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

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House of Lords

Tuesday, 24 November 2015.

2.30 pm

Prayers—read by the Lord Bishop of Rochester.

Introduction: Lord Murphy of Torfaen

2.37 pm

The right honourable Paul Peter Murphy, having been created Baron Murphy of Torfaen, of Abersychan in the County of Gwent, was introduced and took the oath, supported by Lord McFall of Alcluith and Lord Touhig, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Hain

2.43 pm

The right honourable Peter Gerald Hain, having been created Baron Hain, of Neath in the County of West Glamorgan, was introduced and made the solemn affirmation, supported by Lord Kinnock and Baroness Morgan of Ely, and signed an undertaking to abide by the Code of Conduct.

Domestic Violence
Question

2.48 pm

Tabled by ***Baroness Royall of Blaisdon***

To ask Her Majesty's Government how many convictions have been obtained under the laws relating to stalking and whether they are satisfied with the adequacy of legislative powers to prosecute perpetrators of domestic violence.

Baroness Nye (Lab): I beg leave to ask the Question standing on the Order Paper in the name of the noble Baroness, Lady Royall of Blaisdon.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the latest figures show that 495 convictions were obtained under the new stalking laws in 2014. Legislative powers in this important area are kept under constant review.

Baroness Nye: I thank the Minister for that information. It is clear, however, that without effective training and a cultural change in the criminal justice system, perpetrators will still not be brought to justice. It is in areas of the country where there has been training that the law is most effective. I would be grateful if the Minister could say what investment has been made in the training of prosecutors. Will he also say why there are still no sentencing guidelines for stalking, and when these could be expected?

Lord Bates: The sentencing guidelines are an independent matter for the Sentencing Council, but I will certainly look into that point. In terms of the training, a great deal of work has gone on through the College of Policing, which is the vehicle by which most training is provided. The Crown Prosecution Service has also done a great deal of work, particularly on encouraging more prosecutions under the stalking laws rather than under harassment legislation, which was there before, so that we get a better picture of the nature of the crime. But we continue to look at this important area.

Lord Wigley (PC): Is the Minister aware of the substantial growth in cyberstalking over recent months and years? Is he satisfied that adequate powers are available, under anti-stalking legislation or other legislation, and will he make it his business to link up with those in the police force who are quite concerned about this?

Lord Bates: The National Crime Agency takes the lead in this area, particularly on child exploitation. A great deal of work has been going on in schools, pointing out the dangers of online abuse. Of course, we took legislative action in the Criminal Justice and Courts Bill, when we introduced the clause on revenge pornography. This area is one that my noble friend Lady Shields, the Minister for Internet Safety and Security, is very focused on and is having conversations with internet service providers about.

Baroness Howarth of Breckland (CB): My Lords, the Minister will be very aware of the effect of domestic violence on children and young people. What are the Government doing to ensure that their rights and emotional needs are being met during the proper but difficult process of prosecution for domestic violence incidents?

Lord Bates: We have now introduced a system where we have independent domestic violence advisers. They have a critical role to play because, in a very chaotic, difficult and emotionally stressful situation, they can signpost people to the help that they need, particularly the families who are victims in this area.

Baroness Brinton (LD): My Lords, during the passage of the stalking law reforms in your Lordships' House, there was considerable debate about how the CPS could be encouraged not to use the harassment law as an easy way to get a conviction. The Minister has outlined that he believes that more cases are being defined as stalking, but the opposite is true according to the press. How can the Government ensure that the CPS is held accountable to make sure that stalking cases are taken as such and not through the easy win of harassment?

Lord Bates: That is a very good point and comes back to the earlier point made by the noble Baroness, Lady Nye. A consultation is taking place between the CPS and the College of Policing, as well as with Paladin and the Suzy Lamplugh Trust, which do so much valuable work in this area, to see what further training could be provided. When you look at the figures and see that there are 9,180 prosecutions under

[LORD BATES]
harassment and 676 under stalking, clearly there is still further work to be done to make sure that people are being prosecuted in the right area.

Lord Rosser (Lab): My Lords, the Question also relates to domestic violence, and the same point on training and cultural change applies to the new domestic violence offence of coercive control, the campaign in respect of which was led by Paladin, Women's Aid and the Sara Charlton Foundation. If I am right in saying that it has not happened already, could the Minister say, first, when the new domestic violence offence of coercive control will be introduced? Secondly, what action is being taken to ensure that the necessary training is being and will be provided throughout the police and the judicial system, including for prosecutors, judges and magistrates, to ensure that the new law—including the reasons for it and the psychological intimidation and control it is intended to address—is fully and effectively understood and that it is used and applied as intended in all relevant parts of the country? The evidence, including that from the new stalking laws, suggests that inadequate and incomplete training about new offences leads to cases not being pursued or to unduly lenient sentences because the seriousness of the new offence is not fully understood or recognised.

Lord Bates: That is a fair point. We have pledged that the coercive and controlling behaviour provision in the Serious Crime Act will come into force by the end of the year. It will be in force by the end of the year and training will be provided alongside it. On the other point, about ensuring the right response and that people are trained for it, Garry Shewan, the assistant chief constable of Greater Manchester Police, who is the national policing lead for stalking and harassment, has a very important role to play in co-ordinating the wider police response to this important crime.

Baroness Afshar (CB): My Lords, what measures are being taken to assist Muslim women to access the reporting facilities? A great deal of domestic violence goes on in households against women who do not feel at ease with some of the representatives who are available for them to access.

Lord Bates: There is a particular group called Imkaan which works in this area with BME communities and they are represented on the national oversight group which the Home Secretary set up to advise her on improving her response across government to domestic violence.

Baroness Lister of Burtersett (Lab): My Lords, the Justice Select Committee found that more than a third of the victims of domestic violence were unable to get legal aid because they could not provide evidence that such violence occurred within two years of their application. The Government responded with only a very minor reform. Will they now review the situation with a view to extending the time limits and, if not, why not?

Lord Bates: Certainly in relation to legal aid there is a merits test to go through. I understand that in cases of domestic violence there is a more generous provision than in other areas. There is an important new provision coming out in which we are going to refresh the cross-government strategy on tackling violence against women and girls. That will include some elements of new legislative responses which are available and being considered by the Government.

Legal Aid
Question

2.56 pm

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

To ask Her Majesty's Government whether they are satisfied that the Legal Aid Agency's evaluation of tenders for the new duty solicitor contracts was fairly and effectively conducted.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, we are. The Legal Aid Agency followed a robust and fair process in assessing duty tender bids. The assessment process was subject to careful moderation and management at all stages, including independent validation. All staff who assess the bids received comprehensive training to ensure transparent, consistent and fair treatment of all bids.

Lord Marks of Henley-on-Thames (LD): My Lords, two whistleblowers involved in this assessment process have now said publicly that there were too few staff, many of them virtually untrained agency temps with no relevant experience, and that assessment of the bids and moderation of the assessments were subjected to highly unreasonable time targets. Now that this has led to 100-plus legal challenges and calls from the Law Society for a full and proper investigation, what do the Government propose to do to review the process in view of the Answer just given by the noble Lord?

Lord Faulks: The noble Lord is right that this has been the subject of legal challenges, just as the bidding process itself was subject to an unsuccessful judicial review. There have been individual legal claims under public procurement regulations and a judicial review in relation to the process. It is inappropriate for me to comment in detail about matters which are the subject of litigation. However, I can say that about 19% of the staff were temporary. The Government are satisfied that these staff were thoroughly adequately trained and that what they were asked to do was reasonable in the time afforded to them.

Lord Bach (Lab): My Lords, can the Minister confirm that the criminal duty tender policy, which seems to have gone so wrong, was agreed by both parties in the coalition in 2013? Can he tell the House the current estimate of the eventual cost of the litigation now under way and when he expects that litigation to conclude? Finally, is it not well past time to scrap this ridiculous policy and begin negotiations again with the Law Society and the criminal law solicitors' groups on a more sensible and sustainable way forward?

Lord Faulks: The noble Lord seems to suggest that the Law Society was not enthusiastic about the process. In fact, in its response it said:

"The Society agrees, for the reasons given below, that change is needed in the procurement of criminal defence services. There is good evidence that the existing market is unlikely to be sustainable in the longer term and that this represents a significant risk for the integrity of the system".

The Government were trying to ensure that there was adequate representation on the duty provider basis, that this was more efficiently provided and that there was a fair system for making sure that taxpayers' money was properly spent.

Lord Clement-Jones (LD): My Lords, I declare an interest as a member of the Law Society but we all have an interest in ensuring access to justice. As my noble friend Lord Marks mentioned, two whistleblowers have pointed out how flawed the process was, In addition, there is the potential for mass litigation involved in this duty solicitor procurement. Should not the MoJ stop trying to brazen this out, simply scrap this procurement and start again?

Lord Faulks: No, that presumes the outcome of the litigation. Disappointed contractors may well feel it necessary to challenge and decide it appropriate, as is their privilege, to use the legal process. We have not yet had the legal process, nor do we know what the result will be. There have already been some preliminary hearings, but we are some way from a full judgment. Both the individuals were employed as commissioning assistants in a junior role. We are in no doubt that what happened was a perfectly appropriate way of assessing the competence of the solicitors and their appropriateness for the contract.

Lord Clinton-Davis (Lab): Have the Government received any representations from the Law Society in the light of this Question? Will the Minister signify how the Law Society has reacted? I am in accord with what he has said, but I think it is important that he should be more accurate about it.

Lord Faulks: Of course we listen to what the Law Society says: the Law Society represents solicitors and I am sure that a number of them are disappointed at the outcome, although they will still have an opportunity for own-client contracts and as delivery agents for those solicitors who have a duty provider contract. I should perhaps reassure the House that the Legal Aid Agency has monitored and will continue to monitor the quality of the delivery of services through its well-established audit and peer-review programmes.

Lord Tomlinson (Lab): Will the Minister answer my noble friend Lord Bach's first question about the role of coalition members of the Government? Did the Liberal Democrats support the policy when they were in government?

Lord Faulks: I am not sure whether the Liberal Democrats supported it. The fact is that it is government policy and we are pursuing it. Whether they supported it tacitly or had reservations seems beside the point if the process is fair, as we say that it was.

Lord Cotter (LD): My Lords, it is clear that this has been a very faulty process. I give an example. A very reputable organisation with quality and community knowledge in London has been ignored and not appointed in any way. The work has been given to firms in Stafford and Leicester. It is surely ridiculous when a firm based in London has a great reputation that work for London should be given to firms in Stafford and Leicestershire.

Lord Faulks: The noble Lord picks on one disappointed solicitor. No doubt a number of solicitors are pleased with the result and feel that it is an adequate response. I fear that some solicitors will be disappointed, but the noble Lord will realise that it is necessary to effect some consolidation—apart from anything else, because there has been a significant drop in the crime rate, which is good for most of the population, although perhaps less good for some solicitors who rely on crime for their living. I am glad to say that the crime rate began to drop in 2007, when the party opposite was in government. It has continued to drop and is now at its lowest rate since 1970.

Northern Powerhouse

Question

3.03 pm

Asked by ***Lord Greaves***

To ask Her Majesty's Government what proposals they have for strengthening the role and powers of town and parish councils, particularly as part of the northern powerhouse.

Lord Greaves (LD): My Lords, I beg leave to ask the Question standing in my name, and remind the House of my local government interests.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, the northern powerhouse is empowering local areas through devolution, bringing decision-making closer to local people. It is right that local areas are able to involve their towns and parishes as they see fit. The Government are providing additional support to those towns and parishes wishing to exercise the community rights provided by the Localism Act 2011: for example, developing neighbourhood plans, listing assets of community value and running services using the right to challenge.

Lord Greaves: My Lords, all over the north of England there are small towns and villages with town and parish councils in which the northern powerhouse is no more than a remote slogan and of little relevance or meaning. At the same time, local services are being slashed, taken apart and closed down. What advice would the Minister give on behalf of the Government to towns and parishes, and what action should they take in those circumstances?

Baroness Williams of Trafford: My Lords, the northern powerhouse and devolution should not be remote to any area of the country in which devolution is taking place. Whether it is in transport or in increases in the local jobs market—and actually, the north-west has seen the biggest employment growth of any region in the last few years—local people should be able to feel the effects of the northern powerhouse and devolution. Through the Localism Act, local areas such as town and parish council areas should be able to feel the empowerment more than ever.

Lord Beecham (Lab): My Lords, under the Government's devolution proposals, there will be areas of the country, like Lancashire, with local parish and town councils, district councils, county councils and combined authorities with elected mayors. In the light of tomorrow's spending review and the forthcoming local government settlement—in which, like his predecessor, the Secretary of State appears to have been first across the Treasury's door to offer up local government for cuts—what assurances can the Minister give that this pyramidal structure will not be used to house the mummified remains of effective local government?

Baroness Williams of Trafford: My Lords, devolution means empowering communities, from local authorities right down to town and parish councils, and even local neighbourhoods. I do not think—in terms of what the Government have been doing, certainly through devolution and some of their plans for the northern powerhouse—that anybody could accuse local government of not being at the forefront of this Government's policy.

The Lord Bishop of St Albans: My Lords, the northern powerhouse has great potential to bring social and economic benefit to many people, but it is fundamental from the very start that we embed it in the rural communities. Micro-businesses employing fewer than 10 people make a very significant contribution to the rural economy, yet previous approaches to regional development tended to ignore or sideline the rural dimension of it. Will the noble Lord the Minister assure the House that, with the northern powerhouse and other devolved areas, there will be a specific, focused and relevant approach to providing resources for small rural businesses?

Baroness Williams of Trafford: My Lords, I am getting quite fond of the right reverend Prelate calling me "the noble Lord the Minister" and I take no offence whatever. He is absolutely right, and he has brought up the point about rural communities before. Of course, in many areas where we see devolution, we see rural communities. Most authorities—in Greater Manchester, for example—have rural areas such as Rochdale, Oldham, Stockport and even Trafford, so rural communities are very important. He is absolutely right to point out that they should not be left behind, and, with some of the strengthened powers that central government has given them, they should be able to achieve this.

Lord Shipley (LD): My Lords, a recent BBC-commissioned survey showed that two-thirds of people in the north had either not heard of the northern powerhouse or knew nothing about it. Given the deep cuts to local council budgets expected tomorrow, does the Minister agree that it has become essential to produce a strategic investment plan for the northern powerhouse area in order to give the public confidence that the northern powerhouse is a reality?

Baroness Williams of Trafford: My Lords, they might not have heard of the northern powerhouse but—as I said to the noble Lord, Lord Greaves—they certainly will have felt the effects of it. In Yorkshire, for example, more jobs have been created than in the whole of France put together. As I also said to the noble Lord, Lord Greaves, there has been, in the north-west, the highest employment growth, and in the north-east, the highest rate of business start-ups. Whether people label that as the northern powerhouse, or just say that life feels a bit better, they should certainly feel the benefits. In terms of a strategy, we have a simple one: to enable areas of the north to maximise their economic potential.

Lord Naseby (Con): Is my noble friend aware that during the last recess, I went to see my tailor in Ossett? While talking to other people who were shopping at that particular retailer, I felt that there was a great vibrancy about the local town council there, and what it was doing. Also, although Bedfordshire is not in the northern powerhouse, as far as I am concerned the town councillors there do a first-class job as well.

Baroness Williams of Trafford: I thank my noble friend for that question. I was not aware that he had gone to Oxford in the recess—perhaps I should have been. He is absolutely right: town councils now feel very much more empowered in driving forward the future of their communities. So I am not surprised to hear that the particular town council he talked about was feeling very upbeat.

Lord Maxton (Lab): My Lords, could the Minister explain the strange anomaly that seems to have arisen where her Tory Government grant devolution to local authorities, the northern powerhouse, et cetera, while the devolved Scottish Government are taking power away from local authorities in Scotland?

Baroness Williams of Trafford: My Lords, the Scottish Government will have to answer to their electors in due course.

Baroness Farrington of Ribbleton (Lab): My Lords, would the Minister please ensure that she assesses whether the allocation of resources tomorrow means that counties such as my home county of Lancashire get equal treatment with other county areas in the country—even those counties which happen to have the Prime Minister as one of their MPs?

Baroness Williams of Trafford: I shall certainly take that point away.

Prison Service: Trans Prisoners

Question

3.11 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government, in the light of the death of Vicky Thompson, whether they will review the Prison Service's treatment of trans prisoners.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, I offer my condolences to Vicky Thompson's family and friends. Every death in custody is a tragedy and we are committed to reducing their numbers. While investigations are ongoing it is inappropriate for me to comment on the circumstances of Miss Thompson's death. The policy on the care and management of prisoners who live or propose to live in a gender other than one assigned at birth is currently under review.

Baroness Barker (LD): I thank the Minister for that Answer. Recent events have shown that placing trans women in male estates is dangerous. Does the Minister agree that trans prisoners should be housed in the estate of their acquired gender in the first instance and moved to another estate only following a thorough investigation that rules out all other safe alternatives?

Lord Faulks: My Lords, Prison Service Instruction 07/2011 sets out the National Offender Management Service's policy on the care and management of prisoners in the circumstances outlined by the noble Baroness. It suggests that, in the first place, somebody's gender, whether their original gender or one that they have chosen under the Gender Recognition Act, should be reflected in where they are housed. Nevertheless, there is a degree of discretion allowed to the Prison Service, which it exercises, to make sure that someone in that situation is treated with appropriate care, consideration and sensitivity.

Lord Cashman (Lab): My Lords, mindful of the review of the current policy, what urgent steps will the Minister take to review the location of all trans people in prison and to move them to appropriate prisons according to their acquired gender, to avoid a repeat of the tragedy that befell Vicky Thompson?

Lord Faulks: The important thing is that there is no generalisation here. It is important to assess each individual prisoner according to the stage they are at and their particular case. It might be a diagnosis or they may have fully realised their gender transformation. That individual assessment is carried out by the Prison Service, involving the assistance of psychological services and healthcare experts. It is after that assessment that they should be assigned an appropriate part of a prison.

Lord Hope of Craighead (CB): My Lords, can the Minister assure the House that the policies he just outlined apply in young offender institutions? I believe that Miss Thompson was 21 when she died and assume that she was in an adult prison, but I think it is common knowledge that people tend to become aware of their transgender nature when puberty emerges. Therefore, young offenders are particularly vulnerable and require particular care.

Lord Faulks: The noble and learned Lord makes an important point. I assure him that the policy applies throughout the prison estate and the youth estate. I entirely accept that these matters sometimes occur at an earlier stage, before somebody becomes part of the adult custodial estate. Of course, there may be many other aspects that need careful consideration apart from the problems with gender. Those can provide a real challenge to those working in the prison.

Lord Scriven (LD): Can the Minister confirm that the guidelines to which he has just referred, PSI 07/2011, had an expiry date of 14 March 2015? Therefore, there has been an eight-month gap when those guidelines are no longer applicable because they are past their expiry date. If those guidelines are being updated, what open invitation has been given to trans support groups to help the Government update the guidelines?

Lord Faulks: The noble Lord makes what he may think is a clever point, but I refer him to paragraph 2.6 of the instruction system, on "The Approval and Implementation of Policy and Instructions", which provides as follows:

"Regardless of expiry dates, instructions remain in force until specifically cancelled, marked 'obsolete' or replaced and removed from the Intranet".

That policy does not fall into that category; it remains current.

Of more substance—of course it is very important that in formulating any change to the Prison Service instruction we take account of the trans community's views; we are doing so, as my ministerial colleague explained in answering a question of a similar nature to the House of Commons last Friday.

Lord Beecham (Lab): My Lords, the whole House will join the Minister in expressing condolences to the family of Vicky Thompson, and also welcome the Government's response to this tragic case and look forward to the outcome of the review that has been announced. There have been 186 suicides in prisons in the year to September, and a 21% rise in self-harm. Those statistics reflect the pressure on prisons and staff, echoed in the latest report on Feltham young offender institution. Therefore, will the Government's review extend to the size of the prison population, and will the training of prison staff—the briefest of any comparable country—be substantially extended in time and depth?

Lord Faulks: I do not wish to pre-empt what may be considered appropriate to be considered under the review. Certainly, training would be an extremely important factor. The training has been extended to cover a specific module for prison officers to consider equality provisions, which takes into account particularly the protected characteristics of transgender prisoners. The scope of the review will embrace all things that are relevant to make sure that the Prison Service treats such prisoners appropriately. The original Prison Service instruction is an impressive document but, of course, there is room for continual improvement, and we will endeavour to arrive at an appropriate destination.

Lord Marks of Henley-on-Thames (LD): Does the Minister recognise that one difficulty under the existing system, with giving priority to legal gender, is that trans people who turn out to be offenders may be the least likely to apply for gender recognition certificates under the 2004 Act? Will the government review take that into account?

Lord Faulks: The decision to apply for a certificate is, of course, an intensely personal one. What is important is that a prisoner, or indeed anybody, should know that they have the right to do so—but it would be entirely inappropriate to in any way place pressure on somebody to go through that process. The matter is one that the Act rightly treats with great care in terms of protection of data and all the sensitive matters that it is necessary to take into account when making a momentous decision of this sort.

Hereditary Peers By-Election

Announcement

3.18 pm

The Clerk of the Parliaments announced the result of the by-election to elect a Conservative hereditary Peer in the place of Lord Montagu of Beaulieu, in accordance with Standing Order 10.

A paper setting out the complete results is being made available in the Printed Paper Office. The successful candidate was Lord Fairfax of Cameron.

Scotland Bill

Second Reading

3.18 pm

Moved by ***Lord Dunlop***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, the United Kingdom is the most successful multinational state the world has ever known. On 18 September last year, people in Scotland voted in record numbers and by a clear and decisive majority to keep together our United Kingdom. However, last year's referendum showed that nothing can be taken for granted; our union is precious, to be sustained and cherished day in, day out. There is no national forum more committed to protecting and strengthening the union than your Lordships' House. Time and again the United Kingdom has shown its resilience and capacity for renewal in order to meet the needs and aspirations of successive generations. This Scotland Bill sits within that tradition. The Bill balances the strong desire of people in Scotland for more decisions to be taken in Scotland, closer to those they affect, while retaining the strength and security of remaining part of the larger UK.

I have only been in this House a short time, but long enough to appreciate the wealth of constitutional knowledge and experience in all parts of the House. This wealth is evident in the quality of those listed to speak today. I look forward to hearing what I know will be thoughtful and well-informed contributions, in particular the maiden speeches of the noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Campbell of Pittenweem.

Your Lordships have already made valuable contributions, including in the recently published reports of the Constitution Committee and the Economic Affairs Committees. From the outset of this debate, I want to recognise and acknowledge with respect the strong feelings already expressed, both about process and substance. I accept that the process has been unorthodox. Then again, the events of last September were unprecedented. The very future of the United Kingdom was at stake. In those circumstances, no stone was left unturned in the defence and preservation of our country. Who among us can say honestly that, faced with the same circumstances and responsibilities of national leadership, we would not have responded with the same sense of urgency and determination?

The task now is to help Scotland move on, building on our shared values and experiences, to forge anew the close bonds of kinship and friendship and sense of common purpose and endeavour that is the glue of any successful nation state. In rising to the challenge, we have a clear choice. We can continue either to pump things up, or we can try to calm things down. I confess to being a firm supporter of the second approach, not least because I am certain that those who want separation would prefer the first.

I hope that we all share a strong desire to work together to bring our nation together, and for those of us who believe passionately in the union to be united in delivering, through this Bill, the promises made to the people of Scotland.

Lord Maxton (Lab): Is the Minister saying that the vow was the way in which the referendum was won? My view is that the vow was not necessary; the no vote would have won anyway.

Lord Dunlop: Fundamentally, I think it was the economic arguments that were decisive in the referendum. When the country is at stake, you want to do everything possible to maximise the no vote. That was what was done.

Lord Forsyth of Drumlean (Con): Could my noble friend confirm that, according to the article written by the editor of the *Daily Record*, the vow was all his idea and was put together by Gordon Brown and the editor of the *Daily Record* as a publicity stunt?

Lord Dunlop: I am not quite clear whether he is saying that it was my idea or Gordon Brown's. The key point about the vow is that three UK party leaders agreed it.

On the night of the referendum, as I waited for the results to come in, I listened carefully to what my noble friend Lord Forsyth of Drumlean had to say on the BBC's "Scotland Decides" programme. He cut straight to the chase, as he so often does:

> "The three party leaders made a promise—which I think they'll find very difficult to deliver—but it has to be delivered".

I agree with him—no one said it would be easy. Indeed, I can safely say to this House in all humility that, today, I am gaining some appreciation of what my noble friend foresaw. This Bill is the fulfilment of

that promise. It has to be delivered. Yes, there has been scepticism. Would all parties come to the negotiating table? Would they stay? Would someone walk out before a deal was struck? Could all the milestones be met? For the first time in the history of devolution, all five of Scotland's main political parties came together, stayed and reached a unique agreement. Every one of the milestones have been met on time.

Here, I want to pay tribute to the noble Lord, Lord Smith of Kelvin. Hot on the heels of leading the fabulous Glasgow Commonwealth Games, he skilfully steered the process to a successful conclusion. We owe him a debt of gratitude. It is good to see him in his place today and back in rude health.

Much has been said about the Smith commission reaching an agreement of such great constitutional significance after only an eight-week process, yet the agreement was the culmination not of an eight-week process but a four-year process which started in 2011 with the election of a majority SNP Government. So the Smith commission agreement did not emerge from a vacuum. It emerged from four years of lively constitutional discussion and debate in Scotland, which was informed by the body of evidence compiled by the Calman commission, and from a discussion punctuated by the publication of numerous reports from Scottish Labour's devolution committee, the home rule commission chaired by the noble Lord, Lord Campbell of Pittenweem, and the commission chaired by my noble friend Lord Strathclyde, alongside academic and think tank contributions, such as Reform Scotland's devo plus and IPPR's devo more reports. Indeed, I believe the Smith agreement was made possible because common ground had already been established by this body of preceding work.

Delivering the agreement in full is therefore a manifesto commitment of not only the Conservative Party but the Labour Party, the Liberal Democrat party and the Scottish National Party. So this Scotland Bill is not just a manifesto Bill; it is a super-manifesto Bill. Its provisions were agreed in the other place, where the Government listened to the debate, responded to the scrutiny and tabled more than 100 amendments on Report, and where the Bill was passed unopposed at Third Reading.

The *Daily Record* declares its famous vow met, and Gordon Brown says that the Smith commission recommendations, which arose from the vow, are delivered. The noble Lord, Lord Smith, has confirmed that the Bill honours what was agreed by the five parties. "A promise made is a promise kept" is surely an absolute precondition for earning the trust of the people of Scotland. Ahead of next year's Scottish Parliament elections, the debate in Scotland is increasingly turning to how the powers are used, as it certainly must.

This Bill is not simply about keeping a promise. It is about bringing a better balance to Scotland's devolution settlement and strengthening the union as a result. The Scottish Parliament was created with extensive spending powers—its budget today is around £30 billion—but little responsibility for raising the funds it wants to spend. The result is a fiscal gap and an accountability deficit. Before the Scotland Act 2012 is fully implemented, the Scottish Parliament controls almost 60% of public expenditure in Scotland yet is responsible for raising only some 10% of its funding. Once this Bill comes into effect, the Scottish Parliament will be responsible for raising more than 50% of what it spends. Holyrood will be transformed from a pocket-money Parliament, reliant on an annual cheque from the Treasury, to the powerhouse Parliament the people of Scotland want it to be. If the Scottish Government want a higher level of public services than the rest of the UK, they will have first to explain to voters in Scotland how they intend to pay for them.

Of course, some argue this Bill does not go far enough, yet it will make the Scottish Parliament one of the most powerful devolved Parliaments in the world. No amount of devolution is going to be sufficient for those who believe in independence, but a majority of people in Scotland rejected independence and voted to retain the benefits of being part of the UK: the security of our own shared independent currency, backed by the strength and stability of the Bank of England; the job and business opportunities of a deeply integrated single market; our social union, in which risks and resources are pooled; and common defence and security in an uncertain world. Indeed, I am delighted that Scotland is to be home to the new maritime patrol aircraft and another squadron of Typhoon fast-jets. These are the UK benefits that the Smith agreement and this Bill are careful to protect. We have heard a great deal about full fiscal autonomy. I will be clear: full fiscal autonomy ends the pooling and sharing of risks and resources across the UK. It would be bad for Scotland and bad for the UK as a whole, and that is why we rejected it.

I turn to the provisions of the Bill itself. Part 1 takes forward the Smith agreement that the permanence of the Scottish Parliament and Scottish Government be set out in UK legislation, and that the Sewel convention be put on a statutory footing. This reflects the existing political understanding and does not alter the principle of parliamentary sovereignty. The Scottish Parliament will be very largely responsible for how it runs itself, how it is elected and the people who can vote to elect it. Part 2 covers taxation. Maintaining the integrity of our single market and minimising business burdens means that not all taxes are candidates for devolution. Central to the debate is the devolution of income tax on earnings, building on the Scotland Act 2012 tax devolution, which comes into effect in April, and providing the Scottish Parliament with £11 billion of revenues. Income tax is paid by voters and is highly visible; whoever levies it is accountable to those paying it in the most direct way. While the definition of income remains reserved, the Scottish Parliament will have full control over rates and bands of income tax. It will be able to set a 0% rate, if it can afford to do so.

However, the Smith commission agreed that national insurance contributions should be reserved, so Scottish taxpayers will continue to help fund UK-wide services. Alongside income tax devolution sits VAT assignment. Differential VAT rates inside a member state are against EU law. This Bill assigns half of all VAT receipts raised in Scotland: £4.5 billion of revenue. Assigning a share of VAT was first suggested by the Calman commission. The more the Scottish economy grows, the greater the share of VAT revenue Holyrood will keep. That is an

[Lord Dunlop]
incentive to achieve growth. With the devolution of location-specific air passenger duty and the aggregates levy, the Scottish Parliament will have a mix of taxes and vitally important decisions to make.

Part 3 of the Bill means that the Scottish Government will be responsible for welfare provision in Scotland, worth approximately £2.7 billion last year, and able to take decisions for a number of types of social security benefit, discretionary payments, and employment support. Universal credit and its legacy benefits, such as pensions, remain reserved, although Scottish Ministers will be able to vary certain limited aspects. Devolving labour market benefits would undermine their role as automatic stabilisers and potentially put undue pressure on Scotland's finances in the event of a localised economic shock. What the Bill does devolve are benefits strongly linked to powers already exercised by Scotland, such as social care and health. The Scottish Parliament will have responsibility for benefits to meet extra costs paid to carers, disabled people, those who are ill, and those who require help with winter fuel, funeral, and maternity payments. When people most require help, the Scottish Government will be able to tailor that help to particular Scottish circumstances.

The Smith agreement was also of the view that the Scottish Government should be able to top up reserved benefits: the Bill allows this to happen. On Report, the Commons approved a new government clause enabling the Scottish Parliament to create new benefits in devolved areas of responsibility. We must be clear about these new welfare powers. If the Scottish Government wish to make supplementary payments to people in receipt of a state pension or universal credit, for example, or create new benefits in devolved areas, they should be able to do so. However, crucially, they must be able to pay for it from their own revenues.

Lord Forsyth of Drumlean: I am sorry to interrupt again, but can my noble friend explain what the second no-detriment principle contained in the Smith commission report means—the idea that both sides, north and south of the border, should compensate each other for changes in policy—and how that relates to the welfare and other provisions in the Bill?

Lord Dunlop: I shall come on to speak about the fiscal framework. The Government of Scotland and the UK Government are negotiating the fiscal framework and exactly how we put those principles, including the no-detriment principles, into practice. I will come back to that.

The Bill also enables the devolution of many other responsibilities, from the management of the Crown Estate's economic assets in Scotland to the management and operation of reserved tribunals. The Commons also agreed the devolution of abortion policy, which the Smith agreement concluded was an anomalous reservation. There are also significant measures relating to transport and energy.

I want to say something about the fiscal framework, to which my noble friend has alluded, the importance of which is rightly recognised by many of your Lordships. I am particularly grateful for the work done on this by the Economic Affairs Committee. The Government agree with the committee that the relationship between the fiscal framework and the legislative powers in the Bill is critical. It underpins the transfer of tax and welfare powers to Holyrood. The issues raised by the committee's report are exactly those being addressed in the detailed negotiations between the UK and Scottish Governments. Both Governments have agreed not to provide a running commentary—negotiating in public is not conducive to reaching an agreement.

We are committed to reaching an agreement as soon as we can after tomorrow's spending review and the draft Scottish budget on 16 December. We cannot guarantee when the negotiations will end—that is not in our gift—and to try unilaterally to set a specific date risks weakening our negotiating position. I hope the House will understand both Governments need time and space to reach an agreement that is right for Scotland and the UK as a whole and is built to last.

Lord Foulkes of Cumnock (Lab): I am sure the House will recognise that, but can the Minister help us? If, during the discussions on the fiscal framework, the Scottish Government's representatives conclude, as they may well do, that they are better off with a block grant based on the current arrangement of the Barnett formula than raising money through the tax powers on a low tax base, and if they do not accept the proposal from the UK Government on the fiscal framework and the Scottish Parliament fails to give legislative consent to this Bill, what is the Government's plan B?

Lord Dunlop: I seem to have heard "plan B" somewhere before. I say to the noble Lord that we are planning for success here. We working for success and the UK and Scottish Governments are saying the same thing. We are working constructively together to reach an agreement as soon as we can and good progress is being made.

Lord Reid of Cardowan (Lab): I would just like to probe a little on the Government's view that it is unhelpful to have a timeline for this and to envisage potentially indefinite discussions. I heard what the Minister said about unilateral declarations of times being unhelpful, which surprised me because the vow, of which he has spoken very much, unilaterally declared three timetables: St Andrew's Night, Burns Night and so on. I wonder why the Government have changed their mind. Would it not be helpful at least to have some indication of the timescale in which they would hope to reach agreement? I declare an interest as a former Secretary of State for Northern Ireland, where things tended to drift on for years rather than months.

Lord Dunlop: I thank the noble Lord. In broad terms, the Scottish Government and the UK Government are working in sync on this. On Friday, the Deputy First Minister, John Swinney, said,

> "I think fundamentally we need to make progress on the Scotland Bill so that the Scottish Parliament can take its final decision on whether the bill is to be adopted before we get to the Scottish Parliament elections next May".

Our firm intention is for the fiscal framework to be available to both Parliaments before the Bill completes its passage.

Baroness Liddell of Coatdyke (Lab): I am very grateful to the noble Lord for giving way; he has been very generous. One of my concerns following what he has just said is that we are going to be legislating in this Chamber on a wing and a prayer. I have taken Finance Bills through the other place. Changes to taxation have to be looked at meticulously because they have an impact on other parts of the taxation system. I can appreciate the difficulty that the Minister is in because of the commitments made by the leaders of the three parties, but I am extremely worried that we will end up taking decisions that we cannot back out of and that will have a negative effective not just on Scotland but on the whole of the United Kingdom. Can he give me any reassurance on this?

Lord Dunlop: As I said, we are working very hard to get this fiscal framework agreed as quickly as we can. This House considered the tax provisions of the previous Scotland Bill on their merits but, when it did so, aspects such as the block grant adjustment had not been agreed, so there is a precedent here. However, as I said, these two processes need to come together, and that is what we are working hard to achieve.

This House will be involved in the normal way if legislation is needed to implement aspects of the framework. To help the House fulfil its scrutiny role, the order of consideration for Committee will ensure that Parts 2 and 3 of the Bill—its tax and welfare clauses—are scrutinised at the end of Committee, giving more time for the negotiations to progress. As I have already said, it is the firm intention of the UK Government that the fiscal framework should be available to both the Scottish Parliament and both Houses of the UK Parliament before the passage of the Scotland Bill is completed. I shall be happy to say more about the fiscal framework in my closing speech and I particularly look forward to listening to what the noble Lord, Lord Hollick, has to say.

The Government believe that the new powers contained in the Smith agreement provide the basis for a stable devolution settlement for Scotland. Both Governments will need to work together to ensure that the powers are used effectively. The powers in the Bill are substantial and offer real opportunities to develop Scottish solutions to Scottish issues. This is not devolution in isolation but part of a broader process that recognises the need to reflect changes in other parts of the UK and that one size does not fit all.

Lord Lamont of Lerwick (Con): I get the impression that the Minister is getting towards the end of his speech. If I heard him correctly, he said that he would give an explanation of the second no-detriment principle, and I very much hope that he is going to do that.

Lord Dunlop: I need to make progress, as a lot of noble Lords want to speak. I have a closing speech and will say more about the fiscal framework in response to points made during the debate.

At this stage, let me conclude by saying that I am confident that the settlement agreed by the Smith commission, as set out in the Bill, will show itself in time to be durable. I beg to move.

3.43 pm

Amendment to the Motion

Moved by ***Lord Hollick***

As an amendment to the Motion that the Bill be now read a second time, at end to insert "but that this House calls upon Her Majesty's Government not to schedule Parts 2 and 3 of the Bill in Committee until the updated fiscal framework proposed in *Scotland in the United Kingdom: An Enduring Settlement* (Cm 8990) has been published".

Lord Hollick (Lab): My Lords, the Economic Affairs Committee, which I chair, has over the past four months conducted an inquiry into the devolution of public finances to Scotland. We heard evidence in London and Edinburgh from academics, economists, politicians and business leaders, and we met the Scottish Parliament's Finance Committee. Based upon the evidence that we heard, we unanimously concluded that the financial measures in the Bill could be understood and scrutinised only once the fiscal framework was available. The amendment in my name seeks to ensure that the framework is available to Parliament in time to allow a full and informed consideration of the Bill. As the Minister mentioned, the Governments in Westminster and Holyrood declined to appear before us, citing the need to maintain confidentiality until agreement had been reached. Therefore, the terms of the fiscal framework remain shrouded in mystery.

The Scotland Bill is based on the recommendations of the Smith commission, the aspiration of which was,

"to bring about a durable but responsive democratic constitutional settlement, which maintains Scotland's place in the UK and enhances mutual cooperation and partnership working".

There are three aspects to the Smith commission recommendations on financial matters: the tax powers, the welfare powers and the fiscal framework. The latter is the mechanism to make the first two work. The Bill contains the tax provisions and the welfare provisions. It does not contain, nor is it accompanied by, the fiscal framework. This lacuna prompted the former Chancellor, the right honourable Alistair Darling, to tell us that the process was a "rotten" one, and that,

"nobody has a clue what is going on".

So what is the fiscal framework, apart from elusive? On 14 October 2015, the Secretary of State for Scotland told the Scottish Affairs Committee:

"The fiscal framework is a vital element of the package that will make Holyrood one of the most powerful devolved parliaments in the world".

In Scotland, the Deputy First Minister has said the framework is,

"an integral part of the devolution of further responsibilities".

The Smith commission stated that the framework would contain,

"the funding of the Scottish budget, planning, management and scrutiny of public revenues and spending, the manner in which the block grant is adjusted to accommodate further devolution, the operation of borrowing powers and cash reserve, fiscal rules, and independent fiscal institutions".

The fiscal rules will provide the operating system for Scotland's devolved financial powers under the Bill. For example, Scotland will need to be able to borrow

[LORD HOLLICK]
more to manage the potentially increased income volatility arising from its reliance on devolved tax income, which, unlike the block grant, may fluctuate. Without the fiscal framework we do not know how much it can borrow, the limits to that borrowing or what would happen if the borrowings cannot be repaid. Scotland's block grant will need to be adjusted annually to take into account the devolved taxes. How this is done may operate to Scotland's detriment over time. The mechanism to make the annual adjustment will be a crucial part of the fiscal framework.

On 14 October, the noble Lord, Lord Dunlop, told the Scottish Affairs Committee he was confident that agreement on the fiscal framework would be reached this autumn. More recent reports suggest that the target date for publication is now mid-January, which would of course be in time for consideration in Committee. Our report identified seven crucial problems with the Bill, the first of which is the absence of the fiscal framework. The majority of the other problems also arise from its absence. Let me describe four of the problems.

How will devolution affect Scotland's funding? Scotland is funded through the block grant as adjusted each year by the Barnett formula. The formula has been used since 1978 and produces disparity in spending per head between regions of the UK. The latest Treasury figures, published last week, show that taking the UK's identifiable spending as 100%, England is 97%, or 3% below the average; Scotland is 116%; Wales is 111%; and Northern Ireland is 125%. It is generally assumed that the disparities reflect the differing needs of the four countries. That may well be the case but, at present, this assumption is not based on any logical underlying assessment. Six years ago, the Select Committee on the Barnett Formula recommended that the assessment of funding should be based on need and introduced over a 10-year period. We endorse its conclusion and urge the Government to consider this option. It will produce a fairer, more transparent and, crucially, more sustainable outcome for the whole of the UK.

One of the most important and complex issues is how to determine the amount by which the block grant paid to Scotland would be adjusted each year to take account of devolved powers. In the first year, the block grant is set by subtracting the revenues foregone by the UK Government from the total block grant. This fulfils the first no-detriment principle enunciated by the Smith commission. In following years, it must be indexed to reflect the tax forgone by the UK Government. The choice of a method of indexation may seem technical, but it is of vital importance to Scotland and the rest of the UK. If it is not transparent and judged to be fair, it will become a source of annual grievance—and the figures involved are substantial.

As we have heard, Scotland will be taking responsibility for £11 billion of income tax revenue, which is 30% of Scotland's total block grant of £37 billion. We looked at three indexation options: a fixed percentage, indexed deduction to changes in the rest of UK revenues, and indexed deduction to changes in the rest of UK revenues per head. In each case, even if Scotland matched UK economic performance and grew its tax base by the same rate as the UK, the amount deducted from the block grant would be bigger than the revenues collected from tax. Within three or four years, the Scottish budget could be hundreds of millions of pounds lower as a result. Over 20 years, we calculate that it would reduce in real terms by between 34% and 27%. This is unlikely to be a recipe for harmony between nations.

Deciding who bears the risk is another thorny subject. Devolution gives the devolved entity the powers to take responsibility for its overall economic performance. If successful, Scotland expects to benefit from that success. But what if it is less successful or its economy suffers from a UK-wide shock, such as the banking crisis? To what extent should it be protected in such adverse circumstances? Well, that will depend on the fiscal framework.

Another principle governing the financial relationship between Scotland and the UK is the Smith commission's second no-detriment principle, which states that there should be no detriment to the UK or the Scottish Government as a result of policy decisions made after devolution. But how will this work in practice? Professor Kay asked what would happen if you reduced health expenditure in England and made people pay for certain procedures, with the result that ill people would be more inclined to go to Scotland and healthy people more inclined to go to England. Does anybody really imagine that compensation will be paid between the two jurisdictions to reflect that? Furthermore, if the Scottish Government lowered air passenger duty, would they have to compensate Newcastle Airport for any loss of revenue caused by passengers moving their custom to Scottish airports? How would the compensation be decided? Would there be an annual negotiation between the Scottish Government and HM Treasury? If one side is dissatisfied, who would decide? That is yet another opportunity for an annual row. Our witnesses concluded that the second no-detriment principle was simply unworkable and should be abandoned.

The Scotland Act 2012 granted Scotland increased borrowing powers and the power to borrow on the market. Witnesses agreed that the current powers were insufficient to cover the additional devolution in the Bill. Any changes to Scotland's borrowing will be part of the fiscal framework and require legislation. Linked to expanded borrowing is the question of what will happen if Scotland is unable to meet its debt obligations. Is a "no bailout" rule really feasible? We have seen what happened to that rule in the eurozone, while during the financial crisis the UK Government bailed out the largest Scottish bank. The evidence that we heard was clear: a "no bailout" rule would simply not be believed by the markets. It is therefore essential that there are clear and consistent rules in the fiscal framework specifying the amounts that can be borrowed.

Much hangs on the terms and principles of the fiscal framework. It deserves very close scrutiny. Yesterday, the Constitution Committee said:

> "In the absence of any information about the fiscal framework, it will be impossible for the House to assess whether or not the Bill will cause detriment to all or part of the United Kingdom".

Holyrood has made it clear that it will not give legislative consent to the Bill until it is satisfied by the fiscal framework and until MSPs have the opportunity to consider the fiscal framework in detail. However, the House of

Commons completed all stages of the Bill without sight of the framework. The Government's haste to legislate risks adding insult to injury. Not only is this major constitutional change being made on the hoof; it is being made in the dark. This is currently, in the words of Alistair Darling, a "rotten" process but does not have to be so.

In the overview accompanying his letter to Peers dated 11 November, the noble Lord, Lord Dunlop, stated that the Government aimed,

"to give respective Parliaments time for due consideration of both the Fiscal Framework and the Scotland Bill".

He has today confirmed that this remains the Government's firm intention. This is welcome, but meaningful only if the fiscal framework is available while the Bill is scrutinised in Committee. By moving Parts 2 and 3 to the end of Committee stage, the Minister no doubt hopes to ensure that the framework will be published before the final Committee day, but if it is not he must assure the House that he will defer the final Committee day until it is published. If he cannot give that assurance today, will he explain how the Government will make good on the promise given in the overview, repeated today, to allow Parliament time for due consideration of the financial framework if its publication is further delayed? This is a settlement that must endure. Undue haste will make for a bad outcome. I beg to move.

3.55 pm

Lord McAvoy (Lab): My Lords, I thank the Minister for the way he introduced the Bill and for the always constructive manner with which he approached initial proceedings. On that basis, I am confident that this House will be able to have a positive impact on the Bill. I look forward to working with Members from across the Chamber to ensure that this happens.

I also thank my noble friend Lord Hollick for the crucial work that he and other members of the Economic Affairs Committee have done in producing this incredibly detailed and important report on the relationship between the proposals outlined in the Bill and the revised fiscal framework. I will address the fiscal framework and outline the Opposition's position later in my speech, but suffice it to say for now that it is incredibly disappointing for everyone that we do not have draft proposals to consider alongside the Bill. I do not want to pre-empt the debate, but I am sure that if a Joint Committee could redouble its efforts to proceed at the quickest pace possible, without compromising on consensuality and scrutiny, it will be warmly welcomed by colleagues across the House.

By any standards, it has been an extraordinary 18 months for Scotland. Today is yet another milestone in the history of Scottish devolution. The referendum was certainly unlike any political campaign that many of us have ever been a part of, invigorating political debate across party and generational divides. The Scottish people voted to remain part of the United Kingdom, not on the basis of a return to the status quo, but in a belief that they would be a member of the union with an enhanced role in how to govern their lives. Here is also the best place I can think of to record, once again, my and our appreciation for the right honourable Alistair Darling's chairmanship of Better Together; the absolutely brilliant managerial work carried out by my friend, Frank Roy; and the invigorating intervention by the right honourable Gordon Brown.

I mentioned giving the Scottish people an enhanced role in how to govern their lives. The Bill is that change and it delivers on the promise made. It is important to acknowledge from the outset the unique challenge that this House faces, given that the party of the majority of Scotland's current elected representatives does not have a voice in this Chamber. It is something to which we must be wise as we debate the Bill. That said, we on this side will not shy away from what needs to be done to ensure that the Bill is as effective and workable as it can be. The decision by the Government to accept so many of our amendments, and those of other opposition parties, on Report in the other place was an essential part of this process. As a result of these concessions, we are confident that the vow has been delivered and that the Bill fulfils the powers promised and agreed by all parties in the Smith commission. The noble Lord, Lord Smith of Kelvin, has stated that the Bill, as amended,

"honours the agreement that was reached".

The House will be aware that before the Government introduced its amendments we on this side of the House felt that the Bill fell well short of the commitments the main political parties had given to the Scottish people. However, following these crucial concessions—it must be recognised that the Government have moved from their original position, particularly on social security—the Bill now delivers on the vow and the Smith agreement in both spirit and substance. Her Majesty's Opposition, therefore, fully support the Bill and all it seeks to achieve. As my honourable friend Ian Murray has stated,

"the Bill really matters, because it guarantees not only economic benefits and UK social solidarity, but the scope under devolution to do more, to make different choices and to set a different course for Scotland, distinct from a UK agenda that might not always be … in accordance with the public opinion of Scotland".—[*Official Report*, Commons, 8/6/15; col. 933.]

The Scottish Parliament, as has been said, will be one of the most powerful devolved legislators in the world. This presents a huge opportunity for Scotland. Not since the Scotland Act 1998 has there been a bigger transfer of powers. It is now up to the Scottish Government to ensure that these powers are used for the benefit of the Scottish people. The permanency of the Scottish Parliament and Government is now beyond question and, as a result of another Labour amendment, the Government have removed any UK ministerial veto on the new regulation-making powers on universal credit. Along with constitutional changes, the Bill also devolves power over electoral matters to the Scottish Parliament.

I am glad to say that significant headway has also been made on gift aid, following a great deal of concern from Labour and third sector organisations that changes to income tax levels in Scotland could cause considerable confusion among charitable donors, and financial and administrative problems for charities. The Secretary of State has committed to,

"an ongoing dialogue with the charity sector before and after the enactment of the Bill to ensure that gift aid continues to operate effectively".—[*Official Report*, Commons, 9/11/15; col. 100.]

We fully endorse this.

[Lord McAvoy]

From April 2017, the Scottish Parliament will have total control over the rates and thresholds of tax on non-savings and non-dividends income. Following the acceptance of the Labour amendments, the Scottish Government will now be able to create new benefits in devolved areas and top up existing reserved benefits, including tax credits. These substantial new powers will enable Scotland to raise more than 50% of its own expenditure and to design a new social security system. It will allow the Scottish Government to restore, if they so choose, the loss in tax credits for working families, just as the Scottish Labour leader, Kezia Dugdale, has committed to do.

As part of this welfare package, we were pleased that the restricted definition of carer's allowance was removed from the Bill. This will mean that there is significant additional scope for the creation of a new, more generous and more expansive, benefit. However, it was disappointing that the Government did not table a similar amendment with regard to disability benefit. That brings me to the areas of the Bill where we still think improvements can be made.

Although the Government's welfare concessions are warmly welcomed, there remain further measures which, if introduced with enhanced provisions, would clear up some of the Bill's inconsistencies. One area of concern is the definition of disability benefit, as I mentioned. At present, that definition is overly restrictive and could place unnecessary limitations on the kind of replacement benefit the Scottish Government have the power to introduce. Despite the similarity between the amendment and the one pertaining to carer's allowance, the Government failed to table the requisite amendment in this area—we are not certain why. The devolution of the Access to Work scheme is another area where there should be further debate.

Beyond the two specific measures that I have highlighted, it is paramount that a smooth transition is afforded for all the welfare provisions that are to be devolved with the passing of this Bill. Labour believes that the most effective means of ensuring this is the establishment of a Joint Committee on welfare devolution. The committee would oversee the transition and implementation of welfare powers and include Members from both Parliaments. Such a committee would be completely open, impartial and transparent. Transparency is something we regard as having been lacking in discussion so far, particularly in the negotiations surrounding the fiscal framework, an issue I expect to dominate much of our debate today and the remaining stages of the Bill. The Scottish Government have been quick to claim that the Bill will be rejected if the accompanying funding is "not fair to Scotland". However, they have been slow to produce accounts of the meetings that have taken place so far.

The Joint Exchequer Committee between the United Kingdom and Scottish Governments promised that an agreement would be reached by the autumn. However, as has been said, we now understand that the negotiations will not be completed until January at the latest. This is disappointing. It is vital that agreement on the revised framework is reached on a consensual basis and in a timely manner, as well as being made more formal and transparent. This is something that we will be looking to pursue and explore during the passage of the Bill through your Lordships' House.

Lord Reid of Cardowan: I congratulate my noble friend on his presentation. He has tiptoed through some very big thistles—with some aplomb, if I might say so. On the question of reaching an agreement on the fiscal framework, I think the whole House would be unanimous, whatever view we take on the amendment, that that is desirable. Should it not be reached by the time we get to the latter stages of the Bill, does he have a view on how we should address it?

I fully understand that we are caught between a rock and a hard place because we have made a promise. Some of us take the view that that was a strategic masterstroke; some of us, like me, think it was a tactical ploy that turned into a strategic disaster, and we are now facing up to it. Nevertheless, whatever view we take—I am personally of the view that we are where we are now and we have to go on with this—how do we go on with it if we do not have the fiscal framework, which, it seems, would lead not to a sustainable agreement but to years and perhaps decades of future grievances? I hope I have given my noble friend the time to respond to me.

Lord McAvoy: My noble friend is as helpful as ever.

Lord Forsyth of Drumlean: Keep going.

Lord McAvoy: Once again, the noble Lord, Lord Forsyth of Drumlean, shouts encouragement to me. The facts of life are that we are in a very complicated situation. It would be foolish for anyone—me, my noble friend Lord Reid of Cardowan, or even, dare I say, the noble Lord, Lord Forsyth of Drumlean—to make specific, hard-line declarations of what is to be expected, when it should happen and what we do if it does not happen.

I believe that there is good faith—I have no reason to think otherwise—in the discussions between the United Kingdom Government and the Scottish Government. Your Lordships' House should remember that the onus is on the UK Government to come up with a negotiated deal but the onus is also on the Scottish Government to come up with a deal. The people of Scotland voted to stay in the United Kingdom—not unanimously but there was a lot of support for the vote—so there are strictures awaiting anyone who plays games with these very important negotiations. It is not often I say this but I believe we have to trust the Government and the Scottish Government to deliver for the Scottish people.

