proposed by the noble Lord, Lord Kerr of Kinlochard, which would require the Government to set out the relationship they envisage with the European Union in the event of a vote to leave. Noble Lords will be debating that later this afternoon.

As the Prime Minister has said, the Government are focused on delivering a successful renegotiation, but we cannot speculate on the types of possible arrangement that could be negotiable with the EU at this stage. Through Amendment 24B we have sought to provide the public with useful information about some of the existing models that other countries already have. It will be for the campaigns to put forward their vision of the future for the UK, and there will be differing views among them. As the Prime Minister has made very clear, if the British people vote to leave, then we will leave. Should that happen, the Government would need to enter into the processes provided for under our international obligations, including those under Article 50 of the Treaty on European Union. The noble Lord, Lord Kerr, is aware of that. Given that he was involved in drafting Article 50, he knows more about it than I do. Of course, the Article 50 process has never been used: this will be a precedent. That makes it all the harder to speculate about how such a negotiation might play out. In due course, we will of course lay out what this process would involve.

I have taken some time to address the detail of Amendment 24C as it affects the government amendments, but I hope that I have been able to satisfy noble Lords that in bringing back these two amendments the Government have sought to meet the views of the House as expressed at Second Reading and in Committee with regard to what is appropriate for the Government to be able to publish and that the amendments represent a positive proposition by the Government to ensure that the public is able to make an informed choice from objective, reliable information when they come to vote in the referendum. I commend my amendments to the House. I beg to move.

**Lord Hannay of Chiswick (CB):** My Lords, I shall speak to Amendment 24C. In doing so, I pay tribute to the Minister for the way in which she has listened to the points raised, with some force and detail, in Committee. With the two amendments that she has produced today—Amendment 24A, in response to an amendment from the noble Lord, Lord Forsyth, which I also felt was absolutely justified, so I am delighted that she has picked up his amendment and turned it into a government one, and Amendment 24B, which deals with matters that I and others raised—I think that she has made a major effort to meet the point that we made in Committee, and which I continue to make, which is that there will be a need for the electorate to receive factual, objective information from the Government about these extremely complex matters, additional to any information that will come to them, no doubt in tsunamis of rhetoric, from the two campaigns. The campaigns will be advocates but the electorate has to make a judgment, and it will be of essential value to them to have objective factual material provided by the Government. That is why we were extremely dissatisfied with the absence of any provision for this in the original Bill that was drafted by the Government and which came to us with the imprimatur of the other place because we felt that it was a completely inadequate basis on which to move forward to what is after all, as the Prime Minister said, one of the most significant and important decisions that this country has had to take for many decades. So that is a very good step forward.

I shall explain why we felt that the Government should be prepared to go further and be a bit more specific than they are in Amendment 24B, or at least than they were before the Minister gave some rather helpful clarifications this afternoon. I shall take two examples—two sub-headings—that illustrate the amendments that I and others have proposed. I start with Gibraltar because the Minister has mentioned it. What the effects of withdrawal would be is of importance to more people than just the people of Gibraltar. Our own wider electorate needs to know that Gibraltar became part of the EU only because it was a dependent territory for whose foreign affairs the United Kingdom was responsible. That was the sole basis on which it became a member, and therefore if the UK left, it would leave. That has quite important implications for the vexed issue of the land border with Spain, for example, which would cease to be an internal border of the EU and would become an external one. These are facts, not matters of opinion; they do not seek to draw the Government on to what would come after an

Article 50 negotiation or anything like that. They are just so that the electorate knows that, the moment they cast their votes, certain consequences could follow from it.

Secondly, I take the law and order issue. The European arrest warrant was debated at enormous length in both Houses at the time of the Protocol 36 negotiations two years ago. It became apparent during that debate that the European arrest warrant is extraordinarily important for this country in terms of recovering indicted criminals from abroad and returning EU citizens who are accused of often very heinous crimes from here to the country where they have been indicted. These are hugely important for our law and order and our battle against international crime.

In those debates, it also became apparent how important the European arrest warrant is for the Good Friday agreement and what goes on in Northern Ireland because it has depoliticised the extradition arrangements between Ireland and Northern Ireland. In the past, they have been highly politicised and have led to a number of very unsatisfactory discussions between the two Governments, often not leading to the return of criminals who have committed terrible offences. Therefore it is important for the electorate to know that the European arrest warrant would disappear in this country if we left. I am not talking about what we might try to put in its place, the fantasies about negotiating 27 extradition agreements with the other member states or anything like that. I do not want to go there. That is not where the amendment was intended to go.

This afternoon, the Minister has given some important clarifications on a large number of the detailed specifics that I introduced. I and others will need to study them with great care. However, on the point about Gibraltar and the devolved Administrations, I entirely understand what she is saying—that it would not be right for the Government, off their own bat, to write in a report what the consequences were going to be for Northern Ireland, Scotland, Wales or Gibraltar without consulting them and without having their view—but I hope that in her reply to this debate the Minister will go a little further. She said that the devolved Administrations and Gibraltar will be able to produce their own reports. That is fine. They would be reports to their parts of the electorate. I do not imagine—I do not speak in any disparaging way—that they will be widely read by the electorate of this country, yet the issues involve the electorate of the whole United Kingdom. Therefore, I hope that she will be able to say that after consultation with the Government of Gibraltar and the Scottish, Welsh and Northern Ireland Administrations and assuming—I do not see why they should have any objection—that they are willing to do so, the Government will include the implications for the Administrations of Northern Ireland, Wales, Scotland and Gibraltar in the report to which Amendment 24B refers. This will allow the whole electorate to have a proper sight of all the implications. Frankly, those implications, particularly with regard to Northern Ireland and also to Scotland and Wales, could be very far-ranging. Therefore, I hope that when the Minister replies to this debate, she will be able to cover that point.

We are making progress now. I shall listen with great care to the Minister's reply. Others who proposed this amendment may wish to take up other points on which they would like to have clarification. Meanwhile, I look forward with interest to the Minister's reply.

**Lord Pearson of Rannoch (UKIP):** My Lords, buried somewhere in this group of amendments and, I think, in the remarks of the noble Lord, Lord Hannay, is the question about what happens on Brexit to all the EU law which is now sewn into our domestic law. That law will remain valid until repealed. I hope that it will be helpful to your Lordships if I recall that in 1997 I got a Bill through its Second Reading in your Lordships' House, on a vote, that would have taken the UK out of the EU. The same question arose, since one is not allowed to table Bills which cannot be executed in practice. At the time, the clerks' advice was that it would have taken about a dozen parliamentary draftsmen about one month to identify all the EU legislation that was then part of our domestic law. The laws that the Government of the day wanted to repeal could have been brought before Parliament either singly or collectively for Parliament to repeal. Of course, the volume of EU law would be much larger now, the draftsmen required rather more numerous and/or the timescale proportionately greater. However, I make the point that the process and its happy outcome would be the same, and there is no reason why it should not be undertaken.

3.45 pm

I will speak particularly to Amendment 24C in this group, which is in many ways rather beautiful. It sets out specific areas of our national life which Europhiles, who wish to stay in the European Union, believe would be damaged if we left it. It follows that they believe that all those areas—our economy, employment, law and justice, agriculture, research and so on—benefit from our EU membership. My noble friend Lord Willoughby de Broke will, I think, deal with those specific areas and why they would all benefit from our departure. However, I will stand back a little and contemplate the amazing fact that the supporters of this amendment still apparently think that the EU itself is a good thing. That fundamental belief inspires this amendment. In other words, they simply do not see that the founding idea behind the project of European integration has gone horribly wrong and that Europe and the world would be a safer, richer and altogether better place without the European Union.

I am sorry if this sounds rather brutal to the ears of noble Lords who have spent so much of their lives believing in and striving for the project of European integration, but it remains the obvious truth. In parenthesis, I should mention my regret that noble Lords in receipt of a forfeitable EU pension have not seen fit to declare them in any of our proceedings on the Bill so far. I am sure that they will do so from now on.

**Lord Hannay of Chiswick:** I point out that I am not in receipt of such a pension. If the noble Lord was referring to me, perhaps he will withdraw the reference. I am not sure who he thinks he was referring to among those on the Order Paper, but as far as I am concerned,

[LORD HANNAY OF CHISWICK]

I am not and never have been in receipt of a pension from the European Union. I ask the noble Lord to consider the fact that he will have ample opportunity in the name of his party to put forward his views, including those on the giant octopus in Brussels, which seems to be taking a day out today. The purpose of this amendment was not as he has erroneously described it; the purpose of this amendment was to persuade the Government, which we will perhaps succeed in doing, to provide factual, objective information that will enable the electorate to make up their mind on the point the noble Lord raises.

**Lord Pearson of Rannoch:** My Lords, if the noble Lord is not in receipt of an EU pension, I have nothing to clarify. I do not have to name names. I am referring to previous employees of the European Union—in particular, of the Commission—who are in receipt of EU pensions, which they can lose if they go against the interests of the European Union. If no one feels guilty in that regard, of course they have nothing to say. On the amendment, I am going into the fundamental reasons why it is misguided, and with the noble Lord's permission, I will continue.

It is some time since I reminded your Lordships of that founding idea, which was that the European nations had caused so much bloodshed over the centuries that they had to be gradually emasculated and put under a new form of technocratic government that was to supplant national democracy, which it has indeed done; hence the EU's absurd claim to have brought peace to Europe since 1945, which was instead of course secured by NATO; hence also the huge but little-understood powers of the unelected Commission, with its monopoly to propose new legislation, in secret—which is now so much of our own legislation—and then to execute that legislation when it has been through the Brussels sausage machine, imposing heavy fines along the way, and subject only to that engine of EU integration, the Luxembourg court. The Commission also manages the EU budget—so badly that its accounts have not been signed off for 21 years. Believe it or not, the Commission also negotiates all our foreign trade agreements—so badly that we still do not have a free trade agreement with China, India, Russia, the USA, Australia, Canada and many of the markets of the future. Singapore has had them all for 10 years. Who knows what that failure has cost our economy; the amendment refers to our economy.

As to what is left of our democracy while we stay in the EU, the Euro-lie goes that it is upheld in the Council of Ministers from the nation states, where we have only 12% of the votes and where we have been defeated on every single one of the 55 new laws we have opposed since 1996.

My first point is, therefore, that even if we did get any advantage from our EU membership, in any of the areas mentioned in the amendment, it would still not be worth it because the price would have been our democracy. However, the fact is that we do not, as my noble friend Lord Willoughby de Broke will confirm.

Europhiles try to frighten us by pretending that jobs would be lost if we left the EU. We are back to the economy again.

**Lord Foulkes of Cumnock (Lab):** When the noble Lord is talking about democracy, what does he think of the democracy where a party—the UK Independence Party, say—gets a large percentage of the vote but only one seat in the Parliament? Is that the vibrant democracy that he believes in?

**Lord Pearson of Rannoch:** My Lords, no, of course not. If the noble Lord would care to read my peroration on this subject on 15 September, he will see that I opined that our first past the post system no longer produces a vibrant democracy in this country. The system which sends Members of Parliament to the House of Commons should be changed. Then one might find that the UK Independence Party would get one or two more seats.

As I was saying, Europhiles still try to frighten us that jobs would be lost if we left the EU. However, we would keep our free trade with the single market because we are its largest client. We have some 3 million jobs selling things to clients there, but it has 4.5 million jobs selling things to its clients here. Our Europhile friends then conveniently forget that only about 9% of our economy goes in trade with the single market, declining and in deficit; some 11% goes to the rest of the world, expanding and in surplus; but 80% stays in our domestic economy. Yet Brussels overregulation strangles all 100% of our economy.

Another Europhile silly one is to point out that we would still have to obey single market rules if we left the EU.

**Lord Wallace of Saltaire (LD):** My Lords, we are on Report. I have heard the noble Lord, Lord Pearson of Rannoch, repeat these familiar arguments many times in the House, but I am not entirely sure that we are addressing the amendment under discussion.

**Lord Pearson of Rannoch:** My Lords, I think I am addressing it. I am going into the fundamental reasons why the amendment is misguided. I will continue, if I may. Only 9% of our economy goes to the single market and this is the percentage of our exports and economy for which we would have to follow EU rules. Of course we would, just as it pays to put the steering wheel on the left if you are selling a car to the United States.

Talking of cars, Europhiles give our car industry as one which would suffer if we left the EU. Once again, I remind noble Lords of Global Britain's briefing note No. 96, which shows why that is nonsense. We import twice as many cars from the single market as we export to it—1.4 million in and 0.6 million out. EU manufacturers actually own 53% of our domestic car market. Why would they want to impose a tariff against their own profitable business? Indeed, I can go further and recommend that Europhiles particularly, and our civil servants, should take a little time to read the Global Britain briefing notes, which briefly but comprehensively destroy the economic case for staying in the EU.

In conclusion, the amendment makes the basic Europhile mistake of thinking that any area of our national life is funded by the EU, whereas of course for every £1 it sends us at the moment we have

sent it £2.63. According to the latest *Pink Book* figures for 2014, we sent £19.994 billion gross in 2014 and the EU sent us back £7.665 billion for things such as our research budget, structural funds, farmers and so forth, as covered by the amendment. That leaves our net contribution at £12.329 billion per annum. That is £34 million a day, which goes down the drain in Brussels. Or we could look at it as the annual salaries of 352,257 policemen—of whom we could do with a few more right now—or nurses or any other public servant your Lordships may care to mention, at £35,000 a year each.

I would rather welcome the amendment if it were honestly fulfilled because the voters would understand better what a complete disaster is our membership of the European Union and they might even start to ask what is the point of the European Union itself. They might start to see it for what it is. It is an emperor whose clothes have long since fallen off.

**Lord Lea of Crondall (Lab):** My Lords, it would appear that despite our best efforts, this whole objective of some degree of dispassionate analysis will nevertheless wind up as a dog's breakfast. We have to persist in trying to follow what the noble Lord, Lord Hannay, accurately described as the distinction between things that are facts and things that are for debate between the two opposing camps. A good example in the Brexit scenario is one that I will cover now.

A key distinction behind these amendments is similar to what Mr Rumsfeld would have described as the difference between a known known and a known unknown. I have an example. I have in my hand a copy of the pamphlet that I helped to put together entitled *Europe and Your Rights at Work*. Since Maastricht, there have been 10 or a dozen very important reforms that are now on the statute book, such as protection when a business changes hands, equal rights for part-time workers, maternity and paternity rights, equal rights for fixed-term workers, four weeks' paid holiday—although that falls under the health and safety regime. Other reforms include having a voice at work, European Works Councils, the posting of workers in Europe and health and safety at work.

Those were negotiated—I did a lot of that myself for some years—in Brussels between the leaders of the trade unions and the leaders of the employers. The result is that, despite the sound and fury at the beginning, we do not hear too much complaint now because everyone, including the employers, appreciates that they are a useful floor for employment rights in this country.

4 pm

Let me put the spotlight on the Brexit scenario and take this illustration to probe—drill into, they say these days—what we know to be a fact and what is simply supposition. On day one, after Brexit, nothing will happen. On day two, after Brexit, nothing will happen, and it will go on like that for some time. That is the first thing. On day 21, 51 or 201, something may happen. That can be described as a known known—we know that that is a fact. We also know that it is a fact that a British Government would be free to repeal any

of these measures. Whether they could do that from day one could be discussed, but at some point that would be true. If we are outside the EU some or all of these measures could be repealed.

That is a procedural fact. Whether one party or the other in the national debate wants to draw attention to it—

**Lord Grocott (Lab):** Of course, my noble friend is quite right that these measures could be repealed, but they could also be extended and improved on by a British Government. If we are looking for good conditions for people at work, I would say that a huge advance in recent years was that wonderful national minimum wage introduced not by the EU but by the last Labour Government. Ultimately, the terms and conditions of people at work about whom he and I care most passionately are better protected by a Labour Government in Britain than by any decision in Brussels.

**Lord Lea of Crondall:** I have the highest respect for my noble friend but I am afraid that on this one he is wrong. In international trade, employers will claim we are at a competitive disadvantage if we do not do things together. This is what Europe is about. That is what Delors pointed out in Bournemouth in 1988.

If we were to say to an employer in Holland, Italy or Spain, “You can lead the race to the bottom”, all the employers, one by one, would scream that they had to go in that direction. I will be calling for a European identity card the way I am going, but if we had a floor for all European workers in all these areas, the comparison with the minimum wage—although we do not have a European minimum wage—would be valid in that all workers and employers would be protected. If noble Lords will allow me to conceptualise, we will have a European ring-fence—let us not start getting into the argument about competition with China or Japan; it is a good argument but quite different from the one we are considering at the moment. This is for the parties in the referendum debate to discuss, and they are valid points to discuss.

Another factor that will determine how Brexit would work would be, no doubt, the majority in the country and the state of agitation on how best to progress matters on the Back Benches of the Conservative Party—and indeed, the Labour Party, the Liberal Democrats and everybody else in the House of Commons. To get to the nub of the point for this debate, and maybe to add some value to what I am about to say, we have a difficulty which would have been avoided if we had followed what we called in an earlier debate the OBR-type of authorship because all these amendments look to HMG to produce these studies. How will Ministers avoid the charge of cherry picking, as and when they deal with what are, with good will all round—and there will not be an oversupply of that—difficult analytical distinctions between things that we know and things that are going to be debated?

In conclusion, I will try to answer my own question.

**Lord Foulkes of Cumnock:** You are the only one who understands it.

**Lord Lea of Crondall:** For once in his life, my noble friend may care to pay a little more attention to what I am about to say, and he may even be convinced by it. I think that there is scope for an inter-party agreement on the preparation of a statement of intent, as it were, between the two camps that neither will accuse the other, or even the Government, of bias, if not dishonesty, simply as a consequence of having conducted an insufficiently robust analysis of the distinction between the facts—the known knows—and the unknowns. What I am saying may prove to be true or untrue, but on the percentage chance that it is true, can we follow up the worries of the noble Lord, Lord Hannay, about tsunamis by saying that they will be prevented only if we can avoid charges of bad faith when these reports are published? Therefore, the leaders of the two campaigns should swear an oath—as in ancient Rome, or some such—that they will accept that the assessment is dispassionate and that neither side will try to shoot the messenger, as and when these surveys are produced.

**Baroness Ludford (LD):** My Lords, I back up what the noble Lord, Lord Hannay, said, with which I entirely agree. To make the noble Lord, Lord Pearson of Rannoch, happy, I should say that my receipt of a pension from the European Parliament is on my declaration of interests. As far as I know, I do not have to mention it every time we discuss the EU, as that would bore the House greatly.

I wish to amplify two of the points in Amendment 24C, in the name, principally, of the noble Lord, Lord Hannay. The Prime Minister said recently that the EU was essential—I cannot remember whether he said “essential”, but he at least meant that it was very important—to the UK’s national security. I think that is the first time he has made that very valid point. Therefore, it is important that the report the Government promise to publish in the very welcome amendment tabled by the noble Baroness, Lady Anelay, should cover the law enforcement, security and justice point because the public have a right to know what that consists of. For instance, the report should state that we are a full member of Europol and not stray into the domain covered by Amendment 25, in the name of the noble Lord, Lord Kerr, by implying that if we are not in the EU we will not be a full member of Europol, as Norway is not—it has a sort of observer status. The same applies to referring to Eurojust as a sort of club of prosecutors which makes sure that we catch, and can prosecute, these major criminals.

As the noble Lord, Lord Hannay, said, we have full membership of the European arrest warrant. We could even push for reform. I wish that Ministers, the Government and the Commission would take up the report that I wrote as one of my last acts in the European Parliament. This was about multilateral reform of the European arrest warrant. We could not do that simply as law takers outside the EU, even if we had some kind of other arrangement.

On proposed new paragraph (d) in Amendment 24C and the rights of UK citizens living in another country, a lot of work is being done here, to which the UK, being in the European Union, has a great deal to contribute. This work is about complementing the

rights of free movement. We have maybe 2 million citizens living in the rest of the EU. We can take a leading part, with our strong civil as well as criminal legal traditions, in influencing the work on the mutual recognition of documents and of civil partnerships and marriages, including of course same-sex marriages, and on the rights that help our citizens in their daily lives in other EU countries.

It is important that our citizens understand the full implications of those EU measures, and the rights and obligations that arise under EU law enabling us to help defend our national security and ourselves against terrorism, to catch criminals and to help people taking advantage of free-movement rights through civil-law issues. I hope the Minister will say that the report will have some focus on these sectors of law enforcement, security and justice, including civil justice.

**Lord Hamilton of Epsom (Con):** My Lords, I should like to speak to these three amendments.

My noble friend the Minister’s first amendment, Amendment 24A, makes the assumption that the Prime Minister will come back with a negotiated package from the EU. There is not a lot of evidence at the moment that that will happen. The Prime Minister has made it clear that if he cannot get any reforms of or agreement with the EU he will walk away. Is that offer no longer on the table? Are we now basically taking the position that, however hopeless the concessions that we get from the EU are, the Government will campaign to stay in whatever happens?

On Amendment 24B, I have many more concerns. It speaks of,

“information about rights, and obligations, that arise under European Union law as a result of the United Kingdom’s membership”.

This really encompasses a large part of UK citizens’ lives. Nick Clegg, from another place, said that 50% of our legislation originates in the EU. This is a very broad category, encompassing very many activities that happen in this country.

In proposed new subsection (1)(b) my noble friend’s amendment says,

“examples of countries that do not have membership of the European Union”.

Can she indicate which countries she will identify as being not part of the European Union, but which have a relationship with it? This is also an extremely broad category. Virtually every country in the world has some sort of relationship with the EU. I would be particularly interested to have a little bit more detail about the free-trade treaty between South Korea and the EU. My view has always been that if South Korea can have such a treaty, the United Kingdom can, too. I should like to know a lot more about that. Will we be told about it in this paper? In general terms, nobody can pretend that the information that will come out in the report suggested by Amendment 24B will be in any way impartial. But of course, when it comes to partiality, we have only to move on to Amendment 24C in the name of the noble Lord, Lord Hannay, to find a whole list of things that quite clearly the noble Lord thinks are going to give advantage to those people who want to stay in the EU.

4.15 pm

I could have tabled another amendment saying that in the event of the United Kingdom leaving the EU, the report should cover the implications of having supremacy returned to our Parliament and having control over our own laws and not being subjected to EU laws any more. I could have asked for it to cover the implications of regaining control over our borders, which is something that people in this country might rather like, as well as no longer being subject to qualified majority voting in the EU and being voted down by other nations, which has happened very frequently, on matters of national interest over which we have absolutely no control. I would also like to know what the implications are of being exempted from any further integration into the political union of the EU and the freedom we would gain from being able to negotiate our own free trade deals.

But I did not put down such an amendment for the simple reason that I knew your Lordships would say, “Well, this is completely biased. All you are trying to do is to slew the whole thing in the direction of those people who want to come out of the EU”, and that is why I did not do it. Unfortunately, that constraint does not seem to have impinged on the noble Lord, Lord Hannay, who is more than happy to table one amendment after another in an attempt to make what we are trying to do—to create a level playing field—tilted in the direction of those who want to stay in the EU.

**Lord Wigley (PC):** My Lords, I suppose I had better make a declaration of interest in case I upset the noble Lord, Lord Pearson. I have a minuscule pension that comes from the National Assembly for Wales, and that might be interpreted as colouring my views on some of the matters in these amendments. Be that as it may, I am very glad to see not only Amendment 24C, which picks up some of the points that I introduced in Committee with regard to regional policy, structural funds and agriculture, but the response of the Government, which has included these points, as Minister underlined in her opening contribution. Perhaps I could press a little further on those aspects.

The Minister referred to the fact that Amendment 24B(1)(a) covers structural funds and agriculture. Perhaps she can clarify whether that would be the intention of interpreting the effects of changes arising from our withdrawal from the European Union on structural funds in specific areas—that it is not just the overall picture but the picture as it impacts on those regions that are beneficiaries of structural funds. Quite clearly, the effect can be different and we could well make a case that there might be an overall UK benefit but a disbenefit for the regions concerned.

Likewise, in the case of agriculture, questions such as the issue that is dominant in Wales at the moment in a European context—the sheep meat regime—can impact regions very differently. Obviously, regions such as eastern England would have a much greater interest in the grain-producing industries and the effect that pulling out might have on them. I would be very glad to know that there will be more than just the overall interpretation of the effect when that appraisal is undertaken.

Secondly, I would like to pick up the question of engagement with the devolved Administrations. For that engagement to be meaningful, and for the devolved Governments to be able to put forward their own statements on their interpretation of the effect of withdrawal on matters of concern to them, it would be necessary for them to have some detailed information on how the negotiations have gone and how the points have emerged during those negotiations. Therefore, there would be a requirement for the devolved Administrations to be pulled into the discussions as they were going along, and not just to be told at the end, “This is what we’ve negotiated. You say what you like about the effects on Wales, or Scotland, or Northern Ireland”. If that is the case, if it is possible for the devolved Administrations to be involved in the negotiations—even if only to know, step by step, how they are moving forward—can the Minister give that reassurance to the House, and tell us at what stage she will start to negotiate, or discuss, these matters with the devolved Administrations to ensure that they are involved from this stage forward, and do not just come in at a very late stage?

Clearly, what we are concerned with here are the effects of withdrawal on various aspects of policy, as detailed in Amendment 24C. A number of the instances raised in that amendment are not covered in Amendment 24B, as far as we know. Perhaps the noble Baroness, Lady Morgan, whose name is on Amendment 24C, will address this matter if she speaks to this group of amendments. I would have thought that clarification was needed on other points in addition to structural funds and agriculture, for which Amendment 24B does provide, at least to some extent. We also require clarification on the matters covered by Amendment 24C. None the less, I welcome the fact that the Government have moved on this subject, and I hope that the clarification provided will add to my contentment.

**Lord Owen (Ind SD):** My Lords, I would like to make points of general application to all the amendments. I have read all the debates that have taken place on this subject here, and it seems to me that it is time for the House, way before we get into any ping-pong, to ask itself what its role is in relation to this legislation.

I gave evidence to the Select Committee in another place, at a time when it looked as if the referendum might be transparently rigged. There was the question of the independence of the Civil Service, and its involvement—and also the question of how long a time would have to elapse between the announcement of the results and the time when the referendum would take place. In fairness to the Government, and in the light of the Select Committee, I must say that most of the major issues of fairness were dealt with, and I thought that we were accorded a judgment in favour of fairness, which I strongly uphold. That, certainly, is the duty of this House.

However, we must now look at the debates, and the direction in which they are going. I agree with the statement already made that it is patently obvious that a lot of the substance of the amendments and the arguments is an attempt to shift the debate. That does happen in these situations, and we cannot stop it. But it does mean that we are talking ourselves into a

[LORD OWEN]

situation of legitimacy in terms of intervening in the referendum in ways that would be not only absurd but dangerous for this House to adopt.

We have already taken one decision in recent weeks: I voted for it myself, but only after very careful consideration as to whether we were overstretching our powers. I will not go into that debate now, but I was confident that what we were doing was just about acceptable. But to delay the referendum is not acceptable. To do anything in this House, either through ping-pong or otherwise, that would delay the undoubted constitutional right of the Prime Minister to choose the timing of his announcement—and therefore, following his announcement, the timing of the referendum—would be absurd.

It is also necessary to remember that there are some differences between the referendum that took place in 1975 and the one that is due to take place on whether we should leave the European Union or remain within it. In 1975, there was no provision in the treaties for a two-year period during which negotiations would be held. This is a very substantive difference. When the then Foreign Secretary, the former Prime Minister, James Callaghan, was asked by a civil servant in the Cabinet Office what he would do in the remaining few weeks of a referendum campaign were the decision to be taken to leave, he made it quite clear that he would be feel obliged immediately to curtail in some substantive measure the powers of the European Union—there could be no delay. That was the right decision, given the nature of that referendum and the fact that there was no two-year period for negotiations. He had to be able to demonstrate forthwith that the powers had changed as result of the referendum.

That judgment was not liked by the civil servants who got it but, as of course they do in these cases, they immediately set about creating the necessary legislation and powers so that had that referendum voted to come out of the European Community, we would have been able to take powers as soon as the referendum was held. That needs to be borne in mind when we discuss some of these very detailed provisions. I cannot help but agree with the noble Lord. Subsection (1)(a) of the proposed new clause in Amendment 24B refers to,

“information about rights, and obligations, that arise under European Union law”.

We could have a cursory glance at that, which I should think would take a White Paper of about an inch thick. A very substantial glance at it would take a White Paper of about five or six inches thick.

We need to keep a sense of proportion here on one particularly important matter: the giving of a referendum is a right for Members of Parliament and nobody else, because it curtails their democratic rights. It is a very serious curtailment of their rights, so much so that, although we call it an advisory referendum, we all know that they accept an obligation to take into law decisions which, as citizens, they may personally have voted against. That is why, in my view, referendums are to be used rather more sparingly than seems to be developing. It is a very considerable infringement on

the rights of a representative, elected, democratic Member of Parliament—and, frankly, those rights do not retain in this House.

For example, the mandate, but perhaps more importantly the actual details about who is enfranchised to vote, is a Member of Parliament's decision and not for this House. We can express views, but the idea that we could hold up a referendum on this issue is absurd. People may say, “We have no intention of doing that. When it comes to the ping-pong, we will accept it and rationalise it. We realise our powers”. It is much better not to embark on this. Ping-pong that is not serious is a waste of everybody's time. More importantly, it gives an image to the country at large, which does not understand our procedures, that we in this Chamber think we have rights that we do not have. We do not have rights over the franchise for this referendum or over the Prime Minister's decision as to when he calls to an end the negotiations and puts the issues to the people. He will of course know and listen to all the arguments about the way in which that decision and the facts should be presented.

Again, we have to be honest about this: we have had a long debate on this issue, and not just on this current referendum Bill. After all, it was announced under the previous Government and was in the manifesto. We know the issues and the electorate, because they are not stupid, will take it upon themselves to be cognisant of those factors that concern them in how they make that individual decision. So if I may make a plea, it is that the House will be very careful from now on to not give the impression that we have rights in this debate which we do not have. This is developing on quite a large number of fronts and it is going to end in tears.

4.30 pm

**Baroness Smith of Newnham (LD):** My Lords, I shall speak to Amendment 24C to which I have put my name. I would like to thank the Minister for listening, as the noble Lord, Lord Hannay, said and for reflecting the views put forward at all stages of the Bill's passage through this House.

Listening to the noble Lord, Lord Owen, I am slightly at a loss because last week we discussed the franchise at some length and voted on it and today we are thinking about reports and paragraph (a) of subsection (1) of the proposed new clause, to which the noble Lord referred, relates to Government Amendment 24B, not to an amendment which is being proposed by Back-Benchers or others.

I want to speak to parts of Amendment 24C. Most of the concerns that I raised at Second Reading about the need for reports have been answered by government Amendment 24B in terms of outlining what alternatives to membership might mean. It is important that we have objective information. I hear from both sides of the House—from the noble Lords, Lord Hamilton and Lord Pearson of Rannoch—that Amendment 24C is somehow trying to put forward things that pro-Europeans want to hear about. However, if the information that is being asked for is objective and membership of the European Union is bad for the economy, a report will make that clear. There is nothing in Amendment 24C that says that the report should



outline the “benefits of” or the “disbenefits of”; it merely refers to the “effects of”, so it would be helpful if noble Lords took the wording of the amendment at face value. Some of us who are still very new to your Lordships’ House have put our names to amendments because we believe that they will improve the quality of debate and the information that is available to citizens.

I turn to paragraphs (b) (c) and (d) of Amendment 24C on the rights of EU citizens in the UK and UK nationals resident in other member states. If the vote is to withdraw, there will clearly be implications for those citizens, which was one of the reasons we discussed at some length whether those people should be enfranchised. Will the Minister confirm that issues about the rights of citizens resident here and in the other EU states will be taken into consideration by the Government under Amendment 24B and, in particular, will she focus on the relationship with Ireland? In Committee, my noble friend Lord Wallace and I raised this issue in an amendment, which was withdrawn. Clearly in addition to discussions with the devolved Administration of Northern Ireland, it is important for the Her Majesty’s Government to think about the implications for the relationship of the United Kingdom and the Republic of Ireland in the case of withdrawal. It is not simply a matter for the devolved Administration; it is a matter for two sovereign countries. The other devolved Administrations would not be affected in quite the same way.

**Lord Grocott:** I do not think there is any disagreement about the need to provide precise factual information so that people can make the judgment that they will have make when the referendum is called. That is clearly a benefit. The difficulty that arises—it is pretty obvious to me and I hope I can convince any doubters that it ought to be to all of us—is in determining what is factual, unarguable, objective information and what is a matter of judgment.

Looking at the amendments, I can certainly give an example of what is factual and what is not. For example, government Amendment 24B—leaving aside just for a moment the doubts of the noble Lord, Lord Hamilton, about which countries might be included—is close to a factual requirement,

“examples of countries that do not have membership of the European Union but do have other arrangements with the European Union (describing, in the case of each country given as an example, those arrangements).”

Admittedly, the noble Lord, Lord Hamilton, made me waver a bit when I heard his comments. There is deep uncertainty as to precisely which countries would be covered by this—perhaps the Minister will answer that point in her reply—but if you gave that to 10 top civil servants and said, “Right, you have to draw up these facts, these details, on this precise point”, they would roughly be in the same territory. They would spell out what deal Norway had got, what deal Switzerland had got and so on.

By complete contrast, I have to disagree with the Liberal Front Bench strongly over the idea that Amendment 24C, in the name of the noble Lord, Lord Hannay, involves a kind of clear, objective and unarguable description about the consequences of withdrawal.

The game is given away in the language of the very first line of the amendment:

“The report shall cover the possible consequences of withdrawal”.

The term “possible consequences” contains within itself the possibility of different considerations that need to be brought into account in the event of withdrawal. The language of the amendment itself admits the possibility of debate, discussion and uncertainty. I am not a lawyer, but if that ever passed on to the statute book and 10 civil servants were asked to give a precise answer on those points, they would come up with 10 different solutions.