The Labour Party supported many of the amendments that the Government brought forward in the other place, not least because the concessions had been debated thoroughly. However, that was not true for all the amendments, particularly those concerning the devolution of abortion law. I put on record that our concern is not about the issue of abortion—as we all know, that is different from constitutional matters—but about process. We will be calling for extensive consultation with relevant groups and representatives in Scotland to see what support there is for this proposal. This is not a reflection on the Scottish Government; this is about following the advice of the Smith commission.

Beyond these issues, we will be keen to debate a number of the transport provisions, most notably those surrounding the British Transport Police. Clause 43 follows the recommendation of the Smith commission that the functions of the British Transport Police should be devolved; but not to abolish them, which is what is being proposed by the Scottish Government, who want to transfer the existing functions of the British Transport Police to Police Scotland—more centralisation. This news has been met with strong criticism from trade unions and British Transport Police itself. This is something that we will explore in Committee.

We also intend to extend the Scottish Government's capacity to bring about equality, particularly in relation to the functions of Scottish and cross-border authorities. That means increasing the accountability of the Equality and Human Rights Commission to the Scottish Parliament. This House has an excellent record of bringing about greater levels of equality in public life.

The final point to make on specific areas of the Bill that we hope to improve is about the Crown Estate, which again will be the subject of much debate in Committee. Although we are largely supportive of the measures the Government have brought forward, we seek clarification on a number of issues, which we will do in Committee. There are issues that need to be examined.

Lord Forsyth of Drumlean: I am most grateful to the noble Lord—I can tell he is reaching the end of his remarks. Could he have a go, on behalf of the Official Opposition, at explaining to us how the second no-detriment principle will work?

Lord McAvoy: Your Lordships' House should be aware that I was sitting here a few minutes ago, before I started, wishing that the noble Lord, Lord Forsyth of Drumlean, would ask that question. The noble Lord was a driving force in imposing the poll tax in Scotland, which was certainly to the detriment of Scotland. He did not give any consideration to the detriment to his country then. I am really glad that the noble Lord asked that question.

Lord Forsyth of Drumlean: And the answer is?

Lord McAvoy: The answer is that we will not support anything that we know is detrimental to our nation—unlike the noble Lord during the poll tax debacle.

The passage of the Bill through your Lordships' House was always going to strike a different tone from its passage in the other place—the noble Lord has confirmed that—for a variety of reasons that I mentioned during the start of my speech. However, the concessions made on Report and the acceptance of amendments from Labour and other opposition parties has meant that the Bill, as drafted, delivers the vow in full. That has to be stated time and time again.

Your Lordships' House has a genuine opportunity to focus on the detail of the Bill and to ensure that it meets the standards that the Scottish people deserve. This is what your Lordships' House does best, and I caution those on the outside who snigger at or demonise the work that we can do in this Chamber, with insults such as "unelected cronies" and all the rest of it. As we set out to engage in a thorough, detailed and thoughtful debate, which has at its core the very best interests of the Scottish people, I am sure your Lordships' House will live up to that. I am proud of a lot of what the House of Lords can achieve through the scrutiny and revision of legislation. I am also a proud Scot. Whatever people may say, these two facts are not contradictory.

The Bill is a real opportunity to provide a stable, durable devolution settlement and gives the Parliament the capacity to create a fairer, more prosperous Scotland. Once it has finished its passage through your Lordships' House, we must turn our attention to ensuring that all these new powers are devolved and, crucially, to how they can be used. In the mean time, as always, there is more that can be done. We support the Bill.

4.13 pm

Lord Wallace of Tankerness (LD): My Lords, we on these Benches very much welcome the fact that we now have this Bill before us and congratulate the Minister on introducing it.

Many times before today, and already in this debate, the history of the Bill has been well rehearsed. Reference has been made to the agreement among the three party leaders and the fact that on the morning after the very successful outcome of the referendum—which showed that the people of Scotland did, by a significant margin, wish to remain part of the United Kingdom—the Prime Minister announced the establishment of the commission under the chairmanship of the noble Lord, Lord Smith of Kelvin. I am delighted to see the noble Lord with us today. As has been said, there was a very exacting timetable for the publication of the commission's proposals, which were due before St Andrew's Day last year, with the draft clauses due before Burns Night. I had some engagement in those days with the Scotland Office, the Cabinet Office and the Treasury, and the work that was put into meeting that particular deadline is a great tribute to the staff. Since then, in the light of further discussions, there has been some refinement of the clauses, but we on these Benches believe that the commission's recommendations and proposals—taking forward, as they did, the agreement among the three party leaders—are delivered in full in this Bill we have before us. The noble Lord, Lord Smith of Kelvin, has also indicated that, and we look forward to hearing more precisely what he thinks about the detailed provisions of the Bill.

We also support the Bill because it is a further step along the road to federalism, which for my own party has been the ultimate destination for many years. Indeed, the Scottish Liberal Democrats' contribution to the Smith commission was based on *Federalism: The Best Future for Scotland*, the report produced by a commission chaired by my noble friend Lord Campbell of Pittenweem. We very much look forward to hearing his maiden speech today. He brings to this House great expertise and experience, not just in politics but also outside politics, in particular on this subject. We also look forward to the maiden speech of our fellow member of the Faculty of Advocates the noble Baroness, Lady McIntosh of Pickering.

While it is important that we support this Bill, as the noble Lord, Lord McAvoy, echoed, the House must do its job properly—a job of proper scrutiny. I think that is more incumbent on us, given that the three principal parties actually agree on the Bill. As I said at our

[Lord Wallace of Tankerness]
briefing last week, I think we should be haunted by the Child Support Agency which went through Parliament with the support of all parties. Those of us who were Members of Parliament at the time know how much our constituency mailbags and surgeries expanded because, I think, something that was agreed by all parties did not perhaps get the scrutiny that it should have had. If we seek to improve on the Smith commission proposals and do so in the spirit of the commission, then we should feel that we can certainly do so.

Lord Reid of Cardowan: In fairness, since the noble and learned Lord said that we have to give this scrutiny, I should ask him the same question that I asked my noble colleague here. How can we give it scrutiny if an essential, central, crucial part of it—the fiscal framework—is not available for us to scrutinise? Does he have a view on how it might proceed? My noble friend gave us his view that we should have a degree of trust and wait to see how things develop. Does the noble and learned Lord have a view?

Lord Wallace of Tankerness: My Lords, I do. If I start answering that partly now, I will probably end up repeating myself. I certainly will address the point that the noble Lord, Lord Reid of Cardowan, asks.

I see the Bill as having a number of different parts, dealing with constitutional issues, fiscal issues, welfare issues and what might be described as miscellaneous provisions issues. On the constitutional issues, the commission recommended that,

"UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions",

and that,

"The Sewel Convention will be put on a statutory footing".

Clause 1 of the Bill does indeed state that the Scottish Parliament and the Scottish Government are permanent institutions, and it is claimed, as the Minister said, that it should not encroach on the sovereignty of Parliament. I certainly believe that federalism would be a better guarantee of the long-term establishment and entrenchment of the Scottish Parliament, but that is not on offer—it was not before the Smith commission.

During the Scottish Constitutional Convention—there are a number of noble Lords present who were party to that convention—we had many agonising debates as to how we might best entrench the Scottish Parliament that we were intent on establishing. We came to no really good conclusion. When the Labour Party, in Opposition in 1996, recommended and proposed a referendum, my party colleagues and I were opposed to that. In retrospect, I think we were wrong. The fact that we had a referendum in 1997 with such an overwhelming result—both on the Parliament itself and on its tax powers—means that there was a political entrenchment that no amount of legal debate, legal argument or legal wording was ever going to establish. While it is undoubtedly the case that, technically and legally and in constitutional theory, Parliament can repeal what has been said here, nevertheless the fact that it is suggested that there should be a referendum before there is any abolition of the Scottish Parliament lends a political entrenchment which is very welcome indeed.

With regard to Clause 2, I note that what is in the Bill is almost literally what the commission proposed—that it should put on a statutory footing the Sewel convention—because it states:

"But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament".

Those are the words that Lord Sewel used on 21 July 1998. Of course, in practice, legislative consent Motions have been extended by *Devolution Guidance Note 10* to include Bills in the United Kingdom Parliament which confer new powers or responsibilities on Scottish Ministers and the Scottish Parliament. By definition, if we are conferring new powers, the powers cannot already be devolved. My question for the Minister is: why is the clause limited to the very narrow, literal expression used by Lord Sewel in July 1998? In practice, that wording plus *Devolution Guidance Note 10* has worked. Strictly speaking, this Bill does not require a legislative consent Motion because it is conferring new powers on the Scottish Parliament. Are two categories of legislative consent Motions envisaged and, if not, why not just put the whole practice of legislative consent Motions on to the statute, rather than limit it to the words of Lord Sewel during the passage of the Scotland Act 1998?

With regard to welfare powers, we believe—and it was reflected in the outcome of the Smith commission report—that it is consistent with the principle of securing a social union that many welfare benefits are rightly reserved to the Westminster Parliament, but we support the proposals for the Scottish Parliament to have power to create benefits in the areas of its devolved responsibility: housing, carers, disabilities and discretionary payments in areas of welfare. As the noble Lord, Lord McAvoy, said, no doubt they need to be looked at in more detail so that they deliver what was said on the packet, and we will certainly do so.

It is also important to remember that with that power goes responsibility. There is not much point if people go around promising more in terms of top-up benefits unless they are prepared to say where the money will come from to pay for them. It is an inevitable consequence of having a mixed welfare system—partly devolved, partly reserved—that the Scottish Government and the United Kingdom Government will have to work more closely together. That in itself cannot be a bad thing; we hope that it will generate more collaborative working than we have sometimes seen in the past.

The amendments made in the other place have to some extent taken away the concern that there was a veto, which is welcome. I always thought that the veto case was totally overstated. I think it is a question of practicality. I remember that when I was in the Minister's position of having to answer to your Lordships' House, I asked: "What is actually meant by this?", when we were dealing with the draft clauses. The example given to me was: "If the Scottish Parliament decides that it wants to have a top-up benefit for left-handed redheads, frankly, the social security system does not have a database for that, so we could not agree to it until such time as we had one". It was therefore not unreasonable that such a mechanism was included to allow the practicalities to be resolved.

There are one two other specific provisions. The commission recommended that there should be,

"a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement".

Clause 58 refers to "Renewable electricity incentive schemes", but it does not refer to heating schemes. I am not sure that any explanation has been given as to why heating schemes should not be included, given the wider remit of the Smith commission proposals.

I echo some of the comments made by the noble Lord, Lord McAvoy, on equality. However, I think it is important that we ensure that the basis of equalities legislation in the United Kingdom is in no way diluted through devolution.

With regard to the Crown Estate, the commission recommended that there should be devolution of management to the Scottish Parliament—or, more practically, to Scottish Ministers—and onward devolution to the communities of Orkney, Shetland and the Western Isles, and indeed, other local authorities. Many of us here are hugely suspicious about whether a Government in Edinburgh who seem to spend all their time centralising, as the noble Lord, Lord Maxton, said during Questions today, will actually adopt the spirit of decentralising power further. The noble Lord, Lord Smith of Kelvin, in his personal comments on the commission, stressed the importance of devolution going beyond Edinburgh. We may wish to examine amendments along the lines of those moved by my right honourable friend Alistair Carmichael in the other place to leapfrog, as it were, and genuinely ensure the empowerment of local communities.

Turning to the fiscal powers, we now have full income tax, aggregates tax, air passenger duty—the latter, too, having been recommended by the Calman commission on which I served. Can the Minister indicate why aggregates tax is included now? We did not include it before because we were awaiting judgments from the European Court of Justice. An update on where we are on that, and why the Minister thinks it is possible now when it was not in previous legislation, would be welcome.

We owe it to your Lordships' Select Committee on Economic Affairs to respond to the report that it has given us, which undoubtedly has aroused some controversy. I certainly understand and recognise the frustration that we do not yet have the fiscal framework. In response to the noble Lord, Lord Reid of Cardowan, I believe that it is important that we should have sight of that at some stage in our proceedings, but I just utter this word of caution. We cannot do this in a political vacuum. Delaying the Bill at this stage would effectively give the SNP Government a veto on the progress made, and that would not be particularly desirable either. The Minister said that John Swinney was on record saying that he wanted this agreement. We must take that at face value, but, equally, those of us who are immersed in Scottish politics well know that, if something went wrong and we did not manage to reach agreement, they are the masters and mistresses of turning that to their account, and the finger of blame would point unequivocally at your Lordships' House. Those who have made milking grievances a master art would be only too pleased to have a narrative of betrayal.

Lord Reid of Cardowan: I have a great deal of sympathy with what the noble and learned Lord says, because, on the one hand, we have the cause of rational scrutiny, and on the other the imperative of politics—of keeping a vow. My worry is actually politics: I worry that, in capturing the minutes, we will lose the hours. In other words, if the criticisms being made are correct, then we might have a political storm at present if we were to do as was suggested and in any way delay the Bill, but if the criticisms are correct, we will have decades of such grievances and political problems in future. I probably come down on the same side as the noble and learned Lord on this: the imperatives of the politics are necessary today, but it is essential that the Government recognise that this fiscal framework has to come back at some stage before we get to the end of this process. Otherwise, we are having to make the devil's alternative choice.

Lord Wallace of Tankerness: My Lords, nothing I said takes away from what I said at the outset: that it is very desirable that we see the fiscal framework. The Government should take from all sides of the House that there has been a view to that effect. While I think it is nonsense to expect the Government to reveal their negotiating hand in this debate, it is not unreasonable to ask, perhaps, for more transparency to show that progress is being made, and for the Government to enunciate some principles as to what they wish to see in the fiscal framework.

For example, one hopes that the Government's negotiating stance is to seek fairness on all sides—for Scotland and the rest of the United Kingdom. Their role is to take in the whole of the United Kingdom, not just the rest of the United Kingdom. The no-detriment principle should be at the point of devolution: that there is no detriment one way or the other when a particular tax is devolved. There should be a form of indexation—I do not underestimate the difficulties, but it should be one which in itself is neutral, with an automatic mechanism to avoid an annual row.

Lord Forsyth of Drumlean: Does not the noble and learned Lord think that there is a great irony that the Scottish nationalists are arguing that it is essential for the Scottish Parliament to be able to consider the Bill alongside the fiscal framework, in order to ensure the best interests of Scotland, when this is a Bill that will affect every part of the United Kingdom and the House of Commons has not had an opportunity to do what the nationalists are saying is essential, and quite rightly so, in a Scottish context?

Lord Wallace of Tankerness: My Lords, I am not sure what, if anything, was said in the House of Commons about the lack of the fiscal framework when the Bill was being debated there—in fairness, I am sure that it was discussed—but what I have said is that the Government should be seeking to negotiate for the whole of the United Kingdom: there should be fairness all round with regard to this.

[Lord Wallace of Tankerness]

Crucially, we should make it very clear that Scotland should bear the full fiscal consequences of its own decisions. There has been some suggestion somewhere that there has been a bit of "cake and eat it": that somehow or other, if things go wrong, Westminster will top it up. There are those of us who believe that the important rationale for more tax powers is accountability, but that goes out the window unless—for better or worse—the Scottish Parliament accepts responsibility and accountability for the consequences of its decisions.

In conclusion, the important thing that many of us want is to get on and use the powers. From next April, there will be the Scottish rate of income tax. We look forward, once this Bill is implemented, to more than £15 billion-worth of tax powers and £3 billion-worth of welfare.

Lord Lamont of Lerwick: I am most grateful to the noble and learned Lord for giving way and apologise for having hesitated for a moment; I was just reflecting on what he had said. I strongly agree with him about the Scottish Government accepting responsibility when they have the power to make individual decisions relating to rates of income tax. He said they must be accountable because they have the responsibility, but is that not utterly inconsistent with the idea of the second no-detriment principle which seeks to safeguard them and does it not make a nonsense of the responsibility that they have?

Lord Wallace of Tankerness: I look forward with interest to what the Government have to say on the second no-detriment principle. If I may say so, one of the shortcomings of the Smith commission report—I am sorry, this will have to take up a bit more time—is that it just gives a heading on page 26 that says:

"No detriment as a result of UK Government or Scottish Government policy decisions post-devolution".

It then says:

"Where either the UK or the Scottish Governments makes policy decisions that affect the tax receipts or expenditure of the other, the decision-making government will either reimburse the other if there is an additional cost, or receive a transfer from the other if there is a saving. There should be a shared understanding".

Scotland has powers over the threshold and rates of income tax. As I understood it—no doubt the noble Lord, Lord Smith of Kelvin, will be able to tell us—if for example, as was indicated, the United Kingdom Government were to change the definition of an income tax payer, that could have an impact on Scottish tax rates. I see that as the other detriment that would have to be addressed. It is certainly how I understood it—but more important is how the Government understand it. Thank goodness I do not have to answer for that any longer.

This should actually be an exciting time. The two most exciting elections I fought in Scotland were in 1999 and 2003, when we had got the constitutional settlement and were debating how we would use the powers we had. That made for real political debate. We should be able to use the powers imaginatively. Parties should be able to debate how we set out an agenda for an enterprising Scotland, a more socially just Scotland, a greener Scotland and a fairer Scotland, and how we can benefit all its communities—not just in the central belt but from the islands down to the Borders. This Bill is not an end in itself. It is a means to try and improve the governance of Scotland and the accountability of that governance, give the Scottish people an opportunity to take more decisions into their own hands and build the kind of Scotland we want to see. The Bill has our support.

4.32 pm

Lord Smith of Kelvin (CB): My Lords, in the run-up to the Scottish independence referendum, the leaders of the UK's main parties made a series of commitments about further powers for the Scottish Parliament. I was asked to chair political talks to agree the detail of what those powers should be. These talks led to an unprecedented agreement among Scotland's five main parties. That agreement has now been translated into the Bill before us. I will address three main issues in my brief remarks today: first, to talk about the process through which the agreement was reached; secondly, to reflect on how the agreement has been translated into the Bill; and, thirdly, to address the issues that remain outstanding.

Before I do so, I will explain my role in the process. I stand here today as a Cross-Bench Peer, and throughout my career I have sought to avoid any political affiliation. Although the agreement has come to bear my name, its conclusions have not been influenced by me. I never discussed my views on Scotland's constitutional settlement or how the powers should be used—and I intend that to remain the case.

I begin with some reflections on the process that led to the agreement. The process was the first time that Scotland's main parties came together and reached an agreement like this. It was an unprecedented outcome of an unprecedented time in Scottish politics, so it was no surprise that the agreement was hard fought. All parties had to make compromises. Some felt that the agreement had in some areas gone further than they would have liked and others felt it had not gone far enough, yet they all put their personal positions to one side to reach a deal. I pay tribute to the parties for doing this, especially the representatives that I had the pleasure to work with directly. I think we have one solitary member of the commission with us today—the noble Baroness, Lady Goldie.

Lord Foulkes of Cumnock: In relation to good faith, the noble Lord says that all the parties agreed to the agreement. I saw his press conference, when he announced the agreement, and I also saw John Swinney immediately afterwards say that he did not agree with what had been agreed. Is that good faith?

Lord Smith of Kelvin: What actually happened was that he signed up to every single word in that agreement. Immediately afterwards, as a lifelong nationalist, he said that he would always want much greater powers—and, indeed, independence. That was probably what he was going to say when he entered in—but they did not leave the table, and they signed up to every word in the agreement.

The agreement was published on 27 November and it was and is a political agreement. Then it had to be turned into law and, very importantly, in the months

that followed, a commitment to implement the agreement was set out in the 2015 general election manifestos of the Conservative, Labour, Liberal Democrat and Scottish National parties. At the same time, teams of civil servants were busy translating the agreement into a Bill.

That leads me to my second point: does the Bill match the agreement? I believe that the Bill that we have before us honours the agreement among the five parties. Both the House of Commons and the House of Lords will have an important role to play in making sure that the Bill makes for good law, but I am also sure that this House will reflect very carefully before making any substantial changes to the Bill that would result in it differing significantly from the agreement.

I turn to my last substantive point: the issues that remain outstanding. Not all the agreement requires legislation. One crucially important part remains outstanding, as we have been hearing time and again: a new fiscal framework for Scotland. This is fundamentally important to making Scotland's new powers work. It is the final piece of the interlocking jigsaw. As we have heard, it is not yet agreed and is being discussed between Governments. I am told by Ministers on both sides—I am taking a healthy interest in this—that conversations have been constructive and carried out in good spirit. I expect that to continue and to deliver an outcome in line with the principles set out in the agreement. It is vital that they do. I know that noble Lords and the Scottish Parliament will have views on how the Bill and fiscal framework should proceed. In my view, it is an issue to be discussed and agreed between both Governments, so I shall defer any questions on the parliamentary handling of this issue, at any rate, to the Government Front Bench.

That leads me to the final issue that I want to raise under the heading of unfinished business: the working relationship between a Scottish and UK Government.

Lord Forsyth of Drumlean: I am most grateful to the noble Lord, but before he moves on to that point, could he explain how he sees the second no-detriment principle operating, as the author of that idea?

Lord Smith of Kelvin: The principle is very simple. We established the principle that there should be two areas where there should not be detriment. In the second area, as I am sure the noble Lord is aware from his time working on budgets for Scotland, there is a very complex calculation even now, without these new powers, under the Barnett formula, whereby averages and so on are looked at. The noble Lord, Lord Hollick, expertly explained that it will be even more complicated in future. We arrived at a principle whereby, when taxes are raised, the money is kept and is available and, when taxes are reduced, the money comes off the block grant. There should be no change between the two countries aside from that. It is very complicated indeed, but it is rather like the Schleswig-Holstein question. I am not saying that no one remembers the answer to it, but it is that complicated. May I leave it at that? The noble Lord could perhaps ask future speakers as well.

The Bill is important to Scotland and to the rest of the UK. I think noble Lords will agree that it is one of the most important we are going to see in this Parliament.

To return to the point I was making before the noble Lord, Lord Forsyth, intervened, in my view, relations between the UK and the Scottish Government are not good enough right now. We need to see greater respect from each Government to the other in public and in private. The agreement reached with the Scottish parties, and subsequently tested with the electorate across the UK, demonstrated a clear intent. I believe the Bill honours that intent and I hope noble Lords can work to support its progress, improving it where necessary, to deliver that intent into law.

4.40 pm

Baroness Goldie (Con): My Lords, I am delighted to take part in this important debate. For me, it is reaching the destination of a journey which started more than 16 years ago. I will explain further why my perspective on this Bill is slightly different from that of any other Member of this Chamber. I view it through the prism of having been a Member of the Scottish Parliament since 1999, a stalwart supporter of the union who fought with Better Together to reject independence, and a member of the Smith commission on which it was a great privilege to serve. It was a commission set up by the Prime Minister after the referendum to respond to a universal demand to broaden the powers of the Scottish Parliament.

This Bill is two things. It is a pragmatic response to a Scottish Parliament with power to spend money but with very little responsibility for raising it. It is also, very importantly, a political response to a manifest and tangible sentiment in Scotland which emerged during the referendum campaign from people who, although uneasy about independence, did not support the status quo and wanted a parliament with greater political responsibility.

To put this into some kind of context, when I was elected to the Scottish Parliament in 1999, I was not among those who thought it was the first stage of a journey to hell in a handcart. Nor did I share the views of those at the other end of the spectrum who, even then, flirted with full fiscal autonomy and greater spending flexibility. After several years of devolution, I recognised that the structure was flawed. The fault lines were prised open in 2007 when an SNP administration took office. Admittedly, it was constrained by being a minority administration, but that was a temporary abeyance. That period of political indigestion paved the way for the Calman commission to which some noble Lords have already referred. Its recommendations induced the Scotland Act 2012—a cautious, not extensive increase of powers.

In 2011, the election of the SNP to the Scottish Parliament with an overall majority introduced a completely new political dynamic in Scotland. Among other things, the SNP embarked on an almost daily, relentless gripe about the inadequacy of resources given to Scotland. It also possessed a clear mandate to hold a referendum on independence. However, something else was happening. There was a growing awareness among Scottish voters that things needed to change. For example, many were aware that, while welfare was interlinked with the devolved competencies of health, housing, local government, skills and training, welfare itself was reserved to Westminster. It was such inconsistencies that the SNP relentlessly exploited. There was a vacuum

[Baroness Goldie]
of any meaningful political responsibility in the Scottish Parliament, whereby the SNP could constantly criticise lack of resources and yet have responsibility for raising only a fraction of them.

Some have argued that the Bill before us was a panic reaction to a highly charged referendum debate. In fact, the deficiencies, frailties and inconsistencies of the devolution settlement were laid bare by the referendum debate. This Bill is a pragmatic response to that reality. At the heart of this is also an issue of political trust with the people of Scotland. Prior to the referendum, voters were demanding clarity from the individual political parties in Scotland—clarity about a commitment to extend the powers of the Scottish Parliament if Scotland voted no. That led to the collective undertaking by David Cameron, Ed Miliband and Nick Clegg—to which some noble Lords have already referred—to honour that commitment within a timescale. The first part of that commitment was the Smith commission, so ably chaired by the noble Lord, Lord Smith of Kelvin.

The Smith agreement is the genesis of this Bill, which has been passed by the House of Commons, was not opposed by the SNP and has received the approbation of Lord Smith himself. It is far-reaching and exciting legislation that delivers the Smith agreement. As a pragmatic and political response, it does what it says on the tin. In anticipation of these real political responsibilities, parties in Scotland are already drafting manifestos for the elections next May.

Lord Forsyth of Drumlean: My noble friend served admirably on the Smith commission. Can she explain to us how the second no-detriment principle will work?

Baroness Goldie: The noble Lion, my noble friend Lord Forsyth of Drumlean, may, with the passage of time, have lost a fang or two, but I have learnt that whenever the matter of devolution and the Scottish Parliament comes before him, his demeanour is more predatory than benign. I could not improve on the answer given to him by the noble Lord, Lord Smith of Kelvin.

Regarding the Economic Affairs Committee's report advocating a delay in enacting the Bill, I have very real political concern because I have to look at all this through a political eye. Were such a delay to be a possibility, Nicola Sturgeon would be cracking open the champagne and thinking all her Christmases had come at once, because such a delay would write the script for her. I can hear the words tripping off her lips: "deception", "betrayal", "bad faith", "broken trust" and "Westminster is a bunch of scheming ferrets".

This Bill must be enacted. Were it not, the political breach of trust and the betrayal of commitments to Scottish voters would be unacceptable. However, the Economic Affairs Committee is absolutely right to identify that the fiscal framework consequential on the Bill is of huge importance. The Smith commission recognised that, as it did the need to retain the Barnett formula. As has been indicated, constructive discussions are ongoing between the two Governments about how the formula should be adjusted to reflect the changing circumstances consequential upon the Bill. That is not a reason for delaying the Bill; it is a reason for the intergovernmental discussions arriving at a stable and flexible solution that can withstand financial shocks.

The committee is right to identify these challenges, but the fiscal framework is a modus operandi for the two Governments to agree. As a member of the Smith commission, I was privileged to play a part in the genesis of the Bill; as a Member of the Scottish Parliament, I know Scotland needs this Bill; and as a proud Scot, I look to Westminster to deliver this Bill.

4.47 pm

Baroness Liddell of Coatdyke (Lab): My Lords, I am delighted to follow the noble Baroness, Lady Goldie. She and I were a double act during the referendum and spread fear throughout the land. I shall take up one of her final points. She talked about faith and trust in the process and the vow, or the promise, or whatever you call it. I agree that Ms Sturgeon will be cracking open the champagne bottle, but whether we pass this Bill or not, she will be cracking open the champagne bottle because the one thing the SNP is very good at is whingeing. It has raised it to an Olympic sport.

I believe that a promise is a promise and should be kept, but there is something that overrides that, and it is the well-being of the Scottish people—and, indeed, the people of all of the United Kingdom. It should not be above our capabilities to sort this and get a move on with the fiscal framework. Contained within this, there are a number of traps that could cause huge damage to the Scottish economy and therefore to the Scottish people, but, as was pointed out in my noble friend Lord Hollick's excellent speech and in the excellent document from the Economic Affairs Committee, there are real threats to the performance of the United Kingdom economy. I shall pluck one from the air: borrowing rights and borrowing costs. If they are not resolved, we could find ourselves in a Greek situation: we could be into the Varoufakis school of economics. I apologise to the noble Lord, Lord Lamont, who I know is a friend of Mr Varoufakis.

The faux outrage that we have had from the SNP in relation to the powers in the Bill was absolutely predictable, and it will wish to keep it going because what it is most interested in is process. The longer we keep on at process, the less we look at competence. I will come on to some of the competence issues later. The Scottish Government do not want this legislation on the statute book before the next election because if it is, they will have to say what they are going to do with it. They have powers from previous Acts that they have not used. So there are issues here which we need to address in Committee, but there are some which the Scottish people need to be made aware of because the constant undertone of whingeing and complaint drowns out those who are raising real concerns about the competence of the Scottish Government.

Lord Maxton: I entirely agree with what the noble Baroness has said. Will she make it quite clear that the SNP is interested only in an independent Scotland, not in devolution in any form whatever?

Baroness Liddell of Coatdyke: I agree with my noble friend and will come back to that point later. The debate on the fiscal framework is interesting, particularly the intervention by Professor Anton Muscatelli, who is no fan of those of us on the union side. The work by

him and by the Economic Affairs Committee, and some of the comments from the Scottish Government, reveal that the Barnett formula, and the process we have had up until now, delivers the best possible deal for Scotland. It is interesting that there is now back-tracking, with people saying, "We are going to get less", or, "We could get less" as a consequence of losing chunks of the Barnett formula. This makes the case that we were all making during the referendum campaign. The SNP was trying to get the Scots to walk away from that very formula.

The independent Institute for Fiscal Studies says that the real significance of the fiscal framework is the no-detriment deal. I will get this in before the noble Lord, Lord Forsyth, does. That deal is,

"unworkable and will simply create ongoing disputes".

I would take this one stage further: you have to define what detriment is. You cannot conclude that something is detrimental until you have set out the parameters of what detriment means. The overall deal gives the Scottish Government the power to design a significant part of the welfare system and control income tax. We have to reflect here, in the short term, on issues of competency, because there are impacts for all of the UK and how we are perceived internationally—and the omens are not good.

This is one of the reasons why we have had such histrionics from the other place about this legislation. Audit Scotland has already revealed that the Scottish Government are running a deficit: an underspend of some £350 million. This is at a time when our health service and education system are underperforming and crying out for money. Speaking as somebody who has been a Finance Minister, it is an even greater sin to have an underspend than an overspend, because it means that you have not done your planning properly and it raises issues of competence or cynicism. What is more, we have never been given a proper explanation of why previous powers have not been used. We also have lots of examples of how money has been misspent. In the past week, there were two cases of IT systems that are not even going to be used because they were so badly specified.

The performance of individual departments within the Scottish Government also gives me real cause for concern. Many Scots are really concerned about what is happening with Police Scotland. We have had some terrible tragedies recently. I was quite astonished to discover that the Justice Minister had not met the Chief Constable for four months. That is a shocking statistic and I am really concerned about it. We have 2,000 fewer police staff in Scotland.

The other area I have a concern about is one that we in Scotland have always been extremely proud of: our health system. The headlines may be about people dying on trolleys, but behind that there has been a 0.7% fall in real-terms spending on NHS services and new hospitals in Scotland over the past six years. Bed blocking has increased from 200,000 in 2011 to more than 612,000 last year because of a lack of community support, 71% of vacancies in accident and emergency staff are unfilled for six months and 2,000 NHS nursing jobs were cut in Scotland when Nicola Sturgeon was Health Minister.

I am a proud bus driver's daughter from Coatbridge. It is a coincidence that I am standing behind my noble friend Lord Reid of Cardowan as both of us went to the same school and both of us got our opportunities because we were given a good Scottish education that allowed us to go to university. The gap between Scotland's most and least deprived children stands at 12% in reading, 21% in writing and 24% in arithmetic. There are 4,000 fewer teachers in Scotland and the figure that really sickens me is that fewer people from poor homes in Scotland are now able to go to university—down at less than 10% when it is more than 12% in the rest of the United Kingdom. That shames Scotland and it must be put right.

I suspect that many Members of your Lordships' House would not be aware of the fact that the budget for bursaries and grants in Scotland has been cut by £40 million and that the total value of student debt in Scotland stands at almost £2.7 billion. It is the SNP Government's biggest financial asset. That is absolutely shameful. Against that record of incompetence we have to look at agreeing the legislation in this House without knowing the detail of the fiscal framework.

Many of us in this House are a bit long in the tooth. We should be able to come up with ways to examine the fiscal framework in time to meet the promise before the legislation is enacted. If we cannot see the detail of the fiscal framework—if we cannot see the workings, as they used to say in primary school—if the Government would be prepared to release to us the minutes of the discussions between the UK and Scottish Governments, we would at least have a flavour of where it was going.

The noble Baroness, Lady Goldie, referred to the jollity that there would be if this Bill was not passed. In the other place there was a lot of criticism from the SNP Benches about how bad this legislation was. Yet did they put down amendments? Did they vote on those amendments? One very important amendment that my noble friend Lord McAvoy referred to was about abortion being devolved to the Scottish Parliament. They put down an amendment on that because they support it. They did not put in tellers. What could be more cynical than that? You have the amendment, you have the debate but you run away at the final hurdle because you are frightened of the nature of the debate that it will create.

I apologise that I have taken longer than the advisory time. As noble Lords may gather, I feel very passionately about this. The noble Lord, Lord Dunlop, referred to the fact that he listened to the results on the night and heard the noble Lord, Lord Forsyth. I listened to the results outside Stirling—Stirling in South Australia. The next day, when I went into shops, as is my wont, people would come round the counter when they heard a Scottish accent and shake hands and say, "We are glad that Scotland is part of the United Kingdom and will continue to be part of it". If we muck this up, that is not going to be the case.

I will shut up now and look forward to the noble Lord, Lord Campbell of Pittenweem—the second most beautiful place in Scotland after Coatdyke—and I very much look forward to hearing the noble Baroness, Lady McIntosh.

4.59 pm

Lord Campbell of Pittenweem (LD) (Maiden Speech): My Lords, I am not entirely clear how to respond to that but I think that the good people of Pittenweem will make their own judgment.

I hope that it will not be thought presumptuous of me to suggest that we should be loath to draw any parallels between the Schleswig-Holstein question and any of the contents of the Bill. It will be remembered that one of those who claimed to understand the question went mad, and it may be thought an unfortunate omen.

Contrary to expectation, this is not the first time that I have spoken in your Lordships' House. The last occasion was more than 30 years ago but I have good cause to remember it well. Outside, there was a most Indian of Indian summers; inside, being after 1 October, the central heating was going full bore, and I was dressed in full court dress and wearing the necessary full-bottomed wig when appearing before the judicial committee in the Chamber. Notwithstanding that ordeal, worse was to be suffered. I spent a whole day being eviscerated by Lord Bridge of Harwich, whom some of your Lordships will remember for his robust interventions on the judicial committee. It is only very recently, and reluctantly, that I have come to the view that perhaps he did not care for my argument.

For maiden speakers, the advice is clear: be grateful, be short and be uncontroversial. I believe that I will be able to meet the first two of these but I have some reservations about my ability to adhere to the third. I am indeed grateful to all those who have successfully piloted me through the necessary steps to enable me to become a Member of your Lordships' House but I have little doubt that I shall be seeking their indulgence for some considerable time to come. However, if I may offer a tentative conclusion, it is now patently clear to me that the House of Lords is run by the attendants. I am left with the feeling of a junior who has left to join the seniors, and I mean no adverse implication by that characterisation. As for being short, I believe that I can meet this requirement, as in my previous life I never showed any enthusiasm for long distances or indeed endurance events.

However, it is the third of those pieces of advice of which I am less confident. This is a debate nominally about Scotland but, as has been made clear in some of the contributions, it is also about the future of the United Kingdom. In the febrile and sometimes intimidating environment of Scottish politics, it is almost always necessary to state one's qualifications for joining in the debate, and that is why I will state mine.

I was born in Scotland, my parents were Scottish, I went to school and university in Scotland, I am married to a Scot, I qualified in and practised Scots law, I represented a Scottish constituency for 28 years and I am the chancellor of Scotland's oldest university. I believe that I have the right to participate in any debate about the future of Scotland and the United Kingdom wherever it may be held. But my pride in Scotland is not exclusive: I am equally proud to be a citizen of the United Kingdom. At Murrayfield I cheer for Scotland, although not always to good effect; at the Oval I cheer for England; and, wherever the Ryder Cup is played, I cheer for Europe. These are not competing but complementary affiliations.

So why should I be proud to be a citizen of the United Kingdom? Here are a few reasons. This country has had no civil war since the last convulsions of Jacobitism in 1745. It successfully resisted the fascism and the communism which blighted so many countries in Europe. It invented the welfare state and created the National Health Service. Human rights are at the very heart of our governance and we have a judiciary, both north and south of the border, of enviable independence. Our freedom of speech, expression and assembly are admired by liberals everywhere. Beyond that, we are permanent members of the Security Council of the United Nations, the G8, NATO, the European Community and the Commonwealth. We have much to be proud of in our unique contribution to international affairs.

And yet our union is under threat. I have no doubt that the people of Scotland agreed that we are better together but, following the events of the last few weeks, I am equally convinced that we are safer together. I simply do not believe that an independent Scotland would be capable of providing the level of security required if we are to live in safety. A failure to do so would have dangerous implications not only for Scotland but for the rest of these islands. If we are to preserve our union, I believe that we need to legislate for a new Act of Union; legislating for England, Wales, Northern Ireland and Scotland, and setting out clearly the responsibilities and rights of all four nations. If you advance that proposition, you have to answer the question of what form such a reinvigorated union should take.

Until very recently the F-word was not mentioned in polite society, and certainly not before the BBC's 9 pm watershed. But now, it is in common parlance. My personal view, agreeing with that of my noble and learned friend Lord Wallace of Tankerness, is that the case for federalism has never been more popular or stronger than it is now. This is not the occasion for a detailed debate on a new Act of Union or indeed on the principle of federalism itself. However, I hope that we shall return to these matters early here. If I may, out of nostalgia as much as anything else, I will say as I said on the previous occasion when I spoke in your Lordships' Chamber: my Lords, I rest my case.

5.07 pm

The Earl of Kinnoull (CB): My Lords, what a pleasure to follow that wonderful speech from the noble Lord, Lord Campbell of Pittenweem. As ever, it was perceptive and thought-provoking. I note that in the short interlude since his promotion from the other place he has lost none of his eloquence nor the stamp of wisdom. He was most modest about his many achievements. The House is very much aware of his political ones, but he shone too in a stellar athletics career, holding the 100 metres record for Great Britain for seven years. He was an Olympian and also captain of the Great Britain athletics team for a couple of years.

One achievement that he is not aware of, and which I think is an equally great achievement, is capturing the vote of my grandmother. She was a constituent of his who lived in Elie, a neighbouring village of Pittenweem,

and a life-long Conservative. She cited his great charm and his common sense, and we have seen that evidenced today. I think we can look forward very much to his further contributions in debates.

I declare my own interests as set out in the register of the House, especially as a Member of your Lordships' House who lives and farms in Perthshire.

At this important stage of an important Bill, it is a great pity that we will not hear at all from the Scottish National Party. As a matter of SNP party-political policy, its members have refused the offer of appointments to your Lordships' House. The result is that at least a part of Scotland has no voice in proceedings today and no method of advancing some, or indeed any, of the many amendments that the SNP put down in the other place, which were substantially not debated. I am sure that many in the House today regret this self-inflicted state of affairs. It would be very interesting, for instance, to have the SNP's view on the fiscal framework and the second no-detriment principle.

I have at home a handwritten set of the minutes of the 1706 meetings between the commissioners for Scotland and England that gave rise to the union, and I spent part of last weekend rereading it and reflecting on it. It is a fascinating document dealing with the proceedings over several months, between April and July that year. The early part of the proceedings were very much about political structure and the later part about financial matters—Scotland being effectively bankrupt at the time. The symmetry of history means that one could cast this Bill as substantially being the final financial follow-on to the political settlement of devolution.

Put simply, the Smith commission agreement hands more power to Holyrood, substantially over financial matters. However, the Parliament or Government who are to receive the new power must be ready to receive it. There has recently been considerable public comment about perceived failings in Scotland today—very ably summed up by the noble Baroness, Lady Liddell, in her powerful speech, which I look forward to reading again tomorrow. The criticism is directed at government performance and at the way in which Holyrood scrutinises new legislation. On this latter point, I have some direct personal experience—which I will not go into today for timing reasons—and I cannot see how MSPs, with their heavy constituency programmes, can lend the time required for the sort of careful scrutiny that your Lordships undertake; I hope that this scrutiny point is being thought about in Holyrood with a view to change. Accordingly, we must be very careful not to overimplement the Smith commission report.

Turning to the specifics of the Bill, given that there are some 40 speakers I will comment only on Clause 34, which concerns the Crown Estate. Currently, the Crown Estate is managed by the independent Crown Estate commissioners, pursuant to the Crown Estate Act 1961. The make-up of the commission is, by custom and practice, politically neutral, as it looks after so much of great national importance. The commissioners have done a very good job over the years and, in the last financial year, returned £285 million to the Treasury. The Scottish assets within the Crown Estate render a much larger percentage of the Crown Estate income than the 10% or so that Scotland might get through the operation of the Barnett formula. Accordingly, this became the subject of a Smith commission discussion about money.

In closing, I put three questions to the Minister. First, the Smith commission agreement calls for the assets to be transferred to the "Scottish Parliament". In the Bill, this has become "Scottish Ministers". The proposed move is therefore from apolitical commissioners to highly political Ministers. Can the Minister explain this change? Secondly, the Smith commission envisages further onward devolution to various named local authorities, as was pointed out by the noble and learned Lord, Lord Wallace of Tankerness. The Bill is silent on this. Can the Minister explain this? Finally, can the Minister confirm that it is the intention in this Bill to ensure that in future the Scottish assets are held on an exactly analogous basis and cannot be used for political purposes? The Crown Estate commissioners have an excellent record of service to the United Kingdom, and I very much hope that the new Scottish replacements will maintain these high standards and that this Bill will act as a strong constitutional document for them.

5.14 pm

Lord Lang of Monkton (Con): My Lords, it is a particular pleasure to follow the noble Earl, Lord Kinnoull, and to echo his tribute to the noble Lord, Lord Campbell of Pittenweem, who gave us a most interesting and elegant speech and whose presence in this House will enhance it considerably, not least because of his great distinction in the field of defence—knowledge of which will be quite welcome in the weeks and months ahead.

We must pass the Bill. That is not in doubt. Promises were made, agreement was reached between the parties, and approve it in due course we certainly must. But it must also be pointed out that, for the leaders of all the major parties in Westminster to agree in advance to pass into law whatever the Smith commission came up with—to do it in full and at once—is indeed, mercifully, a unique constitutional experience. No constitution committee could fail to protest at such an abandonment of due constitutional process, or to identify, as our report did, its dangers and possible shortcomings. Nor can the House fail in its duty as a revising Chamber to scrutinise the Bill thoroughly.

I make no criticism at all of the Smith commission or its chairman. Indeed, I congratulate the noble Lord, Lord Smith of Kelvin, on reaching an orderly conclusion. He presided with great skill. He showed perceptive and sensitive guidance that contributed much to the process. His comments in the foreword of the agreement are indeed valuable, in particular his reference to further devolution in Scotland and to improvement in intergovernmental relations—a subject on which the Constitution Committee has already reported, to which we await the Government's response. I also pay tribute to the productive contribution to the Smith commission of my noble friend Lady Goldie, whom I am sure helped to contain some of the wilder aims of others.

Nor do I blame for the problems we now face my noble friend the Minister, who has the misfortune to be the last in line in the legislative process, with a

[Lord Lang of Monkton]
difficult job to do and a lot of troubles piled up. But the bigger picture is not just about this Bill. We now have the third Scotland Bill in just 17 years—a box set of enduring settlements, each one seeking to regain lost ground. We all saw how the nationalists signed up to the agreement and then resiled from it the very next day, trying to use it as a stepping-stone. To them, it was simply ground gained.

The Bill has one really important aim: it will at last force the Scottish Government to face up to the responsibility for raising much of the revenue in Scotland and thus be held accountable to their electorate. That alone is a good reason for the Bill passing in due course, but that does not excuse it from scrutiny. I trust that your Lordships will indulge me for a little longer than the advisory speaking time so that I can draw attention to some of the most significant concerns our Constitution Committee has expressed. In the interests of time, I will leave to others the vital issue surrounding the fiscal framework. I will not endeavour to explain the double jeopardy point—what was it called?

A noble Lord: Detriment.

Lord Lang of Monkton: The double detriment point. To do so would be to the detriment of my speech.

A similar problem attaches to the shared powers over welfare, whereby the House cannot assess how the vital intergovernmental relations will operate without the revised memorandum of understanding and joint ministerial committee structure now still being negotiated. Our report has therefore suggested that, as with the Economic Affairs Committee's concern about the lack of a fiscal framework, a delay in the progress of the Bill may be necessary to allow for proper scrutiny of the welfare provisions.

I agree with my noble friend the Minister about the desirability of calming things down, but I hope that in his winding-up speech he can reassure me and the Constitution Committee on a number of points. Clause 1, on enshrining the permanence of the Scottish Parliament, seems simple, straightforward and declaratory, but it could have profound constitutional significance. The Government now appear to seek to compromise the United Kingdom Parliament's competence with regard to the devolved institutions, first by stating their permanence in statute and secondly by creating conditions involving a referendum that have to be met before the UK Parliament could move to abolish them.

It is of course completely implausible to suggest that such a course would ever be contemplated, but the concept of parliamentary sovereignty is a fundamental principle of the United Kingdom's constitution and it has long been understood that no Government can bind their successors. In seeking to limit Parliament's powers in this manner, the Government are introducing confusion and uncertainty about the nature of parliamentary sovereignty where once there was none.

Clause 2 compounds this concern. By giving the Sewel convention a statutory basis, the Bill opens the door to judicial intervention on the right of Parliament to legislate. It risks creating a route through which the courts might be drawn—inappropriately but perhaps inescapably—into an area hitherto within the jurisdiction of Parliament alone: its competence to make law. That is serious enough, but it seems to me that the original meaning and purpose of that convention may have already mutated, with no debate or authority from Parliament, into something much more far-reaching, which could breach the whole principle of devolution: that power devolved is power retained. Even the word "normally" in the clause raises clouds of uncertainty and the prospect of judicial involvement.

Our committee believes that it is now vital that the Government clarify the purpose and reach of the Sewel convention as stated in Clause 2. Can my noble friend confirm that the guidance note GGN2, issued in 2005, to which the noble and learned Lord, Lord Wallace of Tankerness, referred, did not change the purpose of the convention in any material way? In addition, the combined impact of Clauses 1 and 2 could be dangerous and no thought seems to have been given to this. These two clauses might not be just declaratory and, taken together, could have far-reaching consequences. Will my noble friend also confirm that in the final analysis, no devolved Parliament or Assembly is entitled to veto legislation passed by the sovereign United Kingdom Parliament?

Lord Wallace of Tankerness: The noble Lord is raising an important point. Does he agree that, as we now have a system under Standing Orders whereby legislation passed by both Houses can be vetoed by a subset of the House of Commons—namely, English MPs—the Government have already sold the pass on the sovereignty of Parliament?

Lord Lang of Monkton: The noble and learned Lord identifies precisely the kind of confusion and obfuscation which endangers the sovereign nature of this United Kingdom Parliament. It is a very important area and I hope we are able to pursue it further.

The Bill also has significant implications for England. Considerably fewer issues will now be reserved, and the West Lothian question will consequently intensify. By increasing the scope of matters devolved to the Scottish Parliament, the number of issues to which the new English votes for English laws procedures will apply will increase. This will add to the complexity of establishing whether new legislation deals solely with devolved matters. I do not believe enough consideration has been given to that, and further confusion will flow from matters that are shared between the two Parliaments.

Our report commented on several other matters of concern, but the recurring theme was that no serious consideration seems to have been given to the implications of the Bill for the union as a whole. We need to articulate a coherent vision for the future shape and structure of the union if the ongoing process of reactive, ad hoc devolution, demand-led and indiscriminately granted, is to be stabilised. No major constitutional measure that does not take account of its implications for the United Kingdom as a whole can possibly claim the right to provide for an enduring settlement. It is that wider challenge of stabilising the union, and rationalising devolution within it, that your Lordships' Constitution Committee is engaged with in our current inquiry.

5.23 pm

Lord Foulkes of Cumnock: My Lords, I also congratulate the noble Lord, Lord Campbell of Pittenweem, for his very statesman-like maiden speech—I was going to refer to it as "Ming's maiden speech" but that might not be appropriate in this setting. It was a tremendous tour de force. I am also very much looking forward to the maiden speech of the noble Baroness, Lady McIntosh of Pickering, who I know well from the other place.

As a number of Members will know, not least my noble friend Lord McAvoy on the Front Bench, I have been an enthusiast for devolution for a very long time. I argued for it in the 1970s and was very disappointed at the result of the 1979 referendum, when, although we had a majority, we did not get over 40% of the vote. We were all disappointed but we pulled up our skirts—or our kilts—and fought again and we managed to get it in 1997 in the general election and in 1999 in the referendum. We were very pleased about that. The constitutional convention in Scotland—with, let us be honest, the SNP and the Tories on the sidelines—came up with a great scheme. At least we thought it was a great scheme. The noble and learned Lord, Lord Wallace, and I served on that constitutional convention and many compromises were made, as he knows.

I must confess—and I know the noble Lord, Lord Forsyth, will say, "I told you so"—that, on reflection, the Scottish Parliament and particularly the electoral system have not functioned as we had hoped and expected. We were told that that electoral system would not result in an overall majority. Yet in 2011 we saw the SNP, with only 45% of the vote, get an overall majority: 69 out of 129 seats. Let us be honest about it. This is something we all have to face up to, particularly the noble Lord, Lord Smith, but everyone here. It may not be known by some of the people south of the border that the result has been an SNP hegemony—control by one party—in Scotland.

The SNP does not just have a majority in the Parliament, but there is an SNP Presiding Officer—it did not see fit to let another party have that job. There are SNP majorities on every committee—which never criticise, unlike our committees in both Houses of this Parliament. Civil society, through a succession of carrots and sticks, is becoming increasingly subservient to SNP dominance, as are the media. We saw that one of the committees of the Law Society seemed to have been taken over. There are the voluntary organisations: we saw a £150,000 grant, without any submission, being given to T in the Park because there was a little bit of elbowing by someone very close to the SNP.

Of course, there are no checks on the power. There is no "House of Lairds"—or, even better, a Senate—that might hold the SNP to account. It has total control. Let us not pretend. My noble friend Lady Liddell—I call her the Secretary of State Emeritus—and my noble friend Lord Maxton said this. Everything the SNP does is subservient to its goal of independence. We must never forget that. That is what it is doing. If it agrees, it is a tentative agreement. It is done just because it is expedient to do so at the time.

As the noble Lord, Lord Lang, said, we have had three Scotland Bills. The tax-varying powers in the 1998 Bill were never used. The second Bill in 2012 led to the Calman commission and all those powers—tax-raising powers, borrowing powers, the revenue Scotland created—but very little recognition or credit was given to this Parliament for giving that kind of devolution. The SNP keeps asking for more—this Oliver Twist syndrome, which is part of the slippery slope towards independence. That is how the SNP sees it.

As the noble Baroness, Lady Goldie, said, the 2011 election provided the SNP with the 2014 referendum. With no disrespect to the Prime Minister, he was conned by Alex Salmond into deciding that it should be yes/no—and the Electoral Commission went along with that. It is not doing that for the European referendum, which is not going to be yes/no; it is going to be "withdraw or stay in". Of course the SNP made its proposal the yes proposal because it is good to be positive. It chose the date. It used all the resources of the Scottish Civil Service to argue its case.

Then, just as we were getting near, there was that flawed YouGov poll—and it was flawed. It was out of kilter with every other poll. That led, as my noble friend Lord Maxton said, to the unnecessary vow. It led to panic. It led to the Smith commission. With no disrespect to the noble Lord, Lord Smith, that was rushed and we have ended up with an unworkable proposal. That created the momentum for the 2015 victory; it led to the SNP being elected with—well, it was 56 seats, then it was 55, now it is 54; they are toppling one by one through various means.

What have we got in Scotland? We have an Education Minister who cannot string two sentences together, a Justice Minister who does not seem to see the need to meet with the chief constable regularly and a Health Minister who is totally oblivious to the failings of the Scottish health system. They are not exercising their powers. The noble and learned Lord, Lord Wallace, made a very eloquent plea for the SNP to improve services in Scotland, to improve education, to have innovation and new ideas in the health service, and to improve the justice system to get fewer people in prison—all those kinds of things which it promised it was going to do but has not been doing. It has let the services take over while the First Minister and her Cabinet Ministers go around the country for photo opportunities, campaigning for independence. That is exactly what they are doing—let no one be in doubt about that.

In an intervention that I made on the Minister, I asked about the now increasingly likely event that the SNP will see that it is going to get these proposals but will be worse off in financial terms than it is currently under the block grant and will decline legislative approval for the Bill. It might well do that. We are in a very difficult position because the Government have no plan B. The Conservatives are doing this and everything else on an ad hoc basis. As for the truth of what went on between the First Minister and French ambassador, I still believe that she did say to her that she would prefer Cameron as Prime Minister to Miliband, because it serves the SNP's purpose to have a right-wing Tory Government making cuts, doing the kind of things that the people of Scotland do not want.