I will complete that point by including one particularly contentious example. I mentioned this in Committee but make absolutely no apology for mentioning it again. Amendment 24C says:

“The report shall cover the possible consequences of withdrawal from the European Union, including information on the effects of withdrawal upon ... (g) the provision of financial support for agriculture in each region of the United Kingdom”.

Does that or does that not include a consideration of what support agriculture would get in the event of withdrawal from the common agricultural policy? In my book, of course that would be a possible consequence of leaving the European Union: there would be subventions from the British Treasury to British agriculture. The levels of that would be unknown, but it is a fair bet in my book that they would at least be equal to the colossal sums that we contribute to the common agricultural policy under the present arrangements. Whether I am right or wrong does not really matter: all I am saying is that the language of the amendment itself means that that is inevitably the kind of debate that would take place. Clearly, you cannot talk about the possible consequences of withdrawal from the CAP without giving some consideration to what sort of support would come from a country that was outside the EU. In trying to pretend that that is a kind of objective consideration, the noble Lord, Lord Hannay, must allow himself a little smile.

**Lord Hannay of Chiswick:** I am not smiling very much. As I explained in Committee, that was not the intention of the people moving these sorts of amendments. We wish to have a factual, objective statement of the consequences of withdrawal. I noticed with some pleasure that when the Minister opened the debate this afternoon, she included a recognition that there would need to be, in the paper provided under Amendment 24B, some consideration of that matter. I never suggested—and I twice replied to the noble Lord, Lord Grocott, on this point in Committee—that we should go into the speculative area of what the Government might do to replace the common agricultural policy, which would have been withdrawn from British farmers. I am sorry, but the noble Lord is simply barking up the wrong tree. There is therefore no difference between us and no difference with the Minister. This is important information. It was not intended to enter the speculative realm of what would replace it.

**Lord Grocott:** In that case, the noble Lord really should have put down a different amendment. In my book, possible consequences means possible consequences. Possible consequences of withdrawal from one

[LORD GROCCOTT]

organisation will include what will happen to the beneficiaries, if that is the right word, of the common agricultural policy in the event of withdrawal. If there is no possibility of uncertainty, remove “possible” from the amendment. The noble Lord has to defend his amendment as written. In any conversation interpreting the meaning of the amendment as written, there would be any number of possible—I use the word myself again—ways in which the consequences of withdrawal could be written.

I think that the noble Lord will be frank enough, as am I, to admit that he does not come from a completely neutral position. If he thought that his amendment would result in a large number of statements and heavy tracts one or two inches thick pointing out what disastrous consequences there would be for Britain if it remained within the European Union, I am quite sure that he would not have put the amendment down. He has put the amendment down precisely because it is consistent with his perfectly sincerely held view—and we know that almost irrespective of what the Prime Minister brings back he will be voting to stay. I just find it unacceptable in terms of the language.

**Lord Hannay of Chiswick:** I am sorry, but I really must reply to this point about possible consequences. If I had put “consequences” without “possible” that would have entered the speculative realm because it would have needed to bring in what was done to replace the common agricultural policy. By putting “possible consequences” it merely stays in the factual realm—what will be removed from the British agricultural sector if we were to leave. It does not enter into the conjectural area of what would replace it. That was the reason for the wording.

**Lord Grocott:** I think actually it is much clearer from the noble Lord’s perspective if he says “consequences” and does not put “possible”. I think we are beginning to dance on pinheads now, but test it out in the pub. What are the possible consequences of you not paying for your pint? There are a whole range of possible consequences. Anyone who is asked might say: you might go to prison; it might result in a fight. Any number of consequences are possible from an objective fact. The objective fact, which is acknowledged, would be withdrawal from the common agricultural policy. I am simply putting to the noble Lord that with “possible consequences” the language itself implies that there could be lots of different interpretations. I put it no stronger than that.

**Lord Lamont of Lerwick:** My Lords, I would like to speak, as the noble Lord, Lord Owen, did, rather generally about the whole series of amendment that have been put down. I have been rather struck by the plethora of different reports demanded. My memory went back to the repeated demands that the noble Lord, Lord Pearson, used to make of successive Administrations that they should have a publication stating the advantages of being in the European Union. Year after year, Administration after Administration—I do not know whether the noble Lord, Lord Kerr, was one of the people answering the PQs that the noble

Lord, Lord Pearson, put down—the reply always came back, no, they would not publish any evaluation of our membership. It was never clear whether this was because they thought it was self-evident or, as I also suspect, because there is an element of greyness. The truth is never precise. I think what is wrong in so many of the assessments that have been asked for is that, actually, one cannot always give a precise factual answer.

For example, take the case of membership of the EEA, the European Economic Area, to which Norway belongs. Some people would say you have to accept all the regulations just the way they are imposed—it is government by fax. Actually when you look into it in real detail, it is not like that at all. It is a very complicated procedure and it is not quite true to say that a country such as Norway has to accept the laws it is given, let alone just by fax. First, there is a very elaborate machinery before laws are formulated. Secondly, when laws are formulated, the EEA countries have a right to reject legislation—they have a veto—something that we inside the European Union do not. The noble Baroness shakes her head. I am very willing to give way to her if she disagrees with me.

4.45 pm

**Baroness Smith of Newnham:** My Lords, as I understand it from a colleague at the EFTA secretariat, the way that the EEA agreement would work is that legislation on that part of the internal market would be disappplied. So it is possible to say that you do not like something, but then no part of that internal market legislation applies. That makes it somewhat more difficult than the noble Lord appeared to imply.

**Lord Lamont of Lerwick:** By interrupting, the noble Baroness illustrated exactly my point. She just said that it is more complicated than I had said. I am saying that government by fax is an oversimplification as well. These things are not capable of a single interpretation; they cannot all be reduced to numbers. In this debate, we have a series of people with different motives putting forward different lists that they think would help their case.

The noble Lord, Lord Lea, had an interesting exchange with the noble Lord, Lord Grocott. The noble Lord, Lord Grocott, responded to the reference of the noble Lord, Lord Lea, to various rights that existed, and made the point: could not the UK Parliament just legislate for each of those rights? I thought that the noble Lord, Lord Lea, did not answer that question satisfactorily.

It reminded me of a conversation I had many years ago with a friend before we joined the European Economic Community. My friend was an enthusiastic supporter of joining; I was a bit sceptical. I voted to join and made my maiden speech in the House of Commons in favour of joining, but I objected to the argument that my friend put forward for joining the EEC, as it then was. He said, “The reason for joining the EEC is that we can irreversibly freeze into law capitalism, free markets and deregulation”. That is how the EEC appeared at the time: it was something that appealed to economic liberals.

Of course, the whole nature of the EU changed as it involved and we had what the noble Lord, Lord Lea, referred to as the Delors doctrine, which was that you would enshrine permanently in EU law certain social rights. That is why the TUC changed its mind over membership, I think. The noble Lord, Lord Grocott, was quite right to say that you can have all those lists put forward in different amendments, but actually the UK Parliament is perfectly capable of implementing whatever rights or limitations on rights it wishes. That is one of the fundamental points about the EU and one of the fundamental objections to it: it is so difficult to repeal legislation because it is enshrined almost in aspic.

**Lord Lea of Crondall:** My point was that employers would not be happy to do that just as one country because they would become less competitive; they want to do it as a continent. I know that the noble Lord will not think that a good argument, but that was the point being made.

**Lord Lamont of Lerwick:** I know that the noble Lord made the point about acting together, but I do not think that it really answers the point made to him by the noble Lord, Lord Grocott. These lists are highly selective. In the amendment moved by the noble Lord, Lord Hannay, all right, some items stand on their own, but let us take paragraph (e) in Amendment 24C, which covers,

“law enforcement, security and justice in the United Kingdom and in the devolved jurisdictions”.

Of course there will be arguments both ways. One noble Baroness referred to the European arrest warrant as though that were self-evidently all in one direction, but a published analysis of it might give rise to a lot of argument about the rights of people who are wrongly prosecuted, or of the innocent who are extradited.

Many people have anxieties about the whole theory of parity of esteem of the justice systems of different countries in the EU. Can anyone really say that the justice systems of Bulgaria or Romania are equal to ours—that we have as much confidence in them as we do in our own UK system—and that therefore there should be automaticity of extradition? I say that because the idea that these things can be reduced to simple formulae, to black and white or to one particular viewpoint is not correct.

**Lord Hannay of Chiswick:** I remind the noble Lord that both Houses of Parliament recently voted for resolutions which stated that the European arrest warrant was in the national interest of the United Kingdom. Presumably it is reasonable, therefore, that it should be stated in a government report that it would cease to apply to us if we left the European Union.

**Lord Lamont of Lerwick:** Yes, Parliament has voted for it—but if we are having a referendum, everything is up for argument. The public have been given the right to dispute and to vote. Equally, paragraph (f) of the noble Lord’s amendment refers to,

“those regions of the United Kingdom that qualify for structural funds”.

I imagine that that would have a big impact in certain regions of the north of England, but other people in

the south might attach equal importance to the fact that we did not have to make a budget contribution across the exchanges any longer.

The point that I am trying to make is that these things cannot all be reduced to black and white. The truth is grey: there is no such thing as complete impartiality in all these arguments. That comes back to a very important point made by the noble Lord, Lord Owen, who quite rightly and with tremendous force reminded the House that we may be in danger of overstepping the mark. As I think he was hinting—although he had the graciousness not to say so—I suspect that a lot of these amendments are being put forward for rather self-interested motives from the side that people find themselves on in this argument.

So rather than seeking after some elusive impartiality that does not exist, let both sides slog it out in argument. Let the Government, as they have said, publish a White Paper saying what they think is the result of the negotiations and why they think we should stay in, if that is what they think—and they probably will—but let us not go beyond that into an area that is highly disputable. Each side can put its case best, rather than the Government trying to argue a case that they are fundamentally opposed to.

**Lord Wallace of Saltaire:** My Lords, let me simply add to what the noble Lord said. The last Government produced 32 reports on the EU balance of competences; I have painful memories of it. We covered the European arrest warrant. It was a process where we asked the opinions of experts and stakeholders throughout the country. We were as impartial as possible in that respect: civil servants reviewed the results and made an assessment of the balance of comments that had come back. So it is possible to be relatively impartial on all this. If we are to have a referendum, it is important that the people are as well informed as possible on the evidence that is provided.

**Lord Green of Deddington:** Before the noble Lord sits down, is he aware that the balance of competences review did not include the word “population”?

**Lord Wallace of Saltaire:** I have not checked all 2,500 pages of the report, but I cannot guarantee that I will do so as quickly as I read the speech in 2002 by the noble Lord, Lord Pearson of Rannoch, when he reminded me that I had not referred to it. I have to say that I found it rather thin.

**Lord Willoughby de Broke (UKIP):** My Lords, like my noble friend Lord Pearson I welcome this group of amendments—perhaps, rather surprisingly—because it gives us the chance to get some facts out in this report. I hope that the noble Baroness will listen to the other side of the argument. Having listened to what the noble Lord, Lord Grocott, said, I will try to confine myself to facts. Amendment 24C states:

“The report shall cover the possible consequences of withdrawal ... upon ... the United Kingdom’s economy”.

I think that on the whole that could be rather beneficial. We could get £20 billion back that otherwise we would send to the European Union. That £20 billion may not seem an awful lot of money to

[LORD WILLOUGHBY DE BROKE]

some noble Lords who tabled the amendment, but it is a substantial sum of money and would be Britain's to spend as it sees fit. That is a fact. According to the Pink Book published at the end of October this year, £20 billion was our contribution in 2014.

When we talk about the economy, I know that behind this is the idea that if we were to leave the European Union our industry, the City and other sectors of our productive economy would be acted against and discriminated against by our erstwhile partners. I find that very unlikely. Again, according to the recent Pink Book, we have an annual trade imbalance with the EU of £107 billion. That is a Pink Book fact. What is also a fact is that Britain is the eurozone's biggest single trading partner—bigger than the United States. We are Germany's biggest single export market—bigger than the United States. I therefore find it really hard to believe that our trading partners, who have such a promising trade balance with us as their best market, would possibly want to destroy the interests of their best customer.

Going on down the list, I think that the noble Lord, Lord Grocott, has already dealt with the rights of the individual. That of course is entirely up to the United Kingdom Parliament to decide, and no longer a matter for the European Union.

We move on down to law enforcement—new subsection (e) on law enforcement, security and justice. Again, I do not know whether the European arrest warrant is actually the best way to deal with matters. Obviously, we need some way of getting criminals back to face justice, but a *prima facie* case should be made in front of a magistrate in England before people are sent back to face systems of justice that are very different from ours—so I do not agree with the noble Lord, Lord Hannay, on that.

As for security, of course, were we to leave the European Union we would have control of our borders again. That is arguably the most important thing of all when it comes to security at the moment. We see the chaos in Europe, with barbed-wire fences being erected and France putting up border controls. All over Europe now, people are debating whether free movement of people in and out of the EU is actually possible.

**Lord Reid of Cardowan (Lab):** Could the noble Lord elaborate on control of our borders? In what sense do we not have control of them?

**Lord Willoughby de Broke:** We no longer have control of our borders because we are subject to the EU directive on free movement of people. That is why we do not have control of our borders, and it is what we need to get back if we are going to give to our citizens—subjects of the Queen—security. Surely giving their citizens security and safety is an overriding priority of any Government now. That trumps any EU ideology, given what is happening right now in front of our faces in Europe. I really think that that is incontrovertible.

**Lord Reid of Cardowan:** The security of our borders, even with the free movement of people, subjects anyone coming here to the same level of scrutiny that would be available were they coming from anywhere else in

the world. So while it is true that there is free movement of people, it is not true that the security of our borders is impeded.

**Lord Willoughby de Broke:** I do not agree with the noble Lord at all. Unless we have control of our own borders—our own Border Force properly controlling our borders, not subject to the EU free movement of people directive—we do not have control of our borders. I am very sorry that he does not agree with that, but it is a simple fact.

I shall move on, if I may, to the regions of the UK that receive structural funds. I draw noble Lords' attention to the fact that we have £20 billion at our disposal. It is entirely possible that structural funds, infrastructure applications, can be judged on their merit by the British Government of the day and allocated accordingly. It is very simple. Our money should not be sent to Brussels with a label on it saying how we are going to spend it. It should be a matter for the British Government and the British people how that is done and not a matter for Brussels at all.

5 pm

On agriculture, I declare my interest as a farmer in receipt of UK taxpayers' funds recycled through Brussels and coming back to me. At the moment, UK agriculture gets about £3.5 million in support nominally from the EU but actually from the British taxpayer. With £20 billion at our disposal, we could, as the noble Lord, Lord Grocott, implied, afford to support British agriculture at the current level and have £16.5 billion left over. I should have thought that would be quite a good deal. British farmers would be happy with that—I certainly would—and I think that the British Treasury would be happy as well because at the moment part of our funds goes to support "la France profonde". The noble Lord, Lord Kerr, has referred to that in previous debates. France is a wonderful country, but I do not see why we should support its agriculture.

On research and universities in the United Kingdom, it would be really embarrassing and unthinkable if the fifth-richest economy in the world could not afford to support its own research institutions and its own higher education. Therefore, none of these points raised has much import.

The problem that we should look at in a report relevant to the referendum and giving people an informed choice, and on which I thought of tabling an amendment, is the implication of remaining in the EU. After all, there are a lot of implications of remaining in the EU, as we can see. Just looking at the EU, the ice is cracking under it. Look at the chaos in the eurozone and, on free movement of people, at the Schengen agreement coming apart daily—it is getting worse, so what is Britain's future in the EU with the way the EU is heading now? What is the future for the British Parliament if the EU goes on making more and more laws in which Parliament, whether this House or the other House, has absolutely no say? Parliament just has to rubber-stamp EU law—bang!—and it becomes UK law. That can only get worse. That is what the Commission does: it makes the laws, it implements them and we have to put them into UK law without any debate and without so much as a single comma

changing. What will be the consequence of our being unable to control our own borders? If we remain in the EU, the consequence will be uncontrolled immigration for an unknown period into the future.

Therefore, we should look carefully at what remaining in the EU means for us and for our economy. The cost of the EU goes up every single year. It is £20 billion now, it will be £22 billion next year and £25 billion in three years' time. I am not sure that the United Kingdom can afford to give away those sort of sums to the EU willy-nilly.

On factual information, it is important to remember that the EU's whole *raison d'être*, its reason for existence, is to form a United States of Europe: the "ever closer union" of the peoples of Europe. There is no mechanism for returning powers to member states, none at all. I defy anyone, anywhere—Europhile or non-Europhile—to tell me what power has ever been given back to a member state from the EU. None ever has. None is ever going to be. That is factual. That should be in any report that the Government put out about the EU—that once you are in, the laws are coming your way, you cannot do anything about it, they are there for good and they are going to get worse.

I welcome the idea of the report. I hope that it will be even-handed and take account of the dangers inherent in our continuing membership of the EU as well as the manifold problems that we have with it now anyway. Therefore I support the amendment, although I am not sure that the mover of the amendment will support what I have just said.

**Baroness Morgan of Ely (Lab):** My Lords, I am going to resist the temptation to revisit the Second Reading and Committee stages that we have undergone so far and I shall address the amendment that we are supposed to be discussing. It is essential in this EU referendum that the public have information at their disposal not just in terms of what will change as a result of the Prime Minister's renegotiation, but also in terms of what potentially will change if we leave the European Union. That is what we are addressing at the moment.

Most respectable companies and charities have a risk register—a list of where there may be unpredictable changes if circumstances change. In this amendment, we are essentially asking for a register of where we will have to act in some way or another if we leave the EU. I thank the Government for understanding the need for this information. We are grateful that the Government have listened and that they understand that we are not asking here for any kind of hypothetical explanation of what might happen if we were to leave; we want to know what domestic systems they would need to replace for EU systems if we were to leave. We want a comprehensive list of what issues and subjects would need to be addressed. I emphasise that we do not want this information to be loaded in any way; plenty of that will be pushed during the course of the referendum debate itself. Here we are looking for statements of objective facts that are in no way speculative.

The Electoral Commission has suggested time and again that the public are unclear about the situation and are anxious for more information to help them to make an informed choice. The public currently take a

whole series of rights and responsibilities for granted, which many will have no idea are related to our membership of the European Union. We are therefore grateful to the Government for introducing their amendment, which understands the need to set out these rights and obligations in a comprehensive way.

**Lord Spicer (Con):** What is the point of these facts if we do not allow compensatory facts to be included in the total effect? If you do not look at the net effect, what is the point of the facts?

**Baroness Morgan of Ely:** The whole point is that we need to know what the situation is today and what we will need to change. In some way or another, we will have to revisit these issues. What are these issues? What is that list of rights that the public will need to know will change as a result of our leaving the European Union? That is not clear—it is not written down anywhere. We think there should be a register or list of rights that are currently there as a result of our membership of the European Union.

**Lord Lamont of Lerwick:** The yes campaign has spent an enormous amount of time listing and scaring the pants off people, terrifying the public with all the things that are uncertain, so why do the Government have to argue one particular case in addition to the case they are arguing?

**Baroness Morgan of Ely:** We are not asking for the Government to argue a case; we are asking them to list what the responsibilities are, which is very different. We talked earlier about agriculture. Yes, some may argue that the Government would very happily replace any money that has come from the CAP with some kind of domestic policy. Others may think that the Chancellor may just grab that £20 billion to fill the black hole in his deficit. Who knows? We do not know what will happen and we will not enter that realm of speculation. However, we know that we would have to address the issue of agriculture if we were to leave the European Union. That is an objective statement of fact, which is what we are looking for here.

I thank the Minister for noting and listing most of the points we have set out. I assume that when she talks about social rights, she includes employment rights within that. I will not relist them—they are now on record—but I concur with the noble Lord, Lord Wigley, that it would be beneficial to have a regional breakdown of the impact of funding if possible.

Some of those rights will be in the gift of the Government to implement at a domestic level. We must be aware that to cease our membership would allow the Government to repeal the rights that are currently secured by our EU membership; we have heard the examples of agriculture and structural funds. Other rights, such as the ability to access continental hospitals, would not be in the gift of the Government and would be subject to negotiation with our previous EU partners. Whether they want to play with us after our exit would be, to an extent, beyond our ability to influence.

I am grateful to the noble Lord, Lord Pearson, for drawing attention to the fact that there would be considerable legislative and statutory consequences to

[BARONESS MORGAN OF ELY]

withdrawal. The noble Lord came up with some figures for how long and how many people it would take to rewrite all the laws that have accumulated over 40 years. It would be useful to know if the Government concur with his suggestion and whether the same is true for devolved Governments as well.

The Minister did not specifically mention the rights of EU citizens in the UK and UK citizens in the EU. It would be useful if she would give some commitment that they would be covered by the reports.

I will not go on to deal with the second part of the Government's amendment, relating to alternatives to EU membership. We will come to that later in the debate but, as the amendment is set out at the moment, I am afraid it would not be acceptable to us.

**Baroness Anelay of St Johns:** My Lords, I thank all those who have contributed to the debate on this important issue. As the noble Lord, Lord Hannay, pointed out at the beginning, nearly two hours ago, it is important that we are able to produce factual, objective information that is additional to the rhetoric of campaign. The Government have directed their attention to putting forward amendments that address the need for the public to have that information. I am grateful to the noble Lord, Lord Hannay, the noble Baroness, Lady Morgan, and other noble Lords for their contribution, not only to this debate, but to the passage of the Bill in general.

The Government have considered the range of views presented in Committee and, as I outlined earlier, we have brought forward Amendments 24A and 24B, which we have been discussing. The noble Lord, Lord Hannay, asked for further reassurance that the devolved Administrations and Gibraltar would be covered under Amendment 24B and asked how that would happen. I can reassure him that, under these amendments, the reports published by the Government will include information on the position of Gibraltar and the devolved Administrations, including Northern Ireland. As I mentioned earlier, we will need to be mindful of the constitutional position of Gibraltar and the devolved Administrations and we will continue to engage with them. The noble Lord, Lord Hannay, and the noble Baroness, Lady Ludford, also raised the question of law and order. I will not rehearse the discussions we had on another occasion about Protocol 36, but I can reassure the noble Lord that the rights and obligations arising from this area would be in the scope of the report set out in Amendment 24B. The noble Baroness, Lady Ludford, specifically asked whether civil justice was included within the definition of justice. The answer is yes, as with all these matters, to the extent to which we have opted in.

My noble friend Lord Hamilton asked what would happen if my right honourable friend the Prime Minister returned empty-handed or, at least, with an agreement that he felt was not good for this country and the other 27 states. My right honourable friend David Cameron has been engaged, along with my right honourable friends the Foreign Secretary, the Chancellor of the Exchequer and David Lidington, in negotiations throughout the summer and autumn and these have stepped up a gear. We have confidence that we will be

able to present to the country a deal that is good for the United Kingdom and our colleagues across Europe, which is what needs to be achieved. However, the Prime Minister has also made it clear that, in the remote contingency that that did not happen, he would have to take a view. His view at the moment is that it is in the interests of this country that we all work together, as hard as we can, from every single party and none, to ensure that the right deal is achieved. That is where our concentration lies.

My noble friend Lord Hamilton also asked which countries will be used as examples under the second part of my Amendment 24B and asked specifically whether South Korea would be covered. Amendment 24B will require the Government to give examples of countries that have arrangements with the EU other than membership. It does not require the Government to comment on every single country that has a relationship with the EU. It will be appropriate to select a range of examples that most usefully and effectively demonstrate the existing arrangements to inform the public in an objective way. However, it would not be possible or even right for me to try to confirm the exact contents of such a report at present because it would lead to a tome. I am mindful of what the noble Lord, Lord Owen, reminded us earlier. These reports must be meaningful and accessible. If they are like *Encyclopaedia Britannica*, they would not do the job that noble Lords have required the Government to achieve.

5.15 pm

**Lord Hamilton of Epsom:** My Lords, before she leaves that point, does my noble friend accept that the EU has very few free trade treaties with other countries, so at least one of them should be listed so that we can know about the detail?

**Baroness Anelay of St Johns:** My Lords, I believe that we will select examples of countries that can best inform the people of this country about how they should cast their vote. We must not try to skew that. Clearly, it would be a balanced selection of countries. I would not like to define now what will be in the report because that would assume that I would be writing it—I will not be.

**Lord Pearson of Rannoch:** For instance, will the noble Baroness assure us that the Government will give us a summary of the free-trade agreements reached by Singapore, whether we would be able to emulate Singapore and within what timescale? At the moment, we have none of those.

**Baroness Anelay of St Johns:** My Lords, I believe I have answered that question twice. I would test the patience of the House were I to repeat myself a second time.

With regard to the devolved Administrations in the renegotiation, as foreign policy issues are reserved matters, relations with the European Union are the responsibility of Parliament and the Government of the UK. However, the UK Government involve the devolved Administrations as directly and fully as possible in decision-making in EU matters that touch on devolved areas. Further, Ministers have held meetings with

representatives of the devolved Administrations. Most recently, the Minister for Europe met Fiona Hyslop MSP, the Cabinet Secretary for Culture, Europe and External Affairs, on 11 November to discuss the EU reform process. The renegotiation is now a standing item at quarterly meetings of the Joint Ministerial Committee on Europe, which allows Ministers from the devolved Administrations to feed in their views ahead of the meetings of European Councils. The next such meeting is next month. I hope that is the information that the noble Lord, Lord Wigley, requested.

The noble Lord also asked whether the report described under Amendment 24B would cover matters such as structural funds and how they impact on the region. I thank the noble Lord for his contribution to this debate. He reminded us of the importance of these matters at Second Reading, in Committee and, quite rightly, now, too. I remarked in my opening speech that the report under government Amendment 24B would indeed cover important rights such as the right to apply for structural funds. Where appropriate, we will set this information in context. However, again, I am not in a position to set out the exact contents of the report today. Clearly, it is a matter of making sure that the information is as balanced and full as is appropriate.

I was also asked by the noble Baroness, Lady Morgan, and the noble Lord, Lord Lea of Crondall, whether employment rights would be covered. I briefly referred to that in my opening remarks, but they were quite detailed, so I can give the assurance that employment rights would be covered under the report required by government Amendment 24B, as indeed would the rights of EU citizens referred to by the noble Baronesses, Lady Smith of Newnham and Lady Morgan. They would be covered by Amendment 24B.

In coming to my final words on this group of amendments, I reflect on the fact that what we have sought to achieve is to listen to the request of the House to table amendments that provide a factual basis on which people can make up their minds when they cast their votes. Government Amendments 24A and 24B will ensure that the public are crystal clear on what EU membership currently entails for the UK and how the EU has been reformed. This will enable them to make their decisions in an informed way at the referendum.

The Government reports are intended to be informative, objective and evidence-based. It will be for others—the campaigners—to then take from the report such information as perhaps fits their case, and to use it with regard to other information they may have when they talk about risk assessments and views. That is a matter for another day, although I know we have had quite a flavour of it today.

In conclusion, when Amendment 24A is called in its place, I will move it, and Amendment 24B. I hope they will both be acceptable to the House and I hope the noble Lord, Lord Hannay, will not press his Amendment 24C as an amendment to Amendment 24B. I beg to move.

**Lord Hannay of Chiswick:** I wish to reply to the Minister briefly and thank her for her contribution in replying to the debate. She has clarified a number of

issues which were raised by me and others who put their names to the amendments. Her clarifications were basically very helpful. We have had a long debate. I would describe it as slightly a curate's egg of a debate. My motives have not been so traduced since Fidel Castro's representative on the UN Security Council had a little rant about British foreign policy, but I am used to these things and I am not objecting too much to that. I, and those who tabled the amendment, will study the Minister's words with very great care. She weighed them carefully before she said them, both in the introduction and in responding to the debate. We will consider them very carefully. We may return to them on Third Reading, but in the mean time I do not intend to take the opinion of the House on this amendment.

*Amendment 24A agreed.*

#### *Amendment 24B*

*Moved by Baroness Anelay of St Johns*

**24B:** After Clause 5, insert the following new Clause—

“Duty to publish information about membership of the European Union etc

(1) The Secretary of State must publish a report which contains (alone or with other material)—

- (a) information about rights, and obligations, that arise under European Union law as a result of the United Kingdom's membership of the European Union, and
- (b) examples of countries that do not have membership of the European Union but do have other arrangements with the European Union (describing, in the case of each country given as an example, those arrangements).

(2) The report must be published before the beginning of the final 10 week period.

(3) In this section “the final 10 week period” means the period of 10 weeks ending with the date of the referendum.

(4) A copy of the report published under this section must be laid before Parliament by the Secretary of State.”

*Amendment 24C, as an amendment to Amendment 24B, not moved.*

*Amendment 24B agreed.*

## **National Security Strategy and Strategic Defence and Security Review 2015**

*Statement*

5.23 pm

**The Minister of State, Ministry of Defence (Earl Howe) (Con):** My Lords, with the leave of the House, I shall now repeat a Statement made earlier this afternoon by my right honourable friend the Prime Minister in another place on the national security strategy and strategic defence and security review. The Statement is as follows:

“With permission, Mr Speaker, I would like to make a Statement on the national security strategy and strategic defence and security review. Our national security depends on our economic security, and vice versa, so the first step in keeping our country safe is to ensure our economy is, and remains, strong.

[EARL HOWE]

Over the past five years we have taken the difficult decisions needed to bring down our deficit and restore our economy to strength. In 2010, we were ordering equipment for which there was literally no money. The total black hole in the defence budget alone was bigger than the entire defence budget in that year. Now it is back in balance. By sticking to our long-term economic plan, Britain has become the fastest growing major advanced economy in the world for the last two years and our renewed economic security means that we can afford to invest further in our national security.

This is vital at a time when the threats to our country are growing. This morning I was in Paris with President Hollande discussing how we can work together to defeat the evil of ISIL. As the murders on the streets of Paris reminded us so starkly, ISIL is not some remote problem thousands of miles away. It is a direct threat to our security at home and abroad. It has already taken the lives of British hostages and carried out the worst terrorist attack against British people since 7/7 on the beaches of Tunisia, to say nothing of the seven terrorist plots right here in Britain that have been foiled by our security services over the past year.

And of course, Mr Speaker, the threats we face today go beyond this evil death cult. From the crisis in Ukraine to the risk of cyberattacks and pandemics, the world is more dangerous and uncertain today than five years ago. So while every Government must choose how to spend the money they have available, every penny of which is hard-earned by taxpayers, this Government have taken a clear decision to invest in our security and safeguard our prosperity. As a result, the United Kingdom is the only major country in the world today which is simultaneously going to meet the NATO target of spending 2% of our GDP on defence and the UN target of spending 0.7% of our GNI on development, while also increasing investment in our security and intelligence agencies and in counterterrorism.

In ensuring our national security, we will also protect our economic security. As a trading nation with the world's fifth biggest economy, we depend on stability and order in the world. With 5 million British nationals living overseas and our prosperity depending on trade around the world, engagement is not an optional extra; it is fundamental to the success of our nation. We need the sea lanes to stay open and the arteries of global commerce to remain free-flowing. So the strategy which I am presenting to the House today sets out a clear vision for a secure and prosperous United Kingdom, with global reach and global influence. At its heart is an understanding that we cannot choose between conventional defences against state-based threats and the need to counter threats that do not recognise national borders. Today we face both and we must respond to both. So over the course of this Parliament our priorities are to deter state-based threats, tackle terrorism, remain a world leader in cybersecurity and ensure that we have the capability to respond rapidly to crises as they emerge.

To meet these priorities we will continue to harness all the tools of national power available to us, co-ordinated through the National Security Council, to deliver a 'full-spectrum approach'. This includes support for

our Armed Forces, counterterrorism, international aid and diplomacy and working with our allies to deal with the common threats that face us all. Let me take each in turn. First, the bottom line of our national security strategy must always be the willingness and capability to use force where necessary. On Friday evening, the United Nations Security Council unanimously agreed Resolution 2249, calling on member states to take 'all the necessary measures' against ISIL in both Syria and Iraq.

On Thursday, I will come to this House and make a further Statement responding personally to the Foreign Affairs Select Committee. I will make the case for Britain to join our international allies in going after ISIL at its headquarters in Syria, not just Iraq. I will explain how such action would be one element of a comprehensive and long-term strategy to defeat ISIL, in parallel with a major international effort to bring an end to the war in Syria. But today I want to set out how we will ensure that our Armed Forces have the capabilities to carry out such a task, and indeed any other tasks that might be needed in the years ahead. We will invest more than £178 billion in buying and maintaining equipment over the next decade, including doubling our investment in equipment to support our Special Forces, and we will increase the size of our deployable Armed Forces.

In 2010 we committed to an expeditionary force of 30,000. Today I can tell the House that by 2025 we are increasing that number to 50,000. As part of this, we will create two new strike brigades, forces of up to 5,000 personnel fully equipped to deploy rapidly and sustain themselves in the field. We will establish two additional Typhoon squadrons and an additional squadron of F35 Lightning combat aircraft to operate from our new aircraft carriers. We will maintain our ultimate insurance policy as a nation, our continuous at-sea nuclear deterrent, and replace our four ballistic missile submarines.

We will buy nine new maritime patrol aircraft, based in Scotland, to protect our nuclear deterrent, hunt down hostile submarines, and enhance our maritime search and rescue. We will buy at least 13 new frigates and two new offshore patrol vessels. These will include eight Type 26 anti-submarine warfare frigates. We will design and build a new class of light, flexible, general-purpose frigates. These will be more affordable than the Type 26, which will allow us to buy more of them for the Royal Navy, so that by the 2030s we can further increase the total number of Royal Navy frigates and destroyers. Not one of these capabilities is an optional extra. These investments are an act of clear-eyed self-interest to ensure our future prosperity and security.

Secondly, turning to counterterrorism, we will make a major additional investment in our world-class intelligence agencies to ensure that they have the resources and information that they need to detect and foil plots from wherever they emanate in the world. As I announced last week, we will invest £2.5 billion and employ over 1,900 additional staff. We will increase our investment in counterterrorism police and more than double our spending on aviation security around the world.