[Lord Foulkes of Cumnock]

What is the alternative? The Minister could well ask me what my plan B is, but I have said it again and again. It was great to hear the noble Lord, Lord Campbell of Pittenweem, come in and say it and to hear the noble and learned Lord, Lord Wallace, say it again. We have the Bill from the noble Lord, Lord Purvis of Pittenweem, and we have heard this now from the Constitution Committee of this House on a number of occasions. What we need is a UK constitutional commission to work towards a federal or a quasi-federal system to deal with the English democratic deficit, to include Scotland, Wales and Northern Ireland, and to provide an opportunity to consider proper Lords reform at the same time. There is a growing consensus for that, and the only people who do not see it are the Government. If the Government continue to fail to understand this and what is happening in Scotland, I warn them now that independence is inevitable sooner rather than later. It is about time that the Conservative Government woke up and did something positive to protect the union.

5.33 pm

Lord Steel of Aikwood (LD): My Lords, way back in the mists of time—I am talking about 1960 or 1961—I was president of the students' representative council at the University of Edinburgh. A young man was elected to the council that year on behalf of the first-year students who turned out to be a complete pest. He was always raising points of order, asking awkward questions of the establishment and interrupting other people. I always wondered what would happen to him—his name was George Foulkes. He has continued that wonderful tradition in the House of Commons, in the Scottish Parliament and now here in the House of Lords. It is a great pleasure to follow him and agree so much with his last peroration. He echoed what my old friend and colleague, my noble friend Lord Campbell of Pittenweem, was saying in urging that we should have a proper debate and a proper constitutional commission at some future time to look at the whole future settlement of the United Kingdom rather than these endless piecemeal points. I entirely applaud what my noble friend Lord Campbell said on that matter. I also welcome the report of the noble Lord, Lord Smith of Kelvin, my former constituent, particularly the foreword that he wrote, to which reference has already been made, about further decentralisation within Scotland.

I welcome this Scotland Bill. I said right at the start of the Scottish Parliament, when I was elected its first Presiding Officer, that no self-respecting Parliament could exist for ever on a financial grant from another Parliament. So the proposed transfer of responsibility for raising the bulk of the money that it spends in future, which is the basis of the Bill, is entirely correct. However, I have two concerns. First, as so often happens, the Bill was not fully scrutinised in the Commons, where it was subject to tight timetabling. That was especially so on Report, when the Government tabled many important amendments, some of which were simply never debated at all. If they plan to have this on the statute book before next May's Scottish elections—which is wise—they will need to aim for Easter. In that case, to do it justice, they will need more days in this House than they have been contemplating so far.

Secondly, and more substantially, I am deeply disturbed at what I see as the growth of a one-party state in Scotland, about which we need to warn the electorate. I do not wish to be misunderstood. I have the advantage, shared by others in this House who have served in the Scottish Parliament, of knowing the personalities in the SNP quite well. I have from my objective chair developed a genuinely high regard for the First Minister, Nicola Sturgeon, and for her two close allies, John Swinney, her deputy and Finance Minister, and Angus Robertson, its leader in the Commons. These people should not be underrated. They also have some talented younger members not yet known here, such as Humza Yousaf, who any party would be glad to have in their ranks. It simply will not do to sneer at or belittle these people as somehow inferior to those we are used to here at Westminster.

However, the one-party state is a real threat. I do not mean by that ludicrous comparisons with North Korea nor Mussolini's Italy—although some of the cybernats come close to that—but the growing assumption that if you are not an SNP supporter you are somehow unpatriotic or anti-Scotland. I will give two examples. Recently an Orkney friend of mine complained to a Highland MSP that areas such as the Western Isles and Argyll, which happened to have SNP MSPs, enjoyed lower public ferry fares than the Lib Dem-voting islands of Orkney and Shetland, only to get the response, "Well, you know what to do next time".

The other example is the tendency of the SNP Government to increasing centralisation, as has been mentioned several times already. Scotland is a small country where it is relatively easy to centralise. We have already seen the disaster of abolishing local police forces and combining them into one. Local authorities and health boards are increasingly nervous that their powers are being subsumed by central government, while education and health service targets are being missed, as the noble Baroness, Lady Liddell, rightly told the House a few minutes ago. The SNP Government are sort of Teflon coated. Every time these figures are produced, they simply say, "It's all the fault of Westminster for not providing the money". That is one of the reasons why the Bill is so important.

The latest threat in terms of centralisation is to the governance of the Tweed river, which, ever since the Tweed Act 1950, has been an outstanding example of good management, involving scientists, the local authorities, angling clubs, fishing owners and landowners. The SNP appears baffled by that Act, which applies Scots law to the English side of the Tweed and English law to the Scottish bank of the Esk in the west. They want to scrap those decades of success and impose a centralised governance on all Scottish rivers.

Last autumn, we in Scotland had a lucky escape in the referendum. At the time, the SNP was able to predict a healthy economy based on North Sea oil prices at over $100 per barrel. They have been bouncing along since at just over $40 per barrel, which would have hit every household grievously had we gone independent without the protection of the United Kingdom. Now we are faced with this new threat: if the nationalist tsunami hits the Scottish Parliament

next May, we shall have uncontrollable government of the most dangerous kind. The Bill should be passed with that very serious health warning in mind.

5.39 pm

Lord Mackay of Clashfern (Con): My Lords, I would like to begin by expressing my appreciation of the maiden speech by the noble Lord, Lord Campbell of Pittenweem. He has been a colleague in the Faculty of Advocates for many years and his coming to this House can only be a benefit to us. I simply say the same about the noble Baroness, Lady McIntosh. As another member of the Faculty of Advocates, it is a great privilege to welcome her, as it will be to listen to her maiden speech in due course.

I have been privileged to hold a number of important offices in Scotland and also in the United Kingdom with functions in Scotland. Today, I am glad to participate in discussion of this important Bill relating to my native land. The most relevant of those offices today is my appointment as sheriff principal of Renfrew and Argyll, when I was the returning officer for Argyll and declared the late Iain MacCormick, the SNP candidate, as Member of Parliament for Argyll in the elections of 1974.

Turning to the Bill, on 12 November 2015 Bruce Crawford MSP, chairman of the relevant committee of the Scottish Parliament, wrote a letter to the Secretary of State for Scotland, from which I quote:

"Dear Secretary of State … Re. Views on the Scotland Bill—post-Report Stage … I am writing to you on behalf of the Committee following our consideration of the latest stage (Report Stage) of amending the Scotland Bill in the House of Commons held on 9 November.

We welcome your constructive engagement with the Committee during the process since then and the obvious improvements that have been made at this most recent stage. Many of the changes that you made are in line with our suggestions and we are pleased that you have agreed with the Committee's view and further improved the Bill. We welcome your comments to this effect made in the House of Commons during Report Stage.

As you are aware from previous correspondence and our Interim Report published back in May 2015, the Committee remains in agreement that we want to see the final Scotland Bill fully respect both the 'spirit and substance' of the all-party Smith Commission agreement. At both introduction of the Bill and at Committee Stage, we stated that, in some of the areas, the legislative proposals met the challenge of fully translating the political agreement reached in the Smith Commission. In other areas, improvements in drafting and further clarification were required. In some critical areas, the legislative clauses fell short.

In particular, the Committee is pleased to see the changes that have been made to some of the welfare provisions, notably the ability to introduce new benefits in devolved areas and to top-up benefits in reserved areas".

He goes on to list a number of detailed points about the clauses which it would be appropriate to consider in Committee.

I have quoted this to show my profound appreciation for the co-operation that, in this case, has marked the process so far associated with the Bill—which I hope will continue—and to refer to the agreement that the final Bill should fully respect both the spirit and substance of the all-party Smith commission agreement. In my view, a role of this House as a revising Chamber is to examine the Bill to see if other amendments are required in order that that agreement be fully implemented. The fact that I am not elected in no way disqualifies me from fulfilling this function, and I am comforted by the knowledge that any amendments we judge to be necessary need to be approved by an elected Chamber before they become part of the Bill that passes into law. I say this in the light of the comments about this House made by a member of the Scottish Government some weeks ago on the BBC's "Question Time".

I believe that the process so far precludes us from giving effect to the conclusions of our Select Committee on Economic Affairs concerning the Barnett formula, but of course, they may well be effected by the fiscal framework which is still in the process of negotiation. The principles set out for that in the Smith agreement are reasonably clear, in language that is not very recondite. To put them into practice just now is quite difficult. I conclude by suggesting that my noble friend the Minister make copies of the letter to which I have just referred available to Members of this House, as I think the later paragraphs would be very useful in Committee.

I am very conscious of the problems in Scotland that have been mentioned. As a resident of Scotland most of the time, it is apparent to me that there are matters that need to be dealt with. They are primarily matters for the Scottish Parliament, but there are serious problems relating to the constitution of the United Kingdom as a whole, and I am glad that my noble friend Lord Lang of Monkton and his very capable Constitution Committee are looking into them.

5.46 pm

Lord Kirkwood of Kirkhope (LD): My Lords, it is always a great pleasure to follow the noble and learned Lord, Lord Mackay of Clashfern. He is one of these unique individuals who never says anything that is not worth listening to, and his speech will repay careful study. I remind the House of my interest in the Wise Group, which will become obvious in a moment because I want to restrict my remarks in the next five minutes to the welfare clauses, Clauses 20 to 29. I also want to express the hope that someone in our Whips' Office reminded my noble friend Lord Campbell of Pittenweem that the last time he was here, he got his clerk to send a fee note for £3,000 for his performance. I hope someone will put him right about the going rate at today's prices, although it was probably worth £3,000 in terms of the value of his contribution.

This has been a more optimistic debate than I expected. I take my cue from my leader, my noble and learned friend Lord Wallace of Tankerness, by saying that I think this is an opportunity. If I can claim to be a kind of specialist in social policy, I have a distinct feeling that investing in social protection is something more easily accepted by the electorate north of the border than in other parts of the United Kingdom—I put it no higher than that. I have come across a number of exceptional examples in Scotland of investing in preventive spending and giving early attention to preventing recidivism, for example, some of which I have seen as a non-executive director of the Wise Group. There are such opportunities in smaller scale communities across different parts of Scotland that I think would benefit from having more control over what they do.

[Lord Kirkwood of Kirkhope]

I agree with everyone who says that it is essential to retain for the benefit of the population of Scotland the residual machinery that deploys universal credit and the private pensions industry in the United Kingdom, but there are areas that I am increasingly coming to believe would be better devolved. I include in that category—it is not in the Bill but we need to think about it for the future; maybe 2020, not 2017—devolving Jobcentre Plus and putting it under the control of the Scottish Government. According to a report published by Cambridge Econometrics, £660 million is spent on employability in Scotland. It comes from all sorts of different places of different sizes, such as the European Social Fund and the Government's Work Programme. I am absolutely certain that a Scottish Government who were sensible about planning and controlling that expenditure could get better results. The Bill opens the door to that.

I understand the powerful speech of the nobble Lord, Lord Foulkes. I was his best man, and that has been held against me—particularly by his wife. He stands up to the cybernats; I do not have the bottle to handle them the way he does. I have a Twitter account which I hide in; he has a Twitter account through which he attacks everybody in sight. My noble friend Lord Steel made the point that there is a danger of a single-party state. We must remember that the nationalists will not be the Government for ever. I come back to the point made by my noble and learned friend Lord Wallace of Tankerness. We are setting plans in train, and this is an opportunity to think about how we do things better in future. I am more confident than some others; I might be more naive, but I am more confident.

I have two more things to mention before I turn to the eight clauses I will concentrate on. I listened carefully to the noble Lord, Lord Smith of Kelvin, and it was his last point that worried me most. If he is of the considered view that the relationship between our two Governments still is not good enough, the Government need to respond. The Minister has a hard job responding to what will be a detailed and complicated debate. If he does nothing else, I ask him to address that point, if he can. Secondly, it is entirely correct that we put Part 3 at the end of Committee. I am against any principle of detriment, whether it is the first or the second; I just do not think that detriment is a good thing. We should take our time and give the clauses due consideration. If Part 3 comes last, nobody will be more pleased than me, because I will be tabling amendments the like of which I have a minute now to describe.

One thing we need to think carefully about is that Clause 27 introduces the notion of concurrent powers. I do not know of any other part of the social security legal framework that contains that concept. We need to be very careful about how the machinery is put in place to ensure that that works.

We should also consider—I will be tabling amendments to this effect—introducing the Social Security Advisory Committee in some form north of the border, because I do not believe that social security provision will lessen in future in the devolution settlement. I support those who say that the constitutional framework now needs to be addressed. There is a whole series of such questions, and I give notice to the Minister that I will be tabling amendments to try to clarify the Bill, make it more effective and less ambiguous and ensure that there are no unintended consequences.

I end on a point made by the noble Lord, Lord McAvoy, in what was a very measured speech: the important thing is to get a smooth transition in 2017, because the welfare changes affect hundreds of thousands of families. If the machinery does not work, it is not the politicians or the policymakers who will suffer; it is the families who depend on those benefits coming in week by week, month by month. Let us hasten slowly; let us get this important Bill on the statute book in good time to plan for the social security work necessary to ensure that smooth transition in 2017.

5.53 pm

Lord Forsyth of Drumlean: My Lords, it is a pleasure to follow the noble Lord, and I am sure we can all agree that we are against detriment.

I thank the noble Lord, Lord Hollick, who chairs the Economic Affairs Committee, of which I am a member, for the brilliant way in which he introduced the substance of our report. It is a high-powered committee, very diverse in its nature, but we had no disagreements or arguments: the report is absolutely unanimous. It was described by one journalist in Scotland as delivering the political equivalent of a Glasgow kiss to the Government; he clearly does not understand that we are much more civilised in this House, but I am sure that my noble friend can feel the pain from some of the report's recommendations. It is a double whammy, because the other great committee of this House, the Constitution Committee, has independently come out with exactly the same conclusion: that we should not proceed with the Bill without the fiscal framework.

This has been a very interesting debate. It is a great pleasure to have heard the maiden speech of the noble Lord, Lord Campbell. I have a lot of sympathy with his view that what we need is a new Act of Union which is well thought through and not based on a ragbag of conclusions. There was no greater joy in heaven than to hear the noble Lord, Lord Foulkes, confess that perhaps devolution on a piecemeal basis had not quite worked out as he expected. I must say that I thought it would be a disaster, but I never expected that it would reduce the Labour Party to only one MP in Scotland. We were told that no party would have a majority. We were told that they had devised a scheme which would save the union and kill nationalism stone dead. I will not venture down an analysis of how well that has worked out.

I was disappointed to hear that the noble Lord, Lord Campbell, managed to steal the mother of the noble Earl, Lord Kinnoull, from the Conservative Party, but I take comfort in the fact that his mother-in-law and his father-in-law, the very distinguished General Urquhart, were both stalwarts of my local branch when I was the Member of Parliament for Stirling.

I know that it is difficult to keep up with all the reports produced in this House, or sometimes even just to read the summary, but if your Lordships cannot bring yourselves to read the report of the Economic Affairs Committee, all you need to do is look at the title: *A Fracturing Union? The Implications of Financial*

Devolution to Scotland. If you can get to the last paragraph of the first section, entitled "Executive summary", it says all you need to know. You can forget what the members of the committee had to say. Under the heading "Huge risks to the union?", it says:

"A number of witnesses expressed concern that overlooking the problems identified above is storing up trouble for the future, even threatening the existence of the Union. Professor David Heald, Professor of Accountancy, University of Aberdeen Business School, described the political climate around these issues as 'toxic … the future of the United Kingdom remains at risk'".

Professor John Kay, whom we all know as having three brains—it does not say that in the report, by the way—and who is the visiting professor of economics at the London School of Economics, thought that Scotland would drift towards independence,

"because it is the only way to resolve these problems".

So there is a special responsibility on this House, on this Parliament, to seek to resolve those problems.

Here we have the Scotland Bill, all gleaming and new. The noble Baroness, Lady Liddell, the former Secretary of State for Scotland, knows of the complexities of the Barnett formula, and all the rest. In a fantastic speech, she said that she was the daughter of a bus driver and talked about the failure of education in Scotland—not least, actually, caused by the Labour Party's refusal to embrace our education reforms in Scotland. I have to balance my remarks because I would not want to damage the noble Baroness by praising her too highly. During her excellent speech, I was reflecting that my father sold second-hand cars.

Noble Lords: Ah!

Lord Forsyth of Drumlean: Yes, and I am proud of that, just as the noble Baroness is proud of her origins. My mother used to polish the cars so that they were gleaming in the sunlight, in the hope that someone would come in to buy them.

So we have the Bill: all beautifully presented and put together. I do not think that my father would have got very far if he had tried to sell a car by saying, "I am terribly sorry, you can't look at the engine. I can't tell you about the gearbox. In fact, there might not be an engine—actually, it is confidential. But once you've bought the car, we can tell you whether the engine works, whether the gearbox works and whether the software works". That is what we are being asked to do on the Bill: "We can't possibly tell you about the fiscal framework", which is the guts of the Bill, "because it is confidential. We are discussing it with the SNP. By the way, we are getting on very well; we have a long record of getting on very well with them".

I thought that my noble friend Lord Dunlop had given me an assurance, in a private meeting back in the early part of the summer, that the Bill would not be introduced to this House without the fiscal framework. However, because I know the ways of the Civil Service, and of the Treasury and Governments, I thought that I would table a Written Question. I tabled it on 9 July—remember July? It was a long time ago. I asked Her Majesty's Government,

"when they plan to publish the new fiscal framework agreed with the Scottish Government".

The Answer I got was:

"The Chancellor of the Exchequer, the Chief Secretary to the Treasury and the Deputy First Minister met on 8 June where they agreed that they would aim to conclude negotiations on the fiscal framework that will underpin the financial provisions of the Scotland Bill by the autumn, in tandem to the timetable for the Bill".

I thought that Answer was not quite consistent with what I thought my noble friend Lord Dunlop had said, so I put down another Question. I asked,

"whether they plan to take any stages of the Scotland Bill in the House of Lords before the fiscal framework has been agreed and published".

The Answer I got on 22 July was:

"The Government intends to progress the negotiations on the fiscal framework in parallel with the Scotland Bill. At their meeting on 7 July, the Chief Secretary to the Treasury and the Deputy First Minister re-affirmed their aim to conclude negotiations on the fiscal framework by the autumn".

Now is the winter of our discontent not made glorious summer by my noble friend. When I was in school, "in parallel" meant "alongside each other". How can it be "in parallel" with the House of Commons when the Bill has left that House? In his speech, my noble friend said that the Bill was unopposed at Third Reading. Third Reading in the other place took all of 10 minutes, with the fiscal framework not known.

Of course, I understand the political difficulties that afflict my noble friend and the Government. We have heard a great deal about this amazing vow. I do not normally recommend the *Daily Record* for reading, but I recommend looking at its report on the anniversary of the vow on 17 September, where the editor says that it was all his idea. It was invented by him: he rang up Gordon Brown and said, "Gordon, can you get the other party leaders to do this and we will put it on the front page?". Indeed, the description of the vow was not that of the party leaders but invented by a tabloid journalist. Noble Lords can imagine my astonishment on hearing this when we got evidence to our committee from a distinguished academic who told me that the vow was the nearest thing we had in Scotland to Magna Carta. So there we have it: the *Daily Record* is better than Magna Carta.

If we look at this vow—this vow which is of such importance—it contains the sentence:

"And because of the continuation of the Barnett allocation for resources and the powers of the Scottish Parliament to raise revenue, we can state categorically that the final say on how much is spent on the NHS will be a matter for the Scottish Parliament".

That is what it said when it was signed by David Cameron, who is still a leader, Ed Miliband and Nick Clegg—both of whom have since disappeared, leaving us to sort out the problem. It is illiterate and completely wrong. How can you say that spending on the health service would be "protected" because of the Barnett formula and the tax-raising powers? The whole point about the Barnett formula is that the amount of money that goes to Scotland for health is determined by what is decided in England. That is why the report of the Economic Affairs Committee is right to emphasise that we need to move away from Barnett towards a needs-based system if Scotland is to get the share of grant that represents its needs. The whole thing—this

[Lord Forsyth of Drumlean]
clash between the Barnett formula and the impact of the tax-raising powers—is based on something put together by a tabloid journalist.

We then had the argument that we cannot delay the Bill and need to get on with it. This has been the problem all along. I pay tribute to the noble Lord, Lord Smith, the Smith commission and the work that he did on it. However, I cannot think of any time in our history—perhaps we could go back to Henry VIII—when three privy counsellors could sit down and agree something that then had the force of law. Normally, Governments—the Executive—have to go to Parliament: it is a matter for Parliament, not Governments, to decide the fiscal framework. The only part of our parliamentary process in these islands now that seems to understand that—irony of irony—is the Scottish nationalists, who are saying, "We want to see the fiscal framework and the Bill. We are only prepared to consider them together and if we don't think it works in a fair way, we will reject it". It is a situation that has been denied to the House of Commons.

I would like to pick up the noble Lord, Lord Smith, on one point. In his foreward to the Smith commission report—there is a picture of him on the front—he says, under "A more autonomous Parliament":

"The Scottish Parliament will be made permanent in UK legislation and given powers over how it is elected and run … The Parliament will also have the power to extend the vote to 16 and 17 year olds—"

So it goes on, using "will". I am sorry, but it should perhaps say "should" or "we recommend that it might". Whether or not it does is a matter for this Parliament—not for the Smith commission or the Government, but for Parliament. It is right that Parliament should have the opportunity to look at it.

I will make one final comment, because I realise that I am over my time. By the way, that is another disgrace: for us to be limited to six minutes on a major constitutional change is quite ridiculous.

Lord McAvoy: Before he sits down, could the noble Lord perhaps give us his understanding of no detriment?

Lord Forsyth of Drumlean: God bless the man: I have an excuse to speak for another six minutes. First, all the evidence that we had from our witnesses—it is all on the internet; people can read it and it is available in the Printed Paper Office—is that no detriment is completely unworkable. The report says that if on either side of the border, a change of policy results in a change in the money available to either side, the other side should compensate it. I will give an example. When I was Secretary of State, they privatised water in England. In Scotland, my noble friend Lord Lang decided that we were in enough trouble; he did not privatise water. As a result, of course, Scotland no longer got the Barnett consequences of the public expenditure on water in England, because it was charged, and we had to find from within the Scottish block the money to pay for water.

My understanding of the no-detriment principle, if it means what it says on paper, is that in similar circumstances under the new arrangements, if in England they decided to privatise or stop doing something and that resulted in a lesser grant to Scotland through the part related to the Barnett formula, then England would have to send Scotland a cheque. That seems to be rather unworkable. The idea that because England, say, had privatised water, it should send a cheque to the Scots to enable them to continue with a state-run, inefficient system, does not seem to be practical politics. I might have got this completely wrong, but every time I ask the Minister or the author or its exponents what it means, they say, "This is a matter for negotiation and we cannot possibly comment, because it has all been done on a secret basis". It is just not acceptable to proceed beyond Committee until we have answers to this and many other questions that I will seek to elucidate for my noble friend by tabling lots of amendments.

6.08 pm

Lord Hope of Craighead (CB): My Lords, it is a very real pleasure for me to follow the noble Lord, Lord Forsyth of Drumlean. He will remember that when he was Secretary of State for Scotland and I was the head of the judiciary, we did not always see eye to eye. In fact, I can assure your Lordships that he was just as vigorous and energetic in his presentation of policies with which I did not agree, and just as controversial, as he is now. These days are past now, if I can echo the words of a well-known song, and it is a pleasure to listen to such a spirited speech, with much of which I can agree.

I would also like to echo the words of the noble and learned Lord, Lord Mackay of Clashfern, a former dean of the Faculty of Advocates—as am I—in what he said about the noble Lord, Lord Campbell of Pittenweem, and the noble Baroness, Lady McIntosh of Pickering. It is a quite unusual situation for two members of the Faculty of Advocates to make their maiden speech in this House on the same day. I am not sure that this has ever happened before. It is a very real pleasure for us, who recall the faculty and owe it so much.

Turning to the Bill, I confess to having mixed feelings about it. Of course, the Bill must pass and it was—and is—an essential part of the process that the recommendations of the Smith commission are put in place. As the noble Lord, Lord Smith of Kelvin, put it in his foreword and also said today, that process is one of turning the recommendations into law. There must be some relief at the progress made in what has been achieved so far to bring the Bill forward to this House within a year of publication. The report is not yet one year old—I think its birthday is on Friday of this week.

Leaving that to one side, there are some serious grounds for concern. I mention a point developed by the noble Earl, Lord Kinnoull, in his very perceptive speech, that if you look at the detail in the Bill and contemplate what it really means for the people in the Scottish Parliament, you begin to wonder at the ability of that Parliament to handle what we propose to deliver. After all, the Parliament was designed in the Bill that became the Scotland Act 1998. I am one of a number of noble Lords here who is a veteran of the debates then. I remember that the Minister who introduced it, the noble Lord, Lord Sewel, said:

"Through this Bill we seek to establish an enduring, fair and stable settlement".—[*Official Report*, 17/6/98; col. 1567.]

He said he was,

"completing the unfinished business of which John Smith spoke",

and that this was to be a,

"lasting political legacy".—[*Official Report*, 17/6/98; col. 1574.]

What was designed, in a similar pattern to Wales and Northern Ireland, was a unicameral system with a series of committees to control and scrutinise the Executive and the legislation being put through. Given the package that was in the Scotland Bill of 1998, that seemed a reasonable and stable situation. However, as the noble Baroness, Lady Goldie, was careful to explain to us, the political situation has changed entirely from what was envisaged in 1998. That leads me to the concern about the ability of the Parliament to really deal with the situation we have now, with a majority Government and all the consequences already mentioned.

The noble Lord, Lord Smith of Kelvin, drew attention to this problem in his foreword, where he said that the addition of these new responsibilities,

"means that the Parliament's oversight of Government will need to be strengthened".

He called for,

"an inclusive review which will produce recommendations to run alongside the timetable for the transfer of powers".

As far as I can detect, that has not happened. I do not know what is going on to try and achieve the noble Lord's wise words. I hope that the Minister in his reply will be able to give us some insight into the progress, if any, being made to achieve that kind of strengthening of the system of government which will need to cope with these new responsibilities.

On the detail of the Bill, in the short time I have left, there are particularly Clauses 1 and 2, to which the noble Lord, Lord Lang of Monkton, referred and which have been the subject of some discussion in the Constitution Committee's report. Clause 1 reminds me of Article XIX of the Act of Union 1707, which declares:

"That the Court of Session or Colledge of Justice do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom".

In other words, that was a declaration that the College of Justice was not to be capable of being removed by an Act of this Parliament. As a student at Edinburgh University many years ago, I was taught that the provision in those terms was fundamental law and in that respect the UK Parliament did not have absolute sovereignty. That is what I was taught. Clause 1 seems to drive in the same direction: a declaration that is perhaps intended to have political effect but, as the noble Lord, Lord Smith, said, the purpose of the Bill is to turn these things into law. If it is turned into law then one day somebody will bring the issue before the judges. The judges do not invent the argument; it is brought before them. If it were brought before them—I sincerely hope it never would be—that would give rise to exactly the point that the noble Lord talked about.

In Clause 2, I am concerned about the use of the word "normally". I do not understand what that would mean. If this is making law, again the judges will have to decide what is normal. I do not see how they could possibly do that without evidence. It has to be explained. Also, as has been pointed out, the Sewel convention must be explained. If it is to be turned into law, it must be capable of being argued about in court and made the subject of a determination by the judges which makes sense and contributes to our well-being. These points are very well taken by the committee, with great respect, and I hope we can develop some further thinking about this in Committee.

6.15 pm

Lord Brennan (Lab): My Lords, having had the privilege of serving on a board with the noble Lord, Lord Forsyth, for several years, I recognise his formidable debating skills but today's was a star performance. As the second English contributor to this debate, I will take an English point of view about much of the content with which we should be concerned. Of the matters raised by the Bill that affect the role and future of the union, of particular importance are governmental structures, finance and potential adverse consequences.

First, on governmental structures, we have three devolved legislatures in this nation and the peoples of those three each have their own Assembly and devolved powers, and therefore their say through that Assembly in the exercise of those powers. The English have none of that. In addition to the fact that we have those three legislatures, each of them has significant differences one from another—sometimes all three the same and sometimes all three different. Now we have yet further changes to compound that: this Bill, giving the greatest powers to a devolved nation, in many ways, in the world; then the draft Wales Bill; and then the Northern Ireland (Welfare Reform) Bill that we will debate this evening. There was also the corporation tax Bill for that devolved legislature a few months ago. It is more and more change, none of it properly interrelated and with no cohesive structure. That is a recipe for a constitutional mess, to put it bluntly. Of course these decisions are political, but they must be responsibly political.

This unhappy state of affairs now frequently attracts the use of the word "asymmetry". That is a refined, classical Greek word in origin which is extremely useful to describe a state of affairs that it would be embarrassing to describe in plain English. When I looked at the dictionary today, "asymmetry" not only means simple things such as imbalance of power or irregularity but also has one definition that I thought significant: a state of affairs in which there is an uneven distribution to the detriment of one. Which one might that be in the system I just described—Scotland, Northern Ireland, Wales or England? Who knows? With this Bill, asymmetry takes on a yet more profound significance. This present state of affairs illustrates a fact we must recognise: there is no constitutional cohesion in the present union and this Bill further compounds that.

I have one final example on this question. There are 13 major powers in this Bill shared between the UK Government and the Scottish Government, including on energy and the like. How are they to be resolved? Under what system of co-operation are the two Governments required to engage? We do not know. The inter-governmental relations programme is as yet undefined on that issue. So let us have a care. We are here to look after the constitution of our country not just, as we should from time to time, to satisfy the devolution wishes of individual parts.

[Lord Brennan]

Secondly, on finance, I cannot conceive as a Member of this House passing legislation which involves such a vast tax-raising power without the Bill including the fiscal framework under which that power is to be exercised. It is a negation of parliamentary duty. The present state of affairs—let us look at it in the simplest constitutional terms—requires, first, fiscal sharing by us all; secondly, fiscal responsibility; and, three, fiscal accountability. In my view, those are constitutional principles that should be common to the nation. If in Scotland there comes a time when spending significantly exceeds the tax revenue or borrowing powers are so far exceeded that the Government cannot repay their debt, who is to rescue that position? Who bears the risk? That is a question that I ask of Scotland as of the other three countries in this kingdom. Probably it will be London and the UK Government who bear the risk—the risk of whether, how and when to bail out such a disaster.

Extending the Committee period and giving it an extra day is simply inadequate. This House is not asking for delay; it is asking for the participant Governments to exercise fiscal responsibility and present the results to this House for our decision.

Lastly, I turn to potential adverse consequences—I use the word "potential" because they can be avoided with proper parliamentary and governmental action. On the fiscal framework, an English taxpayer would like to know, as would the Northern Ireland and the Welsh taxpayers, what the liability is of those citizens to a Scotland that might go wrong in financial terms. It is so obvious that it is almost embarrassing to have to state it. Therefore, it is the obligation of all of us to ensure that those citizens receive the same protection as the Scots citizens receive in advancing their devolution.

Next, I turn to the no-detriment principle—and the noble Lord, Lord Forsyth, having asked the question, answered it to his own satisfaction. He is waiting for the Minister to give his answer to what is a tough question. How we put into comprehensible and persuasive words that which all the experts say is unworkable is quite a parliamentary challenge, and he deserves our sympathy—but it is a significant point. Who carries the burden is what taxpayers want to know.

The third point is on inter-governmental relations. How is everything going to work? There is no statute and there is a memorandum of understanding affecting the present arrangements, which is being reviewed. Who is reviewing it, and when are they going to report? The Government say that they are going to update it, but when? If we cannot make it work, what is the point of the legislation?

Fourthly, constitutional instability has to be avoided, especially when it concerns England. It is a simple proposition: with 50 million people out of the 60 million, we have to pay attention. English votes for English laws is the barest of beginnings; it is not a conclusion.

Lastly, I was surprised to see a clause such as Clause 68 in a constitutional Bill, creating a Henry VIII power for the Government to present secondary legislation on behalf of themselves and, presumably, the Scottish Government, to this Parliament without the opportunity for us to vote against it. That is astonishing.

We have been told that this measure has to be delivered, and I agree—but it has to be delivered following proper parliamentary process. Haste based on a hasty political vow is not the foundation for sensible legislation; expedition tempered by prudence is. All that the House is asking in many of the speeches heard today is that, in the conduct of this Bill, we get the chance to debate and decide on everything, and then we can say as parliamentarians that it has been delivered.

6.26 pm

Lord Shipley (LD): My Lords, it has been a pleasure to listen to this debate and to the excellence and importance of all the contributions that have been made—not least that of my noble friend Lord Campbell of Pittenweem in his maiden speech. I look forward to the rest of the contributions and, in particular, to the speech of the noble Baroness, Lady McIntosh of Pickering.

I decided to speak in this debate for two reasons. First, the Bill concerns the whole of the United Kingdom and not just Scotland. Secondly, there is the principle of no detriment, which remains the central issue and is clearly not yet resolved.

The Bill has to be considered, not just from the perspective of the two Governments—the Scottish and UK Governments—but from the perspective of those parts of the United Kingdom that share a border with Scotland. Living in Newcastle upon Tyne, I have an acute awareness of cross-border issues.

I make it clear at the outset that I support the principles behind the Bill. The people of Scotland want enhanced devolution with the tax-raising powers that come with it, and it is also clear that devolution commands broad support from the UK's political parties. But the no-detriment principles are primarily seen as a matter for the two Governments. We have had a lengthy debate as to what those two no-detriment principles mean and whether they are deliverable. I suggest, as part of this Second Reading, that a no detriment principle must surely extend to ensuring no detriment to those parts of the United Kingdom that share a border with Scotland and which could lose out—if, for example, the Scottish Government reduced air passenger duty by 50% or 100%. The impact of such a decision on airports south of the border might be significant. A small outflow of passengers chasing lower fares in Scotland could cause a movement of carriers. It would be of little help to the connectivity of the north-east of England if air passenger duty was not reduced there in line with whatever decision was taken to lower it in Scotland.

There is a further issue. If Scotland reduces APD, who meets the cost of it—the Scottish Government or the UK Government? Logically, the answer is the Scottish Government. If it is the Scottish Government, presumably it will come from the block grant, but the adjustment of the block grant is currently unknown. How will we know that it is fair to the rest of the United Kingdom or that an APD reduction is paid for by Scotland, rather than by the rest of the UK?

I am puzzled, as are many others, as to why this Bill is being considered before the fiscal framework has been agreed. I read the report from the Institute for Fiscal Studies questioning a process in which the new fiscal framework is not part of the Bill. I want to quote from it, because it is highly material. Last week's report said that,

"it is impossible to design a block grant adjustment system that satisfies the spirit of the 'no detriment' from the decision to devolve principle at the same time as fully achieving the 'taxpayer fairness' principle at least while the Barnett formula remains in place".

As part of our discussions on the Bill, it needs to be clear how the block grant is to be calculated in future. The indexation of the Barnett formula during the last 36 years has resulted in serious anomalies. These must be addressed. If they are not, there is a real possibility that increases in taxes in the rest of the UK, which fund higher spending in the rest of the UK, could end up funding higher spending in Scotland through the block grant system without a corresponding increase in Scotland's tax levels. The Smith commission talked in terms of taxpayer fairness. We must ensure that this is fulfilled for the whole of the United Kingdom.

Perhaps the reason the block grant adjustment system has not been agreed is that there have been very few formal meetings to get on with doing it. Papers for and reports of meetings are not in the public arena. However, in a Written Statement earlier this month, the Secretary of State for Scotland said that the Joint Exchequer Committee had met four times since June 2015, that work was continuing and that both Governments aimed to complete this work as soon as possible to give the respective Parliaments time for due consideration of both the fiscal framework and the Scotland Bill. Broadly speaking, that is a meeting a month. It is hard to see how the timetable will be met, since the Bill is with us now and Committee stage approaches. We have, however, received ministerial assurances that we will have a fiscal framework by the time we reach Committee in the new year. I hope that proves to be the case.

In a compelling report, the second conclusion from the Institute for Fiscal Studies is very important. It says that,

"it may now be time for a more fundamental reassessment of how the devolved governments are financed"—

that includes Wales and Northern Ireland—

"including whether the Barnett formula should be retained. Reform of Barnett may remove some of the conflicts between the Smith commission's principles. The Smith Commission parked these issues to one side by stating that the Barnett formula should be retained. Making the UK's fiscal framework sustainable for the long term may require reopening the debate".

We have heard that this problem over the Barnett formula has also been pursued by the Economic Affairs Committee in its excellent report published last Thursday. It, too, concluded that the Barnett formula should be replaced with a needs-based funding formula. That has to be right. It would be in line with the report published by the Select Committee of your Lordships' House on the Barnett formula in 2009.

In conclusion, we have a Bill to consider which, in principle, I want to support and which should be supported. However, we lack the information we need to consider it and which is central to getting the legislation right. I hope we will have the fiscal framework to consider at some point during Committee and that the Government will take seriously the need to revisit the Barnett formula as part of the block grant agreement that is reached.

6.35 pm

Earl of Stair (CB): My Lords, I broadly welcome the arrival of the Scotland Bill in this House. Although I have many concerns about many aspects of the Bill—most of which have been mentioned by other noble Lords—I hope it receives a successful, but not too speedy, passage to Royal Assent.

This is the second time I have given a Second Reading speech on a Scotland Bill. The first was on the initial devolution Bill and I very much hope that this will be the last. There are horrible similarities in the production of both, in so far as they have both resulted from promises made by leaders of parties seeking to ensure support from Scotland. In the first, it resulted in what became the Labour Government earning the support of Scottish Labour. In this, the second, it has resulted from the present Prime Minister retaining Scotland as part of the union. If the Government had spent a bit more time fighting for the union during the referendum, with less of a last-minute rush, I am sure that the result would have been far more conclusive and there would be no need for this present Bill.

I thank the noble Lord, Lord Smith, who is sadly not in his place, for leading the inquiry that resulted in a degree of harmony among the parties and led to this Bill. I know there are supporters of independence—who may or may not be members of the SNP—who are watching carefully the outcome of this Bill. They are prepared to continue to accept the union if they deem Scotland to have received fair treatment and greater recognition as a result. I am sure that there are some in the SNP of a similar opinion. As has been said on many occasions, I am sad that there are no members of the SNP in this House. I hope that they will accept from afar the amendments that may come from this place as being for the future benefit of all in Scotland and the remainder of the United Kingdom.

I am keen that this important piece of legislation should pass quickly because I do not wish future changes to the powers of the Scottish Government to become entangled in the election campaign in Scotland next year. If we fail to establish exactly how the new powers will be implemented, I can see the Bill becoming a political football in the election campaign, with an attendant loss of credibility. Although I would like to see the Bill pass quickly, it should not be at the expense of too short a time being allocated to complete all its stages. I urge the Government not to underestimate the importance of this Bill and to allow as much time as is needed to ensure that all the detail is tied in correctly.

I hope that the Scottish Government may also use some of their new powers to modify the Scotland Act 1998, and to reappraise and possibly reassess some of their own working practices in the Scottish Parliament. To my mind, a significant error was made during the debate on what was then the first Scotland Bill: the determination that a revising chamber of the

[Earl of Stair]
Parliament would not be needed and that the committee structure would suffice. Ministers on the then government Benches assured the House that there was no possibility that the committee system could be dominated by any one party, and certainly not by the party in power. Sadly, that has not proved to be the case. I earnestly hope that, when the Bill is passed and with significant money-raising powers, there will be no opportunity for one party to overwhelm all others.

Another main area of concern in the Bill is the fiscal framework, which has been raised by virtually every other speaker in this debate. With the potential to raise so much money under the new powers, the Government are assuring us that the fiscal framework will be complete before the Bill is passed. However, I regret to say that I think the description of the noble Lord, Lord Hollick, of the current state of the fiscal framework and what will be required is the most accurate.

It is vital that information is available to the people of Scotland on all aspects of VAT and taxation before the start of elections next year. Clause 17, on air passenger duty, is a welcome addition, and I am sure it will be a tremendous boost to transport and development in Scotland. I hope that some of the income can be invested in the impressive, but mostly mothballed, Prestwick airport, but not to the detriment of other airports in the United Kingdom.

However taxation is not the only part of the future finances of Scotland. The Barnett formula still needs to be considered and amended. Until all these matters are addressed, I find it difficult to understand how the Bill can be passed in any form of sound condition. It is vital that it is clear at the end of the passage of the Bill where responsibility lies for expenditure and, more importantly, that there is accountability for all the money that will be raised through taxation. There must be no chance of any grey areas whereby blame can be passed from Parliament to Parliament.

Finally, it must be remembered that we are here with this Bill because of politics. I believe that the majority of voters in last year's referendum did not wish for a change to the status quo, irrespective of posturing in the lead-up to the referendum and before the vow was made. I earnestly hope that when this Bill is passed it will be in such a condition that not only will it be sound but it will restore the confidence of the electorate in Scotland.

6.41 pm

Baroness McIntosh of Pickering (Con) (Maiden Speech): My Lords, to speak for the first time in your Lordships' House is a great honour and very humbling. I am delighted to follow the noble Earl in this debate. I take this opportunity to thank the noble and learned Lords, Lord Wallace, Lord Mackay and Lord Hope, the noble Lord, Lord Foulkes, and many others for all their kind words since I have been in the House. I extend heartfelt thanks to all who have made my introduction and my early days in this place so smooth. The doorkeepers, the clerks, the attendants, the Library, catering and all the officials and other staff are due a very big thank you. Like the noble Lord, Lord Campbell, I am sure I will have many opportunities to call on their advice in future months and years.

To my supporters at my introduction, my noble friends Lord Plumb and Lady Byford, warm thanks are due. In many respects, the fact that I entered politics at all is due to my noble friend Lord Plumb, who many years ago recruited me to work for the European Democrats, the family of Conservatives in the European Parliament. I had the good fortune to work on the same shadow ministerial team as my noble friend Lady Byford. I yield to no one in my admiration for my noble friends' collective knowledge and experience of farming, the countryside and rural affairs, which they share with my noble friend Lord Jopling, a former Minister for Agriculture in the other place.

I was born in Edinburgh to a line of pharmacists. Anybody who over the years went to the chemist in Elm Row or to George Cowie chemist on Dublin Street or to the chemist in North Berwick could have been served by my grandfather or one of my uncles. My father, my uncle and my brother took a medical path, but I followed my mother's interests in languages and history and embarked upon a legal career. I studied law at Edinburgh University. I remember being a student of JDB Mitchell, who introduced the first six-month course on the implications for British constitutional law of joining the European Union in 1973. I entered the Faculty of Advocates in 1982 and benefited from the rigorous training. At the time, professional training was serving a Bar apprenticeship with a firm of solicitors before undertaking a period of devilling with a devil master. Both parts of my training straddled the longest case in Scottish legal history, in which Strathclyde Regional Council's attempt to add fluoride to the water supply was thwarted by a pensioner who wore dentures who petitioned the Court of Session because she could see no personal benefit from adding a potential carcinogen to her drinking water supply. Needless to say, the council lost. I was fortunate to have as my apprentice master the much revered Evan Weir of Simpson & Marwick, who ultimately became the Auditor of the Court of Session. My first duty as a Bar apprentice was debt collecting, but my most memorable experience was being asked to take evidence productions to court in Mr Weir's car. Imagine my consternation when the vehicle broke down outside the then venue of the sheriff court. It was not my most career-enhancing moment as I faced Mr Weir, who questioned my driving skills rather more than the age or unreliability of his car.

The fact that Scots law is closer to Roman law stood me in good stead when I subsequently practised European law in Brussels before going on to advise the Conservatives in the European Parliament. Therefore my background is very much in European law, European politics, transport, farming, the environment and the countryside. I was transport spokesman in the European Parliament for a number of years, held a number of shadow ministerial positions in the other place, and for five years I was honoured to chair the Environment, Food and Rural Affairs Select Committee in the House of Commons, which covered all aspects of farming, flooding, food production and animal health.

My political career took a circuitous route, with 10 years representing part of Essex and Suffolk in the European Parliament, and then the Vale of York and

subsequently Thirsk, Malton and Filey in the other place. I am immensely proud of my Scottish heritage and roots, and particularly of our Clan Mackintosh motto, "Touch not the cat bot a glove". I leave its interpretation to your Lordships.

I must not forget my Danish roots. My mother was born and bred in Copenhagen. Denmark's loss of independence when occupied by Nazi Germany in the Second World War is a constant reminder to me and my family of why a strong Europe has ensured democracy across this continent in the intervening years. I firmly believe that the union of the United Kingdom and the UK's union—a customs union and single market—with the European Union are the bedrocks of our economic strength and place in the world. I counsel all those who refer to the Schleswig-Holstein question to beware of the fact that the conclusion of the war in 1864 led to the loss of one-third of Danish territory to Prussia. That is one thing we should be careful of in the debate today.

This debate is important because it makes good all the conclusions and recommendations of the Smith commission and the political agreement of the main parties. However, I have two main concerns. One was referred to by the noble Lord, Lord Shipley, and others and is the implications for airports in the north of England of air passenger duty being confirmed as part of the revenue-raising powers. I would like to understand how that will be calculated, how that will be raised by Scottish airports and what economic impact it will have on English competitors, particularly in the north of England. My other concern relates to not just the fiscal framework, which is being discussed at length by noble Lords, but the sheer number of secondary regulations giving legislative teeth to the Bill before the House today. In particular, Clause 14 has a number of subsections that leave much to secondary legislation. When the Minister replies, will he say to what extent there will be parliamentary scrutiny not just of the fiscal framework but of the enabling regulations, which presumably will not meet the same timetable as the rest of the Bill?

The fact that the main parties agree and support the main provisions of the Bill does not negate the absolute need for parliamentary scrutiny by both Houses. The statute book numbers many Acts on which all parties agreed that led to enormous practical difficulties of implementation. Two immediately spring to mind: the Act setting up the Child Support Agency and the Dangerous Dogs Act.

This debate and this legislation are historic. The Bill gives effect to the Smith commission, and makes good the promise made by the Prime Minister in the immediate aftermath of the Scottish referendum last year not just to the people of Scotland but to the people of the United Kingdom as a whole.

6.49 pm

Lord Selkirk of Douglas (Con): My Lords, it is a very great pleasure to congratulate my noble friend Lady McIntosh of Pickering. Her speech was excellent and we look forward to very many more. She and I have both been advocates at the Scots Bar, but unlike many parliamentarians she has been both an MEP and an MP. Our training as advocates helps us to think straight—I like to hope so, at any rate. She will find this House full of dedication and good humour and—usually—engaging in the pursuit of excellence. I wish her every success and happiness here in the years to come. I also congratulate the noble Lord, Lord Campbell of Pittenweem, on a characteristically memorable speech. It seems like only yesterday that I was his junior counsel in a thoroughly traumatic and tragic murder case. We are extremely glad to see him here and welcome his great experience, including as chancellor of St Andrews University, and his substantial expertise. His point about Scotland's security will be an important marker in a debate which looks as if it will continue for a long time.

It will come as no surprise that I support the Bill and wish the Minister success with it. I do not think this House should try to halt its progress, as recommended by the Economic Affairs Committee. I fully appreciate the importance of the United Kingdom and Scottish Governments agreeing on a fair and workable fiscal framework in which to embed the new financial arrangements, but it should surely not prove beyond the wit of man and woman to reach such an agreement in the near future without any intervention from this House which would be both misinterpreted and badly received. When he winds up, it would be helpful if the Minister informed the House of his willingness to update it on the negotiations between the Treasury and the Scottish Government. I have a past interest in the first Scottish Parliament, since I served two terms as an MSP. I remember the excitement, enthusiasm and optimism of the opening day, which included a fly-past by Concorde and the Red Arrows.

Lord Forsyth of Drumlean: Does my noble friend really mean that he would like to see the Bill pass out of this Parliament, even if we have not got the fiscal framework and even if that resulted in Scotland being greatly disadvantaged?

Lord Selkirk of Douglas: My noble friend misunderstands the purpose of what I was saying. It would of course be 100% better if we had the fiscal framework before us. I hope the Minister will assure us that he will report back to the House on the progress of his discussions with the Scottish Government, because that is very important. However, if a Bill went through this Parliament on a subject which came under the devolved powers of the Scottish Parliament and that Parliament found it wholly unacceptable, it would not be implemented. I am not too concerned about the Minister asking for more time. He should be given the benefit of the doubt and supported. I hope he will come back with an agreement and that his confidence has not been misplaced.

I served as a member of the Calman commission which first reviewed the progress of devolution in the UK. It reported in 2009 and proposed an increase in the Parliament's powers that is just beginning to come into force. We now have a Scotland Bill before us which gives extensive new powers to Holyrood promised in the famous vow. It is worth stressing that the noble Lord, Lord Smith of Kelvin, who chaired the all-party commission, is on record as stating that he believes

[LORD SELKIRK OF DOUGLAS]
that the promises in the vow have been met by the legislation proposed so far, as does Gordon Brown, who intervened so passionately during the referendum campaign. I very much hope that the new powers over setting a Scottish income tax and welfare spending will be available by 2017. This will mean that all parties in Scotland will have to publish their tax and spending plans in their manifestos for the election next May. For the very first time there should be no hiding place, especially for those who have taken refuge for years in simply blaming the United Kingdom Government for every financial problem. Accountability and transparency will be greatly enhanced and it is to be hoped that, instead of arguing endlessly about process, all Scotland's politicians will have to convince the voters of the benefits of their policies.

One of the SNP's former top advisers recently declared, in a powerful critique, that the economic plan for independence which it put forward last year is "broken beyond repair", and that the Scottish Government currently have no credible alternative to Tory financial plans. For their part, however, unionists must not appear grudging and disgruntled at the progress of events since September 2014. There have been more than enough predictions of doom and gloom. Instead, I welcome the reality that the Scottish electorate will soon have the opportunity to make very important decisions about the kind of Scotland in which they wish to work, live and care for their families. I hope they will conclude that this legislation offers them a constitutional framework within which they can enjoy the best of both worlds: having one of the most powerful devolved Parliaments in the world, operating within the wider parameters of a very strong and extremely successful United Kingdom.

6.56 pm

Baroness Quin (Lab): My Lords, it is a pleasure to follow the noble Lord, who is very often a travelling companion on the east coast line between London, Northumberland and the Scottish borders. It is also a pleasure to pay tribute to and welcome the two maiden speakers in this debate: the noble Lord, Lord Campbell of Pittenweem, alias Ming, and the noble Baroness, Lady McIntosh of Pickering.

The Bill gives legislative effect to the vow and to the outcome of the Smith commission. Once the vow was made, it needed to be delivered. In that sense, I support the Bill and the speech made by my noble friend Lord McAvoy from our Front Bench. Living in England's most northerly constituency, Berwick-upon-Tweed, I am affected and concerned by the debate on Scotland and its future role within the UK. The referendum vote was the most important one in my political life, although I did not actually have a vote to exercise. The Bill gives effect to the vow and I respect that but, from my own experience of canvassing for Better Together in the borders, particularly in the last 10 days of the referendum campaign, I agree with my noble friend Lord Maxton that the vow was not the reason why Scots voted no. It was certainly not mentioned to me on the doorstep. More effective was the splendid speech by Gordon Brown, reclaiming the saltire for the whole of Scotland, not just the yes campaign.

I was also struck by a comment made in an earlier debate by the noble Lord, Lord Forsyth of Drumlean, who correctly pointed out that most of the postal votes had been cast well before the vow. As I understand it, those postal votes very much favoured the no side and were therefore not influenced by the vow at the last minute. I also clearly remember Nicola Sturgeon, now First Minister, saying on 16 September that the Scottish people were not daft and would not be taken in by the vow—and, only five days later, Alex Salmond saying that people in Scotland were tricked into voting no because of the vow. This seems highly inconsistent on the part of the SNP. On this occasion, I agree with Nicola Sturgeon that the electorate were not daft and knew what they were voting against, just as much as what they were voting for.

In many ways, I would prefer all the matters in the Bill to have been part of the constitutional convention approach, which a lot of noble Lords have put forward in the course of this debate and over the last few months. There are all kinds of implications as a result, not least for areas neighbouring Scotland, as the noble Lord, Lord Shipley, pointed out. That obviously resonated with me in particular. I also pay tribute to the tremendous speech by my noble friend Lord Hollick in presenting the findings of the Economic Affairs Committee. I hope that the Government will very much take into account the views he expressed.

Some noble Lords in this debate, including the noble and learned Lord, Lord Wallace of Tankerness, have spoken about federalism and how keen they are to see a federal solution. I know that my noble friend Lord Foulkes also takes a keen interest in this. To a certain extent, it depends what you mean by federalism. I say this particularly coming from the north-east of England because, in many ways, our natural allies over many elections were in Scotland and Wales. There is a great worry that if there is simply an England-wide solution or an English Parliament, we could be more marginalised than we are in the United Kingdom Parliament. Although the Government seem now to be embarking on a programme of devolution it seems very piecemeal and aspects of it very much worry me, such as inflicting elected mayors on areas that have already voted against them. That seems against the very principle of localism and regionalism. I hope that regional devolution is not dead. It is true that the past vote in the north-east went strongly against it, in rather different circumstances, but that was by a rather similar majority to the rejection of the Welsh Assembly the first time around in Wales. So I do not lose hope of having a devolved situation in the largest by far, in population, of the four countries of our union.

Nicola Sturgeon recently spoke on "Desert Island Discs" about how she had come into politics and wanted to become involved in the SNP as a result of the effect of Mrs Thatcher's policies on Scotland. Again, coming from the north-east of England where we, like Scotland, had three industries—shipbuilding, coal and steel—that went into a massive decline at once, I was very sad that she concluded that separation was the better road rather than economic and social solidarity across the whole United Kingdom, which is the approach that I would much prefer to see.

I accept the Bill but, at the same time, I urge the Government to accept the idea of the constitutional convention and to look urgently at ways of strengthening the union, particularly across the border in areas such as mine adjoining Scotland, so as to make a success of it—and not to allow it to drift apart and, possibly, break up.

7.02 pm

Lord Lyell (Con): My Lords, it is now 44 years since I made my first humble speeches in your Lordships' House and I think it is the fourth time we have discussed major events dealing with my homeland of Scotland. This evening I seem to be on a downward tide, very happy and content with much of what is in the Bill. It is interesting that the Scottish Parliament is now up and running and is a great success, and we see around us noble Lords who have served, such as my noble friend who spoke before me, and others who are still serving, with a dual hat.

We are discussing a different concept tonight from what I call the constitutional past in that we are doing something fairly quietly but apposite. We are downsizing from what I would call a federal block—known in Scotland as "Waste monster", or Westminster—and looking at what is, and I hope will continue to be, a very successful devolved system in Edinburgh. We are looking at how these two Parliaments can react well and without too much friction. Before us this evening we have a decent stab—I will use that tactful term—to confirm what already works with the Scottish Parliament, but I worry about some particular gaps in that happy scene.

I commend the noble Lord, Lord Hollick, on his fortitude in having sat here throughout the debate. In fact, he is one of a fairly large number of noble Lords who have not budged from their positions. I also thank him, my noble friend Lord Forsyth and others who sat on the committee that produced this report. My noble friend Lord Forsyth put things far more forcefully, if I may say, than I would be able to. This is a really excellent report on the financial aspects and indeed what I hope may be the fiscal framework. I will just consider two or three small paragraphs from the report of the noble Lord, Lord Hollick. We will be able to discuss them in much more detail when we come to the income tax aspect of the Bill.

If your Lordships glance at paragraph 160 of the Hollick report, there are the immortal words of Professor Holtham, who praises the Barnett formula saying that it is "extremely simple". I agree with him, since my main motto, both in your Lordships' House and out, is KISS—it is nothing to do with affection but is "Keep it simple, stupid"; I am only an accountant not a major lawyer. Above all, keep it simple.

I refer to paragraphs 120 to 133 in the Hollick report, which is beautifully put together and has been praised by my noble friend Lord Forsyth. I am very interested in paragraph 122, which points out that so far the Scottish Parliament has made no use of the income tax powers. You might call me a cynical so and so, but I believe that is a mixed blessing since some of the thoughts I have seen in the Scottish media, both in print and in the electronic media, make my blood run cold.

In paragraph 130, there is marvellous advice from PWC, which I understand is one of the leading firms of chartered accountants. It points out, "For goodness sake, get the system right". In three words, "Don't rush it". Those words, I hope, will be taken on board by my noble friend the Minister when he comes to wind up and indeed will colour my thoughts on what is before us this evening.

I come to paragraph 131 in the Hollick report. Although I shall be out of order and my noble friend on the Front Bench may kick my shins or do other things to me, I wish to pay the highest compliment to the noble Lord, Lord Smith of Kelvin, whom I call my noble colleague. I am not too sure about the noble and learned Lord, Lord Wallace of Tankerness, but I think that I and the noble Lord, Lord Smith, are the only two members of the Institute of Chartered Accounts of Scotland actually sitting in your Lordships' House. As a member of the institute, I cannot praise highly enough anybody in Scotland who has done what the noble Lord, Lord Smith, has done in gathering politicians and every kind of economic outlook. He has seen Scotland on a global basis and what he has managed to do with his Smith agreement is worthy of the very highest praise. Certainly I bask in the mini-glow of the chartered accountants as a junior member with the noble Lord, Lord Smith.

I am interested in looking at the wise words, in paragraph 131, of Ms Charlotte Barbour, one of the tax directors of the Institute of Chartered Accountants of Scotland. She pointed out that, as far as income tax is concerned, which is the main thrust of what I see in front of us this evening, there is the issue of identifying who is a Scottish taxpayer. The definition of that, she says, will be "difficult". Well, in the words of the Bible, I say, "Verily, verily"—indeed, it will. My noble friend who is right in front of me and, I think, the noble Lord, Lord Sanderson, and others may well remember that I was entitled to lead on the definition of a "Scottish taxpayer" in 1998. If your Lordships go back and look at the *Hansard* at that time, they will find that the Government had some difficulty in explaining to me and to the House why somebody on a ferry which was tied up at the ports of Cairnryan or Stranraer would, for the purposes of the Scotland Bill, be defined as being resident in Scotland overnight. It is there in black and white. I hope that it has been changed, and indeed there is room for it to be removed.

Paragraph 133 of the Hollick report refers to the fact that the definition of a Scottish taxpayer will be based on an individual's main place of residence. I think it was the very kind lady from HMRC who pointed out that for the "vast majority" of the population this would be simple. Perhaps she is watching this debate on television this evening. If so, I ask her to look around at your Lordships. Perhaps I may quote a personal example. My tax affairs used to be dealt with in Dundee. I have one or two interests south of the border and, because of that, my tax details were then dealt with at Leeds and Shipley. I am given to understand that, because at some stage in my career I took paid employment as a Minister—in this House, not in the other place; no one elected me there—all my affairs are, and will be, dealt with in Cardiff. At the moment,

[LORD LYELL]
there are three or four centres that deal with my affairs, and I am just a simple Scottish taxpayer. It is pushing at the limits of reality for an HMRC representative to say that this is going to be quite simple for every Scottish taxpayer. In my case, she might find that it is just a little more than that.

The Bill before us certainly provides the framework for something which is acceptable and reasonable, and which is very practical for Scotland, let alone for Scotland's finances, and I hope that your Lordships will accept that the further detail can be brought forward in Committee. I congratulate the Minister on what he has done today in bringing everything before us but, above all, I congratulate my noble colleague—if I may call him that as a fellow accountant—the noble Lord, Lord Smith of Kelvin.

7.12 pm

Lord Sharkey (LD): My Lords, I can save some time by saying right away that I cannot explain the second no-detriment principle, even though I am a member of your Lordships' Economic Affairs Committee under the very able chairmanship of the noble Lord, Lord Hollick, whose amendment I support. I believe that it is impossible to properly debate this Bill unless we have before us the details of the fiscal framework. I believe it is impossible because those details will be critical in determining the nature of the relationship between the rest of the UK and Scotland, and the fiscal framework may well have implications for the future arrangements for Wales and Northern Ireland. If the framework is flawed, as it could easily be, it could lead to friction and to regular disputes. Such friction and regular disputes would weaken the union—the exact opposite of the purpose of this Bill.

As the noble Lord, Lord Hollick, said, our committee identified seven problems that need to be addressed. They are all important but the first is the absence of the fiscal framework and the timetable for the Bill. As things stand, it is not certain that your Lordships will have the opportunity to examine the fiscal framework, and it is entirely unclear, this Bill having been through the Commons, how MPs could have any opportunity to debate any proposed fiscal framework in any meaningful way. This matters because the fiscal framework will determine the funding that the devolved Administration will receive from the UK Government. Our report discusses, for example, the question of the adjustment of the block grant for Scotland after the initial settlement.

There are many ways of making that adjustment and we examined three in detail. All three showed significant differences in the size of the block grant received by Scotland. For example, in the longer term, there was an annual difference of £1.3 billion between two of the methods we discussed. Without a statement of underlying principles and without being clear what risks the Scottish Government should take responsibility for, it is not possible to argue coherently in favour of one method over another, but the argument needs to be had. The funding differences can be very, very significant. Without the fiscal framework, we do not know which adjustment method is proposed; we do not know on what basis it is proposed; and we do not know its revenue consequences.

Your Lordships' Constitution Committee, in its report on the Bill of last Friday, commented on the situation, as the noble Lord, Lord Hollick, noted. It said:

"In the absence of any information about the fiscal framework, it will be impossible for the House to assess whether or not the Bill will cause detriment to all or part of the United Kingdom".

The word "detriment" of course appears in the discussion of the Bill in another guise. The Economic Affairs Committee concluded, after hearing evidence from experts, that this second no-detriment principle was not workable and that it was in fact a recipe for an unending series of future disagreements about what constituted detriment and about its value. This needs to be dealt with in any fiscal framework. The Government need to explain how they intend to interpret and to implement the second no-detriment principle.

There is also the issue of what borrowing powers will be granted to Scotland. This is obviously a vital question: getting this wrong would put the whole deal at risk. Even framing it in the wrong way would be very damaging. For example, any no-bailout provision would, I think, look like a repudiation of Scotland as a part of the United Kingdom and would, in any case, almost certainly be ignored by the markets. The Constitution Committee quotes the Government on providing the fiscal framework for parliamentary scrutiny. It says that the Government have said that they,

"aim to complete work on the fiscal framework 'as soon as possible in order to give respective Parliaments time for due consideration of both the Fiscal Framework and the Scotland Bill'".

It goes on to say:

"It is not clear how the Government expect the House of Commons to give 'due consideration' ... when the Commons has already passed the Scotland Bill to the House of Lords".

No, it is not clear. Perhaps the Minister can explain how the Government intend to allow the Commons this "due consideration" and whether it will include the opportunity to amend. As things stand, it is entirely possible that the only legislature to have an opportunity to scrutinise the fiscal framework will be the Scottish Parliament. This is obviously wrong and completely unacceptable.

As the Constitution Committee and the Economic Affairs Committee suggest, we should consider delaying parts of the Committee stage until after the publication of the fiscal framework. I look forward to hearing the Minister's plain-English and unequivocal response, making a commitment to arrange matters so that this House can examine the fiscal framework in Committee.

Viscount Younger of Leckie (Con): My Lords, I rise with some trepidation to raise the subject of speeches and time guidelines, which is no reflection on recent speeches. The House may like to know that if noble Lords adhere to the time limit of six minutes for speaking, the debate may finish at a reasonable hour to allow time for the next business.

7.18 pm

Lord Kerr of Kinlochard (CB): The noble Viscount was good enough to tell me that he was about to make that announcement and that it was not directed only at me.

It is a privilege to take part in a debate which has included a remarkable maiden speech from the noble Lord, Lord Campbell of Pittenweem, whose international performances I have been admiring for about 55 years, and a wonderful maiden speech from the noble Baroness, Lady McIntosh of Pickering, whom I first remember admiring as an extraordinarily active Member of the European Parliament.

It is a privilege for me, too, to serve on the Economic Affairs Committee chaired by the noble Lord, Lord Hollick. I got to realise quite how big a privilege that was when the committee went to Edinburgh to take evidence in the Scottish Parliament. As we drove in from the airport, the streets were lined with cheering crowds, which is not normally how a Glasgow man like me is received in Edinburgh. It even brought a wintry smile to the patrician features of the noble Lord, Lord Lamont. But then our driver explained that the reason for the crowds was that we happened to be in Edinburgh on the day that the Queen became our longest serving monarch ever, that the streets were blocked and that we would now walk to the Scottish Parliament.

I agree with everything that the noble Lord, Lord Hollick, said. I cannot see how we can do our proper scrutiny job without seeing the fiscal framework, and I support the amendment in the noble Lord's name. Of course we must pass the Bill, but we need to see this crucial part of its underpinning, which will explain how the system that we are about to legislate for will work.

For me, there are three unknowns—I hope the Minister will be able to throw light on them—that have to be made clear before we complete our scrutiny of the Bill. The first is the mechanism for the adjustment to the block grant, year by year, when Scotland is retaining virtually all its income tax paid in Scotland. How will that be done in a way that can be shown to be fair not only to Scotland but to the rest of the United Kingdom? The second is the limits on Scottish borrowing powers. The Economic Affairs Committee report rejects, in my view absolutely correctly, the idea that there should be a no-bailout rule. For so long as Scotland remains part of the union, in extremis, Scotland would be bailed out—of course it would. But that means that there have to be very clear, very strict limits on borrowing, and the House is entitled to know what they are. The third is that we need to know what arrangements are envisaged for future transparency. If the current negotiation on the fiscal framework, behind closed doors, is to be a precedent for the future, we will not see an enduring settlement but enduring dispute. There has to be an open, transparent, principles-based way of proceeding in future.

I want briefly to touch on two aspects of the Smith commission report that I personally regret. One is reflected very clearly in the Bill and we need to work on it, and the other is accepted by all parties and regretted by me. First, I am uneasy about the choice of personal income tax to provide the bulk of devolved revenue raising. As the noble Lord, Lord Campbell of Pittenweem, reminded us, the union is responsible and will remain responsible for the individual's safety—security, defence, development aid, foreign affairs and so on. Would that truth not be more readily perceived by the individual if he believed that he paid his share of the cost of that safety through his income tax? Think of an analogy with council tax: could he not receive a statement indicating where the money was going and how it would be spent? It seems to me, in principle, wrong. I am not arguing against the quantum of devolved revenue raising; I am arguing against the choice of this particular tax. But that pass is sold, and I am sad about that.

Secondly, the other pass that is sold and that I am also sad about is our old friend Barnett. I do not need to rehearse the arguments because we all know how unsatisfactory the Barnett formula is: introduced in 1979 as a temporary expedient, it was always intended to be replaced quite soon. Its financial effects now were explained to the House this afternoon by the noble Lord, Lord Hollick, and its deficiencies were explored in detail in the Select Committee report of 2009 under the chairmanship of the noble Lord, Lord Wakeham. On looking at the Barnett formula, everybody has always agreed that it should be replaced by a needs-based formula. Sadly, that is not going to happen because the vow decreed that the Barnett formula should continue and the Smith commission felt bound by that.

The Economic Affairs Committee report correctly states that the committee unanimously thought that that decision was wrong. The report recommends that the Government consider the case for,

"introducing a needs based approach to funding devolved administrations".

Last week, all guns blazing and shooting from the hip, the Scottish Government came out against that recommendation. That is unworthy and short-sighted.

Barnett is not demonstrably fair, and is seen as unfair by many in Wales and some in England. An enduring settlement cannot be based on perceived unfairness. Of course, I do not believe that fair allocation necessarily means equal allocation. The cost of providing services such as health, education, transport and social services to an agreed UK standard is plainly higher in Sutherland than it is in Surrey. Peripherality, sparsity of population, population age structures, dependency ratios, incidence of chronic ill health and life expectancy all differ across the kingdom. It should not be impossible—the Australians do it now—to devise a system for fairly assessing relative costs, and so needs, on a continuing basis. Of course there will be disputes about the weighting of the various factors, but these disputes would be containable if clearly based in a framework of principle.

I do not think it follows that any change to the Barnett formula would be a change for the worse for the Scots. I believe that under any fair system, the Welsh would certainly gain compared with the status quo now, and England would undoubtedly receive less per capita. I do not know where the Scots would end up, but I do not agree with their assumption that what we have, we hold—that there must be no change to the Barnett formula because it is bound to be for the worse.

The real gain would actually be stability. It would be possible to explain inequalities, how they arise and why they are fair. Current inequalities are the product

[LORD KERR OF KINLOCHARD]
of a 1979 back-of the-envelope formula that really needs replacing. But that pass is sold, and I am sad about that too.

The difficulty we are in is the result of piecemeal devolution driven by pragmatism, not principles. The underlying principles have not been clearly enunciated. Devo-max was not an option on the referendum ballot paper, and that was a mistake. But that is what we are now getting—devo-max defined on the hoof in the heat of a referendum campaign.

Of course we must pass this Bill—we are where we are—but once we have done that, I hope we can sit back and think. I hope we can think about the proposal from the noble Lord, Lord Campbell of Pittenweem, for a new Act of Union. I hope we can think about the advice we get from our Constitutional Committee, as quoted by the noble Lord, Lord Lang of Monkton, this afternoon:

> "The UK Government and the major UK-wide political parties need urgently to devise and articulate a coherent vision for the shape and structure of the United Kingdom, without which there cannot be constitutional stability".

I strongly agree with that.

I also agree with the noble Baroness, Lady Quin, that the case for a constitutional convention grows stronger every day. The essence of that convention would be that it meet in public, in total transparency. That way, if any participant or group of participants in a convention show themselves unwilling to subscribe to sensible principles and genuinely to seek an enduring settlement, that would be evident to all.

7.29 pm

The Earl of Dundee (Con): My Lords, I begin by congratulating both maiden speakers on their excellent contributions. In another place and for many years, the noble Lord, Lord Campbell, has been a very effective and exemplary Member of Parliament for North East Fife, where I live—and, as it happens, not too far away from Pittenweem.

In my remarks today, I should like to connect three aspects: first, transparency and co-operation, in particular between the Scottish and United Kingdom Parliaments and Governments; secondly, consistent with the principle of devolution, the role of Holyrood in transferring powers to Scottish regions and local communities; and thirdly, following from that, the scope of Scottish devolution for evolving good and better national practice which, as a result, can extend elsewhere.

In his very useful report, the noble Lord, Lord Smith of Kelvin, stresses, as he has also done today, the importance of finding good new systems and arrangements for co-operation. As instruments between the two Governments, we have the joint ministerial committee and the joint exchequer committee. Bilateral government work will clearly assist the successful implementation of more devolved tax and welfare. Both Parliaments and Governments must receive regular updates on funding plans and fiscal changes. Not least, on all matters and at all times, we should seek improved transparency and public awareness arising from proper levels of co-operation between the two Parliaments and Governments.

Yet how confident are we that these procedures will actually be followed? To encourage them, during the passage of this Bill, which further measures does my noble friend the Minister believe to be necessary?

Political devolution means the transfer of powers from a centre, such as Westminster, to the regions and localities—in this case, of Scotland within the United Kingdom. That is why, consistent with the principle of devolution, Holyrood, as the Scottish centre of power, has the obligation, wherever possible, to pass on functions and powers to Scottish regions and localities.

However, so far, does my noble friend the Minister consider that this aspect has been sufficiently addressed? If not, what relevant amendments to the Bill might he now have in mind to put forward?

Where it promotes localism, one great benefit of devolution is more accurate readings of national performance; and hence a far better understanding of how national success should be defined in the first place. Hitherto, for the latter, we have tended to use the measures of gross domestic product only. Yet on its own GDP does not tell the whole story. Now, as a result, we refer not just to GDP but to a combination of GDP and other indicators, such as those of the satisfaction or well-being of people where they live and in their communities. The criteria for those assessments are currently detailed by the OECD and are increasingly addressed in the United Kingdom, as well as by our 47 Council of Europe states and their Strasbourg parliament, where I have the honour to serve.

In this respect, does my noble friend the Minister agree that localism or devolution, provided that it is properly carried out, can have the beneficial effect of evolving far better practice both in this country and elsewhere? For the same reason, here and elsewhere, proper devolution can hugely reinvigorate democracy.

Nevertheless, we must advocate the full journey of devolution beyond Edinburgh to Scotland's regions and localities. Previously, too much emphasis on that would have drawn the accusation of upstaging or undermining the role of nation states. Fortunately, that is no longer the case. Instead, devolution or localism can now be viewed as a national force for fairer standards, and an international facilitator of well-being and stability.

7.34 pm

Lord Maxton: My Lords, it is a pleasure to follow the noble Earl, Lord Dundee. Before he became an earl, he was actually the Tory candidate in the famous Hamilton by-election in 1978. Of course, he bears a very famous name in that, in 1924 or 1925 I believe, one of his distant ancestors—standing as a prohibitionist—defeated Winston Churchill in Dundee.

I too congratulate the two maiden speakers, the noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Campbell of Pittenweem—or Ming; I have known him for a very long time. He has had three distinguished careers: first, as an athlete; secondly, at the Bar, where he was a very distinguished lawyer; and thirdly, in politics—and I hope that career will continue. He also had a fourth one; I think I am the only person in this House who can claim to have played rugby against the noble Lord, Lord Campbell.

He always accused me of being a dirty player, and he was not as distinguished on the rugby field as he was elsewhere—I am sorry he is not here to hear that.

Almost everything I wanted to say has been said. I will concentrate on two aspects. First, we must stop bringing together devolution and nationalism; they are not the same thing. We must emphasise and keep emphasising that point. At the end of the day, devolution is a democratic process—and I am not saying that the SNP is not a democratic party. That is why some of us campaigned for devolution. I know that some people opposite opposed it, but the fact is that we were in favour of devolution because Scotland had become out of sync. Therefore, it was right that we devolved power to a Scottish Parliament. The alternative was to get rid of Scotland, to be honest. When my late friend Donald Dewar said that devolution was a process—although I gather it has been denied that he ever said it—what he meant was that democracy should go below the level of the Scottish Parliament to local authorities and local communities, and that is what democracy means. It means people taking decisions at the point at which they want and need to take them. Devolution has to be a two-way process. Some powers should perhaps be taken back from the Scottish Parliament and given back to this Parliament, or even given to the European Parliament; I do not know. The fact is that devolution is a two-way process and it has to be.

Secondly, we have had a long argument and, quite rightly, a discussion about fiscal autonomy and the fiscal arrangements being made by the two parties, and a large part of me agrees with everything that has been said about that. But a part of me also says that it does not really matter, because whatever the fiscal arrangements this Government come to with the Scottish Government, at some point or other the Scottish Government are going to say no. What the SNP wants is a fight. It does not really care what the arrangements will be. It just wants a grievance. What it wants is an independent Scotland. We have to stop appeasing it, and to some extent this Bill is an appeasement for the SNP. That is what the vow was; it is what the Smith commission was, to some extent. It was an attempt to appease the Scottish nationalists in their demand for the nationalist case. We have to stop that. We have to start fighting them.

We might start fighting them by asking a very simple question: why do you want to separate from the rest of the United Kingdom? What is it that divides us? I speak with an English accent because I was brought up in Oxford. My mother and father both spoke with Glasgow accents, Scottish accents, because they were brought up in Scotland. My brothers and my sister live in England. My nieces, nephews, grand-nieces and grand-nephews live in England. They do not consider themselves Scottish. My brother may consider himself Scottish, but he does not really consider himself a Scot. At the end of the day, I am typical of many people. What is it that divides us from the rest of the United Kingdom? The answer is: nothing. Religion and language do not divide us. There is not even a natural frontier between England and Scotland any more. Until we start asking those basic questions of, "Why do you want to go? What is it that divides us?", and start fighting nationalism, I fear that Scotland may very well slip uncontrollably down the route towards becoming an independent country, which I personally would regret and I will fight all my political life—what is left of it—against.

7.40 pm

Lord Norton of Louth (Con): My Lords, for the past 18 years, we have seen significant measures of constitutional change enacted on an almost unprecedented scale. For most of those 18 years I have drawn attention to the fact that the measures have been disparate and, crucially, discrete. There has been no attempt to locate them within an intellectually coherent approach to constitutional change. They derive from no clear view of the constitution as a constitution. The constitution of the United Kingdom is being fundamentally altered without any attempt to stand back and make sense of where we are going.

We have before us just one of many measures of major constitutional importance, but one that, as the report of the Constitution Committee puts it, devolves powers,

"in a reactive and ad hoc way".

I declare an interest as a member of the committee. The Bill derives from what the committee identified as a "disjointed approach". We have a Bill that is rushed and coheres with no clear view of constitutional change. Perhaps when my noble friend the Minister comes to reply to the debate he will explain what, precisely, is the intellectually coherent approach to constitutional change taken by the Government.

The report of the Constitution Committee draws out the problems with the Bill's constitutional implications. I wish to pursue problems associated with Clauses 1 and 2 that build on and go beyond the committee's report.

There is a problem with the first two clauses, in terms of not only the basic issues they raise regarding parliamentary sovereignty but the very purpose of legislating. They have been drawn up in the face of the Government's own guidance on drafting legislation. I quote paragraph 10.9 of the Cabinet Office *Guide to Making Legislation*, published in July, which states:

> "Finally, when writing instructions it is important to keep in mind the general rule that a bill should only contain legislative propositions. These are propositions that change the law—they bring about a legal state of affairs that would not exist apart from the bill. It can sometimes be tempting to ask the drafter to prepare a provision that is not intended to change the law but is instead designed to serve some political purpose or to explain or emphasise an existing law. However, non-legislative provisions of this sort are likely to go wrong because the courts will be inclined to attribute legal effect to them on the grounds that Parliament does not legislate unnecessarily—and the legal effect attributed may be one the Government could not have predicted".

The Scottish Parliament is already permanent under the terms of the Scotland Act; it remains in being unless this Parliament legislates otherwise. New subsections (1) and (2), introduced by Clause 1, do not make it any more permanent than it already is. Under the doctrine of parliamentary sovereignty, this Parliament could legislate to suspend or abolish the Scottish Parliament. One could provide, as new subsection (3) does, for a referendum to be held before it is abolished, but this

[Lord Norton of Louth]
Parliament could legislate to remove this provision. The purpose of new subsections (1) and (2) is therefore not clear; they add nothing unless they seek to create some body of higher law and thus conflict with what has been termed the cornerstone of the British constitution.

Lord Hope of Craighead: I am fascinated by what the noble Lord is saying, but the problem is that the Smith agreement was to create these undertakings in law. The difficulty I have is how you can reconcile that proposal with the memorandum that has been quoted, and then provide a formula that the courts can adjudicate on. I find that extremely difficult, but one cannot slide round it by saying that this is simply a political exercise.

Lord Norton of Louth: I agree with the noble and learned Lord. It puts us in a very difficult situation because there is a commitment to it, but it creates problems by being embodied in the Bill. It raises a problem that should not be there and should perhaps not have been made in the first place, because the Smith commission's recommendation falls outside the commission's terms of reference.

Clause 2 is a novel provision. There are precedents for transposing a convention of the constitution into statute, but once it is in statute the convention ceases to exist. The most recent example of this replaces the convention that a Government who lose a vote of confidence in the House of Commons either resign or request a Dissolution with Section 2 of the Fixed-term Parliaments Act 2011. The Act provides legal certainty. It was amended in your Lordships' House to ensure that it did so.

Clause 2 does not transpose the Sewel convention into statute. It simply states the convention. The convention does not cease to exist. We thus have the convention and we have statute. The flexibility inherent in conventions is not displaced by the certainty of a statute. This creates uncertainty in a way that has not existed when conventions have given way to legal certainty before. Conventions are not enforceable in the courts. What we have here is a statutory provision. As the noble and learned Lord, Lord Hope of Craighead, said, it is not immune from being challenged in the courts. It may never be challenged, but there is no immunity. Will my noble friend the Minister therefore explain why these provisions are in the Bill? How does he justify them, given the Government's very clear guidance on the purpose of legislating?

The Constitution Committee's report makes a compelling case for standing back and making sense of where we are. Some may see that as justifying the case for a constitutional convention, as we have heard. I do not. I fear that a convention may rush and produce skewed recommendations. I have argued for a different type of body—one that looks at how the changes we have undertaken, or are undertaking, fit together and how the basic principles underpinning our constitution are maintained. The more that Bills such as this come before us, the more the need for such a body becomes urgent. Does my noble friend the Minister agree that the time has come for us to take stock of where we are, and, if not, why not?

7.47 pm

Lord Thomas of Gresford (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Norton, and to agree with him that we have perhaps got to the end of piecemeal devolution. It is time to look at the devolved legislatures as a whole. Perhaps a Welsh voice may be heard in this, although I have to tell your Lordships that my three sons, Andrew, Gavin and Jamie, were all entitled to Scottish passports under the SNP proposals, although curiously my three grandchildren, Angus, Finley and Murray, were not.

Immediately before the Scottish Referendum, the no campaign ran scared. The vow set out in that hallowed constitutional document referred to by the noble Lord, Lord Forsyth, the front page of the *Daily Record*, contained no pledge to maintain the Barnett formula. In the context of the SNP's false complaint that the coalition Government intended to slash expenditure on the NHS, the vow was a pledge that the final say on how much was spent by the NHS in Scotland would be a matter for the Scottish Parliament—as, indeed, it already was. The words,

"because of the continuation of the Barnett allocation for resources and the powers of the Scottish Parliament to raise revenue",

were added. That is the only reference to the Barnett formula in the vow.

On 28 September, on the BBC's "Sunday Politics", the Prime Minister said that the Barnett formula would become "less relevant over time" as Scotland's block grant from Westminster would be cut in proportion to the extra tax-raising powers being devolved. Of course, in the days that followed, before the referendum, Alex Salmond said that the vow was a last-minute offering of nothing. After the referendum, as the noble Baroness, Lady Quin, pointed out, he described it as a trick, a deception and the crucial factor in swinging more than 10% of the votes. This claim was later dismissed as rubbish by Gordon Wilson, the former leader of the SNP, who said that the vow had had "zilch" influence on the result. That conclusion was later backed by all the independent polling evidence.

According to Professor Tomkins of Glasgow University, in his evidence to the Economic Affairs Committee, the Smith commission, of which he was a member, took it as a given that the Barnett formula would survive the process,

"because it was in the Vow, and the Smith Commission was meeting and working in the shadow of the Vow".

I think we are all in the shadow of the vow in this debate and that is very unfortunate. The Smith report simply said of the Barnett formula, in paragraph 95.1, that,

"the block grant from the UK Government to Scotland will continue to be determined via the operation of the Barnett Formula".

That is all it said. Of course, it was signed up to by the leaders of the political parties, who no doubt did not give their minds to the implications of it all.

The First Minister, Nicola Sturgeon, last week promised to block the Scotland Bill at Holyrood by refusing to introduce a legislative consent motion unless the United Kingdom Treasury agrees a "satisfactory and fair" settlement to underpin the Bill. So, we have these

protracted talks on the fiscal framework. Her decision as to what is satisfactory and fair no doubt requires the maintenance of the Barnett formula, because it provides 20% more funding for public spending per capita in Scotland than the UK average.

Let us look at Wales. The Wales Act 2014 permitted the partial devolution of income tax to Wales, subject to the endorsement of the people of Wales in a referendum. The First Minister, Mr Carwyn Jones, has refused to hold that referendum until there is a "fair funding settlement" for Wales. By that he means the abolition of the Barnett formula and the introduction of a block grant based on need. He has also complained that as the devolution of income tax on earnings in Scotland does not require a referendum, Wales should not have to put up with one.

The noble Lord, Lord Kerr of Kinlochard, referred to the Select Committee on the Barnett formula, chaired by the noble Lord, Lord Richard, which concluded that,

"the Barnett Formula should no longer be used to determine annual increases in the block grant for the United Kingdom's devolved administrations",

and:

"A new system which allocates resources to the devolved administrations based on an explicit assessment of their relative needs should be introduced".

I think the noble Lord, Lord Forsyth, was a member of that committee and no doubt he signed up to that conclusion.

The need, therefore, for a constitutional convention to look at the constitutional arrangements for the devolved Administrations is essential. It has been referred to by my noble friend Lord Shipley, my noble and learned friend Lord Wallace of Tankerness, the noble Lord, Lord Foulkes, and others. There will be anomalies, particularly if a fiscal framework agreement for Scotland is based on the retention of the Barnett formula. Those anomalies may be overwhelming. Are we to have a different fiscal framework for Scotland, Wales and Northern Ireland and, as the noble Baroness, Lady Quin, would have it, for the north-east of England, should devolution ever come to those parts? Or are we to have a formula that makes sense wherever it is operated within the United Kingdom?

My late wife Nan came from the mining village of Fauldhouse in West Lothian—she had the answer to the question, as it happens. She would have called this a real stushie. But it can run and run. The Economic Affairs Committee has suggested a delay between Second Reading and Committee. I understand why but what it has failed to grasp is the political imperative of next May's elections—elections that give the people of Wales and Scotland an opportunity to consider the record of their respective Governments and the outcomes of their policies. It is now to be turned into a wrangle over powers. It is very much in the interests of Labour in Wales and the SNP in Scotland to keep the pot boiling until those elections are over. I say to the noble Lord, Lord Forsyth, that the no-detriment principle is simple: it means whatever you want it to mean. I am sure the Mad Hatter would have approved of that definition.

The target of the Welsh Government in 1999 was to raise the level of the economic indicator of gross value added per capita in Wales from 73% of the UK average to 90%. The latest figures show that the level has declined to 72.2%. We remain bottom of the league. As the noble Baroness, Lady Liddell, pointed out in a passionate speech, the latest Scottish survey of literacy and numeracy finds that the education system, which was the pride of my mother-in-law, Dux of Bathgate Academy in her day, is in decline. Performance in reading dropped in primary schools between 2012 and 2014, and there is a dramatic decline in standards of numeracy. This is the Scottish education of which you were proud and the situation matches my feelings about the state of Welsh education. It is the records of these Governments that we should be attacking before the May elections, not which powers are being granted or what the fiscal framework should be.

The essential thing is that the Bill be subject to proper scrutiny in this House, but also that it be passed. If the SNP does not wish to exercise the powers this Bill presents to it on a plate, its demands for full fiscal autonomy will be hollow. The people of Scotland should not be diverted by wrangles over a fiscal framework, which is a smokescreen for the record of that Government, which fails Scotland as the Labour Government fails Wales.

Finally, I was delighted to hear the maiden speech of the noble Baroness, Lady McIntosh of Pickering. I hope we hear a lot more from her. I was completely impressed by the assertion of the value and the values of the United Kingdom by my noble friend Lord Campbell of Pittenweem. He calls for a new act of union and a federal United Kingdom. I have been asking for that since 1964.

7.58 pm

Lord McCluskey (CB): My Lords, I was privileged to be part of Lord Elwyn-Jones's Front-Bench team in 1978 when this House fully debated every detail of the Government's Scotland Bill that was enacted that year. In 1998, I took part in the debates on the Scotland Act 1998. I helped to persuade this House to reject the disgraceful legislative proposal that that Bill contained to allow the Scottish judges—senior judges—to be dismissed by a political vote in the new Assembly.

In 2012, having been invited by the then First Minister of Scotland to chair a group to consider problems that had arisen—at least in his mind—between the Supreme Court and the Scottish courts. I was able to play a significant role in this House in persuading that the reforms suggested by the group that I had led be enacted into law. That was done by way of amendments to the Scotland Act 2012, with the extremely valuable assistance of the noble and learned Lord, Lord Wallace of Tankerness, who was then serving as Advocate-General.

I refer to these matters because in each instance I had direct personal experience of the many valuable improvements that this House has made to devolution legislation over the years. It is because of the outstandingly valuable work done in this House in relation to these matters that I am saddened by the absence from the House of any Peers placed here to speak as official representatives of the SNP. In the other place SNP Members put down many amendments to the Bill and

[LORD MCCLUSKEY]
might even have voted for one or two of them. However, in the absence from this House of any Peers speaking officially for the SNP, it is difficult to have the fullest and most convincing debate possible on the SNP's ideas—in Committee or otherwise.

That is a pity because the merits of the SNP's proposed amendments and ideas—and, indeed, its whole approach—deserve the kind of critical analysis that this House uniquely makes. The legislative debates here are seldom dominated by political point-scoring. Regrettably, too many Bills coming from the other place contain numerous provisions—as indeed this one does—especially technical ones that have never been debated at all. This House, with all its faults, invariably debates the entire Bill and every single amendment. In 1978 there was no time limit on any speeches and we often sat until 1 am, but we got the business done. We also have a very large number of experts in every field who have no political axe to grind, whose best days are behind them but who have not left their experience or learning behind them. They are well qualified to contribute to a fuller understanding of how our democratic institutions work—or, indeed, fail to work. They are able to analyse, critically and free of political bias, the technical merits of the many new and untested proposals contained in this extraordinary Bill.

As your Lordships have said, the proposals in the Bill emerged in the past few months as a result of hasty compromises that have left many of the participants, and others, deeply unhappy. How much better informed would our consideration of the Bill be if we had the advice of some of the experienced members of the SNP to respond to the analysis and criticisms that are likely to emerge? How much more satisfactory would it be if the amendments put on paper in the other House by the SNP were able to be moved in this House by persons committed to them and convinced of their value, and then tested by the experience of your Lordships? I do not pretend to have any inside knowledge as to why the SNP appears to have set its face against having party representatives contributing as Members of this House but I think that it is a mistake. The absence from this House of SNP Peers lends weight to a frequently repeated charge against the SNP—that it does not respond to reasoned criticisms of its policies but seeks instead to divert attention from the criticisms by attacking the process that yielded them. Too often its response to reasoned criticism appears to be, "Ignore the message, just shoot the messenger".

I also regret to say that I am seriously disappointed by the quality and the capacity of the Members of the Scottish Parliament to scrutinise the Scottish Government's measures sufficiently. I do not know if that was always so but those are the fruits of my observation over the past few years. There is a widespread perception in Scotland that pre-legislative scrutiny by committees in the Scottish Parliament does not work well at all; in fact, it works badly. There is also a public sense that too few of the Members of that Parliament have the expertise properly to assess and criticise the measures that are put before it by the Scottish Government, especially those of a technical character.

Those weaknesses are seriously compounded by two features of the Scottish Parliament. The first is that the Opposition are electorally weak and, because of a lack of numbers and resources, do not provide the vigorous and informed critique that a unicameral legislature needs. The second is that the Scottish National Party exercises an iron discipline over its Members in the Scottish Parliament because, as the noble Lord, Lord Foulkes, has reminded us, the overriding imperative of the governing party is to promote the cause of independence. Within the Scottish Parliament no dissent from government initiatives is permitted. The facade of unwavering unity must be maintained.

For example, I and a number of others recently welcomed the U-turn by the Scottish Government when they abandoned their previous policy of scrapping the long-standing evidential rules governing the use of corroboration in Scots criminal cases. The SNP MSPs first voted unanimously for the legislation abolishing the old rules. But when the former First Minister retired, the unanimous condemnation of corroboration as a bad thing turned overnight into a unanimous acclamation that corroboration was, after all, a good thing. Why was that? Simply because the new First Minister said so. The unquestioning obedience to the central diktat on each occasion was disturbingly sheepish. Radio 4 told us the other day of the local butcher who died and the organist at his funeral played, ironically, "Sheep May Safely Graze". I will take the matter no further.

Finally, I am concerned that the weak Scottish unicameral Parliament will have real difficulty in dealing with the new and untested powers contained in the 2012 Act and the present Bill. The devolved Government will exercise greatly enhanced powers of which they have little or no experience. The Scottish Parliament itself is not well equipped, as we have said. Additionally, as others have pointed out, there is no second Chamber to allow an informed examination and critique of the new machinery and procedures required. There is no constitutional culture of conventions, never mind this particular convention, to govern the exercise of those powers. I hope, for the good of Scotland, that the SNP will not—as usual—lightly dismiss the advice that this expert House is sure to offer.

I conclude by expressing my real fear that once the Bill is enacted and brought into operation, it is more likely to compound our constitutional problems than to solve them. I am not an enthusiast for this Bill.

8.07 pm

Lord Griffiths of Fforestfach (Con): My Lords, I feel very humbled to take part in this great debate, not least after our two maiden speakers, who were excellent and regaled us with their Scottish credentials. I am not Scottish and have only a modest knowledge of Scottish politics. My reason for taking part is that I am a member of the Select Committee on Economic Affairs, which for the past four months has been looking at the issue of the fiscal framework and financial devolution, something that professionally—I hope at least—I know something about. In that context, I would like to say, along with other members of that committee, how much we owe to the noble Lord, Lord Hollick, who did an outstanding job of chairing the committee.

His speech today, while in parts quite technical, nevertheless was a very fair assessment of an all-party agreement on the way forward.

I have three concerns with the Bill but I will preface my remarks by saying that I wholly support the objective of the Bill; namely, to extend devolution in Scotland and, in time, maximum devolution to Scotland, in a way that I hope will become a template for maximum devolution in Wales and Northern Ireland, with its implications for England.

My first concern—this has been said before but it has to be said again because it is so important—is about our ignorance of the fiscal framework. For some people, the fiscal and financial aspects of the Bill may seem simply technical details best left to economists and Treasury officials to work out together. That would be a great mistake, because hidden in the fiscal and financial details—what taxes you devolve, how you adjust the block grant, exactly what the terms are on which you can raise debt—are political time bombs which, if detonated, will have disastrous implications for the UK. We chose *A Fracturing Union?* as our title, and I believe that these issues will ultimately lead to the break-up of the UK if they are not dealt with.

The reason for that is that a new fiscal settlement for Scotland will, after a few years, directly affect the living standards of Scottish people, not least in health and education. It will also affect the living standards of people in Wales, in Northern Ireland and in England. More than that, the terms of fiscal devolution between Scotland and the rest of the UK will almost certainly become a template for devolution in other countries. Therefore, after a few years, if electorates in the various countries which make up the United Kingdom decide that because of the terms of this settlement their standard of living has worsened, either absolutely or relatively, they will almost certainly feel a sense of grievance and betrayal. I believe it would be very difficult to rebuke in any way the Scottish people for saying that the only way forward would be independence. That is not just my personal view. Our committee, having taken evidence from academics, economists, constitutional experts, businesspeople, accountants and politicians, came to a unanimous conclusion. Because of this, until Parliament knows the details of the fiscal settlement and the financial devolution, we should really not proceed to pass the Bill. Publication of the details, with full transparency, is essential.

My second concern is that the Bill does not start with a clean sheet of paper. We have the referendum result, the vow and the commitments of the main political parties, all of which, crucially, have raised the expectations of the Scottish electorate about the Bill and further devolution. I thought the noble Lord, Lord Reid, hit the nail on the head when he said that we are between a rock and a hard place. However, we have to start from where we are. The Barnett formula, which has been mentioned already this afternoon, attempts to do something very difficult: to reallocate resources between countries and individuals who are in real need. It has its advantages—which we should not neglect—in terms of simplicity, stability and a lack of ring-fencing but, as has been mentioned, after 37 years, it really needs to be modernised. The failure of the Barnett formula is seen, as I am sure the noble Lord, Lord Thomas, will agree, in the fact that because the allocation in Wales is so unfair, the Government—as we shall see tomorrow in the Statement by the Chancellor—has had to put a floor under it. The Barnett formula has not delivered what is necessary.

The Barnett formula is not, in our judgment, and certainly in my opinion, a solid basis for a sustainable, long-term settlement for adjusting the block grant to Scotland, Wales and Northern Ireland. Because of the commitments that have been made, we have to start with the Barnett formula. But while starting with it, is it not possible, when the fiscal statement comes out, to make a commitment to carry on and say that we need to change it during this Parliament to take account of the things it should if it is to be considered and widely accepted as fair?

My third concern is that the fiscal and financial framework should not create expectations which cannot be delivered. My noble friend Lord Forsyth has mentioned many times this afternoon the no-detriment principle. To take the example of borrowing in the capital markets, which has been mentioned, Scotland will clearly benefit if it is able to access the capital markets in its own right, particularly for long-term investment. But what if Scotland is unable to repay interest on its bonds or even to repay its debt at all? In that case, Scotland, as other noble Lords have said, must face up to the consequences of its actions. However, including an explicit no-bailout clause in the Bill would be provocative to the people of Scotland and contrary to the spirit of devolution. More than that, it is inconceivable that the capital markets would ever believe it. However, this means strict limits to the amount that Scotland is able to borrow and limits placed on the ratio of Scotland's national debt to national income. The Bill therefore has to make it very clear, through the fiscal arrangements, exactly what the potential for borrowing is.

In conclusion, we need an explicit and detailed fiscal framework. We start with the Barnett formula, but it must be amended during this Parliament. We also need rules for borrowing and debt to be set out clearly. All of these are within our reach. I have great confidence in the Minister, having had the privilege of being a colleague of his for some years during the second half of the 1980s in the policy unit in 10 Downing Street. The noble Lord, Lord Dunlop, is a person of great ability and integrity and all I ask for is greater openness, greater clarity and greater transparency. As a result, this Bill, when scrutinised, will be workable and ensure a United Kingdom, not a divided one, which I feel is what all Members of your Lordships' House would wish.

8.17 pm

Lord Gordon of Strathblane (Lab): My Lords, I welcome in particular three speeches: first are the two maiden speeches this afternoon from the noble Lord, Lord Campbell of Pittenweem, and the noble Baroness, Lady McIntosh of Pickering; the third is the speech of the noble Lord, Lord Smith of Kelvin. In a debate on the Smith report, it is vital that one of the key issues to consider is whether the Bill meets in full what the report—adopted by all five parties—called for. It was vital that we heard directly from him that it does.

[Lord Gordon of Strathblane]
I congratulate him on a very fine speech and it was very nice to see him back in the Chamber. I will also say that the three former Secretaries of State for Scotland did not do badly this afternoon, either; all of them made very good speeches.

We are where we are. The vow, the panic of the three party leaders, was frankly ludicrous but we are where we are. I judge this Bill partly by how far it meets the recommendations of the Smith commission but also by how far it genuinely delivers accountability. When you get into accountability, it is impossible to decide whether the Bill is good, bad or indifferent until we have the full fiscal framework. That does not mean delaying the Bill; it may mean asking the people who are examining this to maybe work a wee bit harder. Meetings once a month is frankly rather leisurely. What is wrong with once a week? Why can we not get them moving on this? It is impossible to reach a decision and the SNP are quite right. It is a disgrace that the Bill left the House of Commons without this ever being debated. I said to one of the SNP MPs the other day, "You guys should surely have made sure that this was fair to Scotland before you passed it," and he said, "We're leaving it to the Scottish Parliament to do that for us."

That is fine for the SNP but it is not actually fine for either the Conservatives or the Labour Party to have allowed it through without scrutinising it properly. I hope that we will have that scrutiny here.

Lord Forsyth of Drumlean: Does the noble Lord think it is conceivable that it might have dawned on the SNP that in moving from a block grant, which is 20% more per head of population than the rest of the UK, towards a point where a large part of that is substituted by a tax-raising power where the tax base is not 20% higher, there is going to be a gap? Does he think that they are deliberately not reaching agreement because they do not want to face an election telling the Scottish people that there will be less money?

Lord Gordon of Strathblane: If the noble Lord waits until the end of my speech he will find that on this, as on so many other things, we are totally of one mind. The problem is that we had a very narrow escape last year. The fall in the oil price is not the fault of the SNP but had the vote gone 10% the other way we would have been landed in a situation where Scotland would be heading for bankruptcy very quickly. We lost our independence through bankruptcy way back in 1707 and the Darien scheme and we could well have been returned to it. It is vital that we put a cost on things.

Everyone has concentrated on the no vote and whether the vow mattered. I am rather more interested in the 45% of my fellow countrymen who voted for independence on a false prospectus because this document—the White Paper—which I imagine every Scot read cover to cover before using it as a very convenient doorstop, predicated oil revenues in 2016-17 of £6.8 billion. The oil revenues are of course a lot smaller. They then sneaked out a document without any ministerial statement, published in *Oil and Gas Analytical Bulletin* two hours before the Parliament closed for the summer recess, predicating oil revenues of £0.6 billion in 2016-17. That is a hole of very nearly £6 billion and compared to the proportionate effect of anything that George Osborne has in mind in welfare, it is six times worse than anything George Osborne is thinking about. We are heading for super austerity in Scotland if we are going to balance the books. It amazes me that my fellow countrymen are not constantly quizzing the SNP saying, "What taxes are you going to raise or what services are you going to cut to bring the books into balance?" They need not exactly balance—I fully accept that you can borrow—but you cannot go on borrowing for ever and ever.

It is very important that we put price tags on things, and there is a price tag I invite the Minister to consider. There was an amendment in the House of Commons asking for the Government to appoint a body, including representatives nominated by the Scottish Parliament, to estimate the effect of full fiscal autonomy. I think it should be possible to do that. It was voted against by the Government on the premise—mistaken, in my view—that we have done the sums already and we all know that. The trouble is that the Scottish people do not believe you. It is a tragedy and it is very unfair but I am afraid it is true. We need something that people believe in. The SNP rejected it because they did not think that anything appointed by the Conservative Government would be impartial because they are against full fiscal autonomy.

Now I am fairly certain that full fiscal autonomy is a disaster and I agree with the noble Lord, Lord Forsyth. I think the SNP feel it is a disaster as well but do you think they are going to admit it is a disaster? If full fiscal autonomy is a disaster then full independence, which goes one step further, is even worse. The SNP is unlikely to do that. It is more likely to pick holes in the way that the sums were calculated. That is why the report of the committee chaired by the noble Lord, Lord Hollick, is so important and that it is so important that we debate it.

Reference has been made, particularly by the noble Lord, Lord McCluskey, to the absence of the SNP. It is not our fault that it is not here: it has been given ample opportunity to have representatives here. It is very important that we hear the SNP viewpoint on what methodology is used to calculate the reduction in the block grant. I am quite prepared to take representations from the SNP and put them forward as amendments on the block grant here, if only to give them an airing. However, who knows? I might even agree with them. Nobody knows, because we do not know what the block grant reduction system will look like. It is very important that we get adequate information on that.

Likewise, we must make sure what the fiscal framework actually means. It is very complicated, and I entirely respect and do not mock the idea of it being negotiated behind closed doors. That is perfectly sensible. I think that we will have to wait for a complete package before either party wants to admit what they are negotiating on, because there will be trade-offs and compromises. I do not regard compromise as a dirty word in politics; it is what politics is all about. I am quite happy to wait until the conclusion of the process, but the parties must be told that there is no deal without the process being complete. Why should it be singularly the Scottish Parliament which can reject this purely on the grounds of the fiscal framework being wrong?

There was an interesting article last week, just before the committee of the noble Lord, Lord Hollick, reported, from Anton Muscatelli, the principal of Glasgow University. He said that, depending on which system is chosen, there could be a disastrous effect on the block grant. That was echoed by the committee in its report. To be honest, my concern is that whatever system is chosen, there will be a bad deal for Scotland, because the economics of independence, or of much more devolution, do not work. It is better to have a system where we spread risk throughout the entire United Kingdom.

I fully accept that the Scottish Parliament is elected; I am not. If its Members choose to go for that deal, that is entirely up to them and I will respect that decision—I will not leave Scotland as a result, or anything like that—but they must tell the Scottish people first. It is all very well accepting a bad deal if you think you will feel better about it because you are independent and doing it yourself. That is fine—I fully respect that—but to deceive the Scottish people would be totally wrong. So there is quite a lot we could go for here, but it is very important that we nail in advance any suggestion that the Treasury is choosing unfavourable methods of calculation—otherwise, the SNP will blame that for the breakdown of negotiations.

8.26 pm

Lord Sanderson of Bowden (Con): My Lords, I welcome the arrival of the Bill in this House. I also welcome the arrival of my neighbour here, my noble friend Lady McIntosh of Pickering, whom I congratulate on her very excellent speech. As somebody who served in a Scottish regiment, I was particularly struck, in the speech of the noble Lord, Lord Campbell of Pittenweem, by what he said about the referendum campaign: we are better together and safer together. The noble Lord brought a very important point to bear in his maiden speech, and I hope to hear from him many times more.

I was also pleased to hear from the noble Lord, Lord Smith of Kelvin, who fully approves the Bill as presently constituted. As he said, if the powers are used wisely, it will be of great benefit to everyone in Scotland. I support the Bill because I believe that taxation must go hand in hand with representation if a Parliament or Assembly is to have any democratic legitimacy, although I must say that devolving 100% of income tax is a very big step indeed.

I congratulate the committee which published this splendid report last week, and particularly draw attention to the paragraph on borrowing powers, which makes it very clear:

"We recommend that the UK and Scottish Governments agree simple and clear rules for borrowing including"—

most importantly—

"a ceiling on Scottish Government debt".

I turn to scrutiny, because this is one area where the Scottish Parliament has not shown much progress up to now. I want an assurance from the Minister that the arrangements agreed for the operation of the Scottish Fiscal Commission will make it sufficiently independent to ensure that forecasts about the financial state of the Scottish scene are accurate. The way that the OBR has been put in place and is now working should be the model for the Scottish equivalent. Is the Minister confident that his Scottish counterparts will indeed appoint independently-minded members to that body who will have the statutory backing to speak out on a regular basis? In order to promote harmony within the UK, would it not be appropriate to suggest that one member of the OBR also be a member of the Scottish Fiscal Commission—or, better still, a joint OBR-SFC committee for endorsing forecasts?

Having looked at some of the forecasts made by Members of the Scottish Government on oil prices, particularly Alex Salmond at the time of the referendum, I am afraid that I do not believe much of what I hear from them: certainly, when Alex Salmond talked about $112 a barrel, it was nonsense when today we see it standing at $45 a barrel. As we go forward, we must be assured that these sorts of forecasts are a thing of the past and not the future.

Can the Minister tell us when we are likely to see the results of these financial matters, as many people have asked, and whether they will come to this House, as they certainly ought to do, before this Bill receives Royal Assent? Agreement on these matters is essential if this huge transfer of power is to succeed.

I should add—and I believe that it was mentioned by the noble and learned Lord, Lord McCluskey, and the noble Lord, Lord Smith, in an article—that Holyrood would do much better to have a serious look at the way Select Committees operate in Westminster. It is quite clear that the way scrutiny is carried out in the Scottish Parliament is not up to standard and must be improved if those of us who live in Scotland are going to believe anything they say.