I can tell the House today that we have put in place a significant new contingency plan to deal with major terrorist attacks. Under this new operation, up to



10,000 military personnel will be available to support the police in dealing with the type of shocking terrorist attack that we have seen in Paris. We will also make a major new investment in a new generation of surveillance drones. These British-designed unmanned aircraft will fly at the very edge of the earth's atmosphere and allow us to observe our adversaries for weeks on end, providing critical intelligence for our forces. We will also do more to make sure that the powers that we give our security services keep pace with changes in technology. We will see through the draft Bill that we have published to ensure that GCHQ, MI5 and our counterterrorism police continue to have the powers that they need.

Thirdly, we will use our formidable development budget and our outstanding Diplomatic Service to tackle global poverty, promote our interests, project our influence and address the causes of the security threats that we face, not just their consequences. Alongside the strategic defence and security review, I am publishing our strategy for official development assistance. At its heart is a decision to refocus half of DfID's budget on supporting fragile and broken states and regions in every year of this Parliament. This will help to prevent conflict and, crucially, to promote the golden thread of conditions that drive prosperity all across the world: the rule of law, good governance and the growth of democracy. The Conflict, Stability and Security Fund will grow to over £1.3 billion a year by the end of the Parliament and we will also create a new £1.3 billion prosperity fund to drive forward our aim of promoting global prosperity and good governance.

Building on our success in tackling Ebola, we will do more to improve our resilience and our response to crises, identifying £500 million a year as a crisis reserve and investing £1.5 billion over the Parliament in a global challenges research fund for UK science to pioneer new ways of tackling global problems such as anti-microbial resistance. We will also invest £1 billion in a new fund for the research and development of products to fight infectious diseases, known as the Ross fund, and £5.8 billion in climate finance to play our part in helping poorer countries switch to greener forms of energy.

Taken together, these interventions are not just right morally; they are firmly in our national interest. They mean that Britain not only meets its obligations to the poorest in the world, but can now focus our resources on preventing or dealing with the instability and conflict that impinge on our security at home, investing at scale to create the economic opportunities that lead to long-term stability across the world, and responding rapidly and decisively to emerging crises overseas. Acting on all of these fronts gives us greater influence in the world.

Finally, Britain's safety and security depend not just on our own efforts, but on working hand in glove with our allies to deal with the common threats that face us all, from terrorism to climate change. When confronted by danger, we are stronger together. We will play our full part in the alliances that underpin our security and amplify our national power. We will work with our allies in Europe and around the world, as well as seizing opportunities to reach out to emerging powers.

History teaches us that no Government can predict the future. We have no way of knowing precisely what course events will take over the next five years. We must expect the unexpected, but we can make sure that we have the versatility and the means to respond to new risks and threats to our security as they arise.

Our Armed Forces, and police and security and intelligence services, are the pride of our country. They are the finest in the world and this Government will ensure that they stay that way. Using our renewed economic strength, we will help them keep us safe for generations to come. I commend this Statement to the House".

My Lords, that concludes the Statement.

5.36 pm

**Lord Touhig (Lab):** My Lords, the House is grateful to the noble Earl, Lord Howe, for repeating the Prime Minister's Statement. I am especially grateful to him for the very helpful briefing he afforded my noble friend Lord Tunncliffe, the noble Baroness, Lady Jolly, of the Liberal Democrats, and me earlier today.

The noble Earl, for whom I have great personal respect, has a difficult job. Our country, people and way of life are again imperilled. Not only do we have to contend with the conventional challenges posed by air, naval and ground forces, but we face the threat of those who would walk down high-street Britain and shoot and kill our fellow citizens. The days when Britain might engage in a conflict and send our forces into battle while those at home were, in the main, safe are now long gone. Today any strategic defence and security review must take account of that.

When in Government, my party had a proud record in the area of defence. It was a Labour Government at the end of the last war who committed us to an independent nuclear deterrent and who helped create NATO. The then Foreign Secretary, Ernest Bevan, said of the atom bomb:

"We have got to have this thing over here ... we have got to have the ... union jack on top of it".

Bevan made sure that his opponents were excluded from the Cabinet committee that took the decision. That is my kind of Foreign Secretary. Under the previous Labour Government defence spending rose by an annual average of 1.8%, resulting in the modernisation of our Armed Forces. We published Britain's first national security strategy, delivered the first cross-governmental approach to forces welfare and strengthened medical care and welfare support for those serving in Afghanistan. I judge the Prime Minister's Statement on the SDSR against that background.

It is the second SDSR of Mr Cameron's premiership. The first in 2010 was not strategic and not about defence or security. It was nothing more than a cost-cutting exercise run by the Treasury. The Prime Minister has since admitted that his Government took 8% out of defence spending over the past five years. Under his stewardship, defence has underspent the budget that Parliament has voted for it. Such has been the enthusiasm to put saving money at the top of defence priorities that the planned cuts in the size of the Army, announced in 2010, have been achieved two years earlier than intended.

[LORD TOUHIG]

Before the 2010 general election, Mr Cameron promised a bigger Army, Navy and Air Force. In fact, the Army of today is smaller than the one we put in the field against Napoleon. The Royal Navy has just 19 vessels. We are told in the Statement that in the long term we are to increase the size of our frigate fleet. Can the Minister tell us what is meant by “long term”? The French already have 23 service vessels, the Russians 35 and the United States 105. Naval manpower is a real problem. My noble friend Lord West said only recently that 3,500 to 4,000 people were needed to man the fleet correctly. Can the Minister say what is being done to reverse this?

As for the Royal Air Force, the number of planes is at an historic low. We have to rely on the maritime patrol aircraft of our allies to track Russian submarines close to our waters, following the scrapping of Nimrod. That massive error of judgment has to be seen against a background in which the Russians have increased submarine patrols by 50% in the past two years. We welcome the decision to acquire Boeing P-8 MPAs but will the Minister confirm that it will be seven years before Britain has a fully operational independent maritime patrol capability? Today’s announcement of the F-35s is welcome, as is any move to strengthen our high-end military capability, but why has it taken so long to make this decision?

Why is it taking 10 years to create the new strike brigades of up to 5,000 personnel for rapid deployment missions? The world could be quite different in 2025. Does this decision mean that we are abandoning our capability for sustained deployment, which was set out in the previous defence review? Can the Minister tell us for how long these new brigades will be capable of being deployed?

One of the greatest challenges we face is cybersecurity. The Prime Minister has said that due to the threats posed by Russia and ISIL, Britain will be investing in cybersecurity. The Chancellor, speaking at GCHQ, announced that spending on cybersecurity would be almost doubled to £1.9 billion over the period to 2020. He made that statement after the director of GCHQ, Robert Hannigan, called on the Government to intervene in the cybersecurity industry because the free market was failing. Can the Minister say what the Government are doing about this? What projects will be part of the £1.9 billion fund? The Chancellor went on to say:

“Strong defences are necessary for our long-term security. But the capacity to attack is also a form of defence”—

I most certainly agree. He said that Britain is,

“building our own offensive cyber capability—a dedicated ability to counter-attack in cyberspace”.

Can the Minister tell us if such an offensive capacity already exists or is it just at the planning stage? If that is the case, what is the timeframe before it becomes operational? How much is being invested in the national offensive cyber programme?

I was in Paris the day before the attack; I was there again last Tuesday, and what a difference in the city in those few days. In view of the horrors of Paris, will the Minister comment on reports in the *Daily Telegraph* that our special forces have shrunk by 40% due to

reduced numbers and restructuring, and will he comment on a senior MoD official telling that newspaper that, “there is no point spending vast amounts of money on new kit if you don’t have the manpower to operate them”?

Still on personnel matters, noble Lords around this Chamber who have served or spent time with the Armed Forces will know that if service families are happy, the service men and women we send into conflict will have the morale they need to do the job—I am sure the Minister has found that in this time. Does he agree, therefore, that the Chancellor of the Exchequer’s changes to tax credits will be seen as a breach of the Armed Forces covenant? How well does he think ending annual pay rises for the forces will be received, if the Government go ahead with that? Is it any wonder that a survey by his own department shows that one-quarter of those serving in the Armed Forces plan to leave as soon as they can and one-third are dissatisfied?

The Prime Minister has committed Britain to a NATO target of spending 2% of GDP on defence. We welcome that but worry whether it is another of Mr Cameron’s cosmetic creations. For instance, can the Minister say how including the £800 million we spend on war pensions as defence spending will help protect and project Britain’s force and military capability?

The tradition of Governments of both main parties in this country has been to show how much we value the men and women of our Armed Forces by giving them the tools they need to defend and protect our country and ensuring proper remuneration for them and their families. That tradition, I fear, has been spectacularly badly served by this Prime Minister and this review.

**Baroness Jolly (LD):** My Lords, I thank the Minister very much for the briefing that I received, along with colleagues from the Labour Party, earlier today. I am sure that the final form of this document was a result of the events in Paris and, as with all reports, the devil is in the detail. The debate next week in the name of the noble Earl, Lord Attlee, will give us all more time to analyse that very detail.

This strategy points to a more forensic and measured analysis than its predecessor, which is welcome, and it is appropriate to the times we find ourselves in. I will concentrate my remarks on the interconnection between defence and the world, our alliances, personnel and cyber. It is a complete coincidence that the noble Lord, Lord Touhig, has covered much of the same detail. On Syria, my leader has made it clear that he is not a pacifist or a unilateralist, and he is concerned for security of the nation. He will be outlining the conditions under which we would support military action in the next few days.

It is pleasing that the Government see our defence and security as requiring such a strong commitment to our allies and to international efforts. There are few issues that we face that can be addressed without co-operation, from climate change to transnational terrorism to state aggression. It is the strength gained from working with our allies and like-minded states, in particular within the United Nations, NATO and, of course, the EU, that will allow us to overcome and address these issues.

Our soft power capabilities—the British Council, international aid, the BBC World Service and our diplomatic representation—are valuable assets for spreading British values. A recognition of their contribution to our security and defence is an important addition to the SDSR. Will the Minister confirm that there will be no cuts to the budgets of either the World Service or the British Council? I am sure the extension of deep country expertise to a wider span of areas that are vital to our security and prosperity will be welcomed at the FCO, but will the Minister point to how this dovetails with the possible cuts in the FCO's budget, which officials have said may,

“imperil the UK's diplomatic capacity”,

if they go ahead?

Moving on to personnel, today I will focus on the Royal Navy and get into the detail of the other services in next week's debate. Last week I was delighted to visit, with parliamentary colleagues, the two carriers, “Queen Elizabeth” and “Prince of Wales”, in Rosyth. They are an awesome sight and a tribute to British engineering and co-operation between manufacturers. While I welcome their addition to the fleet over the next couple of years, they bring with them a challenge. Will the Minister confirm that there are plans to ensure that there will be sufficient personnel with the right specialities to run the carriers with the Astute-class submarines, destroyers, frigates and support ship configuration? In particular, what action is being taken to ensure that there will be engineers at all levels of seniority and speciality?

As a member of the AFPS, I have visited service personnel in their workplaces, met families in their homes and spoken to senior officers and other ranks. I have to tell your Lordships that morale is not universally high. There is concern about salaries and allowances. Will the Minister confirm the rumours that the annual increment system will change, as will overseas allowances, as a result of MoD cuts? I welcome the move to support a service woman or man to buy their own home. A supported family is critical to the well-being of a serving member of Her Majesty's Armed Forces. Will the Minister confirm that the covenant will continue and, more importantly, that its implementation is being monitored by the MoD?

On cyber, it is important that cyber intelligence is shared, as many of our systems are shared with our allies and our partners. I am concerned about defensive cyber. Cyber threatens systems and, by its nature, much of today's warfare consists of systems of systems, with millions of lines of code, all interconnected and interrelated. It is great that we are working with our partners and allies on this, but adding to the connectivity is a multiplier of risk. So I welcome the joint cyber group, but there is an urgent need for recruitment and training. Will the Minister tell us how quickly we can gear up for this joint cyber group as the need is immediate?

I should not finish without a nod in the direction of how the SDSR is to be paid for. I am aware that the Chancellor will unveil the CSR on Wednesday. The Liberal Democrat Benches welcome the commitment to 2% of GDP, but that is another issue where the devil is in the detail. Will the Minister tell the House

what sort of efficiencies the MoD is expected to make—apart from selling land and property—that will have no impact on the smooth running of the department? If we are to believe today's *Financial Times*, it will be paid for from the welfare budget and from cuts to police and in grants to businesses.

**Earl Howe:** My Lords, I thank the noble Lord and the noble Baroness for their comments and questions. I particularly welcome many of the comments made by the noble Lord, Lord Touhig. It was regrettable that he felt it necessary to conclude his speech as he did, on a note of dissent. Nevertheless, taking his comments in the round, there is much to unite us, rather than the opposite. The noble Lord asked me a number of questions, as did the noble Baroness, and I will get through as many of the answers as I can.

First, on the Royal Navy, I would put it to the House—once noble Lords have had an opportunity to read the document, which is in the Printed Paper Office—that the Navy has benefited very considerably from the review. Full crewing of aircraft carriers, new offshore patrol vessels, new fleet solid support ships, 400 extra personnel, and a faster buy of F35 Lightning, to allow the carriers to embark up to 24 operational aircraft, are just examples of that. As for manning, the reorganisation of manpower within the Navy will ensure that sufficient people are trained and available to man and operate both Queen Elizabeth carriers. The requirement for each carrier is, I understand, a crew of 733 sailors. The planned retirement of HMS “Ocean” in 2018, combined with a rationalisation and reprioritisation of personnel across the naval service, plus the uplift of 400 extra personnel, which I mentioned, will ensure that sufficient people are trained and available to man and operate both carriers.

We will maintain our fleet of 19 frigates and destroyers. There has been no moving away from that commitment. We will also design and build a new class of lighter flexible general purpose frigates, as was mentioned in the Statement. I am sure that many noble Lords will welcome the fact that we are now committed to reintroducing maritime patrol aircraft. We will purchase nine Boeing P-8 maritime patrol aircraft—that includes the aircraft we need in the envelope—advanced high-altitude surveillance aircraft, and 138 F35s over the lifetime of the programme. The MPAs will be based at Lossiemouth; that is considered to be the ideal location for the most common maritime patrol areas. Further details will emerge in due course. It is likely that there will be 400 additional personnel for Lossiemouth, to ensure that the MPA capability can be properly serviced.

On the F35, we will bring forward the purchase of nine front-line aircraft, which will allow the second F35 Lightning squadron to stand up in 2023. That is about a 60% increase in front-line aircraft numbers by 2023, compared with our previous plan. We are buying our current tranche of 48 F35 aircraft earlier than originally planned, to maximise our carrier strike capability in the early 2020s. As I have said, we are committed to a total through-life buy of 138 F35 aircraft. Decisions on the precise details of subsequent tranches will be taken at the appropriate time.

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I am conscious of the clock, so I will get through as many questions as I can. When will the strike brigades be ready? The fielding of the strike brigades will start from 2018, delivering an initial operating capability by 2021, and moving towards a full operating capability from 2025.

The £1.9 billion that we have set aside for cyber is a national-level investment towards implementing the new national cybersecurity plan. I am advised that I have more time than I thought, which is good. The national cybersecurity plan will include a new national cybercentre, a stronger active defence programme, more funding for training of the UK's next generation of experts in digital skills, a stronger regulatory framework, a stronger cyber sector, and funding for the national offensive cyber programme.

In September 2013, during the coalition Government, the Defence Secretary announced that, as the noble Baroness mentioned, Britain would build both defensive and offensive capabilities, including a strike capability to operate in cyberspace as part of our full spectrum military capability. The national offensive cyber programme is a partnership between the Ministry of Defence and GCHQ, harnessing the skills and talents of both organisations. As for the deterrence of cyberattacks, it is our aim to make ourselves a difficult target, so that doing us damage in cyberspace is neither cheap nor easy. We hope to build global norms in that regard, so that those who do not follow them suffer the consequences.

On the 2% commitment, I hope noble Lords will accept my assurance that we follow the NATO guidelines as to what constitutes defence expenditure. Like other NATO member states, we make periodic updates to how we categorise defence spending—for example, to reflect changes in the machinery of government—but all updates remain, and will continue to be, fully in accordance with NATO guidelines.

I shall briefly cover the question that the noble Baroness asked me about pay and allowances. It is not our intention to remove incremental pay or annual pay increases for those serving. We have reviewed military allowances: the vast majority will not change, but we are making minor changes to a few of them, and removing commitment bonuses. Commitment bonuses were designed as a retention tool, but we have no evidence that they influenced people's decisions on whether to stay or leave. The Chief of the Defence Staff recommended that we remove them, so we will phase them out.

The remaining questions I will write on—but on the subject of the British Council, the SDSR refers to it by saying that we will continue to invest in it. It does not give a figure, and I think we will have to wait for the spending review announcement to know what that will be.

**Lord Ashton of Hyde (Con):** My Lords, in view of the importance of this Statement, the usual channels have agreed an extra 20 minutes for questions, so Back-Bench questions will be for 40 minutes. May I remind noble Lords that this time is for brief questions, not speeches? For noble Lords who wish to make speeches, there will be a two-and-a-half-hour debate on this subject on Thursday week.

6 pm

**Lord King of Bridgwater (Con):** I congratulate my noble friend Earl Howe on his presentation of a very substantial report, which the House will want to study. One thing that concerns me in it are the completely new elements that have come into our defence strategy. Drones, cyber and the interception of communications will play a much bigger part in the defence of this country than might previously have been the case. I am concerned about where we will be by 2025 or maybe—it may be better to look this far—by 2030. That is quite a long way away. My noble friend has already partly answered this but my concern is on how soon some of these capabilities, which in the present frightening state of the world are very desirable, will be ready and how the manpower challenge will actually be met.

**Earl Howe:** My noble friend puts his finger on a central issue that we have been wrestling with over these past months. It is impossible to predict the threats that we will face in 10 or 15 years. We know that there are many uncertainties. The national security strategy sets out a quite different threat picture from that of 2010. In particular, the threat from terrorism has increased substantially and aggressive Russian behaviour means that state-based threats are more prominent. As the Statement said, we cannot choose between conventional defences against state-based threats and the need to counter threats that do not recognise national borders. We have to tackle both. We have attempted in this document, I hope successfully, not just to address the threats in order of priority but to plan for an array of capabilities that will make us much nimbler on our feet, more flexible and able to respond globally to any threat that materialises. My noble friend is right to put his finger on cyber and drones as new elements of this strategy. We must invest in these things but we must also ensure that the skilled manpower is there so that the equipment can be utilised to its best effect.

**Lord Reid of Cardowan (Lab):** My Lords, I welcome the Statement as being better than the 2010 so-called strategic defence review. My welcome is therefore conditional. I have scanned through the document and much of it is filling in the gaps that were left some years ago, for instance, on the maritime patrol aircraft. May I ask the Minister a couple of questions? First, what is the difference between the rapid deployment brigades—I use “rapid” advisedly, because they will not be at full capability for 10 years—and 16 Air Assault Brigade, which was formed in 1999 after the last and only genuine strategic defence review, which was conducted by my noble friend Lord Robertson? If there is no substantial difference, why has it taken all this time over the last five or six years to decide to get the capabilities and to put them in effect for the future?

Secondly, is it not the case that the addition of 1,900 intelligence professionals at the centre will unfortunately be off-set if we reduce police numbers in the community, since the police act as a bridge between central intelligence—SIGINT and communications intelligence—and human intelligence, which is gained

from trust by being in the neighbourhood? Finally, why does “innovation” not appear at any stage, particularly as regards cyber? Cyber now permeates everything from our weapon systems through our critical national infrastructure to central finance in London. The chief characteristic of cyber is constant entrepreneurial innovation and if we do not instil that at the centre of our processes, in procurement as well as in operations, we will fall behind in cyber. We are spending just under £2 billion there; the Chinese are spending \$180 billion over the coming period.

**Earl Howe:** My Lords, the noble Lord asked me three questions. The first was about the rapid deployment strike capability. The Army is able to deploy a division now with sufficient notice and has been able to for some while. During the time of the noble Lord, Lord Robertson, as Defence Secretary, he was instrumental in ensuring that capability. This division could consist of an armoured infantry brigade, 3 Commando brigade and 16 Air Assault Brigade as well as forces from other nations. This SDR is investing in improving the readiness level and upgrading the capabilities of the division, so that by 2025 we will be able to deploy a division comprising two armoured infantry brigades and a strike brigade, in addition to our high-readiness forces of 3 Commando Brigade and 16 Air Assault Brigade.

The noble Lord, Lord Reid, also mentioned intelligence and expressed a fear that this capability might be off-set by reductions in numbers in community policing. The SDR document does not cover community policing, which is a matter for local forces, as he knows. We will no doubt be hearing news of that as the effects of the SR are made known. I cannot comment on that today but I can say that we will protect absolutely the counterterrorist police we need to ensure national security and that the funding for that will be ring-fenced. He also said that innovation was not mentioned. I will just refer him to part B of chapter 6 of the document, which is entitled “Innovation”, and is on page 73 and the following.

**Baroness Ludford (LD):** My Lords, can the Minister help to resolve a disconnect between the recent remarks of the Prime Minister and this document? The Prime Minister recently stressed the significance of the European Union for the UK’s national security in the context of, for instance, standing up to Russia, helping to stop Iran’s nuclear programme and tackling maritime piracy. But this document hardly mentions the European Union as such, as opposed to individual European allies. For instance, in chapter 5, “Project Our Global Influence”, you have to get to its seventh page before there is any mention of the EU. This seems to contrast with the Prime Minister saying a fortnight or so ago:

“The EU, like NATO and our membership of the UN Security Council, is a tool that”,  
we use,  
“to get things done in the world, and protect our country”.

One would have thought that would count as projecting our global influence, so why is there so little mention of the European Union?

**Earl Howe:** My Lords, the noble Baroness should not read anything in particular into what she perceives as a paucity of mention of the European Union in this

document. There is no doubt that our membership of the European Union adds value to our defence capability. We have only to look at the operation in the Mediterranean to rescue migrants earlier this year to see how the European Union came together. I was in Brussels last week at a meeting of the European Defence Agency, which is another means whereby member states can collaborate to ensure that we have such things as common standards in air-to-air refuelling, aircraft safety and a range of other areas. The European Union is a vehicle for co-operation, in parallel to our membership of NATO, and I would be the first to pay tribute to the work of its member states in protecting the security of Europe.

**Lord Boyce (CB):** My Lords, I declare my interests as in the register. We should welcome this arrest in the decline in defence spending. We should also welcome the Government’s rather belated recognition of the damage that was done in the 2010 SDSR. But repairing the holes in our capability caused by that damage will take years and we need it today. In that context, for example, it is to be welcomed that the Statement says:

“We need the sea lanes to stay open and the arteries of global commerce to remain free flowing”,

but for that we need sufficient escorts. Does the Minister agree that it is not enough to say that we will not reduce our destroyer and frigate force from 19? Does he not agree that that force is far too small and that waiting until the 1930s, as the Statement says, is completely unacceptable?

**Earl Howe:** My Lords, I think the noble and gallant Lord meant the 2030s. This has been a matter of very deep consideration in the SDSR process. The commitment to maintaining our fleet of 19 frigates and destroyers is still there, as I have said. The Navy needs eight Type 26 frigates to undertake the core anti-submarine warfare role and we remain committed to building those ships. We are taking more time to mature the design and drive down the costs before we cut steel on the first Type 26. Meanwhile, we will build two more offshore patrol vessels to ensure continuity of work on the Clyde and to provide more capability to the Royal Navy.

The concept of designing and building a new class of lighter, flexible, general-purpose frigate is, I hope, interesting to noble Lords. We are clear that behind that lies an aspiration to increase the total number of frigates and destroyers available to the Royal Navy. If we can produce something that is more generic—that is less high-spec when it does not need to be state-of-the-art high-spec—that should benefit the reach and capability of the Royal Navy in the round. It should also benefit shipbuilders in Scotland and the rest of the UK. We will publish a new shipbuilding strategy in 2016 setting out the detail of that.

**Lord Cormack (Con):** My Lords, is it not deeply unfortunate that the leader of Her Majesty’s loyal Opposition does not speak the same language as the noble Lord, Lord Touhig?

**Earl Howe:** My Lords, the noble Lord, Lord Touhig, is, I am sure, in complete harmony with his leader in the other place. But he does, of course, have one

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advantage over his colleague in that he has been a Defence Minister and has a deep knowledge of these matters.

**Lord Robertson of Port Ellen (Lab):** My Lords, although the review is light on detail and timing, it is at least strategic and therefore sets itself apart from the exercise in 2010. In the light of events that took place across the channel 10 days ago, I do not think this is the time for picking holes in the review, although there are a few holes to be picked. It is a time, however, for us to assert to our enemies and adversaries, both actual and potential, that this country still has robust defences and that we are still capable of deploying those forces in the defence of this country and of our allies and playing our part in the international community. After all, we are the second military power in the West.

I will make two points about the review. In relation to the deterrent, I fully support the reinforced decision made today to order the four new nuclear submarines. Will the noble Earl's department be a bit more robust in taking on the opponents of Trident who say that it does not address the biggest threats that we face today? Were it not for the deterrent, we would face even bigger threats to our national safety and security today—that is, nuclear coercion and blackmail.

Finally, the noble Earl has the responsibility with other government Ministers to ensure that the safety and security of the people of this country does not depend on the military alone. If further raids are going to be made on the budget of the Foreign Office, the World Service and the British Council, then huge damage will be done to the reputation of this country abroad, and to the safety and security of the British people.

**Earl Howe:** My Lords, as regards the last points that the noble Lord made in his speech, we will have to wait for the spending review announcement. However, I take on board all that he says, particularly about the Foreign Office. We are clear that we must maintain the global representation that we have at the moment, if we are to support this country's interests.

The noble Lord began by making some very welcome remarks, for which I thank him, about the strategic nature of the review. It is indeed strategic. It has been a two-year exercise. It included the lessons that we learned from the last SDSR. More importantly, it involved a deep analysis of the evidence base and wide consultation across diverse stakeholders both at home and abroad. We have tried to be truly strategic in identifying what we wanted to achieve in the national security arena, as outlined clearly in the national security strategy, and how we will achieve that in the SDSR.

Further details will emerge over the coming days, which will flesh out some of the high-level aspirations set out in the document. Unfortunately, I cannot release those at the moment.

We still have a global power projection capability second only in NATO to the United States. We should remember that. We have among the most capable troops and aircraft ships and submarines in the world.

The Joint Force 2025 that we have designed is genuinely better equipped, more capable, more deployable and more sustainable than ever before.

As regards the deterrent, I welcome the noble Lord's comments. The nuclear deterrent exists to deter the most extreme threats to our national security and way of life. Other states have nuclear arsenals. There is a risk of further proliferation of nuclear weapons. There is a risk that states might use their nuclear capability to threaten us or to try to constrain our decision-making in a crisis, or to sponsor nuclear terrorism. We cannot rule out further shifts in the international order that would put us or our NATO allies under grave threat. That is the rationale and the context for the substantial investment that we are making in the successor programme.

The document tries to make and refresh the case for the deterrent. We thought it important to do that, to go back to first principles and to demonstrate why this was something that we felt it absolutely right to include in the forthcoming defence programme.

**Baroness Northover (LD):** My Lords, I thank the noble Earl not only for his Statement, but also for the statement on aid. In relation to the new prosperity fund, which countries will receive our main emphasis? Are we talking about the BRIC countries and, if so, how do we ensure that the prosperity fund does not get close to tied aid and is appropriately poverty-focused?

**Earl Howe:** My Lords, the prosperity fund will be focused mainly on emerging and developing economies. They are becoming increasingly important for global growth. As the ODA document sets out, we will give greater priority to promoting sustainable economic reforms that are needed to continue that. The prosperity fund, which will be worth £1.3 billion over the next five years, will be aimed at things like the competitiveness of an operation of markets, energy, financial sector reform, encouraging Governments to look at ways of bearing down on corruption and, in so doing, to address the need to reduce poverty.

The fund is designed to give an additional boost to the opportunities for international business, especially, but not totally, for UK companies. We are planning a lot of other work on promoting prosperity, which is set out in the document. I am sure that the noble Baroness will find that of interest. I cannot be specific about the countries that we will target at this juncture, but I hope that that general description will be helpful. Africa is going to be a major focus for this, not least sub-Saharan Africa, maybe looking at ways that the energy market, for example, can be encouraged in that area.

**The Lord Bishop of Leeds:** My Lords, would the Minister agree with me that some of the language we are using in this debate reflects an assumption that the world is binary and divided into allies and enemies? The reality is that allies become enemies, and enemies become allies. In any strategic approach to the future, could we be assured that that possibility will be taken into account? I worked on elements to do with Iraq in the 1980s, and we can see what happened in the 2000s.

Arms and resources that we sell to people who are rebels in Syria can then be used against us. Is that sort of strategic thinking about a non-binary, more eclectic world being taken into consideration?

**Earl Howe:** The right reverend Prelate reminds us of a very important point of principle. As I hope he will find when he reads this document, running through it is a thread or theme that makes clear that government has to be joined up in all of this—much more joined up than it ever has been in the past. The way in which countries abroad are assessed as friendly, non-friendly or something in between is absolutely essential in our long-term planning. Having said that, we are very clear that we have our prime allies with whom we wish to collaborate, specifically when it comes to defence—not least the United States, France and, increasingly, Germany. However, it is possible for countries around the world to unite around a common objective, as we saw recently with the United Nations Security Council resolution, where all the members of the Security Council voted in one direction. That was a remarkable event in itself, and we should take our cue from that in deciding how to proceed further in the context of the Middle East conflict.

**Lord Ramsbotham (CB):** My Lords, one of the problems of SDSR 2010 was that so much depended on financial provision in 2015, which of course has not materialised. Could the Minister say how much of the £178 billion provision for buying and maintaining equipment over the next decade is guaranteed? Presumably, that includes the military equipment which is required for the two strike brigades which the noble Lord, Lord Reid, mentioned earlier.

**Earl Howe:** My Lords, the figure of £178 billion is £12 billion more than we previously announced and is over 10 years, as the noble Lord rightly said. It will embrace a whole range of equipment, including equipment needed for the Army. It is not possible for me to define some of that equipment at this juncture, because we wish to leave our options open. But I hope he will take heart from the section in the report about equipping the Army with, for example, the new Ajax vehicle and the new MIV, as it is called. These highly flexible, speedy and capable vehicles will ensure that the strike brigades are supported, as they need to be, with the right equipment so that they can be deployed swiftly and effectively—sometimes, if necessary, at long range.

**Lord West of Spithead (Lab):** My Lords, I welcome this review. It starts to correct the devastation caused by the 2010 SDSR, but it does not resolve it. As the Minister said, the actual amount of extra money is not that huge, and certainly in the early years there is not very much at all. I am delighted that we are running both carriers and that we are getting some of the Sea Lightnings—I hope that is what we are going to call them—for the new carriers.

However, I have a couple of questions of concern, the first about the Trident programme. From reading the document, it looks as though the first replacement boat for Vanguard will arrive in the early 2030s. Running Vanguard on until 2028 was further than many of us wanted to go and was very high risk. Has advice been

given that people are content to run Vanguard on for what sounds like another four to five years? That is certainly contrary to the advice that I thought we were getting in the Ministry of Defence some five years or so ago.

My other point relates to frigates. Very clearly, we do not have enough destroyers and frigates, which is a national disgrace. I am very concerned about timescales, and there is nothing in here about that. We really need to go out there and start ordering these ships and to work out a drum-beat for their delivery. The Minister talked about OPVs. I have not had a proper Answer to my Written Question, but can I assume that the three OPVs we are currently building will be run as well as the ones we have already and the two extra ones? If not, I have concerns about naval manpower.

**Earl Howe:** My Lords, I am sure that many of us would wish that the Royal Navy was larger than it is, but we have had to look very carefully at what the Royal Navy's tasks are and are likely to be and to configure the Navy accordingly. As regards the sufficiency of ships, we are advised by the Chief of Naval Staff that a 19-ship destroyer and frigate fleet, capable of co-operating on a global scale, is what is required. That fleet will, incidentally, be supported by a very capable and renewed tanker fleet, with two fast fleet tankers, four new Tide class tankers in the short term and three new fleet solid support ships in the longer term. A fleet of up to six patrol vessels will support our destroyers and frigates in delivering routine tasks and enhance our contribution to maritime security and fisheries protection. All this will mean not only that our fleet will have as many assets as it does today but that there will be high-end technological capabilities to provide a better contribution and to retain a world-class Navy up to 2040 and beyond.

As regards the Trident fleet, the advice we have received is that it will be both possible and safe to continue with the current Vanguard class submarines in service. However, as regards a successor, we need to get on with it. There is no doubt that we cannot countenance a delay in the construction of a successor, which is why we intend to move ahead with all possible speed on that front.

**Lord Burnett (LD):** My Lords, I welcome this Statement and the full replacement of the Trident submarine fleet, and am conscious of what the Minister has just said about expediting the work on that replacement programme. Will the Minister confirm that each aircraft carrier will be able to conduct amphibious operations with its own helicopters, concurrently with its fixed-wing role? Will each carrier have the capacity to carry and deploy a Royal Marine commando group while deploying its fixed-wing aircraft?

**Earl Howe (Con):** My Lords, the intention is that the carriers will be able to operate in three configurations: first, carrier strike for mainly air operations, obviously; secondly, amphibious assault, with helicopters and Royal Marines on board; and, thirdly, what one might call a hybrid type of configuration, involving aircraft, helicopters and Royal Marines. These will be very

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versatile ships. They will be some of the most capable ships—if not the most capable ships—the Royal Navy has ever had. We need to make sure that the very large investment that we are making in them is deployed to best effect, and I think those varying ways in which we can use the carriers demonstrate that this will be a good investment.