Due to my past involvement with the Highlands and Islands, I am interested to note that paragraph 33 of the Smith commission report, says that the Crown Estate assets,

"will be further devolved to local authority areas such as Orkney, Shetland",

and the Western Isles. I know how much importance is attached to this part of the Bill by those people who live in that area. Given the tendency of the Scottish Government to centralise—and we have seen that with the police forces in Scotland—can the Minister give us any indication of how the Smith commission's request is to be put into practice? It is, I imagine, a red line, as they say, for those who live in the Highlands and Islands.

I have one other thing to say about the Crown Estates: it is a very successful and well-run property company. It has many joint-venture partnerships with sovereign funds and others. You only have to walk up Regent Street to see how much they own there. Joint ventures are essential to the continued success of that company. I would not wish to see the confidence of their global partners upset in any way by the terms of this devolution Bill, as there are partnerships whose interests straddle the border.

I have no time to speak about the energy measures in the Bill; that will have to wait for Committee. I look forward to the passing of this Bill and to seeing the terms of the first Scottish Budget, but we must see the terms of the fiscal framework before a green light can shine for this Bill.

8.33 pm

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Sanderson of Bowden, not only due to his very strong Borders links, to which I have great affinity, but since he raised some of the aspects that I will try to pick up in my own contribution in the wee small hours of this long debate.

Before I start, I, too, wish to add my congratulations to the noble Baroness, Lady McIntosh of Pickering, on her maiden speech, and to my noble friend Lord Campbell of Pittenweem. So successful was his maiden speech that the noble Lord, Lord Foulkes, even named me after my noble friend's adopted area of Pittenweem when he referred to me. My noble friend Lord Campbell's work as chairman of my own party's commission, following in the footsteps of the Steel commission, is relevant to this debate. There is obviously something about the Lib Dems that we have the great benefit of our former leaders to chair constitutional committees—noble Lords may draw their own conclusions about that for their own parties—and his work established the fundamentals of our approach to this Bill.

In the last two decades, in the two referendums there have been in Scotland, the people have spoken very clearly. They want a Scottish Parliament and they want it to operate within the United Kingdom. That beguilingly simple opinion is complicated by the fact that, since the Act of Union, we have lived in a unitary state. Furthermore, the Treasury has developed really quite enormous centralised power over the decades. Also, when we developed the welfare state in the 20th century, it was by and large geographically blind for understandable reasons.

Creating a system of governance that changes the core elements of this unitary state has not been easy, and I for one never thought it would be. The consequences of trying to balance choice and affordability in Scotland with a different profile of economy in other areas, as well as changing the British state, has not been straightforward. It proved to be complex both politically and practically. In many respects, it will continue to be so, but that should not necessarily cause any great surprise to us. Securing consensus has sometimes been very difficult and often led to a lowest common denominator for constitutional reform. However, gladly, it has not presented a block to change.

We have debated many aspects of reform but all without the wider narrative as to the future of the union overall. Change has, therefore, proven to be what was expedient for political agreement rather than set within a wider settlement. The establishment of the legislature in 1999 without commensurate fiscal power or a fully formed Government was a clear example of that. We still see remnants of an outdated concept of Westminster parliamentary sovereignty, which we have heard referred to in this debate, rooted in an imperious parliamentarist view rather than the more compelling concept of citizenship sovereignty that we now have across our lands.

In this regard, the noble Lord, Lord Smith of Kelvin, deserves considerable commendation. He is remarkably modest, given his achievement in finally bringing about what can be the fundamentals of a home rule settlement, where we bring fiscal power commensurate with legislative power, and start to establish that we will need much greater transparency in intergovernmental relations and also that Governments must work together across both devolved and reserved interests. That is finally establishing some of the principles on which the future generations of our governance must be based.

I was grateful to the Minister for referencing in his opening remarks the devo-plus reports that I authored after I served in the Scottish Parliament, for five years of which I was a member of the Finance Committee there. I think that we will finally see the functions of a tax and welfare system in Scotland, but this will also bring about difficulties because it will not be easy. It will also add pressure on my former institution in Holyrood. As the noble and learned Lord, Lord McCluskey, and others said, the current way that the Scottish Parliament operates will need to change. Again, that should cause no surprise. I believe it is positive.

There has been much concern about the lack of publication of the fiscal framework. By and large, I share that concern. At the very least, it would have been helpful for the Government to have published the statement of principles, especially on this now famous or notorious concept of no detriment. That would have been helpful and would have framed the debate much better. My noble and learned friend Lord Wallace of Tankerness outlined very clearly the principles underpinning why such a concept exists, but greater clarity would have been more helpful. Again, it would be helpful to know whether the fiscal framework is simply another iteration of the *Statement of Funding Policy*. There have been six versions of that since 1999—that is how the devolved areas are funded—and it would be helpful to know whether the framework is based on that.

Finally, there has also been comment on the need for a wider consideration of a narrative of the union going forward. I passionately believe that that is necessary, and I brought forward a Bill to your Lordships' House to try to help to bring about space in which we can debate that, in a Constitutional Convention Bill. That would be citizen led and try to establish some of the fundamental principles, as well as establishing a narrative. I have talked about the need for a statement of the new union, and others have called for a new Act of Union, but the common thread is that this Scotland Bill deserves to be passed—we need it on the statute book; it corrects many of the areas where we have been piecemeal in the past. However, without such a binding statement, a core element, on why this union of these nations exist, I think that we will still struggle. Once this Bill passes, as I hope that it will, we should give our absolute focus to bring about either a new Act or new statement for the generations to come.

8.41 pm

Lord Turnbull (CB): My Lords, I join others in welcoming the noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Campbell of Pittenweem, to this House. Their arrival could not have been better timed.

As a member of the Economic Affairs Committee, ably chaired by the noble Lord, Lord Hollick, I naturally endorse the criticisms that he made of the process for scrutinising the Bill. The Bill is full of holes; for example,

Part 2 lists the taxes to be devolved or assigned but tells us nothing about how they will interact with other parts of the settlement—for example, the highly complex but vital indexation mechanism for uprating revenues and for calculating the abatement of a block grant. That sounds a mouthful and it is very complicated, but I predict that it will be the single most powerful mechanism in this new settlement. We will have to find some way in which to understand it.

The Bill also tells us nothing about the borrowing and debt regime. The UK Government have an objective to eliminate the budget deficit by the end of this Parliament. In a country with a single currency, exchange rate and monetary policy and a unified public debt market, the fiscal policy of the devolved Administrations must be consistent with the national policy. The argument that Scotland should be free to set its own borrowing, subject to a no-bailout rule if it gets it wrong, is simply not plausible. There must be clear statutory limits to debt. So this Bill is like buying an Ikea flat-pack with no instructions on how the pieces fit together, or a mobile phone with no operating manual.

I therefore welcome the Minister's assurances, as far as they go, that it is the Government's firm intention that the fiscal framework should be made available to Parliament before the passage of the Bill is completed. But that does not tell us what happens if negotiations drag on. In my view, the Bill is of such importance that its proper scrutiny should not be sacrificed to the timetable. Like the noble Lord, Lord Gordon of Strathblane, I think that the answer is not to delay the Bill but to start work right now on accelerating work on the framework.

This is a very important Bill, which seeks a major advance in the degree of devolution in Scotland, taking it from a very low level by international standards to among the highest in the world. The settlement transfers responsibility for revenues approaching £16 billion and should give Scotland the incentive to develop its revenues and spend them wisely, rather than simply moaning about the inadequacy of the block grant. It is also trying to establish a settlement that lasts. The Smith commission used the word "durable", while the White Paper seeks an "enduring settlement" and the Bill uses the term "permanent". The success of the Bill is important for the union but if the settlement is poorly designed and collapses in confusion and acrimony, the union will be put in peril.

As well as serious flaws in process, the Economic Affairs Committee has highlighted a number of concerns of substance. A key feature of the proposal is the retention of the Barnett formula by assertion rather than detailed justification. I am grateful to the noble Lord, Lord Thomas of Gresford, for pointing out the rather oblique way in which the Barnett formula appears as obiter dicta in a Statement which appears to be about health funding. Does the Smith commission really believe that every jot and tittle—every parameter—of the Barnett formula should be immutable for all time? By adopting the stance of "What we have, we hold", Scotland seems to think so.

The defects in the Barnett formula are well known to this House. It was thoroughly reviewed by a Select Committee in 2009, and its report set out some principles for a new system: it should consider both the baseline and any increment to funding; it should be fair, and be seen to be fair; and it should take account of relative need. None of these conditions is being satisfied. The current allocations are grossly and, as they might say in Wales, grotesquely unfair. Scotland has a gross value added—that is what we used to call GDP—per head 29% higher than that of Wales. That is a significant gap in its prosperity. It has the highest GVA per head of any region of the UK after London and the south-east, and identifiable spending per head 4.5% higher than Wales.

There is nothing in the Barnett formula which has regard to the baseline and nothing to promote any convergence towards a fairer reference point. A settlement whose starting point is so unfair cannot prove to be durable, permanent or enduring. It will embed a festering grievance which will lead to the breakdown of the settlement and, in this way, imperil the union. An enduring settlement will, over time, have to adopt needs funding as its reference point, even if it takes many years to get there. Some witnesses argued that calculation of needs would be too complex, even though, ironically, need is one of the factors by which the devolved Administrations divide up the direct grant once they have it.

I have two further observations to make. First, the House of Commons has just amended its procedure to provide for English votes for English laws. Study of the finances of the devolved Administrations, even after the changes now proposed, tells us that their finances and those of the national Government are closely intertwined. The pure English law which has no consequences for tax or spending beyond England will turn out to be a rare beast indeed. Secondly, the work of the Economic Affairs Committee has demonstrated that there is little transparency in the current arrangements and a poor public understanding of them. We need mechanisms and organisations—maybe the OBR or something like it—not to make decisions, as in the Australian grants commission, but to keep the numbers honest and document the methodology.

I include one final point on this famous second no detriment. Let us suppose that health spending in England increases by 4% this year and the Government plan to increase it by 3% next year. Is that a 3% increase —or is it a 1% cut, which has to be compensated for? I do not think you would get agreement on that and if you cannot get agreement on something so simple, I do not see how you can make this thing work. We are therefore drifting into dangerous waters. We should heed the warnings of the Constitution Committee about piecemeal change, inadequately scrutinised by Parliament.

8.48 pm

The Marquess of Lothian (Con): My Lords, it is a pleasure to follow the interesting speech of the noble Lord, Lord Turnbull. It will certainly deserve re-reading tomorrow to get its full impact and I shall certainly be doing so.

My family's Latin motto is "Sero sed serio" which, translated into English, means "Late but in earnest". That is fairly appropriate for my position in this debate. This does, however, have its disadvantages

[The Marquess of Lothian]
because I had written a speech for this occasion before I knew the running order. During the course of the debate, every line of my speech has been delivered in one part or other of the House, so I am going to restrict myself to a number of observations. Before I do, I should like to congratulate the two maiden speakers. The noble Lord, Lord Campbell of Pittenweem, is an old colleague of mine at the Bar in Scotland and served with me for a long time in the other place. My noble friend Lady McIntosh of Pickering made another very fine maiden speech. She was also at the Bar in Scotland, as I was, and also served with me in another place. We had two excellent maiden speeches. I look forward to hearing much more from them.

It has been 17 years since I last spoke on devolution at all, let alone in a devolution debate—I will explain why a little later—so coming to this debate has been rather nostalgic. There are the same faces and quite a lot of the same points are being made all over again. One of the things I enjoyed most, which was fairly novel in these debates, was listening to my old friend the noble Lord, Lord Foulkes, fulminating against the success of the nationalists over the years since devolution was introduced. I wonder whether at some stage he might apologise for the enthusiasm with which he embraced the concept that devolution would kill nationalism stone dead, but—Oh! Perhaps I will get that apology.

Lord Foulkes of Cumnock: It was another George, my noble friend Lord Robertson, who used that particular phrase. I am sure he will explain that away himself. I have gone as near as I can—the noble Lord, Lord Forsyth, recognised this earlier on—in recanting some of the things I said when I was a bit younger.

The Marquess of Lothian: I think I will have to take that as being as near to an apology as I will get from the noble Lord, Lord Foulkes.

Lord Reid of Cardowan: I am grateful to my noble friend Lord Foulkes for recanting, as he should on a number of issues. This is the third time that the accusation that somehow devolution would not deter or kill nationalism, which in its ultimate expression is separation, has been mentioned. Will the noble Marquess reflect on what might have happened in the recent referendum had we not had devolution? We would now be a broken union because I have no doubt at all that if the aspirations of the Scottish nation to have more control over its own affairs had been denied for generations over this century and the previous century, we would not have had the result we had, which was to retain the United Kingdom but with devolution inside it. I ask him to reflect on that before he repeats what is becoming a cliché throughout the House.

The Marquess of Lothian: I am very happy to reflect on it, but I make the point that had we not had devolution, I doubt whether we would have had the referendum because the basis for having the referendum would not have been there. A little later in my remarks I will deal rather more fully with what the noble Lord has just said.

Another thing that has interested me about this debate is how unpartisan it has been. In different parts of the House, people have taken the same view, but differing from that in other parts of the House. That is a very interesting factor in this debate. This is not a party issue. The Committee will therefore be of great interest.

I shall pick up one or two points that were made. First, we have heard a lot about the fiscal framework. I look forward to seeing it in due course. However, if we do not have it as part of our deliberations, our scrutiny in this House is false scrutiny because it is not based on the full facts and realisation of what the full impact will be. My noble friend Lord Forsyth described it as a second-hand car with we know not what under the bonnet in terms of the engine. I think it is more dangerous than that; we are about to launch an aeroplane without knowing whether it has landing gear and, if it has, whether it will work when the plane lands. That is a very serious consideration. I hope that even at this late stage the Government, through my noble friend the Minister, will try to find some way of ensuring that we can, as part of our scrutiny, look at the implications of the fiscal framework.

My second point is about permanence. I remember that many years ago when I was a law student in Edinburgh I was told that the Act of Union, which contained the phrase "that Scotland and England would ever after be united into one kingdom by the name of Great Britain", could never be changed. I seem to remember "perpetuity" being mentioned. Yet the very holding of the referendum last year showed how false a position that was because, had the result gone the other way, that perpetuity would have been destroyed. I rather think that the permanence we are looking at in terms of Clause 1 will suffer the same end, and I look forward to hearing the arguments in Committee about whether there is some other way to give satisfaction and confidence, which I understand from the Minister is what we are trying to achieve. I mention in passing that doing so might be helpful to give satisfaction and confidence to the other side of the argument, too. If we are to have a ratchet to say that we can never go back from where we are, we ought to have a ratchet to say, "Thus far and no further". That might give many of us a lot of reassurance on devolution.

In answer to the noble Lord, Lord Reid, my reason for not having spoken on this for 17 years is that at the end of the process of taking the Scotland Bill through the other place, where I led for the Opposition, I described it as the beginning of the slippery slope to separation. I was answered with accusations of scaremongering; that this was never going to happen; that devolution would hold. I do not think that the phrase "Thus far and no further" was ever mentioned, but that was the impression I had. That was what we would give the Scots in terms of devolution and that would be that. We are now on the third Bill: the slippery slope is continuing and, if we are not very careful with this Bill, it will go on even further.

I stopped talking about devolution because I recognised that the line I had taken had been defeated and I had to live with that. I did not want to be part of the slippery slope argument. The only reason I come back to it now is that, when we held the referendum last

year and I thought the staying together side would win it, I rather foolishly thought that might be the end of the slippery slope. However, it was not, because in the last few days the vow was given, in unnecessary panic, and the results of that are now before this House. I am absolutely convinced that this is going to give encouragement to the nationalists in Scotland to push further and further.

This brings me to another point about the fiscal framework. My noble friend Lord Forsyth mentioned, quite rightly, that he was suspicious about how keen the nationalists would be to see this completed in time for the parliamentary elections in Scotland. If I was them, I would not want to see it. If I am a nationalist I do not want stability when we get to those elections: I want instability. If I was a nationalist I would be saying, "Let us do everything we can to stop the framework being achieved". The Government are in danger of falling into that trap unless we find another way out of it.

My view is very simplistic and has been from the start. The nationalists are the Danes. In the words of Kipling: when you start paying the Danegeld, you never get rid of the Dane. Over the years since devolution came along, we have always been paying the Danegeld; they always come back for more and will continue to do so. We have to think very seriously about that when considering the Bill. I end by saying something that I never thought I would say. Over these years, we have created great instability within the United Kingdom. I am a keen supporter of the United Kingdom—an arch unionist. I never thought I would be looking at anything to replace the United Kingdom that I was brought up with. However, I accept what I have heard from a number of noble Lords today, starting with the noble Lord, Lord Campbell of Pittenweem. The time has come when we have to look seriously at how we create another Act of Union. It might be by convention or by all sorts of different ways, but we cannot go on relying on an Act of Union that has been so destabilised. We need to find something and if that is federalism, which I have opposed all my life, so be it. I would prefer that to the alternative of a further slippery slope and eventual separation.

8.59 pm

Lord Stephen (LD): My Lords, this has been a very good debate. Although there were parts of the last speech that I did not agree with, I very much agree with the final words of the noble Marquess, Lord Lothian. The name Michael Ancram kept coming into my mind—my apologies to him. There have been outstanding maiden speeches from two members of the Faculty of Advocates. As a mere solicitor in Scotland, I feel truly humbled by there having been eight contributors from the Faculty of Advocates, so far, with one still to come. This is a pretty fair contribution from the faculty. I think there are probably too many advocates going into politics these days and we need a few more solicitors, perhaps. However, I have very much enjoyed participating in a debate in which there have been these maiden speeches.

I enjoyed hearing from the noble Baroness, Lady McIntosh of Pickering, about her family background in Edinburgh and her time in Brussels and Westminster. As the noble Lord, Lord Kerr of Kinlochard, mentioned, it has been a privilege to be involved in the debate. Unlike him, I have been listening to Menzies Campbell's contributions and speeches for a mere 35 years or so, seeing him first as a very young candidate, then as a new MP, then as a very highly regarded expert on foreign affairs, then as my party leader, and now, in this Chamber, as the noble Lord, Lord Campbell of Pittenweem.

I start my attention to the Bill with the words of the Minister and give the Minister my strong support. He gave a very good, fair and wise opening speech in the face of, at times, a flurry of challenges on detriment and fiscal frameworks. It could, at times, have been easy to forget that the Bill has very strong all-party support, not only here but in the House of Commons and the Scottish Parliament. We must not forget that. I still have to pinch myself that this all-party support includes the Conservatives. Indeed, it is now being led by the Minister and the Conservatives. It is quite a sight to see a Conservative Minister in the party of the noble Lords, Lord Forsyth and Lord Lamont, and the noble Marquess, Lord Lothian, speaking eloquently of creating one of the most powerful devolved Parliaments in the world. This remarkable change owes a great deal to the work of the noble Lord, Lord Strathclyde, and the Conservative commission he chaired in preparing his party's submission to the Smith commission, and indeed to the role of the noble Lord, Lord Dunlop, for which we should give him great credit.

The whole of the United Kingdom has become far too centralised and needs more than piecemeal or partial reform. I respectfully, sincerely and, perhaps, hopefully encourage the Minister and his colleagues in government to go one step further. This would lead very naturally and logically to a constitutional convention for the whole of the United Kingdom to start the process of creating a more modern, effective and stable democracy, not only for Scotland but for Wales, Northern Ireland and the regions of England. In such a convention, the Liberal Democrats would argue for a federal solution and—who knows?—looking around the Chamber, there might just be a few noble Lords who would wish to join us in that process.

Returning to the Bill, this is important, substantial legislation. As the noble Baroness, Lady Quin, mentioned, short of war and peace, for a Parliament it does not get much more important than this. Of course, it all comes tumbling out of the referendum and out of the vow. The vow has been spoken about a great deal. The answer on the vow is simple: it was made and, having been made, it has to be delivered. I ask people not to look back and squabble or speculate on what might have been. Together we will, as the noble Lord, Lord Smith of Kelvin, has again confirmed today, deliver on the promise by passing this Bill. We owe the noble Lord, Lord Smith, and all the members of his commission for producing and unanimously agreeing such a far-reaching set of proposals to such a tight timetable. This brings me to the fiscal framework. We are all agreed, I believe, on this issue as well. We need to see it and need it pretty much now. Delay or dragging of feet could fracture a delicate consensus. Let us get it agreed and get it published. Delay in progressing the Bill, however well intentioned, would simply play into the hands of the SNP.

Lord Forsyth of Drumlean: I understand what the noble Lord is saying about delivering the Bill but if, when he sees the fiscal framework, it shows that Scotland will be financially worse off by a considerable degree, will he still be of the view that we have to get on with this and deliver it?

Lord Stephen: I very much take the view that, if that were the case, it would fracture the delicate political consensus that I have been speaking about. Therefore, I think it is up to the Minister and the Scottish Government to give everyone—the five parties of the Smith commission—confidence that we are on the right track in relation to the fiscal framework. If it cannot yet be published in full, why not look at other opportunities to publish an outline of the framework as agreed—the minutes of the meetings that have been discussing the framework have been spoken about—or a draft of the framework as it stands at this stage? Let us not hide it all. Let us get it out there in the open, and let us challenge the Scottish Government as well as the Government at United Kingdom level to open up on this issue and not have the discussions quite as much behind closed doors as currently appears to be the case.

The noble Lord, Lord Smith, emphasised that he was very much a Cross-Bencher and played no part in the policy as agreed by his commission. I am sure he was very modest in that regard. However, he mentioned two vital points in relation to all this. The first is that decentralisation to Scotland should not mean centralisation to one Government in Edinburgh. There should be decentralisation right across Scotland, and the mistakes of Police Scotland are a major warning to us all.

The second point is that all this should be about the good government of Scotland, which means parties and Governments working together and co-operating for the good of the people of Scotland. We would do well to bear that in mind over the next few weeks, not only as the Bill progresses through this place but in Scotland as well.

I turn to the main clauses of the Bill. On the constitutional changes, why not have a reformed, more modern constitution? Why not enshrine in legislation certain matters of great importance, such as the permanence of the Scottish Parliament? Why not have special majorities on other issues of great constitutional importance? Other countries do it. Our constitution can develop, change and be adapted to the needs of the 21st century. Why not also ask the Government to specify in the Bill before us today the current legislative consent rules rather than those defined back in 1998 before the Scottish Parliament was even created? It would be very interesting to hear the Minister's response to the comments made in that regard by my noble and learned friend Lord Wallace of Tankerness.

The Liberal Democrats support the full tax-raising powers now found in the Bill. As my noble friend Lord Steel highlighted, a Parliament with such limited tax-raising powers as was the case with the Scottish Parliament back in its early years lacked accountability and responsibility from the start. It is no secret that the Liberal Democrats on the Smith commission, building on the work of the Liberal Democrat Campbell commission, supported bolder powers on welfare. We now see some of those powers coming forward, but I know that my noble friend Lord Kirkwood of Kirkhope will lead the Liberal Democrats' charge on this issue with appropriate amendments in Committee—in a very responsible way, of course.

I want to pick up on the thanks expressed by the noble Lord, Lord Reid of Cardowan, to those who helped save the day in the referendum. Many in this Chamber deserve thanks as well, including the noble Lord, Lord Reid, himself, and so very definitely do Gordon Brown and Alistair Darling. But I hope also that the name of Charles Kennedy is remembered, as he gave a huge amount to the cause of home rule and federalism, and to speaking out strongly against the cause of nationalism.

Finally, I turn to the aid of the Minister and offer support. In echoing the words of my noble friend Lord Thomas of Gresford, I shall try to help him out on the issue of detriment with the actual quote from *Through the Looking-Glass*:

> "'When I use a word', Humpty Dumpty said, in a rather scornful tone, 'it means just what I choose it to mean—neither more nor less'. 'The question is', said Alice, 'whether you can make words mean so many different things'. 'The question is', said Humpty Dumpty, 'which is to be the master—that's all'".

So over to the Minister and to the next advocate in the debate.

9.10 pm

Lord Davidson of Glen Clova (Lab): My Lords, I add, if I may, to the many congratulations to the noble Lord, Lord Campbell of Pittenweem, and the noble Baroness, Lady McIntosh of Pickering. It is a joy to see two members of faculty joining this august body. The welcome from the noble Lord, Lord Stephen, was perhaps less warm, identifying as he did the difference between members of the Faculty of Advocates and the solicitor branch. However, I assure noble Lords that the ratio of nine members of the faculty to one Scottish solicitor does not always happen in debate.

As ever when one is dealing with legislation to do with Scottish devolution, there has been a lively, lengthy and informed debate. As ever, many questions have arisen to which the answers from Her Majesty's Government are eagerly awaited. Some of these issues, as the noble Marquess, Lord Lothian, observed, are not entirely novel, so perhaps the answers have already been prepared.

One wonders whether the progenitors of the Scotland Act 1998 ever foresaw that their work would require to be revisited quite so often and quite so extensively. Be that as it may, the Scotland Bill, implementing as it does the recommendations of the Smith commission, is a remarkable piece of legislation. I join the noble Baroness, Lady Goldie, in saying that the noble Lord, Lord Smith of Kelvin, deserves considerable gratitude from both the UK and Scottish Parliaments for the work he has carried out in bringing about this remarkable piece of work. Reflecting as it does the work of five political parties represented in the Scottish Parliament, as well as the very many other contributors, the Smith commission makes for a substantial constitutional contribution.

As my noble friend Lord McAvoy has pointed out, this side of the House has obtained a number of amendments by concession from the Government to bring the Bill into line with the Smith commission recommendations.

I will try to cover some of the many significant points that noble Lords have raised today. I start, if I may, with Clause 1—always a good place to start in a Bill—and the question of permanency of the Scottish Parliament and Scottish Government. The noble and learned Lord, Lord Wallace of Tankerness, drew this very swiftly into the area of federalism, as Liberal Democrats sometimes do. I was not sure whether he saw the permanency provision as one that was a bar to federalism or one that maybe encouraged a referendum on federalism to take place in due course. Be that as it may, he identified an important question for the Minister to answer: the question of whether the legislative consent Motion has two categories and how these are to be dealt with.

The noble Lord, Lord Lang of Monkton, raised fundamental issues in looking at this clause, going to the very root of the sovereignty of Parliament. These are very deep waters. Perhaps this may not be the right time at which to examine these points, but they certainly make the constitutional position of the UK, which is sometimes lost sight of, very much an issue to be looked at in the context of this Bill.

As the noble Marquess, Lord Lothian, observed just a few moments ago, it does rather seem as though permanence is not for ever. Be that again as it may, the noble and learned Lord, Lord Mackay of Clashfern, echoed that the issue of sovereignty is an important point. That was picked up on by, I believe, his noble devil, the noble and learned Lord, Lord Hope of Craighead. He further developed the concern that this question might result in these issues having to be determined in a court, and that might make matters even livelier than people perhaps have considered thus far.

My noble friend Lord Foulkes of Cumnock, who styled himself as, I think, a disappointed devolutionist, thought that clarity might be helpful to some degree. I am possibly helping the Minister here in saying that permanent Scottish government does not actually mean permanent SNP Scottish government. However, the point that has become rather more concerning in Scotland and was identified by the noble Lord, Lord Steel of Aikwood, is the question of a one-party state. This is a warning; it is not actually a representation of the reality at the moment. However, these issues should not be ignored. They reflect real concerns in some quarters in Scotland.

The noble Earl, Lord Stair, raised the question of the committee structure in the Scottish Parliament and identified that the tendency for domination by one particular party is of real concern. My noble friend Lord Maxton reminds us that devolution is a democratic process, and I trust that his words will be carried northwards. The noble Lord, Lord Norton of Louth, questioned the constitutional and intellectual coherence, and I think many people can understand his point. However, it is perhaps a high bar in UK constitutional matters to require intellectual coherence at every stage. One has only to occasionally consider the debates about the reform of the House of Lords, where one or two oddities have presented themselves—not least the constitution of those of us who are participant.

The question raised as to whether the broader UK context might lead us into some issue was developed by my noble friend Lord Brennan. He requires an answer as to how one is going to build confidence in Scotland, as well as in the rest of the UK, in these procedures. That is quite an important part of how this process should develop, because its impact is not restricted inevitably to Scotland; it is part of the whole unitary state that is the UK.

I turn to an issue raised briefly in relation to welfare. The noble and learned Lord, Lord Wallace of Tankerness, raised the question of delivery and responsibility in this area—an entirely sensible approach. I take that as support for the proposition that we should establish a Joint Committee on welfare devolution. The noble Baroness, Lady Liddell of Coatdyke, took this point very much to heart in her intervention, demonstrating the question of the competence of the Scottish Government. She identified this as an issue relating to health, and therefore welfare. Indeed, she took it further to look at, correctly, the issues of education, policing in Scotland and so on, a point echoed by the noble Earl, Lord Kinnoull. I suspect that my noble friend Lord Foulkes is not entirely satisfied with the Scottish Parliament in this regard. Since he participated in it from time to time, he is a substantial witness in relation to how the Scottish Parliament may proceed in its competence. The noble and learned Lord, Lord Hope of Craighead, continued to develop these concerns in relation to how the participants—the Members of the Scottish Parliament—were in a position to fully seize and deal with the new responsibilities that would be coming their way. That question was picked up by a fellow member of the Faculty of Advocates, my noble and learned friend Lord McCluskey. He added the question about SNP competence, but as I understood it he was keen to welcome their presence here as well—presumably on the basis that those who came here would be more competent.

The noble Lord, Lord Sanderson of Bowden, had an interesting suggestion that the Select Committee structure might usefully be brought to the attention of the Scottish Parliament. That echoes the notion that the current committee structure is perhaps not providing the level of scrutiny that one would desire.

The critical issue that has been repeated by many noble Lords is the fiscal framework. This is, of course, the focus of important matters. It has been looked at by both the Economic Affairs Committee and the Constitution Committee. I respectfully suggest that it is clear to anyone that a Bill of the highest constitutional importance deserves wide and full consideration. This House—the very existence of which is justified on its being a revising Chamber—has an especially important position in such constitutional debate. The coherence of the UK as a unitary state is not an irrelevant consideration in that debate.

My noble friend Lord Hollick set out a number of issues where there are real concerns. It is important that we see what the answers to these questions are.

[Lord Davidson of Glen Clova]
Maybe we will have to wait until January next year, but it would be helpful if we had some indication of where the discussion between Her Majesty's Government and the Scottish Government has been going.

The noble Lord, Lord Kerr of Kinlochard, raised his "three unknowns", which raise very clear issues—fairness, borrowing powers and future transparency. These are mightily significant issues, on which this House really requires some kind of instruction if it is properly to scrutinise the Bill.

The noble Lord, Lord Griffiths, with his well-known economic expertise, raised the question of Scottish living standards and the way that they may be affected in ways that are not minor. These issues also have to be considered.

The noble Lord, Lord Turnbull, raised the complex question of indexing. Again, this is not something that can be dealt with in a few minutes of discussion. These are complicated issues and some insight into them is, I respectfully suggest, what this House deserves.

The noble Lord, Lord Lang of Monkton, also raised the question of scrutiny and the terms of a memorandum of understanding. Again, some hint might be useful as to where this is going, because these involve deep issues that may be with us for many years. The noble Lord, Lord Kirkwood, is correct that it is important that the Bill be passed before the Scottish election, but it is important that we have some understanding of where we will be, whether it is in January or shortly thereafter.

When he looks at these kinds of issues, the Minister might wish to share with the House, for example, whether an analysis has been offered by the Scottish Government—a considered analysis, one trusts—of the two committees: the Economic Affairs Committee and the Constitution Committee. They have raised important issues; have the Scottish Government discussed them with Her Majesty's Government? It would be interesting to know whether they see force in these points. Where do they stand on these issues?

Lord Reid of Cardowan: I confess that I am neither an advocate nor even a solicitor, which probably excuses my inability to grasp the answer to what is a simple question. The question at the centre of all we have been discussing is the consideration of the Bill, in this House and the House of Commons, without the fiscal framework. That is what has run through every debate. Given that the Scottish Parliament will not consider the generality of the Bill without the fiscal framework and that in July, the Government expressed that it was perfectly feasible to discuss the Bill while externally discussing the framework, why is it not possible to agree, during these discussions with the Scottish Parliament, that we will complete the final stages in parallel with it? That would not be unfair to anyone. It would mean that, since the Scottish Parliament will not consider the final details of the Bill without the framework, we would simultaneously be considering it and the Bill, and doing so in a spirit of concord and agreement. Perhaps as an advocate, as well as a noble and learned Lord, my noble and learned friend will explain why that process would be impossible.

Lord Davidson of Glen Clova: One of the problems one faces as an advocate is being tempted to follow what is put before one by a judge. One is quite often tempted down that road. What my noble friend is putting to me, in a style which is not wholly unfamiliar in the courts, is one such temptation. I would care to deflect it to the Minister. This is not something that the loyal Opposition can put into the discussions between Her Majesty's Government and the Scottish Government but I respectfully suggest that this interesting proposition from my noble friend Lord Reid be introduced into those discussions.

It is clear that we have to find a mechanism that enables the discussion on this critical area to be slightly widened in its understanding. We have ended up with the Scottish Government's view not being revealed other than in minutes that do not really set out what has happened. My noble friend Lord Foulkes raised the question of what plan B is. I think we can legitimately assume the answer is that there is no plan B and that negotiations will be successful. That may be reassuring for some people but for others perhaps it will not. My noble friend Lord McAvoy was clear that we simply have to trust Her Majesty's Government and the Scottish Government to produce a result. It would be helpful if they gave us a basis for developing that confidence.

My noble friend Lady Liddell asked if we might see the minutes and papers. She was joined in that request by the noble Lord, Lord Stephen. These are interesting points but one can understand the competition between the politics of the issue and the scrutiny. It would be helpful if we were given some guidance as to where the balance lies. Scrutiny, after all, is the purpose of this Chamber.

I was just coming to the noble Lord, Lord Forsyth—

Lord Forsyth of Drumlean: Might the noble and learned Lord turn his attention to telling us what the Opposition's position is on whether consideration of this Bill should be delayed so that we are able to consider it with the fiscal framework?

Lord Davidson of Glen Clova: The answer that I have just foreshadowed is the question of trust. We are prepared to trust Her Majesty's Government and the Scottish Government to conduct their negotiations. We would like to have some further basis on which to develop and strengthen that trust, which might even meet some of the requirements of the noble Lord, Lord Forsyth of Drumlean. He looks at me quizzically—

Lord Forsyth of Drumlean: I do not know whether that is a yes or a no.

Lord Davidson of Glen Clova: One sometimes finds that there are questions that do not have a yes or no answer. The question of trust is something that one might reflect upon and, if that is lost in translation in some way, I would be happy to explain later.

The charge that the noble Lord, Lord Forsyth, has made against the vow is that it reveals a certain degree of illiteracy. Be that as it may, as the noble Lord, Lord Stephen, pointed out, the vow is a fact; it has been acted on and here we are with the consequences of that vow. We can analyse questions of the Barnett formula,

which have been discussed in this House over and over again, but perhaps that will not really add very much to the discussion of this Bill.

I am conscious that I am taking rather more time than perhaps—

Noble Lords: Oh no!

Lord Davidson of Glen Clova: I suspect people are demanding even more but perhaps I might briefly rush through a few points. The noble Lord, Lord Shipley, identified that there had been four Joint Exchequer Committee meetings. The noble Lord, Lord Gordon of Strathblane, suggested that an increase in efficiency of even once a week might develop a bit more immediacy. The noble Lord, Lord Turnbull, agreed with this, and one respectfully has difficulty seeing why things cannot be speeded up—including my speech.

The noble Lord, Lord Lyell, raised the complexity of definitions in tax matters, not least with regard to the Scottish taxpayer. I suspect that we will come back to that in due course because these are critical matters which, when the reality comes home, may involve all sorts of cross-border issues, where already advice has been taken by various parties which wish to alter their jurisdiction.

The question of complexity and difficulty was raised in the context of the airport duty. This was raised by the noble Lord, Lord Shipley, but echoed by the noble Baroness, Lady McIntosh. These are perhaps not the most important issues but they are complicated issues. How does all this fit together? These are areas where we need some guidance.

The question of consensus not always being able to be achieved was identified by the noble Lord, Lord Purvis of Tweed. That is an entirely appropriate way in which to look at these issues.

The noble Lord, Lord Selkirk, had confidence in the process and we may trust that his confidence that the Minister will report to the House is not misplaced. The noble Lord, Lord Sharkey, perhaps did not fully share that confidence but stressed that due consideration was critical in such a constitutional Bill. He suggested that perhaps the Minister might produce some answers in plain English—with which we might all agree.

As I move towards a conclusion—

Noble Lords: No!

Lord Davidson of Glen Clova: Much obliged. The question of the use of devolved powers vexed a number of noble Lords—quite sensibly so. The issue of how the Scottish Government and the UK Government will operate together in the way in which the Scottish Government use these powers will be a matter of real concern. We shall see how this works, because it will have to work.

My noble friend Lady Liddell evinced her concern about the Olympian—or possibly Olympic—level of griping that may be achieved by the SNP and which may be made manifest. This is a real challenge for the Scottish Government to act in the interests of the people of Scotland—those who live in Scotland and who will have to be governed by a Scottish Government using these new powers.

The noble Earl, Lord Dundee, raised the question of localism. It will be interesting to see whether the Scottish Government are able to lose their centralising impulse and perhaps move towards a more appropriate and modern concept of localism.

The question of a constitutional convention was raised by the noble Baroness, Lady Quin, the noble Lords, Lord Campbell, Lord Kerr and Lord Thomas, and many other noble Lords. This is an attractive proposition which we on this side would encourage.

The suggestion from my noble friend Lord Gordon of Strathblane of an analysis of full fiscal autonomy is, again, a useful contribution to the discussion and, from this side, we would encourage that.

Lest there is any doubt, we on this side support the Bill. We see it as a challenge to the Scottish Government. It is also a challenge to this Government to work sensibly, coherently and perhaps transparently to produce an Act. We are for this Bill.

9.36 pm

Lord Dunlop: My Lords, this has been a lively debate, to say the least. It has been a good, informed and productive debate, and has demonstrated once again the important role of this House in scrutinising legislation. The House has had the benefit of the experience and wisdom of many of your Lordships who have helped shape the destiny of Scotland over many years—before the Scottish Parliament, at its birth and in the years since—including the noble Lords, Lord Steel and Lord Reid, my noble friend Lord Lang, the noble and learned Lord, Lord Wallace, the noble Baroness, Lady Liddell, and of course my noble friend Lord Forsyth, who delivered another tour de force today. I have to say that the prospect of being given a Glasgow kiss by my noble friend does not bear thinking about. The prospect of spending many hours with him in the coming weeks in Committee is something I hope I can look forward to.

The Scotland Bill implements the Smith commission, and the House has benefited enormously from the participation of the noble Lord, Lord Smith, himself and his fellow commissioner, my noble friend Lady Goldie—two people who were actually in the room as the agreement was reached. I am sure, once again, that the whole House would wish to express thanks to them for their work. I also congratulate, as others have done, my noble friend Lady McIntosh of Pickering and the noble Lord, Lord Campbell of Pittenweem, on their superb maiden speeches.

A number of viewpoints on the Bill and the Smith commission agreement have been expressed in the debate, and the House has benefited from a broad range of views. Noble Lords have indicated areas of the Bill to which they will return as it proceeds through the House. I am pleased that, whatever the views on the particulars of the Bill, the debate has shown that delivering the Smith commission agreement is a commitment of the three principal UK parties represented in this House and the other place. Indeed, the Government were elected on this commitment, and I am grateful to noble Lords who have recognised this and indicated their support, in particular for the support from the two Front Benches opposite. It is right and proper that the House scrutinises the Bill, and I am sure we will return to many of the points raised in the debate.

[LORD DUNLOP]

I now turn to the points that have been raised. There are so many that I apologise in advance that I will not be able to do justice to them all, but I will try to pick up the main themes that have been raised in the debate. There was some discussion this afternoon and evening about the constitutional provisions. My noble friends Lord Lang and Lord Norton, and the noble and learned Lord, Lord Hope, mentioned these provisions specifically, as did other noble Lords. The Advocate-General and I look forward to engaging with noble Lords on these matters in more detail in Committee.

Clause 1 delivers paragraph 21 of the Smith commission agreement which sets out that the UK legislation will state that the Scottish Parliament and the Scottish Government are permanent institutions. Last September, more than 2 million Scottish people voted to remain part of the United Kingdom and to retain Scotland's two Parliaments and two Governments. This clause is set within that context and underscores the permanence of the Scottish Parliament and the Scottish Government while at the same time remaining loyal to the fundamental principles of the UK's constitutional arrangements.

This clause states in law that the Scottish Parliament and Scottish Government are a permanent part of the UK's constitutional arrangements. The constitution of the UK Parliament cannot bind a successive Parliament. The sovereignty of Parliament remains. The Smith commission's intention here was not that the constitutional position be changed but that legislation should accurately reflect what the political understanding already is, that the Scottish Parliament and Scottish Government are permanent parts of the UK's constitutional arrangements. This clause therefore delivers the Smith commission agreement while respecting the UK's constitutional arrangements. The amendments made to this clause in the other place put that beyond all doubt.

Clause 2 delivers paragraph 22 of the Smith commission agreement which sets out that the Sewel convention will be put on a statutory footing. The Sewel convention was never intended to change the sovereignty of the UK Parliament—nor was it intended to prevent the UK Parliament from making laws across the United Kingdom. As with Clause 1, the intention of the Smith commission was not that the constitutional position be changed but that legislation reflects accurately what the political understanding already is. Clause 2 simply sets out that where legislation in the UK Parliament relates to a devolved area consent will normally be obtained. Since the Scottish Parliament came into existence, the UK Government have consistently adhered to the Sewel convention. A legislative consent motion is always sought before Westminster passes legislation for Scotland in relation to devolved matters. The practice set out in the devolution guidance note 10 works well and we expect this to continue but if the Smith commission had intended for the guidance note to be placed on a statutory footing it would have specified that and it did not. The convention is that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. The Sewel convention is a political convention which does not give rise to justiciable rights. It is right that this Parliament, while respecting the views of the Scottish Parliament and its right to legislate, continues to be able to legislate for all matters without restriction on its sovereignty.

A number of noble Lords raised the question of a constitutional convention; the arguments have been well rehearsed in this House. This Government are ensuring that we work hard to govern in the interests of one nation and one United Kingdom. It has already been made clear many times before that the Government do not believe that there is a popular demand for a convention. Our priority is to deliver Smith, the St David's Day agreement and the Stormont House agreement in full.

Another important element of the Smith commission agreement that has been raised—in particular by the noble Lords, Lord Lang and Lord Kirkwood—is the need to improve intergovernmental working. As noble Lords will be aware, historically the arrangements for intergovernmental relations within the United Kingdom have certainly not been perfect. The noble Lord, Lord Smith of Kelvin, drew our attention to this in his personal recommendations and the work of the Constitution Committee of this House, chaired by my noble friend Lord Lang, highlights the value of ongoing evaluation of our formal structures to ensure their relevance. None the less, your Lordships will be aware that there are already many positive examples of intergovernmental working at both bilateral and multilateral levels. I can testify from my own personal experience that whatever the public differences, the two Governments work constructively together on a whole range of issues. A good practical example of improved intergovernmental working is the joint ministerial group on welfare which was established to provide a forum for discussion to ensure the effective implementation of welfare-related aspects of the Smith agreement and has facilitated increased engagement. This group is tackling the practical issues of implementation, and the noble Lord, Lord Kirkwood, talked about concurrent powers. A good example of this close working is on the universal credit flexibilities in the Bill.

In addition, the Prime Minister and the heads of the three devolved Administrations agreed at the Joint Ministerial Committee last December that existing intergovernmental mechanisms should be reviewed. This is an important part of the agreement, and one that this Government take seriously. That work is ongoing, and the outcomes of that review will be considered by the heads of the four Governments at the next plenary meeting of the Joint Ministerial Committee. I will of course be happy to update the House with any developments. The Government are clear that positive intergovernmental relations, whether through formal or informal structures, will be absolutely key to making the powers a success for the people of Scotland.

Turning to more specific matters, the Crown Estate has been raised by several noble Lords. The noble Earl, Lord Kinnoull, the noble and learned Lord, Lord Wallace, and my noble friend Lord Sanderson raised the issue of whether the Bill should provide for further double devolution of Crown Estate management. The Smith commission agreement stated that following the transfer of the management of the Crown Estate's

Scottish assets, responsibility for the management of those assets would be further devolved to local authority areas.

Further devolution within Scotland is a matter for the Scottish Parliament to determine. Clause 34 enables the Scottish Parliament to make its own legislation about the management of the Crown Estate in Scotland after the transfer—and beforehand, should it wish to have arrangements in place in readiness for the transfer. It would not be in keeping with the principle or spirit of devolution for the UK Parliament to determine how the management of the Crown Estate in Scotland should be further devolved.

The noble Earl, Lord Kinnoull, also raised concerns that the management is being transferred to a political body. The Bill provides for the transfer of the management of the Scottish assets to Scottish Ministers or to a person nominated by them. I would expect the Scottish Government to want an arm's-length body to take over the management, but it will be a matter for the Scottish Parliament to decide. This is not entirely dissimilar to the current arrangements. The current managers of the Crown Estate are the Crown Estate commissioners, which is an independent commercial organisation established under statute. It is not an instrument of government policy; nevertheless, it is a public body. The Treasury is its sponsor department and has general oversight of the Crown Estate's business.

I turn to the fiscal framework and the timing of Committee. Noble Lords' important points about the fiscal framework and the next stages of the Bill's passage through this House have been a consistent thread running throughout the debate. I reaffirm my thanks to the Economic Affairs Committee and the Constitution Committee of this House for their reports —in particular to the noble Lords, Lord Lang and Lord Hollick, who set out so clearly the conclusions of their committees. I can, however, reassure noble Lords, as I said in my opening speech, that the negotiations absolutely address the issues raised in the Economic Affairs Committee report, including the point raised by my noble friend Lord Sanderson about the robustness of the independent fiscal scrutiny.

My noble friend Lord Forsyth raised the second no-detriment principle, and the Smith agreement says that there should be:

"No detriment as a result of UK Government or Scottish Government policy".

The negotiations between the UK and Scottish Governments are discussing how this principle and others outlined in the Smith agreement can be applied in practice. This is all about fiscal responsibility and a proper allocation of risk between the UK Government and the Scottish Government, so that the Scottish Government reap the rewards of good policy choices and accept the costs and consequences of poor ones. This is not just an objective of the UK Government. John Swinney has said publicly that that is his objective, too. He said recently before the Scottish Parliament's Finance Committee:

"Scotland should retain the rewards of her success in the same way as we must bear the risks of the policies and actions that we pursue".

Lord Reid of Cardowan: Before the Minister leaves this subject, let us get to the heart of the matter. The thread that has been running through tonight's discussions has not been about the coherence or otherwise of each individual element of the fiscal framework. It has been the question of whether this Parliament can possibly proceed with the Bill without knowing the fiscal framework that is the crucial, central element that determines all its other aspects, particularly in view of the fact that the Scottish Parliament has, very sensibly, under the leadership of the SNP, taken the view that it cannot and will not ratify the terms of the Bill without first knowing the fiscal framework. That is the question—not any individual, tactical item of the framework, but whether we are flying blind. Will the Minister therefore address the question that I put to my noble and learned friend on the Front Bench, which he generously offered to share with the Minister: why is it that, if we can envisage simultaneous negotiations outside Parliament with proceedings inside Parliament, we cannot envisage simultaneous conduct and conclusion of the Bill, including the financial framework, on terms that the Scottish Parliament itself thinks are reasonable? Would he respond to that? I hope he will say that he will inject this into the cordial and constructive negotiations that are going on, but if he is not prepared to do that, will he tell us why not? Is this just a matter of parliamentary timetabling, or is there some matter of principle that the Scottish Parliament should be encouraged and permitted to make a decision in the full light of all the facts while the British Parliament should be asked to make a decision with half the facts missing?

Lord Dunlop: The noble Lord anticipated what I was going to talk about. He is always very prescient about these matters. I want to explain why the Government believe that the Bill can proceed without delay and without compromising the detailed scrutiny of the fiscal framework, which Parliament rightly expects to carry out. First, there are the practicalities around delivering the promises that we made. People in Scotland made a decisive choice to remain part of the United Kingdom. They voted for a more powerful Scottish Parliament with the strength that comes from our union of nations. To achieve this, voters in Scotland will expect to go to the polls next May knowing what powers the Scottish Parliament and the Scottish Government will have, so they can cast their votes knowing how the parties will use those powers.

It is important to get the Scotland Bill to Royal Assent before the Scottish Parliament elections next year. A number of noble Lords have made that point in this debate. That is for a very good reason. It is not just a political priority for the Government. I believe—this has been confirmed in the debate today—it is a priority shared by the Labour Party and the Liberal Democrats, too. If we seek to delay the Bill now, it will be very difficult to meet that timetable, which is one that Scottish voters expect and one that the UK Parliament has adhered to every step of the way so far.

Lord Wallace of Tankerness: I am very grateful to the Minister for picking up the question of when we will see the fiscal framework. Everyone without exception said that it was really required. Will he explain what he means when he says that the Bill must "be there"

[Lord Wallace of Tankerness]
before the Scottish elections? Does he literally mean the Scottish elections, or does he mean when purdah starts before the Scottish elections? Is the deadline the first Thursday in May or the last week or March?

Lord Dunlop: To answer the noble and learned Lord's last point, we absolutely need the Act by the time the Scottish Parliament breaks for the election.

The second point I wanted to make is on ensuring that the fiscal framework receives detailed scrutiny. There has been widespread support around the House for that concept. I reassure noble Lords that both Governments aim to complete the framework as soon as possible to give both the Scottish Parliament and the UK Parliament time for due consideration of it. As mentioned by several noble Lords, the Government will keep updating Parliament after each negotiation session, as we have done. We will invite all relevant committees to look at the framework, including Lords committees and the Scottish Affairs Committee in the Commons. We will welcome their comments.

If legislation is needed to implement the framework, both Houses would be involved in that in the normal ways. There was such legislation in 2012, with primary legislation debated in both Houses. As I said in my opening speech and reaffirm now, the Government's firm intention is for the fiscal framework to be available to the Scottish Parliament and both Houses of this Parliament before the Bill completes its passage. In response to my noble friend Lord Griffiths, I confirm that the intention is for this to be a detailed written agreement.

Lord Forsyth of Drumlean: Forgive me but, as I mentioned in my speech, my noble friend answered a Written Question in July saying that he expected the fiscal framework to proceed in parallel with the consideration in both Houses. He told us that the relations with the Scottish Government are very cordial and doing well. Why, then, is it taking so long to reach agreement? I listened to his words very carefully. Is he saying that he would be prepared for this Bill to complete all its stages without the fiscal framework being known because it is just so politically important to have it on the statute book before the elections? I cannot believe that he is.

Lord Dunlop: On my noble friend's first point, it has been evident from the debate today that the framework is of critical importance. It raises very complex issues that need to be worked through to get it right. That is exactly what we are doing. I repeat what I said: the Government's firm intention is for the fiscal framework to be available to the Scottish Parliament and both Houses of this Parliament before the Bill completes its passage. Clearly, a range of procedural options are available. We will need to consider them nearer the time in light of how negotiations progress.

Lord Wallace of Tankerness: I would be grateful for further clarification from the Minister because he said, I think, in the very useful briefing he gave for Peers last week, "If the fiscal framework gives rise to further legislation". Could he elaborate on what he has in mind there? What kind of legislation would that be? Would it be amendments to this Bill, or fresh primary or second legislation?

Lord Dunlop: That all depends on what is agreed in the fiscal framework. For example, if you look at the last Scotland Bill, there were issues to do with borrowing that needed to be put in primary legislation. The outcome of the fiscal framework will determine what legislation we need to underpin that.

The third point I wanted to make was on the legitimacy of the process. Given the degree of cross-party consensus on the devolution of further powers to Scotland, whatever the result of the general election in May there would have been a UK government Minister standing here arguing for the Smith agreement to be implemented in full. That is the nature of the cross-party agreement. The Scotland Bill and delivering the Smith commission agreement in full was, as I said, a manifesto commitment of all three UK parties. Against that background, I ask the House to consider how it would play with voters of Scotland, six months out from important Holyrood elections, if your Lordships were seen to hold up the passage of this Bill.

Lord Foulkes of Cumnock: I wonder if the Minister could answer the question I asked right at the start. I have waited patiently for the last seven hours for him to do so. If there is no agreement on the fiscal framework —that is entirely possible—and, as a result of that, the Scottish Parliament refuses to give consent to this Bill, what is his alternative?

Lord Dunlop: I am afraid that I am going to give to the noble Lord the same response that I gave earlier. We are working very hard to get a success and an agreement on this fiscal framework.

I think that the noble Lord, Lord Foulkes, was one of those who suggested that the Scottish Government do not want a fiscal framework agreed or to take on the new powers in this Bill. I do not accept that—and I have to say that I think there has been a tension in this debate. On the one hand, the noble Lord, Lord Lang, and others, have called for improving intergovernmental relations and, on the other hand, we have heard it said that actually we should not trust the Scottish Government. We have to operate on the basis that the Scottish Government are negotiating in good faith.

Lord Foulkes of Cumnock: Could the Minister answer the question that I put to the noble Lord, Lord Smith? John Swinney signed the Smith agreement, which was meant to be agreed by all parties. Then he came out immediately and denounced it. How can you describe that as good faith?

Lord Dunlop: I thought that the noble Lord, Lord Smith, answered that question very well. He put it in the context of an agreement, every aspect of which they signed up to—but, clearly, the SNP is a party that believes in independence, and therefore the whole context should be seen in that light.

The Deputy First Minister has agreed that finalising the fiscal framework is essential to delivering the Smith commission proposals. To touch on what the noble Lord, Lord Smith, said earlier, in the debate, he has spoken to both Governments and is confident that talks will deliver a fiscal framework in line with the

principles set out in the agreement. As I said in my opening speech, talks have been constructive. We have agreed every step jointly with the Scottish Government and are working hard to agree a fiscal framework that is built to last, and is fair for Scotland and for the UK as a whole.

Lord Gordon of Strathblane: Without in any way wishing to hold up the Bill, is it not possible to increase the work rate of those working on the fiscal agreement? Meeting once a month seems pretty leisurely to me.

Lord Dunlop: I assure the noble Lord that these are ministerial meetings of the Joint Exchequer Committee. In between those meetings, very intensive work is going on to agree the fiscal framework. If, unlike me, you believe—

Lord Purvis of Tweed: I know that the hour is late and do not want to prolong the debate, but could the Minister address the question that I put in my speech? What standing will the agreement or framework have? Is it a revision of the statement of funding policy, which is a Treasury policy, or will it be a stand-alone agreement between the two Administrations? What standing will that have, as a document, and will it require ratification by the Scottish Parliament, which obviously involves a timetable entirely in its hands?

Lord Dunlop: The Deputy First Minister has made it clear that, for the Scottish Parliament to give its legislative consent to the Bill, it would have to be satisfied that there was an agreed fiscal framework in place.

I return to the argument that I was making. If, unlike me, you believe that the Scottish Government are not serious about reaching agreement, that is not a good reason to delay the Bill—far from it. Doing so would hand the Scottish Government a get-out-of-jail-free card, which is not right for the people of Scotland, who expect these powers to be implemented.

Lord Forsyth of Drumlean: Could the Minister explain to me—perhaps I am being a bit thick—whether he thinks that the Scottish Parliament is right to insist on considering the Bill with a fiscal framework? I do. If so, why does he think that it is okay to have the House of Commons consider it without the fiscal framework and, perhaps, to have this House consider it without the fiscal framework?

Lord Dunlop: As has been clear from everything I have been saying, we want to get a fiscal framework agreed so that this House and the House of Commons can look at that agreement. This is what we are working to achieve.

The Smith commission secured the cross-party agreement of all five of Scotland's political parties. The parties subsequently included manifesto commitments to deliver it and supported the introduction of the Scotland Bill. While there are those in the other place who do not consider the Scotland Bill goes far enough, there is support for it and for further powers for the Scottish Parliament. As the noble Baroness, Lady Liddell, pointed out, the nationalists like nothing better than to talk about process. We want political debate in Scotland to move on to a debate about policy and how the powers in this Bill that rebalance the devolution settlement by reintroducing real fiscal responsibility to the Scottish Parliament will be used. The Government look forward to engaging with this in full and I commend this Bill to the House.

Lord Hollick: My Lords, I thank all noble Lords for their contributions to this debate. In particular, there have been two outstanding maiden speeches from the noble Lord, Lord Campbell of Pittenweem, and from the noble Baroness, Lady McIntosh of Pickering. As one of the few English speakers in the debate, it was a privilege for me to hear our Scottish brothers and sisters—all part of the union, I am pleased to say—making such fine speeches, analysing the issues very well and intervening in a pugnacious way—all laced with good humour. It has been a privilege to be part of it.

I think the Minister has struggled to answer the question which has been put to him on a number of occasions. He has heard everybody in the House say that the fiscal framework is necessary for the proper scrutiny of the Bill. I think he accepts this. If the fiscal framework is delayed—and it has been delayed so far—what steps will the Government take to ensure that both Houses of Parliament will have the opportunity to scrutinise the Bill in the light of the fiscal framework?

My noble friend Lord Reid has come up with an interesting proposal. The noble Lord, Lord Forsyth, has intervened on a number of occasions. The question still hangs in the air and it is one that we will continue to follow closely. If the fiscal framework is not available and the Government seek to pass this legislation, this House will need to look at it very carefully, because I do not think it is the wish of this House. It may well be, on that occasion, that the House will need to divide and give its decision. On this occasion I do not think that is necessary. I beg leave to withdraw the amendment.

Amendment withdrawn.

Bill read a second time and committed to a Committee of the Whole House.

Northern Ireland (Welfare Reform) Bill

Second Reading (and remaining stages)

10.09 pm

Moved by ***Lord Dunlop***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con): My Lords, I beg to move that the Bill be now read a second time.

This Bill is a fundamental part of the agreement reached last week after 10 weeks of intensive talks involving the Northern Ireland parties, the Secretary of State and the Irish Government. The talks resulted in an agreement called *A Fresh Start: the Stormont Agreement and Implementation Plan*. As part of this agreement, the Government are committed to bringing forward this Bill, which will enable it to legislate for welfare reform in Northern Ireland.

[LORD DUNLOP]

Noble Lords will be aware of much of the background to why this legislation is necessary, so I will not go into a great deal of detail now. In summary, while welfare is a devolved matter in Northern Ireland, it has in practice maintained parity with the rest of the United Kingdom. This parity principle has served Northern Ireland well. It means benefit claimants have been able to avail of the same rates of benefit as those in the rest of the United Kingdom, something that would not have been affordable if Northern Ireland had to support its own system.

However, over the past three years, the Northern Ireland Assembly has been unable to implement welfare reform legislation mirroring that of the Government's Welfare Reform Act 2012. This has resulted in Northern Ireland's welfare system being not just slightly different but fundamentally and structurally different from that in place in the rest of the United Kingdom. This difference is simply unsustainable. Once Great Britain moves entirely to the new system based around universal credit, Northern Ireland will no longer have access to the DWP computer systems on which it relies to assess and deliver people's benefits. It would be left with no option but to devise, implement and maintain an entirely separate and more expensive system and meet the massive costs of the IT needed to support it. For a small devolved Administration, this would be prohibitive. Budgets for other departments would have to be cut very significantly to pay for it with an inevitable impact on front-line services and the capital spending available for crucial infrastructure, such as road improvements. This would undermine the credibility of the devolved institutions and would also do irreparable damage to the political relationships which are central to making them work.

This scenario was dangerously close to becoming a reality following the Assembly's failure in May to pass its Welfare Reform Bill. On 26 May, the Bill passed its final stage with the backing of three of the then five parties in the Executive, but it was blocked by the other two parties using a device in the Assembly known as a petition of concern meaning that the legislation had to have cross-community support, which it failed to achieve. Northern Ireland's devolved institutions were once again faced with almost complete deadlock and, by early autumn, it looked increasingly likely that welfare reform would bring down the Executive itself.

This is the context in which the agreement was reached and in which the Government have agreed to bring forward this Bill. The Bill provides the Government with a power to legislate for welfare in Northern Ireland via an order in council. The power provided is a broad power, for a number of reasons. In providing a broad power, the Bill allows the Government to implement various Northern Ireland-specific flexibilities and top-ups. In doing so, the Government are demonstrating that their intention is not to impose Great Britain's welfare system on Northern Ireland. Instead, we are proposing to use the power provided by this Bill to legislate for the Northern Ireland-tailored welfare system agreed by the Northern Ireland parties. The order in council that will follow this Bill, if passed, will make this clear. The second reason for opting for a broad power in this Bill is that it enables the Government to help implement other welfare reforms, including those contained in the Welfare Reform and Work Bill currently being considered by noble Lords.

It is important to stress three important considerations at this point. First, this Bill does not affect the legislative competence of the Northern Ireland Assembly. In other words, if the Assembly can agree to do so, it can continue to pass welfare legislation. The Bill therefore creates a situation in which welfare is both devolved—meaning that the Assembly can legislate for it—and effectively reserved, meaning the Government can legislate for it. Secondly, the legislative approach outlined in this Bill has arisen at the request of the Northern Ireland parties. The Assembly last week granted its consent, by an overwhelming majority of 70 votes to 22, to this Bill. Thirdly, I assure the House that the UK Government have no intention or desire to legislate on an ongoing basis for welfare in Northern Ireland. This is why Clause 3 time-limits the power so that an order cannot be made after 31 December 2016.

In closing, I shall comment briefly on the speed at which this Bill is being taken through both Houses. I fully accept that what we are asking the House to do today is exceptional. I agree that taking all stages of a Bill through the House in a single day is not ideal and I fully understand that a number of noble Lords have misgivings about it. The Government would very much prefer not to have to take this approach. I can assure the House that the Government are fast-tracking this legislation only because we view it to be absolutely necessary in this specific case; necessary to ensure that welfare reform is no longer an issue undermining the political process in Northern Ireland; necessary to implement the agreement that was reached at Stormont last Tuesday; and necessary to underpin the stability and survival of the power-sharing devolved institutions at Stormont.

If we do not get this legislation on to the statute book and continue with the implementation of last week's agreement, there will be a very serious risk that devolution will collapse, leading to a return to direct rule. A resumption of direct rule would inevitably mean many items of long and complex primary legislation being taken through by order, month after month. This would mean not only denying such legislation scrutiny in the Assembly but would also inevitably take up large amounts of parliamentary time. The Government's approach may be unconventional, but it does have the cross-community support of a vast number of Northern Ireland's elected representatives. This is a Bill which will help resolve the long-running, politically divisive stalemate over welfare reform. It is a crucial element of establishing and building upon the fresh start announced last week and it offers the only realistic prospect of resolving Northern Ireland's welfare reform impasse. I beg to move.

10.17 pm

Lord Alderdice (LD): My Lords, first I say a word of thanks to the Minister for his explication of things at the start of this Second Reading. I also offer him an element of sympathy: there are many people looking in from outside who, regarding his carriage of the Second Reading of the Scotland Bill for some seven hours and his then being condemned to the Irish

legislation, would properly define that as cruel and unusual punishment. We should be informed by the Chief Whip what on earth the poor Minister has done to deserve this. We will, however, proceed with what is of course a matter of great seriousness and concern.

The Minister said some things about the speed with which all the stages of the Bill are—we hope—being carried through the House this evening and the context in which it is being brought here. I am sure all parliamentarians would like more time and consideration to deal with this matter, but we have to reflect that this time last year we were coming up to the Stormont House agreement. At that stage, we were not at all sure that there would be an agreement. It was, apparently, signed off before Christmas but it all began to unravel in the early part of the new year, after a Sinn Fein ard fheis. All of us can wholly understand the Government's concern to make sure that this legislation gets through and is put in place before any similar mishap can occur.

Unfortunately, we might say that it is unusual for legislation in regard to Northern Ireland—and particularly in regard to the peace process—to be carried through in such an urgent fashion, but I am afraid that is not the history of things. It has regularly been the case that unusual arrangements have had to be made for the timing or speed of Northern Ireland legislation. Your Lordships' House, and the other place too, has often felt that the legislation came somewhat pre-cooked, in terms of agreements reached with the Northern Ireland parties. That is not an entirely satisfactory situation, because they themselves do not always consider the consequences of their actions, and inaction, terribly well. It is therefore important that others can help them on it.

If we take, for example, the so-called *A Fresh Start* agreement of which this piece of legislation is a part, in truth it is much less satisfactory, appropriate and complete than the Stormont House agreement a year ago. In almost all aspects it is less satisfactory. The First Minister and Deputy First Minister, in their introduction to *A Fresh Start*, talk about it being,

"a far-reaching and comprehensive framework".

The framework bit is right, but it is hard to be persuaded that it is "far-reaching and comprehensive", since it almost completely excludes any substantial dealing with the past, and things such as flags, parades and strategies to deal with paramilitarism are very much a framework rather than evidenced delivery.

In fact, one has the sense, not just in this agreement but in the way in which the Assembly and Executive have operated, that while there may be a commitment to the institutional architecture of power-sharing there does not seem to be much commitment to the relational sharing of power, which is actually what the whole thing was about. In many ways we find this legislation coming before us as an admission of failure.

It is also a little puzzling why it has taken so long to get here. The noble Lord will know that, when the issue arose at the start, I advised him and his right honourable friend in the other place that the best solution was to take the matter back to Westminster. Why did I say that? First, I did not believe that Sinn Fein would bring down the whole edifice of devolution on the basis of this being taken back to Westminster. It would know that, if it was taken back to Westminster because devolution had collapsed, the Government would simply implement the matter in full, so it would have saved nothing but lost all the benefits of the devolved Administration and Assembly. I did not believe it was going to do that.

Secondly, all through the period of the Assembly, right from early times, unionists were coming to me with a great deal of frustration about legislation in this area. They would say, and the noble Lord has indicated this, "We are expected to deal with this so-called devolved matter, but we know perfectly well we have no real freedom in what we do because maintaining parity with the rest of the United Kingdom is critical". Indeed, those who have a long memory—and in Northern Ireland quite a few people do—recall that the first Stormont Parliament was unable to sustain itself financially, unable to use the devolved powers it had to sustain itself, and came to the UK Government and said, "Please take these matters back from us because we cannot survive financially". Unionists frequently said to me, "It would be far better for the matter to be taken back, because we debate things and have to agree to things we do not like and do not agree with, because we have no power to make any difference". I never thought there would be an enormous problem in taking this back, and it would have been better if it could have been taken back at an earlier stage when there could have been proper debate and discussion and fewer financial problems created for the Northern Ireland Assembly.

While this comes to us, albeit belatedly and with not very much time, many other issues are not coming to us at all. Perhaps the most notable and distressing is the whole question of the legacy of the past and the impact that failure to reach agreement on this has had on victims. On Monday in Belfast, I spoke at a conference, which continued for a couple of days, looking at post-traumatic stress disorder and the impact on individuals and groups of people in the community because of the Troubles in the past. There was a great sense of anger, from victims and from those working with them and dealing with them, that any agreements that they thought had been reached a year ago seemed to have fallen to pieces. Although both Her Majesty's Government and the Irish Government, in their comments in the foreword to *A Fresh Start*, point out that they are going to continue to discuss and try to reach understandings and agreements, there is a sense of betrayal on the part of victims and people who have worked with them that we are now back further than ever.

Can the Minister indicate whether he seriously believes that progress is going to be made on this, or is it the case that those outside the political process—outside the Government, the Assembly and the Executive—are going to have to find a way of taking responsibility for addressing these issues? Repeatedly, there has been disappointment, and there does not really seem to be much evidence on the hard issues that created the failure that much progress is going to be made over the next number of months.

As the Minister will probably realise, I also look with some scepticism at the monitoring device that is being proposed. I expressed some scepticism about the

[Lord Alderdice]
one that was proposed on the last occasion when we addressed this matter in the House, and I have every reason to believe that I was right, because it produced more problems than it resolved. It is not clear to me how what is proposed in the terms of reference for the upcoming monitoring commission will resolve any problems. It has much less power than the Independent Monitoring Commission, on which I sat. It has power only to produce a few proposals for the Executive, which will then fall into disagreement about how they should be implemented. That does not seem a satisfactory arrangement at all.

There is financial support, which one is glad to see. However, problems remain for the Police Service of Northern Ireland in dealing with the many issues of the past. Without sufficient resources, dealing with the legacy of the past will take away from the normal policing of the here and now.

Isolating this Bill from the rest of the issues, at best we will get it through quickly so that these matters can be addressed for the people of Northern Ireland. I hope that, frankly, the matter will continue to be dealt with in this Parliament. I know that there is a sunset clause that will end this legislation in 2016, but I see very little likelihood that there will be agreement by the parties to accept the real responsibility, which ought to be theirs, of dealing with social security matters. We may well have to deal with these things in the future but, if that is the only cost of reaching agreement and continuing with devolution, frankly, it will be a small price to pay.

Although the noble Lord talked about the legislative load that would come to us if devolution were to collapse, that is the least important thing. If devolution were to collapse, it would mean that the whole peace process collapsed, and the implications of that would be absolutely enormous. If the cost of keeping the show on the road is that we continue to address welfare questions through a follow-up to this legislation, I say to the noble Lord that it will be a small price to pay for the continuation of the other, more important parts. However, if the cost is a refusal to address the needs of the victims and the legacy of the past, that will gnaw away at devolution and at the credibility of the devolved institutions.

10.27 pm

Lord Browne of Belmont (DUP): My Lords, I very much welcome the Bill, which I regard as one of the most important components of the Stormont fresh start agreement. Welfare undoubtedly represented the most intractable problem which arose during the process of trying to achieve the successful implementation of the Stormont House agreement of 23 December 2014. I take this opportunity to pay tribute to all those who put short-term political considerations aside and worked tirelessly on behalf of all the people of Northern Ireland to bring about agreement on this very issue. In particular, the unwavering commitment of my party leader, Peter Robinson, deserves the highest praise, and there is no doubt that his impending retirement represents a significant loss for the whole community.

As the Minister pointed out, the Bill gives Parliament power to legislate for welfare reform in Northern Ireland, and it confers on the Secretary of State and the relevant Northern Ireland departments powers to make further provision by regulation and order. The passage of this Bill into law will at last bring to an end a period of financial instability, during which the Treasury has been forced to impose financial restrictions on Northern Ireland departments because of the failure of the Executive to reach agreement on welfare issues. Indeed, instead of facing fines of some £2 million a week, the Executive will now have a stable and sustainable budget, which is clearly a prerequisite for successful devolved government in Northern Ireland. I sincerely hope that all those involved will build on this agreement by working together to achieve the resolution of the outstanding contentious issues, referred to by the noble Lord, Lord Alderdice.

It is expected that the Bill will facilitate the extension of the provisions of the Welfare Reform Act 2012 to Northern Ireland. I welcome the fact that the Executive will retain the power to compensate some groups and, in particular, working families who may suffer a loss of benefits as a result. The agreement to increase efforts to tackle fraud and error in benefit payments should also, I believe, prove beneficial. The provision that the Executive can retain 50% of any money saved should provide an effective incentive.

It is important that the Bill is passed this evening so that the Order in Council containing regulation-making powers and measures to implement welfare reform may become law as soon as possible. I welcome the provision in Clause 3(3) that no Order in Council may be made under the Bill after 31 December 2016. But does the Minister agree that it might be reasonable to review the position after the Northern Ireland Assembly elections in May 2016?

Welfare reform has been blocked for almost four years by some parties in the Northern Ireland Assembly. Passing the Bill tonight will bring to an end an impasse, thus allowing the fresh start agreement to be implemented. This will allow the people of Northern Ireland to benefit from a welfare reform package that will meet their needs. I hope that we can all look forward to a peaceful and prosperous Northern Ireland. I support the Bill and trust that other noble Lords will take the same view.

10.32 pm

Lord Glentoran (Con): My Lords, I want to take this opportunity to speak on Northern Ireland matters because, over the last few years, I have been so frustrated by the lack of action in the Northern Ireland Assembly. It does not appear to have achieved anything positive recently. The Stormont House agreement was, at the time, excellent for what it was. But in my opinion this agreement is far less good, and we should not pretend anything different.

I personally do not wish to see direct rule again. I was on the Front Benches during direct rule before and it was not much fun, I can tell you. Equally, *A Fresh Start* does not, I am afraid, answer any of the difficult questions facing the Assembly today. The constitution needs to be changed—in fact, it must be changed—by

its own Assembly Members to allow a coalition between two and more parties to govern. An active form of opposition is very necessary to maintain pressure on the Executive and to ensure that *A Fresh Start*, as well as the previous agreements, is being adhered to and driven forwards.

In the agreement, the First Minister and Deputy First Minister said:

"We are profoundly aware that the leadership challenge is to build hope and confidence throughout our community so that we can all rise above narrow sectional interests to play a bigger part in creating a truly reconciled and regenerated community".

That statement has been signed by the First Minister and the Deputy First Minister, and, my God, I wish them well. They go on to say that:

"The essence of this Agreement, the vision which must inspire our leadership, is our shared belief that the civic values of respect, mutuality, fairness and justice must take precedence over those narrow values that too often manifest in division".

And have not we seen them for so long and so often? If this agreement is to work, this final comment is vital.

There are some failings in this new agreement, as have been mentioned a little already. First of all, as far as I can see, the disagreements over budget have not been solved. No reform there will suddenly allow the budget to be agreed to; I do not see it.

Dealing with the past is very important to the people of Northern Ireland. There are very many families out there which have lost loved ones and do not know where the bodies are, what happened to them and why. That must not stop the search for the past; that history must continue. When I was working with Owen Paterson when he was Secretary of State, one of the key things that we were trying to do quietly behind the scenes was to make it all happen.

Then we come to the cantankerous business of flags and parades. These things really get under people's skin during the seasons when they appear, particularly in the summer. I see nothing in this agreement that is going to solve that. It says that a commission is going to be set up. We have had a Parades Commission for years. Why do we need another one? Nobody took any notice of it. It did not obey the rules or the laws. Let us not get carried away by this new agreement. What I am saying is, "So what's new?".

On continued paramilitary activity, Her Majesty's Government are to provide £25 million over five years and, more importantly, £160 million over five years to support further the PSNI.

Earlier today I heard it said that the Northern Ireland economy was doing well, but in my part of the world it is not. Michelin has closed down its factories in Ballymena, withdrawing over the next three years. Gallaher tobacco is also pulling out. What is so great about our economy when two of our major employers are pulling out?

To counter that, perhaps, we are told in this agreement that, as of 2018, there will be a reduction in corporation tax. The major companies in Northern Ireland will be paying only 12.5% corporation tax, against 20% in the rest of the United Kingdom. That should help to entice new companies and new businesses into the Province.

Lastly, one of the most important matters is to improve the financial base of the economy. We have to create jobs for young people, and to ensure that the less well-off half of the population have available to them a much higher standard of education than they have today. Certainly in some areas, Northern Ireland's education is the best in the world. Our grammar schools and universities are great, but many families do not reach those standards. Some are living in houses where there is third-generation unemployment, with parents and grandparents who have never been to school and cannot read or write. That still exists, and we have to get rid of it. Let us hope that we can actually move forward. I do not feel very excited by this agreement but I am prepared to support it.

10.38 pm

Lord Hay of Ballyore (DUP): My Lords, first, I wish the First Minister of Northern Ireland, Mr Robinson, very well in his retirement, which I hope will be long, and I thank him for the legacy that he has left to Northern Ireland. I also thank the Secretary of State very much for her patience—in Northern Ireland, you need patience on many issues—and I thank Charles Flanagan TD, the Minister for Foreign Affairs and Trade in Dublin. Those two people worked extremely hard to get to where we are on this agreement. I welcome the fact that we have the Bill before the House this evening.

This has been a challenging time for all the political parties in Northern Ireland, and especially for the people of Northern Ireland. After 10 weeks of talks, a way forward was agreed on many issues. It was not easy for some of the political parties in Northern Ireland to come to that agreement. However, as other noble Lords said, they failed to break the deadlock over the legacy issues and, of course, the past. One issue that continually comes up to knock the political process in Northern Ireland is the past. As some noble Lords have said, we have long memories in Northern Ireland.

The agreement secures sustainability, especially for the Northern Ireland budget. There is an urgency to this legislation: Northern Ireland continues to lose money back to the Treasury until this Bill is passed. It is £2 million a week, as my noble friend Lord Browne said, which is a huge drain on the resources of the Northern Ireland Executive. Over the last four years there have been attempts to resolve the welfare question, which has contributed to the political crisis in Northern Ireland, especially in the Executive's finances. However, I believe that financial sustainability of the Executive is crucial for the success of devolved government in Northern Ireland, and that requires implementation of welfare reform. It certainly looked likely that this very issue would bring down devolved institutions in Northern Ireland. Northern Ireland could not continue to lose money every week because it did not implement welfare changes.

As the Minister said, the Bill does not of course affect the legislative competence of the Northern Ireland Assembly. It is very important that that is put on the record. The Assembly can still agree to pass welfare legislation. The Government here at Westminster can legislate for it as well. It is important that that is put on the record, too. I know that the noble Lord's plan to ask Westminster to do what Stormont failed to do and

[LORD HAY OF BALLYORE]
pass a welfare reform Bill for Northern Ireland is controversial in Northern Ireland, and here as well, but time is running out for the Assembly. We cannot afford to waste any more time on this issue. The alternative was to allow devolution to fall, with possible direct rule from London. At one point I remember talking to people back home who said, even within the corridors of the Northern Ireland Assembly, that that was a very strong possibility. There was a serious worry that direct rule would be coming from London. The stalemate that existed had not only financial costs but a credibility cost for the institutions in Northern Ireland. Their credibility was totally and absolutely called into question.

As I said, the last few months in Northern Ireland have been very difficult but it is time to implement the agreement. The document *A Fresh Start* is a milestone in the history of Northern Ireland. We should not be too negative about what we have achieved in Northern Ireland over the last 20 to 25 years. All our politicians have travelled a huge journey. Some are still travelling that journey and we should give them the support that they need at this minute in time to implement this agreement.

10.43 pm

Lord Eames (CB): My Lords, I rise briefly in the gap. I hoped fervently that this debate, which is important for the people of Northern Ireland, would be surrounded by the agreement of the leading parties in Northern Ireland on the contentious issue that has already been mentioned tonight: how we deal with the past. The noble Lord, Lord Alderdice, quite rightly reminded the House of the vital nature of this divisive issue. As one of your Lordships' House who probably sees more than others in my day-to-day work the desperate plight of the victims who are the inheritors of this—the living examples of the legacy of the past—I am disappointed that it was not possible for us to approach this debate with news that there had been agreement on how to tackle this legacy.

As a co-chairman of the Consultative Group on the Past, who has struggled to get recognition for groups of victims and has had to listen to their complaints and grievances almost daily, I hope that the swift passing of this Bill and the increased amounts it will make available will make it possible for this legacy to be tackled at last. I say to the Minister that perhaps the situation is not as bleak as it seems. If, as is being suggested, the papers that were presented during the discussions leading up to the Stormont agreement were published, we might see a greater consensus between the parties as to how the legacy can be tackled. I urge Her Majesty's Government to do what they can to encourage the publication of those papers, for I believe the victims and the people of Northern Ireland deserve nothing less. I wish this Bill well and I emphasise again that we cannot forgot the crying needs of the victims.

10.46 pm

Lord Rogan (UUP): My Lords, I am pleased that welfare reform in Northern Ireland is at last being addressed and is moving forward. However, I deeply regret that it is happening in Westminster rather than Stormont, where it should rightly be legislated for. Nevertheless, it will allow a log-jam created by the intransigence of Sinn Fein/IRA to be broken. It will, I hope, permit the Northern Ireland Executive to move forward and at last provide opportunities for that devolved Administration to begin to address bread-and-butter issues, which, for far too long, have not been properly addressed in Stormont. Those are issues such as how we attract more overseas investment, how we help home-grown businesses to develop and expand, how we rebalance our economy with a greater private sector and more manufacturing jobs, how we better educate our young people and thus create an even higher skilled workforce, and how we provide an improved health service and healthcare—and, in doing so, reduce the lamentable waiting list. These matters should be addressed by the Northern Ireland Assembly, as should the whole matter of welfare reform. Why has welfare reform been given back to the sovereign Parliament in Westminster to legislate for? Is it because Sinn Fein/IRA could not be seen to weaken their stance on austerity, or is it, as the Member for North Antrim stated in another place, that the Northern Ireland Assembly is dysfunctional, unworkable and incapable of making decisions? It is here that these matters are being discussed and I regret that we have to legislate for what should have been a devolved matter.

We are where we are but let it clearly be noted that, yes, the Northern Ireland citizens are getting a better and fairer welfare package than the rest of the citizens of Great Britain, but these extra benefits are not being funded by the United Kingdom Exchequer; they are coming out of the Northern Ireland block grant. As the Parliamentary Under-Secretary of State, Mr Ben Wallace, stated in another place, while,

"those flexibilities may turn out to suit the people of Northern Ireland … The UK Government will not fund on top of the existing UK roll-out".—[*Official Report*, Commons, 23/11/15; cols. 1104-05.]

It is clear that around £600 million will have to come out of the budgets of other Northern Ireland departments to finance this now-agreed welfare reform package. Who will bear this cost? Will it be, as I mentioned earlier, areas that desperately need improvement? Will it be education, the economy or health? It is regrettable that due to this rushed legislation these matters and other important issues could not be debated fully and clarified.

Much time and money have been wasted by the intransigence of Sinn Fein/IRA but I am glad that it has now done a complete U-turn and allowed this process to begin. I would much have preferred it if we could have achieved this in our own devolved Assembly, but that was not to be. So tonight let us collectively move forward and help all the people of Northern Ireland to have a fairer, better and, I hope, more prosperous and settled future.

10.50 pm

Lord McAvoy (Lab): My Lords, first, I pay tribute to the Minister, who has carried quite a heavy burden tonight. Quite a few of us have been here for the same length of time, but not carrying the same burden. He has stuck to his guns, sometimes even under pressure from the Privy Council Bench—on his own side, not from

this side. I also pay tribute to all our colleagues from Northern Ireland who have spoken. To be here at this time of night shows their commitment to what they have been saying and to Northern Ireland, which is commendable and appreciated by all of us.

I will try to curtail my remarks out of—I will not admit to compassion; that would ruin my reputation—some consideration for our colleagues who have been here all night. We will not be opposing the Bill this evening. As I have said before, we fully support the need for this and the Government bringing it forward. The noble Lord, Lord Alderdice, said quite rightly that it is not a new situation to be dealing with legislation such as this. We have been here before and we recognise the necessity of it.

It is important to acknowledge how difficult it has been in Northern Ireland over the past few months because it is in that context that we are debating this piece of legislation. It has appeared at times throughout the year, culminating in the past 11 weeks, that the talks were going nowhere. I understand the despair that people were feeling. As the noble and right reverend Lord, Lord Eames, said, it is to the huge disappointment of all of us that collectively we have not managed to do anything about the legacy of the past. Notwithstanding that failure to come to a conclusion on how to deal with the past, the noble Lord, Lord Hay of Ballyore, very generously mentioned all those involved in coming to this agreement, including the Irish Government and Members of Parliament, and that is also appreciated.

It has been said before that without an agreement there was the real risk of the collapse of devolution or indeed the return to direct rule, either of which would have been unthinkable. However, that has been avoided and that is why we believe that this agreement is significant and why we are lending our justified support to the Government. As part of the agreement, a consent Motion was agreed by the Northern Ireland Assembly to allow us to legislate for welfare reform at Westminster—a measure designed to ensure that the reform can take place as soon as possible without further financial penalties to allow stability to return and normal government arrangements to proceed.

It is never ideal when Parliament is asked to agree fast-tracked legislation—that has been made clear on all sides of the House—but it can be necessary. In this case in particular, expediting this legislation is the right thing to do. The agreement reached has also allowed other very significant measures, aside from welfare reform, to be adopted and other money released for the benefit of the people of Northern Ireland. This includes additional funding to the PSNI to combat the continuing terrorist threat; money and increased efforts to tackle paramilitarism and cross-border crime; and funds for community initiatives such as bringing down the peace walls.

The Bill will enable the Secretary of State to reform the welfare system. We still disagree with much of the present Government's welfare reform and will continue to speak out against it. However, we accept that the agreement allows Northern Ireland certain welcome exemptions and the ability to mitigate the impact of these cuts. This certainly demonstrates that the Government's welfare cuts, and indeed their austerity programme in general, are as much a problem for Northern Ireland as they are for any other part of the UK.

As the noble Lord, Lord Glentoran, mentioned, this agreement ensures stability and means the Northern Ireland budget can function properly, but of course we believe, as the noble Lord believes, that jobs, growth, prosperity et cetera represent a better way to manage the economy than cuts. Crucially, what is needed alongside any welfare reform is a focus on a programme for jobs and growth. The Government must now engage in rigorous work with the Northern Ireland Executive and Northern Ireland businesses to give such a programme greater urgency. Reforming welfare is about more than cutting benefits, it is about training, skills, opportunity, and tackling low aspiration and educational underachievement. That has to be recognised, and new programmes are needed.

I turn very briefly to the specifics of the Bill. If the Minister does not have the information to hand, I am more than happy to accept a letter. First, can he clarify the timetable and process for the Orders in Council which will follow this paving legislation? Secondly, what scope is there for consultation with respect to these orders? In the Assembly, the Minister for Social Development talked of agreement in principle to introduce the changes to the welfare system in Northern Ireland at Westminster. Does this mean amendment is possible? Thirdly, can the Minister detail which welfare parts of the Welfare Reform and Work Bill this legislative process actually covers? Finally, this legislation falls at the end of 2016—will the Minister confirm why this date was chosen?

We will not be opposing this legislation as we are of the view that the dangers of an agreement not being reached were huge, with potential restoration of direct rule. This has been averted. Northern Ireland political institutions are stabilised, notwithstanding the continuing debate, so let us ensure that the UK Government work with the Irish Government and all the parties and that we continue to support the building of not only a peaceful Northern Ireland but one of prosperity, fairness and opportunity for all.

It is appropriate to finish by echoing some of the tributes that have been paid to Peter Robinson for his service to Northern Ireland. I have mentioned previously that Peter and I were on the Northern Ireland Select Committee together, and we became and are good friends. He has travelled a long and at times rocky road, and became absolutely essential to the peace that we have in Northern Ireland at the moment.

10.58 pm

Lord Dunlop: My Lords, I begin by thanking speakers from all sides of the House for their helpful, constructive and supportive contributions to this debate and the noble Lord, Lord McAvoy, for his generous words. I echo what several noble Lords have said about Peter Robinson. It is always useful to hear views from across the spectrum and I shall try, in my closing remarks, to address as many of the points raised as I can.

The noble Lord, Lord Alderdice, asked why we had not moved more quickly. The Government were keen not to absolve the Northern Ireland parties of the responsibility that devolution brings, and the Secretary

[LORD DUNLOP]
of State was clear throughout that legislation in this Parliament was a last resort. We were also very mindful of the need, were we to legislate in this Parliament, to get legislative consent from the Assembly. The noble Lord also mentioned the issues around legacy. It is very regrettable that consensus on all aspects could not be reached. The Government have worked hard to build consensus with the Northern Ireland parties over many weeks of intensive discussion, and the Government remain committed to continuing to work to build consensus on legacy issues. That is very much for the reasons about which the noble and right reverend Lord, Lord Eames, spoke so powerfully, with his focus on finding closure for victims. I was very much encouraged by his message of hope.

The noble Lord, Lord Alderdice, also mentioned a body to monitor paramilitary activity. The establishment of a monitoring body to assess the impact of paramilitary activity on local communities is a crucial part of the final agreement between the Northern Ireland parties. The new body will measure the impact of paramilitary activity on local communities, as well as monitoring the delivery of the strategy to be developed by the Executive to bring an end to all paramilitary activity in Northern Ireland.

Turning to what the noble Lord, Lord Browne of Belmont, asked on the review of the sunset date after the Assembly elections, the Government's strong view is that it is essential that the sunset clause runs until 31 December 2016. An earlier end date would mean that the necessary structural changes to the Northern Ireland welfare system could not take place. In other words, there has to be sufficient time to undertake other reforms such as those provided for by the Welfare Reform and Work Bill. This was a point accepted in the agreement reached last week and confirmed by the legislative consent motion passed by the Assembly last Wednesday.

The noble Lord, Lord Glentoran, raised a number of issues about the *Fresh Start* agreement and I very much agree with what he is saying about the future in Northern Ireland, which is really about getting a strong economy in Northern Ireland. He talked about the finances of the Northern Ireland Executive and said that securing the implementation of welfare reform legislation is absolutely critical to putting those finances on a more secure footing. It is not a free lunch and included in the *Fresh Start* agreement is enhancing the fiscal responsibility of the Northern Ireland Executive through additional financial controls to limit the Executive's potential to set unrealistic budgets in future. Key to that is a new, independent fiscal council for Northern Ireland.

The noble Lord, Lord Hay, talked about the cost of not implementing welfare reform, and he was right to highlight that failure to implement welfare reform is costing the Executive around £2 million a week. That is the difference between what the Treasury is prepared to fund up to parity with Great Britain and the cost of continuing to run the old, unreformed welfare system. The Northern Ireland Executive estimates that the cost to their budget next year will rise to more than £200 million and to more than £500 million by the end of this Parliament. That is clearly unaffordable, and these figures do not even take into account the cost of IT.

In terms of some of the points raised by the noble Lord, Lord McAvoy, I am very happy to write to him. We have taken this broad power because, when the 2012 welfare reform measures were first introduced, Northern Ireland's Department for Social Development agreed certain administrative flexibilities with the Department for Work and Pensions. These included, for example, a slightly different sanctions regime and the ability for welfare payments to be made to claimants on a fortnightly rather than a monthly basis. Clearly, as I have said already, we have chosen a date that makes it possible to implement other 2015 reforms that are still in train.

I hope that answers most of the points. If I have not answered all the points then I am of course very happy to write to the noble Lord.

Bill read a second time.

Viscount Younger of Leckie (Con): My Lords, I beg to move that the House do adjourn during pleasure until a time to be advertised on the annunciators. It may be helpful if I add that the House will adjourn for at least 10 minutes to allow Members to inform the Public Bill Office if they wish to table amendments. If there are no amendments, the House will resume in 10 minutes' time to take the remaining stages of the Bill. If there are amendments, there will be a longer adjournment to allow the amendments to be tabled, printed and distributed.

11.04 pm

Sitting suspended.

11.15 pm

Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time and passed.

House adjourned at 11.16 pm.

Grand Committee

Tuesday, 24 November 2015.

Electricity Capacity (Amendment) (No. 2) Regulations 2015

Motion to Consider

3.30 pm

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

That the Grand Committee do consider the Electricity Capacity (Amendment) (No. 2) Regulations 2015.

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

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, this draft instrument is an amending regulation to the main secondary legislation package for the capacity market scheme, part of the electricity market reform programme. The powers to make this implementing secondary legislation are found in the Energy Act 2013, which, following scrutiny in this House and the other place, received Royal Assent in December 2013 with cross-party support.

The two changes contained in the draft instrument are simplifications intended to make the process easier for applicants, and were overwhelmingly supported by respondents in the consultation, but before I explain them in more detail it may be helpful to the Committee if I say a few background words about the capacity market itself.

I remind noble Lords that the capacity market will address our medium-term electricity needs and ensure that there is sufficient electricity supply towards the end of the decade and beyond. In brief, the capacity market will achieve this by making a regular capacity payment to providers who are successful in capacity auctions. In return for this payment, providers must meet their obligations to provide capacity, or reduce demand, when the system is tight, ensuring that enough capacity is in place to maintain security of electricity supply.

Ensuring that families and businesses across the country have secure, affordable energy supplies that they can rely on is our top priority. That is why we already have firm mechanisms in place, working closely with National Grid and Ofgem, to maintain comfortable margins on the system over coming winters.

Beyond that, it is essential that generators have confidence that they will receive the revenues that they need to maintain, upgrade and refurbish their existing plant, and can finance and build new plant to come on stream as and when existing assets retire. Equally, we want to make sure that those who are able—without detriment to themselves and the wider economy—to shift demand for electricity away from periods of greatest scarcity are incentivised to do so.

That is why we have the capacity market. The first auction, held in December 2014, saw a good outcome for consumers, as fierce competition between providers meant that we obtained the capacity that we will need in 2018-19 at prices below the levels that many had expected. That translates into lower consumer bills.

This instrument makes two minor changes to improve the capacity market, based on feedback from stakeholders. First, this instrument substitutes a new definition of "relevant grant" in Regulation 17, and secondly it extends from five to 15 the number of days in Regulation 59(3) of the 2014 Electricity Capacity Regulations, to permit providers a longer period in which to submit credit cover after receiving a conditional pre-qualification notice.

The amendment to the definition of "relevant grant" will ensure that grants, the purpose of which is to support feasibility studies or research and development in relation to carbon capture and storage, will not preclude participation in the capacity market. The essential feature is that the CCS support should not have provided effective material support which has put a provider at an advantage compared to others which have not so benefited. This will not be the case for such early stage grants for CCS purposes: hence the amendment. The second amendment amends the number of days from five to 15 to allow applicants, after receiving a conditional pre-qualification notice, longer to submit credit cover.

My department consulted on the two changes in March 2015 and received 22 responses. The vast majority of stakeholders who responded were content with the changes proposed. I look forward to hearing what noble Lords have to say on these proposed changes. I beg to move.

Lord Teverson (LD): My Lords, it is the first time that I have spoken in any meeting of the House since the Secretary of State announced that coal was going to come to an end within 10 years, and I congratulate the Government and the Secretary of State on that announcement, which is a major step forward. I disagree with a great deal of government energy and climate change policy but that is an excellent move forward, and I would like the Minister to note that and pass it on.

I have a couple of questions about the capacity market, although I have no issues with this statutory instrument. Will the Minister update us on interconnectors and the capacity market? There have been plans to bring on demand reduction aggregators but in the short term rather than the long term. I would like to think that we can bring on institutionalised demand reduction and aggregation much more than we have done in the past, something which is very much in the Government's interests. On the reduction of fossil fuels, I recall that quite a number of the successful tenderers for capacity payments were coal generators. Do the Government have any plans to exclude them as we move forward to auctions?

We are now down to a very low level of margin, yet the National Grid and the Government seem fairly relaxed. Does that mean that a 20% margin in the past has been a waste of expensive resource that was not

[Lord Teverson]
needed and that we should have been managing on much smaller margins? I should be interested to hear the Minister's response on those issues.

Baroness Byford (Con): I should like to make two observations. The Minister has said that the vast majority accept the proposals, so which respondents did not? I have no difficulty with the proposed change from five working days to 15, but there has been a suggestion in the public domain that electricity supplies could be fairly fragile in the coming months, particularly if we have very cold weather. How has that been built into the system? I am glad that feasibility studies were done and were accepted, but what is the comfortable margin of security of supply in the months ahead? Those are my questions: who did not support these proposals, and what do the Government consider a comfortable margin of security supply?

Lord Grantchester (Lab): I thank the Minister for his introduction of the regulations. The amendment they contain is minor and uncontroversial, extending to carbon capture and storage the possibility that it could participate in the capacity market. The Government now seem to recognise the potential of CCS, as evidenced by the amendments recently agreed in the Energy Bill, now passed to the other place. They had previously not considered CCS as sufficiently relevant operationally to the capacity market, and this amendment allows that CCS projects which will in the first instance have received grant support or funding arrangements for early stage developments can now qualify for participation in the capacity markets. The essential feature is that this early stage support should not materially put the provider at an unfair advantage compared with others without that support. The greater matter is that any provider that can shift demand away from periods of greater stress without detriment should be encouraged.

I am content that this proposal was overwhelmingly supported by respondents to the consultation. Will the Minister clarify the Government's intention a little further? While it is true that there is not as yet any deployed carbon capture and storage in this country, is it intended that CCS will eventually pre-qualify for capacity auctions in its operational phase?

It has been understood from the Government's scoping document earlier this year that the operation of CCS plant operational support would take place through a form of modified contracts for difference rather than through capacity auctions. I would be grateful if the Minister could signal the Government's intentions as early and comprehensively as he can to provide certainty about the direction of travel to developers. This amendment, and future intentions, could begin to allow the development of an industry that could be very valuable for the long-term use of fossil fuels. The noble Lord, Lord Teverson, has congratulated the Government on their plans to phase out coal generation, and we certainly support this direction of travel.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords, Lord Teverson and Lord Grantchester, for their kind words regarding the speech given by my right honourable friend the Secretary of State, Amber Rudd, last week in relation to the withdrawal of coal-fired power stations, with the aim of doing that by 2025. It was most kind and gracious of them to say what they did.

I turn first to the questions raised by the noble Lord, Lord Teverson. Yes, we are looking at interconnectors, I think to Norway and Ireland, in addition to the existing interconnectors as part of the capacity issues that we are addressing, and we are looking at the possibility of them elsewhere, including Iceland. That is a large part of what we are doing.

The Statement on coal was of course subject to a consultation, as the noble Lord will know, which opens in spring next year, I think, subject again to ensuring that we have the necessary capacity in relation to gas-fired stations coming on stream. Still, a clear market signal was given in the speech. Demand reduction is a significant part of what we are doing, and of course there will be a demand response auction as well in the new year.

With regard to the system margin causing concern, there is a trigger for this. At the moment we are very confident of the 5.1% margin with regard to the announcement of the most recent one. To the noble Lord's suggestion that a 20% margin is more than we need, I suppose the answer must be yes—that must follow. However, obviously one wants to stray on the side of safety so we are seeking to address this. Although the margin is comfortable, we have to look ahead. The next few years look comfortable but we need to bring on the new nuclear and look at other forms, such as small modular reactors and so on. That, too, is important.

I turn to the questions raised by my noble friend Lady Byford. First, on the consultation, I think I am right in saying—the team behind me will correct me if I am wrong—that out of the 22 responses, 21 were supportive.

Baroness Byford: That is a majority.

Lord Bourne of Aberystwyth: It is a huge majority that a lot of parliamentarians would be content with; it is roughly 95%, so it is pretty convincing. If the noble Baroness wants more information, I am happy to supply it.

The second question was a very fair one: what is a satisfactory margin? It is dependent on many factors. As I say, we are confident that 5.1% is a sufficient margin but it is on the tight side so we are trying to build in additional capacity. It is dependent on many factors, most obviously the weather, as well as political factors, such as where gas is coming from. I remember from my very first visit to the National Grid in Wokingham that someone, armed with the *Radio Times*, was trying to assess whether there was going to be additional demand on the system, such as England playing a football match. Notoriously, at half-time—or into penalties, as it inevitably goes—people go and put the kettle on. Work is done on looking at factors like that. So there are lots of additional factors, but 5.1% seems to be a sufficient margin although, as I say, on the tight side.

I turn to the questions from the noble Lord, Lord Grantchester. Regarding the ongoing position with CFDs, my right honourable friend the Secretary of State announced in her speech that there would be contracts for difference in 2016, and we will set out nearer the time what the technologies are; I suspect that some will not be there, such as onshore wind, but that is just a view. We will set out closer to the time the precise way that that will work. I very much welcome his kind words.

Lord Teverson: If the Minister will allow me, I would like to come back on one point. I welcome his comments on interconnectors; they are something that over the past five years or so the Government have got more into, and they are an important part of energy supply. I recognise what he was talking about. However, I had the impression that there was an impediment to interconnectors bidding into the capacity mechanism system. That is as I understood it but I may be wrong. If that is the case, are the Government trying to rectify it? It is an important area of increasing competition that could reduce the cost to consumers.

Lord Bourne of Aberystwyth: I was unaware that there was a problem. However, 2015 is the first year in which the capacity market extends to interconnectors, so we are anticipating some activity. I hope that that satisfies the noble Lord, who asked a very fair question.

Lord Teverson: I thank the Minister and welcome that response.

Motion agreed.

Renewables Obligation Order 2015

Motion to Consider

3.47 pm

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

That the Grand Committee do consider the Renewables Obligation Order 2015.

Relevant document: 3rd Report from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the renewables obligation is a long-standing mechanism for supporting renewable electricity generation in the UK. It places an annual obligation on licensed UK electricity suppliers to source a specified proportion of the electricity that they provide to customers from eligible renewable sources. The scheme is administered by Ofgem, which issues renewables obligation certificates to electricity generators in relation to the amount of eligible renewable electricity that they generate. Generators sell their certificates to suppliers, who use them towards meeting their obligation. Since it was introduced in 2002, the renewables obligation has played a key part in increasing the level of renewable electricity from 2.9% of total UK generation in 2002 to over 25% in the second quarter of this year. It supports around 22 gigawatts of accredited capacity.

The renewables obligation scheme has been subject to a number of changes in recent years. The draft Renewables Obligation Order 2015, which I am putting before the Committee today, revokes, consolidates and re-enacts the Renewables Obligation Order 2009 and the orders that have amended it since it came into force on 1 April 2009. It also makes consequential amendments to the Renewables Obligation Closure Order—in other words, a significant part of this order is a consolidation measure. The consolidation simplifies and brings together in one document the main legislation underpinning the renewables obligation, making it more accessible to those who use it, including the Government and industry stakeholders.

The draft Renewables Obligation Order 2015 also implements outstanding policy decisions on the renewables obligation consulted on in 2013 and 2014. The changes focus on three areas: strengthening the sustainability of biomass electricity generation; providing for biomass conversion projects with an investment contract to regain eligibility for support under the renewables obligation in certain circumstances, which I will go into; and providing for the transfer of biomass co-firing and conversion projects to the capacity market mechanism.

An earlier draft of the order was published for a three-week technical consultation on 24 March 2015. Comments were received from 18 respondents, mainly representing the biomass sector. The majority of responses focused on the detail of how the biomass sustainability land criteria had been incorporated in the draft order. We have considered all of the points raised carefully and have taken them into account where appropriate.

I turn now to the detail of the new provisions in the draft order. The first set of new measures is aimed at strengthening biomass sustainability criteria. The Government are committed to achieving sustainable and cost-effective bioenergy deployment, which drives carbon savings, minimises the environmental risks and makes best use of the biomass resource available, both for energy and non-energy purposes. Currently, there are mandatory sustainability criteria in the renewables obligation for the use of bioliquids, which transpose certain requirements in the renewables energy directive. Since April 2014, generating stations of 1 megawatt and above capacity, using solid or gaseous biomass, have been required to report only on whether they meet greenhouse gas emissions and land use criteria. This draft order consolidates previous changes and makes compliance with the greenhouse gas emissions and land criteria mandatory for generating stations using solid or gaseous biomass, in order to receive support under the renewables obligation, as is the position for bioliquids.

These measures will ensure that renewable generation from home-grown or imported solid or gaseous biomass receives financial support only where that biomass delivers genuine greenhouse gas emissions savings compared with fossil fuel, and where it is sourced from land that is sustainably managed, not from land with a high biodiversity value or carbon stocks. This area of forestry and timber will be an important part of negotiations in the Paris climate change discussions on 1 December, the day after the conference opens.

[Lord Bourne of Aberystwyth]

On greenhouse gas criteria, biomass power generation is already required to meet a greenhouse gas savings target of at least 60% compared with the EU fossil fuel average, and this target becomes tighter in 2020 and 2025, increasing in 2025 to 75%. This draft order introduces a new methodology for calculating an annual average greenhouse gas emissions figure for all biomass used by a generating station, excluding certain types of waste. The purpose of this calculation is to ensure that generators are not penalised if an individual biomass consignment exceeds the greenhouse gas target due to circumstances beyond their control, such as bad weather increasing transport distances. This is subject to the provision that each individual consignment of biomass must not exceed an overall ceiling. This prevents mixing extremely high-emission consignments with lower-emission consignments as a means of 'washing through' fuel consignments with unacceptably high greenhouse gas values. I am sure that noble Lords will appreciate that the intention is to be fair in relation to acts of God, extreme weather and so forth, but without providing an opportunity to circumvent what is a sensible provision.

On land criteria, the draft order requires generators using wood fuel to comply with specific land criteria, derived from the *Timber Standard for Heat & Electricity*—a domestic regulation, not influenced by Europe—which draws on the principles set under the Government's timber procurement policy. There are some exemptions introduced for certain low-risk categories of wood, such as arboricultural residues—basically hedges—and material removed from non-forest land for ecological reasons. These criteria have been developed following engagement with interest groups and were consulted on in August 2013 and in 2014. They take into account a range of social, economic and environmental issues, including protecting biodiversity, land-use rights, sustainable harvesting and regeneration rates.

The draft Renewables Obligation Order also makes minor technical adjustments to the sustainability criteria for non-woodfuel biomass which correspond to the land criteria for bioliquids, for example, to implement recent EU legislation. It amends the reporting requirements for wood fuel to enable government to monitor more effectively the use of different types of wood by the bio-energy sector, as well as making the reporting provisions more workable for industry. Ofgem will regulate compliance with the mandatory greenhouse gas and land criteria. Generating stations using biomass which have a capacity greater than or equal to 1 megawatt must prepare and submit an annual sustainability assurance report which is compiled by a third party auditor or verifier.

The second new measure relates to implementation of the final element of the renewables obligation to contracts for difference transition policy. The first competitive contract for difference auction for renewables support was completed earlier this year and has allowed us to support low-carbon electricity projects at a lower cost to the consumer. This draft order provides for a biomass conversion unit or station which has previously entered into an investment contract under the final investment decision enabling for renewables process to regain its eligibility for support under the renewables obligation, including conversion-level support, if the contract is terminated for a "permitted termination event", such as failure to secure, or a delay in securing, state aid approval from the European Union. This specific transition measure is necessary because the investment contract process commenced in 2014, ahead of the rest of the electricity market reform, and contracts were awarded ahead of state aid clearance. It aims to provide the assurance and comfort needed to encourage ongoing investment, safeguard security of electricity supply and ensure value for money for consumers. It may well affect two ongoing projects.

The third new measure in the draft order provides for combustion units to bid into the capacity market and leave the renewables obligation if successful in that bid. As we know, the purpose of the capacity market is to ensure that there is sufficient investment in the overall level of reliable capacity—both supply and demand side—needed to ensure secure electricity supplies. It will bring forward investment at least cost to consumers by allowing the market to set a price for capacity competitively. The first capacity market auction was held at the end of last year for delivery of capacity in 2018-19.