**Lord Marlesford (Con):** My Lords, first, I strongly support what I can see of the new security strategy. There is one point I wish to raise. With the announcement in the Statement that we are going to take military action in Syria, can we be assured that this relates to, in the Prime Minister's phrase, "going after ISIL" and will not include military action against President Assad? Do Her Majesty's Government now recognise that the earlier decision of the West to provide a great deal of weaponry to the rebels against Assad has had four results: one, Assad is still there; two, we have had a four-year civil war; three, we have had a major refugee crisis; and, four, we have created the space for ISIL to be created?

**Earl Howe:** The implication behind my noble friend's question is that it is the actions of the West that have caused the migration crisis and the suffering in Syria. I respectfully disagree with him on that. It is Mr Assad himself who is the prime cause of the suffering in his country and the migration crisis. It is Mr Assad who has created the vacuum that ISIL has, unfortunately, filled very capably.

As regards the Motion that may come to the House of Commons on Syria, I have not seen a draft of it, but the discussions in government involve a Motion which would focus on ISIL. It is very clear that the House of Commons two years ago rejected the proposal that we should be involved in a war against Mr Assad. I think the UN Security Council resolution also points us towards a very clear and focused campaign to eradicate ISIL, which is a clear and present danger not just to us but to many countries around the world.

**Lord Carlile of Berriew (LD):** My Lords—

**Lord Hennessy of Nympsfield (CB):** My Lords—

**Lord Ashton of Hyde:** My Lords, it is the turn of the Cross-Benchers.

**Lord Hennessy of Nympsfield:** My Lords, I commend the Government for the clarity and realism with which they have displayed the threats in the document before us this evening in the three tiers. However, I have looked very carefully at the ingredients of the three tiers and I can find in none of them a very possible and real threat to our kingdom—the very configuration of the United Kingdom—which is the possibility that, two SDSRs on, if we are having this debate in 2025, we may be in a kingdom outside the European Union and shorn of Scotland. Whatever noble Lords think about that as a prospect, it would be a first-order change in our strategic position in the world and there is not a whiff of it in this document. Does the Minister agree that sometimes the first people we have to defend ourselves against are ourselves?

**Earl Howe:** I think we must all be mindful of that precept. I hope we have been mindful of it in this document. It sets out what we see as the tier-one risks over the next five years. Clearly, were there to be such a major change in this country's place in Europe or, indeed, such a major change in what this country consists of, there would be an obvious need to look again at some of the planning encapsulated here. However, I put it to the noble Lord that neither of the events that he has postulated invalidates the key strands of thinking in the SDSR set out here.

Terrorism is going to remain the most direct and immediate threat to our domestic security and overseas interests. Cyber threats to the UK are significant whether we are in or out of the EU. The risk of international military conflict is growing. Although it is unlikely there will be a direct military threat to the UK itself, there is a greater possibility, I put it to him, of international military crises that may draw us in. There is instability overseas. Since 2010, that has spread significantly to the south and the Middle East and northern Africa, as the noble Lord knows. The public health threats and the major natural hazards that the report identifies will still be there regardless. Therefore, I hope that the House will agree that we have looked in the round here not at a crystal ball but at an analysis of the threats that face us, analysing in turn what resources we need to address those threats.

**Lord Carlile of Berriew:** My Lords, I support the counterterrorism strategy contained in the document but can the Minister confirm that the document takes into account the events of Friday 13 November? Can the Minister also confirm that the strategy will include extensive sharing of intelligence techniques and information, subject, of course, to national security considerations so that, when attacks are threatened from abroad, there is the greatest possible chance of their being detected before they occur?

**Earl Howe:** I can give the noble Lord that assurance. We wish to see maximum collaboration with our friends and allies on the intelligence front. In the wake of the Paris attack, the question that we have asked ourselves is obvious: what are the capabilities that we need to counter such an event? We need the means to protect our transport systems, borders, critical national infrastructure and crowded places. We need systems that give us data in advance about people intending to come to this country so that they can be checked against our records. We need emergency services to respond to such incidents were they, God forbid, to occur. We need Armed Forces who are ready to provide support at very short notice in the event of a terrorist attack. Those are the questions we have asked ourselves over the past few months. The answers are contained in the report and I hope they will be reassuring to the House.

**Lord Lansley (Con):** My Lords, my noble friend will be aware that in the national security strategy one of the greatest risks we face is from pandemic influenza or, indeed now, the spread of global organisms with antibiotic resistance. What he said about the availability of resources to support research in areas of infectious disease is extremely welcome. Can he confirm that will



include support for that research in the United Kingdom at centres of world-leading excellence such as Porton Down and the research facilities being created at the Francis Crick Institute? Can he also say, in decisions yet to come and to be announced, that the public health capability in Public Health England and through local authorities will also be given, due regard in its ability to combat this particular great threat?

**Earl Howe:** My noble friend, with his tremendous experience on this, knows that Public Health England will have to remain centre stage in the effort on major public health risks. However, I welcome his comments on the announcement around infectious diseases.

We are clear that the new £1 billion fund which will be rolled out over the next five years for R&D in products for infectious diseases—the Ross fund, which was mentioned in the Statement—will address the development and testing of vaccines, drugs, diagnostics, treatments and other technologies to combat the world's most serious diseases in developing countries in particular. The Ross fund will more broadly target infectious diseases, diseases of epidemic potential, such as Ebola, neglected tropical diseases, which affect more than 1 billion people globally, and drug-resistant infections, which clearly pose a substantial and growing risk to global health. We look forward as a country to joining organisations such as the Bill and Melinda Gates Foundation, which has been so effective in tackling those issues around the world.

## European Union Referendum Bill

*Report (2nd Day) (Continued)*

6.40 pm

### Amendment 25

Moved by **Lord Kerr of Kinlochard**

**25:** After Clause 5, insert the following new Clause—

“Report on the United Kingdom’s future relationship with the European Union in the event of withdrawal from the European Union

(1) The Secretary of State shall report on the relationship with the European Union which the Government envisage in the event of a referendum vote to leave the European Union.

(2) The report provided for by subsection (1) must be published and laid before each House of Parliament, no later than 12 weeks prior to the appointment date of the referendum.”

**Lord Kerr of Kinlochard (CB):** My Lords, Amendment 25 stands in my name and those of the noble Baroness, Lady Morgan of Ely, the noble Lord, Lord Tugendhat, and the noble Baroness, Lady Smith of Newnham. Before I speak to it, I should perhaps comment on an important point raised by the noble Lord, Lord Pearson of Rannoch, who, sadly, is not in his place. I was secretary-general of a small institution in Brussels throughout its brief life. It paid me expenses. Having clearly got a good judgment of my qualifications and qualities, it neither paid me a salary nor pays me a pension. I should put that on record. It was good to have a guest star appearance from the noble Lord, who seemed to have missed Committee but made a very interesting contribution on Report.

I should perhaps also comment on an important speech made by the noble Lord, Lord Owen. We were

privileged to have him with us on Report, although not before. I found one point in what he said with which I strongly agreed, which I will come to in a moment. One point with which I did not entirely agree was his concern that we should not get too big for our boots in legislative scrutiny. The way that this House has scrutinised the Bill is a good example of constructive work. I think the Bill is better today than it was, partly because of the amendments with which the Minister has come forward, including Amendment 24B, which we debated earlier. As she fairly said in introducing it, it contains a provision, proposed new subsection (1)(b), designed to pick up a point that some of us had been making and which is encapsulated in Amendment 25.

Amendment 25 goes a little further than proposed new subsection (1)(b) in Amendment 24B, because some of us not only believe that the country does not need to see examples of other people’s relationship with the European Union but would like to know in advance of the referendum what the Government would do in the event a vote to leave: what immediate steps they would take and what permanent relationship with the European Union they would seek. Listing the arrangements of the Norwegians, the Swiss or the Turks does not quite do that. We would want to know what would actually happen.

In Committee, the noble Lords, Lord Hamilton, Lord Forsyth and Lord Stoddart, criticised me for my description of others’ arrangements. They did not find others’ arrangements very relevant; they were sure that, being bigger, we could do better—I paraphrase the argument of the noble Lord, Lord Hamilton. Several of us were not so sure about that, because in an Article 50 negotiation, if that is what we would be in, the Commission would be across the table from us and no other member state would be in the room. The Commission would be acting on guidelines laid down by the European Council by unanimity: everybody will have had to agree. The outcome of the negotiation, assuming there was one, would need qualified majority approval in Council and a simple majority in the European Parliament. That is quite a high hurdle. It was the noble Lord, Lord Bowness, who made the point in Committee that what we would seek,

“in exit negotiations, if that is where we get to, are not a fait accompli. They are not ours to demand. We cannot assume that all the other 27 states will agree. It will be for the 27 to decide and agree, and we do not have a vote in that”.—[*Official Report*, 2/11/15; col. 1441.]

That is correct; that is the case.

6.45 pm

There is a second point. Several noble Lords—in particular, the noble Lords, Lord Stoddart and Lord Hamilton—made a point frequently made these days by Mr Redwood and some others in the other place. It was alluded to by the noble Lord, Lord Pearson of Rannoch, in his exhaustive analysis earlier, and was highly relevant to the speech of the noble Lord, Lord Owen. The Redwood argument, as I understand it, and the argument advanced against me by the noble Lord, Lord Stoddart, in Committee, was that Article 50 is irrelevant. We could and would simply repeal the 1972 Act. We would then stop paying our subscriptions, we would not go to the meetings, and we would have left. With one bound, we would be free.

[LORD KERR OF KINLOCHARD]

I think we can deduce from what the Minister said in answer to Amendment 24C, tabled by the noble Lord, Lord Hannay, that she does not agree with that and does not believe that that is the course we would take. I hope it is not the course that we would follow, because with so much UK legislation—although not quite as much as the noble Lord, Lord Pearson, likes to argue—depending on the 1972 Act, the uncertainty that would ensue if we followed the course of the noble Lord, Lord Stoddart, would be quite damaging. There would be a serious risk of a legal vacuum.

Moreover, although I am not a lawyer, I believe that it is clear in international law that when a treaty expressly provides a basis for withdrawal from its obligations, a state party cannot escape such obligations by enacting its own domestic legislation. That is my understanding of the international law of treaty on this question. When the noble Lord, Lord Owen, reminded us of what Foreign Secretary Callaghan would have done in the event of a vote to leave in 1975, he was careful to say that Article 50 did not then exist. That is correct. Nevertheless, the Redwood thesis is that one would do exactly what Mr Callaghan apparently had in mind in 1975.

It is very important that the country should be clear about what will happen. I do not think the Government would act in breach of international law. Whether it is a good thing or a bad thing, Article 50 is there and I think the Government would use it, even though in Article 50 there is the difficulty that you need to persuade all 27 other member states to instruct the Commission, which enables it to reach an agreement.

I do not want to go again through why I do not think the Norwegian deal is particularly good. The noble Lord, Lord Forsyth, encourages me not to do it again. The noble Lord, Lord Hamilton, would hate it if I did it again, because he agrees with me that the Norwegian deal is not very good. He believes we can get a better one. The Prime Minister certainly said very clearly that the Norwegian terms would not suit the United Kingdom. That is my view, too. Where I differ from the noble Lord, Lord Hamilton, is in his certainty that, being bigger, we would get better terms. That is a dispute that we will not settle between us. I understand his point of view, although I happen to think it is wrong.

It is important that, before it votes on whether we should stay or leave, the country should know what the Government would do on day one, what process of negotiation they would then follow and with what aim. Where would they want to end up? The noble Viscount, Lord Trenchard, said in Committee that, however difficult that may be, at least the Government should say what kind of association with the EU they think it would be desirable for the UK to pursue in the event that it votes to leave the EU. That is not an unreasonable position. Of course, it is well-judged wording, which says,

“desirable for the United Kingdom to pursue”.—[*Official Report*, 2/11/15; col. 1454.]

Because of how the Article 50 negotiation is structured and the rules of the game, we could not say where we would end up. There would be considerable uncertainty: it would be quite unpredictable.

I am grateful to the Minister for the various moves she has made. My amendment is in a cut-down form in response to her scathing criticisms of my feeble public service drafting. I thought her best barb was when she described part of my amendment, which has now vanished, as wholly speculative and completely unacceptable, and said that I was,

“asking the Government to put the cart before the horse before the horse has even bolted”.—[*Official Report*, 2/11/15; col. 1506.]

It seems to me that if you are going to put the cart before the horse, it would be good to do it before it had bolted. However, I am not pursuing any of that; mine is a cut-down version of the previous versions of this amendment and I very much hope that the Minister can now accept it.

**Lord Green of Deddington (CB):** There is a rumour that the noble Lord is the author not just of Article 50 but of the entire treaty. Can he therefore explain to us what happens if the two-year period permitted under Article 50 expires and we cease to be a member? What happens then?

**Lord Kerr of Kinlochard:** There are probably greater experts on Article 50 than me; but, as the noble Lord undoubtedly knows, paragraph 3 makes it clear that the two years is extendable, if all parties agree. I believe that, if we were in an Article 50 negotiation, it would almost certainly be necessary to extend it. I beg to move.

**Lord Pearson of Rannoch (UKIP):** My Lords, do I understand Mr Redwood’s position to be that, if we repeal the 1972 Act, all the other treaties that come after that Act—the Single European Act, Maastricht, Amsterdam, Nice and Lisbon—are all amendments to the original 1972 Act? If we repeal the 1972 Act, the other 27 member states may start getting difficult with us, but it is unlikely. We should be in the driving seat, not least because of the amount of money we give them, which of course we need not decide to axe overnight. We could say that if they behave themselves, we will taper the £20 billion a year we give them nice and slowly. Likewise, it is in their interests to go along with us and our free trade with them, the single market and all the rest of it, because we are their largest clients—as I said earlier. We have a certain amount of pressure with the non-EU free trade agreements, some of which have been organised entirely by the Commission and some by the European Commission and us in our sovereign right, as I am sure the noble Lord knows. It is a boggy area, but surely it depends on the political will of the Government of this country, and the political will of the Prime Minister.

Therefore I put it to the noble Lord that he is seeking to gaze into a crystal ball that is somewhat clouded. If the Prime Minister has negotiated a reform and comes back from Brussels with a piece of white paper saying “Reform in our time”, but the British people do not like it—if the British Prime Minister wants to stay in the European Union on those terms but the British people throw it out and vote against him—surely it is unlikely that he would survive as Prime Minister. Therefore, we would be dealing with a new Conservative Prime Minister, presumably somewhat less Europhile than the present one, and the whole ball game would change in the negotiations over Article 50,

if we decided to go down the Article 50 route. Surely, though, we are in a position to say that we are not going to do that. Our position is so strong that we require our own free trade agreement. I do not want to follow the Norwegian/European Economic Area red herring anymore, because none of us has ever wanted to do that. How does the noble Lord react to that position, with a Prime Minister who has gone, a new Conservative leader who wants to get on with it, and a European Union that perhaps will not be as recalcitrant as the noble Lord hopes?

**Lord Hamilton of Epsom (Con):** I am grateful to the noble Lord, Lord Green, for telling us that the noble Lord, Lord Kerr, drafted all this legislation. I think he should have declared an interest, because the last thing he will want to admit is that the EU is going to completely override everything that he drafted. When the eurozone was set up, I remember it was thought that there would be a big problem if Governments borrowed excessively and cumulative debt built up to very high levels of GDP, so limits were put in on how much Governments should borrow in the eurozone. The Germans found that too inconvenient, so they just overrode it. Then the French followed, and everybody else said, “If they are not going to follow the rules, why should we bother?”. So why are we obsessed with the legislative integrity of Article 50? It has never been tested; no one has ever left the EU. If we were to leave, it would be a unique situation. They would be losing their second biggest economy, and they would have to accommodate us.

Let us remember another thing that the noble Lord, Lord Kerr, omitted to tell us. This referendum will be advisory, not mandatory, and that is very significant.

**Lord Kerr of Kinlochard:** My Lords—

**Lord Hamilton of Epsom:** I shall give way in a moment. All we have to do in response to a leave vote is repeal the 1972 Act. After that we have to enter negotiations, and we can apply for Article 50 at the end of the negotiation.

**Lord Kerr of Kinlochard:** I think it is not for me, but for lawyers, to discuss what would ensue were we immediately to repeal the 1972 Act. I do not think it is a pretty picture, but it is not for me to depict it. On the noble Lord’s argument that we would have all these cards in our hand, I was trying to extend an olive branch to him earlier. There is a point that nobody would want us to go—that is correct. The Germans would want to go on selling cars, as the noble Lord, Lord Hamilton, reminds us almost daily.

My argument is that it might prove difficult to get 27 member states, many of which have a negative trade balance with us and not all of which are as friendly to us as our friends in Germany, to agree all the detail. The noble Lord, Lord Green, is right: the process could be prolonged and quite tricky, and the country should know before the referendum that that is the case.

7 pm

**Lord Hamilton of Epsom:** We come back to the point that was made earlier by my noble friend Lord Lamont: all this is down to interpretation. There is no

fixed thing that is going to happen, and we do not actually know how it will map out, but it seems highly likely that the EU will do everything it possibly can to accommodate us. The Germans are going to be very distressed if they lose all their exports to the UK, and I know they will be very much in the driving seat to ensure that the other members of the EU abide by some sensible agreement. I see no reason why there should not be a free trade treaty between us and the EU. I am not saying that it will happen tomorrow, but then for that matter that is true of all the EU trade treaties; they seem to be taking an interminable amount of time with China, India, Russia and practically every other country in the world.

**Lord Stoddart of Swindon (Ind Lab):** My Lords, I am sorry if my remarks offended the noble Lord, Lord Kerr, or made him a bit unhappy. I would not do that for the world; not only do I like him but I respect him and understand his expertise in these matters. However, I still have a difference of opinion with him, although quite frankly I would be quite happy if his amendment were accepted. If the EU behaved as he was intimating earlier on, it would help my cause. It would show that the EU, instead of being a partner, was in fact rather spiteful if, after the British people had voted a certain way, instead of accepting it with good grace the EU would want to be spiteful and put obstacles in the way of agreements that we could make outside the members of the EU. We ought to take that into account.

I return to the original contention, which is this: whether this is a binding referendum or some other sort, I do not know, but if the people have spoken then they will have to be listened to. There is no question about that. It is not a question only of the Government listening; it is more about Parliament listening. It is Parliament that will have to take action after the people have spoken, and the action it must take is to repeal the European Communities Act 1972. Once it did that, everything would fall into place; after the repeal it would then have to embark upon negotiations.

I think that the Vienna convention governs the unmaking of treaties. We would be acting within the Vienna convention if we adhered to the two-year period of negotiation and, after that time, either accepted the agreements that were made or not. Basically speaking, though, once the people have spoken, if they have said that we are to come out, no treaties or conventions will prevent this country coming out. If this Parliament decided otherwise, there could be a revolution.

I hope that I have made clear what my view is and that the noble Lord, Lord Kerr, is now unoffended. If his amendment is accepted, I am quite sure that later on we can make use of it.

**Lord Mackay of Clashfern (Con):** My Lords, I am quite tempted to intervene in this debate. We had a full discussion of this issue, as noble Lords who were there will remember, when the European Union Referendum Act was being discussed here. The question arose of the basis on which European law applies in our country. The answer is clear: the 1972 Act makes European law the law of this country. We could get rid of that immediately by repealing the 1972 Act, but under

[LORD MACKAY OF CLASHFERN]

international law we are also members of a treaty organisation. If we are going to observe international law, which on the whole I hope we would want to do, then we would have to go through the proper procedures for renouncing or denouncing a treaty. That is the next stage in the matter. It is clear that the law would no longer apply in this country as a domestic law, which is the result of the 1972 Act, once Parliament decided to repeal that Act. I think that that would be true of all the European law that has come in since 1972. None of it would apply here any longer, but the treaty obligations would apply and we would be obliged to follow the mechanisms laid down in international law for denouncing a treaty.

**Lord Hamilton of Epsom:** Before the noble and learned Lord sits down, would he accept that what has actually happened is that EU law has been enacted into British law? Anything that has been passed down from the EU is therefore on the statute book of the British Parliament, and therefore that would continue.

**Lord Mackay of Clashfern:** No, because that is all done under the authority of the 1972 Act by subsequent amendments under it. We had a lot of discussion about this last time and I do not want to start that up again if I can avoid it. Some of the devolution statutes had reference to Acts, for example, but they all flow from the 1972 Act. That Act is the authority for applying European law in the UK. That is why the courts of the UK are obliged to follow it because that is the law laid down by the Parliament of the UK. If that law were repealed, it would become a question of international law, and the rules of international law do not apply to domestic law except in so far as they are incorporated. It is only then as treaty obligations that the state proceeds thereafter.

**Lord Lamont of Lerwick (Con):** My Lords, I was intrigued that the noble Lord, Lord Kerr, did not deny authorship of Article 50 of the treaty. I am rather sceptical that he is the author because Commissioner Christophersen assured me that he was the author of Article 50 and that through it he had laid a deep trap for the British. The noble Lord always had a great reputation for masterminding so much in Brussels, but I am not sure that Article 50 is actually his creation.

The noble Lord, Lord Kerr, made a powerful speech against my noble friend Lord Hamilton, and my noble friend Lord Hamilton made a powerful speech against the noble Lord, Lord Kerr. That seems to illustrate that the amendment the noble Lord is putting forward is really one of the arguments being used by those who wish to remain in. Their argument is that it is going to create an enormous amount of uncertainty, that it is incredibly complicated, that we have got all these trade negotiations and the repeal of British legislation has to take place before we can feel the effects of being outside. This seems to me to be what the campaign ought to be about. For the noble Lord, Lord Kerr, to think that the Government ought to publish a document detailing all this is to invite the Government to publish a document taking one side of the referendum question.

The amendment is redundant because of the government Amendment 24B and particularly subsection (1)(b) of the proposed new clause to which the noble Lord, Lord Kerr, referred, in which the Government have said—slightly to my distress—that they are going to bring forward examples of countries that do not have membership of the European Union. No doubt they will have in that that Norway is governed by fax, something that I absolutely dispute despite the intervention of the noble Baroness from the Liberal Benches. This amendment, requiring a report that would be pure propaganda, is therefore completely inappropriate when we have subsection (1)(b) of the proposed new clause inserted by Amendment 24B, which it would duplicate.

To go back to Article 50 and address the alarmism, I accept that there is going to be a degree of uncertainty. That uncertainty is going to be one of the arguments deployed by the people who do not wish us to leave. However, we are, as the noble Lord, Lord Green, pointed out, going to have two years in which these negotiations take place. The roof is not going to fall in nor will the buildings crumble while these negotiations go on. I am unsure whether we repeal the European Communities Act 1972 at the beginning of the process or at the end, but I should imagine that things would remain during the period of the negotiation for at least two years, and, as the noble Lord, Lord Kerr, has said, the two-year period is extendable. Life would probably go on much as it is now while the negotiations took place.

The noble Lord, Lord Kerr, tried to chill our blood even further by saying that we would be left alone in the room with the Commission. My goodness, that is one of the things that I regret that the Government did not try to achieve in the negotiations. They have done nothing to reduce the power of the Commission. If we had just one reform in the EU it should have been to reduce or get rid of the Commission's power of initiating legislation. I do not see why civil servants should have the right to initiate legislation in the way that they do.

The image that, rightly or wrongly, I have of the Commission was reinforced by the way that the noble Lord, Lord Kerr, portrayed it. I do not believe that the Commission is going to act in some way completely divorced from the political will of member states. The noble Lord, Lord Kerr, said that there are some European Union countries that have an unfavourable balance of trade with the UK. I do not know which they are. There cannot be very many since we have a socking balance unfavourable to us. I cannot believe that Germany, which seems to call the shots within the European Union on almost every issue today, will not be able to persuade Slovenia, or whichever country it is, that it ought to come into line with the outcome of the negotiations. I do not believe that the Commission can act without political will. I believe that the Economics Minister of Germany has already publicly stated that he believes that Britain could get a free trade arrangement with the EU if it left. If Germany thinks that, there is a good chance that we could get it. However, all this is an argument for the referendum. It should not be in particular amendments to the legislation.

**Lord Forsyth of Drumlean (Con):** My Lords, the noble Lord, Lord Kerr, played a formidable role in the Scottish referendum and in the discussions of the rules that should surround it. I can just imagine how he would have been appalled had anyone tabled an amendment that the British Government should publish in advance of the referendum the arrangements that they would make if Scotland decided to leave the United Kingdom. It would have been an utterly ridiculous proposition, and there is no way that the noble Lord, Lord Kerr, would ever have proposed it.

As my noble friend Lord Lamont has pointed out, there is a golden thread through all the amendments that the noble Lord, Lord Kerr, has tabled. It is all about trying to rig the referendum in favour of the position he favours. That is what this is about. Having worked with the noble Lord and knowing the precision with which he operates, I am amazed that he should suggest that the Secretary of State should report on the relationship with the European Union that the Government envisage in the event of a referendum vote to leave the European Union.

7.15 pm

The Prime Minister has said that he wants to stay in the European Union and that he is going to do this fantastic negotiation that is going to change the European Union and reform it. It is ridiculous to ask him to go out and campaign for what he believes in and at the same time explain what he would do if he lost the argument. That is an impossible position to ask even of a very flexible Prime Minister.

**Baroness Ludford (LD):** Will the noble Lord accept that the Prime Minister has also said that he would not rule out calling for a no vote if he does not get satisfaction in the negotiations? Therefore, what the amendment moved by the noble Lord, Lord Kerr, is calling for—that the Government set out what they envisage could happen in a scenario that the Prime Minister has not ruled out—is perfectly reasonable. What so shocks him to the core about that idea?

**Lord Forsyth of Drumlean:** I know that the Liberals find it easy to occupy two opposite positions at the same time on a number of occasions but we cannot ask the Prime Minister to do that. Subsection (2) of the new clause proposed by the amendment states that this has got to be done no later than 12 weeks prior to the appointment date of the referendum. I should like to think that 12 weeks before the referendum the Prime Minister will have decided whether he is going to rule anything out. The Prime Minister will have a position, so that point simply falls.

In Committee, I used the analogy of the European Union being like a bear trap. No one in Britain today would want to put their foot in the bear trap and join the European Union as it is. The question is how to get your leg out of the bear trap. People like the noble Lord, Lord Kerr, say that it is just going to be too painful to remove our legs from the bear trap and therefore we must just accept the risk that we might be bleeding to death but that is much less painful. In this amendment he has now come up with the proposition that because of Article 50 it is not just one bear trap: if you take your leg out of the bear trap there are

26 others to get through, each one of which could cause enormous grief, so it is better to stay in the one bear trap. This is a ridiculous position. I am deeply shocked that he should put forward an amendment of this kind.

Perhaps the Minister can tell us whether Ministers are going to be bound by collective responsibility in respect of the Government's position. If they are, it is asking a lot of them that they not only have to stand up and support something in which they may not believe, but they have also got to go out and explain what would happen if the opposite happened.

**Lord Garel-Jones (Con):** My noble friend has just referred to something called “the Government's position”. Does he accept that if the Government have a position, they owe it to the country to campaign on that position?

**Lord Forsyth of Drumlean:** No, I would not accept that. If the Government are people who genuinely have differences of view as to what is right for the country, then those members of the Government should be free to argue their case. As the noble Lord, Lord Stoddart, said, this is matter for Parliament, not for the Government and not for the Executive. It is for Parliament to decide what is in the best interests of our country. I hope that Parliament, by passing this Bill, will decide that the people should have an opportunity to express their view. That will then be advisory for the Government and I would expect the Government to carry on on the basis of what is suggested.

I shall make one other point. Even if the Government wanted to do it, it would be impossible to report on the relationship with the European Union that the Government envisage in the event of a referendum vote to leave the European Union. We do not even know what the European Union will be like. It is the European Union that is leaving us as it struggles with the disastrous consequences of monetary union. It is the European Union that will have to move towards a more integrated fiscal arrangement if the euro is to survive. The amendment is asking the Government to predict what it will do to maintain the stability of the euro and at the same time to predict what they will do.

In response to my noble friend, I have just thought of another argument. I would like to think that in the referendum campaign the Government will be respectful of the arguments which are put across and the way they are received by the public and that they will acknowledge and respond to these arguments.

I know why the noble Lord, Lord Kerr, has put forward this amendment. Of course it would help his case if the Government had to make these points. I have always thought that he was very even-minded and impartial on all these matters, but now he has left his former position he has turned into a politician, and a campaigning politician at that. I hope that my noble friend will not feel able to accept this amendment in any way.

**Lord Davies of Stamford (Lab):** My Lords, I rise to speak, not that I intended to do so, because although we have been going over the same ground this evening that we have gone over before, and although no doubt many of these points will be debated passionately

[LORD DAVIES OF STAMFORD]

during the referendum campaign, I had rather hoped that the effect of these debates would be to separate out a bit the wheat from the chaff in the arguments and that those arguments that were found to be obviously unviable would be dropped by the various parties before the referendum campaign started. Therefore we would have a function here of hoping to clarify some of the essential arguments before the public debate begins in earnest.

In that context, I am quite amazed and very disappointed that two grossly invalid arguments continue to be put forward by the Eurosceptic representatives in your Lordships' House. I thought that we might have seen the end of them. Those two arguments are so irresponsible and illusory that it amazes me that men or women of the world can seriously want to take them any further, even on an electoral platform, where I know the same qualities of intellectual analysis are not always deployed as they are in other contexts in life.

The first argument is the suggestion that this country might simply walk away from an international treaty in breach of that treaty. We have a long tradition going back over centuries of respecting international agreements, and it would be quite extraordinary for us seriously to propose to do that. We all know that Article 50 of the treaty of accession has a precise procedure to be adopted in the event that a member state wishes to withdraw; therefore withdrawal was properly and reasonably discussed at the time we signed that treaty. There was no material non-disclosure of relevant information or anything of that kind. No one was under any illusion. We signed that treaty with open eyes. Now, 40 years later, or whatever it is, suddenly to turn round and say, "We're tearing it up and walking away", is extraordinary.

I am amazed that anybody thinks that this country should behave like that. I would have thought that even those who are not influenced by the element of principle in this matter, which seems very obvious, or who cannot estimate or appreciate the diplomatic value—the soft diplomacy and soft power value—of having the reputation we have had until now of being a nation that takes international agreements and international law seriously might at least from sheer cynical pragmatism have realised that the last and worst thing you want to do when you are about to engage in a difficult negotiation with a group of countries, with whom we would be having a difficult negotiation to try to restore some access to the single market with our former partners in the European Union, would be, on the eve of beginning such a complicated, difficult and important negotiation, to tear up a treaty that we had previously had with them.

**Lord Hamilton of Epsom:** Has the noble Lord not missed the point, which is that the key to all this is when you invoke Article 50? Do you do it at the beginning of the negotiations, when we have just voted to come out, or at the end, after two or three years?

**Lord Davies of Stamford:** My understanding is that from the very moment you initiate the process you invoke Article 50, which sets out the procedure to be followed. I have certainly read Article 50, and that is

the way I read it. I do not think that any interpretation we have heard this evening, including from the noble and learned Lord, the former Lord Chancellor, is inconsistent with that reading. The fact is that we must act in good faith in these matters. If we do not act in good faith out of moral principle, we should do so out of sheer selfish pragmatism because we will need to get a deal with the people who account for about 50% of our exports in the event that we want to leave the present arrangements we have with them. The idea that we start off by breaking an international agreement solemnly entered into is quite extraordinary.

The second extraordinary thing—I have heard this argument before and I hope I will not hear it again, although I am sure I will; I expect that it will be in the *Daily Mail* every day during the campaign—is that because we have a balance of payments deficit with the rest of the European Union, we have more leverage on them in these negotiations than they have on us. That is complete nonsense. I dealt with this argument before, and I used an analogy, which no one quarrelled with at the time, to try to make clear that the fact of having a deficit or a surplus is neither here nor there. What is important is the proportion of one's total exports and, behind that, the proportion of one's GDP which is exposed in a negotiation of this kind and which could therefore be subject to something nasty happening to it, such as having tariffs imposed or no longer being able to be sold at the same favourable terms as competitors could offer the relevant customers. The proportion of exposure of gross domestic product, and the employment that goes with it, is important.

**Lord Lamont of Lerwick:** I am very sorry to ask the noble Lord a question, when he has made it so abundantly clear so many times before to the schoolchildren what the real situation is. However, when he says that what matters is the percentage of GDP represented by a market, does he seriously advance the position that Germany would not care if it did not get access to its largest customer for exports just because that is a smaller percentage of German GDP than our exports are to it?

**Lord Davies of Stamford:** Everybody would be a loser in this game. I do not hide in any sense my conviction that we would all be losers. It would be a very sad day if we broke up the European Union or moved out of it. Therefore my point is that the Germans would lose, but we would lose more.

**Lord Green of Deddington:** Does the noble Lord recognise that if the UK were to withdraw from the European Union, the Germans could then find themselves quite frequently outvoted by QMV by the southern members of the union, who have very different interests?

**Lord Davies of Stamford:** It is quite obvious. The Germans have made it very clear indeed, from the Chancellor downwards, that they do not want us to leave the EU, and that is one of the reasons why. In fact, in many cases we have very much the same view about markets as the Germans have, and on deregulation, an entrepreneurial economy, labour market reform and what have you. We have undergone the same kind of supply-side changes, they with the Hartz reforms,

we with the Thatcher reforms in the 1980s. All of that is true and is appreciated in Germany. I repeat: the Germans think that it would be a great disaster if we left. However, it would be an even greater disaster for us than it would be for them. It would be a disaster for everybody. Sometimes you break up a relationship and all parties lose. It is an extraordinary idea to think that if you break up a relationship, some parties are bound to win. That simply does not happen. Therefore that is the logical situation.

When I talk about exposure, let me put it this way—I have used this analogy once before. If Micronesia had \$1 million-worth of trade with China, and it sold the Chinese \$100,000-worth of products every year and bought \$900,000-worth from the Chinese, they would have a massive balance of payments deficit with China, which would have a proportionate very substantial balance of payments surplus with Micronesia. Would that mean that Micronesia would have the slightest leverage on China? Of course not. It is not, in fact, the deficit that counts but the extent of the exposure of exports, and the relevant dependence on exports is very simple. I repeat: our leverage—if you like to put it in mathematical terms—would be a positive function of their dependence on us and a negative function of our dependence on them. Our dependence on them is about 14% or 15% of our GDP, which is accounted for by exports of goods and services to other members of the European Union. If you look at it the other way round, there is no member state in the European Union other than ourselves, except for the Republic of Ireland, for whom that figure is higher than 3%. That literally means that there is a 500% greater degree of dependence on our part towards them than on their part towards us. That is an extraordinarily bad basis for going into a negotiation. I do not say that there would not be a negotiation or a conclusion to a negotiation, but I am quite certain that the terms we would get would not at all be the ones we had hoped to get when we started out.

7.30 pm

**Lord Liddle (Lab):** I will make two quick points in support of the amendment in the name of the noble Lord, Lord Kerr. The speech of the noble Lord, Lord Forsyth, was rhetorically brilliant, as his contributions in this House so often are. However, his brilliance displayed a weakness on the part of those who want to leave the EU: they are frightened of the argument about what the alternatives to membership really are. That is why he is so reluctant to support the amendment.

There are two points which have not been made in this debate about the wrong assumption, made by many people who favour leaving the EU, that the UK would be able to retain most of the advantages of EU membership without actually being a member of it. That is what one hears from UKIP and the leave campaign. I question this on two grounds. The first ground is the politics of us voting to leave. In the Prime Minister's renegotiation, which I want to succeed, many member states will make concessions to Britain that they do not actually want but make because they want to keep Britain in the EU. The politics of this is that there will be a great deal of bitterness if they have gone a mile to help the UK and we then vote to leave.

What is more, there is a significant—20% to 30%—anti-European element in the politics of many EU countries today. The last thing in the world that the leaders of other EU countries are going to want to see is Britain able to negotiate a good deal from being out, because that will just strengthen the voices of the right and left populists in their own countries who are arguing to get out of the EU. So the politics will be extremely difficult for us if we vote to leave.

My second point is about free trade. I agree with all the arguments that our bargaining position is not as strong as is often claimed. However, a lot of this debate ignores the modern facts of free trade. It is not about tariffs and access, as it used to be. It is about sharing the same rules as the people with whom you are trading. That is why most banks in the City of London want to remain in the EU: if they do not share the rulebook with people on the continent, they will not be able to trade in euro business. I do not know how big an element of their business that is, but it is certainly substantial. A friend of mine in Brussels told me what happened in the recent fracas about Volkswagen. The initial proposals to deal with the problem of diesel engines, which the French and Germans had cooked up together, would actually have meant that half of Ford engines could not have been exported to the continent because the British methods of production would not have been compliant. It was only because we were in the room and making the arguments that we could do a deal with our partners to make sure that the rules would not disadvantage British-based manufacturing.

So it is about rules and, if we want to trade with the EU, either we have got to stick with their rules and all the talk about repealing regulations is complete nonsense, or we abandon the rules and we do not get the trade. That fundamental point is why the British public need to have it objectively explained what the consequences of leaving the EU would be, and what the nature of our future relationship with the EU would be.

**Lord Willoughby de Broke:** I pick up the noble Lord, Lord Liddle, for saying that to export to the EU we would have to meet the rules it imposed. Of course we would. It is the same position as America, India, Australia, New Zealand, Brazil or any other country that is not in the EU—or, for that matter, Switzerland, which manages to export more per head to the EU than we do and it is not in the EU. It is not a convincing argument at all. We already meet the rules now with our motor car exports. Why should that change? If change is required we will, of course, have to change—and so will other manufacturers who are outside the EU.

**Lord Liddle:** I am glad that the noble Lord, Lord Willoughby de Broke, defines British sovereignty as simply having to accept whatever changes in the rules the EU makes without our participation.

**Lord Tugendhat (Con):** My Lords, I do not normally find myself in close agreement with the noble Lord, Lord Stoddart of Swindon, but on this occasion what he said was absolutely correct. If the British people speak in a referendum, Parliament must follow and

[LORD TUGENDHAT]  
the United Kingdom will inevitably, in the circumstances which he envisaged, be leaving the European Union. I would very much regret that: it would be contrary to the interests of this country. However, were the electorate to make that decision I would hope, as would others who campaign for Britain to stay in, that we would negotiate the most favourable deal possible with the European Union. Our loyalty to this country would be unaffected by the result and would remain a primary consideration.

However, it is absurd to suppose that we will not enter into a period of very considerable uncertainty. Anybody who knows anything at all—and noble Lords know a great deal—knows that the worst possible thing for an economy and investment is uncertainty. It may be that we would negotiate a favourable agreement in the end, but there would be a period when a great deal would be unknown and people would be very reluctant to invest. I hesitate to talk about the Scottish referendum in the presence of my noble friend Lord Forsyth, but there was evidence in Scotland, as there was in Canada on an earlier occasion, that a referendum casts a shadow ahead of it which deters investment. If there was a period of considerable uncertainty at the end of the referendum before the outcome was known, the economy would suffer, even if one was optimistic about the outcome.

**Lord Green of Deddington:** Does the noble Lord agree that the noble Lord, Lord Kerr, has lifted a very interesting stone as to the exact process following a vote to leave the European Union? Would it be helpful for business confidence, which he has just mentioned, if the Government were to produce a report on the process, not the alternatives, that would then entrain?

**Lord Tugendhat:** I was going to come to that point, although not in exactly the form that the noble Lord put the question. I have now rather lost my train of thought. As I was saying, we would have a period of uncertainty.

Some noble Lords have suggested that, inevitably, a free trade agreement would be negotiated, but they talk about free trade agreements rather as if they are all the same. It is like saying a car will meet you at the station, but you do not know whether it will be a Rolls-Royce or a Mini—both are cars, but they are very different. Free trade agreements are all very different. To draw attention to what Singapore, Switzerland, South Korea or anyone else has done is hardly relevant to the situation that we have. The single market is a unique structure and finding a formula that will replicate the advantages of the single market would be very difficult to do.

Given that there would be a period of uncertainty and that we would not know what the outcome would be, although all of us would hope that it would be as favourable to this country as possible, the thrust of the amendment put forward by the noble Lord, Lord Kerr, which I support, to try to secure as much guidance from the Government as possible is an extremely useful exercise. Indeed, it has proved its utility, as the noble Lord said earlier, because it has enabled the

Minister to look deeply into these matters and come up with an amendment of her own that goes a fair way towards meeting the objectives of the amendment to which I put my name. That seems a model way for this House to proceed—for noble Lords who have a concern to table amendments and for the Government to seek to react to them, as the Minister has done. Therefore, I am glad to have supported the noble Lord, Lord Kerr, in this matter and I congratulate the Minister on the progress that she has made in seeking to meet the point that we put forward.

**Baroness Smith of Newnham (LD):** My Lords, I am somewhat surprised that many Members of your Lordships' House seem to find the idea of understanding what leaving would mean somewhat strange. The question that will be put to the people of the United Kingdom is:

“Should the United Kingdom remain a member of the European Union or leave the European Union?”.

The Electoral Commission, in its briefing to us for the second day of Report, points out that:

“It is important for voters to have access to information about the consequences of voting to remain a member of the European Union or leave the European Union, to help ensure they are able to make an informed decision on how to vote. However, any provision in legislation for this should ensure that voters can have confidence in the accuracy and impartiality of the information. There should also be sufficient balance given to the consequences of both a majority vote to remain a member of the European Union and a majority vote to leave the European Union”.

Amendments 24A and 24B went quite a long way in that regard but, if the Minister may not be able to envisage what the Government might say in terms of the relationship, can she at least tell us a little more about what “leave” might mean? The voters of the United Kingdom need to understand what “leave” means just as much as “remains”. We are almost there, but not quite.

**Lord Higgins (Con):** My Lords, in Committee and this evening, a number of amendments have requested reports on a large range of subjects. I suggested in Committee that the extent to which these reports are likely to be read by the majority of people voting in the referendum is small. The reports might be of some use to parliamentarians and other people preoccupied with the issue, but they would be of very little use in determining the outcome of the result of the referendum. However, it suddenly seemed to me that there was some case for a particular report on a matter where there seems to be some confusion—namely, a report on what the process of withdrawal would be.

I was most interested in the point made by my noble and learned friend Lord Mackay that seemed to suggest that in the course of that process we would necessarily, and perhaps almost as a first step, repeal the 1972 Act. There was a large amount of other legislation, including that on devolution, that was based on that Act. I imagine that that would create an enormous problem in terms of the legislative programme that would follow any decision to leave. I do not know whether my noble friend on the Front Bench can shed any light on that, but the case for rather more attention as to how it would be done if there were to be a vote in favour of withdrawing may well have a rather strong argument in favour of it.



7.45 pm

**Baroness Morgan of Ely (Lab):** My Lords, I support the view outlined by the noble Lord, Lord Kerr, in suggesting that the amendment proposed by the Government in the last debate, when we addressed this question very briefly, does not go far enough in addressing the issues set out in Committee and again on Report.

The noble Lord, Lord Kerr, eloquently addressed the need for the public to know what “leave” looks like. We actually know what the alternative existing models are. In fact, the shadow Minister for Europe, Pat McFadden, has produced a comprehensive report on this which could simply be copied in order to conclude one’s own amendment. We are not asking for the same things as we did on the last amendment, which was more of an objective statement of facts. We are going further here and asking the Government, who we assume will still be holding the reins of power in this country—albeit maybe with a new leader, who knows?—what they would want as an alternative to membership. It is a question that they would be asked the day after any vote to leave the EU.

We understand that it would be ridiculous for us to ask for this to be set out prior to the end of the Prime Minister’s task in trying to renegotiate the position with his EU colleagues, so we would not expect this to be done until the end of that negotiation. I heard the Minister state when she introduced the last amendment that the Government “in due course” will set out what the process of withdrawal will involve. Will the Minister clarify what “in due course” means? When will that happen? Will it happen before the referendum vote? How much before? That would be very useful, because one thing has become clear this afternoon. There is a need for some sort of procedural clarity. It has provoked a debate. I understood the Minister to have suggested earlier that the Government would not want to repeal the 1972 Act, so even if we had absolute clarification on that, we have gone a step further. It would be very useful to the public in this country. At the very least, we need those procedural steps to be set out very clearly for the public.

We still do not know which way the Government will recommend the British public to vote. If the Government were to suggest a “leave” vote, are we seriously expecting the country simply to follow them to some unknown destination with no idea what that would look like? I suggest that the public have a right to know the answer to that question. If the Government were to recommend us to stay, they still have the responsibility to set out what the position would be if the public went against their recommendation. They will still be the people sitting in that seat when those alternative arrangements will have to be made.

If the Government will not set this out, then who will? The leave campaign may have a mandate from the public to ensure that we leave the EU, but it would have no legitimacy in securing or putting in place alternative arrangements. They would not be in the driving seat for subsequent negotiations. So far, I do not believe that the Government have gone far enough in addressing this issue and I hope that the Minister can give us some clarification, at the very least on the

procedural steps, but ideally on what the Government would like to see as an alternative to EU membership if we were to vote to leave the EU.

**Lord Forsyth of Drumlean:** Before the noble Baroness sits down, can I ask her whether—either on the previous occasion when we had the Scottish referendum or in the event that there is another Scottish referendum—it is the Labour Party’s policy that the Government should in advance set out what the procedures would be and how they would set about breaking up the United Kingdom? The parallel is clear: this is an important policy view that she is taking. Is that the view of the Official Opposition?

**Baroness Morgan of Ely:** It is far more complicated. We are talking about 28 member states which will all have a say on our destiny in terms of our relationship with them in future. That is a completely different situation from the situation in Scotland. So no, I do not think there is a parallel here but the Government should come forward with some clarity, in particular on the procedural process.

**The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con):** My Lords, the noble Lord, Lord Kerr, made important points in his speech earlier this evening about the nature of this referendum and the fact that what the leave scenario will look like will be less clear to the public. That is certainly true by the very nature of this referendum. He has called for the Government to set out the relationship that they envisage for the European Union in the event of a vote to leave the EU, and he rightly highlights that it would be for the Government to negotiate on any future relationship in the event of a vote to leave.

The noble Lord, Lord Kerr, and just now the noble Baroness, Lady Morgan, have made it clear that it is the matter of the process which is important for the Government to clarify, and I shall certainly seek to do that among giving other answers to questions that have been posed.

The second part of the government amendment earlier today—Amendment 24B, which the House agreed to—seeks to address the earlier call of the noble Lord, Lord Kerr, for the Government to set out what some of the alternatives to membership might be. In response to the noble Lord’s amendment, we have proposed a duty that would require the Government to describe some of the existing arrangements that other countries have with the EU, where they are not members. I believe that this is as proportionate and reasonable a response as we can provide.

Noble Lords have called for any government amendment to set out evidence-based and authoritative information in a way that is as useful to the public as possible. However, I do not believe that it would be helpful, or indeed appropriate, for the Government to have a commitment in legislation to confirm at this early point exactly what the UK’s envisaged relationship would be with the EU, should the UK electorate vote to leave. I think that I can be more helpful to the noble Lord, Lord Kerr, as a result of the conversations that

[BARONESS ANELAY OF ST JOHNS]

we have been able to have today, and look more deeply at the intention behind the amendment. I hope to come to that fairly shortly.

My noble friend Lord Hamilton correctly referred to the fact that this referendum is advisory not mandatory, but I can assure him that my right honourable friend the Prime Minister has said that we will abide by the decision of this referendum, whatever it is. The Prime Minister has said that the Government, of course, are now focused on delivering a successful renegotiation. Therefore, we feel that we cannot speculate on the types of possible arrangement that could be negotiable—not negotiated, but actually achieved—with the EU. In my right honourable friend's speech at Chatham House, the Prime Minister gave his view on some of the existing alternatives. He made clear that Switzerland has had to negotiate access to the single market sector by sector. He pointed out that Norway is part of the single market but has no say in setting its rules.

What we sought to do, through my earlier Amendment 24B, is to provide the public with useful information about those existing models and others that other countries may have. We sought to meet the aims of the amendment of the noble Lord, Lord Kerr, as far as possible at that point. We made it clear then, and we have throughout our discussions at Second Reading and in Committee, that it is the campaigners on both sides of the debate who will have strong views about the arrangements. Any information published by the Government will be heavily scrutinised and interpreted in different ways by the campaign groups to make the strongest arguments for the case for remaining or leaving. One side is likely to argue that the Government have not been ambitious enough and that far more should have been possible, and the other side, I suspect, will argue the opposite.

The result for the public may be confusion—I appreciate that—rather than providing useful information. This would have the exact opposite effect from that which noble Lords have said they wish to support over the course of our debates. Indeed, if we were to set out early and in statute an envisaged relationship in the event of a vote to leave, it would simply invite media headlines because it would be interpreted that the Government were sending a strong signal that we had already prepared to exit the EU. I confess that I do read the *Daily Mail* and I can see the headline hitting me already. If I were to accept the amendment tonight I would be stepping into that bear trap. I know that that is not the bear trap that the noble Lord intended—that was not his intention.

As I said earlier in the debate, should there be a vote to leave, the Government would then at the appropriate moment need to engage with processes provided under our international obligations, including those under Article 50 of the Treaty on European Union. Of course, processes such as Article 50 have never been used in the past. This would be a precedent if it were to happen and that would make it all the harder to speculate on how such a negotiation might play out. Indeed, there could be unpredictable consequences to entering into a process to leave under any scenario, including that which encompasses the Article 50 process. Much play has been made about Article 50—I said to the noble Lord, Lord Kerr,

earlier today that I now carry it around with me in my handbag wherever I go. Therefore I know that I also referred to it in some detail at an earlier stage in Committee and set out the processes that it engages. I will not abuse Report stage by reading again from the full text of that.

As I mentioned briefly but will now say more fully to the noble Baroness, Lady Morgan, before the referendum we will of course lay out what this process would involve. In this scenario, as in any scenario, the Government would seek to protect the interests of the British people. That is exactly what noble Lords would expect us to do. There has been some question about the whole issue of the process being tangled in international law—yes indeed. The noble Lord, Lord Kerr, raised an important question about whether the UK would abide by its international obligations. I can reassure him concisely that, of course, the UK will abide by its international obligations. The Government are committed to upholding the rule of law, including under any of the different scenarios for withdrawing from the European Union. I was most grateful to my noble and learned friend Lord Mackay of Clashfern for crystallising so clearly the problem at hand, as he so often does in this Chamber, and making it clear that international law requires the Government to go through the proper procedures if they wish to resile from a treaty obligation. That is certainly the case.

Indeed, my right honourable friend has made it very clear throughout his time as Prime Minister that he holds dear the golden thread. The golden thread means not only that we have government that is not corrupt and is careful of people's interests, but involves strengthening international law, not weakening it.

**Lord Forsyth of Drumlean:** Given that the Prime Minister said that he rules nothing out, and that the Government will abide by any result in the referendum, surely we must assume that the Government are absolutely confident that they can make the necessary arrangements to enable us to leave the EU, and therefore this is a bit of a red herring.

8 pm

**Baroness Anelay of St Johns:** My Lords, I am not quite sure what the colour of a herring may be, but all I can say is that I am sure that my right honourable friend could fillet it quite nicely.

However, the problem is that the result would not be predictable. This is the picture that the noble Lord, Lord Kerr, has carefully teased out. Clearly, there could be unpredictable consequences; that is why I am not in a position tonight to accept the amendment. There is also an issue about timing. It is simply not feasible, or indeed in the national interest, to tie the Government's hands in legislation by setting out our preferred, almost negotiable, alternative before we have had the referendum, let alone before we know the consequences of the vote. We are focused on delivering a successful renegotiation. This debate, led by the noble Lord, Lord Kerr, has teased out the implications of the process. I hope therefore that I have put on the record more clearly the Government's view of how those processes would be engaged. Although I am not

able to accept the noble Lord's amendment tonight, I hope that I have put on record sufficient information to enable him to withdraw his amendment.

**Lord Kerr of Kinlochard:** I thank the noble Baroness and all those who took part in this debate, particularly those who supported me. However, I am left worrying what the Scots have against me. When you think about it, everybody who spoke in support of my amendment was not a Scot and everybody who attacked it was a Scot—the noble Lords, Lord Hamilton, Lord Forsyth and Lord Lamont. I believe that the Stoddart family hailed from Scotland. Anyway, we Scots are a cantankerous lot.

I wish to comment on only three points from the debate. First, I totally agree with the noble Lord, Lord Stoddart, and indeed with the Minister, that the fact that the referendum is advisory, not mandatory, is a distinction without a difference. If the country votes to leave, we leave—that is for sure. I say to the noble Lord, Lord Hamilton, that I thought we had an agreement that we both were clear that any free trade agreement was perfectly possible. I am sure that it is perfectly possible although, of course, as the noble Lord, Lord Tugendhat, reminded us, there are free trade agreements and free trade agreements. Saying that it is possible does not guarantee that it is perfect. Where I cannot agree with the noble Lord, Lord Hamilton, is that I do not believe that it would be possible to secure full voting membership of the single market with no concomitant obligations on expenditure commitments. I do not believe that that is on offer or that it could be offered. That is where I differ from the noble Lord, Lord Hamilton. I am very grateful to my only Scottish ally in this matter—the noble and learned Lord, Lord Mackay of Clashfern—for confirming that my understanding of the law, although amateur, was in this case, by great good luck, correct.

The noble Baroness has moved a long way, for which I am very grateful. She has listened to what has been said in non-Scottish accents in various parts of the House during this debate. I think she is saying that, in the event that the country voted to leave, the Government would invoke Article 50—that that is the process that would be followed. I think she is also saying that the country would need to know before the referendum that, because we would be in an Article 50 negotiation, we would be unable to dictate the terms of our withdrawal—that that would be a matter for negotiation and that there could be, in her words, unpredictable consequences. I think she is saying that that is factual information, not speculative, which it would be the duty of the Government to make clear. The leave campaign will assert that we can dictate whatever terms we like. The stay campaign will assert that an Article 50 negotiation would, indeed, be a bear trap, as the noble Lord, Lord Forsyth, said. But what is important is that the Government should say what in their view would be the—

**Lord Green of Deddington:** My Lords, I apologise for interrupting the noble Lord, but does he agree that—

**The Earl of Courtown (Con):** I do not think this is the time for interruptions. Noble Lords should remember that we are on Report.

**Noble Lords:** He was asking a question.

**Lord Kerr of Kinlochard:** The noble Lord, Lord Green, and I are diplomats. We do this stuff all the time.

I shall look very carefully at what the noble Baroness has said. It seems to me she is saying that the country would be entitled to know in advance whether Article 50 would be invoked; that that article is not a *fait accompli*, as the noble Lord, Lord Bowness, said; that we would be unable to dictate our terms; and that there would be unpredictable consequences. If that is what the noble Baroness is saying, I see no need to press my amendment now. If that is not what she is saying and I have misheard her, we might refer to the matter again at Third Reading, but I hope that we shall not have to. I beg leave to withdraw the amendment.

*Amendment 25 withdrawn.*

#### *Amendment 26*

*Moved by Lord Green of Deddington*

**26:** After Clause 5, insert the following new Clause—

“Report on the consequences of the United Kingdom staying in the European Union: net migration

No later than 12 weeks prior to the appointed date of the referendum, the Secretary of State shall publish, and lay before each House of Parliament, a report on the impact of continued membership of the European Union on the scale of net migration to the United Kingdom and its consequential effect on the future population of the United Kingdom.”

**Lord Green of Deddington:** My Lords, I shall speak also to Amendment 27. I can be very brief, as the ground is familiar but very important.

I welcome the Minister's introductory remarks. She steered a very careful course to avoid advocacy. However, her presentation seemed a little one-sided. There would be very serious consequences of staying in the EU as well as of leaving it. Unpredictable consequences apply to both staying and leaving. The EU is not a stationary ship. It has considerable momentum in various directions, as the noble Lord, Lord Lamont, pointed out. Therefore, it is only right and fair that both scenarios should be considered and that factual and objective information should be provided on both.

I have selected two consequences of great concern to the public. Amendment 26 draws attention to net migration and its consequences for our population. Noble Lords will be aware that migration from the EU has doubled in two years. At 180,000, it is now about half our total net migration and will have a huge impact on our population—indeed, an inevitable impact. The latest population projections are based on net migration of only 185,000, but even at that rate we will have to build a city the size of Birmingham in the next five years. In the next 25 years, our population will go up by 10 million. I make no apology for repeating that key point. Any report from the Government will have to set out this stark prospect. I say “stark” because 79% of the population of England—if I dare refer to England—believe that our country is already overcrowded.

[LORD GREEN OF DEDDINGTON]

Amendment 27 addresses the medium-term consequences for the UK of the situation in southern Europe. In Committee, the noble Baroness, Lady Royall, questioned the advisability of mentioning refugees in the context of a referendum campaign. I entirely accept the need for care but I also believe that we should level with the public, especially perhaps when the issues are, indeed, sensitive. It is now apparent that the European Union has lost control of the borders in Greece and Italy. The number of migrants is likely to run into several million over the next several years. More importantly for us, because we do not have a land border, under present arrangements all those who will acquire EU citizenship will gain the right to move to the UK. What is more, they will get an automatic right to bring family members who are not EU citizens. This is clearly a matter of real importance to the public and should be covered in any reports that the Government might issue. I beg to move.

**Lord Willoughby de Broke:** My Lords, I support the amendment of the noble Lord, Lord Green. It is important that these matters of immigration, however unpalatable they may be sometimes, are brought out into the open. The point that he made, which I also made in my speech, though it did not seem to find favour with noble Baroness, is that we should also look at the consequences for this country of staying in the EU. This amendment touches on that and is worth supporting. Surely this will be one of the pivotal arguments. Again it might not be popular to say so, but immigration and control of our borders will be a major topic during this referendum campaign. To have something about it in the Bill would be very useful.

I hope the amendment of the noble Lord, Lord Green, will find favour with the Government, because the public will certainly be interested in it, given the huge waves of immigration that are coming our way and will continue coming our way—I agree with the noble Lord—with huge consequences not just for numbers but also for infrastructure, schools, hospitals and accommodation. There are many consequences here and I know people are concerned about this. This is an important amendment to look at carefully and I hope the noble Baroness will follow that.

**Lord Wallace of Saltaire (LD):** My Lords, I apologise for missing the first part of the noble Lord's short speech. Since he referred to the population issue earlier, perhaps I might be allowed to say a few words. Incidentally, the reason the balance of competences report did not include population is that it is not one of the issues on which the European Union has any competence. There have been indirect references to population issues in one or two of the provisions of the treaties. I think it is the treaty of Amsterdam that has an obscure protocol in which the Republic of Ireland says that nothing in the treaties should be construed as countermanding Article 41 of the Irish state constitution, which is about abortion. While we are on the abortion issue, the efforts that Catholics in Scotland are now making to ensure that abortion law is not only not pulled up to

the European level but pushed down to the Scottish level demonstrate that population issues are extremely sensitive.

**Lord Green of Deddington:** My point is not that population falls under EU competence. Our membership of the EU and the fact that we have no way of limiting the number of migrants from the European Union obviously feed directly into net migration, which accounts for virtually all the long-term haul of our population increase.

**Lord Wallace of Saltaire:** My Lords, as the noble Lord knows, I follow the Migration Watch UK publications in detail. One way or another, I have also been involved in migration issues since the end of the Cold War. One of the things by which I am most struck is that population and migration flows are very complex. When you close one door the flow comes in from another, as we see at the European level and also at the British level. It is very hard to close our doors more than we do.

The issue of secondary migration that the noble Lord raises in the second half of his amendment is also complex and delicate. I agree that it is one at which we need to look in more detail. But much of what Migration Watch does, and this amendment, ignores the important pull factor in British migration. I am struck, for example, that the newspapers in recent days have talked about the NHS going out to recruit additional nurses from abroad, while at the same time we are being told in the comprehensive spending review that the Government will cut nurse training and impose fees on nurse training in Britain. A better example of a pull factor in migration could simply not be found.

8.15 pm

I am conscious that, for their plumbers, their bricklayers and others, building companies in Yorkshire recruit directly from eastern Europe. I happen to be associated with a housing association in Bradford that has an apprentice scheme, which is enormously oversubscribed. I suspect that when the new rules on selling off social housing come in that housing association will find it more difficult to run its apprenticeship scheme. It is producing skilled British workers, of whom there are not enough in that area. This is why more Poles, Slovaks and others come in.

I am also conscious that our Armed Forces are engaged in recruiting soldiers from abroad, largely from Commonwealth countries, because we cannot find enough here. That is a problem that we have in Britain. It is a problem of not providing the skills and right motivation for our young people, and we should pay more attention to that. If we invested more in making sure that our population had the right motivation and skills, the important pull factor that we have for so many of our semi-skilled workforces and public services would be a great deal less than before. That is one of the most important aspects in the current pull factor in British migration.

**Lord Lamont of Lerwick:** My Lords, the noble Lord, Lord Wallace, has made some very interesting comments. I learnt two things. First, I understand now why migration was not included in the review of

competences. He explained that that was because the word used was “population”, whereas had one asked the question about movement of labour or migration, perhaps it would have been different. Secondly, the noble Lord made quite a persuasive case, on one ground, for the necessity of migration and the inevitability of a degree of migration. I found it interesting that he was a regular watcher of Migration Watch. I was fascinated to hear that. But the arguments that the noble Lord put forward are the very things that would be considered in the Government’s publication if the amendments in the name of the noble Lord, Lord Green, were accepted.

I was somewhat neutral towards the amendment in the name of the noble Lord, Lord Green, because I have been trying to argue that all these reports that have been called for are the issues that ought to be debated during the referendum campaign. But everybody else has been coming forward and saying we ought to include this and that. When I look at the list compiled by the noble Lord, Lord Hannay, of things that ought to be considered in the publication, the one thing that is obviously missing is migration. Why did the noble Lord, Lord Hannay, not say that the publication ought to include migration?

I have been converted to the amendment in the name of the noble Lord, Lord Green, both by the noble Lord, Lord Wallace, and the noble Lord, Lord Hannay. I wish the noble Lord, Lord Hannay, were here to support it.

**Lord Hamilton of Epsom:** My Lords, I, too, would like to say some words in support of the noble Lord, Lord Green. He says that we have to level with the public on this and I think that is absolutely right. Net migration into this country last year was 330,000 people. That is a very large number of people. I totally accept that perhaps only half of them came from the EU but this is certainly something that we have to address.

I am particularly interested, as was the noble Lord, Lord Wallace, in Amendment 27. I would like to know from my noble friend the Minister exactly what the mechanics are with regard to people who have come from outside as part of this refugee crisis into somewhere such as France, who then apply for a French passport, which then enables them to come to the United Kingdom under the free movement of labour. Can she fill us in about how this process takes place? This is obviously an extremely worrying aspect of these migration flows. At the moment we are in a position to say that we are not members of Schengen and we can probably do something not to have to accept any of these people. But of course, if they are given European passports, that is rather a different story. Can she give us an insight into her understanding of this process?

**Lord Collins of Highbury (Lab):** My Lords, we do not support the amendments tabled by the noble Lord, Lord Green, mainly because, as the noble Lord, Lord Lamont, said, they are highly speculative, impossible to calculate, unpredictable, and not based on factual information that the Government have. Confusing the free movement of labour with migration and simply putting everyone in together will not lead to a rational debate.

The free movement of labour has been an important component of the EU. Certainly, people have come here to work. Where they have not come here to work, the Government have been addressing those issues in terms of the benefits system, as the Labour Party has also committed to do.

I have no doubt that in the course of this referendum campaign, the noble Lords, Lord Green and Lord Willoughby de Broke, will repeat what they have said. They will make this issue part of the referendum campaign and I will take great pleasure in making sure that other voices are heard in that debate which challenge some of the assumptions about migration. But for the purposes of the EU referendum campaign, it is wrong to confuse the free movement of labour with migration, and it certainly is not capable of being subject to a rational report.

**Baroness Anelay of St Johns:** My Lords, Amendments 26 and 27, tabled by the noble Lord, Lord Green of Deddington, would create a statutory requirement for the Secretary of State to publish two very specific reports no later than 12 weeks before the date of the referendum, and to lay these reports before each House of Parliament.

The first of the reports, in Amendment 26, would focus on the effect that remaining in the European Union would have on net migration to the United Kingdom. The second would include information on access to citizenship for non-EU citizens within member states. As I have set out, and as the noble Lord, Lord Collins, just alluded to, the Government have come forward with amendments designed to provide information that is as useful as possible to the public, ensuring that they are able to make an informed choice. In addition, these reports should be appropriate for the Government rather than the kinds of reports that campaigning groups or other groups not related to the campaign might commonly issue in any event. We have said throughout that whatever the Government produce in the way of reports must be objective and grounded in fact.

The Government already publish information on migration issues in this country. The Home Office issues a quarterly release of immigration statistics from administrative sources. These statistics are complemented by the *Migration Statistics Quarterly Report* of the Office for National Statistics. Indeed, I understand that the next set of figures is due to be published this Thursday. In addition, the Office for National Statistics periodically publishes quantitative projections, looking at future figures and trends. That is it—they look at the likely future figures and trends. The Government should publish only reports that are grounded in fact and objective.

The wording of Amendment 26 is clearly speculative, because it asks the Government to publish,

“a report on the impact of continued membership of the European Union on the scale of net migration to the United Kingdom and its consequential effect on the future population of the United Kingdom”.

One can speculate on that, but one cannot provide statistical information grounded in fact that would guide the public in a non-directional way about how to vote in a referendum. I understand the noble Lord’s

[BARONESS ANELAY OF ST JOHNS]

concern, but there are ways in which information is already provided, and it is better provided by others rather than by a statutory requirement on the Government.

On Amendment 27, my noble friend Lord Hamilton raised the issue of free movement. The amendment asks the Government to lay a report giving information, “on the current length of time taken for people who are not European Union citizens to acquire citizenship in each member state”.

That in itself is not information to which the Government would have right of access, so I am not sure how a statutory requirement could be placed upon us. The amendment also asks us to report on,

“the extent of free movement within the European Union that accompanies such citizenships and accrues to family members of those citizens”.

Again, this is a matter of reporting on the law of other countries rather than conditions in this country. My noble friend Lord Hamilton raised a serious point about migration, and my right honourable friend the Prime Minister has made it clear that in his negotiations with our European colleagues—the other 27 states—one of his four requirements is that there should be reform of the impact of migration, particularly as it relates to welfare law.

I am afraid that my noble friend will have to wait a little while before we have a debate on exactly what the impact of the law on free movement is. But I am sure that the usual channels will arrange good opportunities for debate, because if they do not, the Government will not be able to set out our case—which we need to do. I feel confident that the usual channels will be there first, before I can even ask. I understand the concerns underlying the amendments. I hope that I have been able to explain why it would be inappropriate for them to go into the Bill—but also why their content will, indeed, be the focus of much debate, not just by Government and by Parliament but by all the campaigning groups. I therefore urge the noble Lord, Lord Green, to withdraw his amendment.

**Lord Green of Deddington:** My Lords, I thank the Minister for that response. The hour is late, so I shall be even briefer. There certainly are pull factors. There has been inadequate training in the past, and we have even cut our budgets for training. Secondly, I think that it was the noble Lord, Lord Collins, who spoke about EU migrants coming here to work—but 75% of them are in low-paid employment, so they are not a huge benefit to our economy. As for speculative projections, the Government produce population projections every two years. I assume that those are objective and grounded in fact, and could therefore be published, with the immigration assumptions underlying them.

As for Amendment 27 and the Government’s right of access to the citizenship laws of other countries, they have already answered Parliamentary Questions on that subject, so they clearly have some information. If they need any more, they have 27 embassies that could, I hope, help them. Apart from that, the noble Lord, Lord Lamont, has already said it all, so I shall say no more. I beg leave to withdraw the amendment.