Biomass co-firing or conversion stations or units which wish to transfer from the renewables obligation into the capacity market will be able to claim support under the renewables obligation until the last day prior to the first day of the delivery year under their capacity market agreement—so it will be seamless—as long as they have given a capacity market transfer notice to Ofgem. This will ensure that all stations which are primarily coal-firers but have at some point claimed low levels of biomass co-firing renewable obligation certificates, and remain accredited under the renewables obligation, have a chance to enter the capacity market.

In addition, a biomass co-firing unit or station can withdraw from its capacity market agreement to fully convert under the renewables obligation prior to the first day of the delivery year under its capacity agreement—so it applies in both directions—or before closure of the renewables obligation to new generating capacity from 1 April 2017, whichever is earlier. The aim of this order is therefore mainly consolidation but with some necessary amendments in relation to biomass which I have set out. With that, I beg to move.

Lord Teverson (LD): My Lords, I declare an interest in that I was in front of a very warm wood-burning stove over the weekend in my house, and therefore am a great supporter of wood biomass at a domestic level. There is great pressure these days from various NGOs to take biomass out of the renewables mix. I think the approach of the last Government and this Government has been absolutely right in tightening the definition of sustainable biomass, as this SI does, rather than throwing the baby out with the bathwater and saying, "This is all wrong". That is the right approach.

4 pm

I understand the enforcement processes to some degree but the Minister mentioned that there had to be an audit of the process. Will he reassure us that

there will be enforcement in this area? Biomass comes in globally, as well as locally. It comes from all sorts of sources, and monitoring those supply chains, as we know from the food industry equivalent, is very difficult indeed. Enforcement is almost more important than the rules themselves. I ask the Minister how he sees the state of that enforcement and how it can be made to work effectively. How can we reassure ourselves that the biomass that we support is what we want to be in our generating system?

I was going to ask the Minister to explain the formula at the top of page 75 in paragraph 6 of Part 2 as I could not quite work it out. Perhaps he will write to me.

Baroness Byford (Con): My Lords, I shall follow the noble Lord again—we seem to be following each other around this afternoon. The Minister referred to the fact that some of the products will be imported, but the agreement was a domestic standard rather than an international one. My query merely follows on from what the noble Lord has just said. Are we requiring a higher standard of our producers here than perhaps of those coming from abroad? How does the Minister justify that in relation to what we are trying to do, which is to allow us to include biomass as a worthwhile product while, again, looking at sustainability for land, particularly forestry and woodland? I do not have a wood fire but I burn logs that fall off our trees from time to time. If we have a domestic standard, how is that different from the international standard and how will it be reviewed at the end of each cycle? That is not clear within the order.

Lord Moynihan (Con): My Lords, I find it difficult to believe that it was 25 years ago when I was the Minister responsible for energy that I introduced the first non-fossil-fuel obligation, which has subsequently moved into an excellent series of initiatives that I very much support.

I have just two comments. The first picks up on the capacity market, which the Minister has just raised, and which the noble Lord, Lord Teverson, referred to in the context of interconnections. I understand from what the Minister has just said that renewable technologies will certainly be able to bid into that.

I have a question on sovereignty with regard to the development of interconnections. A country just across the Channel will face similar weather conditions to ourselves, and we are focusing our capacity market not only on bitterly cold weather but when the wind is not blowing during that bitterly cold weather for an extended period of time. That is more than likely to be the same in the neighbouring country, which will no doubt have a high level of demand for energy in its own right. How will the Government address the question of sovereignty over contractual arrangements?

My second question is a specific one from the recent consultation on adjustments to sustainability and reporting provisions for biomass. I note that the majority of responses were very positive to the Government's proposals but there was one exemption to that, which related to the exemption from the land criteria on the timber standard when a number of respondents suggested that the exemption should be applied to a wider range of wood and wood residues. In that context, I see that the Government rejected that series of representations and I wonder if the Minister could give the Committee a little more detail on the reasons for that rejection.

Lord Grantchester (Lab): I thank the Minister for his explanation of the order. It is not particularly controversial. The Minister underlined that the RO scheme has been particularly successful in increasing the level of renewable electricity from the 3% generated in 2002 to 25% today. It is helpful that the order will consolidate into one document the Renewables Obligation Order 2009 and the orders that have since amended it, and that it will be the main instrument underpinning the RO, thus making it more accessible. We should perhaps note that the Renewables Obligation Closure Order 2014 remains valid pertaining to the closure of the RO to onshore wind in particular, something that the Government have been keen to amend through the Energy Bill that was recently in your Lordships' House. The Renewables Obligation Closure (Amendment) Order 2015, regarding solar renewable electricity, also remains pertinent.

This order also implements outstanding policy decisions that were subject to consultation in 2013 and 2014, predominantly concerning biomass electricity generation—not only in consolidation, as I said, but also in regulations relating to its sustainability. We welcome the fact that the order should ensure the sustainability of biomass throughout the chain of biomass procurement, transport and production. Providers will now be eligible to enter the capacity market through giving advance notice to Ofgem that they have complied with the list of requirements concerning specific land criteria and other issues. This has been admirably developed from engagement with interest groups, taking account of social, economic and environmental aspects. Co-firing is also within the order, which is welcome.

I ask the Minister for further clarification concerning compliance with mandatory greenhouse gas emissions. To be able to receive financial support, biomass must deliver emissions savings in comparison with fossil fuels. In the submission of sustainability and emissions reductions, are the criteria likely to be accumulative throughout the chain? Will there be a total score to be complied with, in addition to providing evidence of sustainability at each stage? I ask this because it could be envisaged that further development of the methodology could be incorporated through amendments to the order at a later date, or even that greenhouse gas emissions relative to fossil fuels could be tightened further, beyond the level that the Minister stated. Perhaps the Minister could outline whether Ofgem will provide guidance on this issue, especially in relation to EU directives on biofuels. Is the Minister satisfied that there is no formal sanction for not meeting sustainability criteria beyond the so-called "acts of God" that he outlined?

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on the draft order. I seek to deal with the points raised by noble Lords in the order in which they were raised.

[Lord Bourne of Aberystwyth]

I turn first to the points raised by the noble Lord, Lord Teverson. I thank him for declaring his interest in his own coal-fired facility—I apologise: I meant to say "wood-fired facility". We are indeed tightening the definitions of what is eligible. The audit process is significant. First, there are some de minimis exceptions for small suppliers; I shall write to noble Lords who participated in the debate to outline what those exceptions are. Secondly, I think that the noble Lord was making the point that enforcement overseas is more difficult. We require limited assurances in relation to what is happening overseas, and once again I will write with details of that process.

I move on to points raised by my noble friend Lady Byford in relation to the standard that we are setting. I think it fair to say that we are ahead of the game, but for a good reason: the European standard will almost certainly be the same. Work on that is going on at the same time as on our own domestic standards. It is just that we are there first, so we do not have to catch up; we are ahead of the game. My noble friend noted that she does not have a wood fire. The noble Lord, Lord Teverson, will have picked up that point and will no doubt want to ask her over to experience his. I am glad to be able to bring them together in this way.

I turn to points raised by my noble friend Lord Moynihan. I thank him for his early pioneering work in this area, which we continue to take forward. He made a fair point about the interconnections and the weather effect on the continent, which is likely to be the same as here. That is absolutely true. This is only one factor that influences the capacity issue, although it is a significant one. An interesting issue that we are researching arose recently in one of the Sunday newspapers: to switch to double British summer time. Not only would that reduce demand per se, it would put us out of line with peak demand on the continent. That is something worth looking at. It is an indication of the imaginative ways in which we can do fairly painlessly the things that we are looking at.

My noble friend Lord Moynihan also raised the issue of the range of woods required to be reported on in relation to the tightened requirements. It is true that some people suggested tightening that range while others wanted the requirements not to be so tight. All these things are a question of balance. One issue that was raised in the consultation on the tightening grip of requirements, and I will give more details on this in the letter, is that this reporting requirement is quite a burden for some businesses, so we are trying to get the balance right there.

I thank the noble Lord, Lord Grantchester, for his comments on the consolidation and in general on biofuels and the tightening of the conditions in relation to this area. I will write to him on specifically how we deal with the supply chain, because that was a fair question that demands a fuller answer. In relation to fuller answers, my officials were delighted with the question about the formula on page 75, so we will ensure that the noble Lord receives a fuller response on that if he really requires one.

Motion agreed.

Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015

Motion to Consider

4.12 pm

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

That the Grand Committee do consider the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015.

Relevant documents: 3rd Report from the Joint Committee on Statutory Instruments, 8th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, we are today considering an instrument which sets out definitions for the "protected groundwater source areas" and "other protected areas" in which hydraulic fracturing will be prohibited. The powers to make this secondary legislation are found in Section 4B of the Petroleum Act 1998, as inserted by Section 50 of the Infrastructure Act 2015, which, following scrutiny in this House and in the other place, received Royal Assent in February 2015.

Before outlining what the draft regulations seek to do, I will take this opportunity to restate the Government's commitment to a low-carbon and affordable future for energy. Gas, the cleanest fossil fuel, still meets a third of our energy demand and we will need it for many years to come. It is vital that we seize the opportunity to explore the United Kingdom's shale gas potential while maintaining the very highest safety and environmental standards. We have established these standards as world leaders in extracting oil and gas over decades.

Shale can and will be developed safely. The UK has over 50 years' experience of safely regulating oil and gas exploration. We have world-class, independent regulators who will not allow operations that are dangerous to local communities and the environment to go ahead. Safety is and always will be absolutely paramount. Highly respected independent bodies such as the Royal Society, the Royal Academy of Engineering and Public Health England have reported that risks associated with developing shale gas in the UK can be managed effectively if operational best practices are implemented and enforced through regulation. We have a strong regulatory regime for exploratory activities, which we will look to review continuously as the industry develops. We insist on the highest safety standards, and all this is backed up by independent checks from the regulators.

4.15 pm

There is no denying it: 80% of us use gas for heating and cooking, and industry uses gas in many everyday products. At the moment we import around 40% of our gas needs, and by 2030 we could be importing three-quarters of the gas that we use. Shale is vital, not just to reduce our reliance on imports but because it can also create an energy "bridge" while we further develop renewable energy, improve energy efficiency

and build new nuclear generating capacity. Importantly, studies have shown that the carbon footprint of electricity from UK shale gas would likely be significantly less than unabated coal and lower than imported liquefied natural gas. Shale offers a valuable decarbonisation route from where we are today to where we want to be in future. Exploring for shale will also help to create jobs and grow local economies. Investment in shale could reach £33 billion and support as many as 64,000 jobs in the oil, gas, construction, engineering and chemical sectors.

I turn to the draft regulations. As noble Lords may be aware, Sections 4A and 4B of the Petroleum Act 1998 set out further safeguards for onshore hydraulic fracturing in England and Wales to provide the public with confidence that the developing shale industry is being taken forward in a balanced and measured way. The Act contains a number of conditions that must be satisfied before a hydraulic fracturing consent is issued by the Secretary of State. This includes two conditions specifying that associated hydraulic fracturing cannot take place within "protected groundwater source areas" or "other protected areas". These two terms are not defined in the Act. Instead, the Act contains a requirement for the Government to produce draft regulations with the definitions and to lay them in both Houses by the end of July this year. Honouring this commitment, we laid the instrument, in draft, on 16 July.

The draft regulations will afford greater protection to some of our most precious areas, in a manner that meets the Government's broader policy objective of supporting the long-term development of the UK's shale gas industry. Regulation 2 defines "protected groundwater source areas". The definition is equivalent to the regulators' existing definition of source protection zone 1, which applies to those areas close to drinking water sources where there is the greatest risk associated with groundwater contamination. As required by Section 4B of the Petroleum Act, we consulted with the Environment Agency and Natural Resources Wales when formulating our proposed definition of "protected groundwater source areas". Both agencies confirmed that they were content with the definition being aligned with source protection zone 1, as this reinforces their approach to controlling risks from other groundwater activities.

The draft regulations ensure that the process of hydraulic fracturing cannot take place at depths above 1,200 metres within these areas. The vast majority of drinking water supplies are located at depths above 400 metres. This limit therefore provides a buffer of at least 800 metres between the depth of most drinking water sources and the highest possible level at which hydraulic fracturing can take place. This exceeds the safety depth recommended by the most cautious scientific reports.

It is worth noting that if the environmental regulators assess that more stringent controls are needed to protect groundwater, these can still be applied as conditions in the environmental permits required for all developers. The environmental regulators have successfully influenced operators not to apply for sites in these zones and have made sure that pipelines do not run through these areas. What is more, if either of these agencies assess that more stringent controls are needed to protect groundwater, these will be applied as conditions in the environmental permits required, as I say, for all developers. The proposed definition would not impact on the environmental regulators' current powers to refuse permit applications within source protection zones 1, 2 or 3, or wider on a case-by-case basis, if they consider that an activity poses an unacceptable risk to the environment. So, in addition to the regulations a discretion can be applied via the environmental regulators that is more stringent even than those in the regulations, if it is considered that an activity poses an unacceptable risk to the environment.

I turn to Regulation 3, which really comes in two parts. One part relates to the depth at which the fracking can be carried on, which is always at least 1,200 metres below ground. I will come to some specific areas where it will be more than that and where there will be a control on what happens on the surface, as it were. Regulation 3 defines "other protected areas" as national parks, the Broads, areas of outstanding natural beauty and world heritage sites. The regulations ensure that the process of hydraulic fracturing cannot take place above 1,200 metres in these areas.

In defining protected areas there is a need to strike the right balance between affording them additional protection and stifling the nascent shale industry. The Government firmly believe that the depth limit chosen, 1,200 metres, strikes this balance. In addition, national parks, the Broads and areas of outstanding natural beauty are our finest landscapes and are afforded the highest protection within the planning system in relation to landscape and scenic beauty. Similarly, world heritage site status is the highest international heritage designation. Our world heritage sites are irreplaceable, and the Government take their responsibility to conserve and protect them very seriously.

We recognise that concerns have been expressed about fracking from wells drilled at the surface of some sensitive areas. The draft protected areas regulations can relate only to the subsurface process of fracking, in accordance with the requirements and provisions of the Infrastructure Act 2015. However, we have separately committed, in a way that is not intended to impact on conventional drilling operations, to ensure that fracking cannot be conducted from wells that are drilled at the surface of our most valuable areas. That will be reflected in the licensing and environmental permits process. We are minded to apply the surface restrictions in sites of special scientific interest, in Ramsar and Natura 2000 sites, which are very similar—Natura is a European designation, Ramsar an international one—as well as in the areas covered by the draft regulations. We are currently consulting industry and other interested parties on how best to implement these surface restrictions.

I stress that, even with these draft regulations, a company looking to develop shale will still need to obtain all the necessary permissions, including planning and environmental permits, before hydraulic fracturing can be carried out. Those are in addition to these requirements. As part of the licence, permission and permit procedures, the environmental impact of operations, and any risks associated with them, are assessed by regulators and through the planning system

[Lord Bourne of Aberystwyth]
on a case-by-case basis. All oil and gas sites need permits under the Environmental Permitting (England and Wales) Regulations 2010, as well as planning permission from the relevant planning authority. The National Planning Policy Framework and supporting practice guidance clearly state that, in respect of minerals like shale oil and gas, new development should be appropriate for its location. Let me be clear: if the risks of a proposed shale activity are deemed unacceptable, the environmental regulators will simply not allow it to go ahead, irrespective of the area or depth.

In line with the Small Business, Enterprise and Employment Act 2015, Regulation 4 commits us to carry out a review of the regulations in five years' time and every five years thereafter, and to publish a report setting out the conclusions of the review.

Before we start what I am sure will be a helpful and insightful debate, I emphasise that shale gas may hold huge potential for adding to the United Kingdom's energy sources, helping to improve energy security, create jobs and meet carbon targets. We need more secure, home-grown energy supplies, and shale gas has a vital role to play. It is much better that we use what we have at home than rely on supplies from overseas. I beg to move.

Lord Judd (Lab): My Lords, I have given notice to the Minister that I was going to raise this point, but before doing so, I should say that I take second place to nobody in supporting the priorities spelled out in the statement that the Minister took the opportunity of making. We have to build up our sustainable energy resources. That is crucial to our survival. Our survival is not just an end in itself; it is to have a country worth living in. That is why areas of special exception are so crucial because that is part of a decent civilised society.

Quite serious issues have begun to register as a consequence of this statutory instrument. For example, in the Peak District there are complex geology and water quality issues that raise particular concerns with regard to the potential for harm arising from fracking. That is why it is essential to have a precautionary approach. We need to avoid removing important protections from the national park and to avoid potential risk to the deeper geological features, including show caves, potholes and systems enjoyed by thousands each year. Water quality and sensitive wildlife habitats in areas of the Peak District national park could consequently suffer. They are, of course, protected under primary legislation.

I should declare an interest because I am vice-president of the Campaign for National Parks and an honorary patron of Friends of the Lake District. In saying that, I should also emphasise that there is no pecuniary interest whatever—quite the contrary—in holding these roles.

The Environmental Audit Committee inquiry into the environmental risks of fracking made a recommendation for protected areas. Recommendation 8 states:

"Fracking must be prohibited outright in protected and nationally important areas including National Parks, the Broads, Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest and ancient woodland, and any land functionally linked to these areas".

The Government response was given on 26 March this year that the Infrastructure Act ensured that no associated hydraulic fracturing would take place within protected groundwater source areas and other protected areas, and that that would be clarified in secondary legislation by the end of July. The Minister referred to that. They confirmed that that would include—again, the Minister underlined this—national parks, areas of outstanding natural beauty and sites of special scientific interest.

However—this is the issue—the proposed draft statutory instrument defines "other protected areas" as,

"areas of land at a depth of less than 1,200 metres beneath … a National Park … the Broads … an area of outstanding natural beauty … a World Heritage site".

The draft statutory instrument, therefore, allows for associated hydraulic fracking within a national park at depths below 1,200 metres, and incorrectly states in paragraph 3(3) that the national park,

"has the same meaning as in the National Parks and Access to the Countryside Act 1949".

It seems that by default the draft statutory instrument is altering primary legislation by limiting the extent of the national park to a depth of 1,200 metres, and in so doing is potentially placing at risk the national parks' ecosystem services.

4.30 pm

The Peak District raises particular anxieties in this respect. It is, of course, a unique landscape with a unique geology, deep geological features and a complex set of historical mines beneath it. The House of Commons Environmental Audit Committee stated:

"The UK has complex geology and more effort is required to understand and map specific local geological conditions and the influence of historic mining activity".

In its evidence to the British Geological Survey, it stated:

"There is also very limited knowledge of the properties of the sub-surface (geological and other) pathways along which pollutants might migrate. This makes assessment of the risks very difficult. More work is needed to develop tools for assessing the vulnerability of groundwater and the risks from deep activities".

The report continues:

"The difficulty lies in the fact that below c.200m there is very little information and data on the hydrogeological properties and potential for movement of pollutants through rocks below this depth".

Given this limited knowledge and experience of hydrogeological fracturing in the UK and of the deep geological features and the water resources of the Peak District National Park, there is a risk of allowing secondary legislation to remove the precautions that are in place for this valued and environmentally significant land, when a precautionary approach is essential. That is why I raise this matter at this point. Why do I stress the Peak District National Park? We are yet to see whether—life is life and things work this way—as other people register, it will become clear that there are similar serious issues in other national parks.

There is another point, which concerns constitutional propriety. I suggest—indeed, I am fairly convinced of this—that the statutory instrument potentially conflicts with primary legislation. What is now in question is

how secondary legislation, in the form of a statutory instrument, is able to reduce the extent of land in a national park, when all the land is within the national park and benefits from the protection of two pieces of primary legislation—the National Parks and Access to the Countryside Act 1949 and the Infrastructure Act 2015.

The National Parks and Access to the Countryside Act does not state that national parks end at a depth of 1,200 feet. The Infrastructure Act states that the associated hydraulic fracking will not take place within other areas. The deep geological features below 1,200 feet are still within the national park. The national parks authorities are custodians of land valued by the nation for its clean air, earth and water, biodiversity, geodiversity and inspirational landscapes, and which provides tourism opportunities that are valued worldwide. These special qualities should not be undermined. Indeed, that would be against the primary legislation and contrary to the recommendations of the Environmental Audit Committee. In the Lake District we have a park which is being put forward for world heritage status. That again underlines the Government's commitment to not in any way counter world heritage status.

The impact assessment for the secondary legislation SI that defines "protected areas" under Section 4B of the Petroleum Act 1998, and the commencement of Section 50 of the Infrastructure Act 2015, has not considered the statutory purposes of the national parks as required under Section 11A(2) of the National Parks and Access to the Countryside Act 1949, which states the duty of certain bodies and persons to have regard to the purposes for which the national parks were designated:

> "In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park".

For the purposes of this section, the "relevant authority" means, as stated in the Act,

> "any Minister of the Crown … any public body …any statutory undertaker, or … any person holding public office".

It continues in Section 5, entitled "National Parks":

> "The provisions of this Part of this Act shall have effect for the purpose … of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and … of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public".

Of course, in the Peak District, those wonderful caves that some of us may have experienced are very much part of that enjoyment and understanding.

I therefore suggest that some quite serious issues are raised by the drafting of the regulations as they stand. I hope that we will not have to have a great confrontation at the next stage but I suggest that it would be helpful if the Minister could not only answer convincingly on these points—I know that he takes all these issues seriously; he has been most courteous and kind in his responses to me—but also give us some indication that the Government are prepared to look again at getting this right, because it would be a great shame if we did not get it right.

Baroness Parminter (LD): My Lords, I will raise two matters, which the Minister skated over slightly in his introduction. The first is the definition of the protected areas, which is a different definition to that which was brought into force when the Infrastructure Act was introduced by the previous coalition Government. The Minister made it clear that at that stage it included national parks, AONBs, world heritage sites and triple SIs, which are excluded from the definition in this regulation. SSSIs are some of our most valuable areas of wildlife and nature protection. If any noble Lords saw "Countryfile" on Sunday they would have seen the care with which many farmers ensure that triple SIs are managed sensitively because of their importance to the nation and to our biodiversity but in a way that is consistent with them getting an economic return as farmers. It is important that this Committee reflects on the fact that SSSIs have been dropped by this Tory Government; I will come on to the process of decision-making in a moment. I also highlight a point that was touched on by the noble Lord, Lord Judd—that this legislation no longer prevents the drilling of wells in national parks. I just want to make that clear.

The Minister went on to talk about the fact that there will be a concentration on drilling in national parks, but these draft regulations do not prevent a well being drilled from the surface in protected areas. I would be grateful if the Minister could say a few more words about the wording of the proposed consultation because I really do not understand it when it says,

> "from wells that are drilled in the surface of National Parks and other protected areas, but without having an impact on conventional drilling operations".

I would be grateful for more clarification of what the consultation will mean.

My main point is on the main process of decision-making, about which the Minister said nothing. What disappoints me so much about the impact assessment is that the Government have not looked at the environmental, economic and social impacts equally, and then, on the basis of a rational consideration of the three, decided that, "For the following good reasons, we are going to take this route". No, they are quite honest and open; on page 3 they say:

> "The environmental benefits from preventing hydraulic fracturing in protected areas has been considered, but not quantified".

They then go on to say, on page 11:

> "Extreme uncertainty attaches to the key parameters underlying this estimate; most if not all of the assumptions are subject to very wide margins of error".

So they are taking figures from the industry but taking no evidence from anyone else. They accept that there are extreme uncertainties attached to the key parameters, yet they base the definition of "protected areas" solely on consideration of those economic costs provided by a wholly biased source, those in the industry, and the department does not even say that there is any certainty attached to those figures. Does the Minister really believe that that is the right way for a Government to

[Baroness Parminter]
make decisions—not looking at environmental impacts and basing decisions entirely on questionable costs provided by industry? That does not give me confidence in solid decision-making by the Government.

On the point about decision-making, the Minister did not mention that the Secondary Legislation Scrutiny Committee rightly challenged the Government over why there was no public consultation or indeed any ministerial Statement. I thought that the response provided by the department was pretty thin, but then of course I am sure that is because it was very worried about bad publicity, particularly in the Weald and Bowland, when this regulation came forward. Even if the department is worried about that, though, it strikes me that the public have a right to know. A lack of transparency will just breed more cynicism in the process and that will make it even harder for the Government to get what they want, which is more fracked gas, so this seems to be a rather short-sighted approach.

In conclusion, I am disappointed in how the Government have come to make this decision. It is disappointing that SSSIs have been taken out on that basis. It shows an extremely cavalier approach to environmental protection that does not serve this Government well. I fully understand that they want to have a dash for gas but they have to accept that we have to do that in a way that takes people with this and, rightly, protects what is special and precious about our countryside. The process of bringing about this piece of secondary legislation does not do that.

Lord Young of Norwood Green (Lab): My Lords, I welcome the statutory instrument. I listened with great interest to my noble friend Lord Judd and the noble Baroness, Lady Parminter. I declare straightaway that I have no pecuniary/financial interests. I have an interest in energy and in the area of fracking in particular because I think there has been so much misinformation put about about the process. All the sources that I quote from are independent; I do not rely on the oil and gas industry to supply me with information. If I do not agree with much that the noble Baroness said, I agree on the point that we should not rely just on the industry.

One phrase that the noble Baroness used made me smile, albeit ironically. She used the phrase "dash for gas". Would that we were doing so! There has been no dash for gas, that is for sure. I forget for how long exactly, but one exploration well in Lancashire has been delayed for over three years. Considering the amount of experience out there, including in some quite sensitive areas, there has certainly been no dash, and there has been plenty of environmental examination.

4.45 pm

I was also interested in my noble friend Lord Judd's remarks. By coincidence, I was on a cycling tour this year in the Peak District and I went down the mines he referred to. Of course, it is a wonderful area and nobody in their right mind would want to damage one of the great natural resources we have in this country. They are of inestimable value, both to those who live near them and those who visit them for tourism. I share my noble friend's concerns about water quality and wildlife and I do not want to place either of those at risk.

Nevertheless, I note as a matter of interest that oil has been produced in the UK for over 150 years, with production from oil shales in Scotland in 1851. In 1896 a water well was sunk during the construction of Heathfield railway station in the High Weald of East Sussex, and natural gas was discovered at 312 feet. The gas was used to light the station and the local hotel until February 1934. In 1973 the Wytch Farm oil field in East Dorset was opened in an area of outstanding natural beauty, and today it is the largest onshore oil field in western Europe. The 1979 oil crisis again accelerated onshore activity, and many of the fields operated today were discovered and developed during this period. In all, over 2,000 wells have been drilled in Britain, with more than 200 wells having been hydraulically fractured to improve their performance—so we are not talking about a new science by any means.

As for the experience in the States, the only thing I want to say is that we are not using the rather poor environmental protection that they had over there, inasmuch as that some of the fracking agents that they used were doubtful. However, the recent study by the Environmental Protection Agency—which is not a soft touch by any means—

"did not find evidence that these mechanisms have led to widespread, systemic impacts on drinking water resources in the United States".

That study was the most comprehensive ever done, having taken five years and investigated over 38,000 wells.

That was in the US; our regulations in relation to fracking are much tougher. It is unfortunate that there is so much misinformation, in some cases deliberately put about. The worst example recently was when one of the green organisations alleged that there are carcinogenic problems with silica. Are we going to ban people from beaches next, since it is mostly sand that is used? The organisation went on to talk about acrylamide. In fact, the substance that has been used for fracking—polyacrylamide—is the same substance that has been used to bathe contact lenses. It does not strike me as a highly polluting substance.

In my view, what the Government are doing here is sensible. I think my noble friend had a slip of the tongue when he referred to 1,200 feet—in fact, it is 1,200 metres, which is more than three times greater. There is very significant protection in the statutory instrument that is proposed.

I will not repeat all the points made by the Minister about the benefits of having a source of home-grown energy. It is, however, somewhat ironic—

Lord Judd: I thank my noble friend. I have checked my notes. I misquoted, and I accept the correction: it is 1,200 metres.

Lord Young of Norwood Green: I assumed that that was the case. I thank my noble friend for that.

We are going to be dependent on gas for 30 years, and some would say for even longer than that. It is ironic that we are prepared to import it. We know that importing liquid natural gas is not good in terms of emissions. Gas, certainly in comparison with coal and with liquid natural gas, will reduce carbon emissions significantly.

I am not by any means opposed to renewables. Since we are burnishing our own contributions, I would mention that the solar panels on my roof are working very effectively and I have ensured that my local primary school has just installed solar panels. I am as committed as anyone to renewables.

This, however, is a sensible and measured approach to developing shale gas and it takes into account the understandable concerns that we should have about protecting sites of outstanding natural beauty, national parks and so on. All the agencies that have been involved with this, including the Environment Agency and the Health and Safety Executive, consider it to be low-risk. We are talking about drilling to very deep levels before the fracking turns and goes underneath: 1,200 metres is a long way below the natural water aquifers, which the Minister referred to as being at 400 metres.

So I welcome the statutory instrument because it is important that we have a balanced and integrated approach to energy. It is unfortunate that it has taken us so long. It would have been interesting to see, if we had produced our own natural gas and if the costs of energy had been reduced, whether the Redcar situation would have been impacted. I do not want to make unreasonable assumptions.

Another point about assessing the potential economic benefits was made by the noble Baroness, Lady Parminter. Most of the figures are usually obtained from the Royal Geological Society. Where I would partially agree is that no one can be sure until you start drilling. I have spoken to some of the world's leading experts on fracking and they all tell me the same thing: you can drill a well and it may or may not produce. You can move along a few hundred metres and you may strike lucky. There is no certainty.

We know that that there are very significant amounts of shale gas there. We need to be able to assess the situation and do the drilling safely wherever we are doing it. It does not matter whether we are in an area of outstanding natural beauty or somewhere else: we want it to be safe. We want it to be justified in terms of an integrated approach to energy. We also need to take into account whether there is potential for jobs. There is a mothballed training college in the north-west that is ready to go and would give us probably a few thousand apprenticeships and many thousands of jobs. There has been no dash for gas; there has been a sensible, measured and proportionate approach. I welcome the introduction of this statutory instrument.

Baroness Byford (Con): My Lords, I thank my noble friend the Minister for introducing this statutory instrument today, which I welcome. I have listened very carefully to the contributions made by others, and I should like to thank the noble Baroness, Lady Parminter, for her expressions of appreciation to the farming community, which cares very deeply about biodiversity. I should declare an interest as we have a farm in Suffolk, although not where any fracking will be taking place.

Can my noble friend tell us a little more about the urgency of the need to get shale gas into action, bearing in mind the various aspects of gas and oil production that we have been debating over the past year? As noble Lords will know, we had a big debate on setting up the Oil and Gas Authority. At the moment gas seems to be in fair profusion—they are not the words I really want to use but I cannot think of the right ones, so I apologise to noble Lords. I think that we in Committee are all agreed that we need to have a balanced approach to energy production. That is what we are really after and I am grateful to noble Lords for their support in that.

I listened with great care to the noble Lord, Lord Judd, who is rightly very passionate about his concerns on areas of outstanding natural beauty. I also take up the point made by the noble Baroness, Lady Parminter, which I had not picked up, that SSSIs were not included, so I shall be interested to hear what the Minister has to say on that.

In the scenario that I have set out, I wonder if we have slightly more time to review the way in which we use, and explore for, shale gas. I am sure that it is the right thing to be doing, but the gas that has been referred to is not as great as it might have been considered a couple of years ago. That is not to say that I am not in favour of shale gas exploration, because clearly I am. However, I wonder whether the Minister can tell us a little more about the costs involved, or if there are costs that I missed in the impact assessment, because of the decline in the cost of oil and gas, and whether fracking has less of a drive than it perhaps had a little while ago when energy costs were so expensive. I can well understand if the Minister wishes to write to me on that because it might be argued that that is why we are having this debate today. I thought it was important to include it because certainly we need to be looking to the future for a sustainable supply of gas—shale is but one option—and at the same time having a very balanced approach to the biodiversity of the land above the soil and obviously, as noble Lord, Lord Judd, said, to that beneath. I take the point that it is a long way down; it is in fact metres, not feet.

I have raised one or two questions in the broader context and I wonder whether there is slightly less pressure than there was in the circumstance before. It gives us a wonderful opportunity to use the shale gas that is there to be used while at the same time ensuring that we use it in the wisest way and that we have time to review how that development is going. If there are issues on which the Minister does not have briefing, I am more than happy for him to write to me later on.

5 pm

Lord Grantchester (Lab): I thank the Minister for his explanation of the regulations. He has explained the Government's approach to providing added protections and assurances relating to the major public concerns regarding fracking in environmentally sensitive

[Lord Grantchester]
areas around water catchment zones, national parks, areas of outstanding natural beauty and world heritage sites. We regard this as largely beside the point, though, so we have severe reservations about these regulations.

The point is that from the passage of the Infrastructure Bill earlier this year in the other place the outlined areas were thought to have been excluded altogether from fracking explorations and production. As has been said, the Secretary of State is quoted as agreeing that there will be an outright ban on fracking in natural parks and these other environmentally sensitive areas. This is rightly leading to grave public concerns. It cannot be bypassed by, in these regulations, permitting fracking to proceed with only the added conditionality of being driven further underground. Quite simply, there was agreement that there would be no-go areas within which fracking would not take place, and with these regulations the Government are now backtracking.

Furthermore, the Government have not gone to consultation on the regulations. This has rightly become the subject of the eighth report from your Lordships' Secondary Legislation Scrutiny Committee. The Minister's department refers to consideration of the Infrastructure Act as justification for there being no public consultation about the definitions within these regulations. The Committee takes the opposite view that both public consultation and a ministerial Statement could be justified.

Are the Government trying to avoid embarrassment and controversy? Are they once again trying to put forward measures that they want through secondary legislation that cannot be amended? Instead of public consultation, the Government have merely consulted the environmental regulators on the proposed definition of "protected groundwater source areas" so that their proposal of excluding depths of above 1,200 metres was workable in light of the existing groundwater regulatory practices. I also express concern at the exclusion of SSSIs from the definition, as has already been expressed by the noble Baroness, Lady Parminter.

Can the Minister state the evidence that 1,200 metres is the correct extra precautionary level? The Environment Agency and Natural Resources Wales refer to sensitive areas for groundwater sources as source protection zones. These regulations will now provide a formal definition of how deep beneath the surface these SPZs extend, where before there was none. Can the Minister provide the Committee with any consideration or comments given to this specific depth by the regulators? Can he also clarify that these regulations would also apply to Scotland, in that the Scottish Parliament does not yet have legislative competence on this issue?

There is the further point of where the proposed wellhead of a fracking operation may be situated. These regulations do not prevent a fracking well being drilled from within the protected zone. Present guidance to planning authorities suggests that developments in these sensitive areas be refused unless demonstrably exceptional circumstances exist and they are in the public interest. Can the Minister confirm reports that the Government will consult on the question of whether wells can be drilled from the surface of natural parks and other protected areas? If these drills located outside protected areas can proceed down to 1,200 metres before changing direction and then cross underneath the surface of a national park, is this provision largely irrelevant? There will be understandably grave misgivings regarding the integrity of drilling levels should wellheads be situated within striking distance of national parks and other protected areas.

These serious issues, and others expressed around the Committee today, translate into our view that these regulations should not be proceeded with. We believe that Britain must pursue a socially just energy policy that is sensitive to the impact on the environment and climate change and how it impacts people's lives, as well as the need for secure, affordable energy. These regulations should be deferred for further consideration by the Government. Indeed, that seems to be the Government's position at the moment in the other place, where they have deferred further consideration on these regulations.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have taken part in this debate and I will endeavour to cover the points that they have made. I shall address myself first to the points made by the noble Lord, Lord Judd, who, in a meeting yesterday evening in a corridor, did indeed tell me that he was going to be raising issues today. I have looked closely at what he said last night and have listened carefully again to what he said today. We have followed a precautionary principle: 1,200 metres below the surface is well below where normal drinking supplies will be sourced from in protected areas. The noble Lord might be making a point about these regulations being ultra vires or not within scope or perhaps running contrary to the national parks Act regarding access. I think I am right in saying that the deepest pothole in the UK is 198 metres, so there should not be any issue about access to 1,200 metres below the surface. That is not what was envisaged then or indeed feasible now, so I do not think there is an access issue relating to the areas that we are talking about in national parks.

What is happening in the regulations and the statement that we are making about surface developments is that there can be no development on the surface of a national park, as it were; any drilling has to come down and then across, and it has to be at that depth. I am able to offer that reassurance and say that, like the noble Lord, I am a great fan of national parks, particularly the Peak District, where I walk frequently. I do not pothole, but I would not be able to pothole at a depth of 1,200 metres anyway because that is just not feasible.

Lord Judd: The concern is that we do not know what will happen to the geology once the fracking begins and what that might do to the cave system to which the Minister has referred.

Lord Bourne of Aberystwyth: My Lords, I was going on to say—perhaps I will come on to it now—that the scientific and environmental evidence is overwhelming that it should be safe at that depth.

In addition to the regime that we are seeking to set up here, as I have explained, there is a process of requiring a licence and planning permission, as well as the numerous EU directives that have to be complied

with—the groundwater directive, the water framework directive, the industrial emissions directive, the environmental liability directive, the habitats directive and the mining waste directive—along with basic safety standards and the process that we follow. This country has a very good record for safety, and safety first, in relation to drilling. I am sure that no system can be 100% robust, but it is very clear that saying that this drilling is effectively two-thirds of a mile down very much favours the precautionary approach.

I turn to the points raised by the noble Baroness, Lady Parminter, about the environmental impact. The economic impact is what is quantified in the assessment of economic impact; environmental issues are dealt with elsewhere. To come back to the basic point about the need to balance interests, we have an obligation, in terms of not just energy security but energy affordability and indeed our carbon footprint, to progress as a nation and to try to strike a balance between what is sensible and what is fair. We need to look at our own energy security rather than importing from overseas. My noble friend Lady Byford suggested as much by saying that we have to look to our own resources and these things take time, as indeed they do. Even with these regulations, as I have explained, there is a necessity for planning permission and licensing. In addition to the regulations, as I explained in introducing them, there is a discretion for the Environment Agency to turn down individual applications where it thinks there is good reason to do so.

I do not think that we can be accused of a dash for gas at all costs; indeed, I agree with the noble Lord, Lord Young, that we as a nation cannot be accused of a dash for gas at all. It really is time that we started taking this seriously. We have this massive potential and we have the experience of what has happened in the United States. We cannot draw direct parallels, but I think that we have a greater regard for safety in this country than is the case there. We have every right to be proud of our precautionary safety-first approach. Like the noble Lord, Lord Young, I wish that we had had a dash for gas. That is certainly not what has happened historically.

I move on to points raised by the noble Lord, Lord Young. If he is doing well with his solar panels at the moment, then the London Borough of Ealing is obviously the place to be. I am reassured that he has them and that he is contributing to the great growth of renewables. I thank him sincerely for what he says, in a most unpartisan way, about the importance of this for British jobs, for British security supply and for affordability, all of which are very necessary. However, it is really not realistic to suggest, if you study this and react to it in a fair way, that we are cutting corners.

My noble friend Lady Byford raised points about the urgency of the need for shale, which very much ties in with what the noble Lord, Lord Young, was saying. There is an urgent need for shale for our own domestic supply. Of course, we need to balance that; safety must come first, with proper planning and environmental considerations, which are already there.

To come back to protection, we have afforded particular protections to national parks, to the Broads and to world heritage sites by providing that drilling has to be at a greater depth. We have provided protection, too, by stipulating that there can be no development on the surface in those areas; we have also provided that protection in relation to SSSIs and Natura sites and so on. It is true that we have not extended SSSI protection below 1,000 metres, but 1,000 metres is well above what is considered safe in the assessment of the various scientific bodies—the Royal Society and so on—that have looked at these issues.

So far, there have been no successful planning permission applications in relation to shale, but these things take time. We have a massive potential and we have issues to address. This is the right way forward and it is a satisfactory approach. I understand what the noble Lord, Lord Grantchester, says about people's concerns about surface activities. That is why we have said that there can be no surface activities in the areas that demand particular protection. However, we have to recognise that, if we are too restrictive, that will just drive investors away altogether.

My noble friend Lady Byford also raised the question of whether there is interest. There is some interest—there have been developers who are interested in this—but we do not want to make it so difficult or so unattractive that all interest dies away all of a sudden. We are not that sort of nation. We have energy issues to address on security of supply, which we looked at in relation to other statutory instruments earlier today.

I turn to two additional points raised by the noble Lord, Lord Grantchester. First, this does not apply to Scotland. We anticipate that Scotland will bring forward legislation of its own. This is a measure for England and Wales. Secondly, as he rightly said, we have chosen to align the 1,200 metres issue with the source protection zone 1 areas. That seems the sensible approach; the Environment Agency and Natural Resources Wales have recognised that. It seems a consistent approach. I do not think that there is any danger of pollution to groundwater. I do not accept that there is any massive safety issue. You can never be 100% certain, but we are almost there with our safety regimes, which I think we should be proud of.

5.15 pm

Lord Judd: The Minister is being his usual self in being very full in his response, which I appreciate greatly, but he has not really dealt with the constitutional issue of whether you can redefine what is a national park through an order when there is legislation covering national parks and their status. I hope that the Government will look at that before this issue comes before us again. He really must not pit those who have anxieties about what is happening with the government situation on national parks against the general argument about making ourselves self-sustaining in energy. I am absolutely convinced that we must make ourselves self-sustaining in energy, but there are exceptions to the application of what is necessary.

Lord Bourne of Aberystwyth: My Lords, on the second point first, I was certainly not suggesting that the noble Lord, with his vast experience, or indeed anyone else, was raising anxieties that were not valid. I was seeking to reassure noble Lords that we have a

[Lord Bourne of Aberystwyth]
safety regime of which we can be very proud and proposals in these draft regulations that strike the right balance. In relation to the first point that the noble Lord raised about the constitutional position of national parks and the argument that he is deploying that we are redefining national parks in this statutory instrument, I know that he has vast experience, but I think that that is rather a creative argument. I will of course have a look at the issue, but I do not for one minute accept that that is the case. However, I will write to him and other noble Lords who have participated on that point.

Motion agreed.

Health and Care Professions Council (Registration and Fees) (Amendment) (No. 2) Rules Order of Council 2015

Motion to Take Note

5.17 pm

Moved by ***Lord Hunt of Kings Heath***

That the Grand Committee takes note of the Health and Care Professions Council (Registration and Fees) (Amendment) (No. 2) Rules Order of Council 2015 and of the increase in mandatory registration renewal fees for health and social work professionals (SI 2015/1337).

Lord Hunt of Kings Heath (Lab): My Lords, this order concerns the Health and Care Professions Council and its fee raise, which is in relation to 330,000 health and social care professionals. They include paramedics, occupational therapists, biomedical scientists, chiropodists, dieticians, physiotherapists, radiographers, prosthetists, orthotists, speech therapists and social workers. That list brings home the importance of this group of professionals. Parliament, through various pieces of legislation, has seen fit to ensure that they are subject to mandatory regulation in the interests of public protection. Parliament also has a role, therefore, in overseeing the performance of the regulatory bodies.

On 1 August, the annual registration fee for members of the professions covered by the HCPC went up by 12.5% overnight as a result of the order that we debate today. The order was passed in the face of cross-party concern, including 100 Members who signed up to an Early Day Motion and indeed the tabling of a Motion to annul in committee at Holyrood. The 12.5% increase in fees followed on the heels of a 5% rise the previous year and in the face of assurances given by the HCPC in 2014 that it would not look to raise fees again until 2016. This is not being done in isolation. I know that we are not discussing other regulatory bodies, but I would mention to the Minister the NMC, which raised fees for nurses in 2013 from £76 to £100 and in 2015 from £100 to £120. The points that I want to raise in principle relate to a number of these regulatory bodies.

The contrast that I want to make is between the regulator's demand for an increase in fees alongside what is essentially the sixth year of pay freeze and pay restraint and the Government's policy on austerity generally. It is a puzzle as to how, when the public sector in general is under tight financial control, the one area that seems to be able to raise its fees willy-nilly is that of the professional regulatory bodies and the Care Quality Commission. The Minister will know that the CQC proposes to raise fees hugely, at some financial risk, particularly in the care sector. That is not for debate today, but there is an issue of principle here: in contrast to the issue of pay restraint and restraint generally on the public sector, a group of regulators seems to be able to put forward proposals, which the Government accept, for large fee increases.

I read the consultation paper issued by the HCPC, which said that the unexpected fee rise was prompted by the levy that it now has to pay to fund the Professional Standards Authority for Health and Social Care, the regulators' regulator. I understand that and it was fully discussed in a debate in the other place in March. However, it subsequently emerged that the levy that it said had to be paid because of the Professional Standards Authority actually accounted for only 30% of the fee rise, and the remaining 70% was so that the HCPC could buy new accommodation for hearings, IT and quality assurance systems. In the consultation document, as far as I can see, that was not made clear. There was no breakdown or detailed justification of the fee increase.

That is particularly striking in light of the judicial review proceedings brought by the British Dental Association against the increase proposed by the General Dental Council whereas I understand that the High Court said that a regulator's consultation on fee increase must set out a clear and detailed breakdown of the financial case for proposed increases. My point to the Minister is that that did not happen in relation to the HCPC consultation. There are three areas that I want to touch on. The first is that the consultation itself was extremely short. It covered the Easter holidays, May Day bank holiday and the purdah period. It closed on 6 May, the day before the general election. It totalled just 26 working days, leading many to suspect that it was designed to be buried away from scrutiny.

My second point is about accountability. Of those who did respond to the consultation, 86% of individual respondents objected to the increase, as did three-quarters of organisations. Their objections made not one iota of difference.

I come now to the role of the PSA, the regulators' regulator. One of the problems is that while in a sense it can ask for a levy in order to fund itself, it does not seem to have a role to intervene on how regulators set fees or consult on them. In the light of experience with the HCPC, it would be good for the PSA to take a more proactive role. We know from submissions that I have received from staff organisations—I particularly refer the Minister to a survey by UNISON of nearly 5,000 registrants across the professions—that the fee rise was commonly referred to as a stealth tax. If you have no choice but to pay to practise your profession then it feels like a form of taxation. Yet registrants have little representation in the decision-making process that sets that fee.

Will the Minister also comment on the issue of the HCPC? Does it represent value for money? I know that the HCPC has done very good work, and I do not

deny that it has absorbed a number of professions over the years successfully. However, these large fee increases bring concerns about whether the overall operation of the HCPC—and the other regulated bodies—is as efficient as it could be.

I want to raise with the Minister an issue that has been presented to me: although the fee might not be considered large in absolute terms, it is, none the less, a consideration for part-time staff in their choice of profession. The Minister may be aware that, as I understand it, the HCPC has declined to introduce a pro-rata structure, or differentiated fee structure, for part-time workers. That is a pity, given the need for us to attract staff and the fact that part-time staff have a lot to offer.

I understand that nine trade unions and professional associations representing registrants in HCPC fitness-to-practise processes have written to advise the HCPC that more could be done to control its costs, improve its efficiency and reduce the number of unnecessary hearings. They also made detailed recommendations on how the investigating process could be improved in order to root out unnecessary investigations, reduce the number of lengthy hearings and facilitate consensual resolutions. Seeing the noble Lord, Lord Lansley, here of course brings great joy to us all, but I cannot help commenting on the draft Bill drawn up by the Law Commission, which he would have received some time ago. Well, he may have commissioned it, I do not know whether he received it.

Lord Lansley (Con): If I remember correctly, it was commissioned in 2011 and received by my successors in April 2014.

Lord Hunt of Kings Heath: My Lords, if he had still been in place I have no doubt that he would have acted on it. The point is, however, that a lot of the problems with the current fitness-to-practise procedures among health regulators generally derive from the fact that we have not implemented the Law Commission's Bill, which would have allowed for a much more streamlined process.

The HCPC has, as I say, earned a great deal of credit for the way in which it has absorbed new professions over the years. I hope, however, that in this short debate the Minister will agree to look at some of the general principles raised. Does he agree that in any future proposal for a fee increase there needs to be a full breakdown and detailed justification for it? Does he also agree that it is not a good thing for Ministers to entertain fee rises that are higher than the percentage fee rises that are going to be given to NHS staff? There is an issue about pay restraint on the one hand and what seems to be the regulator's ability to raise fees well above that rate on the other. Will he consider discussing with the PSA whether it will take a more proactive role in monitoring and evaluating any proposed increases by the regulator it oversees? Will he also look at whether the HCPC should be required to introduce a pro rata, or differentiated, fee structure for part-time workers?

Lastly, and I am sure the noble Lord will say yes to this, will he say that the Government will make it a priority to bring in primary legislation as soon as possible to implement the Law Commission proposals? The alternative is that the Minister will have to go through a succession of Section 60 orders when as a general principle he would find widespread support for the Law Commission proposals—there are one or two issues that we will debate—for a streamlined process that would apply consistency across all the regulated bodies. I am sure that it would reduce the cost of the regulators and, if the Government are not able to bring this in as a full Bill, at the very least it lends itself to pre-legislative scrutiny. However, there is enough consensus around the proposal to allow the Government to introduce a Bill. This short debate is a good opportunity to raise the issue of transparency of the regulators, and I hope that the Government are prepared to give this further consideration when a proposal comes up in the future. I beg to move.

5.30 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I thank the noble Lord for introducing this short debate on the HCPC. It raises other issues beyond the HCPC that are of great interest to us.

The HCPC is a statutory regulator established to protect the public. To do this, it keeps a register of professionals who meet its standards for professional skills and behaviour. The noble Lord knows all that, but this is a preamble. There are 330,000 professionals across 16 health, psychological and social work professions. It is a very large regulator. It is self-financing, with funding coming entirely from registrant fees. It does not receive any regular funding from the Government.

The HCPC's registration fees are the lowest, and have consistently been so, of all the UK statutory regulators of health and care professionals overseen by the Professional Standards Authority. Its fees are £90 a year. The next lowest regulator, the NMC, charges £120 per year. By way of comparison, the GMC is £420 a year. However, as a self-funding regulator, like all the professional regulators, its needs to keep its fees under regular review so that it can respond to demands on finances and resources, and to continue its role of delivering effective public protection.

As noble Lords will know, from 27 March 2015 to 6 May 2015 the HCPC consulted on raising its fees by an average of 12%, or £10 a year. That is 26 days. I appreciate that it was over an election period but that decision on consultation had to be with the council of the HCPC and the decision to formally review and consult on an increase to its fees was the result of three factors: first, as the noble Lord mentioned, because the PSA fee regulations came into effect, as a result of the Government deciding that the PSA should be funded by the regulators that it oversees, rather than the public purse; secondly, to improve how fitness-to-practise hearings are run; and thirdly, to invest in essential IT systems.

In relation to the first point, the Professional Standards Authority for Health and Social Care (Fees) Regulations 2015 came into force on 1 April 2015. This marked the realisation of the previous Administration's commitment, set out in the Department of Health's report *Liberating the NHS: Report of the arm's-length bodies review*, to

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move the PSA away from government funding, to becoming funded by a fee on the nine regulatory bodies that it oversees. As required by those regulations, the PSA's fee is calculated on each regulatory body's registrant numbers. The HCPC is the second largest regulator by registrant numbers and will contribute to around 22% of the PSA's funding. The PSA fee will be determined each year.

This methodology was considered fair because available evidence suggests that the level of PSA resource given to each regulatory body is very much influenced by the number of registrants as this critically informs the level of Section 29 work that the PSA undertakes for each regulator. Section 29 work is where a fitness-to-practise case is heard in court.

While around one-third of the 2015 fee increase was to meet the PSA's fees, as I have said, the HCPC is also making improvements in the way it works. The HCPC is also looking to improve its fitness-to-practise processes. In doing so, the HCPC plans to introduce dedicated facilities for fitness-to-practise hearings. The HCPC's existing office space was not purpose built for holding public fitness-to-practise hearings, which affects its ability to run a high-quality and modern adjudication service. It believes that introducing dedicated space will be consistent with the modern adjudication facilities provided by other regulators.

The HCPC also says that that the number and length of hearings are key cost drivers of the fitness-to-practise process. It has said that it aims to keep the cost of hearings low—for example, by proactively looking to conclude cases with the consent of the registrant involved, where appropriate. This avoids the need to have a contested hearing, with all the costs this involves. However, the HCPC says that it has seen an increase in the complexity of the cases since 2012. This has meant that the average length of a hearing has increased over time. The average number of witnesses required for each hearing has also increased to between three and four for each hearing. The HCPC's primary objective is public protection, and it says that every allegation it receives must therefore be considered on its merits.

On the third point, the HCPC says that the new IT system it is looking to introduce will make its work more efficient by replacing a number of other legacy systems, by driving and delivering time and resource savings. Additionally, a project looking at redesigning the HCPC's registration processes and systems should improve the level of service that it is able to provide to applicants and registrants by allowing them to carry out many more tasks online.

Finally, in determining budget forecasts for future years and the level of fees, the HCPC says that it had to make assumptions about costs and activity level—in particular, the volume of fitness-to-practise cases. It says that these forecasts indicated that despite generating a surplus in previous years, without the 2015 fee increase it would make operating deficits in 2015-16 and 2016-17. This would not be sustainable and would threaten its ability to fulfil its role of protecting the public. Additionally, the HCPC registers each profession on a two-year cycle, so it will take two full financial years before any increase in the renewal fee has full effect.

The HCPC says that it has not changed its ongoing commitment to the principle of small, regular increases in the fees where possible and necessary. Its latest five-year plan does not forecast any further increase in fees until 2019-2020. That said, in the past the Government have expressed a view on registration fees and the expectation that they should not increase beyond their current levels unless there is a clear and robust business case that any increase is essential to ensure the exercise of statutory duties.