*Amendment 26 withdrawn.*

*Amendment 27 not moved.*

*Amendment 28 had been withdrawn from the Marshalled List.*

*Amendment 29 not moved.*

### *Amendment 30*

*Moved by Baroness Morgan of Ely*

**30:** After Clause 5, insert the following new Clause—

“Guidance for charities on engagement with the referendum

The Electoral Commission, in collaboration with the Charity Commission for England and Wales, the Charity Commission for Northern Ireland and the Office of the Scottish Regulator, must issue joint guidance confirming the principles that apply to the engagement of charities with the referendum.”

**Baroness Morgan of Ely:** My Lords, I apologise for submitting this amendment at such a late stage in our discussions, but I believe that essential clarification for charities about their ability to be involved in the EU referendum campaign needs to be set out. This is a probing amendment.

The EU referendum is essentially a single constituency vote, and charities from across the UK should be able to engage fully and equally with that referendum if they wish. The problem, however, is that existing guidance from charity regulatory bodies differs across the UK. Charity law that regulates political campaigning should be the same UK-wide, and I am sure the Minister will agree that there should not be any cross-border disparity. What we need, therefore, is a single set of rules which will create a level playing field across the UK and clarification for charities that are registered with more than one of the charity regulators.

We believe that it makes sense to base this guidance on the tried and tested model of the charity guidance for the Scottish referendum. Let us remember that this has been proven in a fierce campaign north of the border, facilitating engagement while ensuring that charities are still subject to strict rules to act prudently and independently. Let me be clear: we are not setting out what the joint guidance should look like in this amendment. We accept and suggest that it should be carried out by the regulators themselves.

I request that the Minister gives us an assurance that she will seek the full co-operation of the various national charity commissions, so that common guidance can be issued for the whole of the UK in adequate time, prior to the start of that referendum campaign. I beg to move.

*8.30 pm*

**Lord Hamilton of Epsom:** My Lords, as far as I can see, the noble Baroness, Lady Morgan, has put her finger on a slight problem here. The Bill, as I understand it, allows some charities to become permitted participants and permissible donors. But at the same time, Charity Commission law basically says that charitable contributions should not be used for political purposes. I understand that Justice Hoffmann—now the noble and learned Lord, Lord Hoffmann—ruled in 1991 that:

“There is no doubt that campaigning, in the sense of seeking to influence public opinion on political matters, is not a charitable activity ... it is not a proper object of the expenditure of charitable money”.

It seems that we have two conflicting judgments being made, one by the Bill and the other by charity law. It would be very helpful if my noble friend the Minister could cast a bit of light on this. Are we now saying that charities are to be allowed to involve themselves in campaigning, against the judgment of Justice Hoffmann? I am a little confused about where we stand on this.

**Lord Wigley (PC):** My Lords, I am glad to have the opportunity to welcome the amendment put forward by the noble Baroness, Lady Morgan, because it touches on an area that could cause considerable confusion and difficulties to charities. I am involved with a number of them and have known some of the problems that have arisen in the context of elections. It is quite clearly not a question of campaigning in a party-political sense but, equally, charities have a viewpoint on changes that can affect their fundamental *raison d'être*. They need to be able to put forward information for people to consider without being seen as campaigning. That dimension is complicated by the difference in the legislation that exists in different parts of these islands.

This is clearly a probing amendment and I very much hope that the Minister will at least be able to come back at Third Reading on this matter, if not tonight. Before I sit down, I thank her very much indeed for the way in which she and her colleagues have handled the Committee and Report stages of the Bill, and the outcomes we have had from it.

**Baroness Anelay of St Johns:** My Lords, I am grateful to the noble Baroness, Lady Morgan, for pointing out that this is a probing amendment. She was able to give us enough advance notice of this late-stage amendment to enable us, I hope, to gather together the reassurances that she and others rightly seek. Under charity law, political activity by charities is subject to strict rules. Charities are also subject to requirements of electoral law. My noble friend Lord Hamilton asked for some clarification on what appears to be obfuscation. That is what I hope to do at this stage, because he is right: it is important that the role of charities is clear and respected.

In England and Wales under charity law, a charity may engage in non-party political activity to support its charitable purpose where the trustees consider it to be an effective use of the charity's resources. One is thereby pursuing the reason why the charity has been set up—what its mission is—but one is not permitted to take part in party-political activity. A charity must never support a political party or candidate, and must always take care to preserve its independence when engaging in any political activity.

Charity law is devolved in Scotland and Northern Ireland, but the rules are similar. There is already guidance for charities on referendums: for example, the Charity Commission for England and Wales published guidance in July 2014 entitled *Charities, Elections and Referendums*. The Office of the Scottish Charity Regulator published guidance last year ahead of the referendum on Scottish independence. The Charity

Commission for Northern Ireland has produced general guidance for charities in Northern Ireland on political activity.

So we have had Charity Commission guidance in England and Wales, and the Scottish Charity Regulator and Northern Ireland Charity Commission have issued guidance. To complete the picture, the Charity Commission for England and Wales has already said that in principle it will be happy to work with the Electoral Commission, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland on this subject. However, it does not believe that there is a need for much additional material given the existing guidance for charities across the UK, some of which I have just referred to.

The Charity Commission for England and Wales and the Electoral Commission are meeting tomorrow to discuss the joint promotion and communication of their guidance in order to promote charities' awareness and understanding of the rules that apply. I also understand that the UK charity regulators are due to meet later this week, providing a timely opportunity to discuss this issue and consider the potential for collaboration on such guidance. While the provisions of the Bill apply across the UK, we must recognise that charity law is devolved in Scotland and Northern Ireland. We must therefore also respect the independence of the different regulators and their entitlement to reach their own views in particular cases.

Given my explanation about the collaboration that is not just happening normally but is happening now, we do not believe that the amendment is necessary, given the willingness of the Electoral Commission and UK charity regulators to work collaboratively on this specific subject.

I do not think that the noble Baroness intended her amendment to be self-operative, because clearly it will create an unnecessary burden for the regulators, which she does not intend. She asked me to say whether the regulators have demonstrated a willingness to collaborate on guidelines. I say yes, and they are coming up with the evidence for that, as well.

**Lord Lea of Crondall (Lab):** Before the Minister sits down, I am intrigued by whether she is saying that this is a one-off issue of conversation to do with the referendum, or is the word “political” and how it is used by the Charity Commission for England and Wales going to be subject to some new regime?

**Baroness Anelay of St Johns:** My Lords, perhaps I can unpack two parts of my response. With regard to the word “political”, clearly there are regulations and guidance that cover political activity across the whole range of what may happen in the United Kingdom, obviously including Scotland and Northern Ireland. So there is therefore a basis on which the regulators and charities work.

I then referred separately to the meetings that are taking place this week, which are looking specifically at the referendum and what it might entail. So we are applying the general to the particular to ensure that the way they collaborate is effective for the particular referendum. I hope that that is helpful.

**Baroness Morgan of Ely:** I thank the noble Baroness for that clarification. I think we have to remember that charities are anxious to be careful in terms of how they get involved politically—obviously, party-politically would be impossible, but they have a duty to further their charitable purposes. That means, for example, that if they were in receipt of EU funds and if they found the EU regulatory burden too much, they would need to be able to express that in some way. So I think that clarification is necessary. I thank the Minister not for pursuing that not just with the Electoral Commission but with the regulators.

I finish by thanking the noble Baroness for the way she has conducted the whole of this European Union Referendum Bill. It has been very interesting. It has been difficult, sparky and fractious at times, but we have got through it, and I thank the noble Baroness for the way she has conducted the whole debate. I am glad that we have managed to collaborate in the way that we have.

*Amendment 30 withdrawn.*

## Northern Ireland (Elections) (Amendment) (No. 2) Order 2015

*Motion to Approve*

8.40 pm

*Moved by Lord Dunlop*

That the draft Order laid before the House on 2 November be approved.

*Relevant document: 8th Report from the Joint Committee on Statutory Instruments*

**The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con):** My Lords, this statutory instrument, the Northern Ireland (Elections) (Amendment) (No. 2) Order 2015, makes a number of changes to the legislative framework for Northern Ireland elections. Some are minor administrative points, and I will focus on the two most substantive provisions.

The draft order makes provision to allow the retention of certain entries on the Northern Ireland electoral register for a further year. Northern Ireland is unique within the UK in that it does not hold an annual canvass to refresh its register. Since 2006, the register in Northern Ireland has been maintained not via a canvass but through a system of continuous registration which relies on cross-checking electoral data against prescribed official data streams. This approach is possible because all electoral registration in Northern Ireland has been individual registration rather than household registration since 2002.

Following the last full Northern Ireland canvass in 2013, provision was made to retain some entries on the register where the individuals in question had not returned the canvass form but where the Chief Electoral Officer had no reason to question the validity of their entry. The Electoral Office for Northern Ireland was able to assess the validity of entries for these non-respondents, as all the individuals in question were individually registered and the electoral office's data-checking facility with both DWP and health service records allows a high level of assurance on people's current address and other key information.

Let me be clear that the entries that relate to these non-respondents were all checked after the 2013 canvass and have been continuously checked since then in response to alerts from other government data sources. The Electoral Office for Northern Ireland receives regular updates of data from a variety of official sources, including the DWP, the Registrar-General and Business Services Organisation. BSO holds all the details of individuals on GP and dentist lists in Northern Ireland. If there is an inconsistency between the data on the register and that received from the other data sources, the electoral office issues chasing letters to the individual and then a final warning. If the individual does not respond, they are removed from the register.

Of the 112,000 registered electors who did not respond to the 2013 canvass, about 10,000 have been removed from the register and more than 20,000 have been successfully re-registered. Approximately 82,000 voters are therefore affected by the provision we are considering today. The original provision made in 2013 to retain these particular entries on the register was for two years and will expire at the beginning of December this year when the new register is published. However, it was always the intention that the retained entries should not be removed in advance of the next Northern Ireland Assembly elections. Due to the clash of the parliamentary general election and the Assembly election which was originally scheduled for 2015, the date of the Assembly election was postponed until May 2016. That postponement is the reason we need the extension of these provisions for one further year.

Both the Electoral Commission and the Chief Electoral Officer for Northern Ireland share the Government's view that the retention of these entries for a further year is desirable in the context of the continuous registration system employed in Northern Ireland. We fully intend that this will be the final provision made to retain non-respondent voters. We propose to introduce digital registration in Northern Ireland in 2016, and in the context of easier online registration and the publicity associated with its introduction, non-respondent voters will be given clear notice that they will come off the register in December 2016 if they do not take action.

The second substantive provision made by this order is to allow the Chief Electoral Officer for Northern Ireland not to be guilty of an offence if they take steps to fully correct procedural errors made at Assembly elections that would otherwise be a breach of their official duty. Currently, for all Northern Ireland elections, with the exception of those for the Assembly, the relevant legislation provides for the Chief Electoral Officer not to be guilty of an offence if they take steps to remedy in full an administrative error or omission. The order will correct this anomaly and bring the provision in respect of Assembly elections into line with the provisions for parliamentary, European and local elections in Northern Ireland. Although this is an electoral matter, which is therefore not devolved to the Northern Ireland Assembly, it tangentially touches on criminal justice matters. Your Lordships will wish to know that my honourable friend the Parliamentary Under-Secretary of State for Northern Ireland, Ben Wallace, has written to the Northern Ireland Minister for Justice to inform him of our intentions in this as a matter of courtesy.



8.45 pm

In addition to these two provisions, the draft order makes a number of other minor amendments to ensure consistency of administrative approach at Assembly elections. Electoral law is complex and as small changes are made to provisions for parliamentary and other types of elections, it is important that we keep the legislative framework under review and adjust the regulations as necessary where an inconsistency has crept into the provisions. I hope noble Lords will agree that the implementation of these changes in advance of the Northern Ireland Assembly election in May 2016 is both logical and reasonable. I assure noble Lords that all these changes are fully supported by both the Chief Electoral Officer for Northern Ireland and the Electoral Commission. I therefore commend the order to the House.

*Amendment to the Motion*

*Moved by Lord Tyler*

At the end to insert “but that this House regrets that the draft Order is inconsistent with the Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2015.”.

**Lord Tyler (LD):** My Lords, on 27 October, on the comparable order for England, Wales and Scotland—to which my amendment also refers this evening—this is what the noble and learned Lord, Lord Mackay of Clashfern, said:

“I do not understand how shortening the transition period contributes to the accuracy of the register”.—[*Official Report*, 27/10/15; col. 1129.]

As so often, he summed up the situation admirably, and in so doing completely demolished the Government’s case that evening. Sadly, he did not then follow the logic of his own analysis and did not vote for our amendment to persuade Ministers to think again. Even more disappointing was that a number of Cross-Bench Peers, who rightly pride themselves on being independent of party politics, voted to support a blatant move to distort the electoral register in favour of one particular party—the Conservative Party.

This order, by contrast, follows the logic of the summary of the noble and learned Lord, Lord Mackay, but only in relation to Northern Ireland. It would delay the completion of the transition from head-of-household registration to the full implementation of individual electoral registration—IER—in the Province for a further 12 months, as the Minister explained. The Explanatory Memorandum claims:

“In essence, Northern Ireland and Great Britain currently operate very different systems”.

That is true. As the Minister explained, IER was developed in Northern Ireland earlier than on the mainland. So for those of us who have been watching these developments—this evolution—over a number of years, the initial reaction must surely be that it should be further advanced in Northern Ireland. There ought to be a *prima facie* case for moving on in Northern Ireland because it has had plenty of time to develop the new system. Far from that, of course, the order does the reverse.

The Explanatory Memorandum also reports, as the Minister said, that the Chief Electoral Officer for Northern Ireland and the Electoral Commission have both recommended that those electors on the register who have not since confirmed their registration details should be retained on the register until December 2016. Members of your Lordships’ House who attended the debate on 27 October will recall the strong recommendation from the commission that the same should apply to England, Wales and Scotland. Indeed, given that Northern Ireland has had more time to develop the transition, one would think that the case for England, Wales and Scotland was much stronger. On that occasion, the advice from the commission was then ignored by Ministers despite the very special and particular nature of the commission’s statutory responsibility to Parliament.

The Minister referred to the elections to Stormont next May. In the previous debate, we were looking very carefully at the implications for the elections to Holyrood and the Welsh Assembly, where it may be thought that the same arguments apply. What is so different about Northern Ireland elections and electoral registration there?

Noble Lords may also recall that, on that occasion, the Minister constantly justified the Government’s denial of the commission’s recommendation on the grounds that there could be hundreds or thousands of ghost voters—ghost entries on the register—if the transition continued for a further 12 months. I reread *Hansard* this evening and counted a dozen such references in the Minister’s speech alone, and other government supporters followed suit.

I pointed out in my contribution that if there were so many ghost voters in October 2015, it was highly likely that a fair proportion of them would have been ghosts in May 2015, at the time of the general election. I said then:

“Ministers claim that some or many or most of those 1.9 million entries on the electoral register may be false and potentially fraudulent ... This is the register on which the general election was fought. Are Ministers really now saying that the whole election could have been based on a wildly inaccurate, potentially fraudulent register? What is the evidence for that? ... Are Ministers now challenging the outcome of the election on those grounds?”—[*Official Report*; 27/10/15; col. 1098.]

Are the Government now claiming that there is a much greater danger of ghost entries on the mainland register, then and now, than in Northern Ireland? If so, what is the evidence for that? Others in the Chamber have much more experience of elections to the various levels of governance in Northern Ireland, but anyone studying the history of elections in the Province would surely challenge that interpretation and conclusion. Indeed, as the Explanatory Memorandum admirably explains, Northern Ireland does not have an annual canvass, so electors are not required to reregister each year. Noble Lords may be forgiven for thinking that this may mean that the register there is less accurate—less up to date—than that in Great Britain.

In truth, the only real difference between the political circumstances in Northern Ireland and in the rest of the UK is simply this: the Conservative Party has no seats in the Province, no likelihood of contesting constituencies there, and therefore no self-interest in distorting the register. Tonight’s order merely undermines

[LORD TYLER]

the logic of the previous order and displays for all to see the double standards of Ministers. Our amendment simply reads that the draft order is inconsistent with the Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2015. I beg to move.

**Lord Bew (CB):** My Lords, I add a certain scepticism to that of the noble Lord, Lord Tyler, although from a different angle. I would like to say how much I admire his concern for the proper functioning of electoral institutions in the United Kingdom. My point is different and relates to the future. The Minister has brought the draft instrument to the House and there is no choice. The argumentation on technical details is fine, although it requires a certain degree of trust in the Chief Electoral Officer—although I see no reason why he should be denied that trust. So there is no problem with the legislation as such in that narrow sense and, anyway, we must now proceed.

In his opening statement, the Minister talked about the reason why we are in this situation. It was entirely accurate from the Government's point of view, but it is not actually why we are. The reason why we moved the date of the election to the Assembly a year later than the people of Northern Ireland had been told it would be was because of a deal between the local parties. There is no compelling, wider logic that said it must be at the same time as the elections in Scotland, and so on. There was no particularly compelling logic, though I can understand that there was a clash with the Northern Ireland general election. Essentially, the local parties themselves, worried that their performance was poor, said, "We need more time to put together a programme of governance". As noble Lords will be aware, no such programme of governance actually appeared, even given the extra time. I simply make the point that this ruse should not be played again in the next Parliament. It is bad practice to tell any electorate, "This is a Parliament that will be there for four years—no, sorry, five years". In Ireland 100 years ago, this was disastrous, because for very good reasons the general election that would normally have been held in 1915 was postponed, because of the First World War. That gave the people who lodged the Irish insurrection the great excuse of saying, "We are not revolting against democratic institutions, because they are dead. Do not tell us that the Irishmen in the Parliament that sits at Westminster have different views from us; of course they do, but they do not have a mandate. They were elected in 1910 on a five-year term and now their mandate has run out".

This was a risky thing to do. What the noble Lord said about why it was done, from the Government's point of view, is entirely correct, but it is not the underlying politics of Northern Ireland. I simply use this opportunity to say to the Minister that the next time the Government should be very careful about playing around with mandates, timing and duration. In the end, the parties that said, "Give us another year and we will give you a programme of government" delivered nothing.

**Lord Kennedy of Southwark (Lab):** My Lords, first, I am very pleased that the Government are allowing registered voters to be retained on the register for

another year in Northern Ireland. Action taken to improve the accuracy and completeness of the register is always welcome. Like the noble Lord, Lord Tyler, however, I regret the inconsistency of approach in respect of how voters are treated in England, Scotland and Wales and fully support his amendment.

It is in fact astonishing that we have had a system of IER in place in Northern Ireland since 2002 and that the Government felt it necessary on 2 November 2015 to put an order down for consideration in both Houses to allow a further year for voters to be retained. IER has been in force in Northern Ireland for only 13 years, yet this additional year of retaining voters until 1 December 2016 is deemed necessary. I recall the speech on 27 October 2015 from the noble Lord, Lord Empey, who is in his place, telling us how IER had been in force since 2002, how well it was going, and that we needed to get on and complete the job in the rest of the United Kingdom.

In the rest of the United Kingdom we were some years behind: that is correct. However, the process was speeded up with the 2013 Act and then people in England, Scotland and Wales were given until 1 December 2016 to be verified under the new system, or they would be removed. But they have had a year taken away from them in order to complete the verification process, and they now have only until next Tuesday. Therefore an Act in place for two years and a year taken off the transitional period is contrasted with Northern Ireland, which has had IER in place since 2002 and is given an additional year. That does not seem very fair or consistent—it seems grossly unfair and completely inconsistent. I know that the noble Lord, Lord Dunlop, will say that the canvass arrangements are different, but he cannot get away from the fact that in Northern Ireland these arrangements have been in place for 13 years. The noble Lord, Lord Empey, and, on the Minister's own Benches, the noble Lord, Lord Lexden, were full of enthusiasm for what had gone on there.

Paragraph 4.1 of the Explanatory Memorandum states:

"Amendments to these provisions are required to extend this for one further year to ensure the electors who have not since confirmed their details remain registered for the Assembly elections in May 2016".

I think that the elections to the Scottish Parliament, the Welsh Assembly, the Greater London Assembly, the Mayor of London, the mayor of Bristol, the police and crime commissioners in England and Wales, and thousands of councillors are just as important, and voters deserve the right to be treated in the same way. I do not recall a word being mentioned in the debate on 27 October in this noble House that Northern Ireland might need an extension of a further year. It would be very helpful to the House if the noble Lord, Lord Dunlop, could take us through the process that led to this order being put down for consideration on 2 November 2015. Looking at the Explanatory Memorandum, I see that consultation has taken place with the Electoral Commission, the Chief Electoral Officer for Northern Ireland, the Department of Justice and the Justice Minister in Northern Ireland, who were also advised of an incidental impact of a criminal offence, in terms of change of official duties.

It is important for the House to understand whether all of that, along with the decision to grant the additional year, happened after 27 October when the additional year was removed from voters in England, Scotland and Wales, or whether the decision had already been taken before 27 October and the vote on the fatal Motion and the House was just not told about it. It was completely at odds with what the Government were seeking to do for England, Scotland and Wales, and it would have completely undermined the argument being put forward from the government Front Bench if the noble Lord, Lord Bridges, had made us aware of the proposal. The noble Lord, Lord Dunlop, was in the House on 27 October and voted against both my amendment and the substantive Motion moved by the noble Lord, Lord Tyler. Was he aware at the time that this order was going to be put forward? It is very important for the House to be clear on the timelines and on how and when decisions were taken by the Government.

9 pm

I am very pleased, as I said at the start, that voters in Northern Ireland are being given an extra year to verify and confirm their details, but it is a matter of much regret that the Government have chosen to do the exact opposite for people living in the rest of the United Kingdom, and that is something that they should be profoundly ashamed of. I thank the noble Lord, Lord Tyler, for tabling his Motion. I hope that the noble Lord, Lord Dunlop, can answer the questions I have put to him and provide the information that the House needs.

**Lord Empey (UUP):** Before the noble Lord sits down, he mentioned some comments that I made. Actually I would have no difficulty if the proposal were to remove the 82,000, but the difference is that the people on the register in Northern Ireland are not ghosts. They had to have their national insurance numbers and so on verified at the time. So there is a significant difference in that these people clearly did and do exist. We have a continuous process of registration going on and other sources are found to verify their existence.

The noble Lord, Lord Bew, said that the parties wanted the extension to 2015 for the election. Two parties did. My party did not, and neither did others; it was a decision between the DUP, Sinn Féin and the Government. When the people went to the polls in 2011, they thought that they were voting candidates in for four years. Although Scotland and Wales had been told that their Administrations would be there for five years, it did not apply in Northern Ireland. I regret that. The point that the noble Lord, Lord Bew, made is also very valid.

**Lord Kennedy of Southwark:** I thank the noble Lord for that. I would say that the inconsistency here is staggering. IER has been in place in Northern Ireland since 2002, while we have had only two years in Great Britain. At the same time as we are giving an extra year to Northern Ireland, we are taking a year away from the rest of the United Kingdom. It is staggering.

**Lord Dunlop:** My Lords, I thank the noble Lords, Lord Tyler, Lord Bew, Lord Kennedy and Lord Empey, for their contributions. The noble Lords, Lord Tyler and Lord Kennedy, have reminded us of the recent debate over the end of transition to individual electoral registration in Great Britain, particularly regarding the concerns that they have over the impact on GB registers of removing the remaining carry-forward entries this December as opposed to in December 2016. However, what we are considering today are provisions for Northern Ireland alone, and I do not propose to rehearse the arguments and merits of what was determined in that case for Great Britain.

The fact is that the framework in place for ensuring the integrity of the Northern Ireland register is entirely different from that for Great Britain. In Great Britain, we are moving away from household registration and have decided not to carry forward entries that are not IER-registered by this December. We are acting to tackle concerns about ghost entries that the system of household registration gave rise to.

In Northern Ireland we have had individual registration for well over a decade. Every elector on the Northern Ireland register is individually registered. Because Northern Ireland does not have an annual canvass but instead checks entries through data streams, we can and do check the validity of non-respondents.

Great Britain and Northern Ireland have different systems for registration. We believe that there is merit in retaining these individuals on the Northern Ireland register, but that it is simply not appropriate in the case of Great Britain to retain non-IER-registered entries that have not been validity-checked and have not responded to the sustained programme of contact that GB councils have carried out. The chief electoral officer has made it clear that he has no reason to think that non-respondents retained on the Northern Ireland register are anything other than eligible voters. Given the framework of individual registration and data checking in place in Northern Ireland and the current expectation of voters and activists alike that non-respondents who have been validity-checked will remain on the register for the Assembly elections, I urge noble Lords to support this order and the range of provisions in it. I therefore commend this order to the House.

**Lord Kennedy of Southwark:** Before the Minister sits down, I remind him that I put a number of points to him about when these decisions were taken—whether before or after 27 October—on what he knew when he was voting on 27 October and with regard to timelines. He has not addressed them at all in his response.

**Lord Dunlop:** I do not have that information, but I am happy to write to the noble Lord.

**Lord Tyler:** My Lords, despite the advice of the *Companion*, on 27 October I was denied the opportunity to reply to the debate on my Motion or even to indicate whether I wished to withdraw the Motion or to test the opinion of the House. It seems to be my fate that this evening when I do not need it, I am getting that opportunity. As I shall explain, I do not intend to press this amendment to a Division.

[LORD TYLER]

If in Northern Ireland the process that has been described well by a number of colleagues is so much better and does not need an annual canvass, why do the Government not introduce those improvements instead of creating the entirely phoney spectre of ghost voters, as they did when they were dealing with England, Wales and Scotland? The Government have shown themselves to be adopting double standards on this issue. That does no credit to Ministers or indeed to the House or to the Government themselves.

This particular order is much more helpful than the one that we were addressing last month, and I support it. In those circumstances, I beg leave to withdraw the amendment.

*Amendment to the Motion withdrawn.*

*Motion agreed.*

## Arrangement of Business

### *Announcement*

*9.06 pm*

**Lord Taylor of Holbeach (Con):** My Lords, I beg to move that the House do now adjourn during pleasure in anticipation of the receipt of a message from the House of Commons. In order to facilitate the resumption of the House, the annunciators will display a green strip giving an indication of the time of the resumption of the House.

*9.07 pm*

*Sitting suspended.*

## Northern Ireland (Welfare Reform) Bill

### *First Reading*

*10.47 pm*

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

*House adjourned at 10.48 pm.*

# Grand Committee

*Monday, 23 November 2015.*

## **Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2015**

*Motion to Consider*

3.30 pm

*Moved by Lord Bridges of Headley*

That the Grand Committee do consider the Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2015

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments*

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** If there is a Division in the Chamber, the Committee will adjourn for 10 minutes.

**The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con):** My Lords, the instruments before us today will enhance the operation of individual electoral registration, which was successfully introduced last year. In Great Britain, more than 12 million people applied to register under IER, with three quarters of those applying online.

The Minister for Constitutional Reform has spoken about the future vision for electoral registration: maximising opportunities for a complete and accurate register, and making sure that as many of our citizens as possible can participate in our democracy. We know that people rightly expect digital services to be built around them. The Government want to do this while making the system as efficient as possible and driving down costs. These instruments make a modest contribution towards that.

First the instruments remove the requirement for IER applicants to provide their previous name if it has changed in the previous 12 months. Instead, they allow an applicant to provide their most recent previous name if they wish, but provision of this information is not mandatory. The application form will explain that, where previous name details are not provided, additional personal information may be required to verify the application.

Secondly, the instruments make changes to the correspondence required to be sent by electoral registration officers to electors and applicants for electoral registration. Thirdly, the regulations update the electoral registration application form and the annual canvass form to bring them in line with changes made by the Criminal Justice and Courts Act 2015 to the jury-summoning age in England and Wales. This will ensure that the correct information for jury summoning is collected on the electoral register. They will also authorise EROs in England and Wales to inspect marriage records in order to improve the accuracy and completeness of the electoral register. Finally, they make a minor consequential amendment relating to the provision of personal identifiers for postal voting.

The Scottish instrument does not make provisions consequent on the change to the jury age because the changes do not apply in Scotland; nor on the change to access to marriage records, as EROs in Scotland are already authorised to inspect these records.

The previous Government originally intended to make the giving of the most recent previous name mandatory in draft regulations last year. Following concerns raised by users, including from the transgender community, that provision was removed so that further consultation could take place. It emerged that a more acceptable solution would be for IER applications to require the applicant's most recent name on a voluntary basis. The regulations before your Lordships effect such a change.

The changes to correspondence are designed to help reduce the administrative burden on EROs and the potential for confusion among members of the public by avoiding multiple pieces of correspondence. The regulations will amend the way in which EROs send confirmation of registration to successful applicants and the information that that confirmation must contain. When EROs have conducted a review of an individual's entitlement to registration, they will require the ERO to notify that individual in writing of the outcome, and provide information about the appeal process. They also require the ERO to send the individual notice in writing of the outcome of a hearing of a review, and provide information about any appeal process. They will amend the categories of cases in which the ERO does not need to send a letter to any person affected by an alteration in the electoral register.

On the provisions related to the upper age limit for jury service, the register is used as the basis on which people are called for jury service in England and Wales, and EROs have a statutory duty to supply this information. The age limit will change from 70 to 75 in early 2016, and the regulations will require an applicant who is unable to provide their date of birth to specify if they are 76 or over. EROs also issue canvass forms pre-populated with details of electors, including whether they have indicated that they are over 70. These regulations will require the form to specify whether an elector is 76 or over.

Finally, giving authorisation for EROs in England and Wales to inspect marriage records could alert EROs to electors who may wish to change their name on the electoral register, and could also be used to verify the identity of an applicant whose identity cannot be verified using DWP data-matching. That is because proof of name, surname and date of birth is now required in order to marry in the UK. This would reduce the number of applicants who have to provide documentary evidence to establish their identity.

There has been considerable consultation on these provisions. On the previous name and correspondence provisions, the Electoral Commission, while content overall, said that there was some uncertainty about the likely impact on electors and the electoral administration process and that the Cabinet Office should therefore consider how best to assess the impact of the change. The Cabinet Office has responded that it will, together with the commission, continue to monitor completeness and accuracy of the register. It has also given assurances to the commission that the online registration website

[LORD BRIDGES OF HEADLEY]

will be amended to ensure consistency with amendments to the paper application form, and that there is no change to the requirement that, when individuals apply to register by telephone or in person, the ERO must record the required information in writing and submit the completed form for verification. The Cabinet Office also confirmed that it intended to make the regulations in December 2015, subject to parliamentary approval, and would continue to consult with the commission over form design.

The Information Commissioner's Office—the ICO—while welcoming the intended explanation to applicants that provision of previous name information was not mandatory, suggested including further clarification that, when previous name information was not supplied, additional personal information might be required to verify an application. This suggestion has been adopted in the draft regulations. The Association of Electoral Administrators and other electoral administrator organisations consulted responded that making provision of the most recent previous name voluntary would probably have a negative impact, since people may not provide the information, and applicants should be asked to give all previous names. The Society of Local Authority Chief Executives considered that it would lead to more time spent resolving queries. The Government have carefully considered these issues but have decided not to change their policy on previous names. The extra words of clarification suggested by the ICO will give a stronger message about the consequences of not providing previous name information.

On the jury age provisions, the Electoral Commission was content with the proposed timetable for the instrument. The commission pointed out that, if the referendum on the United Kingdom's membership of the European Union were held in autumn 2016, it could have an impact on the timing of the publication of the register after the 2016 canvass and the consequent availability of information about jurors. The Government responded that, in the event of the timing of such a referendum impacting on the 2016 canvass, this would be considered alongside any other pertinent issues relevant to the conduct of the 2016 canvass. The commission will also make reference to inspection of marriage records in its guidance for EROs.

The ICO was also consulted on the jury age and marriage records regulations, and did not consider that they raised any new or significant data protection or privacy issues. On jury age, SOLACE raised the point that information about over 75 year-olds would not be available until after the 2016 canvass. The Government responded that this is why the measure will not come into force until after 1 December 2015. The Government Equalities Office raised some concerns regarding EROs inspecting marriage registers and how this might potentially affect transgender people. The Government informed the GEO that guidance on the use of this information would be a matter for the commission, and ensured that there was a discussion between the GEO and the commission on the production of guidance.

In conclusion, the Government believe that the instruments before the Committee today will enhance IER, and I commend them to the Committee.

**Lord Kennedy of Southwark (Lab):** My Lords, these regulations make a number of changes to the information that needs to be supplied to EROs when applying to register to vote under IER, along with changes to jury summoning in England and Wales, and to correspondence and postal voting. On this issue the Government have on far too many occasions got the balance wrong between completeness and accuracy. They have continued, as they did in the last Parliament, to fail to secure cross-party agreement on these matters, which is a matter of great regret. When my noble friend Lord Wills was in the other place, he had responsibility for these matters. He always sought to get cross-party agreement, which he took seriously. We are not doing that now and it is very regrettable.

I accept that these are relatively small matters, but I fail to see how they help to improve the completeness of the register. The noble Lord said that the Electoral Commission referred to the uncertainty of the impact on electors and on the electoral administration process. Furthermore, as the noble Lord mentioned, the Association of Electoral Administrators thought that this would have a negative impact, as we are moving from mandatory to voluntary previous name provision. SOLACE thought the same.

I find the comments in paragraph 7.2 of the Explanatory Memorandum extraordinary. You are saying that the provision of a previous name increases verification rates, whether it has changed after more or less than 12 months, so you then remove the 12-month mandatory rule and totally ignore the professionals who think that this could lead to fewer people giving the information, thereby increasing the cost and bureaucracy and making the register less complete. This is an example of the Government interfering where they are not wanted. They should have left well alone.

I did not see any reference to political parties in the consultation, which the noble Lord talked about in his remarks. It is not good enough for the Government to say that they will leave it to the Electoral Commission to talk to the political parties. To be clear, it does not do so on these matters. The Government need to consult with the political parties about elections as part of the process. Many experts in all the parties' headquarters give advice on these things.

Will the noble Lord also provide me with a copy of the ministerial guidance referred to in paragraph 9.1 of the Explanatory Memorandum and explain further how the Cabinet Office will review the completeness and accuracy of the register as referred to in paragraph 12?

**Lord Bridges of Headley:** I thank the noble Lord for his short but sweet intervention. I am sorry to say that we might disagree on some points. I do not believe that these provisions quite do what he says. I believe that they will enable us to create a more complete and more accurate register.

The noble Lord asked some detailed questions about how we made these decisions. I will review his questions and, if I may, write to him in due course. In particular, I am more than happy to pick up his point on consultation with political parties as we look ahead in the months to come. Even if we disagree on certain matters, we all

certainly agree that we want to see more people engaged in our political system and registered to vote. That is an aim we all share, and I am more than happy to consider ways to work with him on that.

**Lord Kennedy of Southwark:** I am very pleased to hear that. Before the noble Lord was in the House and had his present responsibilities, I was never convinced by that at all. We could do far, far more. As we all know, millions are not registered to vote in this country. That is an absolute disgrace for a democracy such as ours. We could do much more on this, but we are just not getting there at all at the moment.

**Lord Bridges of Headley:** I am happy to talk to the noble Lord outside of the Room on that precise point. I do not want to rehearse all the arguments we had on the IER debate a few weeks back, but I believe that there has been some confusion over those who are not on the register and those who are entitled to vote. We need to get more people on the register and encourage greater engagement. I am more than happy to discuss that with the noble Lord. As I said, I will endeavour to write to him to address any of the other points.

*Motion agreed.*

### **Representation of the People (Scotland) (Amendment) (No. 2) Regulations 2015**

*Motion to Consider*

3.42 pm

*Moved by Lord Bridges of Headley*

That the Grand Committee do consider the Representation of the People (Scotland) (Amendment) (No. 2) Regulations 2015

*Relevant document: 6th Report from the Joint Committee on Statutory Instruments*

*Motion agreed.*

### **European Parliamentary Elections (Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2015**

*Motion to Consider*

3.43 pm

*Moved by Lord Bridges of Headley*

That the Grand Committee do consider the European Parliamentary Elections (Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2015.

*Relevant document: 8th Report from the Joint Committee on Statutory Instruments*

**The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con):** My Lords, the draft order relates to the functioning of the Political Parties, Elections and Referendums Act 2000 as it applies to Gibraltar.

The Act provides the regulatory framework for political parties and campaigners at elections and referendums. In 2004 the Act was updated to take account of the extension to Gibraltar of the franchise for European Parliament elections. This included establishing which Gibraltar individuals and bodies were eligible to campaign at European parliamentary elections in the south-west region, or to donate to political parties contesting those elections. As far as possible, the eligibility criteria follow the principles that determine which UK individuals and bodies are eligible to donate to political parties and campaign at national elections.

Noble Lords will be aware that the proposed referendum on our membership of the European Union will also take place in Gibraltar. As a result, the European Union Referendum Bill, currently being debated in the Chamber on Report, applies various provisions of the Act that deal with Gibraltar matters.

In drafting the EU Referendum Bill, and from discussions with the Government of Gibraltar, it has been clear that certain references to Gibraltar legislation in the Act are now out of date or otherwise inaccurate. To ensure the effective functioning of the EU referendum, as well as future European parliamentary elections, it is necessary to update and correct these references, and the order will deliver that.

The order also substitutes references to the “House of Assembly of Gibraltar” with references to the “Gibraltar Parliament”. The Gibraltar Parliament replaced the House of Assembly of Gibraltar as a result of the Gibraltar Constitution Order 2006.

Finally, the order also removes certain redundant transitional provisions which accounted for circumstances before the publication of the first version of the Gibraltar electoral register for the purpose of European Parliament elections.

I reassure noble Lords that, in accordance with the Government’s statutory duty, the Electoral Commission has been consulted on this order and has confirmed that it is content with it. Officials have also worked closely with the Government of Gibraltar in preparing the order. I therefore commend it to the Committee.

**Lord Kennedy of Southwark (Lab):** My Lords, I have no comment to make about the order. It is all very straightforward, so I am very happy to support it.

*Motion agreed.*

3.46 pm

*Sitting suspended.*

### **Small and Medium Sized Business (Credit Information) Regulations 2015**

*Motion to Consider*

3.48 pm

*Moved by Lord Ashton of Hyde*

That the Grand Committee do consider the Small and Medium Sized Business (Credit Information) Regulations 2015

*Relevant document: 4th Report from the Joint Committee on Statutory Instruments*

**Lord Ashton of Hyde (Con):** My Lords, I shall speak also to the draft Small and Medium Sized Business (Finance Platforms) Regulations 2015. With permission, I will refer to these as the draft regulations henceforth.

The Government are committed to ensuring that small and medium-sized enterprises—SMEs—can access the finance that they need to grow and to create jobs. Currently, the four major banks account for 80% of SMEs' main banking relationships. The Government believe that such high concentration levels are bad for business and they are determined to see a significant change in competition in the UK SME banking market.

These draft regulations represent the final legislative piece of two flagship measures to improve competition in the SME lending market. They will remove major structural barriers to entry in the SME lending markets—namely, a lack of availability of credit information, a lack of understanding of alternative finance providers and a tendency on the part of most SMEs to give up when they are declined for finance.

It may be helpful at this point if I provide some detail on the need for these regulations. Although these draft regulations are linked and complement each other, I will start by focusing on the aspects relating to credit information.

A lender needs to know the creditworthiness of an SME in order to lend to it. The major banks have access to those data, particularly current account data, which gives them a comparative advantage in assessing the risk of a borrower. The control of information on the creditworthiness of SMEs by existing providers is a barrier to entry in the lending market. Lack of access to those data limits the ability of challenger banks and alternative finance providers to accurately assess credit risk, both in absolute terms and relative to those lenders that hold the relevant information. This barrier can be removed through the sharing of credit data by lenders. In the UK, data are shared through private credit reference agencies—CRAs. However, certain data, particularly current account data, are shared through “closed user groups” and not on an equal basis. This puts newer lenders that do not have access to the full range of data at a disadvantage in taking well-informed credit decisions.

The Office of Fair Trading, the Competition Commission, the Bank of England, the *Boosting Finance Options for Business* review, headed by Tim Breedon, and numerous think tanks and informed commentators have all highlighted the lack of SME credit information as a barrier to competition in the SME banking market and SME lending in particular.

These draft regulations will open up the closed groups that have access to certain types of information. This will level the playing field between providers, allowing alternative finance providers and challenger banks to accurately conduct SME credit risk assessments and make it easier for SMEs to seek a loan from a lender other than their bank. More available data should also enable a better understanding of the SME sector, which should further stimulate competition and innovation in SME lending, improving the cost and quality of services offered.

I will now turn to the finance platforms draft regulations, which will also have a major impact on the ability of SMEs to access more and better finance and on the ability of challenger banks and alternative finance providers to compete effectively.

Survey data show that many small businesses approach only the large banks when seeking finance. A large number of these applications are rejected. In the case of first-time small and medium-sized business borrowers, the rejection rate is around 42%. We know that when applications are declined, a large number of smaller businesses cancel their plans rather than exploring alternative options. As other finance providers with different business models may be willing to lend to these businesses, this represents a market information failure, with borrowers looking to borrow and lenders willing and able to lend, but an inability on the part of both to identify each other.

Under this legislation, designated banks will be required to offer any SME they decline for finance the chance to have its details shared with an online platform that can help match it with other finance providers. This will help put together the alternative finance providers and challenger banks that may not be aware of the SMEs seeking finance and the SMEs seeking finance that may not know about alternative providers and challenger banks. This will help facilitate more lending to SMEs that are looking to grow and expand.

Challenger banks and alternative finance providers have been very supportive of both proposals, as are the UK's major business groups, including the Federation of Small Businesses and the Confederation of British Industry. The major banks and the British Bankers' Association have also been supportive.

Together, these policies have the potential to create a significant change in the market for SME finance. However, for this to happen it is essential that SMEs have confidence in how their data are being used, and that the necessary protections are in place to safeguard the quality of those data. The Government have ensured that SME protections are key elements of the policy design.

The Government have provided SME protections in a number of ways. I will start by outlining the protections afforded to SMEs under the credit information draft regulations. First, data will be shared only where the terms of the products themselves allow data to be shared with credit reference agencies. This reflects the existing framework for the sharing of personal data in the UK and is in line with Data Protection Act legislation. Secondly, the finance provider requesting access to the information from the CRA must gain the express permission of the SME to do so and can access the information only for the purpose of undertaking a credit assessment.

Thirdly, the vast majority of SMEs—sole traders, small partnerships and unincorporated bodies—have the right to action in respect of any incorrect data held about them by a CRA. This allows a complaint to be made to the CRA seeking correction, a complaint to be made to the FCA or the Information Commissioner and, ultimately, a court to order the CRA to rectify, block, erase or destroy any incorrect data. These rights are enshrined in the Data Protection Act and Consumer Credit Act legislation. However, there is currently a



difference in protections if the CRA in question is FCA regulated or non-FCA regulated. CRAs that handle mainly business data do not need to be regulated by the FCA as the provision of commercial credit data is an unregulated activity. The credit information regulations will modify both the Data Protection Act and the Consumer Credit Act to ensure that the protections apply for data held by all designated CRAs.

Fourthly, these draft regulations will extend the right of action in respect of any incorrect data provided under the draft regulations to all SMEs, including companies. This allows a court to order the CRA to rectify, block, erase or destroy any incorrect data held on any SME. Finally, the draft regulations will extend the remit of the Financial Ombudsman Service so that any micro-business with a dispute with any designated CRA can seek a Financial Ombudsman Service decision which replicates the situation in other areas of the regulated financial sector.

I turn now to the protections provided to SMEs under the finance platforms draft regulations. First, data are provided to finance platforms only with the SME's agreement, and finance platforms can provide those data to finance providers on their lending panel only in an anonymised form. Finance providers will then make expressions of interest through the platforms, and SMEs will have the choice to allow specific finance providers to see their details and begin a bilateral conversation. This process will ensure that the business seeking finance remains protected and in control throughout the process.

Secondly, and mirroring the credit information draft regulations, the finance platforms draft regulations will extend the remit of the Financial Ombudsman Service so that any micro-business with a dispute with any designated finance platform can seek a Financial Ombudsman Service decision. Taken together, these are a welcome strengthening of protections for SMEs and have been welcomed by SMEs themselves and business groups.

I turn now to the issue of designation and I will identify the banks, CRAs and finance platforms upon which the obligations contained within these draft regulations will fall. The Government have already announced that they intend to designate RBS, Lloyds, Barclays, Santander, HSBC, Allied Irish Bank, Bank of Ireland and Danske Bank. This decision was made on the advice of the Bank of England based on market share and the importance of these banks in the SME lending market in both Britain and Northern Ireland. Capturing these banks achieves the policy objective of opening up competition in SME lending without imposing the burden of sharing data on smaller credit providers. The Government have not yet announced which CRAs or finance platforms will be designated under these draft regulations. The British Business Bank is currently undertaking a due diligence process on CRAs and finance platforms that have expressed an interest in becoming designated and will advise HM Treasury on designation later in the autumn. This due diligence process will ensure that any CRA or finance platform which is designated has the required systems and processes to ensure that the obligations and policies within the draft regulations can be carried

out while providing the necessary protections for SMEs. This will help ensure that these policies are successful and can make a significant positive impact in the SME lending market.

I hope that my words this afternoon have assured noble Lords that the draft regulations are needed and welcomed, and that they will make a positive impact on the SME lending market and therefore provide for improved outcomes for the UK's SMEs when accessing finance. They will help to create a level playing field between finance providers and make small businesses aware of alternative finance options, while maintaining and strengthening protections for our smallest businesses. This will mean that the small businesses that are so vital to the UK economy can have confidence when accessing finance and can continue to get the finance they need to grow and expand.

4 pm

**Lord Tunnicliffe (Lab):** My Lords, I thank the Minister for his clear and thorough presentation of these two sets of regulations. As he outlined, these two statutory instruments will help small and medium-sized businesses access finance. The first instrument concerns the information available to finance providers of SMEs where the SME in question has given permission. SME lenders above a certain market share threshold will be required to share credit data on their SME customers with credit reference agencies for the purpose of credit scoring. CRAs will also be required to ensure that there is equal access to this data for alternative credit providers.

The second instrument addresses SMEs' ability to access the finance they need in order to start and sustain their business models. The orders would require designated banks to refer details of SME applicants who are turned down for finance, with the SME's permission, to private sector platforms that will facilitate contact with alternative finance providers that are looking to offer finance. The intent of both these measures is to ensure that the process behind SME lending is easier and that the present barriers experienced by many SMEs are removed. These are principles which the Labour Party wholeheartedly supports. The Federation of Small Businesses states that small firms account for 99.3% of all private sector business in the UK. They employ 15.6 million people and have a combined turnover of £1.75 trillion. The country's economic success depends on small businesses thriving.

Given this, as my honourable friend Rob Marris said in the other place, we will not oppose these orders. That said, there are still a number of points that I would like to raise which I hope the Minister can clarify in his response. In 2012, the Breendon task force stated that the Government have a role to play in encouraging lending,

"through the disclosure of data that sits within public bodies."

Can the Minister outline what the Government have done in the intervening three years to play their role? For example, did they encourage RBS and Lloyds Bank to lend particularly to SMEs? As has already been outlined, the first statutory instrument relates to the need to make credit information on SMEs more accessible. Can the Minister indicate what greater data sharing banks have done with non-bank providers?

[LORD TUNNICLIFFE]

Are there examples of best practice that can be followed and will these be included in the implementation guide? The Explanatory Memorandum states that an implementation document will be produced; can the Minister set out a timeline for its introduction?

Turning explicitly to the finance platforms instrument, in section 10 of the Explanatory Memorandum the Government state:

“It has not been possible to monetise many of the benefits of this measure”.

Yet the impact assessment dedicates two pages to setting out the benefits for small businesses, saying that, applying these averages across the 25,500 successful businesses seeking loans from alternative providers via platforms suggest that this policy could increase the supply of credit to SMEs by approximately £1.4 billion. I ask the Minister very simply: which one is it? The Government can either provide monetised estimates or not; they cannot do both. I would be grateful for some clarification.

I would like to make a final point specially relating to these measures concerning credit reference agencies—CRAs. During the debate in the other place, the Financial Secretary to the Treasury said:

“The Government have not yet announced which CRAs or finance platforms will be designated under the draft regulations. The British Business Bank is currently undertaking a due diligence process on CRAs and finance platforms that have expressed an interest in becoming designated, and it will advise the Treasury on designation later in the autumn. The due diligence process will ensure that any designated CRA or finance platform has the required systems and processes to ensure that the obligations and policies within the draft regulations can be carried out, while providing the necessary protections for SMEs. That help will ensure that these policies are successful and have a significant positive impact on the SME lending market”.—[*Official Report*, Commons, Third Delegated Legislation Committee, 5/11/15; col. 6.]

While I accept that the necessary due diligence has to be carried out, it is regrettable that these regulations were introduced before a decision on the CRAs had been made. There may be a perfectly reasonable explanation, and I would be grateful if the Minister could say something more on this. Does he not think that a more informed and constructive debate could have taken place if we had had ready access to information about who the credit agencies are going to be? Finally, can the Minister say when he expects a full list of the CRAs and finance platforms to be available and whether further regulations will be required?

It is also up to CRAs, as I understand it, to apply to be designated under the credit information regulations. Will the Minister explain to the Committee the Government's thinking on why that will not be compulsory? As I have already said, we support any attempts by the Government to make the life of small businesses easier, and that is why we are not opposing these instruments. They do, however, deal very much with the start of a small business's life and, in ending, I would like to ask the Minister about the other end of the spectrum, which is of course inextricably connected.

Does the Minister not agree that, while it is all well and good enabling the start-up of more SMEs, this means very little in the long term if they are not sustainable because so many are held back by late payments? The Government are not doing nearly enough to compel larger businesses to pay their smaller counterparts.

Does the Minister not agree that we need to promote a culture of prompt payment and that the Prompt Payment Code just does not go far enough? The Government need to start legislating to create these obligations, rather than expecting things to change by sticking to the status quo.

The SME access to finance study found that two-fifths, or 43%, of businesses say that they are concerned or very concerned about cash flow over the next 12 months, but their biggest problem, experienced by a quarter of SMEs, is late and failed payments from customers. Seventy per cent of small businesses do not grow—they remain small businesses—so, for the sake of their sustainability, it is vital that we get this right.

These are issues which we will be addressing in the Enterprise Bill. However, I would appreciate it if the Minister would respond to the points that I have made—if not now then in writing after the Committee.

**Lord Ashton of Hyde:** My Lords, I thank the noble Lord for his support for these regulations and I shall try to answer the questions that he asked. If I find that I cannot answer any of them in great detail, I shall be very happy to write to him.

I think that these draft regulations will generate a step change in the market for SME finance in terms of competition that could improve not only the amount of finance available to SMEs but also the cost and quality of services that small firms are offered. As I said in my opening remarks, a large body of evidence shows that there are currently market failures in the SME lending market, and these draft regulations will help to remove some of the barriers to entry identified by this evidence.

The noble Lord suggested that we should explore greater credit data sharing, and asked what the Government have done about greater data sharing for banks and non-bank providers. In fact, the regulations do just that: they apply to the UK's major banks, which will be required to share data through the CRAs. The BBA and the major banks have been collaborative and supportive in ensuring that these regulations are effective in increasing the amount of data on SMEs that is shared on with finance providers. A footnote in the credit information Explanatory Memorandum or the finance platform Explanatory Memorandum gives the example of the sharing of data on VAT returns. That is another example of the Treasury—HMRC, in fact—consulting on credit and publicly held data.

The noble Lord asked what the Government have been doing to help SME lending with RBS and Lloyds, in which the taxpayer has a large share, albeit diminishing. Although RBS and Lloyds are mainly publicly owned, it was always a feature of that arrangement that operational decisions are not made by Ministers—that was never the Government's approach. The best way of ensuring that the banking sector, including RBS and Lloyds, is in a position to lend to SMEs is to ensure that the overall economic situation is suitable for that, and that there are good lending conditions. Policies such as funding for lending were also designed to help banks in that regard. We established the British Business Bank to support the development of diverse finance markets for smaller businesses, bringing together

the management of new and existing schemes into a single commercially minded institution. That bank will manage up to £2.65 billion of existing schemes and deploy a further £1.25 billion on new programmes.

The noble Lord asked why these regulations are being made before the CRA implementation guide is published. The banks and the CRAs, with input from the Government, have put together a technical specification guidance document that is aiding the IT development programmes being undertaken, and which will ensure that banks and CRAs can comply with their obligations. The document is therefore being used effectively and will be published in due course. However, a publication date has yet to be confirmed.

We said in the impact assessment that the benefits cannot be monetised. In it, we tried to put the costs to business and banks and took a conservative position, saying that although we expect the regulations to result in an increase in lending, we would not monetise and take notice of them. So, there may well be a benefit, but we do not take credit for that in the impact assessment. We are trying to give a worst case scenario but we obviously expect there to be a benefit; otherwise, we would not do this. It was simply a question of being sensible and not monetising something that is not definite.

The noble Lord asked why the CRA designation is not compulsory, as it is for the banks. In many ways, the situation with CRAs is the other way round. It is for the benefit of a CRA to be designated and to have available all this data. The issue for the Treasury in designating a CRA is to make sure that it is capable of dealing with and protecting the data. It is therefore important that CRAs are able to show that they can deal with data in line with the data regulations. We want to set the framework by these regulations so that, when the designation due diligence process takes place, we can get the system up and running as soon as possible. This is a framework which will allow the position to take off as soon as the designations are made.

4.15 pm

Lastly, the noble Lord touched on a slightly separate subject, that of late payments. I agree completely with him that this is an important issue which has to be dealt with because it makes the lives of SMEs more difficult. The Government are taking forward a package of measures in both the public and the private sectors to tackle it. As they should, the Government are leading the way by paying 80% of undisputed invoices within five days or within 30 days. Through the Enterprise Bill, the Government are introducing measures currently before Parliament to create a Small Business Commissioner to encourage a change in how businesses deal with each other. We have strengthened the Prompt Payment Code, to which the noble Lord referred, to include a maximum 60-day payment term for all signatories from 2016, along with 95% of invoices to be paid within 60 days unless there are exceptional circumstances, with 30 days promoted as the norm or best practice. The Government are working to increase the number of signatories to the Prompt Payment Code. It was a manifesto commitment to ensure that all major government suppliers sign up to it.

Representative bodies already have the power to challenge contractual terms which seek to oust or vary a supplier's statutory right to claim interest on late payments. We will extend the powers that representative bodies have to challenge grossly unfair contractual terms related to late payment in line with the EU late payment directive. We are working on that and we agree with the sentiment behind the noble Lord's question.

This shake-up of the lending market for SMEs will improve the ability of our small and medium-sized businesses—which are so vital to the UK economy in terms of growth, jobs and opportunities—to access the finance they need to grow, expand and continue making a significant positive impact on the UK economy. I therefore ask the Committee to join me in supporting these regulations.

*Motion agreed.*

### **Small and Medium Sized Business (Finance Platforms) Regulations 2015**

*Motion to Consider*

*Moved by Lord Ashton of Hyde*

4.16 pm

That the Grand Committee do consider the Small and Medium Sized Business (Finance Platforms) Regulations 2015

*Relevant document: 4th Report from the Joint Committee on Statutory Instruments*

*Motion agreed.*

### **Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2015**

*Motion to Consider*

*Moved by Lord Faulks*

4.17 pm

That the Grand Committee do consider the Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2015.

*Relevant document: 5th Report from the Joint Committee on Statutory Instruments (Special attention drawn to the instrument)*

**The Minister of State, Ministry of Justice (Lord Faulks)**  
**(Con):** My Lords, the statutory instrument before the Committee today amends the Civil Legal Aid (Merits Criteria) Regulations 2013, known as the “merits criteria regulations”, so that legal aid funding can be provided in some cases where the prospects of succeeding are below 50% but where legal aid funding is required under the European Convention on Human Rights or EU law. These changes have been made to reflect the findings on the legal aid merits test made by the High Court in the recent case of IS.

While this judgment is under appeal—I have had an indication that an appeal will be heard on 25 or 26 April next year—the Government consider it important

[LORD FAULKS]

that these amendments are brought into force without delay to provide a means by which the Legal Aid Agency is able to comply with the judgment in the interim. Failure to make such a change promptly would have resulted in an extended period in which the Legal Aid Agency might in some cases either have taken an unlawful decision or indeed have been unable to take any decision. For these reasons, and owing to limited parliamentary time, the statutory instrument before us was made and brought into force using the urgency procedure provided for under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The merits criteria regulations set out the merits criteria that must be applied by the Director of Legal Aid Casework at the Legal Aid Agency when determining whether an applicant qualifies for civil legal services under Part 1 of Schedule 1 to LASPO. Broadly speaking, these criteria provide the basis for deciding whether it is justified to provide, or to continue to provide, public funds in an individual case. The factors to be considered are similar to those that would influence a privately paying client of moderate means when considering whether to become involved in proceedings.

Why are the Government taking this action? The merits criteria regulations include a number of different requirements, including a prospects of success test for an application for full representation. When the prospects of success test applies, the regulations generally prevent the Legal Aid Agency funding any case where the prospects of success are below 50%. Had the merits criteria regulations remained unamended, the director would therefore have been placed in something of a bind. Refusing legal aid in some cases would have been an unlawful decision as, on the High Court's findings, it might have resulted in a convention breach. While the Legal Aid Agency could have sought to delay non-urgent decisions, we did not think it would be reasonable to await the outcome of the Government's appeal in this matter, which may not be known for some time. Even though the hearings are in April, there may well of course be some delay in producing a judgment.

The amendments made by this instrument mean that, in cases where an application for full representation is subject to an assessment of its prospects of success, legal aid may now be provided for some cases assessed as having "borderline" or "poor" prospects of success. The director will need to be satisfied that it is necessary to determine or, in the case of a risk of a breach, appropriate to determine that the prospects of success test is met in order to prevent a breach, or the risk of a breach, of the legal aid applicant's rights under the convention or enforceable EU rights.

A discrete point arises. The Joint Committee on Statutory Instruments, or JCSI, has expressed its views on the clarity—or, more accurately, the lack of clarity—in respect of the transitional provisions in the SI. I apologise to the Committee for any confusion that may have been engendered; the department intends to develop a revised drafting approach—resulting, I hope, in greater clarity—to be used in future that is more closely targeted at solely those cases that begin

before commencement. However, we consider that the transitional provisions in this instrument still operate to achieve the policy intention.

This instrument makes important and necessary amendments to the merits criteria regulations to ensure that legal aid will continue to be provided in any case where refusal to grant would be unlawful. It does so while maintaining the underlying purpose of the civil legal aid eligibility criteria and the legal aid scheme—that is, to make sure that the limited legal aid budget is directed at the cases which most justify public funding. I therefore commend this statutory instrument to the Committee, and I beg to move.

**Lord Bach (Lab):** My Lords, I shall be extremely brief. I thank the Minister for his very clear outlining of these regulations. I can tell him and the Committee at once that the Opposition do not oppose it—indeed, we support it. I thank him for his generous apology regarding the points made by the JCSI. The regulations are clearly a sensible step for Her Majesty's Government to have taken following the High Court judgment. The Government are appealing that decision, and we are grateful to the Minister for telling us the date. I gather that it was a fixed date for the hearing. The Minister and I know that those dates can change, however fixed they may or may not be. If the appeal is unsuccessful, will it be the Government's intention to change the criteria by legislation? Our advice, for what it is worth—and if the Government are interested in any way—is not to do so. We welcome the regulations.

**Lord Faulks:** I am grateful to the noble Lord for his observations and for the advice that he so generously offered on behalf of Her Majesty's Opposition. Of course, depending on the outcome of the case, one side or another might consider it necessary to pursue the matter further to the Supreme Court, were permission to be obtained, but in due course a decision will follow that judgment and we will decide whether or not to proceed with the matter.

I have been given an amended date, I am afraid to say. I wrongly informed the Committee that it was April, but the better news is that it has been brought forward: the date is now 21 or 22 March 2016, but of course that will be subject to the provisos so accurately identified by the noble Lord, Lord Bach.

**Lord Bach:** If we allow this to carry on for a bit longer, do you think that the date may get closer and closer?

**Lord Faulks:** I am grateful for that interruption. Who knows? But we are at least moving in the right direction, I am glad to say.

I am grateful for the general acknowledgement of the sense of these regulations, and I thank the noble Lord for that. I believe this to be an appropriate instrument that makes the necessary amendments to the merits criteria regulations in order to comply with the judgment pending the appeal.

*Motion agreed.*

**Civil Legal Aid (Merits Criteria and  
Information about Financial Resources)  
(Amendment) Regulations 2015**

*Motion to Consider*

4.26 pm

*Moved by Lord Faulks*

That the Grand Committee do consider the Civil Legal Aid (Merits Criteria and Information about Financial Resources) (Amendment) Regulations 2015

*Relevant documents: 8th Report from the Joint Committee on Statutory Instruments*

**The Minister of State, Ministry of Justice (Lord Faulks):**

I beg to move that the Committee has considered the draft Civil Legal Aid (Merits Criteria and Information about Financial Resources) (Amendment) Regulations 2015.

The statutory instrument before us today amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to specify the merits criteria that must be met in order to qualify for civil legal aid for applications for post-adoption contact. This statutory instrument also makes amendments to the Legal Aid (Information about Financial Resources) Regulations 2013—the information regulations. The amendments provide that the director of legal aid casework at the Legal Aid Agency may make an information request to the relevant Secretary of State to find out whether a legal aid applicant is in receipt of direct payments for special educational needs or direct payments under Section 17A of the Children Act 1989. That information is relevant for the purposes of the means assessment that the director must carry out.

Orders for post-adoption contact were introduced by the Children and Families Act 2014, which inserted Sections 51A and 51B into the Adoption and Children Act 2002. Applications can now be made for a post-adoption contact order when the court is making an adoption order or when an adoption order has been made. These provisions came into effect on 22 April 2014. The Children and Families Act 2014 also amended Part 1 of Schedule 1 to LASPO. This means that legal aid may be available for any application for post-adoption contact where the person applying for legal aid provides evidence of domestic violence or child abuse or where they are a child who is a party to the proceedings.

Why is this necessary? As I have already mentioned in this Committee today, the merits criteria regulations set out the merits criteria that must be applied by the director of legal aid casework at the Legal Aid Agency when determining whether an applicant qualifies for civil legal services under Part 1 of Schedule 1 to LASPO. Regulation 2 of the merits criteria regulations sets out the interpretation and definition of terms used within those regulations. This instrument adds certain civil proceedings in relation to post-adoption contact orders to the definition of “private law children case”. As a result, the merits criteria which apply to such proceedings when determining an individual’s eligibility for legal representation will be those set out in Regulations 64 and 68. This means that some

elements of the standard merits test will not apply, such as the requirement for the case to be unsuitable for a conditional fee arrangement.

Separately, Regulation 69 of the merits criteria regulations sets out the criteria for determinations for legal representation in relation to family cases to which specific merits criteria apply, other than those specifically provided for elsewhere in the merits criteria regulations. The amendments made by this instrument will also exclude from the scope of Regulation 69 determinations in relation to certain post-adoption contact order proceedings. This exclusion is necessary because, as I mentioned, the applicable criteria for such matters will be those in Regulations 64 and 68.

4.30 pm

Turning to the amendments to the information regulations, where a child has a special educational need they may be eligible for an education healthcare plan, which brings a child’s education, health and social care needs into a single, legally binding document. Cash payments may be made directly to the child’s parent or guardian, the young person or their nominee, allowing them to arrange provision of necessary services such as transport, as identified in the individual’s plan. These direct payments are currently made under the Special Educational Needs (Personal Budgets) Regulations 2014, made under Section 49(3) of the Children and Families Act 2014. Direct payments may also be made under Section 17A of the Children Act 1989 to parents of disabled children, a disabled person with parental responsibility for a child or disabled children aged 16 or 17 to meet their assessed needs.

These direct payments are disregarded for the purposes of a legal aid financial eligibility assessment following amendments previously made by the Legal Aid, Community Legal Service and Criminal Defence Service (Amendment) Regulations 2015, which came into force on 13 April. Therefore, these direct payments are not included when calculating a person’s disposable income.

Why is this necessary? The information regulations give the director of legal aid casework the power to request information from the relevant Secretary of State about a prescribed benefit an individual is receiving, in order to make a financial assessment of legal aid eligibility. The Government intend that the director should be able to make an information request to the Secretary of State to find out whether a legal aid applicant is in receipt of direct payments that are disregarded for the purposes of the legal aid financial eligibility assessment. The amendment to the information regulations will enable the director to make such a request.

The statutory instrument makes relatively minor but important changes to the civil legal aid scheme to provide for the application of specific merits criteria when determining a person’s eligibility for legal aid for applications for post-adoption contact—a relatively new concept—and to provide for efficiency in the assessment of legal aid eligibility through the power to make information requests. In those circumstances, I commend the statutory instrument to the Committee and beg to move.

**Lord Bach (Lab):** My Lords, I again thank the Minister for his clear outlining of both parts of this regulation. I must tell the Committee that we, on

[LORD BACH]

behalf of the Opposition, welcome this regulation in both its parts. It is slightly worrying for the Opposition to agree to two regulations, one after the other, concerning Part 1 of LASPO. The Minister knows very well that we think LASPO has been an absolute disaster, certainly as far as Part 1 is concerned and as forecast by many Members of this House.

However, this is not the occasion to debate Part 1 of LASPO in general terms. I know the Minister will be looking forward as much as I am to the debate on Thursday 10 December on the future of legal aid—it is something he may not be aware of, but it will be a thrill for him to come to it. These regulations seems perfectly sensible. We have taken some advice on the effects of the two parts and they seem extremely sound. We are happy to support them.

**Lord Faulks:** I am very grateful to the noble Lord for his comments on the two parts of this statutory instrument. I look forward to the debate on 10 December—it comes as news to me, but no doubt I would have been informed in due course—if I am lucky enough to respond to that report on the Government's behalf. I know that the noble Lord has been assiduous in his opposition to Part 1 of the LASPO Act. I noticed that he did not mention Part 2, to which there was also opposition, but that seems to have rather faded away. However, that is a debate for another day and we look forward to engaging in it.

In the mean time, I respectfully say to the Committee that the instrument makes important and necessary amendments to the merits criteria regulations to ensure that legal aid will continue to be provided in any case where refusal would be unlawful. It does so while maintaining the underlying purpose of civil legal aid eligibility criteria and the legal aid scheme, which is to ensure that the limited legal aid budget is directed at the cases that most justify public funding. I therefore commend the statutory instrument to the Committee.

*Motion agreed.*

### **Police: Report of the Committee on Standards in Public Life** *Question for Short Debate*

4.35 pm

*Asked by The Earl of Lytton*

To ask Her Majesty's Government what proposals they have to improve police leadership, accountability and ethics in the light of the report of the Committee on Standards in Public Life *Tone from the top*.

**The Earl of Lytton (CB):** My Lords, I am delighted to introduce this short debate on the report of the Committee on Standards in Public Life, entitled *Tone from the Top*. My interest in police accountability is not original. It started with Lord Corbett of Castle Vale and his researcher, and the fact that I was able to source a PhD paper from one Dr Roger Patrick, which delved into all sorts of matters on the reporting of

crime. I then raised the issue before the House in a short debate in March 2013. Subsequently, the Public Administration Select Committee looked into the matter. Following that, the Committee on Standards in Public Life made its investigation and report. I am delighted that the author of that report, the noble Lord, Lord Bew, as chairman of the Committee on Standards in Public Life, is with us. I congratulate him on his committee's report.