The noble Lord raised a number of issues. First, he asked that in a consultation exercise there should be a detailed breakdown of the reason for a fee increase, which strikes me as a reasonable request, which I will draw to the attention of the PSA. He said that the fees should not increase by greater than the amount of the increase paid to NHS staff. All I can say is that the fee increase must be kept to an absolute minimum. I entirely appreciate that we live in a very difficult world, and fees must be kept to an absolute minimum. I do not think that we can make any commitment that they should be kept to the absolute level of increases of salaries paid to NHS staff.

The noble Lord asked that the PSA should take a more proactive role. Of course, the PSA undertakes an annual assessment of all the organisations that it is responsible for, which is tabled before Parliament. It is of course up to the Health Select Committee, if it wishes to do so, to have any individual regulator before it.

The noble Lord also asked about part-time workers; I hope that it will be all right if I write to him about part-time workers, as I am not sure of my answer on that. As regards the work the Law Commission has done, I think we all accept that it has done an outstanding job and made some extremely important and what could be very useful recommendations. The Government are currently reviewing how to take forward the work of the Law Commission.

Lord Hunt of Kings Heath: My Lords, I am very grateful to the noble Lord, Lord Prior. He is right to acknowledge the issue of pay restraint. However, I have three points. On consultation, I hope that the HCPC and the PSA will take note that it is reasonable to have a proper consultation in relation to fee increases in the future. Secondly, I noted what the Minister had to say about the introduction of IT and new systems and that it would lead to resource savings in the future. I have some experience of IT systems in the health service, and I certainly hope that that comes true. I noted the expectation of no further increase until 2019-20. Given the expected resource savings from new IT systems, it would be very disappointing if the HCPC came forward with any other proposal in the next Parliament.

Thirdly, I understand the Government's reluctance to bring health legislation through Parliament, but one has received so many representations from the regulatory bodies. Given the extensive work of the Law Commission, I hope that the Government will

give further consideration to bringing a Bill before Parliament before too long. The debate has been very helpful and I am most grateful.

Motion agreed.

National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2015

Motion to Take Note

5.41 pm

Moved by ***Lord Hunt of Kings Heath***

That the Grand Committee takes note of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2015 and of the simplification of the assessment of the maximum waiting time for NHS treatment for elective patients, in the light of the review by Sir Bruce Keogh, and the risk that the current more complex standards could provide a perverse incentive to commissioning bodies to deal with those recently added to the waiting list before those who have already been waiting for more than 18 weeks (SI 2015/1430).

Lord Hunt of Kings Heath (Lab): My Lords, this is another fascinating measure that the noble Lord has brought before the Committee, for which we are all very grateful. I do not want to extend the time of Grand Committee. I am having this debate not so much because I oppose the regulations, but because I want to understand the thinking. Clearly, these targets are important.

Obviously, I have read the Explanatory Memorandum, which makes it clear that the reason for removing the two referral to treatment waiting time standards related to the completed pathways of patients who started treatment is to focus solely on the standard for the incomplete pathways of patients waiting to start treatment. This is because of the confusion of the previous set of standards that had the potential to give rise to perverse incentives. I understand that. But I wondered whether the Minister could tell me what evidence he, Bruce Keogh or Simon Stevens had for how these perverse incentives were being used. Rather than introducing new standards, this is consolidating existing standards, but does the Minister think that there is a risk of new perverse incentives being introduced as a result of the regulations?

The regulations also relate to NHS-funded nursing care, which, given the vulnerability of the care sector as a whole, is of some considerable interest. Is the Minister satisfied that the current eligibility criteria for NHS-funded nursing care are being observed properly by the NHS and not being reinterpreted? The obvious temptation for the NHS is to ensure that little NHS-funded nursing care is funded because it can then transfer to means-tested social care. Given current budgetary pressures, I would have thought that that is an ever-present temptation for the NHS. Is the Minister able to provide information about NHS-funded nursing care and the extent to which there is consistency throughout the country in terms of ensuring that the eligibility criteria are observed? I beg to move.

5.45 pm

Lord Lansley (Con): My Lords, this is the first time I have had the opportunity to say something in Grand Committee, so I hope that I will be forgiven if I trespass on any of the procedures. I was tempted to speak, not least by the noble Lord's reference in his Motion to the potential perverse incentives surrounding the referral to treatment time targets.

We do not need to speculate on where there might be perverse incentives in the system of targets and the impact they can have on how the NHS manages such targets, as we can see them. We saw them under the previous Labour Government. They had two referral to treatment time targets relating to admitted and non-admitted patients for complete pathways. The net result, of course, was a perverse incentive not to treat patients once they had passed beyond the 18-week point. It was precisely for that reason, after the 2010 election, that my colleagues and I in the Department of Health thought it was necessary to have a third target. For example, we were presented with 18,000-plus patients who at the time of the May 2010 election had waited for their treatment beyond 52 weeks.

There was a perverse incentive. It was very straightforward: if they were brought in in any significant numbers, and they and others like them had gone well beyond the 18 weeks into treatment, they would not be counted for the then 90% or 95% target—particularly the admitted patients on the 90% target. They were simply ignored. That was not acceptable. It was not what the targets were intended to do and it was not for the benefit of patients. So we introduced the incomplete pathway which had a salutary effect. It brought the numbers waiting beyond 52 weeks from more than 18,000 down to the low hundreds. It is still only about 800 patients who have waited. We introduced zero tolerance subsequently, once we had brought the numbers down for beyond a 52-week wait. We do not need to speculate about perverse incentives; they were there.

I can understand where Sir Bruce Keogh has seen that the combination of these targets can create a degree of confusion. The success of having introduced the incomplete pathway standard is something that we can build on. That is what Sir Bruce and NHS England are aiming to do—a simple standard that no less than 92% should be treated within 18 weeks. That reinforces the 18-week standard and it is very clear in the minds of patients.

Of course, there is scope for perverse incentives; there always is. In this instance, we know that by failing to distinguish, as the previous targets have done, between admitted and non-admitted patients—non-admitted patients having been less costly and complex to treat—there is a perverse incentive to concentrate on the non-admitted patients relative to the admitted patients. It is fair to say that if we see that emerging, we would have to respond in terms of the structure of the targets. To introduce something that

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dealt with the transparent detriment to patients of waiting beyond 18 weeks and then simply being dropped from the system and ignored was the right thing to do. When the noble Lord talks about perverse incentives, we have dealt with what was the principal perverse incentive. It is perfectly reasonable for NHS England and for the Government now to focus on one standard to make life more straightforward for those who have the responsibility of managing an increasing workload in hospitals.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, once again I thank the noble Lord, Lord Hunt of Kings Heath, for bringing this to the Committee. My noble friend Lord Lansley has pretty much done my job for me, but I think I had better go through with this to put it on the record. I thank my noble friend for that articulate and eloquent exposition of why we now have one incomplete standard and not the three that we had before.

We all accept that waiting times are critical. I should pay tribute to the Government of which the noble Lord was once a member. Bringing down waiting times was a huge success and there is no doubt that targets were one of the instruments used to do so. However, the noble Lord accepts that they are a blunt instrument and can lead to distorting clinical priorities. They can lead to gaming and extra cost, so they are not the whole answer. In particular, they can lead to perverse consequences. That is why the Secretary of State for Health and Simon Stevens accepted the recommendations made by Bruce Keogh earlier in the year. I will place a copy of his letter to the Secretary of State and Simon Stevens in the Library. The noble Lord may already have seen the letter but I will place it there.

Sir Bruce's clinical advice on the standards used to measure the 18 weeks NHS constitution right was to remove the two standards that looked at how long people who have started treatment waited and to focus on the incomplete pathway standard—that is, the people who are still waiting. Perhaps I can explain that by using the analogy of a bus. The two earlier standards measured the people on the bus and the incomplete standard is designed to measure those who are left behind at the bus stop. As all three standards were written into the standing rules regulations, this statutory instrument, which took effect from 1 October, was required to make that change.

The change affects the metrics by which we measure the NHS's performance on waiting times. It does not change the patient's right. It is important that that is on the record. Patients can still expect to start treatment within a maximum of 18 weeks if they want to and it is clinically appropriate. If this is not possible, patients have the right to ask to be referred to an alternative provider that can see them more quickly, and the NHS must take all reasonable steps to meet patients' requests. Sir Bruce Keogh recommended this change because having a set of three standards could be confusing and give rise to perverse incentives.

My noble friend described those perverse incentives. The perverse incentive was such that you could treat only one patient who had waited for more than 18 weeks as opposed to nine who had waited for less. There is no doubt that hospitals were managing their waiting lists on that basis. As a consequence, there were people waiting beyond 18 weeks for far too long. That was the wrong that the incomplete standard tried to address. As Sir Bruce said in June, while hospitals may be the ones penalised directly when they breached waiting time standards, the true penalty was laid on the patient who was waiting for much longer than he should have done. I wholly agree that that was not right.

In 2012—I think my noble friend was Secretary of State at the time—the Government introduced the incomplete pathway standard that a minimum of 92% of patients yet to start their treatment should have been waiting less than 18 weeks, to give NHS organisations a reason to prioritise patients who had been waiting a long time. The removal of the two completed pathway standards further minimises the potential for management of the waiting list to cut across clinical decision-making. Clinical priority should always be the main determinant of when patients should be treated. This clinical priority should not have been distorted because it should have been possible to meet all the clinical priorities and meet the waiting time standard, but in practice that was not always the case. Clinicians should make decisions about patients' treatment and patients should not experience undue delay at any stage of their referral, diagnosis or treatment.

These changes will mean that there is a simplified, clearer focus on only one standard, covering all patients on the waiting list, and ensuring that those who have been waiting a long time are not left languishing. The noble Lord raised the issue, which was addressed by my noble friend, of whether having just the one standard will result in new and different perverse incentives. My noble friend made the important point that it could lead to priorities being skewed in favour of non-admitted, simpler, cases rather than admitted, more complex, cases. That is something we need to keep a very close eye on. NHS England will continue to measure trusts' performance against all the standards except that there will be only the one measure in the contract.

I stress that changing the standards is not moving the goalposts in response to poor performance. This change has been made on the basis of clinical advice and in the best interests of patients, and has received widespread support, for example from the Nuffield Trust and the Patients Association. More than a million NHS patients start treatment with a consultant each month and the overwhelming majority are seen and treated within 18 weeks. However, the NHS is busier than ever, which is why we are investing the extra £8 billion that NHS leaders have asked for to support the five-year forward view. I hope that the noble Lord will accept that this was done in good faith and in the interests of patients and that it was a decision informed by clinicians, not by politicians. I have not addressed the concerns he raised about the eligibility criteria for nursing, because they are not strictly relevant to these regulations, but perhaps I could write to him on that matter.

Lord Hunt of Kings Heath: My Lords, I am very grateful for that. I must say that the intervention from the noble Lord, Lord Lansley, was very helpful. It

reminded me that in 2001 I was resplendent in the title of Minister for targets in the Department of Health. I remember asking officials to count up how many targets we had set. When we reached 450, we decided we ought to start again, first by trying to refine the targets and then by setting up foundation trusts, in order to take them out of a directly managed form of control from the centre. Whether that has been entirely successful, in light of today's circumstances, is up for some debate, though I still maintain that the concept of foundation trusts, with separate governance and local accountability, is the right way forward. I hope that NHS Improvement will see the benefit of trying to protect foundation trusts, and the good bits of their governance—the role of governors, the accountability of the board to local people—from overmanagement from the centre. I know that the noble Lord also chaired a foundation trust; he will know what I mean.

There is no doubt whatever about the targets. The waiting time in 1997 was more than 18 months. It was brought down to 18 weeks, which was driven by a target that people had to meet. That is always justifiable. However, we know that in both the public and private sectors, people who have to meet targets are very clever and sometimes the temptation for perverse behaviour is all too apparent. I hope that we can continue to rely on NHS England to monitor behaviour closely and that if it needs to adjust targets to meet any perversity, it is important that that is done quickly and responds to problems that arise.

I do not oppose these regulations at all; I think it is a sensible approach. However, it would be helpful if we saw that NHS England was fleet of foot in responding very quickly when new problems arise with targets, as inevitably they will. This is a good example of that.

Motion agreed.

World Biodiversity

Question for Short Debate

5.59 pm

Asked by Lord Blencathra

To ask Her Majesty's Government what steps they are taking to tackle the loss of world biodiversity caused by human activity.

Lord Blencathra (Con): My Lords, the matters that I wish to discuss today are largely taken from the excellent report by the IUCN Red List. By sheer coincidence, the latest list was published last Friday. It states that because of the melting ice at the North Pole, polar bear populations were expected to decline by 30%, confirming their vulnerable status. That was the headline announcement from the IUCN last week.

So, what is the IUCN and its Red List? The International Union for Conservation of Nature and Natural Resources is the world's oldest and largest global environmental organisation, with almost 1,300 government and NGO members and more than 15,000 volunteer experts in 185 countries. Their work is supported by almost 1,000 staff in 45 offices and hundreds of partners in the public, NGO and private sectors around the world. Of crucial importance is the fact that it is absolutely neutral; no one has ever challenged its findings or criticised its integrity. It is the most respected and thorough conservation organisation in the world and is free from political or personal bias.

The Red Lists are the most comprehensive sources on the global conservation status of animals, fungi and plant species. They are the starting point for conservation action. By 2000 the IUCN had assessed slightly more than 15,000 species. By 2015 it had assessed 79,859 species, and it has set itself the ambitious target of 160,000 species by 2020. The assessments are carried out by a global network of scientists who have access to the best scientific data and knowledge available on the species being assessed. Each assessment then goes through a review process involving scientists who were not directly involved in the first assessment.

The Red List is published in eight categories. The first category is species where the data are insufficient or not evaluated. The second category is "least concern", the third "near threatened", then "vulnerable", "endangered", "critically endangered", "extinct in the wild" and finally "totally extinct". The latest list, published last week, shows that of those 79,000-odd species 834 have been lost for ever and are totally extinct, while 69 are extinct in the wild. However, there are also 4,898 "critically endangered" species, 7,323 "endangered", 11,029 "vulnerable" and 5,204 "near threatened". I suppose if you had asked the public—or me, before I read that—to name critically endangered species, I doubt if we could have named 10. We might have come up with rhinos, tigers, maybe elephants, gorillas, polar bears and leopards, and then we would all have got a bit stuck. So how on earth have we got to the stage where almost 5,000 species are in danger of extinction and another 7,000 endangered? In the UK we have lost to extinction the starry breck lichen, and the roundnose grenadier is critically endangered, fished to near extinction by the French and Spanish. That latter comment is mine, not the IUCN's, I hasten to add. The IUCN has also just announced that the Atlantic puffin, of which we all thought there were millions, has moved up into the "vulnerable" category.

Most people would say that it would be a shame if we did not see polar bears, pandas or lions any more, but would ask why we should care about all the other things that do not matter too much, like starry breck lichen. Those things do matter, though, and in our general ignorance of our wanton destruction we do not know how much they matter. Most Governments in the world are trying to cut carbon emissions but we are ignoring the one massive natural resource that captures carbon: forests. The protection of ecosystems such as peat bogs and forests is critical to regulating carbon. The Amazon rainforest has been described as the lungs of our planet because it provides the essential world service of continuously recycling carbon dioxide back into oxygen. More than 20% of the world's oxygen is produced in the Amazon rainforest, which also releases 20 billion tonnes of moisture every day, most of it watering crops tens of thousands of miles away.

The burning of the rainforest accounts for almost 20% of all carbon emissions in the world and that is far more than all the cars, lorries, buses, trains and

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ships put together. If we do not halt the total destruction of our rainforests we could close down all the transport in the world and we would still, eventually, die. We are destroying rainforests the size of England every year, and at the present rate they will be totally destroyed in 40 years' time.

As rainforest species disappear, so too do many possible cures for life-threatening diseases. The National Cancer Institute in the United States has identified 3,000 plants that are active against cancer cells, 70% of which are found in the rainforests, and 25% of the active ingredients in today's cancer-fighting drugs come from organisms found only in the rainforests. However, of those 25% of western pharmaceuticals derived from rainforest ingredients, fewer than 1% of tropical trees and plants have been tested by scientists. So we have tested 1% and are burning the other 99%, yet we are getting a quarter of our drugs from that 1%. How can we be so stupid as to destroy a habitat and species permanently when we have not looked at 99% of the species in it and what benefits they may bring to our survival?

Let us briefly consider the three following facts: a single pond in Brazil can sustain a greater variety of fish than is found in all the rivers of Europe put together; a 25-acre area of rainforest in Borneo may contain more than 700 species of trees, and that figure is equal to the total tree diversity of north America; and the number of species of fish in the Amazon exceeds the number found in the entire Atlantic Ocean.

With enormous effort and will on the part of all Governments in the world we could eventually reverse climate change, but we can never ever bring back to life a species that has been wiped out. Biodiversity is not just about saving the red squirrels—dear to my heart—or the polar bears, orang-utans, lemurs and tigers, whose loss would diminish us all; of perhaps far greater importance to the planet are the plants, bugs, mosses and lichens that we never see and which are not cuddly or iconic.

Look at that tiny insect which we have taken for granted for millennia, the bee, which holds the key to huge quantities of our food production. That is just one insect that we know about and which we have studied. We kind of know the bee's place in the jigsaw of the survival of humankind but why, therefore, do we carry on destroying without checking hundreds of other species whose role we have not studied and do not understand, but which might be equally crucial to our survival?

The complex and crucial interactions between species can sometimes be unrecognised until one species is lost from an ecosystem and the imbalance results in sometimes disastrous consequences. One example is that when top predators are removed from an ecosystem, prey populations can sometimes grow to unstable levels and deplete food resources, which leads to a cascade of ecological effects.

Not many people like vultures—big ugly, nasty birds which eat carrion and rotten flesh. So who cares if their numbers decline? In India a few years ago, in order to protect cattle from flies a pesticide was rubbed onto their hides. It was good for the cattle but when the cattle died, say, out in the bush, and the vultures ate them, the pesticide killed the vultures. India lost 99% of its vultures and what were the consequences? There were no natural scavengers to clean the bones, and rotting, diseased animals were eaten by dogs, which greatly increased in numbers and passed on diseases to humans. There are now programmes to save vultures, and by saving vultures, we save humans.

Not many people like sharks either. We see daily news reports of killer sharks all over the place. I have never seen one but I suspect that 99% of the public would not care if all sharks were killed. Sharks are being killed—in their millions. The median estimate for kills of sharks is at least 100 million, with some estimates at over 200 million. Sharks are heading for extinction unless the Chinese stop eating the fins—the main reason for them being killed. If the top predator of the ocean is taken out, we would certainly get an explosion in seal and dolphin numbers and a catastrophic decrease in fish numbers. We would have an ecological disaster which would impact on the lives of hundreds of millions of people, and it would be irreversible. However, when one species gets to the endangered or critically endangered category we can save it and reverse the process, with enormous effort.

I was privileged to work with the Cayman Islands Government for some time. The native blue iguana had shrunk to just 12 by 2005 and was functionally extinct. Thanks to the work of the Durrell Wildlife Conservation Trust, based in Jersey, and the National Trust for the Cayman Islands, the project led by the excellent Fred Burton has now reproduced about 1,100 blue iguanas in total and almost 700 have been released back into the wild. In 2013 the IUCN dropped them from the "Critically Endangered" list to the "Endangered" list. Of course, the Cayman Islands are a British Overseas Territory, where most of the UK's biodiversity is found.

I congratulate Defra, which is the most respected government department amongst the overseas territories for the work it does with the OTs and in CITES. I am delighted at the creation of the Pitcairn Island Marine Reserve, which at 322,000 square miles is the largest continuous one in the world. I hope that we can work with other countries in the South Pacific to one day make the whole South Pacific a marine reserve.

The loss of animals and plants, their habitats and their genes, on which so much of human life depends, is one of the world's most pressing crises. It is estimated that the current species extinction rate is between 1,000 and 10,000 times higher than it would naturally be if man were not interfering. The main drivers for this loss are converting natural areas to farming and urban development; introducing invasive alien species; polluting and overexploiting resources, including water and soil; and harvesting wild plants and animals in unsustainable levels. Cutting down rainforests in order to produce soya beans, palm oil and beef burgers is sheer madness.

We were not responsible for the extinction of the dinosaurs, but we have been responsible for all the species losses in the last few hundred years. Every decision we take that affects biodiversity also affects

our lives and the lives of other people. Biodiversity is crucial to human well-being, sustainable development and poverty reduction.

I conclude with the words of the double Pulitzer prize-winning biologist, Edward O. Wilson. In 1980, he said that, in the 1980s:

"The worst thing that can happen—*will* happen—is not energy depletion, economic collapse, limited nuclear war, or conquest by a totalitarian government. As terrible as these catastrophes would be for us, they can be repaired within a few generations. The one process ongoing in the 1980s that will take millions of years to correct is the loss of genetic and species diversity by the destruction of natural habitats. This is the folly our descendants are least likely to forgive us".

The late Dr John Sawhill of the Nature Conservancy said:

"In the end, our society will be defined not only by what we create, but by what we refuse to destroy".

I am sorry to have taken so long.

6.11 pm

Lord Jones of Cheltenham (LD): My Lords, I congratulate the noble Lord, Lord Blencathra, on a fascinating speech and on securing this important debate.

Visitors leaving the Two Oceans Aquarium at Cape Town's waterfront see a sign announcing:

"Planet Earth's most dangerous predator".

Under that sign is a full-length mirror. You stand in front of it and a neon sign behind you lights up with the word "You".

We are well into the sixth period of extinction in our planet's history, the first to be entirely manmade. The first five extinction periods were caused by catastrophic methane release, flood basalt eruptions, climate change and impact events like the asteroid famed for the death of the dinosaurs. The main threats to biodiversity today are overexploitation and unsustainable use of species; human wildlife conflict; habitat loss and degradation; emerging infectious diseases; environmental pollution; and human-induced climate change. Some 1.5 million species are known about, but scientists believe that there are potentially 5 million to 10 million or more to be found. However, because of this diverse list of threats, many of these unknown terrestrial and marine species may become extinct without us even knowing they existed.

Since 1970, our planet has lost half its wildlife. 10,000 representative populations of mammals, birds, reptiles, amphibians and fish measured by the Living Planet Index have declined by 52%. Half of the Amazon rainforest tree species are under threat of extinction because of extensive destruction for timber. In Indonesia, forests are being burned to make way for palm oil planting, causing terrible air pollution which is killing animals, insects and humans.

I will say a few words about just three of the many species under pressure because of human activity: bees, bats and elephants. I turn first to bees. Since the end of the Second World War there has been a massive loss of wild habitat for bees and other pollinators. Some 3 million hectares of flower-rich grassland have been lost since 1945, leaving only 100,000 hectares remaining. Only 2% of wildflower meadows and grasslands that existed in the 1930s survive, with over 7 million acres lost.

Honey bees are only part of pollination; wild pollinators are crucial, too. Hoverflies and other fly varieties, butterflies and moths, bumblebees and other wild bees all play their part in pollination, as do bats, but these species, too, are in decline. In the UK, between 5% and 10% of pollination is done by honey bees, with 90% to 95% done by other pollinators.

In the last 35 years, 75 species have declined by more than 70% and more than 250 UK pollinators are in danger of extinction. If these losses continue unabated, we could lose 80% of plant species and 13% of agricultural production at a time when future food security is becoming a real issue. Human intervention has caused this disastrous decline, not just through loss of habitat but though the use of pesticides, particularly neonicotinoids, which confuse the orientation of bees. A halt to their use throughout Europe was announced two years ago. After signing up to this, the UK regrettably gave a derogation to use the chemicals in certain areas of the country, which is likely to worsen the situation.

The population decline of bees is a national emergency. One answer is to grow bee-friendly plants. The Bumblebee Conservation Trust helpfully names the top 10 plants to help bees—mahonia, pussy willow, viburnum, lavender, scabious, borage, comfrey, pink allium, bellflower and yellow aquilegia. We need to outlaw the use of neonicotinoids and carry out an education programme to inform the public on how we can all help the bees.

Secondly, I am appalled to learn that the fruit bat—sometimes called the flying fox—is being culled in Mauritius. Under pressure from farmers, the Mauritius Government say that 18,000 of these little creatures—almost half the population—will be culled because farmers claim that the bats are damaging more than 50% of their crops. The IUCN, which we have already head about, says that this figure is nonsense and that fruit bats account for no more than 14% of the loss. The vast majority of fruit losses come from poor farming practices.

The Mauritian Wildlife Foundation, which has been running a fruit bat project for over a decade, and opposes the cull, strongly encourages a scheme to subsidise nets and train farmers in pruning trees. A government cull of tens of thousands of these bats has no scientific basis and is putting the survival of the species at risk. Furthermore, a decision to cull will damage the good reputation in conservation that Mauritius has acquired internationally with support from organisations such as Durrell. I hope that our Government will make a strong protest to the Government of Mauritius and that the cull will be stopped.

Thirdly, elephants. As we all know, a global poaching crisis threatens decades of conservation successes of many species, including rhinos, lions, tigers, leopards, cheetahs and elephants. The illegal wildlife trade is enormous, worth up to an estimated $19 billion a year. Around 30,000 African elephants are killed by poachers each year. In 2013, more elephants died than were born—a clear sign of a species in trouble. So what can be done? There are two elements of the problem—the market for ivory, and poaching. First, we need to try to eradicate the market. The big markets for ivory are

[Lord Jones of Cheltenham]
China, Vietnam, Thailand and Indonesia. Education is the key. Apparently, in China 75% of people believe that ivory is a mineral. Documentaries such as those made by Sir David Attenborough and others should be distributed worldwide, particularly to schools, so that the next generation will appreciate better that wildlife is precious when it is alive.

Secondly, we need to end poaching. Inevitably, elephants are killed for their ivory. There needs to be a tangible reward for information on where poachers are. When park rangers and game wardens receive intelligence on poachers they need to act and they need training and equipping to meet this task. This costs money and a long-term commitment. The message must sink in that poachers are effectively "on licence" all day, every day of every year from now on. This worked for a while in Kenya. The current Minister for Wildlife and Tourism in Botswana has said that his country does not negotiate with poachers. They are told to lay down their weapons and, if they resist, they do not resist for long.

In some countries, poachers with machine guns use helicopters in their murky exploits. They shoot elephants and rhinos, land the helicopter, take the ivory and take off again. This is not random poaching; it is highly organised and financed crime. There is now hard evidence that these helicopter missions are linked to terrorism; they fund terrorist activity or drug activity elsewhere in the world by killing elephants for ivory and selling it to China or Vietnam. I favour the bazooka option for these helicopters, although this is not party policy. We would need only a few of these aircraft to be destroyed to ram home the message that poachers are not going to win.

It is not all bad news. Botswana has an increasing population of elephants—I draw attention to my declared interest in that country—and that is because their rulers, from Seretse Khama onwards, have loved their wildlife. I understand that if noble Lords wish to have elephants on their estates, they can have as many as they like from Botswana; you just arrange the transport.

I end with this story. A few years ago I was on a boat on the River Chobe near Kisani in northern Botswana. In the distance in the river was a very large elephant, a matriarch. All around there were hundreds, maybe thousands, of elephants. When she died a few days later, wildlife wardens dragged her body on to the riverbank with a tractor and chains. Then, for hour after hour, elephants filed past her in an orderly fashion, touching her body with their trunks—a family paying its last respects. It is up to humans to ensure that elephants, like many other species, are around for future generations to enjoy.

6.21 pm

The Earl of Selborne (Con): My Lords, I thank my noble friend Lord Blencathra for giving us the opportunity to debate this very important subject. I declare an interest as patron of the National Biodiversity Network trust.

Both of the speeches that we have heard so far have given us some stark information on biodiversity losses. We must accept that with the human population expanding, and with the standard of economies by and large increasing, there are bound to be competing demands for land use and maritime resources, hence the conflict between conservation and other interests. We have to tackle the question of how industries such as agriculture, which is a large land user, fisheries, mineral extraction and forestry can coexist with the requirements of conservation. Realistically, if you can achieve 15% of land cover around the world protected in some form, you are doing well. You are certainly not going to get vastly more; that is probably near the upper limit. We have to recognise that habitat destruction is not the only cause of the loss of biodiversity; there is also climate change, and we have heard about the introduction of alien species. These are the issues that have to be addressed.

What instruments are available to us that could be rolled out on a global scale? The UK has some quite interesting tools that it has developed, and it needs to think carefully about how it can pursue them further. In 2011 we published the *UK National Ecosystem Assessment*, which was started under the Labour Government of Gordon Brown and has been pursued with some interest by the coalition Government and the present Government. It gave us an idea of how to take an overview of the state of our natural environment, including biodiversity, and how to value our ecosystem services.

The second instrument, which again is a first in global terms, has been the Natural Capital Committee, which gives advice to government and others on how to value our natural capital, including biodiversity. The Government's response in September this year to the third *State of Natural Capital* report, said that they agreed with the underpinning premise of recommendation 3, which was:

> "Organisations should create a register of natural capital for which they are responsible and use this to maintain its quality and quantity".

The government response continued:

> "We support the NCC's work on developing an approach to corporate natural capital accounting. We will continue to work with the Natural Capital Coalition and the Natural Capital Declaration as they develop an internationally agreed approach to valuing and accounting for nature in business and finance … Once a domestically and internationally agreed approach to natural capital accounting has been established, we will look at appropriate mechanisms to support further adoption of this approach".

That seems thoroughly realistic and it represents quite a sea change in how we construct our balance sheets, and how we put values on businesses and their impact on the environment. We have to make progress on this. There is a danger that this will get bogged down in interminable committees. It is a significant contribution that we should make so that every organisation, ultimately, has to account for its impacts, for better or worse, on natural capital, including biodiversity.

The UK assessment exercise was massive. Many scientists were involved. It took place between 2009 and 2011 and had the great advantage that this country has a wonderful heritage of recording—any number of people go out recording birds and butterflies as volunteers. But scientists, government agencies, NGOs and others also do it. That gave us a head start. This

information, particularly the long-term databanks, is absolutely critical. I draw attention to the National Biodiversity Network, which is bringing together all these records held by any number of agencies. We now have more than 110 million biological records and they are accessible to anyone online. That is the key. There is no point recording where you find one particular plant or see a bird if that is not available online in order to inform policy-makers. That was a great springboard from which to build up the information required for monitoring, valuing and accounting for natural capital, as well as identifying the required investment and management programmes—the risks, the costs and benefits. Those are what was really meant by developing programmes in order to protect biodiversity.

An investment programme has to be based on the strongest evidence of economic benefit. That could include woodland planting, peatland restoration, wetland creation, the restoration of commercial fish stocks, urban green spaces or improving the environmental performance in farming. These are, of course, happening in some instances. There is a feeling that these must be funded by government grants, but that will not happen, particularly when we hear the news tomorrow. We need to be a little more inventive about sources of funding that might include a wealth fund derived from rents from non-renewable resources and compensation payments from developers.

Other parts of the world clearly do not have access to the same amount of records as we have. But we should not minimise the amount of information that we can get from remote sensing. I do not know whether other noble Lords heard, as I did, Professor Kathy Willis of Kew describe recently on Radio 4, Oxford's local ecological foot-printing tool for mapping remote sensing, which gives specific information on biodiversity, which, of course, has to be supplemented, ultimately, by fieldwork. But she made the point that using this tool they were able to provide information that had escaped people on the ground.

I am rather cynical about the United Nations targets—the Aichi targets—the five strategic goals and 20 targets. If you read them, you cannot dispute them. For example, by 2020, the extinction of known threatened species will have been prevented and the conservation status, particularly of the most in decline, will have been improved and sustained. Likewise are the sustainability goals agreed at the General Assembly of the United Nations just this September. Quite frankly, when, as happened in 2010, we come to assess the targets that were set at Rio, such as the Convention on Biological Diversity, surprise, surprise, we have not met them. I fear there is a real danger with a lot of these rather woolly targets set at Aichi that the same thing will happen.

Let us assess what we have that we are proud of in this country and what we need to improve. We should be very proud of the Darwin Initiative, which has been going since Rio. It has done excellent work. Now, it is much more funded by DfID than by Defra. That means that there must be a human well-being content, thereby excluding some of the environmental projects that were supported in the past. Nevertheless, we are proud of it. We have managed some excellent UK-based conservation schemes. Referring back to the IUCN red list, we succeeded in taking the bittern and the nightjar off that list, which is a small plus. I agree that it does not outweigh some of the other cases referred to by my noble friend.

We have been active participants in the international programmes, such as Ramsar for wetlands, CITES for endangered species, and the Convention on Biological Diversity. Therefore we have pulled our weight there. However, quite frankly, I am not sure whether we have brought the devolved Administrations in very successfully. When somebody from Defra goes to these meetings, there does not appear to be very good dissemination of outcomes, which certainly needs looking at.

Lastly, I make the point that historically we are bound to recognise that we have a key role. If you go to Kew, the Royal Botanic Garden Edinburgh or the Natural History Museum, there you have the type specimens—the collections to which just about every other country where these collections come from will need access to make their biodiversity plans. Again, we should be enormously proud of the resources that are available there. I note that the science strategy from Kew, in spite of the funding difficulties it is facing, is very positive.

Scotland is to be congratulated on the online publication last year of the Atlas of Living Scotland, an online biodiversity database built to inform the world of just what biodiversity, soils, climates and habitats can be found in Scotland. I much look forward to the day when England can do the same.

6.31 pm

Baroness Young of Old Scone (Lab): My Lords, I thank the noble Lord, Lord Blencathra, for seeking this debate. I declare my interests in the register of Members' interests as being president, vice-president and chairman of a very long list of biodiversity and conservation organisations.

We have already heard that global biodiversity is declining at its fastest ever rate. I am rather more gung-ho than the noble Earl, Lord Selborne, about the Aichi Biodiversity Targets under the Convention on Biodiversity. Unless we set targets we will live in some sort of fool's paradise, not being able to tell whether we are getting better or worse. We have less than five years left to meet these targets, and to be honest the noble Earl is absolutely right: progress and action from Governments round the world, including the UK Government, is simply too slow and too little.

The noble Lord, Lord Blencathra, stipulated in the question for debate the loss of biodiversity "caused by human activity". That gave me some pause for thought, because that pretty well means all loss of biodiversity. The biodiversity specialists I consulted could not think of a single species decline that was not caused by human activity. We have already heard some of the list: human development, introduced invasive species, climate change, unsustainable agriculture, fishing or forestry, as well as natural resource extraction, persecution and illegal trade—all those are manmade. Yet half the world's population directly depends on biodiversity for its livelihood, and we all depend on ecosystem services that biodiversity and the natural environment provide.

[Baroness Young of Old Scone]

I therefore ask the Minister how the Government plan to step up UK action to meet the Aichi targets and to help protect and foster global biodiversity. I will raise three issues in particular. First, the UK overseas territories contain—would you believe?—90% of the UK's biodiversity, yet efforts by the UK Government to tackle biodiversity loss in the overseas territories is fairly low; there is a very strong presumption that the overseas territory Governments will cope, but they have very small capacity and even less money to do much. The current Darwin Plus funding stream is valuable but does not go anywhere near meeting the scale of the challenge.

I have the privilege of being president of the South Georgia Heritage Trust and just spent five weeks in Antarctica completing the third phase of eradicating the man-introduced rats and mice from South Georgia. They came with the whalers 100-odd years ago and had been eating the eggs and young of seabirds, penguins, albatrosses and the endemic South Georgia pintail, a rather dinky duck that looks more at home in a bath than on a rather cold island. The South Georgia Heritage Trust raised nearly £7 million to carry out the first three phases of the eradication programme. Although I am very grateful for the funding that the Government provided, the vast majority—nearly 90%—came from private donors. I must confess that I gnashed my teeth rather when the Australian members of our highly expert team told me that a similar exercise to rid Macquarie Island off Tasmania of its similarly introduced rats, mice and, in this case, rabbits, in order to protect its native biodiversity, had been paid for totally by the Tasmanian and Australian Governments.

The second point that I want to raise has been raised previously—the Darwin Initiative, which is a fine example of UK leadership on tackling global biodiversity conservation. It has a very positive profile in many parts of the world and has had a significant impact well beyond its relatively small size. However, it has kind of undertaken a bit of mission creep, in my view. It is now rather more focused on DfID and development-related criteria than on biodiversity conservation per se. Can we have Darwin back, please, and can we have it focused on long-term sustainable development and biodiversity conservation rather than short-term and reactive policies?

My third point is that biodiversity conservation is a bit like a charity—it needs to begin at home. We could take the view that if every nation in the world looked after its own biodiversity, we would not have a problem. So I ask the Minister about the Government's commitment to doing their bit for global biodiversity by looking after the biodiversity in the UK that we uniquely are responsible for. We have heard of a number of assessments of biodiversity in the UK, and the 2013 *State of Nature* report found that 60% of UK species that have been studied had declined in recent decades and 31% had strongly declined. More than one in 10 species could disappear from the UK altogether.

I commend to the Minister the conservation NGOs report *Response for Nature*, which outlines what needs to be done. We are all looking forward to the Government's 25-year environmental plan, which I understand will include biodiversity conservation issues. I hope that we might lure the Minister into giving us some insight into what it might contain and how the Government are getting on with their preparations.

Although vision for the future is important, I urge the Minister that the plan needs to be more than just a vision; it needs to have some teeth. It needs to commit clearly to actions for government and to outline actions for businesses, landowners, local government, civil society and the public. It needs to have concrete, numerically expressed goals that can be measured and monitored, and five-year milestones with accountability and reporting to Parliament. In respect of monitoring biodiversity, can I urge the Minister to ensure that the monitoring functions currently carried out by the Joint Nature Conservation Committee do not suffer in the spending review, as is rumoured? If we cannot count and monitor our biodiversity, how will we know if we are winning?

Last but not least, the Government need to defend and implement the laws that conserve nature, particularly the European birds and habitats directives which are currently under review. It would be a grievous blow for biodiversity across the European Union if these directives were weakened. Can I ask the Minister tell the Committee where the Government stand on the defence of these directives? We were somewhat concerned that when nine EU environmental Ministers, including the German and French Ministers, called recently for the directives to be safeguarded, the name of the UK environment Minister was not attached to that call.

The noble Lord, Lord Blencathra, talked about the IUCN Red List. My very good friend Jane Smart, who is the director of the IUCN global species programme, said that the IUCN Red List is the voice of biodiversity telling us where we need to focus our attention most urgently. If we look at that list, biodiversity is not telling us where to focus our attention most urgently; it is screaming for help.

6.38 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am extremely grateful to the noble Lord for initiating this debate today, and indeed to all noble Lords who have spoken. Between us, around the Committee, we have highlighted some alarming truths, as well as making a compelling case for action.

We know that extinction is a fact of life. Species have been evolving and dying out since our creation but in the past there has been a rhythm to it. There has been a rhythm to evolution in which nature adjusts and rebalances as those changes take place. What we have identified this afternoon, which is different and alarming, is the extent to which that process has speeded up over the last 100 years, almost entirely as a result of human activity. As the noble Earl, Lord Selborne, pointed out, the scale of population growth, and our drain on natural resources, is becoming increasingly unsustainable. In 1950 the global population was 2.4 billion; it is now more than 7 billion and continuing to rise. We are, therefore, outgrowing the planet and misusing the limited resources available to us.

The resulting degradation of biodiversity is breathtaking in its impact. Again, we have heard evidence of that. The noble Lord referred to the latest report

from the International Union for Conservation of Nature's Red List. Undoubtedly, the thousands of new species that it has identified as being threatened with extinction really hammer home the case for action.

Knowing that I have limited time to speak this afternoon, I will pick up three issues that echo many of the themes that others have touched on. The first is climate change. Despite a few hardy climate change deniers, I think that there is a growing consensus that the earth is warming up as a result of increased CO_2 emissions. If current trends continue, it is predicted that the earth could be 1 degree warmer by 2025 and 3 degrees warmer by 2050. Already the IUCN report highlights the loss of Arctic sea ice, which has been declining at a linear rate of 14% per decade since 1979.

This not only affects the survival of native species, such as polar bears, but becomes a major global environmental threat. Rising sea levels and extreme weather conditions, such as drought, flooding and hurricanes, will lead to huge population shifts as well as damaging biodiversity. This is why the outcome of the Paris talks is crucial. Countries such as China and India are already beginning to face up to their responsibilities to cut CO_2, but we must show leadership as well. That is why it was so disappointing that the Minister's colleague, the Secretary of State for Energy and Climate Change, chose to put the emphasis on the growth of gas, rather than renewable energy, in her announcement last week. Can the Minister, therefore, clarify what our negotiating position will be and whether the UK is committed to meeting its existing 2020 targets, as well as going further to reduce CO_2?

Secondly, I want to talk about deforestation, another issue which has been touched on already. We know that it is happening globally and that attempts to control it have so far been frustratingly slow. As the noble Lord pointed out, it matters not only because of the rich biodiversity in areas such as the Amazon rainforest, but also because forests play a critical role in regulating climate. Forests are cleared for many reasons, not least the pressures of expanding populations, but they are also cleared to meet the West's obsessive consumption of unsustainable foods: cattle ranching to meet demand for beef products in the Amazon; the planting of huge coffee plantations in Central America; the growing of coffee, cocoa and palm oil for export in Papua New Guinea; and the production of bananas and tobacco in Colombia. I know that we could all name many more. Does the Minister agree, therefore, that further action is needed, on a global level, to secure the future of the forests, and what are the Government doing to negotiate international environment and trade agreements that will deliver this in a meaningful way? What are the Government doing, too, to encourage investment, such as that promoted by Fairtrade, in more sustainable livelihoods for local people, which will make those forests more sustainable? Does he agree that at the UK level we could do a great deal more to improve the environmental labelling of products, as well as enforcing the ban on illegally-traded goods, to make good consumers of us all?

Thirdly, I would like to say something about the decline in marine species. The World Wildlife Fund report, *Living Blue Planet*, published in September, shows a decline of 49% in the global marine population between 1970 and 2012. As WWF points out, this is a disaster for both ecosystems and the people in the developing world who depend heavily on the oceans' resources. Overfishing is a major source of the problem, with levels of some food fish, such as tuna, mackerel and bonito falling by 74%. Again, this is being exacerbated by the impact of climate change, with rising sea levels and increasing acidity levels further weakening the marine ecosystem.

Like the forests, the oceans are an essential part of our life support system, generating half the world's oxygen and absorbing almost a third of its carbon dioxide. We cannot afford to take this contribution for granted. Clearly one solution is the creation of a global network of marine protected areas—we have heard some examples of how those are developing this afternoon and they would certainly help to allow habitats to recover. Of course, we already have our own network of protected areas around UK shores, which was introduced by the last Labour Government. Will the Minister update us on the rollout of these sites and confirm whether the 23 sites in the second tranche in 2016 are still on course? Will he clarify what negotiations are taking place at an international level to ensure that this model of marine protection is being adopted more widely?

I would also like to say something about the UK's biodiversity strategy. Like my noble friend Lady Young, I am concerned about the progress being made at home. The department's *Biodiversity 2020* strategy set out some useful priorities and planned actions, but, four years on, I wonder how the Government think they are doing on meeting those targets. The Minister will be aware that the Environmental Audit Committee last year published an environmental scorecard on its progress, using a traffic light system. None of the areas assessed received a green rating, and on air pollution, biodiversity, flooding and coastal protection the Government received a red rating, showing that things had deteriorated. I wonder whether the Minister would like to comment on that.

I have one final query. Like my noble friend Lady Young, I do not expect the Minister to give us a sneak preview of the Chancellor's Statement tomorrow, but there are concerns about developments. I would be grateful if he could reassure us that, in proposing significant cuts, his Secretary of State has not also damaged the UK's capacity to meet its own targets, as well as its EU and UN commitments. Put simply, if we are not seen to be rising to the biodiversity challenge, we really cannot expect the poorer developing nations to do so. I look forward to the Minister's response.

6.47 pm

Lord Gardiner of Kimble (Con): My Lords, I have been very much looking forward to this debate and I congratulate my noble friend Lord Blencathra on securing it. The Government recognise how important biodiversity is, and the breadth of today's debate has demonstrated the scale of the challenges that we face.

For many in this country, the word "biodiversity" conjures up awe-inspiring images from natural history programmes of majestic species like the tiger or the

[Lord Gardiner of Kimble]
elephant. We are aware of the global impact of the large-scale degradation of an ecosystem like the Amazon rainforest, but when we talk about biodiversity we actually refer to the variety of all life on earth. It includes all animals and plants, including bugs, as my noble friend Lord Blencathra pointed out at the outset.

Climate change, deforestation, the pollution of land and seas, the overexploitation of natural resources and the introduction of invasive species into pristine environments are all major threats to global biodiversity and they are all down to us, the human race. The noble Lord, Lord Jones of Cheltenham, my noble friend Lord Selborne and the noble Baroness, Lady Young of Old Scone, all highlighted that in their exceptional speeches. Indeed, the noble Baroness, Lady Jones of Whitchurch, referred specifically to the impact of climate change on global biodiversity. A global climate agreement is the only way that we can deliver the scale of action required. That is why the Government are committed to working with other countries to secure an ambitious global climate deal in Paris in the coming weeks.

A threat to biodiversity is a threat to us all. Our survival depends upon biodiversity. The natural environment provides us with clean water, clean air, fuel, shelter, food and trade, but we can jeopardise all this if we do not act responsibly to protect it.

On the positive side, much good work is already being done to mitigate the negative impact that we have had, and continue to have, on our planet's biodiversity. The UK is often at the forefront of these efforts through engagement in global agreements like the Convention on Biological Diversity and the Convention on International Trade in Endangered Species, which provide a framework of evidence and best practice as well as setting the common goals we are all striving for. Indeed, the Prime Minister and other world leaders met in New York in September to agree the global goals. These are ambitious and they recognise that biodiversity is key to the survival of life on earth.

My noble friend Lord Blencathra pointed to the devastating impacts caused by species loss and the excellent work being done by the International Union for Conservation of Nature through its Red List. The UK Government are taking the lead on addressing species loss internationally. The noble Lord, Lord Jones of Cheltenham, specifically mentioned the plight of elephants. We have sought to galvanise action on illegal wildlife trade through the organisation of the London conference last year and we are committed to working with international partners to tackle this abhorrent trade. We are investing in projects, including anti-poaching training for rangers, training for high court judges and programmes such as the Elephant Protection Initiative, through which nine African countries have already committed to a 10-year moratorium on domestic ivory sales. However, we clearly need to do very much more.

We provide direct funding for projects in developing countries through our Darwin Initiative and Illegal Wildlife Trade Challenge Fund. The strength of these schemes is that projects leave a strong legacy behind once the project is complete, empowering local communities to protect their natural environment in the future. I am sure that my noble friend Lord Blencathra will be embarrassed but we are in his debt because it was my noble friend who in 1992 launched the Darwin Initiative and was our lead negotiator at the Rio summit, so much good has come of that.

The noble Baroness, Lady Young of Old Scone, mentioned our overseas territories, which are home to many species and ecosystems that are found nowhere else in the world. Since 2012 our dedicated overseas territories environment and climate change grant scheme, Darwin Plus, has funded 40 projects. I was delighted that the noble Baroness mentioned the South Georgia Heritage Trust project. I have just read an absolutely fascinating book on that. I cannot begin to express my delight on hearing that the endangered South Georgia pipit appears to be returning. I very much hope that the five-year quest to eradicate rats from South Georgia will continue to be a success. I hope that the noble Baroness will pass on our considerable thanks for the tenacity and devotion of those involved. Having seen the photographs, I have seen the amusing events that can arise but also the extremely hard work that they put in.

I share the concerns of the noble Baroness, Lady Jones, about declines in marine biodiversity. This Government have also been very clear about the importance of marine biodiversity and the need for marine protected areas throughout the world's oceans. That is why the Government are committed to ensuring that action is taken at the UN on this matter, as well as committing to deliver a "blue belt" of marine protected areas around our coasts and in our overseas territories. The blue belt will help protect threatened species and the marine habitats they rely on. Indeed, 16% of UK waters are already protected in marine protected areas. We established a marine protected area around South Georgia and the South Sandwich Islands covering more than 1 million square kilometres, which is equivalent to four times the size of the United Kingdom. Earlier this year we announced further plans to establish a marine reserve around the Pitcairn Islands, covering 830,000 square kilometres, to which my noble friend Lord Blencathra referred.

The noble Baroness, Lady Jones, asked specifically about marine conservation zones and I am pleased to confirm that the second tranche of these is on course to be established in January 2016 and a third tranche of sites will follow. Overfishing is a serious threat to marine life. At the December negotiations on EU fishing quotas, the Government will continue to press for scientific advice to be followed and to meet our commitment of reaching maximum sustainable yield by 2020 at the latest.

My noble friend Lord Blencathra and the noble Baroness, Lady Jones, referred to the essential importance of forests and the need to tackle deforestation. My noble friend Lord Blencathra highlighted what rainforests offer mankind. Indeed, they are the most biologically diverse ecosystems on the land. That is why we have made it illegal to place illegally-logged timber on the UK market and, through the UK International Climate Fund, have invested extensively in projects which address deforestation and forest restoration in developing countries.

We are equally committed to improving the quality and extent of wildlife habitats in England, for which Defra is responsible. Our *Natural Environment* White Paper sets out a bold vision for a resilient and connected natural environment, providing services vital to our economic prosperity and social well-being. Our Biodiversity 2020 strategy is taking forward that vision.

The noble Baroness, Lady Jones, referred to the Environmental Audit Committee's report on the Government's progress. The Government have a strong record on environmental protection and we believe that the committee's assessment is unduly negative. Clearly there is more work to be done and I hope that when the Environmental Audit Committee reports again, some of the work that we are undertaking will bear even greater fruit. We are committed to continuing implementation of our Biodiversity 2020 strategy, working to protect wildlife habitats and species both on land and at sea. We have set in motion the creation of 100,000 hectares of priority habitats such as arable field margins, wetlands and woodlands. We have also maintained 95% of our Sites of Special Scientific Interest—our most important sites—in favourable or recovering condition.

My noble friend Lord Selborne referred to the Natural Capital Committee. There is a key commitment to the work that we wish to undertake with that committee on how England's natural assets can be better protected and improved. We are committed to developing a 25-year plan that will set out our ambition for a healthy and resilient natural environment that benefits both our economy and our nation. The noble Baroness, Lady Young, specifically mentioned this. We are on course. Three ministerial events have taken place last month and this month and we are engaging with more than 150 organisations. We wish to develop a framework for publication early next year and a full plan will be published late in 2016. I will make sure that all noble Lords who have engaged in this debate are part of that process, because it is important.

We have created a national pollinator strategy—a 10-year plan setting out our commitment to improving the status of the 1,500 or so pollinating insect species in England. That was a point that my noble friend Lord Blencathra and the noble Lord, Lord Jones of Cheltenham, raised. It is immensely important and I am privileged to be part of the Defra team that is pushing forward with this. It is about working with all stakeholders and a huge number of volunteers. It is about, for instance, engaging online with about 30,000 beekeepers who will be our eyes and ears on these matters, so it is very important.

We are committed to planting 11 million trees during this Parliament. That is the equivalent of nearly 25,000 acres of new woodland. We must also tackle invasive non-native species. We are the first country in Europe to develop a comprehensive strategy to address threats to our native wildlife from invasive non-native species. We are faced with many and varied challenges in safeguarding the biodiversity of this country and internationally.

The noble Baronesses, Lady Jones and Lady Young, alluded to the Chancellor's Statement tomorrow. They are generous enough to know that I could not possibly provide any detail. In fact, I do not know any detail. However, I can assure noble Lords that the Government and Defra are committed to protecting biodiversity domestically and globally for generations to come. We clearly cannot do this alone. Many groups and individuals from conservation charities are supported by members of the public and volunteers. Farmers, local government, landowners and developers all need to make a vital contribution to protecting biodiversity. My noble friend Lord Selborne, in referring to the work of generations of recorders in the UK, said that their work should be acknowledged.

I was particularly grateful, as I am responsible for Kew and Wakehurst, that my noble friend mentioned their hugely important work. The Millennium Seed Bank at Wakehurst is a truly exceptional gem of these isles and we should be very proud of what it does. We should also be very proud that this country has a great system of volunteers and partners, and I particularly acknowledge the help that Defra receives from them. We could not do it without them.

There is a fight; the fight is on and we will need to continue that fight. Wherever we are in the world we each have a responsibility to look after the planet on which we live and to safeguard it for future generations. I believe that the debate has been exceptional. It has been an exceptional example of the contribution that noble Lords today have made personally to this quest. I sometimes regret that these gatherings in the Moses Room are a rather rarefied contribution because noble Lords in the Chamber should hear the contributions of those who have made such a personal commitment to biodiversity globally and in this country. All of us genuinely care about this issue. We will all have our differences and our nuances. There may be the odd political element to pushing the Government to achieve their targets. I think that the noble Baroness, Lady Young of Old Scone, is absolutely right. We must have targets. That is the benchmark from which we in Defra and in government can judge how well we are doing. That is what your Lordships and the wider country can see. I want to ensure and instil in noble Lords that we have a department that cares about these things. I work with Ministers who care absolutely passionately about the biodiversity of these islands and the commitment that we have to help in the wider world because we have great opportunities and good fortune in this country. I am most grateful for this debate today.

Committee adjourned at 7.03 pm.

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