I continue by declaring what I believe is an important matter: the fundamental importance of policing in this country. It is a vital first service. It must command the confidence of the public at large, of business and of government. I pay tribute to the many officers who willingly face danger in the interests of protecting the public. There remains a high level of public confidence and support, even though it has taken a bit of a hit over recent years because of a number of high-level failings and revelations referred to in the noble Lord's committee's report. Stories continue to come out weekly, if not daily.

Responsibility for checking crime recording is claimed by Her Majesty's Inspectorate of Constabulary, so it is unsurprising that following the Public Administration Select Committee's report, the Committee on Standards in Public Life turned its attention to the means of accountability set up under the coalition Government—namely, the police and crime commissioners and the panels that work with them. The Home Affairs Committee described this as the creation of,

“a system that relies on local scrutiny and the main check is at the ballot box”.

It also remarked that this comes round only every few years.

Since their creation, several factors have come to light. First, it is fair to say that there has been a bit of a democratic deficit in terms of poor voter response. That feature has not been improved on in subsequent intermediate elections for replacement PCCs. Secondly, many of the police and crime commissioner candidates came from party-political backgrounds. From my own standpoint—from where I sit in the House—I think that a greater degree of political neutrality would have been more appropriate.

Thirdly, some PCCs came to their posts with a history of police or allied area involvement. In some cases it appeared that this might—and in some cases did—impede their role of holding a chief constable to account. Fourthly, while PCCs have a sanction against the chief constable, this may not drill down to the culture of policing in the middle ranks. Example may be from the top, but leadership deficits pointed to by others may mean that this does not permeate through the force, leaving some cultural practices effectively unchanged and unchallenged. Fifthly, PCCs, and indeed their panels, seem to have had a reluctance to challenge anything remotely associated with what the police might choose to claim to be operational matters. I note that the CSPL report comments on the reluctance of one PCP to cross that line.

In respect of police and crime commissioner performance, the report makes some significant recommendations, which I shall paraphrase because I know that the noble Lord, Lord Bew, will want to

flesh some of them out. They fall into the areas of standards, evaluation, sanctions, disclosure and transparency, objectivity in dealing with complaints and safeguards in appointment procedures.

Although the intention was that PCCs would better hold the police to account, that was never the only mechanism. Her Majesty's Inspectorate of Constabulary, the Independent Police Complaints Commission, the College of Policing, the Home Office, parliamentary committees and so on all have a role to play, but it seems to me that none of the issues of "gaming" of crime figures, which I referred to back in 2013, has gone away. Dr Rodger Patrick—yes, the same one—tells me that it is continuing. He believes that it is institutional and, having seen some of his evidence, I have to agree with his interpretation.

Even HMIC seems to admit that police under-recording of crime may be significant, but then it gave the West Midlands force an improbably high approval rating of 99% for its recording procedures. However, at the very time that it was carrying that out audit, circumstances were unfolding which led to the eventual murder of Jacqueline Oakes in January 2014. Apparently the force knew about Ms Oakes's killer and the history of violence and abuse. It seems that the IPCC has now served notices on 26 serving officers, seven police staff and two officers who have left the force in connection with this case. This suggests an institutional issue and a failure to record information—the precise factor that HMIC was supposed to audit. I am told that, subsequently, the West Midlands PCC examined 13 domestic homicide reviews from that force and found that in more than half of them there was a failure by the police to take robust action. So, even had incident reporting been as good as HMIC suggested, the resultant action was defective.

Middlesex University reported on West Midlands's domestic homicide reviews in July 2014. This found that the process remained less than joined up, with many stakeholders, different and poorly integrated areas of focus and an absence of holistic management. Dr Patrick, whom I regard as a great expert on crime recording and statistics, has pointed out that the HMIC methodology of auditing forces' performance is weak. Of course, we will probably never know whether these factors contributed to the death of Ms Oakes.

There is a line in the sand on the question of oversight of police operations. The definition of "operations" as a term of art matters and is based on understandings that go back to the 1920s or earlier. The details of response to an emergency, the sources of information used to disrupt criminal activity and the methodologies for apprehending wrongdoers would of course qualify as being operations. However, there has to be transparency and accountability by the police. If, as I apprehend, freedom from interference in operations can in certain circumstances translate in modern terms into a denial of any oversight rights at all, I think it is time to redefine what is or is not "operational" in this context.

In a conversation today with one of the police force deputy commissioners, other issues came to light, particularly in connection with youths in custody, where there are few, if any, common protocols linking the police activity with that of local authority education or social services departments. Furthermore, it seems

that there are no protocols setting out the respective areas of activity of HMIC and IPCC and how these interleave. If either had a clear road map of their scope and activities, such a protocol would be unavoidable. So on one level agencies defend their turf vigorously; on others, there is unnecessary overlap; and, on a third, there are some significant gaps which erode confidence and ruin, degrade and may even cost lives.

My point is this: all the regulators of the police—police and crime commissioners, HMIC, the IPCC, the College of Policing, the Home Office and so on—are themselves to a degree embedded with policing, and I wonder whether this does not in some circumstances interfere with true independence and objectivity in holding to account those who need to be held to account. For their part, police and crime commissioners walk a tightrope: they need to work with their chief constable in a collaborative manner but yet be able to take the ultimate sanction if need be. But they can only be as good as the performance of other regulators permits.

I finish, with his consent, with a quote from the speech by the noble Lord, Lord Bew, at the annual Newsam Memorial Lecture 2015 hosted by the College of Policing. He said:

"It is no good preaching principles and codes in an organisation if, for example, promotions, pay and other incentives actually encourage something quite different. A number of investment banks had exemplary statements of values. But what was actually rewarded in them, right up to their chief executives, was excessive risk-taking and the pursuit of profit at the expense of customer service".

So ongoing indifference, acquiescence, rewarding poor performance, an administrative Nelson's eye, if you like, and poor leadership remain. Indeed, *Tone from the Top* is a prophetic title. This matters. Confidence in the forces of law and order and the cohesion of society are at stake—as, ultimately, is the rule of law. That is why this report is important for what it says and what it infers, and why it requires government attention.

4.45 pm

**Lord Blair of Boughton (CB):** My Lords, I am very grateful to the noble Earl for bringing forward this debate. I declare my interests in policing and as the drafter of the first police code of ethics in 1991.

The report is extremely good and I read it with great interest. I agree with many of its conclusions. The three that I would particularly note are the call for a mechanism for removing police and crime commissioners, of which there is not one; the weaknesses of the police and crime panels, especially to acquire information; and the call regarding chief constable selection processes. There is also something in the confusion of roles between the PCC and the chief officer. One of the most interesting places that that occurs—it is obvious that it is occurring—is around who talks to the press after a major incident. In some places it is the PCC; in some places it is the chief constable. One of these days, the PCC is going to find themselves caught up in an inquiry because of what he or she said at a press conference. That is just a general point.

What I looked for in the report and did not find is the issue of the power of the PCC to dismiss a chief officer. I want to elaborate on that in my short speech.

[LORD BLAIR OF BOUGHTON]

Mechanisms are clearly laid out in statute for the dismissal of a chief officer found guilty of gross misconduct. That is a pretty obvious requirement in any disciplinary process. But what is missing is the understanding of how it is possible to remove a chief officer merely by making a public statement. That is the crucial point. In other words, a public statement by a PCC to say, “I have lost confidence in this officer”. That is what has happened on more than one occasion.

It is exactly the same as—and I will put this in the most objective manner I possibly can—my slight disagreement with the current Mayor of London. If you look at what was then the Greater London Authority Act, you will see that there were pages and pages on how to remove a commissioner or deputy commissioner, but that was not the route that Boris chose. He chose to threaten that he would have a vote and declare a vote of no confidence, as he put it, “because I have the numbers”.

I merely say that it seems to me that the Government—in concert perhaps with the National Police Chiefs Council and the Chief Police Officers Staff Association, if it still exists—should produce some guidance that actually says that a chief constable can only be publicly called upon to step down after a disciplinary sanction and only with the prior consent of a police and crime panel. That is prior consent, not subsequent. The reason for saying “public” is because in any organisation the person in charge has the right to wander into the room, sit down with somebody and say, for instance, “Gordon, it is time to go”. That is a private conversation which continues, “I think that this is getting worse and it is time for you to go”. I have no qualms about that—but if someone stands in front of the town hall saying, “I have no confidence in the chief constable”, that leaves the chief constable with absolutely nowhere to go. The problem with that is the implications.

The implications are that, for the very first time in England and Wales, a chief constable answers to one person, and one person alone. That would make you pretty cautious. Are you going to be cautious about things where you make a professional judgment but the PCC wants something very different? How many times are you going to argue with the PCC, and then insist on your operational independence, before you start getting a cold feeling between your shoulders? This is a terribly important issue. A chief officer, like any other chief executive, is appointed to do things that he or she believes in, and they should be able to pursue them after rational debate, even against the views of the PCC. At the moment, there is a danger that they might not. They also might decide not to investigate the friend or relative of a PCC. When I was commissioner, we investigated the Prime Minister. There is a freedom which it is necessary for the police to have, and one-to-one relationships require even more care than when answering to a committee or a police authority.

The second point I want to add is this. What is the long-term effect of this on the young men and women who are currently passing through the strategic command course at the Police Staff College? I think that some of them might be on it right now. They face an average

period of seven or eight years before they become chief constables, and they will pass through the ranks of assistant and deputy chief before doing so. They are now going into that knowing that, for the next seven or eight years, they will watch how their chief operates with the PCC. My fear is that over those years they will watch chief officers make less good decisions because they are afraid of losing their jobs. They are afraid of losing their jobs not over a matter of discipline but because of how a decision is taken by the PCC to remove the chief without just cause. That is potentially a very worrying thought. What will be the mindset of aspirant chief constables in eight years’ time if they are brought up in a place where they are vulnerable?

The reason that this is particularly difficult is that to some degree the model for it comes from the United States. The most famous example is Bill Bratton being sacked by the mayor of New York for appearing on the front cover of *Time* magazine as the man who saved New York, whereas the mayor thought that that was his job. The difference is that in America people move from police force to police force after having been removed in that way. There is no detriment and Bill Bratton is back. That is not possible over here. If you lose your job, you lose your reputation and your pension.

4.53 pm

**Lord Wasserman (Con):** My Lords, I, too, wish to thank the noble Earl, Lord Lytton, for initiating this debate. The noble Earl has had a long interest in policing generally and in the integrity and accountability of police leaders in particular. It is no surprise, therefore, that he has pressed for a debate on this important report on his specialist subject. I also congratulate the noble Lord, Lord Bew, and his committee on having decided to turn their attention to policing and on producing a report on this subject which is substantial, not only in size but in content.

Police leadership, ethics and accountability have been very much in the news in recent years. Hillsborough and the Stephen Lawrence case continue to attract attention, although the events to which they refer occurred decades ago. Moreover, those issues show no sign of going away. As recently as last Saturday morning, the media were full of stories about the leadership of the Metropolitan Police having to apologise publicly for the behaviour of undercover officers who had “violated the human rights” of women with whom they had had relationships in circumstances which the Met had to admit were a blatant “abuse of police power”.

So it is not surprising that the Committee on Standards in Public Life, whose mission is to advise the Prime Minister on ethical standards across the whole of public life and to monitor and report on issues relating to the standards of conduct of all public officeholders, should have decided that the time had come to turn its attention to policing. The only surprise about that decision is that it took it so long to get around to it. The committee was established more than 20 years ago and this is its 15th report. I should have thought, given the critical importance of honesty, integrity, openness and impartiality in policing, and the public’s



concern about how far the police actually incorporate these values in their day-to-day activity, that the committee would have put the police several places higher on its priority list for review. Be that as it may, I am delighted that the committee finally focused on this important public service and I join other noble Lords in congratulating the noble Lord, Lord Bew, and his committee.

At the end of what appears to have been a very thorough and comprehensive review of the leadership, ethics and accountability arrangements in our 43 local police forces, the committee came up with 20 main recommendations, several divided into sub-recommendations. There is not nearly enough time in this very short debate to deal with all or even most of these recommendations. All I intend to say is that while I support most of them, there are a few which I feel are a bit too prescriptive and others where I feel that the committee has not been prescriptive enough and has taken the easy way out by passing the buck to the Home Office to put things right.

For example, chapter 5, where the committee discusses the accessibility to the public of information about the performance of their police force, says:

“The public needs to access information to scrutinise the performance of their local police force and to hold the PCC to account”.

Who could possibly object to this statement of the obvious? However, when it comes to recommending how this openness should be encouraged and monitored, the committee makes no proposals of its own but simply endorses the recommendation of the National Audit Office that the Home Office should report on how it plans to increase data availability and accessibility to help the public hold PCCs to account. I found this rather disappointing, to say the least.

Sadly, it is not the only case in which the committee deals with a difficult issue by handing it off to the Home Secretary for action. I would not have bothered to highlight this aspect of the committee’s recommendations if I did not think that it reflected what I regard as an important misunderstanding about the way local policing is presently organised. In short, I feel that the committee, by putting forward recommendations of this kind, has either not understood, or perhaps not quite accepted, the world of local policing as it is following the coming into force of the Police Reform and Social Responsibility Act 2011—that is, the world of local policing post the introduction of PCCs. In this world, whether we like it or not—I know that many noble Lords do not like it at all—it is the responsibility of PCCs, among other things, to provide adequate information about the performance of their forces and it is up to the public, either through the ballot box or through community groups or specialist organisations such as CoPaCC, mentioned in the report, to ensure that they do.

Even the National Audit Office recognises this. In the third paragraph of this report’s admirable executive summary, the committee quotes with approval the NAO’s statement that the present model of local policing is one of “democratic accountability” in which,

“the public will have elected Police and Crime Commissioners and will be holding them to account for how policing is delivered through their force”.

It could not be clearer, so I do not for a moment believe that the Home Office has no role to play in local policing—far from it. I believe strongly that the Home Office has a vital role to play in local policing, for example, by ensuring that the laws on our statute books reflect the evolution of criminal behaviour; by establishing and maintaining strong national policing agencies to tackle crimes such as human trafficking, cybercrime and economic crime, which cannot be tackled effectively locally; and, of course, by arguing the case for local policing when public expenditure totals come to be distributed between competing public services. But when it comes to most of the issues discussed in this report, the buck must stop with the people directly elected to deliver policing services to their communities. They have the power; they must be held accountable for using it.

Devolution of power to local level does not always work as we would like it to. It is always easier to blame central government for everything that goes wrong locally. But giving local communities responsibility for the professional men and women employed to meet their policing needs must be right. We must give it time to work.

5 pm

**Lord Bew (CB):** My Lords, I am very grateful to the noble Earl, Lord Lytton, for initiating this debate and, even more than that, for the work he carried out which first drew my attention to the key issues of leadership in modern policing. Some three years ago the noble Earl initiated a major debate on police statistics. That was before it became pretty fashionable or commonplace to read newspaper headlines saying that police statistics are maybe not cast in gold and that there might be some problems with them. Long before that, the noble Earl led the way in this Room, basing himself in part of course on the work of Dr Patrick—as he would say himself. That gained my interest.

I agree completely with the noble Lord, Lord Wasserman, that the Committee on Standards in Public Life had been in existence for too long without looking at policing, given our remit. My first intention was to look at the statistics. I discussed this with the chairman of PASC and he became very interested, too. In the end, PASC reported in the autumn of 2013 on policing statistics, and the first document from the committee under my chairmanship was a submission to that report. The PASC report ends by saying to us, “Again, would you look at questions of leadership and policing?”. That is what we have tried to do.

It almost pains me to say something so simple about the debate around PCCs but I have one strong idea in mind: even in our best quality newspapers, there has not been a serious discussion about how this major experiment, whether you like it or not, is working out. Either X was wonderful and transformed the sensitivity of the police to crimes against women in their area, or X was a total idiot. That is all you get in one headline after another, with no systematic attempt to look at what this means. PCCs were a major attempt to place the local principle at the heart of our policing and a major transformation, so our idea above all else was to try to produce a balanced and sober report.

[LORD BEW]

I accept the point of the noble Lord, Lord Blair, from a position that I well understand, that there is an essential lacuna—from his point of view, a lack of sharpness—in the report. I also accept the point of view from the noble Lord, Lord Wasserman. However, our approach was to try and raise the quality of the debate. One reason I am so happy about the debate today is that the Committee on Standards in Public Life has a new practice in that we do not just produce a report. We come back at the end of a public debate, as we did on our most recent report last summer, and produce a follow-up. Many things have been said today from all parts of the Room that are of great seriousness and will be reflected in the follow-up report.

While we found a great deal that was positive—greater innovation, visibility, and focus on community engagement and victim support—we also found clear evidence of standards risks in the new experiment: confusion over roles; insufficient challenge and scrutiny; and insufficient redress where PCCs fell below the behaviour expected of them by the public. I am anxious to hear the Minister's views on the particular recommendations our committee made.

We recommended a national minimum code of conduct for PCCs. That is an essential component in ensuring clarity as to the standards of conduct and behaviour expected from PCCs, and to give the public—to whom they are accountable—a common yardstick to judge acceptable conduct. We also suggested a review of the current powers, and that the Home Secretary should urgently review whether there are sufficient powers available to take action against a PCC where conduct falls below the standards expected of public officer-holders. In our view, those standards are always defined by the known principles of public life.

The committee considers the introduction of a power of recall a matter for Parliament, but believes that should this power be introduced for PCCs, commonality relating to the thresholds and triggers to initiate recall is required. In other words, we accept that this is a complicated message. As far as I understand some of the public remarks from the Home Secretary, she acknowledges that if you have recall for MPs, there is an analogy that there should be recall for PCCs. We understand that argument, but we want to ensure that it is done with precision and fairness.

I concede that it is now the very short term with the elections coming up in 2016, but an idea the committee is keen on is the circulation of an ethical checklist to all declared candidates for a PCC post, with a request from the committee for each candidate to publish their responses. We will encourage relevant local media outlets, whether print, broadcast or social, to seek out and publicise their candidates' responses. For us, accountability should not simply be an issue at four-yearly election intervals. We need greater scrutiny and transparency of PCC's decisions between elections. The public must be able to make fair and balanced assessments of this very important new experiment.

There is one other thing that we did not see, apart from the points so cogently made this afternoon. We did not expect the number of resignations by PCCs. As a practical matter, I am not now saying that there is a solution to this. I simply acknowledge that it is

something that we did not expect at all from our visits—and we talked to lots of PCCs around the country. It is not something that can be solved by the application of the Nolan principles, but it is a matter of significance.

5.06 pm

**Lord Paddick (LD):** My Lords, I also thank the noble Earl, Lord Lytton, for the debate. I note his comments about crime figures being underrecorded by the police—was there ever a greater case of shooting yourself in the foot, bearing in mind the justification that the Government have given for reducing police numbers by so great an amount is the drop in crime?

I have a great deal of sympathy for what the noble Lord, Lord Blair of Boughton, said about the way his career came to an end, which I think was entirely inappropriate. As far as the noble Lord, Lord Wasserman, is concerned, the report majors on holding PCCs to account. I am very grateful to the noble Lord, Lord Bew, not only for the report but for raising that as an issue, because I want to concentrate on concerns with the police and crime commissioners, rather than concerns with police leadership.

In 2010, the Liberal Democrats raised concerns about PCCs. We had concerns about concentrating so much power in one individual. As an alternative we suggested that, where police authorities were coterminous with local authority areas, the police authority should be made of the local elected councillors. Where they were not, there should be directly-elected police authorities, but not just one individual. In particular, concerns are highlighted in the report about the hiring and firing of police constables, the transparency of the selection processes and the ability to hold the police and crime commissioner to account when their conduct falls below the standards expected of them but short of criminal conduct.

I will illustrate the report's abstract concerns by reference to a real-life example. A police and crime commissioner selected and appointed a chief constable to head their force. Some time after appointment, serious allegations of misconduct against the chief constable were reported to the PCC by a whistleblower. The allegations were of a sexual nature, involving the alleged abuse of authority, with the chief constable using his position, as both the chief constable and a man, to behave in inappropriate ways towards female staff. Because the chief constable had only recently been appointed by the PCC, there was clearly potential for the allegations to cast serious doubt over the judgement of the PCC in appointing the chief constable in the first place.

It has been brought to my attention by some of those involved that this confidential report of serious misconduct, including the name of the whistleblower, was passed to the chief constable by the police and crime commissioner. Those who brought the matter to my attention felt that, as the PCC was elected, and because of the sensitive nature of the allegations and the impact on the victims if their identities were made public, there was nothing they could do about what they considered to be the entirely inappropriate behaviour of the police and crime commissioner.

Eventually the allegations against the chief constable were formally recorded and investigated, and findings against him were made, short of requiring him to resign. Only after relentless pressure, mainly from his own officers, whose representative organisations, rather than the PCC, said they no longer had confidence in him, did the PCC finally agree to start the proceedings that would result in requiring the chief constable to resign. Eventually he did resign of his own volition.

Apart from the question of lack of judgment by the PCC in the first place, there are serious questions about her conduct—such as the leaking of confidential information about the identity of the complainants to the perpetrator—that have still not been addressed. This report by the Committee on Standards in Public Life queries the robustness of the selection of chief constables by PCCs, the effectiveness of police and crime panels in holding the police and crime commissioner to account, the confused complaints system in relation to PCCs, the lack of a code of conduct for PCCs, and insufficient powers to take action against PCCs whose conduct falls below the required standards.

Those are not abstract or theoretical concerns. As I have outlined in this one case, of which I have some detailed knowledge, the whole system by which PCCs work together with chief constables, how they are appointed and how they are then held to account and disciplined is, in my opinion, flawed. As the report highlights, because there is only one person holding the chief constable to account—in an increasing number of cases, the same person who appointed that chief constable—the relationship between the chief constable and the PCC in terms of their combined skills, their experience and their personalities becomes critical.

Do the Government not accept that, with the best will in the world, even if we have the codes of conduct and an independent element in the chief constable appointments process—as the report recommends—and a clear understanding of operational independence and effective measures to hold an elected police and crime commissioner to account, is having only one person responsible for selecting the chief constable and co-operating with the chief constable to deliver politically critical goals, for holding the chief constable to account and for sacking the chief constable really a workable system? I raise that not as a theoretical question but in relation to the case that I have outlined to the Committee this afternoon.

5.13 pm

**Lord Rosser (Lab):** My Lords, I, too, extend my thanks to the noble Earl, Lord Lytton, for securing this short debate, which enables us to consider the valuable and timely report of the Committee on Standards in Public Life on leadership, ethics and accountability in policing. It has been particularly helpful to have heard in this debate from the chair of the committee, the noble Lord, Lord Bew.

The creation of police and crime commissioners and the associated governance arrangements has clearly been the driving force behind the committee's decision to undertake this report, which is the first one in the committee's history that has looked specifically at policing. As the report says:

“Trust in the police is vital—from the Chief Constable to the most junior police officer. Police ethics—their honesty, their integrity, their impartiality, their openness—should be beyond reproach ... High standards—of both conduct and accountability—also need to be demonstrated by those charged with holding the police to account”.

I believe that, for the overwhelming majority of time, the police achieve the standards required of them—a view supported by the survey undertaken for the committee. However, any straying from those standards must be a cause for concern.

The report does not deal with issues relating to the impact on police officers of cutbacks in staffing, but it would be unrealistic to imagine that poor morale among officers, chief constables and the Metropolitan Police Commissioner in expressing concerns about the impact on effective policing and police numbers of further projected financial cuts, at this of all times, and a Government who have created uncertainty over intended changes in the police funding formula, does anything at all to promote or enhance the kind of culture or standards in policing referred to in the report. I hope that, in considering this report, the Government have taken and will continue to take a look at the impact of their decisions and decision-making on leadership, ethics and accountability in policing.

In his foreword to the report, the noble Lord, Lord Bew, states in respect of police and crime commissioners that there has been evidence of a,

“new impetus in many areas—greater innovation, increased visibility and a greater focus on community engagement and victim support”.

However, he then goes on to say that,

“there is also clear evidence of significant standards risks, including continuing confusion over roles and responsibilities, insufficient challenge and scrutiny of PCCs' decisions and insufficient redress where a PCC falls below the standards of behaviour that the public expects of a holder of public office”.

A great many, if not all, of the issues referred to by the noble Lord, Lord Bew, were raised and, I would have to say, largely dismissed, by the then coalition Government during discussions on the Police Reform and Social Responsibility Act 2011. At that time, the Government's attitude was to get the Bill through as quickly as possible and then hold elections for police and crime commissioners with their very considerable, relatively unchallenged powers, as has already been said, irrespective of how few people might vote in the elections. Detailed considerations on what would be appropriate structures, roles and responsibilities, checks and balances and effective and necessary governance arrangements did not appear to have the same priority.

This report by the Committee on Standards in Public Life forms a basis for a proper discussion of some of these issues, at least where they relate to the role and functions of the committee. I hope that it is an opportunity that the Government either are taking or will take. However, the omens are not all positive. In a parliamentary Written Answer a month ago, in response to a question about the effectiveness of police and crime commissioners, there was no mention of any of the specific issues that had by then been raised in the report by the Committee on Standards in Public Life or, indeed, of any government consideration being given to those issues. Presumably, the Minister will give a government view on the committee's

[LORD ROSSER]

20 recommendations —not least, those that seek to address the “significant standards risks” identified by the committee, including a,

“confusion amongst the public and the participants about roles and responsibilities, especially in relation to where operational independence and governance oversight begin and end ... a significant absence of a clear process to take action against a PCC whose conduct falls below the standards expected of public office holders, resulting in that behaviour going unchallenged and uncensored ... concerns about the robustness of current selection processes for chief officers ... PCCs not encountering sufficient constructive challenge or active support in exercising decision making powers ... barriers to the effective operation of Police and Crime Panels as scrutiners including support, resources and the consistency and credibility of representative membership ... a lack of timely and accessible information being provided to Police and Crime Panels by PCCs affecting Police and Crime Panels’ ability to scrutinise and support the PCC”,

and,

“potential for high risk conflict of interests in roles jointly appointed by PCCs and Chief Constables ... and risks inherent in the combined role of Chief Executive and Monitoring Officer to the PCC”.

Those issues were all raised in the report from the Committee on Standards in Public Life.

It also referred to confusion between and inherent tensions in the current police complaints system and the complaints system attaching to PCCs, and a gap in the expectations of the public in how complaints against PCCs would be resolved, especially when this involves unethical but not criminal behaviour. The Committee concluded that, combined, the factors to which I have just referred also impacted on the ability of police and crime panels to ensure—it is part of their role—

“that decisions of PCCs are tested on behalf of the public on a regular basis.”

Like other noble Lords who have spoken, I look forward to the Government’s response, which I hope will promote rather than shut down further debate, bearing in mind that the current police model is the one the present Home Secretary introduced and presumably felt would work effectively.

5.20 pm

**The Minister of State, Home Office (Lord Bates)**

**(Con):** My Lords, it is a pleasure to respond to this debate on behalf of the Government. I thank the noble Earl, Lord Lytton, for raising this important issue, and congratulate him on securing the debate. Over many years the noble Earl has raised the issue of improving the accountability and transparency of our police forces, particularly in relation to the recording of crime statistics. Although it sometimes makes the Home Office uncomfortable, the whole policing service and the whole Government appreciate his scrutiny, his interest in the minutiae and the rigour he brings to the very important area of maintaining public confidence in the data we have. I also thank all noble Lords who have spoken in the debate.

The noble Earl framed the debate around the Committee on Standards in Public Life’s report on the leadership, accountability and ethics of local policing. I take this opportunity to thank the Chair of that committee, the noble Lord, Lord Bew, for the work he

and the committee undertook to draft that report. I was particularly pleased to note the committee’s observation that police and crime commissioners have brought

“new impetus in many areas - greater innovation, increased visibility and a greater focus on community engagement and victim support”.

On page 24 there is a very interesting statistic about the level of awareness. A survey carried out for the committee found that 68% of people surveyed in 2014 had heard of their PCC. That is quite an impressive number, certainly when compared with the very low numbers that knew about the predecessor chairman of the police committee. The fact that there is greater interest in and scrutiny of the role must show that growing awareness. I am aware that several noble Lords questioned the awareness of PCCs and their democratic legitimacy. Of course, they were elected by 5.8 million people who expressed a view and turned out to vote. We believe that that number will be significantly higher when elections are held next year, not least because the role is becoming more established. For all those reasons, it is critical that the issue of ethics and integrity is at the heart of the deliberations.

The committee’s report contains many thought-provoking observations—20 in total. The noble Lord, Lord Bew, wrote to my right honourable friend the Home Secretary on 27 June, following the publication of the report, and requested that the Home Office respond by the end of November. I can confirm that the response will come by the end of November—by which we do not mean Sunday night, but this week. It has not been able to clear all the internal hurdles that the noble Lord, Lord Rosser, being an experienced member of your Lordships’ House, will understand it needs to clear, so I will need to tread a bit carefully over some of the recommendations he wanted to hear about. He will not have to wait much longer, but I will not be able to satisfy him in every particular today.

I am sure noble Lords will understand that because of the formal response needed here, I am not in a position to address all those issues today. The Government take these issues, and police integrity more broadly, very seriously. It is at the heart of public confidence in policing and underpins the model of policing by consent.

Although I am unable to comment on the specifics of the report, I feel it is important for me to set out what this Government have done to put in place reforms to improve the accountability, transparency and integrity of policing in England and Wales and throughout the rest of the United Kingdom.

The most significant of these reforms came three years ago this month, with the election of PCCs. Since coming into post, PCCs have brought real local accountability to the performance of chief constables and their forces and are working hard to ensure that their local communities have a stronger voice in policing.

I appreciated reading through the report in some detail, especially some of the more anecdotal evidence given to the committee by representatives from local police forces—Greater Manchester being one; Merseyside another—on how the police and crime commissioners are working with the chief constable to implement these measures. That is a good example of what my

noble friend Lord Wasserman said about local police and crime commissioners taking the initiative without necessarily needing to be instructed at every juncture. They realise that public confidence and ethical standards are at the heart of being able to carry out their duty, and that is happening.

The public profile of PCCs means that they are scrutinised in a way that anonymous police authorities were not, which helps to improve accountability in policing. Further, police and crime panels—PCPs—have been introduced in every police force area to scrutinise the actions and decisions of each PCC and make sure that information is available for the public, enabling them to hold the PCC to account.

PCPs have a range of powers to help them carry out their functions and specific responsibilities. A panel can, at reasonable notice, require the PCC to come before it. This power also extends to the staff of the PCC, including the deputy commissioner. The PCP is responsible for recording complaints made against a PCC and, where they are not of a criminal nature, resolving any such complaints.

The noble Lord, Lord Blair, made some very particular points about the operational integrity of chief constables and their ability to carry out investigations without fear or favour. That is a very important element. In fact, just last week, during a couple of Questions that came up in the House, we talked about the importance of integrity. The unique role of the Office of Constable and the oath that is given also came up. The oath is not to the Home Secretary but to Her Majesty, and is to pursue matters without fear or favour.

I am interested in the personal experience of the noble Lord, Lord Blair, in this regard, but there are particular procedures in place. I will not get into commenting on whether the Mayor of London followed them in that case, but the general point is that Schedule 8 to the police responsibility Act and Regulation 11A contain specific regulations and guidance as to how that ought to be done. It should involve the HMIC and conversations with the police and crime panel. That is set out. In that context, I am sure that this report will be read widely by police and crime commissioners. They should make themselves aware of their commitments, which they are obliged to do under law, when undertaking these matters.

The College of Policing was introduced as the first professional body for all policing in England and Wales. The college develops standards for policing based on strong evidence, so that future police practice is always based on evidence and not habit. The creation of the College of Policing is an important pillar in the programme of police reform, setting high professional standards, sharing what works best across policing, acting as the national voice of policing and ensuring that police training and ethics are of the highest possible quality.

In that context, the police Code of Ethics, produced by the College of Policing, has been published for the first time. Certainly, we would encourage all police and crime commissioners to have a discussion with their chief constables as to how that guidance is reflected

in their forces. The Code of Ethics plays an important role in addressing some of the concerns about the ethics and behaviour of police officers and staff, particularly in relation to the media—a point raised by the noble Lord, Lord Blair. A consultation and review is taking place on relations with the media, including guidance on how contact with the media should take place and what procedures should be followed. That is an important part of the work of the College of Policing.

I refer also to the important role played by Her Majesty's Inspectorate of Constabulary. It is important to look at the structural changes being made in the way that policing is maintained. Three years ago HMIC introduced the PEEL programme, which is all about the efficiency, effectiveness and legitimacy of the police. Its reports have been helpful in raising standards in forces across the country.

As the result of the changes made, the Office for National Statistics has highlighted the fact that recent increases in recorded crime are largely a consequence of improving recording practices within forces through the inclusion of previously underreported crimes such as sexual offences. Victims are now more confident about coming forward, which is something to be welcomed.

The Government have made great strides in improving the accountability, leadership and ethics of local policing, but the job is not finished. We are making changes to legislation to make sure that police complaints and disciplinary systems are fairer and more transparent. The package includes making the police complaints system more independent of the police by expanding the role of the PCCs, and introducing systems for supercomplaints to ensure that the key trends and patterns in policing can be raised and addressed appropriately. We will overhaul the police disciplinary system following a review by Major-General Chapman. We will strengthen protections for police whistleblowers and enable the IPCC to continue to operate effectively by strengthening its powers. The Government intend to introduce these reforms in the Policing and Criminal Justice Bill that was announced in the Queen's Speech.

I said that the progress the Government have made on police reform is not finished. In truth, we must never rest when it comes to ensuring that our police have the best leaders who are properly held to account and who lead forces according to the highest ethical standards. Another table in the report shows that the level of confidence and trust that people have in senior police officers is just a fraction short of that for judges, and significantly above that for elected and appointed members of what one might call the political class. We can have great confidence in the quality and integrity of our police forces. Reports such as that produced by the noble Lord, Lord Bew, and his committee will only serve to strengthen that.

Again, I thank the noble Earl for introducing this debate and I can assure him that by the end of the week, there will be further news in the shape of the Home Secretary's response.

*Committee adjourned at 5.34 pm.*





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